



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Isedor Skog N.O & Others v Koos Agullus & Others (797/2021) [2022] ZASCA 15 (20 February 2023)

The Supreme Court of Appeal (SCA) today upheld an appeal from the Land Claims Court, Randburg, (the LCC). The court's order was set aside and replaced with an order evicting all but the eleventh and twelfth occupier respondents. The order required the occupiers to evict the property, a farm known as Rein Hill Estate (the farm), on or before 31 August 2023. The Head of the Drakenstein Municipality (the Municipality) was ordered to ensure suitable emergency housing was provided to the affected respondent occupiers (occupiers).

This appeal centred around the question whether eight families that were residing on private property ought to be evicted on account of conduct that brought about an irretrievable breakdown in the relationship between the occupiers and the appellants (the Trust). In the cross-appeal, the issue of res judicata was raised on account of another court having already decided previously that occupiers could not be evicted from the same property. The occupiers were employees or family members of former employees of the Trust at the time when it took control of the farm. The employment relationship between the occupiers and the Trust, which were premised on substantially similar terms and conditions as the employment relationship between the occupiers and the previous owner, ended on 24 June 2011, being the date they had been ordered to vacate the farm. The occupiers refused to vacate the farm which prompted the Trust to institute proceedings in the Magistrate's Court, Wellington. However, the court refused the relief sought.

In May 2018, the Trust informed the occupiers that their rights of occupation were to be terminated and representations could be made as to why they ought not be evicted. No representations were received and the rights were terminated, followed by a notice that the farm ought to be vacated within 30 days. Upon failure by the occupiers to vacate the premises, the Trust approached the LCC for an eviction order premised on the alleged unacceptable manner in which the occupiers had conducted themselves, which had significantly contributed to the breakdown of the relationship between the parties. On their part, the occupiers contended that the Trust failed to prove that an actual employment contract existed or who the individuals responsible for the alleged misconduct were; they sought to have the matter dismissed. In its judgment, the LCC dismissed the matter, contending that the Trust was wrong in painting all the occupiers with the same brush – the Trust’s house rules were broken by unknown individuals as the Trust had failed to prove which occupiers were specifically responsible.

Upon appeal, the SCA reiterated two important steps with regards to eviction proceedings: the eviction must have followed a fair procedure and must have been premised on lawful, just and equitable grounds, and a notice of termination of a right of residence must have been terminated in terms of s 8 of the Establishment of Security of Tenure Act 62 of 1997, with the occupier not vacating the land, despite two-months written notice of intention to evict. This Court also found that, regardless of each party’s version, the employment relationship between the occupiers and the Trust ended on 24 June 2011. The Trust highlighted serious breaches of the relationship as committed by the occupiers, and substantiated such claims with thorough evidence. Furthermore, this Court discussed the significance of the fact that the occupiers consistently rejected the Trust’s various attempts to have this impasse solved amicably and that they never responded to any invitations to make representations as to why their continued residence on the farm ought to be maintained. Furthermore, the vast majority of allegations were hardly disputed by the respondents, if at all.

The SCA found that, based on the evidence provided by the Trust, the inappropriate conduct complained of was of a serious nature and that the Trust’s assertions had a ring of truth. The damage to the Trust’s property could not be allowed to continue unabated simply because individual culprits could not be identified. The Court confirmed the Trust’s assertion that the occupiers treated the property with utter contempt, which was irreconcilable with a cordial social relationship and ultimately amounted to extreme hardship experienced by the Trust. The Court found that the occupiers themselves frustrated, beyond repair, all efforts to restore the

relationship between themselves and the Trust, and the Trust's attempts to regularise the relationship had come to naught.

Section 9 of ESTA imposed limitations on evictions and prescribed circumstances that authorised evictions. The SCA found that, on a conspectus of the facts, it would have been unreasonable to expect the Trust to continue to provide the occupiers with residence in light of the breakdown of the relationship between the parties. In addition, the dilapidated structures which the occupiers had been occupying exacerbated the need to evict the occupiers, particularly as the Trust indicated that the structures needed to be demolished. Therefore, the Municipality was required to provide the occupiers with necessary shelter, but it indicated that it was unable to do so. However, the SCA found that, in line with its constitutional obligations and, despite its protestations, the Municipality adopted an emergency housing assistance policy, in terms of which it would be obliged to provide the occupiers with alternative accommodation in the event that they were rendered homeless.

Lastly, reliance in the cross-appeal on *res judicata* was misplaced. The SCA was not asked to determine the same issues that were before the court a quo or the LCC. In the court a quo, the application for eviction was predicated on the Trust's operational reasons on the basis that the employment relationship had ended and that, in terms of the lease agreement, the termination of employment in turn led to the termination of the right of residence. Similarly, in the LCC the application was predicated on events post the judgment handed down in 2017. Accordingly, the considerations as to whether the same issue raised was previously determined in an earlier judgment did not depend on the import of the order granted, but rather on having answered the substantive question pertaining to the nature of the issue of fact or law that was decided by the court in the proceedings, and whether it was finally decided.

The SCA determined that the LCC's reasoning was influenced by wrong principles and its discretion was accordingly not exercised properly. This Court deemed it prudent to interfere with the LCC's order and, in the result, upheld the appeal.

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