



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

**Case no: 376/2024**

In the matter between:

**RAYCALDO ROWLAND**

**FIRST APPELLANT**

**WILLIE ADONIS**

**SECOND APPELLANT**

**WAYNE BARRON**

**THIRD APPELLANT**

**ALL THOSE HOLDING TITLE THROUGH FIRST TO THIRD**

**RESPONDENTS OR OCCUPYING PORTION 79 OF**

**THE FARM MORNINGSTAR NO. 141, CITY OF CAPE**

**TOWN, WESTERN CAPE**

**FOURTH APPELLANT**

**THE CITY OF CAPE TOWN**

**FIFTH APPELLANT**

**THE HEAD: WESTERN CAPE PROVINCIAL**

**DEPARTMENT OF AGRICULTURE, LAND REFORM**

**AND RURAL DEVELOPMENT**

**SIXTH APPELLANT**

and

**LOGOS CARRIERS CC**

**RESPONDENT**

**Neutral citation:** *Rowland and Others v Logos Carriers CC* (376/2024) [2026]

ZASCA 36 (24 March 2026)

**Coram:** MATOJANE, SMITH and KOEN JJA and STEYN and BASSON AJJA

**Heard:** 10 March 2026

**Delivered:** 24 March 2026

**Summary:** Extension of Security of Tenure Act 62 of 1997 — eviction of occupiers — application for leave to appeal dismissed — application to amplify grounds of appeal to include defense of lack of jurisdiction of the Land Court dismissed — alleged lack of jurisdiction not raised squarely on the pleadings — income peculiarly within knowledge of deponent — bare assertion lacking particularity insufficient — counter-claim for court-ordered mediation under s 21 dismissed — occupiers invited to mediate and declined — court exercised discretion judiciously — appeal against refusal of application to strike out evidence dismissed — fourth appellant bound by legal representation — obligation to place relevant facts before court.

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## ORDER

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On appeal from: Land Court of South Africa, Randburg (Flatela J sitting as a court of first instance):

1. The appeal against the refusal to strike out evidence is dismissed with costs.
2. The appeal against the refusal of the counter-claim for court-supervised mediation is dismissed with costs.
3. The application to amplify the grounds of appeal to include grounds relating to jurisdiction and the citation of the fourth appellant is dismissed with costs.
4. The application for leave to appeal is dismissed with costs.
5. The first, second and fourth appellants are directed to pay the respondent's costs relating to the above applications jointly and severally, the one or more paying the other to be absolved.

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## JUDGMENT

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**Matojane JA (Smith and Koen JJA and Steyn and Basson AJJA concurring):**

### Introduction

[1] This is an appeal, and an application for leave to appeal, against an order of the Land Court (formerly the Land Claims Court), per Flatela J, granted on 16 August 2023, which ordered the eviction of the first to fourth appellants from Portion 79 of the Farm Morningstar No. 141, situated in the City of Cape Town, Western Cape (the property). The order is in favour of the respondent, Logos Carriers CC (Logos) and was granted in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA).

[2] The Land Court granted partial leave to appeal to this Court on 15 March 2024, limited to two interlocutory aspects of the proceedings: its refusal to grant a counter-application, seeking a referral to mediation, and its refusal to strike out certain evidence adduced by Logos. On 9 April 2024, the appellants applied to this Court for leave to appeal against the entirety of the judgment and order. On 13 June 2024, this

Court made an order referring the application for leave to appeal for oral argument in terms of s 17(2)(d) of the Superior Courts Act 10 of 2013 (the Superior Courts Act). The parties were required to be prepared to argue the merits if called upon.

[3] Furthermore, before this Court is a belated application by the appellants to amplify their grounds of appeal to include: (a) the contention that the Land Court lacked jurisdiction to grant an eviction order against the first appellant, Mr Rowland, on the basis that his monthly income exceeds the prescribed maximum for an ESTA occupier; and (b) the contention that the citation of the fourth appellant as an unnamed group of occupiers was procedurally incompetent. The application was served on the respondent only on 13 March 2025, five days before the due date for Logos to file heads of argument, and was not accompanied by an affidavit explaining the delay.

