



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### Isak Baron and Others v Claytile (Pty) Limited and Another

CCT 241/16

Date of hearing: 23 March 2017

Date of judgment: 13 July 2017

---

### MEDIA SUMMARY

---

*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 13 July 2017 the Constitutional Court handed down its judgment in a matter concerning whether it is just and equitable to evict applicants from private land in terms of the Extension of Security of Tenure Act (ESTA) notwithstanding the non-availability of alternative accommodation by the responsible municipality.

The applicants were former employees of the brick manufacturing business on the farm, who were allowed to occupy farm units for the duration of their employment. After the termination of their employment and having received written notices to vacate the farm units, they continued to reside on the farm, whilst being employed elsewhere.

The first respondent instituted eviction proceedings in the Bellville Magistrate's Court (Magistrate's Court). The second respondent, the City of Cape Town Municipality (City), indicated that it was not in a position to provide alternative accommodation due to a long waiting list and that emergency housing was unavailable. The Magistrate's Court held that the first respondent complied with the requirements for an eviction order as set out in ESTA and that their employment had been terminated lawfully. An eviction order was subsequently granted. The Land Claims Court (LCC), on automatic review from the Magistrate's Court, confirmed the eviction application. It held that the constitutional obligation to ensure access to adequate housing lies solely on the State and not on private citizens. Special leave to appeal to the Supreme Court of Appeal was dismissed.

In this Court the applicants submitted that the farm was the only home they had ever known and that evicting them would be unjust. They argued that there was no

meaningful engagement and that they would suffer greater hardships than the respondent if they were to be evicted.

The first respondent submitted that the eviction was just and equitable having regard to: (1) its efforts to find alternative accommodation, which included a willingness to contribute financially, contrasted with the absence of any effort by the occupiers; and (2) the comparatively greater hardship suffered by the first respondent, as a result of not being able to house its current employees, who in turn, must suffer their own hardships, while free accommodation and water and electricity services were provided to persons who do not work for the first respondent. The first respondent submitted that there was no duty on private landowners to provide suitable alternative accommodation to persons whom they sought to evict. That duty fell squarely on organs of state in all three spheres of Government.

On 27 February 2017, the City made an offer of alternative accommodation at Wolwerivier to the applicants, wherein it indicated that it was in a position to secure suitable alternative accommodation for the applicants. Such offer was subsequently rejected by the applicants.

In a unanimous judgment by Pretorius AJ (Nkabinde ADCJ, Cameron J, Froneman J, Jafta J, Khampepe J, Madlanga J, Mhlantla J, Mojapelo AJ, Zondo J concurring) this Court held that the City is constitutionally obliged, and cannot escape its duty to provide suitable alternative accommodation, not only in terms of the provisions of ESTA, but even more so in terms of section 26 of the Constitution. It emphasised that the preamble to ESTA does not deal only with the rights of occupiers, but similarly recognises the rights of landowners to apply for eviction under certain conditions and circumstances.

This Court accepts that the housing units at Wolwerivier qualify as suitable alternative accommodation which is provided by the City within “its available resources”. The first respondent had a temporary restriction on its property rights and it cannot be expected to continue granting free accommodation to the applicants where its current employees are disadvantaged. Therefore, the applicants must be evicted to enable the first respondent to accommodate its current employees.

This Court granted condonation and leave to appeal, but dismissed the appeal. The City is ordered to secure five housing units for the applicants at Wolwerivier until the date of eviction. The applicants are ordered to vacate the first respondent’s premises within three months of the date of this order. The City is ordered to pay the costs of the applicants up to 23 February 2017.

In a separate judgment Zondo J concurred in the order proposed in the first judgment except in regard to the order that the City of Cape Town Municipality should pay the applicants’ costs. In his view the costs were unwarranted. He also agreed with the reasons given in the first judgment for the outcome of that judgment except that he preferred not to express any view with regard to the duties of private landowners in respect of which he took the view that no pronouncement was necessary in this case.