

SOUTH AFRICA / JUDGMENT

# Stephen v Asnath and Others (LCC 119/2024) [2025] ZALCC 17 (10 April 2025)

[2025] ZALCC 17

## COURT

Land Claims Court

## BEFORE

Ncube

## CASE / FILE NUMBER

LCC 119/2024

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IN

THE LAND COURT OF SOUTH AFRICA

HELD

AT RANDBURG

CASE

NO: LCC 119/2024

Before:

Honourable Ncube J

Heard

on: 24 February 2025

Delivered

on: 10 April 2025

(1)

REPORTABLE: YES/NO

(2)

OF INTREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between:

BEAUMONT BRIAN  
STEPHEN  
First Applicant  
and  
MALEPHI  
ASNATH  
First Respondent  
THE OCCUPIERS OF  
PORTION 230 OF THE  
FARM KNOPJESLAAGTE,385  
REGISTRATION  
DIVISION

J.R  
Second Respondent  
THE CITY OF TSWANE  
METROPOLITAN  
MUNICIPALITY  
Third Respondent  
MZWANELE NYHONTSO  
N.O.(IN HIS CAPACITY AS  
THE MEMBER OF THE  
ECUTIVE COUNCIL FOR  
AGRICULTURE, LAND  
REFORM AND RURAL  
DEVELOPMENT

Fourth Respondent

Heard: 24 February

2025

Delivered: This judgment  
was handed down electronically by circulation to the parties'  
legal representatives via email. The  
time and date for hand down of  
the judgment is deemed to be 13h00 on 10 April 2025.

ORDER

1.

The Respondents' points in limine are dismissed

a. The First and

Second Respondents and all those occupying through or under them are  
ordered to vacate Portion 230 of the  
farm Knopjeslaagte 385,  
Registration Division JR 230 Monument Road Centurion on or before 25  
April 2025.

2.

If the First and Second Respondents and all those occupying through  
or under them fail or refuse to vacate the property  
on or before 25

April 2025, the Sheriff of the Court or his/her lawfully appointed  
Deputy is authorised and directed to evict the  
First and Second

Respondents and all those occupying through or under them on 30 April  
2025.

3.

The Applicant is placed on terms to contribute an amount of twenty-five thousand rands R25 000.00 towards the First Respondent's relocation costs, should the First Respondent so request and be willing to accept such contribution.

4.

The First and Second Respondents and all those occupying though or under them are granted leave to demolish their structures and salvage the material before they vacate the property.

5.

There is no order as to costs.

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## JUDGMENT

NCUBE J

### Introduction

- [1] This is opposed application for the eviction of the First Respondent Malephi Asnath ("Malephi") and the Second Respondent being various occupiers of the Farm Knop Jeslaagte 385 Registration Division JR ("the farm")
- [2] On the 27 January 2025, the application served before my brother Ntshalintshali AJ. On that day, the parties were ordered to convene a meeting within ten (10) days from the date of the order in an endeavour to settle the dispute. Various other orders were made, calling upon the First and Second Respondents to produce proof of their income, expenditure and bank statements at the meeting still to be arranged. Nontobeko Memela, being the official of the Third Respondent, Tshwane Municipality ("the Municipality") was ordered to attend the meeting in order to assess the personal circumstances of the First and Second Respondents. The matter was then adjourned to 24 February 2025 for hearing.

### Background

#### Facts

- [3] Malephi arrived at the farm in 2006 to join her partner John, who was working for the Applicant ("Mr. Beaumont"). When Malephi moved into the farm, she had a minor child, Thato, who was less than a year old at the time. Thato was at the time of institution of these proceedings 18 years old. Malephi also has an adult son, Moses, who came to stay with her in 2010.

