

PROTECTION AGAINST EVICTION UNDER THE EXTENSION OF SECURITY OF TENURE ACT

LEGAL RULES, PRINCIPLES AND PROCESS



*A practical guide for farm dwellers, unions, paralegals
and lawyers interested in farm tenure rights*

SERI

socio-economic rights institute
of south africa



July 2017

A product of partnership between the Commercial Stevedoring and Allied Workers Union (CSAAWU) and the Socio-Economic Rights Institute of South Africa (SERI).

Accurate as of 30 June 2017

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ABOUT THIS GUIDE



This guide was developed through SERI's relationship with the Commercial Stevedoring and Allied Workers Union (CSAAWU), which represents farm workers and people living on farms who face the threat of eviction.

It explains farm dwellers' rights in terms of the Extension of Security of Tenure Act 62 of 1997 (ESTA), and gives practical advice on how to resist evictions. It speaks to a variety of audiences including farm dwellers, unions, paralegals and people interested in farm tenure.

The first section sets out basic tenets of the law. The second section covers key principles, terms and legal definitions including the definition of "occupier", the importance of "consent" and the need for the owner to lawfully and fairly terminate farm dwellers' right to residence before attempting to seek eviction. This section also covers the conditions of protection by ESTA and what farm dwellers can do to defend their rights to residence and protect themselves from eviction.

The third section explains the legal standards in ESTA which apply to evictions of long term occupiers, occupiers on 4 February 1997 and occupiers after 4 February 1997. This section also sets out the duties of all parties (farm dwellers, farm owners and government) in eviction proceedings to meaningfully engage with each other before eviction proceedings, particularly with respect to the availability of suitable alternative accommodation.

In the fourth section, the legal process for a lawful eviction is set out, explaining which parties need to be involved in eviction proceedings and why. This section also explains how eviction proceedings are started and how farm dwellers can best respond to protect themselves against eviction.

What is ESTA and why is it necessary?

ESTA is a law that was enacted by Parliament to secure the tenure rights of farm dwellers and to prevent arbitrary evictions from their homes on farms. It aims to regulate relationships between farm owners and what it calls “occupiers” by allocating rights and responsibilities to both parties and prescribing procedures through which an occupier may be evicted.

Evictions of farm dwellers have for decades been a regular countrywide occurrence. Studies suggest that between 1984 and 2004, 1.7 million of the 3.7 million people displaced from farms were evicted. The *Institute for Poverty, Land and Agrarian Studies* (PLAAS) notes that a large proportion of these evictions have been unlawful. This is particularly the case since ESTA established clear rights for farm dwellers and a rigorous process which to be followed before they can be evicted.

This research also found that approximately half of the farms from which farm dwellers were evicted had houses “standing empty” and that many farms had three or more houses that were unused. In eviction cases, courts often note “housing shortages” and “waiting lists”. According to ESTA, the availability of alternative housing on the farm and in the area should be considered as relevant factors in deciding whether an eviction is just and equitable.

Why are farm dwellers evicted from farms?

Evictions can be devastating for families’ livelihoods. The Constitutional Court has acknowledged that farm dwellers are vulnerable to eviction and that the purpose of ESTA is to make sure that:

“**DESPITE LIVING ON OTHER PEOPLE’S LAND, PERSONS FALLING WITHIN THIS VULNERABLE SECTION OF OUR SOCIETY WOULD BE ABLE TO LIVE A LIFE THAT IS AS CLOSE AS POSSIBLE TO THE KIND OF LIFE THAT THEY WOULD LEAD IF THEY LIVED ON THEIR OWN LAND.**”

- *Hattingh and Others v Juta* (CCT 50/12) [2013] ZACC 5; 2013 (3) SA 275 (CC); 2013 (5) BCLR 509 (CC) -

One of the main reasons that unlawful evictions have continued is that farm dwellers do not know their rights in terms of ESTA or are unable to defend eviction applications in court.

There are three main reasons for evictions from farms:

- ① **The employed farm dweller is dismissed.**
- ② **The main breadwinner in the household dies.**
- ③ **The farm is sold or liquidated.**

If the farm dweller qualifies as an “occupier” in terms of the definition provided in ESTA, their rights are protected regardless of the reason for the eviction. Whether eviction is sought because farm dwellers are dismissed, or the farm is sold or liquidated, or for any other reason, the farm owner or manager seeking eviction cannot evict people living on the farm without following the detailed process set out in ESTA.

The right of access to adequate housing

Since ESTA gives effect to the constitutional right of access to adequate housing it must be understood in the context of this right.

26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.



Section 26(3) provides context for evictions sought in terms of ESTA. When seeking the eviction of a person(s) from their home, the Constitution imposes two clear duties:

- A duty on the owner of property to obtain a court order.
- A duty on the courts to which eviction applications are made to consider “all the relevant circumstances” before granting the application.



The Constitutional Court has explained section 26(3) of the Constitution as follows:

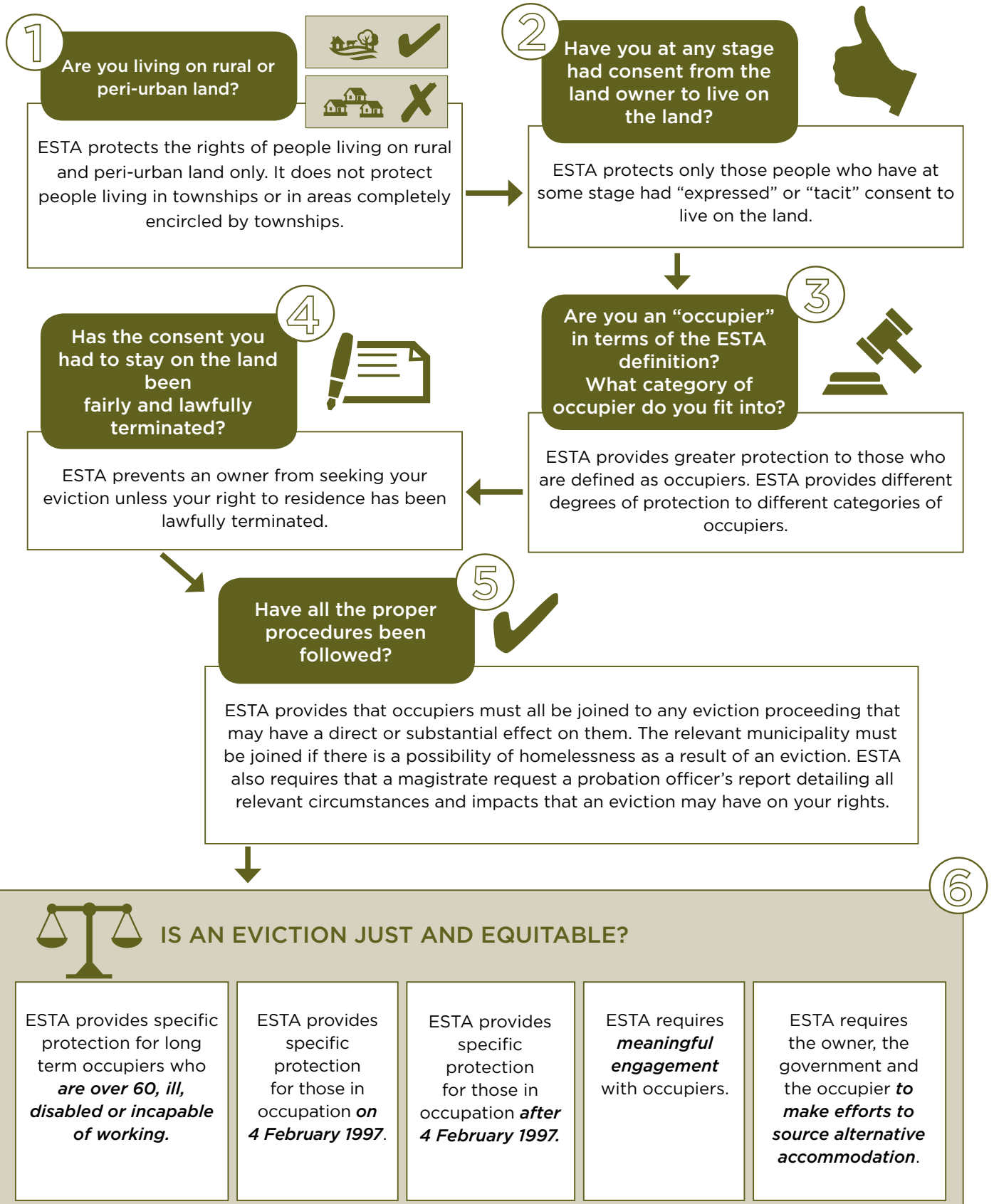
“ SECTION 26(3) EVINCES SPECIAL CONSTITUTIONAL REGARD FOR A PERSON’S PLACE OF ABODE. IT ACKNOWLEDGES THAT A HOME IS MORE THAN JUST A SHELTER FROM THE ELEMENTS. IT IS A ZONE OF PERSONAL INTIMACY AND FAMILY SECURITY. OFTEN IT WILL BE THE ONLY RELATIVELY SECURE SPACE OF PRIVACY AND TRANQUILITY IN WHAT (FOR POOR PEOPLE IN PARTICULAR) IS A TURBULENT AND HOSTILE WORLD. FORCED REMOVAL IS A SHOCK FOR ANY FAMILY, THE MORE SO FOR ONE THAT HAS ESTABLISHED ITSELF ON A SITE THAT HAS BECOME ITS FAMILIAR HABITAT. ”

- Port Elizabeth Municipality v Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004) -

Courts must consider this understanding of the importance of a home and protecting the right to stay in one’s home when interpreting and implementing the provisions of ESTA.