[4] The fifth and sixth appellants, the City of Cape Town and the Head of the Western Cape Provincial Department of Agriculture, Land Reform and Rural Development, were joined as required by s 9 of ESTA and filed affidavits in the Land Court. They did not participate in the appeal before this Court.

[5] The grounds upon which each application and the appeal fall to be dismissed are set out in the analysis below.

### **Factual background**

[6] Logos is a small business of which Mr Sidney Volkwyn (Mr Volkwyn) is the sole member. Mr Volkwyn began his working life as a diesel mechanic and, through years of hard work, built up a transport business. In November 2019, Logos purchased the property at a public auction for R2 000 000. The purchase was funded entirely by a mortgage bond that attracted a monthly repayment of R15 970,36. By the date of the hearing in the Land Court, Logos had paid approximately R862 380 in mortgage instalments yet remained wholly unable to use the property. It was consequently compelled to lease alternative premises for its business.

[7] The property is a modest smallholding of 1,26 hectares. Logos required it for two purposes: as a truck depot for its transport operations and as a family home for

Mr Volkwyn and his family. Adjacent to the property, and registered in the name of a close corporation of which the first appellant, Mr Raycaldo Rowland (Mr Rowland), is the sole member, is Portion 78 of the same farm. Mr Rowland stated in his affidavit that he owns the neighbouring property and resides there.

[8] When Mr Volkwyn visited the property in 2019, accompanied by a representative of ABSA, whose mortgage had led to the property being auctioned, he found only two people there. The ABSA representative, Mr van den Berg, confirmed this account. Transfer of the property to Logos was effected on 2 May 2020. When Logos sought access to its property thereafter, it was refused entry.

[9] The previous owners of the property confirmed in affidavits that they had resided on the property for seven years until 2015; that during their period of occupation, they were the only persons resident on the property; and that Mr Rowland resided on the adjacent Portion 78. No person had advanced any claim of cultural or other rights in respect of the property during their occupation.

[10] The appellants asserted in their answering affidavit that they occupied the property with the consent of the previous owner, whom they did not name. The first appellant stated that 23 people comprising four households were living on the property, the Rowland, Adonis, Samuels and Stout families – including six school-going children, three university students, a person with a disability and a 71-year-old pensioner. No member of the Stout family deposed to an affidavit.

[11] Logos allowed the appellants to make representations under s 8(1)(e) of ESTA before terminating their consent to occupy. The response from the first and second appellant's attorney stipulated that his clients would vacate the property if Logos paid R1 000 000 in compensation. Logos served notice of termination of consent in April and May 2021, requiring the appellants to vacate by 31 May 2021. The notice was served by the Sheriff on persons found on the property and was delivered to the attorneys then representing the first and second appellants.

[12] Logos made multiple offers to engage the appellants in mediation before instituting proceedings. Mr Volkwyn stated that he was willing to attend any mediation

process at a time and place of the appellants' choosing, with a neutral mediator of the appellants' choosing. These invitations went unanswered. Over a period of more than two years between the termination of consent and the hearing, the appellants took no steps under s 21 of ESTA or otherwise to initiate any mediation or negotiation process.

[13] Logos launched its application to evict the occupiers in the Land Court under ESTA on 16 August 2021. The City of Cape Town filed an affidavit confirming that qualifying evictees would be accommodated under its emergency housing programme. A probation officer's report was filed by the sixth appellant as contemplated in s 9(3) of ESTA, on 29 April 2022.

