

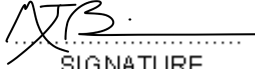


**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case Number: **LCC: 22R2023**
Magistrates' Court Case Number: **831/2019**

Before: Bishop AJ

Delivered on: 11 March 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
11 March 2026 DATE	 SIGNATURE

In the matter between:

CROOKES BROTHERS LIMITED

First Applicant

CROOKES BROTHERS SOUTH AFRICA (PTY) LIMITED

Second Applicant

and

ZOLA ERIC MKOLOLO

First Respondent

CYNTHIA O'REILEY

Second Respondent

**ALL OTHER PERSONS WHO RECEIVED OCCUPATION
THROUGH THE 1ST RESPONDENT**

Third Respondent

ORDER

1. The eviction order granted by the Magistrate is reviewed and set aside.
 2. There is no order as to costs.
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JUDGMENT

BISHOP, AJ

[1] This is an automatic review in terms of s 19(3) of the Extension of Security of Tenure Act 62 of 1997 (**ESTA**). The provision requires this Court to review every eviction order granted by a Magistrate under ESTA. This Court must then confirm, set aside, substitute or remit.

[2] It flows from an application to evict the Respondents brought in the Caledon Magistrates' Court seven years ago. The application was unopposed and so only the Applicants' version was presented.

[3] The Applicants are the owner and person in charge of Ou Werf Farm near Caledon. In January 2010, the First Applicant concluded an employment contract with the First Respondent, Mr Mkololo. Although the agreement never expressly afforded Mr Mkololo accommodation as part of the consideration for his services, it includes this clause: "The provision of accommodation is subject to employment within the

Company and the right of occupation will fall away on termination of this Contract.” It seems implicit in the contract – and the Applicants accept – that Mr Mkololo’s employment agreement conferred on him a right of residence. There is no direct statement of when he took up that right, but presumably it was some time after January 2010.

[4] The Second Respondent, Ms O’Reiley, lived with Mr Mkololo as his partner. When she moved onto Ou Werf does not appear from the application. Her right to reside on the property was connected to Mr Mkololo’s, and therefore to his employment.

[5] The employment relationship lasted until 2014. On 1 February 2014, the police “raided” Mr Mkololo’s home on Ou Werf and discovered an “excessive amount of liquor”. There was a total of 62.25 litres of beer. Mr Mkololo was charged with “trafficking in alcohol” and, on 4 February 2014 paid an admission of guilt fine of R5000.

[6] The police informed a manager on Ou Werf of the charge. The employer then brought disciplinary charges against Mr Mkololo. An enquiry was held on 18 February 2014. The evidence against him was the police’s search and his admission of guilt. Mr Mkololo claimed he did not sell the beer, but that it was for him and his friends to drink. He admitted to signing the admission of guilt, but claimed the police officers threatened to beat him and to lock him up if he did not sign.

[7] The chairperson of the enquiry concluded that there was sufficient evidence to show that Mr Mkololo had been selling alcohol from his room on Ou Werf, and that this was a dismissible offence. The employer resolved to dismiss him on 10 March 2014. The notice included a statement that Mr Mkololo had “one month to vacate the

premises". There is no indication that a separate decision was taken on whether or not to terminate Mr Mkololo's right of residence, or that he was given an opportunity to make representations on, following his dismissal, his right to reside should be terminated.

[8] Despite his dismissal and the demand that he vacate within one month, the Applicants allowed Mr Mkololo to reside on the farm for more than a year before they took steps to remove him. It would take four more years before they brought an application for his eviction. This is the series of events:

[8.1] On 11 May 2015, the First Applicant delivered a notice to Mr Mkololo repeating that his "accommodation on [Ou Werf] was subject to the employment relationship", and that "this right has expired with the termination of your service". It afforded Mr Mkololo another 30 days to vacate Ou Werf.

[8.2] More than a year later, on 26 August 2016, the Applicants' attorneys delivered another letter to Mr Mkololo. The notice was personally served by the Sheriff on 28 September 2016. It recorded the history and then stated that his "right to reside or occupy the Property is hereby cancelled". He was, again, given 30 days to vacate.