- [4] Mr. Beaumont later sold his farm. John relocated to Kyalami where one of Mr. Beaumont's businesses is situated. Malephi remained on the farm. Mr. Beaumont allowed Malephi to continue staying on the farm as long as she liked but she had to look after the property and keep it clean. At first, Malephi was employed by Mr. Beaumont, working at 4 Seasons Gardens which is a nursey and landscaping company. Malephi's employment with Mr Beaumont was terminated in 2013.
- [5] In 2019, Malephi built permanent structures on the farm. She built two four-roomed houses and a separate one-roomed house. The

one-roomed house was to be used for traditional healing rituals. She spent an amount of R400 000.00 in building those structures, although her evidence is contradictory in that regard. It appears from Malephi's answering affidavit that she raised that amount over a period of two years from the transport business and from selling sweets and food. On the 1st of February 2023, Mr. Beaumont concluded an option to purchase and land availability agreement in terms of which he is expected to give vacant possession to the Developer by the 20th of March 2025, otherwise the option to purchase will lapse.

- [6] Malephi is self-employed. She runs a school transportation business for school going children. She gets R5000 per month from that business. In addition, Malephi has income of R8000 per month which she gets from her partner John. Previously, Malephi was, until 2023, running a tuck-shop business which later became unsustainable. Malephi was given an opportunity to make representations as to why her right of residence couldn't be terminated. She did not make representations. On 14 June 2024, Mr. Beaumont terminated Malephi's right of residence.

#### Points in limine

- [7] Malephi has raised the following points in limine:
- a) Non compliance with the provisions of Section 10(1)(b) of the Extension of Security of Tenure Act, 62 of 1997 ("ESTA"). This point is misplaced for two reasons. The first reason is that Section 10(1)(b) is not applicable in these proceedings. This section applies to a person who was an occupier on 4 February 1997. Malephi arrived on the farm in 2006 and it is disputed that she is an occupier in terms of ESTA considering her income. The second reason why this point in limine is misplaced, is that Malephi under the same section speaks about the need for service of notice of termination of the right of residence to each occupant of the household. Section 10 does not deal with notice of termination of the right of the residence.
  - b) Non-Compliance with Section 9(2)(d)

Section 9(2)(d) requires the owner or person in charge, after the termination of the right of residence, to give the occupier, the municipality and head of the Provincial Office of the Department of Rural Development and Land Reform, not less than two months written notice of intention to obtain an order of eviction. This Section provides that it is sufficient if such notice is

given not less than two months before the commencement of the hearing. Malephi complains further that no notice in terms of Section 9(2)(d) was served on her two children. There is no such a requirement in terms of Section 9(2)(d). It is not a requirement that all members of the household should be served with a section 9(2)(d) notice. It is the occupier who requires such notice.

[8] On 26 July 2024, the Notice in terms of Section 9(2)(d) was served on the Municipality. On 29 July 2024, the Notice was also served on the Provincial Head of the Department of Rural Development and Land Reform. The First Respondent's points in limine are therefore without merit.

[9] The next point in limine is concerned with lack of mediation. Malephi started staying on the farm after 4 February 1997. Section 11 of ESTA deals with the order for eviction of the person who became an occupier after 4 February 1997 and it provides:

*“(1) If it was an express, material and fair term of the consent granted to a occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by fluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.*

(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997, if it is of the opinion that it is just and equitable to do so.”

[10] Section 11(2) above has been amended, and it now reads:

*“2 in circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997, if:*

*“(a.) the court is of the opinion that it is just and equitable to do so; and*

(b.) The owner or person in charge of the land and the occupier have [1]attempted mediation to settle the dispute in terms of Section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.”

[11] In my view, this is one of the cases in which the dispute could be settled by mediation. The parties are far from finding each other in such a way that settlement by way of mediation is impossible. Therefore, an attempt to submit to mediation would not have served the desired purpose. In any event, a supplementary affidavit deposed to by Mr. Nicholas Andreas Papas (“Mr. Papas”) outlines the steps taken by the parties in an attempt to achieve a meaningful engagement. The affidavit outlines the income and expenditure of Malephi as gleaned from the correspondence received from Malephi's legal representative. Most of the information in the letter contradicts Malephi's answering affidavit.

