THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case no: 079/2024

In the matter between:

JACOB PIETERS	**FIRST APPELLANT**
CATHERINA PIETERS	**SECOND APPELLANT**
and	
STEPHAN CORNE STEMMET	**FIRST RESPONDENT**
PETER GABRIEL STEMMET	**SECOND RESPONDENT**

Neutral Citation: *Pieters and Another v Stemmet and Another* (079/24) [2025] ZASCA 60 (14 May 2025)

Coram: MEYER, MATOJANE, UNTERHALTER and KEIGHTLEY JJA and WINDELL AJA

Heard: 13 March 2025

Delivered: 14 May 2025

Summary: Extension of Security of Tenure Act 62 of 1997 – Section 2(1)*(a)* – property within a township but designated for agricultural purposes – occupiers entitled to protections afforded under the Act.

ORDER

On appeal from: Land Claims Court, held at Randburg (Spilg J and Meer AJP sitting as court of appeal)

1 The appeal is upheld with costs.

2 The order of the Land Claims Court is set aside and replaced with the following:

a. The appeal is upheld with costs.

b. The order of the court a quo is set aside and replaced with the following:

i. The property registered in the Deeds Registry as Portion 81 of the Farm Joostenberg Vlakte 728 is subject to the Extension of Security of Tenure Act 62 of 1997 (ESTA).

ii. The appellants as long-term ESTA occupiers are entitled to the protections under ESTA.

iii. No order as to costs.

JUDGMENT

Windell AJA (Meyer, Matojane, Unterhalter and Keightley JJA concurring):

Introduction

[1] The Extension of Security of Tenure Act 62 of 1997 (ESTA) was enacted by Parliament to give effect to key constitutional rights, including the right to security of tenure, the right not to be arbitrarily evicted, and the right of access to adequate housing. It seeks to protect vulnerable occupiers living on land falling within the ambit of ESTA from unjustified evictions and the risk of homelessness. In line with its purpose, ESTA must be interpreted in a manner that promotes these constitutional values and ensures that those who fall within its scope are afforded the fullest possible protection. Any

termination of such occupiers' right of occupation must therefore comply strictly with the provisions of ESTA.[1]

[2] This appeal centres on the interpretation of s 2 of ESTA, which provides, as a general rule, that land situated within or entirely surrounded by a township is excluded from the application of ESTA.[2] However, ss 2(1)*(a)* and *(b)* of ESTA qualify this general exclusion and provide specific criteria for determining whether ESTA applies:

'(1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including-

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.'

[3] In terms of ESTA an occupier residing on land falling within the ambit of s 2 is afforded substantive protection. The protection goes beyond what the common law provides.[3] The key issue before the Land Claims Court, Spilg J and Meer AJP (LCC), and now this Court, is whether the property occupied by the appellants is situated within a township or on land not 'designated for agricultural purposes in terms of any law'. If so, the matter would fall under the scope of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), not ESTA.

[4] The appellants, Mr and Mrs Pieterse, reside on the property of the first respondent, Mr Stephan Stemmet (Mr Stemmet). The property is one of several smallholdings in the Joostenberg Vlakte Smallholdings, a rural community just outside Cape Town in the Western Cape. Mr Stemmet has been the registered owner of the property since 18

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[1] *Molusi and Others v Voges NO and Others* [2016] ZACC 6; 2016 (3) SA 370 (CC) para 7; *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 53 *(Goedgelegen).*

[2] *Droomer NO and Another v Snyders and Others* [2020] ZAWCHC 72*;* 2020 JDR 1555 (WCC) *(Droomer*) para 12.

[3] Chapter IV of ESTA (ss 8-15).

September 2014, having acquired it from the previous owner, his father, who is the second respondent.

[5] The appellants began residing on the property in 1988, following the first appellant's employment by the second respondent as a gardener. The first appellant retired in 2012 due to ill health, however, both appellants continued to reside on the property with the consent of the second respondent. In 2014, ownership of the property was transferred from the second respondent to Stemmet.

[6] The appellants live on the property with their two minor grandchildren, who have been placed in their foster care. They occupy a modest two-room dwelling, with one room serving as a bedroom. An additional prefabricated structure is used as a kitchen, and sanitation is provided by an outdoor pit toilet. The appellants have never paid rent but do cover the cost of electricity. Their home is located in a corner of the property, surrounded by blue gum trees. At the time legal proceedings were instituted, their sole source of income was a SASSA pension of R1700. They had been living on the property for approximately 30 years.

