



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

Date: 04 April 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Timothy Maluleke N.O. vs Daniel Phellimon Sibanyoni & Others (Case Name: 1012/2020) [2022] ZASCA 40 (04 April 2022)

Today the Supreme Court of Appeal (SCA) dismissed an appeal from the Land Claims Court, Randburg.

The appeal dealt with the question whether the termination of the first respondent's right to reside on the farm was just and equitable both in substance and procedure as prescribed by the Extension of Security of Tenure Act 62 of 1997 (ESTA). The first respondent had resided on the farm before 4 February 1997 and had cropping and grazing rights, in exchange for his labour on the farm. The appellant sought the respondent's eviction and alleged that the first respondent moved to the farm without the necessary consent and, as a result, exerted considerable and intolerable hardship on the farm and its continued development.

This Court considered the provisions of ESTA and found that an occupier's right of residence can only be terminated in the event that it is just and equitable to do so. This prompted the Court to consider all relevant factors *ex post facto*.

To this end, this Court found that not all relevant factors had been considered. It was clear that the appellant was only prepared to deal with the owners of the property, not its occupiers. In addition, the conduct of the appellant not affording the first respondent an opportunity to make representations prior to the termination of his right to residence, which this Court found to be irreconcilable with the principles of procedural fairness as envisaged by ESTA. This Court found that the termination of the first respondent's right to residence was not just and equitable.

In the result, the appeal was dismissed.

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