

Supreme Court of Appeal of South Africa

MEDIA STATEMENT

From: The Registrar, Supreme Court of Appeal

Date: Friday 1 June 2007

Status: Immediate

The Supreme Court of Appeal delivered judgment on 1 June 2007 in the matter of *Agrico Masjinerie (Edms) Bpk v H Swiers* (399/06).

The applicant owns a farm in the Malmesbury district. The respondent lived on the farm from birth for more than 30 years until 1998. In 2001 she returned to the land without the owner's consent and erected an informal dwelling on it which she and her six children then occupied. The applicant applied to the High Court for her eviction. It claimed that she was an unlawful occupier in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998 ('PIE'). The respondent said she was, until her departure in 1998, an occupier in terms of the Extension of Security of Tenure Act 1997 ('ESTA') and that when she left the farm she did not lose her ESTA rights to occupy the land because she was not made aware of such rights until much later.

The application failed before a single judge and its appeal to the Full Bench was dismissed. On appeal the SCA held that the matter had to be decided on the respondent's version of the facts because the application had been brought on paper without a resort to evidence. It found that ESTA was designed to protect vulnerable farm tenants. ESTA provided remedies for persons evicted and sought to avoid extra-judicial conflicts between owners and occupiers (or persons who claimed the rights of

occupiers). The respondent was in effect a person evicted who had the right to claim restoration of residence and use under s 14 of ESTA. She has not exercised that right but had simply moved back to the property without the owner's consent. That, the court found, was a reliance on self-help and was unlawful. The respondent was in consequence in unlawful occupation within the terms of PIE. The court exercised a discretion against evicting the respondent because of the length of time that she had been in occupation before the applicant commenced proceedings. Instead it ordered her to bring an application for restoration of possession under ESTA within 4 months and authorized the applicant to bring a counter-application for her eviction if so advised. The appeal was upheld but the court gave appropriate directions which should lead to the ultimate resolution of the dispute.

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