



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

Case No: 2024-124657

Before: Ncube J, Du Plessis J and Pullinger AJ.

Heard on: 9 February 2026

Delivered on: 15 May 2026

- (1) REPORTABLE: Yes / No
(2) OF INTEREST TO OTHER JUDGES: Yes / No
(3) REVISED: Yes / No

Date: 15 May 2026

Signature: *eduplessis*

In the matter between:

EMMA SOPHIA DREYER N.O.

First Applicant

WILLEM PETRUS DREYER N.O.

Second Applicant

JOHANN SADIE N.O.

Third Applicant

[in their capacity as the trustees in the
meantime of DIE EMMA DREYER
TRUST IT 3142/2010]

W&E DREYER BOERDERY CC

Fourth Applicant

WILLEM PETRUS DREYER

Fifth applicant

and

MARIA WITBOOI First Respondent

WILLIE WILLEMSE Second Respondent

**AND ALL THE OTHER PERSONS
PRESIDING WITH OR UNDER THE
FIRST TO SECOND RESPONDENTS
IN THE PREMISES ON MOOIGELEE
FARM, DIVISION PAARL** Third Respondent

DRAKENSTEIN MUNICIPALITY Fourth Respondent

**THE DEPARTMENT OF
AGRICULTURE, RURAL
DEVELOPMENT AND LAND REFORM** Fifth Respondent

ORDER

1. The appellants' further evidence is admitted.
2. The first respondent is granted condonation for the late delivery of her application to adduce further evidence on appeal.
3. The first respondent's further evidence is admitted.
4. The appeal succeeds in part, and the order of the Court a quo (per Mabasa AJ) is set aside and replaced with the following:
 - 4.1 The eviction order granted by the Magistrate Paarl on 27 May 2024 against the second respondent and those third respondents whose occupation is derivative of his is confirmed.
 - 4.2 In respect of the first respondent and those third respondents residing with or under her, the matter is remitted to the Magistrate's Court, Paarl, for the hearing of oral evidence on the following issues:

4.2.1 when and on what basis did the first respondent take up occupation of the dwelling on Mooigeleë Farm;

4.2.2 was the first respondent's right of occupation of the dwelling on Mooigeleë Farm lawfully terminated in the circumstances of paragraph 4.2.1 above;

4.2.3 did the first respondent vacate the dwelling in or about December 2024, or at any time thereafter, with the intention of making her home elsewhere, and, if so, whether she later returned, or attempted to return, to the dwelling.

4.3 the witnesses who deposed to affidavits may be called to give evidence before the Magistrate's Court, and either party may call such further witnesses and discover such documents as are relevant to the issues identified in paragraph 4.2, in accordance with the rules of that court.

5. There is no order as to costs in the appeal or in the court a quo.

JUDGMENT

DU PLESSIS AJ (with whom NCUBE J AND PULLINGER AJ concur)

Introduction

[1] This is an appeal against the judgment of this court (per Mabasa AJ),¹ which reviewed and set aside an eviction order granted by in terms of the Extension of Security of Tenure Act² ("ESTA") by the Paarl Magistrates' Court³, and dismissed the eviction application.

¹ *Dreyer N.O v Witbooi* (2024/124657) [2024] ZALCC 45 (9 December 2024).

² 62 of 1997.

³ Dated 27 May 2024 under case number 2022/2093.

[2] The appellants are the trustees of the Emma Dreyer Trust, together with W & E Dreyer Boerdery CC and Mr Willem Petrus Dreyer, the owners and persons in charge of Mooigeleë Farm (“the farm”), division Paarl.

[3] The first and second respondents, Ms Maria Witbooi and Mr Willie Willemse, reside in a dwelling (“the dwelling”) on the farm with other family members, who are cited as the third respondent. For convenience, the first, second and third respondents are collectively referred to below as “the respondents”.

[4] The Drakenstein Municipality and the Provincial Director of the Department of Agriculture, Rural Development and Land Reform are cited as the fourth and fifth respondents, respectively. They do not play any role in this appeal.

[5] The dispute concerns the respondents’ occupation of the dwelling. The appellants contend that the respondents took occupation of the dwelling in 2020 without their consent, that they never worked for the appellants, that any right they had to occupy the dwelling was terminated, and that their eviction from the dwelling is just and equitable.

[6] Ms Witbooi alleges that she has resided in the dwelling continuously since about 1996; initially with her parents and then in her own right. She contends that the dwelling is, and has been since 1996, her permanent home. She denies ever vacating the dwelling or that her tenure has been lawfully terminated.