[14] The probation officer's report confirmed that the second and fourth appellants and their families do not have independent access to suitable alternative accommodation other than their current dwellings on the property. The report further confirmed that these occupiers engage in subsistence farming, including keeping livestock and poultry and cultivating vegetables. The report concluded with a recommendation that an eviction order should not be granted. Significantly, the report noted that only the second and fourth appellants and their dependants lacked alternative accommodation, a finding consistent with Mr Rowland's confirmation that he resides on the adjacent property.

[15] The appellants launched a counter-claim on 26 June 2022, seeking a referral to court-supervised mediation under s 21 of ESTA, together with an application to strike out certain evidence adduced by Logos. This pertains principally to the correspondence from the first and second appellant's attorney demanding R1 000 000 in exchange for vacating the property, and to passages in the probation officer's report based on that correspondence.

[16] On 16 August 2023, the Land Court granted an order for the eviction of the first to fourth appellants. It directed the City of Cape Town to make emergency accommodation available to those who would otherwise be rendered homeless. The court furnished written reasons on 30 November 2023. It did not grant the counter-claim or the application to strike out. On 21 September 2023, an amended eviction order was issued.

[17] On 15 March 2024, the Land Court granted partial leave to appeal to this Court, limited to the refusal of the counter-claim for mediation and the application to strike out. It is common cause that by the time the matter was heard below, Mr Barron, the third appellant, had vacated the property, and the order against him was without practical effect. As Mr Barron does not pursue any relief in the appeal, the costs orders by this Court will accordingly not apply to him.

### **Issues for Determination**

[18] The following issues arise for determination:

- (a) Whether the appeal against the refusal of the counter-claim for mediation should succeed;
- (b) Whether the appeal against the refusal of the application to strike out should succeed;
- (c) Whether the application to amplify the grounds of appeal to include the jurisdictional point should be granted, and, if so, whether the jurisdictional ground has merit; and
- (d) Whether leave to appeal should be granted against the eviction order.

### **The Legal Framework**

[19] ESTA was enacted to give effect to s 26(3)<sup>1</sup> of the Constitution and to confer security of tenure on persons occupying farmland who, by reason of past racially discriminatory legislation, did not enjoy such security. As the Constitutional Court observed in *Molusi and Others v Voges NO and Others*,<sup>2</sup> ESTA seeks to promote the achievement of long-term security of tenure and to regulate the circumstances under which vulnerable occupiers may be evicted fairly, while also recognising the legitimate rights of landowners.

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<sup>1</sup> 26. (1) Everyone has the right to have access to adequate housing.

(2) ...

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

<sup>2</sup> *Molusi and Others v Voges N O and Others* [2016] ZACC 6; 2016 (3) SA 370 (CC); 2016 (7) BCLR 839 (CC) para 1.

[20] An 'occupier' is defined in s 1 of ESTA as a person residing on land belonging to another who, on 4 February 1997 or thereafter, had consent or another right in law to do so. The definition expressly excludes 'a person who has an income in excess of the prescribed amount'. Government Notice 72 of 2018, which took effect on 16 February 2018, prescribes a maximum monthly income of R13 625 for this purpose.

[21] Section 21 of ESTA provides that 'a party may request the Director-General to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act'. On its plain terms, this provision creates a mechanism for voluntary mediation initiated by a party's request to the Director-General. It does not empower a court to compel the parties to participate in mediation. The Land Court has held that the peremptory mediation provisions introduced by amendment were not in force for proceedings instituted before 1 April 2024.<sup>3</sup>

[22] Section 8 of ESTA regulates the termination of the rights of residence. It requires that any termination be just and equitable, having regard to the factors enumerated in ss 8(1)(a) to (e), including the comparative hardship occasioned by termination and whether the occupier was given an effective opportunity to make representations before the decision to terminate was taken.

[23] Section 11 of ESTA governs the eviction of occupiers who are neither 'long-term occupiers' as defined in s 10 nor 'protected occupiers' as defined in s 8(4). Section 11(3) requires a court, in determining whether an eviction order would be just and equitable, to have regard to: (a) the period of residence; (b) the fairness of any agreement between the parties; (c) whether suitable alternative accommodation is available; (d) the reason for the proposed eviction; and (e) the balance of interests between the owner and the occupiers.

