IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 1755/2021 and
Case No: 11835/22

In the matter between:

CJW BELEGINGS (PTY) LTD	**Applicant**
(Registration Number: 2013/028187/07)	

And

COLLEEN ANITA CATHLEEN ARENDSE	**First Respondent**
CONNIE ARENDSE	**Second Respondent**
THE UNLAWFUL OCCUPIERS OF DEO GLORIA FARM, WAARBURGH ROAD, JOOSTENBURG VLAKTE	**Third Respondent**
CITY OF CAPE TOWN	**Fourth Respondent**

Heard: 04 November 2022

Delivered: 01 December 2022

This judgment was handed down electronically by circulation to the parties' representatives via email and released to SAFLII. The date and time for hand-down is deemed to be 01 December 2022 at 10h00.

JUDGMENT

LEKHULENI J,

INTRODUCTION

[1] These two applications are quintessential examples of how the Prevention of Illegal Eviction from an Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act") and the Extension of Security of Tenure Act 62 of 1997 ("ESTA") cross paths. The applicant seeks an order evicting the first to the third respondents ("the respondents") and all occupying under or through them from the immovable property known as De Gloria Farm, more fully described as Portion 23, Farm 727, Joostenberg Vlakte, Division Paarl, Western Cape Province ("the farm"). The court is also requested to determine a just and equitable date on which the respondents and all persons occupying under and through them should vacate the property.

[2] In addition, an order is sought that in the event that the respondents and all persons occupying under or through them fail to vacate the property on the determined date, the Sheriff of this court must be authorised and directed to eject them from the farm and to take all steps as may be necessary to give effect to the eviction order. The applicant relies on the fact that the respondents are all occupiers in terms of the provision of the PIE Act to seek the respondents' eviction.

[3] The applicant also brought a conditional application under case 11835/22 for the relocation of the respondents from the main house marked A on the farm to the second house marked B, in the event, the eviction application is postponed and cannot be determined urgently or in the event an eviction order is granted, but the effective date for execution of the order is postponed to a future date. In that conditional application, the applicant also sought an order interdicting the respondents from denying the applicant or any of its representatives' access to the farm.

THE FACTUAL BACKGROUND

[4] The facts giving rise to this case can be summarised briefly as follows: The applicant is the owner of the farm. The applicant purchased the farm on 28 October 2020, at a public auction. The farm was registered in the applicant's name on 4 February 2021. The first respondent and her late husband, Mr Trevor Daniels, previously owned the farm. At the time of the auction, the first respondent's estate was sequestrated, whilst her husband's deceased estate was also insolvent. On 16 February 2021, the applicant's attorney of record, Ms Yolandi Dippenaar ("Ms Dippenaar"), made telephonic contact with the first respondent to plan for the respondent to vacate the farm. The first respondent was not interested in discussing the matter with Ms Dippenaar. The first respondent advised Ms Dippenaar that her attorney would contact the applicant's attorneys regarding the farm. The applicant's attorneys received no correspondence from the respondents' attorneys, and thereafter, they could not get hold of the first respondent.

[5] On 3 March 2021, the applicant's attorneys dispatched a notice to the respondents notifying them that they were in unlawful occupation of the farm and requested them to vacate the farm on 12 April 2021. The notice inter alia, informed the respondents that the applicant bought the farm through a public auction and that the farm was registered in the applicant's name on 04 February 2021. The notice also drew the respondents' attention to the fact that considering the registration of the property in the applicant's name, the respondents ceased to have a legal claim to the property and had no permission to occupy any dwelling on the property. The notice further informed the respondents to vacate the farm by Monday, 12 April 2021, at 17h00, and to deliver the keys in their possession to the applicant.

[6] On 8 April 2021, Ms Dippenaar attempted to telephonically contact the first respondent to arrange for the handover of the farm keys. Her efforts drew a blank. Subsequently, the applicant's attorneys forwarded an email to the respondents requesting the respondents to correspond with the applicant's attorneys before Friday, 09 April 2021, to conclude arrangements for handing over all keys. No response was received to that correspondence.

[7] On 15 October 2021, the applicant instituted eviction proceedings against the respondents. After a few postponements of the matter and at the instance of the respondents, Legal Aid came on record for the respondents. The second respondent did not file any opposing papers. In her answering affidavit, the first respondent averred that she had occupied the farm for many years before it was sold and had continued to occupy it after it was sold. She further states that the applicant did not give her reasonable notice to vacate the premises as prescribed by law. The first respondent further averred that she was advised that she was entitled to the notice period subject to the provisions of the Rental Housing Act. In terms of the Act, the first respondent averred that she was entitled to a period equal to a calendar month's notice to vacate the farm.

