

SOUTH AFRICA / JUDGMENT

## Old Abland (Pty) Ltd v Hanekom and Others, Old Abland (Pty) Ltd v Jacobs and Others (LCC178/2016, LCC179/2016) [2017] ZALCC 24 (13 December 2017)

[2017] ZALCC 24

COURT

Land Claims Court

BEFORE

MP Canca, GM Makhanya

CASE / FILE NUMBER

LCC 178/2016; LCC 179/2016

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IN

THE LAND CLAIMS COURT OF SOUTH AFRICA

HELD

AT RANDBURG

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

BEFORE:

MAKHANYA J & CANCA AJ

CASE

NO.: LCC 178/2016

DATE:

13-12-2017

In

the matter between:

OLD  
ABLAND (PTY)  
LTD Appellant  
And  
ANTHEA  
HANEKOM First  
Respondent  
STUURMAN  
HANEKOM Second  
Respondent  
THOSE  
OCCUPYING WITH, OR UNDER FIRST  
Third Respondent  
RESPONDENT  
COTTAGE NO. 3 TOPSHELL  
PARK,  
BADEN POWELL ROAD, LYNEDOCH,  
STELLENBOSCH  
UNLAWFUL OCCUPIER  
STELLENBOSCH  
MUNICIPALITY Fourth  
Respondent  
DEPARTMENT  
OF RURAL DEVELOPMENT  
Fifth  
Respondent  
AND  
LAND REFORM  
CASE  
NO.: LCC 179/2016  
SUZIE  
- ANN  
JACOBS  
First Respondent  
THOSE  
OCCUPYING WITH, OR UNDER FIRST  
Second  
Respondent  
RESPONDENT  
COTTAGE NO. 8 TOPSHELL  
STELLENBOSCH  
MUNICIPALITY  
Third Respondent  
DEPARTMENT  
OF RURAL DEVELOPMENT  
Fourth  
Respondent  
Heard  
on: 07 December 2017  
Delivered  
on: 13 December 2017

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**JUDGMENT**

CANCA AJ

- [1] The applicant applies for leave to appeal to the Supreme Court of Appeal against the whole of the judgment and order of Poswa-Lerotholi

AJ delivered on 3 October 2017, with which I concurred. The application was initially opposed by the first to third respondents.

However, the respondents subsequently changed their stance and now abide this court's decision.

- [2] I do not consider it necessary to set out the fairly detailed grounds of appeal in this judgment or to repeat those aspects of the judgment which are attacked by the applicant. I will limit myself to brief comments on the fourth ground of appeal.
- [3] It is suggested that the court erred in finding that the prejudice to the respondents would outweigh that to the applicant should an eviction order be granted.
- [4] The court was concerned about the possibility of the respondents being rendered homeless by the eviction. However, at the hearing of this application, Ms Oschman, for the applicant, in response to a question, submitted that the respondents' possible homelessness on eviction was not an issue in the light of the fourth respondent's ("the Municipality") policy on emergency accommodation.

According to that policy, the Municipality is obliged to supply emergency accommodation to persons rendered homeless by an eviction

and who qualify under the policy. Counsel also submitted that her instructing attorney has, since the handing down of the judgment

which is the subject of this appeal, been engaging the respondents' attorneys in, apparently futile, attempts to settle the dispute

between the parties. An offer by the appellant to pay each respondent the sum of R100 000.00 to vacate the property and to relocate

elsewhere was allegedly rejected a week ago, so the submission continued.

- [5] This matter, as is the case in most ESTA matters, revolves around the relative hardships to an occupier, on the one hand and a land owner or person in charge, on the other hand, a grant or refusal of an application for eviction will have on the parties. On the former, the pain, generally speaking, cuts deeper than mere economic hardship, which, again speaking broadly, is what befalls the latter. The emotional stress brought on by the thought of being rendered homeless as well as the strain of worrying about the minor children's ease of access to schools in the event of eviction, must bear heavily on soon-to-be evicted occupiers.

- [6] I have taken note of the information provided from the bar by Ms Oschman and hope that the discussions between the parties' legal representatives will lead to a settlement.
- [7] I have carefully considered the submissions of counsel and, in the light the recent Constitutional Court case of Baron and Others v Claytile (Pty) Limited and Another
- [2017] ZACC 24, where a municipality's constitutionally imposed obligation to provide suitable alternative accommodation where an eviction results in homelessness was re-enforced, come to the view that there are reasonable prospects that a higher court may come to a different

### conclusion.

[8] In the result, I propose that the following order is made:

1. The application for leave to appeal to the Supreme Court of Appeal succeeds.

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MP Canca

Acting Judge, Land Claims Court

I concur and it is so ordered.

GM Makhanya

Judge of the Land Claims Court

Appearances

For the applicants: Advocate I Oschman

Instructed by: Cluver Markotter Inc. Stellenbosch.

For the respondents: No appearance

Attorneys of record: JD Van Der Merwe Attorneys, Stellenbosch.

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Prepared on 12 October 2026 · Esheria