[24] The Constitutional Court has consistently emphasised that ESTA must be interpreted purposively to give full effect to the rights entrenched in the Bill of Rights.

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<sup>3</sup> *Marais NO and Another v Daniels and Others* (LCC 130/2023; LCC 63/2023; LCC 98/2023; LCC 27/2023; LCC 145/2022; LCC 163/2023; LCC 162/2023; LCC 105/2024) [2025] ZALCC 38 (30 September 2025).

In *Daniels v Scribante and Another*,<sup>4</sup> the majority held that the right to human dignity is an indispensable pivot to the right to security of tenure. The Court affirmed in *Baron and Others v Claytile (Pty) Ltd and Another*,<sup>5</sup> that the rights of ESTA occupiers are ‘as worthy of protection as those of land owners’. These principles do not, however, override the court’s obligation to assess whether the parties before it qualify as ESTA occupiers and whether the applicable procedural requirements have been met.

[25] The test for leave to appeal is governed by s 17(1) of the Superior Courts Act. Leave may be granted only where the judges concerned conclude that the appeal would have a reasonable prospect of success, or that there is some other compelling reason why it should be heard. In *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*,<sup>6</sup> this Court confirmed that if unpersuaded of prospects of success, a court must nonetheless enquire whether a compelling reason in the interest of justice to entertain the appeal has been established.

## **Analysis**

### ***Counter-claim for mediation***

[26] The counter-claim sought a referral to court-supervised mediation under s 21 of ESTA. Section 21 creates a voluntary mechanism for mediation at the instance of a party before the Director-General; it does not confer any power on a court to compel participation in mediation. The submission to the contrary is without foundation.

[27] The proceedings were instituted well before 1 April 2024, so that the peremptory mediation provisions, which were, by subsequent amendment, stated to apply to proceedings instituted on or after 1 April 2024, are not engaged. There was therefore no statutory basis upon which the Land Court could have directed mediation against either party’s will.

[28] Even on the footing that the Land Court possessed a residual just and equitable discretion to refer the dispute to mediation, the exercise of that discretion was

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<sup>4</sup> *Daniels v Scribante and Another* [2017] ZACC 13; 2017 (4) SA 341 (CC); 2017 (8) BCLR 949 (CC) paras 33-35.

<sup>5</sup> *Baron and Others v Claytile (Pty) Ltd and Another* [2017] ZACC 24; 2017 (10) BCLR 1225 (CC); 2017 (5) SA 329 (CC) para 10.

<sup>6</sup> *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd* [2020] ZASCA 17; 2020 (5) SA 35 (SCA) para 2.

unimpeachable. Logos made multiple good-faith invitations to mediate at a time and place of the appellants' choosing, with a mediator of the appellants' choosing. All invitations went unanswered. The appellants themselves took no steps under s 21 of ESTA for more than two years. In the context of the principle affirmed in *Port Elizabeth Municipality v Various Occupiers*,<sup>7</sup> that an attempt at mediation is ordinarily a precondition for a just and equitable eviction, it is Logos's conduct, not the appellants', that is consistent with that principle. Counsel for the appellants could not proffer any basis upon which the discretion exercised by the Land Court could be impugned. The appeal against the refusal of the counter-claim is accordingly dismissed.

### ***The Application to strike out***

[29] The application to strike out targeted principally the correspondence from the first and second appellant's attorney demanding R1 000 000 as the price for vacating the property, and passages in the probation officer's report drawing on that correspondence. The material sought to be struck out was largely either common cause or had been admitted in substance in the opposing papers. It bore directly on the context in which mediation was offered and refused, and on the assessment of the appellants' conduct. The application was therefore unsustainable.