[8.3] Another nine months passed. On 24 May 2017 the Applicants' attorneys sent a letter to Ms O'Reiley. It informed her that Mr Mkololo's residence had been terminated on 26 August 2016 and afforded her 30 days to vacate the property. It did not afford her an opportunity to make representations. The Sheriff personally served the notice on Ms O'Reiley on 5 July 2017.

[8.4] The application to evict was brought two and a half years later, in October 2019. The Sheriff's return of service reports that when he or she attempted to serve the application on Mr Mkololo on 26 November 2019, Ms O'Reiley was present and reported that he was "in Worcester (T.B.) Hospital. [Mr Mkololo] last September month at given address". Anton Alexander – a person working in human resources on Ou Werf "also said that he has seen [Mr Mkololo] long last."

[9] None of these delays are explained. There may well be explanations. Perhaps the Respondents promised to move, and the Applicants wished to avoid costly litigation. But without an explanation, the delay of more than five years from the termination of Mr Mkololo's employment to the application for eviction raises questions about the nature of the relationship between the parties, their current circumstances, and the basis for the Respondents' continued presence on Ou Werf.

[10] In the founding affidavit, the deponent – Mr Prowse, the General Manager of Ou Werf – states that the Respondents' rights of residence "were cancelled based on the fact that [Mr Mkololo is] no longer employed on the farm and therefore have no right to occupy the dwelling any further." There is no indication of when that decision was taken, or any indication that the Applicants invited representations from either occupier before taking it.

[11] The Applicants claim that the continued occupation of the house "causes a shortage of housing". The details are never explained. Given the delay in bringing the eviction application, and the Applicants' apparent acceptance of subsequent delays in the determination of that application, it is difficult to believe the prejudice is substantial.

Mr Prowse also states that he was informed that Mr Mkololo was working on a farm called Fruitways.

[12] Mr Mkololo and Ms O'Reiley did not oppose the application. As they explain, they were never referred to lawyers who could assist them.

[13] Ms Jevu of the Department of Agriculture, Land Reform and Rural Development prepared a report in terms of s 9(3) of ESTA on 16 October 2020 – a year after the eviction application was served. She reported that Mr Mkololo and Ms O'Reiley are life partners and reside on Ou Werf with two minor children who attend a nearby primary school. The names and ages of the two children did not appear from the record. Ms Jevu reported that there was no accommodation available near the school the two children attended.

[14] At that point Mr Mkololo was working for a security company in Worcester, where he rented a shack, but he returned to Ou Werf on off-days and weekends. He earned approximately R3 000 per month. Ms O'Reiley had been working as a seasonal worker at Graymead until August 2020. Ms Jevu recommended that the eviction should not be granted until the end of the school year in order not to affect the children's schooling.

[15] The Applicants served the eviction application on the Theewaterskloof Municipality. But it did not provide a report on the availability of alternative accommodation.

[16] Shortly after the s 9(3) report was filed, the Applicants filed a notice of set down for a hearing on 27 November 2020 in the Caledon Magistrates' Court. When the

Sheriff served the notice on Mr Mkololo, Ms O'Reiley informed him that "he has left the given address".

[17] The Respondents did not appear in Court on 27 November 2020, and the matter was postponed to 22 January 2021. The Respondents were again absent on that date. The Magistrate requested the Applicants' attorney to provide written argument, which he did.

[18] In his written argument, the attorney (Mr Erasmus) contended that the Applicants "gave the Respondents ample time since date of termination on 10 March 2014 until 26 August 2016 to make representation as to why their right of occupation should not be terminated". Then "after receiving no representation the Applicants approached their attorney of record to request that they issue a formal notice" terminating their right of residence. However, as I return to below, there is no evidence that the Applicants invited representations.

[19] The Magistrate gave judgment on 15 June 2022. After recording the facts and the content of the Department's report, she determined that it would be just and equitable to evict. She did not consider whether the Applicants had, after terminating Mr Mkololo's employment, taken a separate decision to terminate his or Ms O'Reiley's employment. The Magistrate held only that, as the dismissal was in terms of the LRA, section 8 of ESTA was satisfied. Presumably to align with the recommendation that the eviction should be postponed to the end of the school year, she set the date of the eviction as 15 December 2022.

