



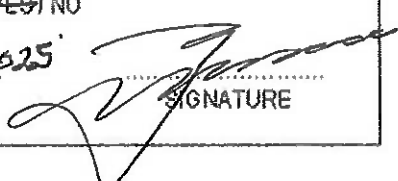
**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NO: LCC119/2024

Before: Honourable Ncube J

Hearing on: **10 June 2025**

Delivered on: **25 September 2025**

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED: YES / NO	
25/09/2025	
DATE	SIGNATURE

In the matter between:

BEAMONT BRAIN STEPHEN

Applicant

and

MALEPHI ASNATHI

First Respondent

**THE OCCUPIERS OF PORTION 230 OF THE
FARM KNOPJESSLAAGTE, 385**

Second Respondent

**THE CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Third Respondent

MZWANELE NYHONTSO NO

Fourth Respondent

(in the capacity as the member of the Executive council
for Agriculture and Rural Development)

ORDER

1. The Application for Leave to Appeal is refused.
2. There is no order as to costs.

JUDGMENT: LEAVE TO APPEAL

NCUBE J

Introduction

[1] This is an application for leave to appeal brought by the first respondent against the whole of the judgment and order of this court granted in favour of the applicant and against the first respondent on 10 April 2025.

Legal Matrix

[2] Before I deal with the first respondent's grounds of appeal, I must first deal with the legal principles applicable to applications for leave to appeal. The applicant for leave to appeal, must satisfy three cumulative requirements. The starting point of exercise is section 17 of the Superior Courts Act¹ which provides:

"17 Leave to appeal

- (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

¹ Act 10 of 2013

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

(b) the decision sought on appeal does not fall within the ambit of section 16(2) (a); and

(c) where the decision sought to be appeal does not dispose of all the issues in the case, the appeal will lead to a just and prompt resolution of the real issues between the parties"

[3] Dealing with the aspect of a reasonable prospect of success, in *MEC Health Eastern Cape v Mkhitha*² Scheepers AJA as he then was, expressed himself in the following terms:

"An applicant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless is not enough. There must be a sound rational basis to conclude that there is reasonable prospect of success on appeal"

[4] In *Smith v S*³ Plasket J said:

"What the test of reasonable prospects of success postulates is a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In order to succeed therefore the appellant must convince this court on proper grounds that he has prospects of success on appeal and that those prospects are not remote but have a realistic chance of succeeding"

[5] In the past, the test applied by the courts in the determination of applications for leave to appeal was whether there was a reasonable prospect that another court may come to a different conclusion to the one reached by the *court a quo*⁴. With the coming into operation of Section 17 above, the threshold to grant leave to appeal has been raised. In *Mont Chevaux Trust v Tina Goosen and 18 Others*⁵, it was held:

² (1221/2015)[2016] ZASCA 176 (25 November 2016) Para 17

³ 2012(1) SACA567 (SCA) Para 7

⁴ *Commissioner of Inland Revenue v Tuck* 1989(4) SA 888 (T) at 8908

⁵ (LCC14R/2014)[2014] ZALCC 20 (3 November 2014)

" It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the Act. The former test whether leave to appeal should be granted was a reasonable prospect that another court might come at a different conclusion see *Van Heerden v Cronwright and others* 1985 (2) SA 342(T) at 343H. The use of the word " would" in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against. This new standard is applied by section 37(4) of the Restitution of Land Rights Act 22 of 1994 to this court's duty to consider the prospects of an intended appeal"

[6] In *Notshokovu v S*⁶, it was held that an applicant faces a "*higher and stringent*" threshold under the Superior Courts Act. Therefore, in terms of section 17 the enquiry is not whether another court "*may*" come to a different conclusion but "*would*" indeed come to a different conclusion.

[7] Before I deal with the grounds of appeal, I want to state herein, that this matter is not concerned with an ordinary farm resident. The case concerns a middle-class businesswoman who occupies a house with a value of more than R400 000.00, who has credit accounts at different shops, who owns a vehicle which she uses to transport school children for a profit and who runs a tuckshop to earn income. This is one of those applications where there is no reasonable prospect of success whatsoever. In future this court shall not shun away from showing its displeasure by awarding punitive costs against whosoever is responsible for bringing such hopeless applications, be it the applicant or the attorney.

Grounds of Appeal

[8] The first respondent listed eight (8) grounds of appeal. However, as it is the case in such applications whenever the applicant is out on a fishing expedition, he will always cast the net wide and in the process repeat the grounds of appeal with slight change in the use of words. It is for this reason why Counsel, in his Heads of Argument, discussed grounds 1,2,3,4 and 6 together leaving grounds 5,7 and 8. In grounds 1,2,3,4 and 6 of the Heads of Argument, Counsel deals with one aspect which is the definition of "*occupier*" in terms of ESTA.

⁶ (157/15) [2016] ZASCA (7 September 2016)

[9] First ground:

“ The learned judge having found in paragraph 5 read with paragraph 26 of his judgment that the amount utilised to build the structures on the land was contradictory, erred in fact and/or law by finding the first respondent had failed to prove that the alleged were incurred as stated alternatively that a dispute of fact exists which dispute cannot be resolved on the application papers”

It is difficult to understand this ground. However, the contradictions regarding the amount of money spent on the construction of the house is apparent from the first respondent's own answering affidavit. Those contradictions make it difficult to ascribe them to *bona fide* errors of recollection, they are more consistent with deliberate untruthfulness. She was ordered to provide the court with her bank statements but she refused, without a reason to do so. There is no real or genuine disputes of fact where the deponent disputes her own evidence under oath⁷.