[30] The Land Court stated in its reasons that it considered the contested evidence in its entirety and had reached its conclusions on the eviction based on all the evidence before it. There is no basis to conclude that, on a proper consideration of the evidence in its full context, the outcome would have differed. The application to strike out accordingly fails.

[31] As to costs, the application to strike out served no legitimate purpose. It was directed principally at evidence that the appellants found inconvenient. The appeal against the refusal of the application to strike out is accordingly dismissed with costs against those appellants who prosecuted it.

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<sup>7</sup> *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) para 41.

[32] As regards the fourth appellant, cited as the class of occupiers of the property, questions of notice and citation become immaterial once a party is legally represented before the court. A legally represented party is properly before the court, and it is that party's obligation, not the respondent's, to place before the court all facts within its knowledge that are material to the exercise of any discretion. One cannot participate in proceedings through legal representatives, decline to place relevant facts in evidence, and then, on appeal, seek to impugn a discretion on the ground that those facts were not considered. The appeal against the refusal of the strike-out application in respect of the fourth appellant is likewise dismissed.

***The Application to amplify the grounds of appeal: the jurisdictional point***

[33] The application to amplify, filed on 13 March 2025, was brought shortly before the respondent's heads of argument were due, and no explanation was provided for the four-year delay in raising the point. The jurisdictional challenge rests on the proposition that Mr Rowland's monthly income exceeds R13 625.00, the prescribed maximum for an ESTA occupier under Government Notice 72 of 2018. The answering affidavit contains only a vague unreferenced assertion that some occupiers earn above the limit; the affidavit does not state the first appellant's income, does not produce a payslip, income tax return or any other objective evidence, and does not articulate, as a distinct *point in limine* that the first appellant therefore falls outside the definition of 'occupier' and that the court accordingly lacked jurisdiction. A party relying on the income threshold must state the income, provide objective proof, and clearly plead that the person concerned does not qualify as an ESTA occupier and that the court lacks jurisdiction. None of these requirements was met. The issue was accordingly not properly pleaded or placed in controversy, and the replying affidavit proceeded on the premise that no jurisdictional challenge had been raised.

[34] The replying affidavit reflects this. Rather than engaging the income point, the respondent noted that the occupiers had not stated their income, had not disputed their status as ESTA occupiers, and had themselves invoked the Act's protection. A litigant who asserts the benefit of ESTA cannot, years later and for the first time on appeal, seek to defeat the court's jurisdiction under that very Act based on facts that were never presented to the court below and would have required factual investigation.

The relevant date for assessing whether an occupier's income exceeds the prescribed threshold is when lawful occupation ceases, that is, when the permission or right to occupy is withdrawn or ceases<sup>8</sup>. It was accordingly incumbent on Mr Rowland, being self-employed, to place evidence of his income at that date before the court. He failed to do so.

[35] The question whether a court of appeal should entertain a point raised for the first time on appeal is well settled. In *Cole v Government of the Union of S.A.*<sup>9</sup>. It was stated that:

'If the point is covered by the pleadings, and if its consideration on appeal involves no unfairness to the party against whom it is directed, the Court is bound to deal with it. And no such unfairness can exist if the facts upon which the legal point depends are common cause, or if they are clear beyond doubt upon the record, and there is no ground for thinking that further or other evidence would have been produced had the point been raised at the outset. In presence of these conditions a refusal by a Court of Appeal to give effect to a point of law fatal to one or other of the contentions of the parties would amount to the confirmation by it of a decision clearly wrong.'

[36] This approach was endorsed in *Naudé and Another v Fraser*<sup>10</sup>, where this Court held that new points will generally be permitted on appeal if they involve pure questions of law, raise no new factual issues, and involve no prejudice to the other party.

[37] The present case does not fall within these exceptions. While the question of jurisdiction is a legal issue, it is not one devoid of factual implications. Had the jurisdictional challenge been raised timeously, Logos would have had the opportunity to clarify the first appellant's true income, sources of income, and residential circumstances. The bare assertion in the answering affidavit that the first appellant earns R15 000,00 is unsubstantiated.