How does ESTA protect my rights? What rights does it protect?

The flowchart below helps farm dwellers to determine whether ESTA protects their rights against eviction.



What land does ESTA apply to?

The type of land on which the farm dwellers live is important to establish whether ESTA applies. If the farm dwellers are not living on the type of land defined in the Act then it does not provide protection against eviction.

ESTA applies 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. ”

This broad definition intends to cover as much land as possible and to protect the security of tenure of as many people as possible. Courts have generally described the land that ESTA applies to as “rural”, “semi-rural” or “peri-urban” land. The term “farmland” used in the guide is included in this definition.

What land does ESTA not apply to?

If the farm is in a rural area, it is likely ESTA will apply. If the farm dweller lives in a nearby township, but lives and or works on a farm in a rural area, it is likely that ESTA applies.

The land which is clearly excluded from ESTA protection is:

- ① **Land in an “established, approved, proclaimed or otherwise recognised” township.**
- ② **Land encircled by townships.**

The meaning of these terms must be interpreted in light of ESTA's purpose which is to protect the security of tenure and housing rights of as many people as possible. The guide refers to farmland and does not include land in townships or encircled by townships.



In *John Vorster Ngwenya v Doris Grannersberger*, the 36 applicants lived in the stables and outbuildings on a piece of land in North Riding between 5 and 10 kilometres from the Randburg CBD. The land could possibly be described as “semi-rural” or “peri-urban”.

The owner, who had previously consented to their occupation, “demolished” the stables and outbuildings, apparently without warning. Some of the people who were living in these structures built temporary structures in response to this demolition and claimed that suitable alternative accommodation should be provided to them in terms of ESTA.

One of the owner’s arguments in court was that ESTA was not applicable to the land or the property and buildings situated on it. The owner claimed that:

- ① the land had been approved as a township; and
- ② the land was encircled by townships.

The court noted that the word “proclaimed” used in ESTA is rarely used in legislation today. It acknowledged that a proposal to “establish” a township had been “approved”.

Nevertheless the court held that for the purposes of ESTA the land could not be considered as land within a township. This is because, according to the court, “it is clear from the definitions that it means a township that has actually been established, and not land in respect of which an application for the future establishment of a township has been approved”. ESTA therefore seeks only to exclude a township “which actually exists in law and not a township which is in the process of coming into existence”.

The court reasoned that there was no guarantee that a township would be established even though it was, on paper, “approved” and even if it was established this may take a long time. In the interim it concluded that ESTA should continue to apply and where it refers to “approval”, this means “approval of the township” not mere “approval of the application to establish a township”.

The court also decided that it could not be suggested that the land was “encircled by townships” because “there are substantial gaps in the circle” which included land to which no application for the establishment of a township had been approved and land for which such applications have been approved but actual approval of the township through declaration has not taken place.

- *John Vorster Ngwenya v Doris Grannersberger Case Number: LCC 71/99* -

Land that is in an “established, approved, proclaimed or otherwise recognised” township

For land to be in an “established, approved, proclaimed or otherwise recognised” township for the purposes of ESTA it must be land that has been finally approved for the establishment of a township.

The “township” in question must have a clear existence in law or be in the process of coming into existence; it cannot be entirely dependent on potentially lengthy and uncertain processes.

It is not enough for the owner seeking an occupier’s eviction to simply show that an initial, preliminary proposal to establish a township has been approved.

Land that is “encircled by such a township or townships”

For land to be “encircled by such a township or townships” for the purposes of ESTA it would have to be shown that the land is totally encircled by townships that exist in law.

If there are geographical gaps around the settlement and the land is only partially surrounded by other townships it will not be excluded from the application of ESTA.

Further exceptional situations in which ESTA will apply

Even if the land in question is “established, approved, proclaimed or otherwise recognised” or “encircled by such a township or townships” ESTA creates exceptional situations in which it still applies.

The first exceptional situation is when the land is within a township but “has been designated for agricultural purposes in terms of any law”.

The second exceptional situation is when the land is within a township that was only established, approved, proclaimed or otherwise recognised after 4 February 1997.

If the township only came into being after 4 February 1997 any person who was already an occupier before its establishment, approval, proclamation or recognition will continue to enjoy ESTA protection despite the fact that the land upon which they are living has been declared a township.

What if you’re not protected against eviction by ESTA?

Because ESTA specifically protects people a) who are living in rural areas such as farms and other rural areas; b) whose occupation is or has been consented to at some stage, and c) who meet its definition of “occupier” the farm dweller may not always be covered by its provisions. **This does not mean the farm dweller can simply be evicted from the land she is occupying.**

In terms of the Constitution and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) the eviction of any “unlawful occupier” on non-rural land requires a court order determining that the eviction will be just and equitable in the circumstances.

To find out more about how rights are protected under PIE and the Constitution, farm dwellers can speak to a union such as CSAAWU, a local community advice officer or contact SERI for more information. SERI’s publication “*Resisting Evictions in South Africa: A Legal and Practical Guide, March 2015*” is available on its website. A list of organisations is provided at the end of this guide.



LEGAL TERMS AND DEFINITIONS



ESTA provides definitions of most of the terms it uses. Where there are debates about the meaning of these terms, courts must clarify them by deciding between competing meanings with reference to the purposes of ESTA, which include protecting the rights of occupiers, and the full context in which the terms are used. Legal interpretations must always be consistent with the right to access to adequate housing discussed in the section above.

These definitions are important because fitting within the meaning of an “occupier” who has some form of “consent” will determine whether farm dwellers qualify for protection under ESTA.

“Occupier”

An occupier is defined in section 1(1) of ESTA. The Act identifies an occupier as a person who resides on farmland with the express or tacit consent of the owner or person in charge of the land, or by virtue of “another right in law”. The definition of occupier also specifically includes a person who “works the land himself or herself and does not employ any person who is not a member of his or her family”.

The definition of occupier excludes labour tenants, people using the land for commercial purposes and those who earn a monthly income that exceeds R5 000.



Section 1(1) of ESTA

“**occupier**” means a person residing on land which belongs to another person, and who has on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding

- (a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); and
- (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
- (c) a person who has an income in excess of the prescribed amount.”



Prescribed amount

The prescribed amount, which is set by regulations in 1998, is currently R5 000. This means that someone who earns an income of more than R5 000 per month will not be regarded as an ESTA occupier and cannot rely on ESTA for protection.

Income generally refers to the wages or salary earned by an occupier. According to the regulations, if an occupier has an income outside of wages, this will be calculated by working out the average monthly amount of that person’s “gross earnings”.

“Primary occupiers” vs “household occupiers”

ESTA itself does not use the terms “primary occupier” or “household occupier”.

The Land Claims Court has used these terms to distinguish between occupiers who reside on a farm with the consent of the owner (“primary occupiers”) and occupiers who only have a right to reside on the land because of their relationship with a primary occupier (“household occupiers”). Other courts have referred to “household occupiers” as “residents”.



In *Landbou Navorsingsraad v Klaasen*, the Land Claims Court dealt with an eviction of a farmworker who occupied a house in the Hexvalley Experimental Farm in Worcester with his wife, children and an adult friend of his wife.

Mr. Klaasen lived and worked on the farm and had concluded a lease for the house and paid rental to stay in it. After he was dismissed, a magistrate granted the whole family's eviction. Issues were raised in the Land Claims Court which required the court to determine whether Mr. Klaasen's rights as an occupier differed from those of his wife, their children and his wife's friend.

The Land Claims Court decided that even though "occupier" is defined in the Act, the word is used "indiscriminately" and in a number of different ways in ESTA. It concluded however, that only occupiers like Mr. Klaasen who by virtue of employment or agreement have the right to stay on land meet the definition of "occupier" in terms of the Act. Mr. Klaasen's children, his wife, and his wife's friend all only had rights to stay on the land "under or through" him and his own ESTA rights and were therefore not entitled to the protection ESTA affords to "occupiers".

