



THE SUPREME COURT OF APPEAL REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 14 November 2019

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

JONES & OTHERS V SUTHERLAND & ANOTHER

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against the order of the Land Claims Court, Port Elizabeth (Canca AJ sitting as a court of first instance) in which it dismissed the appeal with no order to costs.

The three appellants (Mr Cedric Morgan Jones, Mrs Diane Morgan Jones and their daughter Kerenza Morgan Jones) brought an appeal against their eviction from a farm in Meyerton, Gauteng by the respondents and registered owners of the property, Mr Shawn Sutherland and Mrs Julia Sutherland. The appellants were evicted in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA). ESTA contains mandatory requirements for granting an eviction order, regulates evictions of persons who became occupiers before and after February 1997 and further states how right of residence is terminated. With this legislative framework in mind, the Court proceeded to weigh the competing rights of the parties concerned, the rights of security of tenure of occupiers and the property rights of owners.

A one year verbal lease agreement was entered into between Mr Jones and Mr Sutherland commencing on 1 July 2013. A deposit and rental was paid by the Jones but no further rental was received by Mr Sutherland from November 2013. Various notices of termination of the lease were sent to the Joneses in the subsequent years along with attempts to constructively evict the family from the property by Mr Sutherland through various means, some of which were illegal. In 2014, Mr Jones laid charges for malicious damage to property against Mr Sutherland and his son who were later found guilty as charged. The final notices of termination was sent in 2015.

During 2017 a social worker's report from the Gauteng Provincial Department of Social Development was prepared in anticipation of the application for eviction. The deplorable

conditions of the homestead were highlighted – there was no electricity, no running water and the homestead was freezing cold. The appellants are in their late 70's and their daughter is disabled. It was recommended that the appellants be moved to an old age home where their medical and other needs could be attended to.

The mandatory requirements for eviction are set out in s 9(2) which makes it clear that an eviction can only be ordered once there has been a lawful termination of residence in terms of s 8. With the right of residence of the Joneses lawfully cancelled, the Court sought to determine whether it was just and equitable (substantively and procedurally) having regard to the factors enumerated in s 8(1)(a)-(e) of ESTA. Upon evaluating the factors in s 8(1)(a)-(e), the Court held that the right of residence of the Joneses was validly terminated and it was in accordance with the dictates of fairness. Further, the other requirements set out in s 9(2) and (3) had been met. The Court noted that where an eviction is going to render persons homeless, a constitutional obligation rests on the relevant municipality to provide suitable accommodation. The Court held that in balancing the rights of the parties involved, justice and equity demanded that the appeal by the Joneses be dismissed.

The appellants are ordered to vacate the farm in Meyerton, Gauteng no later than 29 February 2020. No costs were awarded.