



## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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

**DATE** 16 March 2020

**STATUS** Immediate

***Aquarius Platinum (South Africa) (Pty) Ltd v Bonene Sebjoa and 170 Others***  
**(1177/2018) [2020] ZASCA 07 (16 March 2020)**

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

Today the Supreme Court of Appeal (SCA) dismissed the appeal of the appellant, Aquarius Platinum (South Africa) (Pty) Ltd, against the decision of the Land Claims Court, Johannesburg (LCC).

The appellant contracted a third party to perform mining operations at the Kroondal Platinum Mine, on a farm in Rustenburg, North West Province and on the Marikana Platinum Mine. The 1<sup>st</sup> to 167<sup>th</sup> respondents (the occupiers) were employed by the third party and resided in hostels on the farm and at Marikana Platinum Mine.

The occupiers participated in an unprotected strike and were dismissed. The occupiers challenged their dismissal under the Labour Relations Act 66 of 1995 (the LRA). The appellant then applied and was granted an eviction order under the Extension of Security of Tenure Act 62 of 1997 (ESTA) against the occupiers in the North West Division of the High Court, Mahikeng (the high court). The occupiers successfully challenged the high court's order in the LCC, where the restoration of the occupiers' rights of residence in terms of ESTA was ordered. The occupiers then resumed residence on the farm.

The appellant then became the employer of the occupiers by virtue of s 197 of the LRA and the occupiers continued to exercise their rights of residence in terms of ESTA. After protracted labour litigation, the occupiers were dismissed. The appellant served notice of its intention to obtain an eviction order on the occupiers in terms of s 9(2)(d)(i) of ESTA, some having been served before the final termination of the employment of some of the occupiers. The appellant then launched an application for the eviction of the occupiers in the LCC, which was dismissed. The appellants then appealed this decision to the SCA.

The SCA held that ss 8 and 9 of the ESTA had been authoritatively interpreted to require the proper termination of occupiers' rights of residence. It held that these sections require a two-stage procedure that involves: first, the termination of the occupiers' right of residence in terms of s 8 of ESTA; and second, before an eviction order can be sought, occupiers must be given notice of the intention to seek their eviction in terms of s 9(2)(d)(i) of ESTA.

The SCA held that it was common cause that the appellant had not terminated any of the occupiers' right of residence. It held that the appellant failed to appreciate the need to comply with this legal

requirement. And it is the duty of the appellant to allege and prove, in addition to the termination of the employment of the occupiers, that their rights of residence had been terminated.

The SCA further held that in the present case the appellant had only served notices in terms of s 9(2)(d)(i) on the occupiers. And in respect of a substantial number of them, this took place before their employment was finally terminated. In the circumstances, the appellant's case for the eviction of the occupiers suffered from a fatal defect. The appeal was accordingly dismissed.