IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LCC 151/2022

Before the Honourable Flatela J
Date of hearing: 15 November 2024
Date of judgment: 6 January 2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED: YES / NO

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DATE SIGNATURE

In the matter between:

BOPLAAS 1743 LANDGOED (PTY) LTD Applicant

and

SOPHIA JULIES First Respondent

WILLEM SMITH Second Respondent

JACQUELINE RUDOLPH Third Respondent

DARREL RUDOLPH Fourth Respondent

BIANCA DE VRIES Fifth Respondent

RADIWA PARKER	Sixth Respondent
SHAIDA JULIES	Seventh Respondent
GRANVILLE MALGAS	Eighth Respondent
ALL OTHER PERSONS RESIDING WITH OR UNDER THE FIRST TO EIGHTH RESPONDENTS IN THE PREMISES ON DU CAP FARM, PAARL	Ninth Respondent
DRAKENSTEIN MUNICIPALITY	Tenth Respondent
DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	Eleventh Respondent

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ORDER

The following order is made:

1. The Application for leave to appeal is dismissed.
2. There is no order as to costs.

JUDGMENT ON LEAVE TO APPEAL

FLATELA J

Introduction

[1] This is an opposed application for leave to appeal to the Supreme Court of Appeal or to the Full Bench of the Land Court of South Africa against the whole judgment and order handed down on 26 July 2024. The Respondents are opposing the application. On 26 July 2024, I dismissed the Applicant's application for the eviction of the Respondents from its property on the basis that there were disputes of facts that were foreseeable and that could not be resolved on paper. I rendered no decision on

merits.

Brief Background

[2] The genesis of this application is comprehensively outlined in the judgment. I do not intend to repeat it in this application.

[3] The Applicant brought eviction proceedings against the Respondents on the basis that they committed a breach as contemplated in Section 10 (1) (*a*), (*b*) or (*c*) of Extension of Security of Tenure Act 62 of 1997 (ESTA). At the time of the eviction application, the First Respondent, who had acquired the status of being a long-term occupier in terms of Section 8(4)[1] of (ESTA), was residing with seven members of her household in a one-room cottage on the farm with an extended room made of wooden pallets and plastic.

[4] The Respondents were ordered to relocate from a three-bedroom house by a court order dated 19 October 2021, issued by Magistrate Paarl. The First Respondents were required to move by 8 November 2021; if they failed to do so, the Sheriff was authorized to carry out the relocation by November 15, 2021. Since the Respondents did not relocate by 8 November the Sheriff proceeded with the relocation on 15 November 2021.

[5] Because of the house's size, which the Applicant acknowledged could accommodate only one or two individuals, a makeshift structure made of plastic and pallets was built. This was done to provide a sleeping area for one of the First Respondent's granddaughters.

[6] On 15 December 2021, the Applicant gave the First Respondent, in her capacity as the head of the household and the only person in the household with direct

[1] **8. Termination of right of right of residence.**
(4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and –
(a) has reached the age of 60 years; or
(b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,
may not be terminated unless that occupier has committed a breach contemplated in section 10 (1) (*a*), (*b*) or (*c*): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

connection with the Applicant, a notice of material breach which addressed the following breaches :

i. The request for the removal of illegal and unlawful structures erected on the farm and any unlawful additional occupiers at the promises.
ii. The request for the removal of the First Respondent's property from the Applicant's storage space.

[7] The First Respondent was requested to ensure that the unauthorized and unlawful structures are removed within 5 (five) days of receipt of the notice and that the individuals residing therein relocate from the farm within 5 days of receipt hereof if they are not permitted to reside.

[8] The notice concluded by stating that "*If you refuse to comply with the requests set forth therein, our client will be forced to terminate your, Mrs. Sophia, Julies, and all other persons who occupy the dwelling with or under you, right of residence, after which you will be required to vacate the dwelling on the farm.*

[9] The Applicant argued that the Respondents did not comply with the written notice to remove the illegal structure and that any unlawful occupiers should vacate the farm. Additionally, the Applicant indicated that during the relocation process, they had agreed to cover the costs of temporarily storing some of the First Respondent's excess belongings until she could find alternative accommodation for them. The Applicant contended that the First Respondent violated the essential terms of their agreement by not securing alternative storage for her belongings off the farm. Furthermore, the Applicant provided the First Respondent with a notice to remove her belongings from storage by 14 January 2022. Still, the First Respondent did not comply, which the Applicant considered a significant breach of their trust relationship. In response, the First Respondent disputed the existence of any agreement regarding the storage of her belongings.