Proceedings in the Magistrate’s Court and automatic review

[7] In 2022, the appellants initiated the eviction proceedings against the respondents. Mr Dreyer, for the applicants, alleged that neither of the respondents had ever been employed by the appellants, that the dwelling had been allocated to Ms Witbooi’s son, Brendon, as an employee under a written housing agreement, and that the respondents had unlawfully occupied the dwelling from September 2020.

[8] The application was opposed by the respondents on the aforesaid basis.

[9] In compliance with section 9(3) of ESTA, a probation officer's report was prepared and filed, addressing the respondents' personal circumstances and the consequences of an eviction order to them. The Drakenstein Municipality also filed a municipal report, *inter alia*, addressing the availability of alternative accommodation. After hearing the argument and considering these reports, the Magistrate, on 27 May 2024, granted an order for the respondents' eviction from the dwelling.

[10] As required by ESTA, the Magistrate's order was referred for automatic review to the Land Court.

[11] On 9 December 2024, the reviewing Judge set aside the Magistrate's order and dismissed the eviction application. The reviewing Judge held, in essence, that there were material disputes of fact regarding (a) whether Ms Witbooi and Mr Willemse were long-standing occupiers of the dwelling and employees on the farm, as they alleged, or (b) whether, as the appellants contend, they, in 2020, unlawfully took occupation of the dwelling after Brandon vacated it, and implicitly (c) whether, in the circumstances, any right of occupation the respondents enjoyed had been lawfully terminated.

[12] On those competing versions, she held that, applying the test in *Plascon-Evans*⁴, the disputes were genuine and material and could not be decided in the appellants' favour on the papers. On that basis, she set aside the Magistrate's eviction order and dismissed the eviction application.

Appellants' application for leave to appeal and to adduce new evidence

[13] On 27 February 2025, the appellants launched an application for leave to appeal against the review judgment and order, together with an application to adduce further evidence in terms of section 19(b) of the Superior Courts Act.⁵

[14] In the application to adduce new evidence, the appellants sought an order admitting a series of affidavits and annexures.

⁴ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

⁵ 10 of 2013. The appellants relied on section 19(b), erroneously, as will be indicated below.

[15] The founding affidavit deposed to by the appellants' attorney explained that, after the Magistrate's judgment and the automatic review, new facts had come to light regarding the respondents' occupation of the dwelling; in particular, the appellants contended that they had vacated the dwelling and no longer resided there.

[16] On 7 May 2025, Mabaso AJ granted the appellants leave to appeal and, purporting to act in terms of section 19(b) of the Superior Courts Act, granted their application to adduce further evidence by ordering that the new affidavits be admitted for purposes of the contemplated appeal.

Application to adduce new evidence

[17] Section 19 of the Superior Courts Act⁶ circumscribes the power of Superior Courts⁷ when hearing appeals. One of those powers includes, in terms of sub-section (b), the power to receive further evidence. The parties relied on section 19(b) of the Superior Courts Act in seeking leave to adduce further evidence. The reliance on this provision is, however, misplaced.

[18] The Land Court was established as a Superior Court by the Land Court Act.⁸ It has the same powers as a division of the High Court in relation to matters falling within its jurisdiction.⁹ The Land Court Act, however, limits the application of the Superior Courts Act¹⁰ to those instances where the Land Court Act does not itself have an equivalent provision, and then only to the extent that there is no conflict with the Land Court Act.

[19] As a court of the same status as a division of the High Court, the Land Court has its own appellate jurisdiction, which includes, in terms of section 17(2)(a) read with section 3(1)(a), the power to receive further evidence.

⁶ 10 of 2013.

⁷ As defined in section 1 of the Superior Courts Act.

⁸ Act 6 of 2023; section 3(2)(a).

⁹ Section 24(1).

¹⁰ Act 10 of 2023.

[20] Section 17(2)(a) provides:

“(2) The Court, at the hearing of any appeal in terms of this Act or any law conferring upon it any appellate jurisdiction, has the power—

(a) to receive further evidence;”

[21] From a plain reading of the words, it is the court, “at the hearing of any appeal”, that has the power to receive further evidence. In other words, the power to admit new evidence is thus conferred on the court seized with the appeal, not the court granting the leave to appeal.¹¹

[22] There is no bar to a litigant, when applying for leave to appeal, indicating an intention to seek leave to adduce further evidence on appeal. Where such evidence may materially affect the outcome, that may legitimately be taken into account in deciding whether the threshold for leave is met. But it is not for the court hearing the leave application to admit the evidence itself; that is a power reserved to the appeal court, as section 17(2)(a) of the Land Court Act makes clear.

