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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Kruger v Sibanyoni and Others (1191/2023) [2025] ZASCA 127 (9 September 2025)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs, including the costs of two counsel where so employed. The appeal, which originated from Land Claims Court, Randburg, now the Land Court (the LC), concerned whether: (a) electricity was a reasonably necessary improvement to make a residential home habitable; and (b) whether the consent of the landowner was required before an occupier as defined in the Extension of Security of Tenure Act 62 of 1997 (ESTA) may install or connect electricity to his dwelling. The LC directed the appellant, Ms Kruger, to consent to the connection of electricity to the dwelling of the first respondent Tate Mathew Sibanyoni (Mr Sibanyoni). It further interdicted her from preventing the installation of electricity to their residential home.

Mr Sibanyoni was born on the farm Mooiplaas, Hendrina, Mpumalanga. This farm was about seven kilometres from another farm known as Portion 13 Vaalbank 177 JS (Vaalbank), also in Mpumalanga. The late Mr MJC van der Merwe (Mr van der Merwe), who is the father of Ms Kruger, was the previous owner of Vaalbank. On the version of Mr Sibanyoni, he was relocated to Vaalbank by the late Mr Van der Merwe. It is not in dispute that he had been residing on the farm since 2011. He and his family had even erected a permanent structure on Vaalbank. It was common cause that he and his family were occupiers on Vaalbank as defined in s 1 of ESTA.

The principal cause of the dispute between the Sibanyonis and Ms Kruger is the supply of electricity to the Sibanyonis' residence. Mr Sibanyoni alleges that he discussed his intention to install electricity at his residence with Mr Vincent Schalk (Mr Schalk), who was in charge of Vaalbank at the time. Mr Schalk was the son-in-law of the late Mr Van der Merwe. Mr Sibanyoni averred that Mr Schalk granted him permission to install electricity and also signed a consent form which was handed to the municipality. Ms Kruger denied that any consent was given and she alleged that Mr Sibanyoni failed to produce a copy of the consent form alleged. According to her, Mr Van der Merwe's son-in-law is Mr Vincent Schulz and not Mr Vincent Schalk as alleged by Mr Sibanyoni. Vincent, also attended the meeting at Hendrina police station where the issue of electricity was discussed. According to Mr Sibanyoni, it was at this meeting that he was given permission to install the electricity by Vincent.

Following the meeting at the police station, Eskom officials attempted to deliver poles to Vaalbank to be used to connect the Sibanyonis' residence to the grid. Ms Kruger took issue with the delivery of the poles as she contended that she had never been consulted about the installation of the electricity at the home of the Sibanyonis and had not granted consent to either Mr Sibanyoni or Eskom to do so. She prevented Eskom from delivering the poles.

The LC held that the installation of electricity was an improvement which was reasonably necessary to make the Sibanyonis' dwelling habitable, and thereby give effect to the right to human dignity. Regarding the issue of consent, the LC held that the right of the Sibanyonis to bring their dwelling to a standard that conformed with conditions of human dignity was not dependent on the owner's consent. Although the LC found that occupiers like the Sibanyonis did not require consent to have access to electricity, it nevertheless directed Ms Kruger to grant such consent.

The general issue for determination before the SCA was whether the LC was correct in granting final relief making the crisp question for determination before the SCA to be whether the Sibanyoni family had a right to effect improvements in the form of electricity installation to make their residential home habitable and thereby give effect to their right to human dignity.

In addressing this issue, the SCA pointed out that it was common cause that the Sibanyonis were occupiers as defined in ESTA and were thus entitled to the protection provided by ESTA. As occupiers, they were entitled to fundamental rights as provided for in s 5 of ESTA and, more particularly, the right to human dignity. Since the occupiers were entitled to the fundamental rights in s 5 of ESTA, the enjoyment of those rights may invariably encroach on the property rights of the landowners as envisaged in s 25(1) of the Constitution. For this reason, the SCA held that landowners and occupiers equally enjoy the same fundamental rights in terms of ESTA.

The SCA further stated that the submission by the appellant that '[t]he property in question is a farmland, where electricity has not historically been supplied', which was submitted in the context that the Sibanyonis failed to place facts before the LC to show the impact on their lives of the lack of electricity disregards the fact that electricity is necessary for an occupier to live in a dwelling in a dignified way as, in modern times where things like mobile phones, electrical appliances are used in daily life, it is difficult to understand why anyone would believe that people in 'farmland' should explain how they are impacted by lack of electricity. On this point, the SCA held the view that to even suggest that refusal to access electricity for the purposes of s 5 of ESTA does not establish apprehension of irreparable harm for the purposes of a final interdict was worrisome.

On the issue of whether the Sibanyonis required the consent to instal the electricity, the SCA held that it was difficult to understand how Eskom could have gone to Vaalbank without the necessary engagement with the municipality with whom it ought to contract, stating that the inescapable inference was that the municipality had consented to supply the Sibanyonis with electricity as end users and Eskom must have been engaged to install the necessary equipment for their supply, hence the delivery of the poles to Vaalbank. The SCA was satisfied that the meeting, as was found by the LC, constituted meaningful engagement for the purposes of resolving the issue of the supply of electricity to the Sibanyonis' home and that the Sibanyonis had no alternative remedy and were entitled to an interdict.

In the circumstances, the SCA found that the LC did not err in finding that the installation of electricity was an improvement that was reasonably necessary to make the Sibanyonis home habitable so as to enable them to exercise their right to human dignity as contemplated in s 5 of ESTA. And, in conclusion, the Court found that the Sibanyonis did not need the landowner's consent to instal electricity to their home.

In the result, the SCA dismissed the appeal with costs, including costs of two counsel where so employed.

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