



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT
OF APPEAL**

FROM: The Registrar, Supreme Court of Appeal
DATE: 14 July 2021
STATUS: Immediate

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

Grobler v Phillips and Others (Case No 446/2020) [2021] ZASCA 100 (14 July 2021)

The Supreme Court of Appeal (the SCA) today dismissed an appeal against an order of the Western Cape Division of the High Court, (Le Grange and Wille JJ) (the high court) upholding an appeal against an eviction order granted by the magistrates' court at Somerset West.

The legal proceedings for an eviction order commenced in 2009 after the appellant, Mr Grobler, had purchased a property in Somerset West at a public auction. Mr Grobler launched an application to evict the respondents, Mrs Phillips and her disabled son. Mrs Phillips had commenced living on the property, which was then part of a large farm, in 1947 when she was 11 years old. She later lived on the property with her husband, since deceased, who worked on the farm. A previous owner of the farm entered into an oral agreement with Mrs Phillips and her husband granting them a life-long right of occupation of the property.

The eviction application, which was brought in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 (PIE), was referred for the hearing of oral evidence. The magistrate granted an order for eviction. On appeal to it, the high court upheld the appeal and set aside the eviction order. The high court allowed Mrs Phillips to raise a new legal issue on appeal, namely that the provisions of the Extension of Security of Tenure Act, 62 of 1997 (ESTA) applied to the matter. The high court found that Mr Grobler did not establish that the provisions of ESTA did not apply. The magistrate was accordingly wrong to grant an eviction order in terms of PIE. The high court also found that the notice terminating Mrs Phillips' right of occupation did not amount to reasonable notice. Her occupation was accordingly not unlawful in terms of PIE. The high court

additionally found that it would not be just and equitable to grant an eviction order in the circumstances.

Leave to appeal to the SCA was granted on petition. The SCA found that the high court had correctly allowed Mrs Phillips to rely upon the new legal issue. It found, however, that the high court was wrong to conclude that Mr Grobler had not proved that ESTA did not apply. The SCA further found that the high court had erred in concluding that Mrs Phillips was not an unlawful occupier within the meaning of PIE. However, in dealing with whether an eviction order would be just and equitable, the SCA found that high court's reasoning on this aspect was correct. It found that Mrs Phillips, now 84 years old, had for the greater part of her life lived on the property with the express consent of successive owners. Although the orally conferred 'life-right' was not enforceable against a subsequent owner, it remained a weighty consideration in determining what was just and equitable. The SCA also found that the circumstances in which the protection afforded by ESTA fell away, did not alter the fact that Mrs Phillips and her son were vulnerable persons deserving of appropriate protection. The steady encroachment of urban development upon the farm and its conversion into urban residential property occurred at a time when Mrs Phillips believed she was protected by the oral right of occupation for life. These factors, coupled with Mrs Phillips' advanced age and that she was residing on the property with her disabled son militated against the assertion of Mr Grobler's rights of ownership.

The SCA concluded that the circumstances of the case were such that to grant an eviction order would not be just and equitable. It came to this conclusion notwithstanding an offer made by Mr Grobler to provide alternative accommodation. It accordingly dismissed the appeal.

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