



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: 30 September 2021

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

Nimble Investments (Pty) Ltd v Johanna Malan and Others (556/2020) [2021] ZASCA 129 (30 September 2021)

Today a majority of the SCA upheld the appellant's appeal against an order of the Land Claims Court, Randburg, which set aside an order by the Stellenbosch Magistrate's Court (the magistrate's court) that the respondents be evicted from a farm known as Topshell Park in Stellenbosch, Western Cape (the farm), in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA). The ground for their eviction was essentially that the first respondent had committed a fundamental breach of the relationship between her and the manager or owner of the farm, that was practically impossible to restore as envisaged in s 10(1)(c) of ESTA.

The first respondent had been living on the farm since 2005 after her husband had passed away. Part of the farm was expropriated for purposes of a road and the appellant needed the portion of land on which the house of the first respondent (Cottage 1) and those occupied by other farmworkers were located. The land was needed by the owner's tenant under a long-term lease. The owner obtained an order in the magistrate's court to relocate the respondents from Cottage 1 to Cottage 5 on the farm. The first respondent breached the relationship when, without permission, she removed the building materials from Cottage 1 and used them to erect an illegal structure next to Cottage 5. When confronted about this, she told the manager that Cottage 1

was her house and she could do with the materials as she pleased. Using an expletive, she shouted at him to go away. The appellant's building materials were used to erect an illegal structure to accommodate persons who had not previously lived on the farm. The first respondent refused to demolish the structure or return the materials. The SCA held that this conduct constituted a fundamental breach of the relationship between the occupier and the landowner, justifying the eviction of the respondents.

The SCA held that the eviction was just and equitable as it was untenable to force a landowner to continue with a relationship which, according to the evidence was practically impossible to restore. For this reason and on a proper construction of s 10(1)(c) of ESTA it was unnecessary to grant the respondents an opportunity to make representations as envisaged in s 8(1)(e). A number of the respondents were employed elsewhere but paid no rent and made no contribution to utilities. The SCA concluded that the landowner could not be expected to provide free housing and utilities to the respondents as it had done for a number of years. ESTA was not intended to promote the security of opportunistic occupiers at the expense and exploitation of the rights of landowners. Moreover, the appellant was, and remained willing to assist the respondents financially in finding alternative accommodation. This assistance was unreasonably refused.

In a minority judgment it was held that the order of eviction was not just and equitable. The respondents had not been given an opportunity to make representations as envisaged in s 8(1)(e) of ESTA, why their rights of residence should not be terminated.