- *Landbou Navorsingsraad v Klaasen* (LCC83R/01) [2001] ZALCC 43
(29 October 2001) 2005 (3) SA 410 (LCC) -

For simplicity the guide refers to people in Mr. Klaasen's position as "primary occupiers" and people in his wife, his children and his wife's friend's position as "householder occupiers".

What legal protection do household occupiers have?

While the primary occupier continues to have consent to stay on a farm, household occupiers will generally be safe from potential eviction by the farm owner. A household occupier may also be evicted by the primary occupier, but that is not the focus of the guide.

A primary occupier has a right in terms of ESTA "to family life in accordance with the culture of that family". The Constitutional Court has accepted that ESTA acknowledges that families come in many "different shapes and sizes" and so not only provides protection to a "nuclear" family comprised of a spouse and children but could apply to different understandings of what a family is and who forms part of it.



In *Hattingh and Others v Juta* Mrs. Hattingh's adult children and their families were living with her in a separate section of the property on the farm owner's land.

The Constitutional Court found that because of Mrs. Hattingh's right to family life in terms of ESTA, ESTA still applied to attempts to evict them.

Are family members of a primary occupier always household occupiers?

Any person who has ever had consent to live on a farm can be considered an occupier. Many people living in the same house may therefore be defined as primary occupiers and entitled to the full protection of ESTA.

It should also not be assumed that only male farmworkers are primary occupiers.

Women who move onto farms to live with their husbands are often employed by farmers as “seasonal” workers.

For years there were debates in judgments of the Land Claims Court about whether women in this position continued to be “household occupiers” or whether they could be primary occupiers with their own independent rights. In an important judgment the Constitutional Court decided that, in the appropriate circumstances, women in this position should be considered as primary occupiers in terms of ESTA.





In *Klaase v van der Merwe*, Elsie Klaase had been living on Noordhoek farm in Citrusdal with Jan for over 30 years. She worked as a seasonal worker on the farm during this time. Her husband, Jan Klaase, was dismissed and had made a settlement agreement in the Commission for Conciliation, Mediation and Arbitration (CCMA) which required him to move off of the premises. The Land Claims Court had granted the eviction of both Jan and Elsie when they didn't move.

The Land Claim's Court's judgment had described Elsie as a resident who was only in occupation "through" or "under" her husband, Jan. Because the farm owner had obtained an eviction order against Jan, it concluded that Elsie and her children should also be evicted because they had no independent rights in terms of ESTA. As she was only a household occupier, as a result of Jan's dismissal, due to no fault of her own, Elsie also faced eviction.

The Constitutional Court overruled this finding of the Land Claims Court in clear terms, saying that:

"The Land Claims Court's finding that Mrs Klaase occupied the premises "under her husband" subordinates her rights to those of Mr Klaase. The phrase is demeaning and is not what is contemplated by section 10(3) of ESTA. It demeans Mrs Klaase's rights of equality and human dignity to describe her occupation in those terms. She is an occupier entitled to the protection of ESTA. The construction by the Land Claims Court would perpetuate the indignity suffered by many women similarly placed, whose rights as occupiers ought to be secured."

The Constitutional Court therefore found that Mrs Klaase was a primary occupier – not merely a household occupier – in terms of ESTA.

- Klaase and Another v van der Merwe N.O. and Others (CCT 23/15) [2016] ZACC 17; 2016 (9) BCLR 1187 (CC); 2016 (6) SA 131 (CC) (14 July 2016) -

It is also common for other members of primary occupiers' families to take up permanent or seasonal work on the farm on which they are living. It is not yet clear how courts will treat adult children and other family members living on farms who claim to be occupiers in a similar manner to Elsie Klaase.

It is now possible to argue that because of the nature and length of occupation, the family members of occupiers can also be considered an "occupier" in the ESTA definition.

Important considerations to emphasise when resisting an eviction include:

- ① The length of time the family member has lived on the farm;
- ② The nature of their relationship with the farm including whether or not they have also worked there, whether seasonally or permanently;
- ③ Whether the farm owner has ever objected to their occupation; and
- ④ Whether there is any independent reason for the family member, as opposed to other occupiers, to be evicted.

Categories of occupiers based on duration and date of occupation

ESTA makes no clear-cut distinctions between the rights and duties of occupiers based on the date on which they first occupied the land and the duration for which they have occupied it.

This is also true for the purposes of determining whether an occupier had consent for their occupation and whether there has been a lawful termination of their right to residence.

However, when it comes seeking an eviction order, ESTA provides additional protection to some longer term occupiers and occupiers who were already in occupation on 4 February 1997. For these purposes, ESTA makes distinctions between:

- ① Occupiers who were in occupation **on** 4 February 1997.
- ② Occupiers who came into occupation **after** 4 February 1997.
- ③ Occupiers who have resided on land belonging to the owner for 10 years and who are either:
 - ▶ 60 years old; or
 - ▶ employees or former employees of the owner who due to ill-health, disability or injury can no longer undertake this work.

ESTA sets high standards for eviction of all of these categories of occupiers. If it did not, it would fall short of the standard set in section 26(3) of the Constitution.

The purpose of these distinctions is to provide additional protection against eviction to longer term and more vulnerable occupiers, including those who came into occupation before ESTA came into effect.

Consent

Whether or not the farm dweller is regarded or defined as an occupier in terms of ESTA depends on whether, at some stage, they can show that they or their family members have had the consent of the owner to stay on the farm.

Consent means permission or agreement. The Constitutional Court has made it clear that the definition of consent in ESTA is broad and includes both express and tacit consent.

Express and tacit consent

Express consent

Express consent means that the occupier was explicitly told by the owner that she can reside on the property, in those words, or in an agreement (for example a lease agreement or employment agreement).

Tacit consent

According to the Constitutional Court, the word “tacit” means “understood or implied without being stated” (for example where the farm owner has known about the farm dwellers’ occupation for a period of time and has not objected to it).

Presumed and deemed consent

Understanding that it may be difficult for farm dwellers to prove consent, ESTA describes some situations in which consent will either be “presumed” or “deemed”. This will assist a person hoping to show that they have tacit consent in the absence of any written agreement.

Presumed consent

Presumed consent to live on a piece of land is established if a person can show that they have been “continuously and openly” living there for **one year**. Because it is presumed consent, the owner can still attempt to prove to a court that even though the farm dweller has been living on a piece of land continuously and openly for year they did not have consent to do so. The starting assumption, however, is that they have consent to live on the land.

Deemed consent

Deemed consent to live on a piece of land is established if a person can show that they have been “continuously and openly” living there for **three years**. In this situation the law “deems” that the owner will have knowledge of a person’s occupation on their land and will not be able to argue that there was no consent. This means that the fact of consent will be treated by a court as true whether or not an occupier can provide any other proof.

In the case of both deemed and presumed consent there is a requirement that an occupier should have lived on the farm “continuously” and “openly”.

Continuous occupation does not mean that the farm dweller has not left the farm at all for work or other reasons; it simply means that they have not lived somewhere else more permanently. Open occupation requires that the farm dwellers' occupation was not hidden from the owner's knowledge or attention: the owner or farm manager must have known or been easily able to know that the farm dweller was living there.

Termination of consent

If it has been established that at some stage the farm dweller had the consent required to be an occupier, before they can be lawfully evicted it must be shown that this consent has been withdrawn, and why, how and when it was withdrawn. A termination of consent, if it complies with ESTA's requirements, will result in the termination of the occupier's right to residence.

ESTA sets out a detailed process to be followed for the lawful termination of an occupier's right to residence. It defines "terminate" to include the withdrawal of consent to a person to occupy or use land.

This means that if an owner lawfully withdraws consent to occupation it can result in termination of the farm dweller's right to residence which can then lead to eviction proceedings. It is important to note however that this termination process must happen **before** the owner can seek an eviction and that both the eviction **and** the termination must be "just and equitable".

ESTA requires that any termination of a right to residence itself must be "just and equitable". The Constitutional Court has explained more than once that the "fairness" of a termination is important in deciding whether it is just and equitable.

ESTA requires that the following four factors be considered when determining whether a termination of a right to residence is just and equitable:

- ① The fairness of the underlying agreement which is being withdrawn;
- ② The fairness of the procedure followed by the owner in terminating the occupiers' right to residence including whether an "effective opportunity" has been provided to the occupier to make representations before the termination;
- ③ The interest of the parties and "comparative hardship" on the owner, the occupier and any other occupiers if the right is terminated; and
- ④ The existence of a reasonable expectation of the renewal of the agreement.

The various factors that a court will consider in determining whether the termination of a right to residence is fair, just and equitable are discussed below.

Fairness of procedure in termination

Section 8(e) which deals with the *fairness* of the procedure of termination is particularly important. An owner hoping to show that a termination is fair will have to show that "an effective opportunity to make representations" was given to the occupiers "*before the decision was made to terminate*".

In *Molusi v Vogues* the Constitutional Court argued that had they been given an opportunity to make representations in terms of section 8, the occupiers “may have explained the unjustness of the cancellation of the lease and termination of the right of residence” and thereby prevented the termination entirely.