[20] The order was referred to this Court for automatic review in terms of s 19(3) of ESTA. It seems that only occurred nearly a year later on 9 June 2023. The matter was

originally allocated to a different judge, and was allocated to me on 12 May 2025 – nearly three years after the Magistrate’s order.

[21] The delays in this case are obviously unsatisfactory. There were delays on all sides. The Applicants delayed in bringing the application. The Department delayed in filing a report in terms of s 9(3). The Magistrate delayed in giving judgment. There is an unexplained delay in the referral to this Court. And then this Court delayed for two years in dealing with the matter.

[22] All of this meant that by the time I received the file nearly five and half years after the application was launched, and three years after the eviction order was granted, the facts had likely changed. Were Ms O’Reiley and her children still occupying the farm? Was Mr Mkololo still living primarily in Worcester? What of the children? If any of the Respondents is still residing on the farm, what are their circumstances? Is Mr Mkololo still working and, if so, where and what is he earning? Has Ms O’Reiley found work? Are the children still attending the same school?

[23] All these facts may well have changed significantly since the most recent information in the s 9(3) report filed more than five years ago in October 2020. Yet it is impossible to responsibly consider the review without those facts. That is why this Court’s rules envisage a *speedy* process of automatic review. Rule 35A(1) requires magistrates to “allow not less than 15 days for the review process in determining” the dates for vacation and eviction.¹ Rule 35A requires magistrates to “forthwith transmit” the record and the reasons to this Court.

¹ It is unclear what purpose this rule is meant to serve in light of s 19(5) of ESTA which provides that any order of eviction is suspended pending automatic review. Whatever date a magistrate sets can be

[24] Confronted with an automatic review where the most recent facts were nearly five years old, the Court needed updated information. I could not responsibly decide the review without knowing the current facts. Rule 35A(2) empowers this Court to seek further information before it decides an automatic review. In particular, Rule 35A(2)(b) allows the Court to “afford any party an opportunity to deliver submissions or further submissions on specific issues”. This power is vital to ensure that evictions are not improperly granted, and also to deal with situations such as the present when delays mean the facts may have changed.

[25] On 13 June 2025, I issued directions requiring the Applicants to file an affidavit answering the following questions. Were the Respondents still present on Ou Werf? If so, the Applicants were invited to provide any further evidence they deemed relevant. If not, the Applicants were required to explain the circumstances under which the Respondents vacated Ou Werf. I afforded the Applicants until 23 May 2025 to respond.

[26] Mr Cloete – the farm manager – duly filed an affidavit. He confirmed that Mr Mkololo had left the farm in 2020, and that Ms O’Reiley and her two minor children still occupied the house. He also confirmed that Ms O’Reiley’s right to reside on Ou Werf flowed from Mr Mkololo’s employment, and that her right was terminated in the notice sent on 24 May 2017. Ms O’Reiley, he attested, did not contribute to the growth of the business in any way.

[27] In light of these representations, and because I still had concerns about the impact of an eviction (particularly on the children), and whether the original eviction

given effect to only if this Court reviews and upholds the eviction order before that date. But that too indicates that the review process must be prompt.

order should have been granted, I instructed the Registrar to approach Legal Aid South Africa to see if they would be able to represent Mr Mkololo and Ms O'Reiley.

[28] Legal Aid South Africa agreed to assist, and contacted Mr Mkololo and Ms O'Reiley. They agreed to instruct Legal Aid South Africa. The Court is deeply grateful to Legal Aid South Africa for its assistance. It is always difficult to assess applications where only one side of the story is presented. Where the result is a potential eviction this Court should always take steps to obtain legal representation for occupiers. Without, the risk of accidental injustice rises exponentially.

[29] I then issued further directions affording the Respondents an opportunity to file submissions or affidavits, and granting the Applicants a chance to respond.