## Discussion

[12] It is common cause on the facts that Mr. Beaumont and Malephi concluded a written agreement. In terms of that agreement, Mr.

Beaumont gave consent to Malephi to reside on the property free of charge. The condition attached to the agreement was that Malephi had to keep the property clean, and she did not allow any other person to stay on the property. It was agreed that Malephi's stay on the property was temporary and could be terminated on a thirty days' notice in case the property is sold. It is also common cause, in terms of the statement of agreed facts signed by the parties' legal representatives on 14 January 2025 that Malephi built permanent structures on the property without Mr. Beaumont's consent.

[13] On 01 February 2023, Mr. Beaumont concluded an option to purchase land availability agreement. In terms of the agreement, Mr. Beaumont was supposed to have given vacant possession of the property to the developer on 20 March 2025.

[14] The starting point of exercise in an eviction application is the termination by the landowner or person in charge of the occupier's

right of residence in terms of Section 8 of ESTA. ESTA requires two steps to be taken before an order of eviction can be granted. The first step is to terminate the occupier's right of residence. The second step is to give notice of intention to obtain an eviction order to the occupier, the Municipality and the Head of the Provincial Department of Rural Development and Land Reform.

[15] In *Mkangeli and others, V Joubert and Other*

[2] Brand JA expressed himself in the following terms:

*"Once the occupier's right of residence has been duly terminated, his refusal to vacate the property is unlawful. Nevertheless, it does not mean that the remedy of eviction will necessarily be available. This remedy is limited by those provisions of ESTA to which I will presently return. On the other hand, ESTA places no limitation on the other remedies attracted by unlawful occupation. It must therefore be accepted, I think, that the other remedies such as the owners delictual claim for his patrimonial loss caused by the unlawful occupation of his land (see for example, Heter v Van Greuning 1979(4) SA 952 (A) are still available to him. As to the remedy of eviction s9(2) provides that a court may only issue an eviction order if certain conditions are met. The first such condition is that the occupier's right to residence must have been properly terminated under s8. Other conditions prescribed by s9(2) include the giving of two months' notice of the intended eviction application after the right to reside has been terminated under s8 (s9(2)(d)). In a case such as the present, where the appellants took occupation of Itso seng after 4 February 1997 s11 also finds application. This section provides that a court may only grant an eviction order if it is of the opinion that it is just and equitable to do so. In deciding whether it is just and equitable to grant an eviction order, the court must have regard to the considerations listed in s11(3), but it is not limited to them. Included amongst these is the consideration whether suitable alternative accommodation is available to the occupier (s11(3)(c)) and the balance of the interests of the owner ... the occupier and the remaining occupiers on the land (s11 (3)(e))"*

[16] In *Snyders and Others v De Jager and Others*[3] the Constitutional Court said:

*“If a person has a right of residence on someone else’s land under ESTA, that person may not be evicted from that land before that right has been terminated. In other words, the owner of land must terminate the person’s right of residence first before he or she can seek an order to evict the person. However, it must be borne in mind that the termination of a right of residence is required to be just and equitable in terms of section 8(1) of ESTA. Section 8(2) deals with the right of residence of an occupier who is an employee of the owner of the land or of the person in charge and where right of residence arises solely from an employment agreement. It provides that such a right of residence may be terminated ‘if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.’*

At para 56:

‘Section 8(1) makes it clear that the termination of a right of residence must be just and equitable both at a substantive level as well as at a procedural level. The requirement for a substantive fairness of the termination is captured by the introductory part that requires the termination of a right of residence to be just and equitable. The requirement for procedural fairness is captured in Section 8 (1) (e)’

[17] In *Casu*, there is no doubt that Mr Beaumont served Malephi with the notice of termination of her right of residence. The contention by Malephi that her children were never served with the same, is neither here nor there. This is not a requirement in terms of ESTA. There is also no provision in the act or regulations that such a notice must be in the language which the occupier understands as the Malephi’s Counsel seems to suggest. Counsel, in his Heads of Argument also refers to unknown kind of notice which he

calls “Notice to vacate”. There is no such notice either in terms of section 8 or section 9 of ESTA.