[10] The Applicant listed other material breaches as failure to remove all negative

comments against the Applicant on social media, failure to engage in the said conduct, organizing and participating in an illegal protest and false allegations to the Cape Winelands District Municipality and Human Rights Commission that they were evicted from previous premises not relocated.

[11] These allegations were disputed by the First Respondent, who deposed to an answering affidavit and supplementary answering affidavit opposing the Application on behalf of all the Respondents.

Grounds of Appeal

[12] The Applicant's main submission is that the court *a quo* failed to have any regard to the common cause facts as listed in the statement of agreed facts and facts in dispute dated 12 April 2024.

[13] The following are the common cause facts:

1.1. *that opportunities were provided to the respondents to remedy their breaches and to make representations before their right to residence was terminated, and failed to react to the opportunities provided positively:*

1.2. *a strike/protest took place at the Applicant's farm:*

1.3. *the First Respondent spoke with the media at the premises on the day that the protest erupted:*

1.4. *the comments placed on social media by members of the household in reaction to the Applicant's offer to provide alternative accommodation and the execution of the relocation order:*

1.5. *the remedial action taken by the Applicant to respond to various media houses and complaints lodged at the Cape Winelands District Municipality occasioned by the comments placed on social media and the protest:*

1.6. *structures were erected at the premises without the Applicant's consent:*

1.7. *respondents operated the spaza shop from the premises until after the eviction application was instituted and after the demand to cease the operation thereof*

1.8. *the Fourth Respondent broke into the Applicant's packhouse, as well as the farm property, before and after these proceedings were instituted, and the criminal charges were laid against him for breaking an entry and stealing from the Applicant and other lawful occupiers residing on the farm;*

1.9. *the temporary storage space provided to the respondents is still to be vacated;*

1.10. *the authenticity of the documentary proof attached to the founding affidavit;*

1.11. *the Applicant terminated the respondents' consent to reside on the farm.*

[14] The Applicant contends that the court *a quo* misdirected itself in the application of the well-established *Plascon-Evans* principles in finding that there were disputes of fact, as stated in paragraph 81 (a) to (f) of the judgment, and that these disputes of fact amount to *bona fide* and material disputes, which cannot be considered far-fetched or untenable or rejected on the papers.

[15] The Applicant further submitted that the *court a quo* failed to consider at all, alternatively failed to place sufficient weight on, the extensive common cause facts, as listed in the parties' joint Statement of agreed facts and facts in dispute dated 12 April 2024. These common cause facts were not properly considered against the principles set out in the *Plascon-Evans-case* and the matter of *National Director of Public Prosecutions v Zuma [2009] 2 All SA 243 (SCA)* at paragraph 26 where it is found that motion proceedings are all about the resolution of legal issues based on common cause facts.

Principles governing applications for leave to appeal.

[16] The principles governing whether leave to appeal should be granted are well

established, but I summarise them for convenience;

[17] An application for leave to appeal is regulated by section 17(1) of the Superior Courts Act 10 of 2013 (Superior Courts Act), which provides:

> ‘(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that –
>
> (a)
>
> (i) the appeal would have a reasonable prospect of success; or
>
> (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;
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> (b) the decision sought on appeal does not fall within the ambit of section 16(2)(a); and
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> (c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.’

[18] Section 17(1)(a) of the Superior Courts Act states that leave to appeal may only be granted where a Judge or Judges are of the opinion that the appeal would have a reasonable prospect of success and if there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[19] In *The Mont Chevaux Trust v Tina Goosen & 18 Others*[2], Bertelsmann J held as follows:

> ‘It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new act. The former test of whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion. See Van Heerden v Cronwright & Others 1985 (2) SA 342 (T) at 342H. The use of the word "would" in the new statutes indicates a measure of certainty that another Court will differ from the Court whose Judgment is sought to be appealed against.’[3]

[2] *The Mont Chevaux Trust v Tina Goosen & 18 Others* 2014 JDR 2335 (LCC).
[3] Ibid para 6.