[30] On 20 November 2025, the Respondents filed an affidavit deposed to by Mr Mkololo, and confirmed by Ms O'Reiley, setting out their circumstances, and the reasons why the eviction should not be confirmed on review. The following averments are relevant:

[30.1] Mr Mkololo began living on Ou Werf in 2008 when he started working there. He was permanently employed in 2010.

[30.2] Since 2023, he has worked as a security guard. He needs to live close to his work and so resides in a shack in Zwlethemba Township in Worcester. Although the details are not spelled out, it seems he was working elsewhere in 2019 when the eviction application was originally brought. He does not deny that he was not living on Ou Werf at that point.

[30.3] However, he claims he has not “relocated or permanently left the farm”. His children still live on Ou Werf, and he visits them when he is able. He says Ou Werf is still his “permanent place of residence”.

[30.4] The children have not relocated to Zwelethemba because there is not enough space, and he does not wish to take them away from the schools that are close to the farm.

[30.5] Ms O’Reiley moved to Ou Werf in 2009, and resided with Mr Mkololo as his partner. She, too, no longer lives on Ou Werf. For the last three months she has been working for Moltino Fruitways as a general worker. She lives in Xola Naledi Township in Grabouw, where she was offered space in a shack. She returns to Ou Werf on weekends to see the children. The Respondents claim that Ms O’Reiley “has not relocated or permanently left the farm. It is still her primary place of residence.” She has moved only so she can be closer to her work.

[31] Who are the children who now live on the farm?

[31.1] Nolubabalo O’Reiley is 21-years-old. She is Ms O’Reiley’s daughter from another relationship. She is unemployed and takes care of both Mr Mkololo and Ms O’Reiley’s other children, and two of her own minor children. The names, ages and circumstances of her minor children are not set out.

[31.2] Lumkani O’Reiley is the child of Mr Mkololo and Ms O’Reiley. He is 17-years-old. He has a heart condition, which has caused him to discontinue school. It seems there are also difficulties transporting him to school as he cannot be unattended due to his condition. He is the recipient of a social

security grant. It is unclear if this is for his disability, or if it is a child grant paid to his parents.

[31.3] Olwethu O'Reiley is 14-years-old. In 2025, she was attending Groenberg Primary School in Grabouw. Presumably she now attends high school. She also receives a social security grant. I presume this means her parents receive a child grant.

[32] Mr Mkololo says he was not aware of the eviction application. As I explained earlier, it was not served on him as he was not at Ou Werf. It appears that Ms O'Reiley did not inform him about the application. She was not informed how to obtain legal representation, and that is why they did not take steps to secure any.

[33] The Applicants elected not to file any further affidavits or submissions in response to this affidavit.

[34] The question now is what this Court should confirm, set aside, substitute or remit. I conclude that the eviction should be set aside as it was not justified when it was made and must therefore be set aside. But I do not do so for the reasons the Respondents advance.

[35] The Respondents argue that this Court should review the grant of the eviction order for several reasons.

[36] First, Mr Mkololo admits signing the contract of employment but claims that his right to reside on the farm, "was based on consent from the landowner, operating separately from [his] employment." Accordingly, so the argument goes, termination of his employment did not justify termination of his right to reside. Mr Mkololo does not

explain on what other basis the owner granted him consent to reside on the land. His claim that it was not linked to his employment is not plausible.

[37] Second, he disputes the fairness or legitimacy of his dismissal. He claims the alcohol was for his friends and neighbours, not for sale. It matters not. He admits he was dismissed. He attempted to approach the Commission for Conciliation Mediation and Arbitration, but did so late. It is not for this Court or the Magistrates' Court to second-guess the outcome of his dismissal.²

[38] Third, he argues that they have “no suitable alternative accommodation available to us so an eviction would render us homeless.” That is not true for Mr Mkololo and Ms O'Reiley. They have accommodation elsewhere. It may be true for the Nolubabalo and her children, Lumkani and Olwethu; but there is not enough information to know. Given the conclusion I reach, I do not need to address that issue.