[18] The Respondents’ Counsel’s submission in the Heads of Argument that Malephi is a long term protected occupier is also misplaced. She arrived on the farm in 2006. She might have lived on this farm for more than ten years, but she has not reached of 60 years which is a requirement in terms of ESTA.[4] There is also no indication on the papers placed before this court that Malephi did not understand the agreement which she signed with Mr Beaumont.

[19] Malephi is lamenting the non – availability of suitable alternative accommodation. The Municipality has filed a report

indicating that she does not qualify even for a temporary emergency accommodation. She earns enough income to provide for her own

accommodation. She spent R450 000.00 on the construction of two four-roomed brick structures on the property. She earns R5000.00 per month from her school transportation business. She gets R8000.00 per month from her partner. She also sells snacks and cold drinks to members of the public. In addition, Malephi has a vehicle in respect of which she pays monthly instalments of R5000.00. She contributes R1000.00 per month towards a stokvel and she has credit accounts at Game, Truworths and Mr Price.

[20] The availability of suitable alternative accommodation is but one of the factors which the court takes in consideration in deciding whether it is just and equitable to grant an eviction order. It is not the only factor to be considered. It must be considered in conjunction with all other factors mentioned in section 11 (3) (a) –(e) of ESTA. There is no obligation on the landowner or person in charge to provide the occupier with alternative accommodation before the eviction order may be granted.

[21] In *Baron and Others v Claytile and Another*[5] the Constitutional Court held that private persons cannot be expected to provide free accommodation indefinitely. The Court said:

“<sup>42</sup> This court in *Blue Moonlight* further held:

“The duty regarding housing in s 26 of the Constitution falls on all three spheres of government local, provincial and national which are obliged to co-operate. In *Grootboom* this court made it clear that “a co – ordinated State housing program must be a comprehensive one determined by all three spheres of government in consultation with each other -----Each sphere of government must accept responsibility for the implementation of particular parts of the program.....”

[22] In *City of Johannesburg v Changing Tides 74(Pty) Ltd* ‘Wallis JA Said:

“The position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The constitutional court has said that private entities are not obliged to provide free housing for other member of the community indefinitely, but their right of occupation may be restricted, and they can be expected to submit to some delay, in exercising, or some suspension of their right to possession of their property in order to accommodate the immediate needs of the occupiers. That approach makes it difficult to see on what basis the availability of alternative land or accommodation bears on the question whether an eviction order should be granted as opposed to the date of eviction and the conditions attaching to such an order. One can readily appreciate that the date of eviction may be more immediate if alternative accommodation is available, either because the circumstances of the occupiers are such that they can arrange such accommodation themselves or because the local authority has in place appropriate emergency or alternative accommodation .....”

[23] In this case even the municipality has indicated that the Malephi does not even qualify for temporary emergency accommodation. Mr Beaumont has been waiting for a long time for the respondents to find their own accommodation. Malephi was even sufficient time to make representations but did not do so. She was offered R25000.00 as a contribution towards relocation expenses but she decline the offer. I am of the view that it is just and equitable to grant an eviction order in the circumstances of this case.

#### Compensation For Structures and Improvements

[24] What remains is the determination of the appropriate compensation for structures and improvements. ESTA enjoins the court in granting an eviction order, to order the owner or person in charge to pay compensation for structures erected and improvements made by the occupier to the extent that it is just and equitable to do so[6]. Before I finalised writing this judgment, I asked parties to make submissions on the just and equitable amount of compensation. I also asked for submissions on possible disruption of schooling activities of the school going child. I have received submissions from both Counsel and I am grateful to both of them for their useful

#### **submissions.**

[25] Mr Beaumont filed an affidavit explaining that he cannot afford any compensation due to the fact that he is financially distressed. He runs a business renting out plant and machinery. The business is not doing well, which is the reason why he is selling his property.