[7] On 13 September 2018, Mr Stemmet and the second respondent instituted eviction proceedings against the appellants in terms of PIE. The appellants opposed the application on several grounds, including that ESTA was applicable to the property, and that they qualify as 'occupiers' as defined by ESTA. Additionally, on 29 May 2019, the appellants launched an application to confirm and enforce their rights in terms of ESTA.

[8] Both applications were heard together in the Bellville Magistrates' Court on 4 April 2022. The Magistrate dismissed the ESTA application and granted an eviction order in terms of PIE, directing the appellants to vacate the property (the PIE ruling). The appellants appealed the PIE ruling to the Western Cape High Court and the dismissal of the ESTA application to the LCC. By agreement between the parties, the hearing of the PIE appeal was postponed pending the outcome of the ESTA appeal.

[9] Section 3(5) of ESTA provides that for the purposes of civil proceedings in terms of ESTA, a person who has continuously and openly resided on land for a period of three

years shall be deemed to have done so with the knowledge of the owner or person in charge. The appellants qualify as occupiers in terms of s 1 of ESTA, having resided on the property on (and before) 4 February 1997 with the consent of the respondents and earning incomes below the threshold prescribed by the Act.[4] However, if the property is not situated on land that falls within the ambit of ESTA, the appellants cannot claim the benefit of being 'occupiers' under ESTA, regardless of the consent granted for their occupation or their income level.

[10] The LCC dismissed the ESTA appeal on 3 February 2023. The court found that the property falls within the boundaries of a township and that it was not land designated for agricultural purposes. Accordingly, the court held that the eviction of the appellants was not governed by ESTA, but rather by the PIE. It is this order that is the subject of the appeal before this Court. The appeal is with leave of the LCC.

The application of ESTA

[11] The first enquiry is whether the property qualifies as land situated within a township that has been 'established, approved, proclaimed, or otherwise recognised as such in terms of any law', or is surrounded by such a township or townships. If the land does *not* fall within this category, the enquiry ends, and the provisions of ESTA will apply. However, if the land *does* fall within this category, a second enquiry arises: whether the land within such a township has been 'designated for agricultural purposes in terms of any law'. If it does, ESTA will apply notwithstanding the property's location within the defined township area.

[12] In terms of s 2(2) of ESTA, in proceedings brought in terms of ESTA it is presumed that the land in question falls within the scope of ESTA. What this means is that although the overall burden to prove that ESTA applies in relation to a specific occupier rests on the occupier who invokes the application of ESTA, the land in question will be presumed to fall within the scope of ESTA unless the respondents proved the contrary.[5]

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[4] Regulations under ESTA, Government Notice R1632 in Government Gazette 19587 of 18 December 1998.

[5] *Frannero Property Investments 202 (Pty) Ltd v Selapa and Others (University of the Free State Law Clinic as amicus curiae)* [2022] ZASCA 61 (SCA); 2022 (5) SA 361 (SCA) para 26.

Does the property fall within the definition of a township?

[13] The answer to this question is factual. The concept of a township has no fixed definition in ESTA. In *Droomer,* [6] Binns-Ward J held:

'The word "township" is not defined in ESTA, but the context in which it is used in s 2 makes it clear that something more than just a developed area is required. A "township" for the purpose of the Act means a development or approved subdivision that has been formally recognised as such in terms of a law. That is the effect of the words '*established, approved, proclaimed or otherwise recognised as such in terms of any law*'. . .' (Citation omitted.)

[14] It is not in dispute that the land on which the property is situated, as well as the surrounding land, has not been formally registered as a township nor officially proclaimed as such in the Provincial Gazette. Section 2 of ESTA, however, does not limit the exclusion only to land in a township established, approved or proclaimed. It includes as a category of township one which is otherwise recognised as such in terms of any law.[7]

[15] The respondents contend that the property is situated within a township and when the appellants moved on to the property in January 1988 (which date precedes the date on which ESTA commenced, being 28 November 1997) the property had already been 'converted from agricultural land'. Central to the respondents' argument is that the subdivision of the original farm into erven and the registration of the property in the land register resulted in its incorporation into a township by operation of law. They rely on *Grobler v Phillips,*[8] in which a similar argument was upheld, and where this Court found that a township 'came to be incorporated', once the property's status as an erf was registered in the land register.