[39] Fourth, the Respondents point to the long period they have resided on Ou Werf, as well as the delays since his dismissal as reasons they should not be evicted. These would be relevant factors in considering whether eviction was just and equitable. But I do not need to consider them for the reasons that follow.

[40] The real problem with the eviction application is that the Applicants never took a separate decision to terminate the Respondents' right of residence. In the disciplinary decision, and all the correspondence that followed, termination of the right to reside was assumed to follow automatically from the termination of Mr Mkololo's employment. But that is not our law.

² ESTA ss 8(2) and (3). See also *Belle Vallee Vineyards (Pty) Ltd and Another v Lakey and Others* [2025] ZALCC 27 at para 60.

[41] In *Snyders*,³ in almost identical circumstances, the Constitutional Court upheld an appeal against an eviction order because the landowner had wrongly “assumed that, once she had terminated [the occupier’s] contract of employment, that automatically terminated his right of residence as well.”⁴ But, as Zondo J explained, “that was not necessarily the position. The right of residence needed to be terminated on its own in addition to the termination of the contract of employment.”⁵ Until the right of residence was separately terminated, the occupier “could not be required to vacate the house.”⁶

[42] The same reasoning applies here. In the decision dismissing Mr Mkololo he is also required to vacate. No separate consideration is given to whether his dismissal justified the termination of his right of residence.

[43] The closest the Applicants come are the letters to Mr Mkololo dated 26 August 2016, and to Ms O’Reiley dated 24 May 2017. The first records the history and then states: “We give you notice that your right to reside or occupy the Property is hereby cancelled”. But that decision was taken without affording Mr Mkololo an opportunity to make representations on whether his right to reside should be terminated or not. It was, in truth, merely a repetition of the existing position that the Applicants believed that the right to reside terminated automatically as a result of Mr Mkololo’s dismissal.

³ *Snyders and Others v De Jager and Others* [2016] ZACC 55; 2017 (5) BCLR 614 (CC); 2017 (3) SA 545 (CC).

⁴ *Ibid* at para 69.

⁵ *Ibid* at para 71.

⁶ *Ibid*.

[44] I do not accept, as argued by the Applicants' attorney in the Magistrates' Court, that the Respondents had an opportunity to make representations on whether their right to reside should be terminated. The Applicants never invited to make representations. There is no evidence that the Applicants indicated they were open to representations. The evidence shows that the Applicants believed that Mr Mkololo's dismissal ineluctably led to the termination of his right of residence. The later letter merely repeated the existing position. Without some new process, it could not constitute a new decision. Because the Applicants never sought representations, there was never a point where the Respondents could have known that the Applicants were open to persuasion. That is, in my view, because they were not.

[45] Section 8(1)(e) of ESTA lists, as one of the factors in determining whether the termination of a right of residence was just and equitable, "*the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.*" An opportunity to make representations is not an absolute requirement.⁷ But where, as here, the absence of any request for representations shows that there was, in truth, no separate decision to terminate the right of residence, it is a weighty if not decisive factor.

[46] This case is different from *Belle Vallee*.⁸ There the landowner had also wrongly taken the position that the termination of employment equaled loss of right of residence. They were then advised of their error and issued a new notice calling for

⁷ *Belle Vallee* (n 2) at paras 64-6.

⁸ *Belle Vallee* (n 2).

representations about why the right of residence should be terminated. That was sufficient because it showed an awareness that a separate decision was required, and informed the occupiers that they could influence the decision. Here there is no evidence that the Applicants reconsidered their initial decision; they merely repeated it.

[47] There is an additional flaw in the eviction application; it treats Ms O'Reiley as a mere appendage of Mr Mkololo. *Klaase*⁹ makes it clear that ESTA occupiers whose consent to reside flows from another person's employment do not automatically lose their right to reside when that person is dismissed. The owner must make a separate determination whether to terminate their right to reside.