[38] The first appellant's conduct precludes him from raising this point. Throughout the proceedings below, he squarely placed himself within the ambit of ESTA

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<sup>8</sup> *Lebowa Platinum Mines Limited v Viljoen* [2008] ZASCA 163; 2009 (3) SA 511 (SCA); [2009] 2 All SA 231 (SCA); (2009) 30 ILJ 1742 (SCA) para 17.

<sup>9</sup> *Cole v Government of the Union of S.A.*, 1910 AD 263 at p. 272)

<sup>10</sup> *Naudé and Another v Fraser* 1998 (4) SA 539 (SCA); [1998] 3 All SA 239 (A); 1998 (8) BCLR 945 (SCA) at 558A–C.

protection. His entire case was premised on the assertion that he and the other appellants were occupiers entitled to the security of tenure guaranteed by ESTA. He invoked the protective provisions of the Act, demanded compliance with its procedural requirements, and sought the benefit of its substantive protections.

[39] Only after the Land Court rejected his defences and granted the eviction order does the first appellant now seek to disavow ESTA's protection and argue that he was never an occupier within the meaning of the Act. This opportunistic volte-face cannot be countenanced. As this Court observed in *Telcordia Technologies Inc v Telkom SA Ltd*<sup>11</sup>, a party cannot be permitted to approbate and reprobate — that is, to take inconsistent positions as suits its convenience at different stages of litigation.

[40] Even if the first appellant's income did place him outside ESTA's definition of 'occupier', this would not necessarily deprive the Land Court of jurisdiction to evict him. Section 22(2)(c) of the Restitution of Land Rights Act 22 of 1994 (the Restitution Act), which established the Land Court and defined its jurisdiction, conferred on the court the power to decide any issue not ordinarily within its jurisdiction but incidental to an issue that is, if it considers it to be in the interests of justice to do so. In *Venter NO v Claasen*<sup>12</sup>, the Land Court invoked this provision to grant an eviction order against persons found not to be ESTA occupiers, holding that it would be wasteful to require fresh proceedings in a different court.

[41] The same reasoning applies in the present case. The eviction application concerned multiple members of several households. If the first appellant alone fell outside ESTA's protection by reason of his income, while other household members remained within it, it would be contrary to the interests of justice to require bifurcated proceedings in different courts to evict members of the same household from the same property. The ancillary jurisdiction conferred by s 22(2)(c) of the Restitution Act would therefore have been available.

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<sup>11</sup> *Telcordia Technologies Inc v Telkom SA Ltd* [2006] ZASCA 112; [2006] 139 SCA (RSA); 2007 (3) SA 266 (SCA); [2007] 2 All SA 243 (SCA); 2007 (5) BCLR 503 (SCA) para 12.

<sup>12</sup> *Venter NO v Claasen en Andere* 2001 (1) SA 720 (LCC).

[42] The application to amplify the grounds of appeal to include the jurisdictional point is accordingly refused.

***The citation of the fourth appellant***

[43] The citation grounds that the fourth appellant's contention that the appellants were improperly described as '*all those holding title through 1st-3rd respondents or occupying Portion 79 of the Farm Morningstar No 141, City of Cape Town, Western Cape*' fares no better. The respondent took reasonable steps to identify all occupiers by repeatedly requesting a list of residents, but the appellants and their attorneys ignored these requests. The first appellant concealed their identity while acting as their representative. Notices were served personally on the first and second appellants, on persons found on the property, and on the appellants' attorneys. The citation in this case was not of the world at large, but of a clearly defined and identifiable group: persons occupying Logos's property. The boundaries of the group were certain and ascertainable. Any person occupying the property would know that they fell within the definition; any person not occupying it would know they did not.