Discussion

[20] It was contended on behalf of the Applicant that the court a quo should have determined the matter based on the common factors outlined in the joint statement of agreed facts and disputed elements submitted by the parties. The matter was determined based on the common factors outlined in the joint statement of agreed facts and disputed elements submitted by the parties. While there were common facts, several disputes arose from the affidavits presented, these were genuine disputes of fact. Neither party requested that the matter be referred for the hearing of oral evidence or trial, therefore, I decided the matter on the basis of the papers before me.

[21] It is trite law that where in application proceedings there are disputes of fact that cannot be decided without the hearing of oral evidence, the court has a discretion to either (i) dismiss the application or (ii) order that oral evidence be heard in terms of the rules or; (iii) order referral of the matter to trial.

[22] These being motion proceedings, the application fell to be decided in accordance with the principle laid down in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [4] . In terms of that principle, an Applicant who seeks final relief in motion proceedings must, in the event of a dispute of fact, accept the version set up by his or her opponent unless the latter's allegations are, in the opinion of the court, not such as to raise a real, genuine or *bona fide* dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.[5]

[23] The Respondents had filed two sets of answering affidavits, in both sets the Respondents raised real dispute facts on the following:

a. **Unauthorized and unlawful occupiers**. The Applicant contended that there was no agreement between the Applicant and the First Respondent granting permission to the Second up to the Ninth Respondents a right to reside on the farm. Therefore, they are unlawful

[4] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984] 2 All SA 366 (A); 1984 (3) SA 623 (A) at 634E-635C.
[5] *Wightman t/a JW Construction v Headfour and Another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA); [2008] 2 All SA 512 (SCA) para 12.

and unauthorized occupiers. The First Respondent disputed that contention and stated that the Second to Ninth Respondents were occupiers in terms of Sections 3(4) and (5) of ESTA.

b. **Erecting an unlawful structure:** The Applicant contends that the First Respondent erected an unlawful structure without the Applicant's consent. It is common cause that the Applicant purchased the Farm from Changing Tides with the First Respondent and the Second up to the Ninth Respondents, who were established households on the Farm. In its version, the Applicant states that the one-bedroom house that the Respondents were relocated to is only suitable for catering to one or two individual's needs. It also acknowledged that the First Respondent was a protected occupier in terms of section 8(4) of ESTA, whereas the Second to the Ninth Respondents resided openly. Additionally, in its relocation application, it relocated the entire household, not the First Respondent. The First Respondent concedes that a makeshift structure was constructed to make space for the Fifth Respondent to sleep. Other occupants had to vacate, whereas the Fifth Respondent, her granddaughter Bianca de Vries, had to erect a makeshift structure adjacent to the dwelling as she had nowhere to sleep in the house; they were already a family of seven.

c. The structure is a makeshift tent made of plastic and wooden pallets. From the exhibits of the Applicant in support of this application, one immediately sees that the said structure would barely withstand light rain, let alone a windy storm. The roofing, being none, looks like that of an open tent. The Respondents argued that the structure was constructed out of human necessity, considering seven Respondents in a one-room dwelling.

[24] In the notice of breach dated 15 December 2021, the Applicant's complaint against the First Respondent was that she enabled or assisted unauthorized persons in establishing new dwellings on the land. The Applicant contends that post-relocation, she allowed unlawful and unauthorized persons to reside with her in the allocated dwelling and construct an unlawful structure. The First Respondent was informed that

the unauthorized persons, being the Second to the Ninth Respondents, should vacate the Farm within (5) days if the Applicant did not permit them to reside in the dwelling with him. The First Respondent disputed that the second to the Ninth Respondents were unauthorized, unlawful occupiers

[25] **The First Respondent's failure to remove her belongings from the storage unit**. In its version, the Applicant admits that on the day of the execution of the relocation order, it agreed to temporarily store what it refers to as the First Respondent's *"superfluous belongings"* until such time the First Respondent can find an alternative storage facility/location to keep her belongings. The First Respondent disputed that the storage facility was a temporary arrangement. She was an occupier in terms of section 8(4) of ESTA at the time of relocation.