Fairness in substance of termination

In determining whether a termination is just and equitable ESTA gives a wide scope to courts to consider the fairness of the termination itself and “all relevant factors”.

In assessing a termination of a right to residence, ESTA requires a court to consider how the occupiers received consent to live on the land and goes as far as allowing a court to investigate the fairness of any law that the owner seeks to rely on to terminate an occupiers right of residence.

Courts are required to consider:

- ① The conduct of parties in giving rise to the termination;
- ② The comparative hardship that the termination will cause to the owner, the occupiers and any other occupier; and
- ③ Whether the occupiers have a reasonable expectation of the renewal of the agreement.





In *Molusi and Others v Voges N.O.*, the owner of a farm sought to evict six occupiers from different families on the Boschfontein farm outside Rustenberg. These six occupiers all had either oral or written leases which had given them consent to stay on the farm. The farm owner alleged that he had served notices on the occupiers terminating their residence because of a failure to pay their rent and in the same notices gave them two months' notice to vacate their homes.

The occupiers argued that they had not received these notices and that they had tried to pay the rent but the owners wouldn't accept it because the owner wanted to demolish their homes. By the time the case got to the Constitutional Court, the owners had accepted that the reason for the termination of the lease was not a failure to pay rent but rather their desire to develop the property.

The Supreme Court of Appeal decided against the occupiers, finding that the owner had a common law right to terminate the lease and that section 8 of ESTA was not relevant.

The Constitutional Court overruled the Supreme Court of Appeal. It found that even if the occupiers had not paid their rent this was no longer a full ground for the termination of their lease in terms of ESTA because having a lawful ground for termination "is merely a portion of the requirement of section 8(1)" and other listed factors in section 8 must still be considered.

By failing to properly apply ESTA and relying on common law grounds for termination of a lease, the Constitutional Court found that the Supreme Court of Appeal's "attention was thus diverted from the interests of the occupiers" and ESTA's emphasis on the fairness of terminations. As a result it did not "give sufficient weight to the hardship that would eventuate from the termination of the rights of residence".

- Molusi and Others v Voges N.O. and Others (CCT96/15) [2016] ZACC 6; 2016 (3) SA 370 (CC); 2016 (7) BCLR 839 (CC) (1 March 2016) -

Clear communication of termination

The owner must have clearly communicated the termination of the occupiers' right of residence to the occupier. The owner must give such notice to each individual occupier whose right of termination they intend to terminate.

It is not enough for the owner to have simply given a letter to the occupier which includes information that he or she will have to "vacate the house".

It is also not enough for the owner to communicate that an occupier's employment has been terminated because this does not necessarily mean that the occupier's right to residence has been terminated.

The obligation on farm owners to clearly communicate termination of the right to residence was most clearly stated by the Constitutional Court in *Snyders v De Jager*. In this case the Court found that there is an obligation on the owner or farm manager when terminating an occupiers' right to residence to "either have read the letter to [the occupier] or have told him specifically that she was terminating his right of residence". Although this finding was because Mr. Snyders, like many other farmworkers, is illiterate, the broader principle is that it is the owner or farm manager's obligation to clearly and explicitly draw an occupiers' attention to the termination of residence.

If this is not done there has not been a fairness in procedure because it is not possible that the occupiers have been given "an effective opportunity to make representations" in terms of ESTA's requirements.

Based on the occupier's various rights to residence

Courts will often accept that there is more than one reason that an occupier was living on the farm even if the occupier is employed on the farm.

Owners often claim – without attempting to prove – that a worker's right to residence was based solely on their employment. The owner must clearly show that the occupier's occupation was based only on her or his employment if this is alleged.

Consent and change of ownership

ESTA makes it clear that a new or "subsequent" owner is bound by the express or tacit consent given to the occupier by the previous owner. The same is true if a new farm manager is appointed.

Once consent is given expressly or tacitly, or is presumed or deemed, a new owner or manager can only withdraw it in terms ESTA through the legal process described above.



24 Subsequent owners

- "(1) The rights of an occupier shall, subject to the provisions of this Act, be binding on a successor in title of an owner or person in charge of the land concerned.
- (2) Consent contemplated in this Act given by the owner or person in charge of the land concerned shall be binding on his or her successor in title as if he or she or it had given it."

Long term occupiers: 10 or more years

ESTA provides special protection to long term occupiers. Long term occupiers are occupiers who have been in residence for 10 or more years, and:

- are over the age of 60, or
- are under 60 years of age but due to ill health, disability or injury can no longer undertake this work.

This type of occupier is sometimes referred to by courts as a “long term occupier”. Long term occupiers are protected by sections 8(4)-(7) of ESTA which indicate that the termination of the right of residence of a long term occupier can only be made under particular circumstances. **A simple withdrawal of consent by the owner is not enough to terminate a long term occupier’s right of residence.**



PROVING YOUR AGE, ILLNESS, INJURY OR DISABILITY

It is crucial to prove to a court that you are 60 years old or that you have a disability, illness or injury that prevents you from working.

Proving a disability, illness or injury is best done through a medical certificate from a doctor or evidence of receipt of a disability grant.

A probation officer’s report, which is discussed below, may also draw the court’s attention to the fact that you are too ill to continue working.

- Ovenstone Farms (Pty) Ltd v Arends and Others (LCC60R/02) [2002] ZALCC 32 (9 July 2002) -

An Identity Document (ID) or birth certificate is the clearest way to establish age, but the courts have been willing to understand that not every person in the circumstances of a farm dweller will know their date of birth or age and that even an ID may not accurately reflect a person’s age.

If your ID suggests that you are under 60 years of age and you want to prove that you are over 60, you will need to provide reliable evidence to prove your age. This could include getting other people to provide written or oral evidence of your date of birth or by providing evidence from which your age could be “reliably inferred”. This evidence could include photos, documents such as school certificates, or old bills and accounts from people who have known you since birth.

- Mpedi and Others v Swanevelde and Another (421/02) [2003] ZASCA 131 (28 November 2003) -



Long term occupiers can only be evicted if their right of residence has been terminated according to ESTA. ESTA does not allow for a section 8(4) occupier’s right of residence to be terminated unless there has been:

- ① A material breach in terms of the occupiers’ obligations in terms of section 6(3) of ESTA; or
- ② A breach of a “material” and “fair” term of an agreement between the occupier and the owner which has not been remedied despite notice being given by the owner to do so; or
- ③ Such [a] fundamental breach of the relationship between the occupier and the owner” that it is not “practically possible” to “reasonably restore” it.

The Land Claims Court has said that a long term occupier’s residence cannot be terminated unless that occupier “has done something seriously wrong”.

The table below summarises these forms of breach; provides detail of the additional obligations placed on the owner to show that this breach has occurred, and offers examples of the kinds of actions that would constitute a breach. It gives guidance to determine when the high standards required for the owner to terminate the long term occupier’s right to residence have been met.

TABLE 1: Grounds for termination of right of residence of a long term occupier

| <p>1</p> <p>BREACH OF ESTA</p> <p>Material breach in terms of ESTA that has not been remedied.</p>  | <p>ADDITIONAL OBLIGATIONS ON THE OWNER</p> |
|---|--|
| <p>2</p> <p>BREACH OF CONTRACT</p> <p>Breach of a “material” and “fair” term of an agreement between the occupier and the owner that has not been remedied.</p>  | <ul style="list-style-type: none"> An owner seeking to prove this form of breach has been committed must be clear on the <i>specific conduct of specific occupiers</i> that he alleges amounts to such breach. <p><i>(Rula Tecno Park (Pty) Ltd v Moses Khuzwayo Mahlangu and Others)</i></p> |
| <p>3</p> <p>BREACH OF RELATIONSHIP</p> <p>Such a “fundamental breach” of the occupier and owner’s relationship that it is not “practically possible” to “reasonably restore” it.</p>  | <ul style="list-style-type: none"> The owner must have complied with both the terms of this agreement and the law. The owner must have given a calendar month’s notice to the occupier to remedy the breach. Failure to provide this notice could be sufficient reason for a court to determine that such breach is not irremediable. <p><i>(Thuthuka Farming v Mofokeng)</i></p> <ul style="list-style-type: none"> The owner must provide clear evidence of breach that he suggests is material and explain why it is material. <p><i>(Thuthuka Farming v Mofokeng)</i></p> |