[16] The history of the property shows that it was part of the original farm, Joostenberg Vlakte 728. In May 1955, a survey was conducted in terms of which the farm (recorded

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[6] *Droomer* fn *2* para 15.

[7] See *Greeff and 21 Others v Eskom Holdings SOC Ltd and Others* [2021] ZALCC 22, in which the court found that the Electricity Act was a law which recognised that Eskom could establish what was in fact a township without having to duplicate the process of engaging a provincial or local administration for approval or to pass a proclamation.

[8] *Grobler v Phillips and Others* [2021] ZASCA 100 para 35, confirmed by the Constitutional Court on appeal in *Grobler v Phillips and Others* [2022] ZACC 32; 2023 (1) SA 321 para 14.

under Surveyor's Diagram number 4544/1955) was subdivided into several erven. The property in question formed part of this subdivision and was registered in the Deeds Registry as Portion 81 of the Farm Joostenberg Vlakte 728. It has been assigned both an erf number and a street address, namely Erf 728/81 and 29 Kestrel Street.

[17] The Spatial Planning and Land Use Management Act 15 of 2013 (SPLUMA) defines a township as '. . . an area of land divided into erven and may include public places and roads indicated as such on a general plan'. SPLUMA does not require the existence of a general plan showing public places as a prerequisite for an area to qualify as a township. It is sufficient that the property forms part of land that has been subdivided into erven.

[18] Township is also addressed in the Land Survey Act 8 of 1997 (the LSA), which describes it as: '. . . subdivisions of a piece of land, which are combined with public spaces and are used mainly for residential, industrial, business or similar purposes'. Similarly, the Cape Townships Ordinance defines township as 'a group of pieces of land, or subdivisions of a piece of land, or subdivision of a piece of land which are combined with public spaces and are used mainly for residential, industrial or similar purposes, or are intended to be so used'. In both definitions in SPLUMA and the LSA, the presence of public spaces is a key feature. The term 'public space' is defined as any open or enclosed area, such as a street or road, depicted on a general plan or diagram, intended for use by the general public and owned by or vested in the municipal council.

[19] According to the locality map attached to the appellants' founding affidavit, the property is situated among other subdivided erven and is integrated with public places such as Kestrel and Owl Streets, which run alongside the subdivided properties, separating it from Paarl Farms. Notably, Kestrel Street is also marked on the Surveyor General diagram as 'Road', aligning it with the definition of a public space in terms of SPLUMA.

[20] The evidence submitted by the respondents supports the conclusion that the property was not only subdivided into erven but also registered accordingly, consistent

with the principles in *Grobler v Phillips*.[9] The respondents have, on a balance of probabilities, established that the land in question meets the definitions set out in SPLUMA, the LSA, and the Cape Townships Ordinance. On the facts presented, the LCC correctly found that the property is situated on land that falls within the boundaries of a township for the purposes of s 2(1) of ESTA.

Is the property nevertheless designated for agricultural purposes?

[21] This brings me to the second enquiry: whether the property, although situated on land within a township, has 'been designated for agricultural purposes in terms of any law', as contemplated in s 2(1)*(a)* of ESTA.

[22] In interpreting this section, a court is required to adopt a purposive approach, in line with s 39(2) of the Constitution, which mandates that legislation must be construed in a manner that promotes the spirit, purport and objects of the Bill of Rights. In *Goedgelegen,* the Constitutional Court emphasised that ESTA is remedial legislation, closely tied to the Constitution, aimed at protecting individuals whose tenure to land is insecure. The Court cautioned against a narrow, text-bound reading of the statue, and affirmed that its provisions must be construed in a way that affords occupiers the fullest possible protection of their constitutional rights.[10]

[23] The term 'designated' means 'to officially give a specified status'.[11] In determining whether the property has been 'designated for agricultural *purposes*', its zoning is a key consideration (my emphasis). This is because zoning confers an officially recognised purpose to land for specific use objectives.[12] The City of Cape Town's Development Management Scheme (DMS) which falls under the City of Cape Town Municipal Planning By-Law of 2015 (the By-Law)[13] and which gives effect to certain requirements in SPLUMA, defines 'zoning' to mean 'a land use category prescribed by the development management scheme regulating the use of and development of land and setting out: (a)

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[9] *Supra* fn 8.
[10] *Goedgelegen supra* fn 1 para 53.
[11] Shorter Oxford English Dictionary 6 ed (2007).
[12] *Droomer* para 18.
[13] The DMS is Schedule 3 to the City of Cape Town Municipal Planning By-Law. Annexure A.

the purpose for which land may be used; and (b) the development rules applicable to that land use category'.