[23] Appeals are generally decided on the facts and law as they stood when the judgment or order was given.¹² There are, however, cases where significant facts arise after judgment. The law on admitting such further evidence on appeal was considered in *Rail Commuter Action Group v Transnet Ltd t/a Metrorail*,¹³ where the Constitutional Court cautioned that the power to admit post-judgment evidence must be exercised sparingly and only in exceptional circumstances, when the evidence is weighty, material and credible.

¹¹ See DE van Loggerenberg *Erasmus Superior Court Practice* (LexisNexis Online) at Commentary on Section 19(b) of the Superior Courts Act, which has similar wording.

¹² *McDonalds Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd and Another; McDonalds Corporation v Dax Prop CC and Another; McDonalds Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd and Dax Prop CC* 1997 (1) SA 1 (A) at 14A – C.

¹³ 2005 (2) SA 359 (CC) para 43.

[24] The *Rail Commuter* principle was extended by the Supreme Court of Appeal in *Krügel Heinsman Incorporated v Thompson*¹⁴ to include interests of justice where subsequent events materially affect the order that had been made.

[25] Therefore, the court below was not empowered by law to receive further evidence for purposes of a future appeal. Given the approach we take in receiving the further evidence in terms of section 17(2)(a), it is not necessary to answer whether Mabaso AJ's order admitting the appellants' further evidence would be a nullity otherwise.¹⁵

Ms Witbooi's application to adduce new evidence and condonation

[26] The appellants' new evidence prompted a responsive application from the first respondent. Shortly before the scheduled hearing, Ms Witbooi, represented by Legal Aid South Africa, applied for leave to adduce further evidence on appeal, together with condonation for its late filing. She sought to place before the Court a supplementary affidavit dealing with the appellants' allegation that she had vacated the dwelling in December 2024, and confirmatory affidavits from fellow occupiers, all refuting that allegation and stating that she had at all times remained in continuous occupation of the dwelling.

[27] Because Ms Witbooi's application was brought on the eve of the hearing of 2 December 2025, she also sought condonation. She explained the lateness by reference to Legal Aid's capacity constraints, the practical difficulty in contacting her, and the time needed to obtain corroborating affidavits once she became aware of the content of the appellants' new evidence, and submitted that, given the centrality of the proposed evidence to her status as an occupier under ESTA, the serious prejudice she would suffer if it were excluded, the limited inconvenience to the appellants, and the constitutional protection of tenure in ESTA and section 25(6) of the Constitution; the interests of justice favour condonation.

¹⁴ (41/2022) [2023] ZASCA 38 paras 24 to 29.

¹⁵ *Department of Transport and Others v Tasima (Pty) Limited* (CCT5/16) [2016] ZACC 39; 2017 (1) BCLR 1 (CC); 2017 (2) SA 622 (CC) para 197; *Knoop. N.O and Another v Gupta* (Execution) 2021 (3) SA 135 (SCA) at paras 27 to 34.

[28] Once the respondents obtained legal representation, their legal representatives considered it necessary for the Court to have a complete picture of the post-judgment facts and filed a supplementary affidavit by Ms Witbooi and confirmatory affidavits from fellow occupiers, directly traversing the allegation that she had vacated the dwelling and asserting continuous occupation.

[29] Condonation is not a formality. It is granted in the exercise of a discretion, after proper consideration of all relevant facts, including the degree of lateness, the explanation for the delay, the prospects of success, the importance of the issues, and the prejudice to each party; these factors are interrelated and must be weighed in the overall interests of justice.

[30] Here, the delay is material: Ms Witbooi brought her application to adduce further evidence only on 30 November and 1 December 2025, on the eve of the hearing of 2 December 2025, some months after the appellants' further affidavits had been "admitted" by Mabasa AJ.

[31] Her explanation rests on Legal Aid's capacity constraints, the difficulty in contacting her, and the time needed to obtain corroborating affidavits once she became aware of the appellants' allegation that she had vacated the dwelling; while not perfect, it is reasonable.

[32] The proposed evidence goes to the heart of her ESTA status and directly answers a new, potentially decisive allegation, whereas the appellants suffer chiefly the inconvenience of a postponed appeal. In light of the constitutional protection of tenure in ESTA and section 25(6) of the Constitution, the interests of justice favour condonation, and it should be, and is, granted.

