



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

**FROM** The Registrar, Supreme Court of Appeal

**DATE** 29 April 2022

**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

*Frannero Property Investments 202 (Pty) Ltd v Clement Phuti Selapa and Others (case no 222/2020) [2022] ZASCA 61 (29 April 2022)*

**MEDIA STATEMENT**

Today the Supreme Court of Appeal upheld in part an appeal against an order granted by the full bench of the North West Division of the High Court, Mahikeng. The full bench dismissed an appeal by Frannero Property Investments 202 (Pty) Ltd against an order of a single judge of the same division. In terms of the earlier court order an eviction application instituted in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) was dismissed on the basis that the high court lacked the jurisdiction to hear the application.

Frannero's property, known as Portion 35 of the Farm Waterval 306 in Rustenburg, Northwest Province (the property), is occupied by a community of about 300 people. Before the sale of the property in 2012, the previous owner, Mr Felix Formariz, had been the owner since 1983. Throughout the years he built small rooms which he, from the year 2000, rented out to mine workers working at nearby mining sites. Oral lease agreements were concluded and rental was payable monthly. Between 2001 and 2010 various tenants, some unauthorised, came to occupy the property and then vacated it. During 2012 Mr Formariz held a meeting with the tenants to remind them of their rental obligations since some were defaulting in payments, as well as to

inform them that the property had been rezoned to an industrial township and was to be sold to Frannero. The non-payment of rentals persisted despite the discussions.

In September 2014 Frannero gave all the tenants written notices terminating their occupancy rights and had the electricity supply to the property disconnected. In August 2015 Frannero instituted eviction proceedings in the high court against the tenants in terms of the PIE Act. The high court dismissed the application on the basis that it lacked jurisdiction to hear the application as the tenants were occupiers in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA). The court found that the onus rested on Frannero, as the applicant for eviction to show that ESTA was not applicable. On appeal, the full bench confirmed the finding that the tenants were occupiers under ESTA and dismissed the appeal. The full bench, however, found that the onus rested on the tenants, rather than Frannero, to show that their occupation was regulated under ESTA and that they had successfully done so.

In partially upholding the appeal against the order of the full bench the SCA held that the jurisdictional facts for the application of ESTA relate to: (a) the person occupying the land, and (b) the land that is occupied. Having found that there was no dispute regarding the fact that the tenants at some stage had consent to occupy the property, the SCA held that they had to show that their income did not exceed the maximum amount of income prescribed for the application of ESTA. The SCA held that consistent with the basic common law principle that ‘the party who alleges must prove’, which is applicable in the determination of the incidence of the onus in civil cases, the burden to prove that ESTA applies in relation to a specific occupier rests on the occupier who invokes the application of the Act. The Court found that the evidence provided by some of the tenants in that regard was vague and inadequate and that the onus to prove that they were not disqualified under the exclusions remained unsatisfied. Only the 15 tenants who gave evidence that they were unemployed were found to have brought themselves within the ambit of ESTA. It is only in relation to them that the appeal by Frannero was dismissed. The appeal in relation to the rest of the tenants was upheld. The SCA referred the matter back to the high court for the determination of the eviction application in terms of the PIE Act.

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