[8] The first respondent asserted in her affidavit that they have no means of survival and depend on other people's assistance. They have no relatives who own sufficient space to accommodate them. She further stated that her mom and dad reside in a four-bedroom house with six other individuals. If they are evicted, it would be difficult for her to find accommodation, as many rental places are expensive and require a deposit and bank statements. The first respondent stated that she lives with

two minor children on the farm and that her eviction would lead to homelessness as they have no other available accommodation.

[9] On 25 August 2022, shortly before the matter could be heard on 08 September 2022, Legal Aid withdrew as attorneys of record for the respondents. Subsequent thereto, T Swartz attorneys came on record for the respondents. Mr Swartz opposed both applications and assisted the respondents in filing a supplementary opposing affidavit. In her supplementary affidavit, the first respondent raised two points in limine. The first point in limine was that of *locus standi in judicio*. The first respondent asserted that Mr Carel Jacobus Wolfaardt ("Mr Wolfaardt") who deposed to the affidavit on behalf of the applicant, did not provide this court with proof that the applicant company authorised him to institute legal proceedings on behalf of the applicant. The first respondent further stated that Mr Wolfaardt claimed that he was a director of the applicant but failed to provide proof to this court. The first respondent averred further that the fact that the applicant only produced evidence of directorship in reply, is fatal to the applicant's case.

[10] The second point in limine that the respondents raised was that the applicant used the wrong forum to vindicate its rights. The respondents contended that the property in these proceedings is a farm and therefore, not located within an approved township. The respondents asserted that the applicant had to use ESTA as it provides farm occupiers with tenure rights over farm property they occupy but do not own. The respondents averred that the applicant failed to comply with the procedural requirements set out in ESTA.

PRINCIPAL SUBMISSIONS BY THE PARTIES

[11] At the hearing of this matter, Ms Du Toit, who appeared on behalf of the applicant, argued that the respondents are mistakenly conflating the issue of authorisation to institute proceedings with the issue of *locus standi*. Ms Du Toit argued that the owner of the land, the applicant herein, has a direct interest in the relief sought and therefore, has standing to bring the applications. Counsel contended that the question to determine if the applications are properly before court and brought by the applicant is not whether the deponent to the founding affidavit is properly authorised, but whether the attorneys claiming to act on behalf of the applicant are so authorised. She submitted that Mr Wolfaardt was duly authorised to bring these applications. Regarding the applicability of ESTA, Ms Du Toit submitted that the nature of the land occupied by the respondent is not dispositive of the fact that ESTA applies. The applicant's counsel contended that the respondent could only avail themselves of the protection of ESTA if they are occupiers as defined in ESTA. If they are not, so the argument went, in that case, they are unlawful occupiers as defined by PIE, and therefore, the PIE Act is applicable.

[12] Mr Swartz, on the other hand, argued on behalf of the opposing respondents that the general rule in our law is that the onus rests upon the party instituting the proceedings to allege and prove that he or she has locus standi. Mr Swartz submitted that the applicant is cited as a company, and Mr Wolfaardt did not provide this court with proof that he has written authority to institute legal proceedings on behalf of the company. He submitted that the applicant failed to provide this court with proof of his directorship in the applicant. He only did so in reply after the respondents challenged his authority. As far as the application of ESTA is concerned, Mr Swartz argued that

the land the respondents occupy is a farm. As such, the respondents are protected by ESTA, and that the PIE Act does not find any application in this matter. To this end, Mr Swartz contended that the applicant should have used ESTA, not the PIE Act. Thus, it was submitted that the applicant used the incorrect forum to launch the application. Regarding the relocation application, Mr Swartz contended that such an order amounts to eviction. He implored the court to dismiss the application.

APPLICABLE LEGAL PRINCIPLES AND DISCUSSION

[13] At the hearing of this application, the respondent abandoned their earlier defence that they were not given reasonable notice as prescribed by the Rental Housing Act. The respondents relied on the two points *in limine* raised in the supplementary affidavit. Both parties agreed that the issue to be decided are the two points *in limine*. Both parties agree that if both preliminary points are dismissed, the court must grant the eviction order and determine the just and equitable date for the eviction of the respondents from the farm. For completeness, I deal hereunder with the two points sequentially.