[24] The zoning of the property has legal effect by virtue of the provisions of s 26 of SPLUMA. This was confirmed in *Droomer,* where the court held:

'. . . Zoning schemes (or "land use schemes" as they are called under the current nomenclature) used to have legal effect in this Province by virtue of the provisions of the Land Use Planning Ordinance 15 of 1985, and have continued to do so latterly in terms of s 26 of the Spatial Planning and Land Use Management Act 16 of 23. There is no doubt that they count as 'law' within the meaning defined in s 2 of the Interpretation Act 33 of 1957.'[14]

[25] It is not in dispute that, in terms of the DMS, the property in question is zoned 'rural' (RU). Annexure A to the By-Law (Part 2: Rural Zoning (RU)) provides that:

'RU zoning accommodates smaller rural properties that may be used for agriculture, but which may also be occupied as places of residence by people who seek a country lifestyle, and who view agriculture as a secondary reason for occupying the property. Such properties may occur inside or outside a recognised urban edge'.

A property zoned rural is afforded certain 'use rights', with primary uses including a dwelling house, agriculture, and additional use rights allowing, among other things, a bed and breakfast establishment and home childcare.

[26] The respondents contend that the rural zoning of the property is not determinative. They argue that it is not zoned 'agricultural', is neither currently used nor intended for agricultural purposes under the DMS, and lacks economic viability as an agricultural unit. According to them, the property is earmarked for urban development and is not designated for present agricultural use in terms of any applicable legislation.

[27] When the established principles of interpretation are applied to the relevant provisions of the DMS, it becomes apparent that the distinction drawn by the respondents (and the LCC) between rural and agricultural zoning is artificial and cannot be sustained. Items 108 and 112 of the DMS deal with the permitted uses of properties zoned as

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[14] *Droomer* para 17.

agricultural and rural respectively. Item 108(a) of the DMS provides that the primary uses of agricultural zoned properties are agriculture; intensive horticulture; dwelling house; riding stables; environmental conservation use; environmental facilities; rooftop base telecommunication station; minor freestanding base telecommunication station; minor rooftop base telecommunication station; and additional use rights as listed in Item 108(b). Item 112(a) of the DMS provides that the primary uses of rural zoned properties are dwelling house; agriculture; and additional use rights as listed in item 112(b).

[28] Accordingly, a plain reading of items 108(a) and 112(a) of the DMS confirms that properties zoned as agricultural and those zoned as rural may, as a primary use, be utilised for both agricultural and residential purposes. Moreover, properties zoned as agricultural may also be used for non-agricultural purposes, such as a rooftop base telecommunication station, minor freestanding base telecommunication station, and minor rooftop base telecommunication station. It is only in respect of the consent use of 'agricultural industry' that the DMS requires agriculture to remain the dominant use of properties zoned agricultural. In such cases, the agricultural industry must be subservient to the primary agricultural use and must not adversely affect the agricultural potential of the property.[15]

[29] The additional use rights[16] set out in items 108(b) and 112(b) of the DMS are identical for both agricultural and rural zoned properties. Similarly, the consent use rights[17] set out in items 108(b) and 112(b) of the DMS are substantially the same, with the exception that properties zoned as agricultural can, with the approval of the City of Cape Town, be used for purposes such as a hotel, utility service and renewable energy infrastructure.

[30] The LCC concluded that land zoned 'agricultural' retains that status unless formally rezoned, while land zoned 'rural' is inherently more flexible, allowing for residential or

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[15] DMS item 110.
[16] The additional use rights for properties zoned rural and those zoned as agricultural are a second dwelling and home occupation, or a bed and breakfast establishment, or home child care.
[17] '*Consent use*' is defined in Item 1 of the DMS to mean '*a land use permitted in terms of a particular zoning with the approval of the City*'.

agricultural use and potentially losing its agricultural character through residential use alone. However, this interpretation is not supported by the DMS. On the contrary, the DMS expressly permits a wide range of non-agricultural uses—including mining—on land zoned as agricultural, indicating that zoning alone does not strictly determine the land's character. This reasoning, which treats 'rural' zoning as unconstrained by agricultural purpose, undermines the statutory protections afforded by ESTA. Section 2 of ESTA determines the type of land to which the Act applies, and the LCC's approach is inconsistent with both ESTA's purpose and the actual provisions of the DMS.