[48] Did that happen? The 24 May 2017 letter to Ms O'Reiley is similar to the 26 August 2016 letter to Mr Mkololo. It records that Mr Mkololo was dismissed, and that Ms O'Reiley's right to reside "flows from" her relationship with him. It then states: "We give you notice that your right to reside or occupy the Property is hereby cancelled". It never asks for representations or suggests that her fate might be different from Mr Mkololo's. The termination of her right of residence was assumed to flow automatically from Mr Mkololo's dismissal.

[49] None of this should be read to mean that the Applicants may not have been entitled to terminate Mr Mkololo and Ms O'Reiley's right of residence. They may well have been. But they should have considered that as a separate question from dismissal. The evidence shows that they did not do so.

⁹ *Klaase and Another v van der Merwe N.O. and Others* [2016] ZACC 17; 2016 (9) BCLR 1187 (CC); 2016 (6) SA 131 (CC).

[50] All of this means that the eviction order should not have been granted in 2022. The only result is to set aside the eviction order that was granted. The passage of time cannot cure the fatal flaw in the original eviction application.

[51] That does not mean that Mr Mkololo and Ms O'Reiley now have a permanent right of residence on Ou Werf. They do not. It means only that the eviction application was premature. The Applicants were required to properly terminate the rights of residence prior to seeking eviction. They failed to show that they had done so. As they had not established that they terminated Mr Mkololo or Ms O'Reiley's right of residence, they could also not have terminated their children's right of residence.

[52] But now it is 2026, and the position is different, and time may have achieved what litigation did not.

[53] Both Mr Mkololo and Ms O'Reiley have left the farm. They do not fully explain the basis on which they occupy the shacks in Xola Naledi and Zwelethemba. Mr Mkololo rents his shack, while Ms O'Reiley says only that she has "been offered a space in a shack". It is not clear if she is a lessee, or merely being allowed to live there out of generosity or charity.

[54] It seems open to debate whether Ou Werf is still their permanent home, and, therefore, that they are still "occupiers" under ESTA. ESTA defines "occupier" as "a person residing on land which belongs to another person". ESTA did not previously define "reside". But the SCA held in 2009 that the word means that "a person has his home at the place mentioned. It is his place of abode, the place where he sleeps after the work of the day is done. ... It does not include one's weekend cottage unless one

is residing there. ... The essence of the word is the notion of "permanent home."¹⁰ ESTA was amended in 2018 to define "reside" as: "to live at a place permanently". That reflects the pre-existing judicial interpretation.¹¹

[55] It seems to me an open question whether Mr Mkololo and Ms O'Reiley still reside permanently on Ou Werf. If they do not, then they are not occupiers. If a person is not an "occupier", then they are not entitled to the protection from eviction offered by ESTA.

[56] But the fact that Mr Mkololo and Ms O'Reiley are not occupiers does not mean that their children and grandchildren are not occupiers. On the facts before me, they permanently reside on Ou Werf. Whether they meet all the requirements to be occupiers under ESTA is a separate question.

[57] All of this is merely to say that it remains open to the Applicants to take whatever steps they deem appropriate, including terminating any existing rights of residence, and bringing any new applications for eviction. My decision merely sets aside the order granted in respect of the 2019 eviction application because, at that time, the Applicants had not lawfully terminated the Respondents' right of residence.

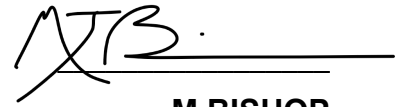
[58] I make the following order:

[58.1] The eviction order granted by the Magistrate is reviewed and set aside.

[58.2] There is no order as to costs.

¹⁰ *Kiepersol Poultry Farm (Pty) Ltd v Phasiya* 2010 (3) SA 152 (SCA) at para 9, quoting with approval *Barrie NO v Ferris* 1987 (2) SA 709 (C) at 714F.

¹¹ See *Sandvliet Boerdery (Pty) Ltd v Mampies and Another* 2019 (6) SA 409 (SCA) at para 19.

A handwritten signature in black ink, appearing to read 'M BISHOP', is written over a horizontal line. The signature is stylized and cursive.

M BISHOP

Acting Judge of the Land Court

APPEARANCES:

For the Applicant: Conradie Incorporated

For the Respondents: Legal Aid South Africa, Stellenbosch