Did the Applicant – Mr Wolfaardt have locus standi?

[14] As discussed above, the respondents challenged the authority of Mr Wolfaardt to act on behalf of the applicant. It was contended that there was no resolution attached to the affidavit authorising him to depose this affidavit. To this end, it was submitted that Mr Wolfaardt had no authority to bring this application. In my view, this argument is misplaced and misses the point. In the founding affidavit filed on behalf of

the applicant, Mr Wolfaardt stated that he is an adult male businessman and director of the applicant. Mr Wolfaardt further said that the applicant has resolved to institute eviction proceedings against the respondents, and to that end, he is duly authorised to depose to the founding affidavit as well as all future affidavits in any court proceedings involving the applicant and the respondents. The respondents did not challenge Mr Wolfaardt on this point in their answering and supplementary affidavits.

[15] In any event, whether Mr Wolfaardt had been authorised to depose to the founding affidavit is irrelevant. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of proceedings and the prosecution thereof that must be authorised. See *Ganes v Telkom Namibia Ltd 2004 (3) SA* 615 (SCA) at para 19. If the respondents had reservations about whether the applicant authorised the eviction and the relocation applications, that authority had to be challenged on whether the applicant's attorneys were empowered to institute and prosecute the two applications. *Unlawful Occupiers School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) para 14.

[16] Rule 7 of the Uniform Rule provides the procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The view, reflected in Rule 7(1) of the Uniform Rules of Court, is that if the attorney concerned is authorised to bring an application on behalf of the applicant, the application necessarily is that of the applicant. There is no need for any other person, whether he is a witness or someone who becomes involved, especially in the context of authority, to be additionally authorised. It is thus sufficient to know whether the attorney acts with authority. See *Eskom v Soweto City*

Council 1992 (2) SA 703 (W). If the attorney had the authority to act on behalf of the applicant, then the attorney was entitled to use any witness who would, in his opinion, advance the applicant's case.

[17] Crucially in this matter, after Mr Wolfaardt's authority was challenged, the applicant filed a power of attorney in terms of Uniform Rule 7, indicating that the applicant's legal representative was duly appointed to represent the applicant. The respondents did not challenge these allegations. It must, therefore, be accepted that the institution of these proceedings was duly authorised. It follows, therefore, that the respondents' preliminary point must fail. This leads me to the second preliminary point.

Does ESTA or the PIE Act applies? Or, was the eviction application instituted in the correct forum?

[18] The respondents contend that ESTA is applicable because the land from which their eviction is sought is a farmland. The respondents further argue that the PIE Act does not find application as the respondents are occupiers of a farm as envisaged in ESTA. On the other hand, the applicant relies on the fact that the respondents are all occupiers in terms of the provisions of the PIE Act and not in terms of ESTA. According to the applicant, ESTA is not applicable in this case. For the sake of completeness, section 1 of ESTA defines "occupier" as follows:

> "occupier" means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding—
> (a) .... Deleted by s 6*(a)* of the Land Affairs General Amendment Act 51 of 2001.)
> (b) a person using or intending to use the land in question mainly for industrial, mining, commercial, or commercial farming purposes, but including a person who works the

land himself or herself and does not employ any person who is not a member of his or her family; and

(c) a person who has an income in excess of the prescribed amount.

2. Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established approved, proclaimed or otherwise recognised as such in terms of any law or encircled by such a township or townships but including—

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment approval proclamation or recognition.

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved."

[19] It is common cause that the land that forms the subject matter of these proceedings is a farm as defined in section 2 of ESTA. However, this is not enough to trigger the applicability of the Act. More is required. The definition of occupier in section 1 of ESTA makes it abundantly clear that the nature of the land is not dispositive of whether ESTA applies. The respondents can only avail themselves of the protection of ESTA if they are occupiers as defined in ESTA. If they are not, then they are unlawful occupiers as defined in the PIE Act, and the PIE Act would apply. In *Ntuli and Others v Smit and Another* 1999 (2) SA 540 (LCC) para 21, the court found that a party who wishes to prevent ejectment proceedings on the basis that he or she is an occupier as defined in ESTA and entitled to the protection given to occupiers under that Act must set out specifically the facts upon which he relies on. His or her *ipse dixit* is not sufficient.