[31] In *Mkangeli v Joubert*,[18] this Court held that the designation of land as rural does not exclude such land from the ambit of ESTA.

'Generally speaking *ESTA protects a particular class of impecunious tenant on rural and semi-rural land* against eviction from that land . . . It seems . . . that . . . the Legislature intended to impose extensive limitations on any right to seek the occupiers' eviction from that land. This intention appears to be emphasised by the plain wording of ss 9(1) and 23(1) of ESTA [which prescribe that] an occupier may be evicted only on the authority of a court order . . . A literal interpretation of these provisions appears to *indicate an intention on the part of the Legislature that any right to have an occupier evicted, regardless of who may be the holder of such right and whatever the source of such right may be, should be subject to and limited by the provisions of ESTA.*'[19] (Emphasis added.)

[32] The property's lack of current agricultural use, and the intention not to use it for agricultural purposes, is thus irrelevant to the enquiry into whether the property falls within the ambit of ESTA. This principle was confirmed by this Court in *Lebowa Platinum Mines Ltd v Viljoen*,[20] where it held that a former operations supervisor of a registered mining company qualified as an occupier for the purposes of ESTA, despite the fact that neither the property nor the individual was engaged in any agricultural activities. The property in question was a farm used for residential purposes in terms of a permit issued to it by the Department of Minerals and Energy, and the appellant had constructed several residential houses on the property to attract qualified staff for its mining operations, offering

[18] *Mkangeli v Joubert* 2002 (4) SA 36 (SCA).
[19] Ibid paras 9; 17-18.
[20] *Lebowa Platinum Mines Ltd v Viljoen* 2009 (3) SA 511 paras 18-19.

accommodation at a nominal rental. Likewise, in *Droomer*, the court emphasised that actual or intended agricultural use is not determinative; what matters is whether the land is designated for agricultural purposes in terms of a law, such as through zoning, which confers an official land-use status.[21]

[33] The evidence in this case clearly established that the property is designated for agricultural purposes, which is ordinarily implied by land zoned as 'rural'. [22] The LCC erred in treating 'rural' zoning as materially distinct from agricultural designation for the purposes of ESTA. This interpretation overlooks the fact that, under planning instruments such as the DMS, rural zoning, absent a formal change in land use, ordinarily includes agricultural use. By disregarding this, the LCC effectively stripped the land of its agricultural character without proper legal basis, thereby circumventing the application of s 2 of ESTA.

[34] In terms of s 2(1)(*a*) of ESTA, the designation of the property brings it within the ambit of ESTA, notwithstanding its location within a township. Furthermore, the appellants have resided on the property with the respondents' knowledge and consent since 1988. They therefore qualify as 'occupiers' as contemplated in ESTA.

[35] The appellants are entitled to the protections afforded under ESTA. The respondents were therefore required to terminate their rights of residence in accordance with ESTA before seeking an eviction order.

[36] In the result the following order is made:

1 The appeal is upheld with costs.

2 The order of the Land Claims Court is set aside and replaced with the following:

a. The appeal is upheld with costs.

b. The order of the court a quo is set aside and replaced with the following:

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[21] *Droomer* para 18.

[22] Ibid para 17.

i. The property registered in the Deeds Registry as Portion 81 of the Farm Joostenberg Vlakte 728 is subject to the Extension of Security of Tenure Act 62 of 1997 (ESTA).

ii. The appellants as long-term ESTA occupiers are entitled to the protections under ESTA.

iii. No order as to costs.

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L WINDELL
ACTING JUDGE OF APPEAL

Appearances

For the appellants:	M Adhikari
Instructed by:	J D Van der Merwe Attorneys, Stellenbosch
	Webbers Attorneys, Bloemfontein
For the respondents:	N Matthee
Instructed by:	Bill Tolken Henrikse Inc., Cape Town
	MM Hattingh Attorneys Inc, Bloemfontein