| EXAMPLES THAT WOULD MEET THE LEGAL STANDARD | EXAMPLES THAT WOULD NOT MEET THE LEGAL STANDARD |
|---|---|
| <p>What amounts to a material breach</p> <ul style="list-style-type: none"> • Intentionally and unlawfully harming a person occupying the land. • Intentionally and unlawfully causing material damage to the property of the owner or person in charge. • Engaging in conduct which is threatening or intimidating to others who lawfully occupy the land or other land in the vicinity. • Enabling or assisting unauthorised persons to establish new dwellings on the land in question. | <p>What doesn't amount to a material breach</p> <ul style="list-style-type: none"> • Any other alleged breach. |
| <p>What amounts to a breach of a material term</p> <ul style="list-style-type: none"> • For a term to be material it must be “vital” and go “to the root of the contract” so as to “render it purposeless to carry on under the contract”. <p><i>(Joostenburg v Brummer)</i></p> | <p>What doesn't amount to breach of a material term</p> <ul style="list-style-type: none"> • If for example the long term occupier keeps a large number of cattle, the owner must first ask for a reduction of the number of cattle being kept, give notice to the occupier to take remedial action and may even need to approach a court about reducing the number of cattle instead of seeking eviction. <p><i>(Thuthuka Farming v Mofokeng)</i></p> |
| <p>What amounts to fundamental breach</p> <ul style="list-style-type: none"> • The relationship referred to here is “social” rather than “legal” and refers to a relationship of “mutual trust”. <p><i>(Ovenstone Farms v Arendse)</i></p> <ul style="list-style-type: none"> • Bringing theft charges against the owner which can not be substantiated. <p><i>(Mpedi v Swanevelder)</i></p> | <p>What doesn't amount to fundamental breach</p> <ul style="list-style-type: none"> • For example, while turning up for work drunk could be grounds for dismissal, it is not necessarily a fundamental breach of relationship. <p><i>(Ovenstone Farms v Arendse)</i></p> <ul style="list-style-type: none"> • An occupier denying that an agreement was reached with the owner about his right of residence before the Act came into existence. • A failure to pay rent and service charges for a period of time. <p><i>(Drumearn (Edms) Bpk v Wagner and Others)</i></p> <ul style="list-style-type: none"> • The operation of a small, legal business on the property. • That rubbish has been dumped by the occupier somewhere on property. <p><i>(Rula Tecno Park v Mahlangu)</i></p> |

Regardless of the category of occupier or length of occupation, a valid termination of right to residence must be proven before a court will decide whether an occupier can be evicted.

This means that occupiers enjoy double-layered legal protection against eviction in terms of ESTA: first a protection against termination of residence and second a protection against the eviction itself. Occupiers should try to use both layers of protection in a defence against an eviction.

Despite this double-layered protection, all categories of occupiers – long term occupiers, occupiers on 4 February 1997 and occupiers after 4 February 1997 – can be lawfully evicted by a court in the correct circumstances.





EVICTION ORDERS IN TERMS OF ESTA



Once it has been established that the farm dweller is an occupier in terms of ESTA; has at some stage had consent to reside on the owner's land, and the owner has shown that the termination of her right to residence was just and equitable, only then will a court proceed to determine whether an eviction sought in terms of ESTA is lawful.

ESTA's general eviction provisions

A court may only order an eviction in terms of ESTA if an occupier has not, within a period of notice given by the owner and the occupier, vacated the premises. This notice could be given to the occupier at the same time as the occupier's right of residence is terminated. If it is given at the same time it must be clear from the notice that it is both a notice for termination of the right to residence and an eviction notice.

After the termination of the occupier's right to residence has taken place, the owner must have given two months written notice "of the intention to obtain an order for eviction" to the occupier, the municipality in which the land is situated, and the provincial office of the Department of Rural Development and Land Reform. Written notice of application to a court for an eviction order two months before the hearing commences will satisfy this requirement.

In order to provide additional protection against eviction, ESTA distinguishes between occupiers who were in occupation on 4 February 1997 and those who came into occupation after 4 February 1997. Once it has been concluded that an occupier's right of residence has been fairly terminated, all occupiers will fit into one of two ESTA categories:

- ① Occupiers on 4 February 1997 (whose eviction is dealt with by section 10 of ESTA); and
- ② Occupiers after 4 February 1997 (whose eviction is dealt with in terms of section 11 of ESTA). This also applies to long term occupiers.

In some instances there is possible overlap or repetition in the protections provided against evictions and those provided against terminations.

AT A GLANCE...

OCCUPIERS ON 4 FEBRUARY 1997

- This group of occupiers is protected under section 10 of ESTA.
- A court may only grant an eviction against this group of occupiers if there is:
 1. A breach of ESTA
 2. A breach of contract
 3. A breach of relationship.
 4. A voluntary resignation.
 5. The provision of suitable alternative accommodation

Occupiers on 4 February 1997

A court may only make an order of eviction against an occupier who was in occupation on 4 February 1997 in five circumstances.

These are: Breach of ESTA; breach of contract; breach of relationship; voluntary resignation, and the provision of suitable alternative accommodation.

These circumstances are summarised in the table on pp 30 and 31.





AT A GLANCE...

Occupiers after 4 February 1997

A court may only make an order of eviction against an occupier who was in occupation after 4 February 1997 in two circumstances:

- ① Based on an expressed, material and fair agreement made between the occupier and the owner.
- ② If it is just and equitable having regard to the period of time that the occupier has been in occupation, the fairness of any agreement between the occupier and the owner, the availability of suitable alternative accommodation, and the balance of interests between the owner, the occupier and any other occupiers.

The court is not limited to the five factors in section 11(3) of ESTA, but it must take into account these factors when deciding that it is just and equitable for an eviction order to be granted.

OCCUPIERS AFTER 4 FEBRUARY 1997

- This group of occupiers is protected under section 11 of ESTA.
- A court may only grant an eviction against this group of occupiers for the following reasons:
 1. An expressed, material and fair agreement.
 2. If it is just and equitable to do having regard to the following factors:
 - ▶ period of occupation;
 - ▶ fairness of the agreement;
 - ▶ availability of suitable alternative accommodation; and
 - ▶ balance of interests between the owner, the occupier and any other occupiers.

TABLE 2: Grounds for eviction of an occupier in occupation on 4 February 1997

| <p>1 2 3</p> <p>GROUND FOR EVICTION OF AN OCCUPIER IN OCCUPATION ON 4 FEBRUARY 1997</p> | <p>ADDITIONAL OBLIGATIONS ON THE OWNER</p> |
|---|--|
| <p>1 BREACH OF ESTA A material breach of section 6(3) of ESTA, which has not been remedied.</p>  | <ul style="list-style-type: none"> An owner seeking to prove this form of breach has been committed must be clear on the <i>specific conduct of specific occupiers</i> that he alleges amounts to such breach. <p><i>(Rula Tecno Park (Pty) Ltd v Moses Khuzwayo Mahlangu and Others)</i></p> |
| <p>2 BREACH OF CONTRACT Breach of a “material” and “fair” term of an agreement between the occupier and the owner that has not been remedied.</p>  | <ul style="list-style-type: none"> The owner must have complied with both the terms of this agreement and the law. The owner must have given a calendar month’s notice to the occupier to remedy the breach. Failure to provide this notice could be sufficient reason for a court to determine that such breach is not irremediable. <p><i>(Thuthuka Farming v Mofokeng)</i></p> <ul style="list-style-type: none"> The owner must provide clear evidence of breach that he suggests is material and explain why it is material. <p><i>(Thuthuka Farming v Mofokeng)</i></p> |
| <p>3 BREACH OF RELATIONSHIP Such a “fundamental breach” of the occupier and owner’s relationship that it is not “practically possible” to “reasonably restore” it.</p>  | |

| <p>EXAMPLES THAT WOULD MEET THE LEGAL STANDARD</p> | <p>EXAMPLES THAT WOULD NOT MEET THE LEGAL STANDARD</p> |
|---|---|
| <p>What amounts to a material breach</p> <ul style="list-style-type: none"> • Intentionally and unlawfully harming a person occupying the land. • Intentionally and unlawfully causing material damage to the property of the owner or person in charge. • Engaging in conduct which is threatening or intimidating to others who lawfully occupy the land or other land in the vicinity. • Enabling or assisting unauthorised persons to establish new dwellings on the land in question. | <p>What doesn't amount to a material breach</p> <ul style="list-style-type: none"> • Any other alleged breach. |
| <p>What amounts to a breach of a material term</p> <ul style="list-style-type: none"> • For a term to be material it must be “vital” and go “to the root of the contract” so as to “render it purposeless to carry on under the contract”. <p><i>(Joostenburg v Brummer)</i></p> | <p>What doesn't amount to breach of a material term</p> <ul style="list-style-type: none"> • If for example the long term occupier keeps a large number of cattle, the owner must first ask for a reduction of the number of cattle being kept, give notice to the occupier to take remedial action and may even need to approach a court about reducing the number of cattle instead of seeking eviction. <p><i>(Thuthuka Farming v Mofokeng)</i></p> |
| <p>What amounts to fundamental breach</p> <ul style="list-style-type: none"> • The relationship referred to here is “social” rather than “legal” and refers to a relationship of “mutual trust”. <p><i>(Ovenstone Farms v Arendse)</i></p> <ul style="list-style-type: none"> • Bringing theft charges against the owner which cannot be substantiated. <p><i>(Mpedi v Swanevelder)</i></p> | <p>What doesn't amount to fundamental breach</p> <ul style="list-style-type: none"> • For example, while turning up for work drunk could be grounds for dismissal, it is not necessarily a fundamental breach of relationship. <p><i>(Ovenstone Farms v Arendse)</i></p> <ul style="list-style-type: none"> • An occupier denying that an agreement was reached with the owner about his right of residence before the Act came into existence. • A failure to pay rent and service charges for a period of time. <p><i>(Drumearn (Edms) Bpk v Wagner and Others)</i></p> <ul style="list-style-type: none"> • The operation of a small, legal business on the property. • That rubbish has been dumped by the occupier somewhere on property. <p><i>(Rula Tecno Park v Mahlangu)</i></p> |