[20] In considering the meaning of the term 'occupier' under ESTA, the starting point must be when the circumstances of the person sought to be evicted ought to be

considered to ascertain whether or not he or she is such an 'occupier. See *Lebowa Platinum Mines Ltd v Viljeon* 2009 (3) SA 511 (SCA) para 14. Simply, a person who claims to be an occupier in terms of ESTA must prove that he complies with all the components of the definition of occupier in section 1 of ESTA. It is evident from the definition of 'occupier' that for one to qualify as an occupier within the meaning of ESTA, one must show that he is residing on the land of another person to which the Act pertains, with consent (in place as at 4 February 1997 or obtained thereafter) or by virtue of another right in law to do so, and must not be in receipt of an income in excess of the prescribed amount of R13 625. See GN R1632 in GG 19587 of 18 December 1998); *Droomer No v Snyders and Others* 2020 JDR 1555 at para 11.

[21] In *casu,* the respondent claimed that ESTA is applicable because the land from which their eviction is sought is a farm. The respondent thus bore the onus to prove that they are occupiers within the definition of ESTA and that they have complied with all the components of the definition. The respondents also had to prove that they earned less than the threshold amount.

[22] It is common cause that the applicant did not give consent to the respondents to occupy the property. Instead, after the farm was sold on auction and registered in the applicant's name, the applicant made several attempts to have the respondents amicably vacate the farm. The applicant gave the respondents a month's notice to leave the farm, and the respondent did not oblige. The respondents occupied and are currently occupying the farm without the consent of the applicant. Instead, the respondents are occupying the farm because the first respondent and her late

husband previously owned it. The respondents were in occupation of the farm when it was auctioned.

[23] Furthermore, the respondents have yet to show that their income is below the prescribed amount. The respondents have not demonstrated any right whatsoever that authorises them to occupy the farm. Save for the fact that the respondents live on the farm, the respondents have not availed themselves of the protection of ESTA. The fact that the respondents occupy a farm is not the overriding consideration for triggering ESTA protection. Not all persons residing on land or farms are entitled to protection against eviction under ESTA. The protection is restricted to occupiers as specifically defined in the Act. See *Droomer v Snyders* 2020 JDR 1555 (WCC) at 11. This conclusion, in my view, is fortified by section 9(1) of ESTA, which provides that 'notwithstanding the provision of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.' This section, in my opinion, makes it abundantly clear that the protection against eviction is directed towards occupiers as defined in the Act and not towards every person residing on land whom the owner chose to evict.

[24] The respondent made no attempt to bring themselves within the definition of occupier as envisaged in section 1 of ESTA. The respondents did not allege that they earned less than the threshold amount. The respondents did not satisfy the three requirements envisaged in section 1 of the Act. On a conspectus of all the facts placed before court, I am of the view that the claim for eviction had been competently brought under the PIE Act. I am also of the view that the respondents are unlawful occupiers

as defined in section 1 of the PIE Act. It follows, therefore, that the second preliminary point must also fail.

[25] As far as the relocation application is concerned, I am confident that Mr Swartz's argument that it amounts to eviction is mistaken and cannot be correct. In *Chagi and Others v Singisi Forest Products (Pty) Ltd* 2007 (5) SA 513 (SCA) paras 19, and 20, the Supreme Court of Appeal held that the word 'land' as used ESTA in section 6 and in the definition of evictions, means the registered unit as a whole and not the actual piece of land used by the occupier. The court found further that relocation of employees from one set of house to another on the same piece of land does not constitute an eviction as contemplated in ESTA. In this regard, the law is well-established and does not need further exposition. I will now turn to consider whether it is just and equitable to grant the eviction order.

JUST AND EQUITABLE TO GRANT AN EVICTION ORDER

[26] Section 4(7) of the PIE Act provides that:

> "If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and

including the rights and needs of the elderly, children, disabled persons and households headed by women."

[27] It is common cause that the respondents have been in occupation of the farm for a period exceeding six months. Section 4(7) of the PIE Act sets out several considerations in determining whether it will be just and equitable for the court to grant an eviction order. Among others, the rights and needs of the elderly, children, disabled persons, and household headed by women, must be considered as factors for the just and equitable enquiry. Meanwhile, section 4(8) of the PIE Act provides that if a court is satisfied that all the requirements of section 4 have been complied with and that the unlawful occupier has raised no valid defence, it must grant an order for the eviction.