[26] **False social media allegations post relocation (i):** The Applicant asserts that the First Respondent engaged in a concerted defamatory campaign with the sole purpose of tarnishing their reputation and casting a dark light upon their business allegations. The purportedly false allegation was about circumstances leading up to the relocation application and execution. These comments culminated in triggering an unlawful protest that erupted on 4 of March 2022, allegedly inside the Applicant's premises. The First Respondent denied engaging in any defamatory campaign against the Applicant to anyone on any platform but conceded to her daughter, the Seventh Respondent, being the one engaging on social media, she responded to the questions asked about their relocation.

[27] **Protest action:** Organizing and allowing an unlawful protest to unfold by illegal protestors on their premises without their consent. It is common cause that the protest was organized by Ms. Wendy Pekeur from Ubuntu Rural Women and Youth Movement together with Ms. Jo-Anne Johannes from Women on Farms Project; they both filed affidavits confirming the same. The First Respondent denies having had any prior knowledge about the protest action. In their reply, the Applicants repeat the allegation without proof.

[28] **Granting protestors access to the Applicant's property:** The First Respondent vehemently denies this allegation. She never gave any entry or access

code to enter the Farm during the protest. The First Respondent states that on the day of the protest, she was approached by Ms. Wendy Pekeur from Ubuntu Rural Women and Youth Movement together with Ms. Jo-Anne Johannes from Women on Farms Project to ask her to talk about her side of the story of the relocation. She **did not partake in the protest.**

[29] **Making False allegation to the media during the protest (ii – during protest action):** Applicant alleges that the First Respondent made calculatedly alleged and malicious allegations to the media about the Applicant, one being that she is discriminated against because of her deceased husband. She denies this statement but confirms talking to the media person who accompanied Ms. Pekeur and Ms. Johannes and answered their questions about the situation of her living circumstances with the sole purpose of tarnishing and ruining its reputation and good name.

[30] On the Applicant's version, the protest was arranged by Ms. Wendy Pekeur from Ubuntu Rural Women and Youth Movement together with Ms. Jo-Anne Johannes from Women on Farms Project Women on Farm Project. On the day of the protest, the Applicant addressed a cease and desist letter to Ms. Johannes and Pekeur, not the Respondents, via the Sheriff of the Court at the best of its instruction to its Attorneys.

[31] The submission by the Applicant is meritless, and it is rejected.

[32] The Applicant submitted further that the *court a quo* misdirected itself in failing to engage with the above common cause facts against the question of whether or not there was a fundamental breach of the trust relationship, which cannot be restored, and as such, failed to consider the legal principles pronounced in the judgments of *Nimble Investments (Pty) Ltd v Johanna Malan and Others [2021] 4 All SA 672 (SCA), Ovenstone Farms (Pty) Ltd v Persent and Another* [2002] ZALCC 31, *Klaase and Another v Van Der Merwe and Others* 2016 (6) SA 131 (CC), *Goosen v The Mont Chevaux Trust* (148/2015) [2017] ZASCA 89 (6 June 2017) and *Isedor Skog N.O. & Others v Koos Agullus & Others [2023] 2 All SA 631 (SCA).*

[33] I did not decide on the merits, the matter was dismissed on the basis that the Respondents had raised genuine disputes of facts that could not be resolved on paper.
[34] I have considered the grounds upon which the application was brought and the submissions made by counsel for the granting of leave to appeal on the part of the

Applicant and those of the counsel on behalf of the Respondents. I am not confident that another court will come to a different conclusion or that there is some other compelling reason why leave to appeal should be granted.

[35] As a result, I make the following order:

1. The Application for leave to appeal is dismissed.
2. There is no order as to costs.

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Flatela L

Judge of the Land Court

Date of Hearing:	15 November 2024
Date of Judgment:	6 January 2025
Counsel for Applicant:	Ms. Bronwynne Brown
Instructed by	Otto Theron Attorneys
Attorneys for Respondents	Ms. Fiona Bester
Instructed by:	Chennels Albertyn Attorneys