TABLE 2: Grounds for eviction of an occupier in occupation on 4 February 1997

| <p>4</p> <p>VOLUNTARY RESIGNATION</p>  | <p>ADDITIONAL OBLIGATIONS ON THE OWNER</p> |
|---|--|
| <p>5</p> <p>SUITABLE ALTERNATIVE ACCOMMODATION</p>  | <p>The obligation is on the owner to provide suitable alternative accommodation even if there has been no breach of ESTA, a contract or relationship and no voluntary resignation.</p> |
| <p>“Otherwise just and equitable”</p> <p>The court must be satisfied that the eviction is otherwise fair, after balancing the interests of the owner and the occupier.</p> | |

EXAMPLES THAT WOULD MEET THE LEGAL STANDARD

A voluntary resignation will only qualify as a ground for eviction if:

- the occupier was an employee whose right of residence arises solely from that employment
- the resignation does not amount to a “constructive dismissal”

In these circumstances, a court is likely to conclude that justice and equity favour the granting of an eviction because:

“The equity is manifest: if the occupier’s right to occupation is linked to his employment, and the occupier, of his or her own volition, resigns that employment, why should the employer (land owner) continue to provide accommodation?”

(Westminster Produce v Simons)

1. Serious prejudice

The owner must be able to show that unless an eviction is ordered from a specific dwelling that “serious prejudice” would be caused to the “efficient carrying on of any operation of the owner”.

To do this it is not enough to suggest that the occupier has been retrenched and the house is now needed for another employee. The owner must *prove* that there is a “causal connection” between the unavailability of the “particular house”, occupied by the “particular occupier”, and serious prejudice.

(Kanhyn v Mashiolane)

2. Just and equitable

If serious prejudice can be proven, a court may grant an eviction despite the unavailability of alternative accommodation if and only if it is *just and equitable* to do so taking into consideration:

- the efforts both the owner and the occupier have made to secure suitable alternative accommodation.
- the “comparative hardships” to and interest of both the occupiers and the owner.

ESTA rights, access to basic services and constructive evictions

Section 6(2)(e)-(f) of ESTA provide occupiers with the right “not to be denied or deprived of access to water” or “educational or health services”. In addition, as the Constitutional Court has interpreted it, the occupier has the right to basic services such as water, electricity, sanitation and refusal removal in terms of the Constitution. As a set, the entitlement to access these services is sometimes called the “right to basic municipal services”.

Farm owners and managers are therefore not legally entitled to simply disconnect electricity, water or any other basic municipal services regardless of whether they believe they have the right to evict the occupier. They must follow the court process to do so legally.

It is also not lawful for the municipality to disconnect services without following legal process.

“ THE PROVISION OF BASIC MUNICIPAL SERVICES IS A CARDINAL FUNCTION, IF NOT THE MOST IMPORTANT FUNCTION, OF EVERY MUNICIPAL GOVERNMENT. THE CENTRAL MANDATE OF LOCAL GOVERNMENT IS TO DEVELOP A SERVICE DELIVERY CAPACITY IN ORDER TO MEET THE BASIC NEEDS OF ALL INHABITANTS OF SOUTH AFRICA, IRRESPECTIVE OF WHETHER OR NOT THEY HAVE A CONTRACTUAL RELATIONSHIP WITH THE RELEVANT PUBLIC SERVICE PROVIDER. THE RESPONDENTS ACCEPTED THAT THE PROVISION OF ELECTRICITY IS ONE OF THOSE SERVICES THAT LOCAL GOVERNMENT IS REQUIRED TO PROVIDE. INDEED THEY COULD NOT HAVE CONTENDED OTHERWISE. IN *MKONTWANA*, YACOUB J HELD THAT “MUNICIPALITIES ARE OBLIGED TO PROVIDE WATER AND ELECTRICITY TO THE RESIDENTS IN THEIR AREA AS A MATTER OF PUBLIC DUTY.” ELECTRICITY IS ONE OF THE MOST COMMON AND IMPORTANT BASIC MUNICIPAL SERVICES AND HAS BECOME VIRTUALLY INDISPENSABLE... ”

- *Joseph and Others v City of Johannesburg and Others* [2009] ZACC 30; 2010 (4) SA 55 (CC) -

Despite this, farm dwellers report that farm owners and managers often disconnect their electricity or water supply in order to encourage them to move off their property. In *Daniels v Scribante* the Constitutional Court acknowledged this, noting that:

“ IN WHAT APPEARS TO HAVE BEEN A MOVE CALCULATED TO GET RID OF MS DANIELS FROM THE FARM, IN JANUARY 2014 MR SCRIBANTE REMOVED OR TAMPERED WITH THE DOOR TO MS DANIELS’S DWELLING AND CUT THE ELECTRICITY SUPPLY.

- *Daniels v Scribante and Another* [2017] ZACC 13 -

This is an example of a **constructive eviction**. A constructive eviction is any situation in which, instead of attempting to evict occupiers physically or by means of legal process, a farm owner or manager deliberately attempts to make life so hard for farm dwellers that they are forced to leave the farm. If for example a farm owner or manager removes the roof or windows from a farm dwellers’ residence or refuses access to water or electricity, this amounts to constructive eviction.

In this situation, the occupier, like Ms Daniels in *Daniels v Scribante*, may approach the magistrate’s court to get a court order to restore her undisturbed possession of the dwelling including water and electricity services.

Rights of all ESTA occupiers include:

- ① **The right to human dignity.** This right must be considered when interpreting all other rights. It includes the occupier’s right to make necessary improvements to her home to ensure that she may live in a dignified manner. This could include for example levelling floors, fixing walls and roofs, establishing of a system of running water with a wash basin in the house, adding windows, laying of paving outside. Although the occupier must engage the farm owner before doing this, she does not need the owner’s permission to make necessary improvements.
- ② **The right to security of tenure,** including the right to reside on and use the land upon which the occupier lives.
- ③ **The right to receive visitors** at reasonable times for reasonable periods.
- ④ **The right to receive post** and other types of communication.
- ⑤ **The right to a family life.**
- ⑥ **The right to bury a deceased relative** who at the time of their death lived on the land in accordance with religious and cultural beliefs.
- ⑦ **All other relevant and applicable constitutional rights,** including the right to basic municipal services.

Meaningful engagement and the availability of suitable alternative accommodation

Recognising that problems can arise from miscommunications and misunderstandings, the Constitutional Court has noted that it is important to “encourage and require the parties to engage with each other in a proactive and honest endeavour to find mutually acceptable solutions”.

The Constitutional Court has developed the principle of “meaningful engagement” in the context of evictions of unlawful occupiers in terms of the PIE Act, which requires that these occupiers and the relevant municipality “engage with each other meaningfully” in an effort to resolve their differences before resorting to eviction proceedings in court. The Court made it clear that it will generally not be just and equitable to order an eviction if “proper discussions and, where fitting, mediation were not attempted”.

Despite the Court’s emphasis on engagement between occupiers and the state, there are two important components of meaningful engagement relevant to private owners of land on which occupiers are living:

- whether the owner’s interests could be achieved without an eviction order being granted, and
- whether the owner could contribute to the efforts of the state to provide an alternative.

More recently, the Land Claims Court has indicated that it considers itself bound to follow the rulings of the Constitutional Court on the principle of “meaningful engagement” when it interprets and applies ESTA. The Court emphasised that this approach is consistent with the aim set out in ESTA to improve security of tenure through “the joint efforts of occupiers, landowners and government bodies”.



In *Diedericks v Univeg (Pty) Ltd* a magistrate had granted an eviction order which was subject to automatic review in the Land Claims Court.

The family whose eviction was sought had been in residence for 14 years and had acknowledged that their rights of residence had been terminated and that the farmers needed accommodation for other employees. The family had indicated they had no other available accommodation but that they could afford to contribute in the form of rental.

Even though the Land Claims Court confirmed the eviction order, it included as part of its order an obligation which required meaningful engagement “as soon as it is possible” between:

- 1 The owner and the family; and
- 2 The owner and the family, together or separately, and the municipality.