Therefore, this ground is considered and dismissed.

Second Ground

“The learned judge erred in fact by finding that the first respondent earned the alleged R13 625 per month without considering or interrogating any evidence to that effect nor considering the veracity of the report in terms of section 9(3) of Extension of Security of Tenure Act 62 of 1997 (“ESTA”) as prepared by the Department of Rural Development and Land Reform”

The Probation Officer's Report contains the information which the Probation Officer obtained from interviewing the first respondent herself. There was no need for this court to interrogate the veracity of the report. The first respondent was legally represented by an attorney who knew what to do if he was not satisfied with the Probation Officer's report with regards to her income. She tendered contradictory evidence in that regard. Her answering affidavit contradicted the letter written by her

⁷ See *Wrightman t/a JW Construction v Headfour (Pty)Ltd and Another* 2008(3) SA 371 (SCA at para 13

own, attorney on her instruction. She also refused to disclose her bank statement as per the order of Ntshalintshali AJ. This ground also has no merit and it is dismissed.

Third Ground

“ The learned judge erred in fact and/or law by finding that the first respondent is not an occupier as defined by section 1 of ESTA whereas the learned judge ought to have found that the applicant had failed to discharge the onus to show that the first respondent is not an ESTA occupier by failing to allege and prove all the components of the said definition and more particularly, that the applicant's income if any, was above the prescribed threshold and as such, did not qualify to be an occupier as per ESTA however, he continued to order the eviction of the first respondent in terms of ESTA”

It is not clear what the first respondent is trying to say in that “ *the learned judge ought to have found that the applicant had failed to discharge the onus to show that the first respondent is not an ESTA occupier by failing to allege and prove all of the components of the said definition and more particularly, that the applicant's income if any, was above the prescribed threshold and as such did not qualify to be an occupier*”.

It was not for the landowner to allege and prove all the components of the definition of the “*occupier*”. It was the first respondent who had to allege that she was an occupier and that she is not excluded from the definition in terms of the exclusionary provisions of the Act. Otherwise, the income of R8000 plus R5000 plus profits she gets from the business of selling fruits and sweets places her far above the threshold of R13 625. From her business alone, the first respondent was able to get money to build a house valued above R400 000.00

This ground of appeal is equally dismissed.

Fourth Ground

Under this ground, the first respondent laments that she in fact earns R13 000.00 and not R13 625.00. However, this ground overlaps with the second ground which I have dealt with above.

The ground is dismissed just like the second ground.

Fifth Ground

In summary under this ground the first respondent alleges that the court erred by relying on the municipal report and disregarding the right to adequate housing, "which section 26 of the Constitution protects and guarantees the first respondent.

It must be borne in mind that whilst everyone has a right of access to adequate housing⁸, the state has obligation only to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of that right. If the eviction will lead to homelessness, which is not the case here, the Municipality has a duty to provide temporary emergency accommodation. As the SCA held⁹, the municipality's obligation extended to providing a court with all of the information necessary to establish whether an eviction would be just and equitable.

This ground of appeal is equally dismissed.

Sixth Ground

In this ground, the first respondent laments the fact that the court ordered the landowner to make a contribution of R25 000 towards the relocation costs "*without investigating the veracity and computation of the said amount*". It is not clear why this court was expected to engage in so many investigations, in motion proceedings involving legally represented parties.

Section 13 of ESTA gives the court the discretion to order the owner to make contributions towards relocation of the occupier. The first respondent has failed to indicate how the court erred in exercising its discretion.

This ground is dismissed.

Seventh Ground

In this ground the first respondent states that the judge erred in finding that it is just and equitable to evict without considering the remaining provisions of section 11(3) of ESTA.

⁸ Section 26(1) of Act 108 of 1996

⁹ *The occupiers Shulana Court, 11 Hendan Road, Yeoville, Johannesburg v Steere* [2010] 4 All SA 54 (SCA) Para 11

The difficulty herein is that the respondent does not disclose which requirement of section 11(3) was not complied with. In terms of section 11(3) of ESTA, there are five (5) factors which the court must consider in determining whether it is just and equitable to grant an eviction. A general statement to the effect that the remaining provision of section 11(3) were not considered does not hold water. It is a classic case of a party who is out on a fishing expedition.

This ground is also dismissed.

Eight Ground

In fact, this is not a separate ground of appeal. The first respondent repeats that there is a reasonable prospect that another court would find that the applicant failed to allege and prove all the prescribed components of eviction in terms of ESTA.

To the extent that this is meant to be a separate ground of appeal, it is hereby dismissed.

In the circumstances I find that there are no reasonable prospects of success in this matter.

Order

[10] In the result, I make the following order:

1. The Application for Leave to Appeal is refused
2. There is no order as to costs.



NCUBE J
JUDGE OF THE LAND COURT
OF SOUTH AFRICA

APPEARANCES:

For the Applicant: Adv. L Peter

Instructed by: Vermaak Mashall Wellbeloved Inc.

For the First Respondent: Mr S Kwenene

Instructed by: Legal aid