



CONSTITUTIONAL COURT OF SOUTH AFRICA

Jan Klaase and Another v Jozia Johannes van der Merwe N.O and Others

CCT 23/15

Date of hearing: 3 September 2015

Date of judgment: 14 July 2016

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.

Today the Constitutional Court handed down judgment in a matter concerning the rights of occupiers in terms of the Extension of Security of Tenure Act (ESTA). The applicants sought leave to appeal against two judgments of the Land Claims Court held at Cape Town. The judgments confirmed an eviction order granted by the Clanwilliam Magistrates' Court against the applicants. In a separate judgment, which was also appealed, the Land Claims Court dismissed Mrs Klaase's application to be joined in the proceedings.

Mrs Klaase is a housekeeper, having worked for the owner of the Noordhoek farm in the Citrusdal district in the Western Cape (farm) as a seasonal worker for approximately 26 years. She resides on the farm with her husband, Mr Klaase (collectively Mrs and Mr Klaase are the applicants) and their three children and three grandchildren. Mr Klaase began working on the farm in 1972, but was dismissed in January 2010. As a consequence of Mr Klaase's dismissal the Klaase family was evicted from the farm. The Land Claims Court confirmed their eviction on 28 March 2014, which the applicants appealed. The Cederburg Municipality was joined to the proceedings as a respondent but filed no papers. The Women on Farms Project was also joined as amicus curiae (friend of the court).

When deciding the joinder application, the Land Claims Court distinguished between two classes of persons who occupy property in terms of ESTA: first, those who are granted consent to occupy by the owner and thus enjoy protection under ESTA; and second, those who – although not occupiers as defined in ESTA – are entitled to reside on the property by virtue of their right to family life. That Court found that Mrs Klaase fell within the second class of persons and therefore she was not an “occupier” as defined under ESTA. In consequence, her joinder application was dismissed, and that Court confirmed the eviction order against Mr Klaase and all occupants of the premises in question (including Mrs Klaase). It dismissed the subsequent application for leave to appeal. The Supreme Court of Appeal also dismissed an application for leave to appeal.

In the Constitutional Court, Mr Klaase’s appeal was dismissed. However, regarding Mrs Klaase’s appeal, the Court considered whether the Land Claims Court erred in not joining her to the proceedings and whether she is an “occupier” as defined under ESTA. The Court also considered her rights under ESTA and the potential prejudice to women similarly placed, in terms of that legislation.

The majority judgment written by Matojane AJ (Moseneke DCJ, Cameron J, Madlanga J, Nkabinde J and Wallis AJ concurring) held that ESTA was enacted to give effect to section 26(3) of the Constitution and to provide security of tenure to people living on farm land whose tenure was insecure as a result of past racially discriminatory legislation or practices. The majority held that the eviction of an individual on the basis of the conduct of a spouse or partner alone has significant impact on security of tenure, not only for Mrs Klaase but also other similarly situated persons. It found that Mrs Klaase had a direct and substantial interest in the eviction order granted against Mr Klaase and should have been joined to the proceedings. The majority held that the respondents’ failure to object to Mrs Klaase’s residing on the farm for decades, or taking steps to evict her implied that they consented to her occupancy, and that she therefore fell into the first class of occupiers, being an “occupier” for purposes of ESTA. The majority judgment concluded that the Land Claims Court erred by not joining Mrs Klaase to the eviction proceedings and therefore set aside the confirmation of the eviction order relating to Mrs Klaase.

The second judgment penned by Zondo J (Mogoeng CJ and van der Westhuizen J concurring) agreed that the Land Claims Court erred in not joining Mrs Klaase to the proceedings as she had a direct and substantial interest in the matter. Zondo J expressed the view that, upon a proper interpretation of the definition of “occupier” in ESTA, a person is an occupier as defined if the consent to reside on the farm or land that is given to him or her by the owner of the farm amounts to consent to reside on the farm independently of any other person’s right to reside on the farm. Zondo J held that

Mrs Klaase is not an occupier as defined because, to the extent that she may have been given consent by the owner of the farm to reside on the farm, such consent was for her to reside on the farm under or through her husband and not independently of his right to reside on the farm.

In a separate judgment, Jafta J concurs in the order by the majority. He disagrees with the conclusion in Zondo J's judgment to the effect that Mrs Klaase's non-joinder vitiated the entire eviction order. He stated that the vitiation is limited to the extent that the order in question referred to Mrs Klaase who was not a party before the Magistrates' Court at the time the order was made. Insofar as Mr Klaase was concerned, the landowner had complied fully with the requirements of ESTA. Consequently there could be no legal basis for overturning the Magistrate's order with regard to Mr Klaase. Accordingly it would not have been competent for the Land Claims Court to set aside the order on review in relation to Mr Klaase because no error of law was committed by the Magistrate.