However, during oral submissions, Mr Peter, Counsel for Mr Beaumont, informed the court that Mr Beaumont has offered to make a

contribution of R25000.00 which he had made previously but was rejected by Malephi. Mr Peter submitted that Malephi is not an occupier in terms of ESTA as she gets income in excess of R13 625.00 which is the amount prescribed by the Minister and therefore she does not qualify for compensation for structures and improvements made. In Terms of the regulations, a person who has income which exceeds R13 625.00 does not qualify to be an occupier and therefore does not enjoy the protection which ESTA affords to occupiers.

[26] Mr Khulu, Counsel for Malephi and Second Respondents, submitted that the just and equitable compensation will be an amount of R400 000 which Malephi spent in the construction of her structures. At first it was R100 000 and later it was R400 000-00. Mr Khulu says the reason for this contradiction is that Malephi could not produce proof since the receipts were destroyed during the floods. It is noted that apart from the income of R8 000.00 plus R5 000.00, Malephi says she has also started a business where she buys stock of R1500-00 per month. It is highly improbable therefore that she make profit of less than R1500-00. If that was the case, she would be running that business at a loss and she would have closed it down.

[27] The report filed by the Municipality notes that Malephi and second respondents do not qualify and do not deserve a temporary emergency accommodation. On the question of schooling for the 18 years old, it transpired and this is the submission by all the parties that the child attends Gezina College where she is doing a Business Management Course. The mother transports her to and from the college. She does not pay at the College. She will pay on completion of the course.

[28] Taking into account Malephi personal circumstances, the inescapable conclusion is that Malephi is not an ESTA occupier. She is excluded from the definition of occupier in terms of paragraph "c" of the definition of occupier in terms of ESTA. Malephi therefore does not deserve any protection in terms of ESTA.

#### Costs

[29] Parties, correctly in my view, did not ask for costs. This court does not normally award costs except in exceptional

circumstances. In the present case, there are no exceptional circumstances justifying an award of costs.

#### Order

[30] In the result, I make the following order:

The Respondents' Points in limine are dismissed

The First and Second Respondents and all those occupying through or under them are ordered to vacate Portion 230 of the farm Knopjeslaagte 385 Registration Division JR 230 Monument Road Centurion on or before 25 April 2025.

3.If the First and Second Respondents and all those occupying through or under them fail or refuse to vacate the property on or before 25 April 2025, the Sheriff of the Court or his/her lawfully appointed Deputy is authorised and directed to evict the First and Second Respondents and all those occupying through or under them on 30 April 2025.

3. The Applicant is placed on terms to contribute an amount of twenty-five thousand rands R25 000-00 towards the First Respondent's relocation costs should the First Respondent so request and be willing to accept such a contribution.

4. The First and Second Respondents and all those occupying through or under them are granted leave to demolish their structures and salvage the material before they vacate the property.

5. There is no order as to costs.

Judge of the Land Court of South Africa

Appearances:

For the Applicant: Adv L Peter

Instructed by : Vermaak Marshall Wellbeloved

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ROSEBANK

For the First and Second Respondent: S. Khulu

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PRETORIA

Heard: 24 February 2025

[1] See Section 6 of extension of security of tenure Amendment Act 02 of 2018 in Government Gazette No. 50014 of January 2024

[2] 2002 (4) SA 36 (SCA) Paras 12 -13

[3] 2017 (3) 545 (CC) Para 67

[4] See section 8 (4) of ESTA

[5] 2017 (5) SA 329 (CC)

[6] See section 13 (1) (a) of ESTA

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