[28] The first respondent occupies the property with her two minor children and her brother. In her opposing affidavit, the first respondent averred that her mother (second respondent) is not living on the property. The first respondent averred that they would be rendered homeless should an eviction order be granted. The first respondent submitted a request for an emergency or other forms of alternative accommodation to the City of Cape Town (fourth respondent) so that a report could be obtained from the latter in connection with alternative accommodation. The City of Cape Town delivered a report in which it reported that it can make available emergency accommodation. The City requested the respondents to complete the acceptance form in order to be provided with an emergency housing kit. The City also asked for a period of eight months to provide an emergency housing kit and a site to construct the structure for the respondent.

[29] The applicant's legal representatives however, indicate that they have been in contact with the City of Cape Town and were advised that the respondents did not accept the offer for alternative accommodation made available to them by the City. This was not challenged at all by the respondents. In my view, the respondents have been in occupation of the farm for quite a long time. The respondents were informed in March 2021 that the property was sold at an auction. The applicant requested the respondents to vacate the farm on 12 April 2021. Most importantly, the respondents have known for a considerable period that the farm was sold on auction. And throughout that time, the respondents have known of the necessity to seek alternative accommodation. The respondents have been beneficiaries of more than one indulgence in this court. This application was postponed on several occasions at the instance of the respondents. It is unfortunate that notwithstanding the efforts made by the City of Cape Town to provide alternative accommodation to the respondents, same seem not to be appreciated.

[30] Section 26 of the Constitution does not afford a right to unlawful occupiers to resist eviction, even though this may result in homelessness. See *Ives v Rajah* 2012 (2) SA 167 (WCC) at para 34. Section 26(3) of the Constitution affords a right against arbitrary eviction. If eviction is to occur, it must happen with regard to the evictees' human rights to dignity. See *Omar NO v Omar and Others* (WCC Case No 9643/07, 11 May 2010) para 8.

[31] This court cannot defer the applicant's right to vacant possession of its farm in perpetuity. As discussed above, the respondents' interests have already been considered. Importantly, it took a long time for the matter to be heard since the

applicant advised the respondents to vacate the premises amicably. I am aware that minor children are involved in this matter and that their best interests must be considered. However, their rights are not absolute. In my view, as with many other evictees in similar circumstances, the respondents would have to depend on family and friends to assist them.

ORDER

[32] Having read the documents filed and having heard from the legal representatives for the applicant and the respondents the following order is granted:

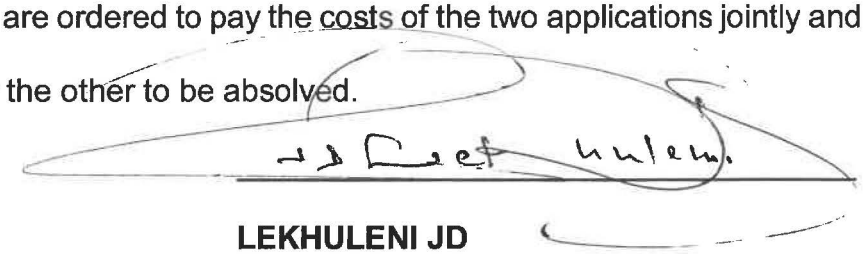
32.1 The first, second, and third respondents or all person occupying through them, in occupation of the farm described above, are ordered to vacate the farm on or before 31 January 2023. Should they fail to do so, the Sheriff of this court (or his / her deputy) is authorised to evict the respondents from the farm with all their belongings on 03 February 2023.

32.2 Any and all of the first, second and third respondents who still reside in the main house (marked A) on the farm described above, are ordered to relocate from the main house to the second house (Marked B) within 7 (seven) days of the date of this order.

32.3 In the event of the respondents failing to relocate as specified in paragraph 32.2 above, the Sheriff (or his / her deputy) is authorised and directed to relocate them to the second house (marked B) pending their eviction from the farm.

32.4 The respondents are interdicted from denying the applicant or any of its representatives' access to the farm. The respondents are ordered within seven days from date hereof to provide the applicant or any of its representatives with a key or the locks that are currently on the access gates.

32.5 The respondents are ordered to pay the costs of the two applications jointly and severally the one to pay the other to be absolved.



LEKHULENI JD

JUDGE OF THE HIGH COURT

Appearances:

Counsel for Applicant:	Adv. Arina Du Toit
Instructed by:	Basson Blackburn Inc.
Counsel for Respondent:	Mr. T Swartz