[44] As noted in *Mtshali and Others v Masawi and Others*,<sup>13</sup> citing occupiers as an unnamed group is standard practice in eviction matters, particularly where they are defined by reference to a specific property. Had the citation issue been raised in the Land Court, appropriate directions could have been sought regarding the mode of service or alternative methods of bringing the proceedings to the attention of all occupiers. The issue was never raised in the Land Court, and the appellants have not established that any actual occupiers were denied notice or an opportunity to participate. The citation was therefore appropriate, and the ground of appeal fails.

***The application for leave to appeal against the eviction order***

[45] The application for leave to appeal against the eviction order itself must be assessed on the grounds as pleaded in the notice of motion, that is, without the proposed amplification, which has been refused.

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<sup>13</sup> *Mtshali and Others v Masawi and Others* [2016] ZAGPJHC 291; 2017 (4) SA 632 (GJ). Para 190

[46] The grounds of appeal for which leave was granted by the court a quo, the refusal of the counterclaim for mediation, and the refusal of the application to strike out do not, for the reasons set out above, disclose any prospect of success. They accordingly fall to be dismissed.

[47] The broader grounds advanced in the notice of application – directed at the just and equitable nature of the eviction order, the adequacy of the treatment of suitable alternative accommodation, and the departure from the probation officer's recommendation were not considered by the Land Court as grounds on which leave was granted. This Court must therefore assess whether those grounds independently meet the test in s 17(1) of the Superior Courts Act.

[48] The Land Court exercised a discretion in granting the eviction order under s11(3) of ESTA. This Court does not interfere with the exercise of such a discretion unless the court below misdirected itself in a material respect, the exercise of the discretion was wrong in principle, or the outcome was palpably wrong. Counsel for the appellants did not submit that the discretion was wrongly exercised and was unable to point to any such misdirection.

[49] The balance of interests, assessed against the factors enumerated in s 11(3) of ESTA, favours Logos. The occupation was, on the probabilities, not established with the consent of any prior owner. The occupation has deprived Logos of the use of its property for more than five years, at substantial ongoing expense. The evidence establishes logos's commercial and residential needs. The Land Court addressed the probation officer's concern about suitable alternative accommodation by directing the City of Cape Town to provide emergency accommodation to those who would be rendered homeless. No basis has been advanced on which that exercise of the discretion can be impugned.

[50] On Mr Rowland's own evidence, he owns and resides on the adjacent Portion 78 and thus has no cognisable interest in challenging an eviction order from the property. Section 16(2)(a)(i) of the Superior Courts Act provides that leave to appeal may be refused where the issues are of such a nature that any decision sought will have no practical effect or result. This is an additional basis for refusing leave.

[51] The application for leave to appeal against the eviction order discloses no reasonable prospect of success, and no other compelling reason exists to justify the grant of leave. The application is accordingly refused.

### **Costs**

[52] All three applications and the appeal are dismissed. The respondent is entitled to its costs in respect of all those applications. Insofar as it concerns the application to strike out, that application was designed to frustrate rather than to advance the proceedings, and there is no reason to protect the appellants who pursued it from the ordinary costs consequences of an unsuccessful application.

### **The order**

[53] The following order is made:

1. The appeal against the refusal to strike out the evidence is dismissed.
2. The appeal against the refusal of the counter-claim for court-supervised mediation is dismissed with costs
- 3 The application to amplify the grounds of appeal is dismissed with costs
- 4 The application for leave to appeal is dismissed with costs
- 5 The first, second and fourth appellants are directed to pay the respondent's costs relating to the above applications jointly and severally, the one or more paying the other to be absolved.

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K E MATOJANE  
JUDGE OF APPEAL

## Appearances:

For the appellant:

P Hathorn SC

Instructed by:

Ashraf Mahomed Attorneys, Cape Town  
Webbers Attorneys, Bloemfontein

For the respondent:

L F Wilkin

Instructed by:

Dick Van Der Merwe Attorneys, Cape Town  
Claude Reid Attorneys, Bloemfontein.