Admission of the parties' further affidavits

[33] I consider this case an instance in which significant facts have arisen after judgment. The litigation commenced in the Paarl Magistrates' Court in 2022 and was subject to automatic review in 2024. In 2025, the appellants sought to introduce further affidavits alleging that the respondents had vacated the dwelling, with a view to

neutralising the factual dispute identified by Mabasa AJ and rendering the eviction question and the review outcome built on it effectively moot.

[34] In my view, it would be in the interests of justice that the developments surrounding the respondents' occupation of the dwelling since 2022 be considered as part of the factual matrix because of its materiality.

[35] Taken together, the new affidavits on both sides are weighty, material and, on the face of it, credible; they bear directly on whether the eviction proceedings have become moot and on Ms Witbooi's continued occupation of the dwelling. The further affidavits crystallise discrete disputes between the parties that must, in the interests of justice, be determined.

[36] The affidavits should therefore be received as further evidence on appeal in terms of section 17(2)(a) of the Land Court Act.

Plascon-Evans, Wightman and the merits of the appeal

[37] Once both sets of affidavits are received, this Court is again confronted with the same core factual dispute that arose in the Magistrates' Court and was identified by Mabasa AJ, now amplified by further affidavits and new facts on both sides. The question is whether this Court should attempt to resolve that dispute on the papers or remit the matter for the hearing of oral evidence.

[38] In motion proceedings for final relief, a court may grant an order only if the facts as stated by the respondent, together with those in the applicant's affidavits that are admitted, justify the order. Only where the respondent's version is so far-fetched or clearly untenable that it can properly be rejected on the papers, may the court depart from that approach.¹⁶

[39] In *Wightman t/a JW Construction v Headfour (Pty) Ltd*¹⁷ the Supreme Court of Appeal emphasised that a respondent must seriously and unambiguously engage with

¹⁶ *Plascon-Evans Paints Ltd* n 4

¹⁷ *Wightman t/a J W Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA).

the facts said to be disputed, and that bare denials or fictitious disputes of fact may be ignored. But *Wightman* also cautions that where a respondent puts up a coherent factual version based on first-hand knowledge, the court is not entitled to reject it merely because it appears improbable. The high threshold for rejecting a version as “so far-fetched or clearly untenable” remains.

[40] As regards Mr Willemse, there is, in truth, no real dispute of fact once the further evidence is received. On Ms Witbooi’s own instructions to Legal Aid, he has vacated the dwelling, now resides elsewhere, and has filed no affidavit asserting a right of residence under ESTA. Those third respondents, whose presence is purely derivative, likewise have not articulated any independent defence to eviction.

[41] In these circumstances, the Magistrate’s order of eviction against the second respondent and those third respondents who reside only through him was properly granted and ought to be reinstated.

[42] Ms Witbooi’s position is different. Two issues are central to her ESTA status. The first is the long-standing dispute, already identified by Mabasa AJ, about when and on what basis she first occupied the dwelling.

[43] The appellants’ case is that when they took over the farm in 2018, neither of the respondents was residing in the dwelling; only Ms Witbooi’s son, Brendon, was an employee-occupier. They contend Ms Witbooi and Mr Willemse only appeared in that dwelling after Brendon vacated the dwelling with his family in June 2020. They rely heavily on the 2018 employment and housing agreement (“the 2018 agreement”), naming only Brendon’s partner and minor children as occupants, and on the evidence of their HR manager, Ms Judd, that she met “all households” on the farm. The evidence is that when Ms Judd met these households, the respondents were not occupants of the dwelling. The appellants further rely on a letter written to Ms Witbooi in September 2020, which records that her occupation of the dwelling was unlawful and demands that she vacate it (“the 2020 letter”). Ms Witbooi did not respond to this letter by disputing the alleged unlawfulness of her occupation at all and does not address her failure to have done so in her answering affidavit.

[44] Ms Witbooi, in contrast, says she arrived on the farm around 1995 with Brendon, then nine months old; that she worked on the farm from 1996; and that she has always lived in the same dwelling, originally occupied by her parents. She describes a conversation with the previous owner, one Rousseau, in which he allegedly assured her and other long-term occupiers that they could remain on the farm even if they did not work for the new owners, and that they could not be “thrown out”. Her account is supported by confirmatory affidavits from the second respondent and Ms Geduld, another occupier of the farm.

[45] Ms Witbooi, while not addressing the 2020 letter, does, however, place Ms Judd’s evidence squarely in dispute, saying “[w]hen the new owners took over to look at all the homes, and they came to meet us. At no stage did they say to us that we need to vacate the premises or that we needed to work at the farm in order to stay on the farm.”