The clear purpose of this engagement seems to have been to ensure that, in the event of eviction, the family is not rendered homeless and that suitable alternative accommodation is located and provided to them.

– *Diedericks v Univeg Operations South Africa (Pty) Ltd t/a
Heldervue Estates (LCC18/2011) [2011] ZALCC 11 (23 August 2011)* –

The obligation to consider suitable alternative accommodation must be understood in the context of the obligation on the owner, the occupier and the municipality to “meaningfully engage” throughout the process of eviction.

The obligation to provide suitable alternative accommodation applies throughout the eviction process, and requires the active participation of at least the occupiers, the owner and the municipality.

The consideration of suitable alternative accommodation

The consideration of the provision of suitable alternative accommodation could be relevant in a decision to grant an eviction order whether the occupier is a long term occupier, an occupier on 4 February 1997, or an occupier after 4 February 1997. Where an eviction order will result in the homelessness of occupiers, a court is always required by the Constitution to consider the provision of suitable alternative accommodation.

“THE COURT WILL NEED TO BE INFORMED OF ALL THE RELEVANT CIRCUMSTANCES IN EACH CASE IN ORDER TO SATISFY ITSELF THAT IT IS JUST AND EQUITABLE TO EVICT AND, IF SO, WHEN AND UNDER WHAT CONDITIONS. ...IN BRIEF, WHERE NO INFORMATION IS AVAILABLE, OR WHERE ONLY INADEQUATE INFORMATION IS AVAILABLE, THE COURT MUST DECLINE TO MAKE AN EVICTION ORDER. THE ABSENCE OF INFORMATION IS AN IRREFUTABLE CONFIRMATION OF THE FACT THAT THE COURT IS NOT IN A POSITION TO EXERCISE THIS IMPORTANT JURISDICTION.”

– *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* [2017] ZACC 18 –

AT A GLANCE...

CONSIDERATION OF SUITABLE ALTERNATIVE ACCOMMODATION

- Courts are reluctant to grant an eviction order that will render occupiers homeless.
- Suitable alternative accommodation must be “safe and overall not less favourable than the occupier’s previous situation”. Relevant factors for consideration include:
 1. The occupiers need land for residential and agricultural purposes.
 2. The occupiers’ joint earning ability.
 3. Proximity to opportunities for employment or other economic activities for occupiers.
 4. Proximity to schools.
 5. Proximity to transport facilities.
 6. Whether the alternative is reasonable.
- Meaningful engagement is required between the occupiers, the owner and municipality about suitable alternatives. The reasonableness of offers made by the owner and reasonableness of responses to these offers is important.
- It will be grounds to have an eviction order overturned if a magistrate does not insist on being presented with evidence about suitable alternative accommodation and properly interrogate it.

Because of the importance placed on protecting occupiers from homelessness as a result of evictions, a court is unlikely to grant an eviction order if homelessness will result. This makes discussion of suitable alternative accommodation crucial to any defence against any eviction in terms of ESTA.

The definition of suitable alternative accommodation

Suitable alternative accommodation is defined in terms of section 1 of ESTA as accommodation that is “safe and overall not less favourable than the occupier’s previous situation”.

The definition requires regard to the following factors in determining whether alternative accommodation is suitable:

- The reasonable needs and requirements of all the occupiers in the household for residential accommodation, land for agricultural use and services;
- The occupiers joint earning abilities; and
- The occupiers need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active.

This definition of “suitable alternative accommodation” has been expanded by the Land Claims Court. In various cases the Court has made it clear that other factors in determining the suitability of alternative accommodation will include:

- how close the alternative accommodation is to a school that the occupier’s children can attend;
- how close the alternative accommodation is to accessible transport facilities; and
- whether in all the circumstances the alternative is “reasonable”.

Obligation on both the owner and the occupier

In terms of ESTA, obligations are placed on both the owner and the occupier to show that they have made attempts to secure alternative accommodation. If the occupier cannot show attempts made to secure alternative accommodation a court may grant an eviction order against them.



In *Land en Landbouontwikkelingsbank van Suid-Afrika v Conradie* the occupier was paying the owner R3 500 in monthly rental. The Supreme Court of Appeal found that because no contrary evidence was presented, it had to accept that the occupiers “should easily obtain alternative accommodation at the monthly rental of R3 500 he was paying to the appellant.”

It is therefore important that the occupier shows the court that she has made attempts to meaningfully engage with the owner and the municipality about suitable alternative accommodation. The Land Claims Court has taken into consideration the *reasonableness of offers for alternative accommodation* made by owners and the *reasonableness of occupiers’ responses* to those offers.



In *Spaarveld Boedery v Sefawa* the Land Claims Court held that a “reasonable alternative” should be made available, and that the court should take into consideration the reasonableness of the offers and responses to offers made in connection with suitable alternative accommodation. Following the Constitutional Court’s housing jurisprudence, the court said that when looking at the relevant circumstances in ESTA cases a court should consider the following factors:

- The time scales proposed for eviction and finding alternative accommodation;
- The degree of disruption involved;
- The offers made by the farm owner to assist in finding alternative accommodation; and
- The willingness of occupiers to consider and respond to offers placed before them.

In this case the court noted that the farm owner had made significant efforts to procure alternative accommodation for the occupiers. The farm owner had spent R55 000 to assist the occupiers he sought to evict to find alternative accommodation, including having bought a site where a four bedroom house had been built and providing building materials to extend existing structures. The court therefore decided in those circumstances that the owner had made sufficient efforts to find alternative accommodation for the occupiers and could evict them despite the requirements of ESTA.

Obligation on a magistrate

The consideration of suitable alternative accommodation is important: If a magistrate fails to properly consider and apply her mind to it, that alone would be grounds for successful overturn of an eviction order on automatic review in the Land Claims Court.



In *De Kock v Juggels* the Land Claims Court found that the magistrate considered little or no information about the provision of suitable alternative accommodation. Instead “he simply said that he had kept in mind the [factor of suitable alternative accommodation]”. The Land Claims Court concluded that this is “not good enough and constituted a further irregularity” which alone was sufficient reason to overturn the eviction order granted by the magistrate.

– *De Kock v Juggels and Another* (LCC7R/99) [1999] ZALCC 13 (11 March 1999) –

The availability of suitable alternative accommodation elsewhere on the owner's property

Research shows that on approximately half of the farms from which farm dwellers were evicted there were houses “standing empty” and that many farms had three or more houses that were unused. The availability of suitable alternative accommodation – including houses, wendy houses, halls and rooms – on the owner's own land must be considered in determining the overall availability of suitable alternative accommodation.



In *Snyders v De Jager* the Constitutional Court showed a willingness to consider potential alternative accommodation available elsewhere on the owner's land in determining whether an eviction of an occupier was just and equitable.

De Jager, the farm manager of Stassen farm had effected the eviction of the Snyders family from their home in terms of a court order but before the Snyders' had had an opportunity to appeal. De Jager then immediately caused another worker and his family – the Bredas – to be moved into this house. The Constitutional Court ruled that the eviction of the Snyders had been unconstitutional and determined that it would therefore be just and equitable for the Bredas to be evicted, if necessary, so as to allow the Snyders to move back in. In coming to the conclusion that the eviction of the Bredas was just and equitable, the Constitutional Court considered the clear availability of suitable alternative accommodation on the Stassen farm as an important factor. The evidence available to the court was that there was a “wendy house” and a “saaltjie” (small hall) on the Stassen farm that were potential options for alternative accommodation for the Bredas.

The Court's order which granted the possible eviction of the Bredas therefore contained the explicit disclaimer that it “does not authorise or order the eviction of Mr Willem Breda and his family from the farm”.

Laying a strong factual basis for a suitable alternative accommodation defence

It is crucial to lay a factual basis in order to use this defence so that the court can properly assess the reasonableness of the occupiers' attempts to acquire alternative accommodation and the possibility of its provision.

The occupiers' answering affidavit, which is discussed in more detail below, must therefore set out their personal circumstances in as much detail as possible. If an occupier will be rendered homeless by an eviction the answering affidavit must clearly and explicitly state this.

The more background detail the occupier provides the greater the chance the judge will understand the specific difficulties of the occupiers' circumstances. This should include information about:

- the occupiers' family life and responsibilities;
- attempts family members have made at acquiring employment;
- children, elderly and disabled people in the household;
- reasons that there is no family with whom the occupiers can live; and
- the cost of rental accommodation in the area.

Finally it is worthwhile to suggest to a court that a "probation officer's report" be requested because a main purpose of this report is to determine whether there might be suitable alternative accommodation available and to understand any relevant personal circumstances of the occupier.

Obtaining a probation officer's report

A probation officer's report is often essential to the eviction process as it will help a court to determine whether or not it is just and equitable to grant an eviction in a particular case.