[46] It is correct that Ms Witbooi’s dating is imprecise and that her failure to explain her omission from the 2018 housing agreement and her inaction when the September 2020 letter accusing her of unlawful occupation was sent are real weaknesses in her case. Ms Witbooi’s evidence is not, however, a bare denial. She gives a detailed, first-hand account of her history on the farm, her work, and the basis on which she understood her right of residence in the dwelling to endure.

[47] Neither the 2018 agreement nor the 2020 letter, important as they are, conclusively disproves Ms Witbooi’s presence on the farm before 2018. They are pieces of evidence which must be weighed. They are not, without more, a basis for rejecting her version outright as clearly untenable.

[48] On a fair reading, that version is “real, genuine and *bona fide*” in the *Wightman* sense, even if it may ultimately be found wanting at trial. In this respect, I agree with the court below. Mabasa AJ correctly held that these disputes of fact could not be resolved in favour of the appellants under the *Plascon-Evans* rule.

[49] The court *a quo*, having found that the disputes could not be determined on the papers, exercised its discretion to set aside the Magistrate's order and dismissed the eviction application. If that were the end of the matter, Mabasa AJ's order would be upheld.

[50] However, on appeal, this court is faced with a situation where evidence results in a further dispute arising, in addition to the long-standing dispute identified by Mabasa AJ about the basis and duration of Ms Witbooi's occupation: the parties now squarely contest whether she vacated the dwelling in or about December 2024 and, if so, whether she later returned. The question as to when Ms Witbooi came to occupy the dwelling must be determined, one way or the other, in the interests of both parties.

[51] Ms Witbooi's evidence goes to matters of credibility and probability, which are determined by oral evidence. A court hearing oral evidence enjoys certain advantages, such as observing the witnesses and having a witness's evidence tested under cross-examination.

[52] The question of Ms Witbooi's comings and goings, together with the existing dispute about her historic occupation, becomes central to the just determination of the eviction proceedings. In these circumstances, the appropriate course is not finally to dismiss the eviction application against her, but to remit the matter to the Magistrate's Court, Paarl, for the hearing of oral evidence on defined issues.¹⁸

[53] In terms of section 17(2)(b) of the Land Court Act, this court can remit the case to the court of first instance for a further hearing, with such instructions as regards the taking of further evidence or otherwise as the Court considers necessary. Apart from the authority to do so in terms of section 17(2)(b), as a court of equity,¹⁹ this seems to be the equitable route to follow. In view of the further evidence now received on appeal, it is appropriate, not because the court *a quo* erred on the record before it, but because

¹⁸ This is because a court of appeal should as a rule not make factual findings as a court of first instance, see *Bruce v Fleecytex Johannesburg* CC 1998 (2) SA 1143 (CC) at paras 7 and 8.

¹⁹ Section 3(1) of the Land Court Act

the factual matrix has evolved, to vary its order so as to remit the eviction application against Ms Witbooi for the hearing of oral evidence.

Order

[54] Accordingly, the following order is made:

1. The appellants' further evidence is admitted.
2. The first respondent is granted condonation for the late delivery of her application to adduce further evidence on appeal.
3. The first respondent's further evidence is admitted.
4. The appeal succeeds in part, and the order of the Court a *quo* (per Mabasa AJ) is varied to regulate the further conduct of the eviction proceedings in light of the further evidence now received, and replaced by the following:
 - 4.1 The eviction order granted by the Magistrate Paarl on 27 May 2024 against the second respondent and those third respondents whose occupation is derivative of his is confirmed.
 - 4.2 In respect of the first respondent and those third respondents residing with or under her, the matter is remitted to the Magistrate's Court, Paarl, for the hearing of oral evidence on the following issues:
 - 4.2.1 when and on what basis did the first respondent take up occupation of the dwelling on Mooigeleë Farm;
 - 4.2.2 was the first respondent's right of occupation of the dwelling on Mooigeleë Farm lawfully terminated in the circumstances of paragraph 4.2.1 above;

4.2.3 did the first respondent vacate the dwelling in or about December 2024, or at any time thereafter, with the intention of making her home elsewhere, and, if so, whether she later returned, or attempted to return, to the dwelling.

4.3 the witnesses who deposed to affidavits may be called to give evidence before the Magistrate's Court, and either party may call such further witnesses and discover such documents as are relevant to the issues identified in paragraph 4.2, in accordance with the rules of that court.

5. There is no order as to costs in the appeal or in the court *a quo*.

eduplessis

WJ du Plessis

Acting Judge of the Land Court

For the appellant:

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Attorneys

For the respondent:

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