When determining whether an eviction order should be granted ESTA says that the court "must" request that either a "probation officer" or "an officer of the department [of land affairs] or any other officer in the employment of the State" submit a report about:

- the availability of suitable alternative accommodation to the occupier;
- how an eviction will affect the constitutional rights of "any affected person" including children's rights to education;
- any undue hardships which an eviction would cause the occupier; and
- any other prescribed matter.

Who requests a probation officer's report?

A probation officer's report is requested from the government by the court. The occupier cannot request it from government because the Land Claims Court has explained that this power "provides a mechanism to get the requisite information to the Court".

The occupier can however file papers or make arguments in court explaining why the report should be requested in the particular circumstances.

The occupier will more successfully explain the need for a probation officer's report if she can show that the report may reveal information about alternative accommodation (for example if an occupier will be rendered homeless by an eviction); that there will be significant impacts on the rights of children (for example a reduction in care or the need to move schools or travel long distances to attend schools), or any other undue hardships.

What if a court doesn't want to request a probation officer's report?

Most judges of the Land Claims Court believe that a probation officer's report is mandatory, because section 9(3) of ESTA says that a court "must" request such a report. On this understanding a report should be requested in every case.

If the magistrate has not requested a probation officer's report this alone could constitute sufficient grounds for the eviction order to be set aside.

In *Rula Tecno*, the Land Claims Court decided that a failure to request a probation officer's report violates a statutory duty, frustrates its ability to make decisions and negatively effects the interest of occupiers.

“ FINALLY, SOMETHING NEEDS TO BE SAID ABOUT THE PROBATION OFFICER'S REPORT. IN TERMS OF SECTION 9(3), READ WITH SECTION 9(2)(C) OF THE ACT, IT IS MANDATORY FOR ANY COURT CONSIDERING AN EVICTION APPLICATION TO REQUEST A PROBATION OFFICER'S REPORT, WHICH ADDRESSES THE MATTERS LISTED IN SECTION 9(3)(A)-(D).

...

IN CASES OF EVICTION, WHEN A COURT MUST CONSIDER AN EVICTION WITHOUT A REPORT BY A PROBATION OFFICERS, IT IS HARD TO DETERMINE WHERE THE EQUITIES LIE - AN OUTCOME WHICH MAY RENDER HOLLOW THE PROTECTIONS GRANTED TO OCCUPIERS BY LEGISLATION.

- *Rula Tecno Park (Pty) Ltd v Moses Khuzwayo Mahlangu and Others* (23 November 2015) -

In *Ramsauer v Klaas Olivier* the Land Claims Court treated the cases in which probation officer's reports are not required as exceptions. The Court set aside the application for the eviction specifically to require the magistrate to request a probation officers report "the contents of which she should consider before deciding whether the granting of an eviction order is just and equitable in this matter". The court's order, which you can ask other courts to make if the magistrate has not requested a probation officer's report, reads as follows:

“ THE MAGISTRATE MUST ENSURE THAT A PROBATION OFFICER'S REPORT IN TERMS OF SECTION 9(3) OF THE ACT IS FURNISHED.

-*Jacobus Johannes Ramsauer v Klaas Olivier* (LCC03R/14) [2014] ZALCC 3 (13 January 2014) -

In *Oudepont v Coetzee* the Land Claims Court came to the conclusion that it is not possible for a court to consider all the relevant circumstances before granting an eviction order unless a probation officer's report is considered compulsory. In coming to this conclusion it relied on the Constitutional Court's reasoning in *Port Elizabeth Municipality v Various Occupiers*. This is an important case in which the Constitutional Court explains the protection afforded to people during evictions by the Constitution.

In having regard to the all the relevant circumstances and to “give them due weight in making its judgment just and equitable” the Land Claims Court has found that it “cannot fulfill its responsibilities if it does not have the requisite information at its disposal.”

– *Oudepont (Edms) Bpk v Coetzee (LCC 26R/2012) [2012] ZALCC 10 (30 May 2012)* –

There are older judgments that suggest that a probation officer's report is not mandatory. These judgments have been overruled in several other judgments of the Land Claims Court. In *Valley Packers v Dietloff and Vinceremo v Visage*, for example, Moloto AJ explicitly indicated that these judgments had been “reconsidered” because they were “wrongly decided”.

“ I CANNOT CONCEIVE OF ANY SITUATION IN WHICH NOT ONE CONSTITUTIONAL RIGHT WILL PLAY A ROLE IN AN ESTA EVICTION. IN CONCLUSION THEN I AM OF THE OPINION THAT WESTMINSTER WAS WRONGLY DECIDED AND THAT A SECTION 9(3) REPORT MUST BE REQUESTED IN ALL ESTA EVICTIONS... THE MAGISTRATE ERRED IN NOT REQUESTING THE REPORT IN TERMS OF SECTION 9(3) OF ESTA. ”

–*Valley Packers Co-operative Limited v Dietloff [2001] 2 All SA 30 (LCC) (12 December 2000); and Vinceremo (Pty) Ltd v Visagie (LCC 106R/00) [2001] ZALCC 3 (20 February 2001)* –

If the farm owner seeks to rely on judgments which say the probation officer's report is not mandatory, the occupier or her representative should bring the above judgments to the court's attention.

In the worst scenario, if a judge does not agree with the argument that a probation officer's report is always compulsory, the occupier or her representative should bring to her attention that the only judgments in support of this view state that probation officers' reports are not required when:

- ① The occupier has voluntarily resigned from employment on the land she is living on; and
- ② The occupier's right to residence relied entirely on the employment from which she has resigned.



What should be included in the probation officer's report?

The report should be specific and deal directly with the occupiers' personal circumstances. This should include any hardships that will be endured by any person as a result of an eviction such as access to schools and transport and the availability of suitable alternative accommodation.

If a probation officer asks the occupier questions it is important to provide details with respect to hardships that will incur if an eviction is ordered as this will help inform a court's decision.

If a generalised report is submitted by the probation officer, the occupier can object to it and argue that it does not give the court a good enough understanding of the specific circumstances. Courts have rejected reports that are too general in applications for evictions under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (the PIE Act). This reasoning should be equally applicable to reports submitted in eviction applications brought in terms of ESTA.

What if a report is requested by the magistrate but not produced?

There are many cases in which a probation officer does not provide a report on a magistrate's request. The Land Claims Court has expressed frustration with this and described it as requiring "urgent attention" from government.

“ THE RECORD DOES NOT CONTAIN A PROBATION OFFICER'S REPORT. THIS IS NOT AN INDICATION THAT NO REQUEST WAS MADE. I AM AWARE OF MANY INSTANCES IN THIS COURT WHERE REQUESTS FOR THESE REPORTS ARE MADE BY JUDICIAL OFFICERS AND NO RESPONSES ARE RECEIVED. THIS IS A MATTER WHICH REQUIRES THE URGENT ATTENTION OF THE RELEVANT STATE DEPARTMENT, BEING THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM. ”

-Rula Tecno Park (Pty) Ltd v Moses Khuzwayo Mahlangu and Others (23 November 2015) -

Once requested by a magistrate, ESTA specifically requires a probation officer to produce a report within "a reasonable period". The duration of a reasonable period will depend on the circumstances of each case. The Land Claims Court is unlikely to be sympathetic with probation officers that take a long time to provide reports, particularly when this causes delays and postponements in hearings.

In that scenario, the outcome of the application will depend on the extent to which the court needs to know about the occupiers' circumstances in order to come to a decision. If, for example, it seems likely that an eviction would render the occupier homeless or compromise children's rights a court may well decide to wait for the report despite significant delays.

“ THE APPLICATION APPEARS TO HAVE BEEN POSTPONED AT LEAST TWICE FOR THE PROVINCIAL DIRECTOR OF THE DEPARTMENT OF LAND AFFAIRS, CAPE TOWN TO SUBMIT A SECTION 9(3) REPORT. NO REPORT WAS FORTHCOMING. THERE IS NO DUTY ON THE MAGISTRATE TO POSTPONE AN EVICTION APPLICATION INDEFINITELY WHEN THE DEPARTMENT FAILS TO SUBMIT THE NECESSARY REPORT. EACH APPLICATION MUST BE CONSIDERED ON ITS OWN MERITS. ON THE FACTS, THIS CASE APPEARS TO BE ONE IN WHICH NO REPORT WAS NECESSARY, IT BEING ALLEGED THAT THE FIRST RESPONDENT BREACHED SECTION 10(1) READ WITH SECTION 6(3) OF ESTA. ”

- *Holt Leisure Park (Pty) Ltd v Josephs and Another (LCC62R/00) [2000] ZALCC 32 (23 August 2000)* -



Parties involved in eviction proceedings

In general, the following parties will have a direct and substantial interest in eviction proceedings in terms of ESTA:

- **Occupiers:** Any person whose eviction is sought whether a “household occupier” or a “primary occupier”;
- **Owners:** The owner or farm manager who is seeking the eviction of a particular person or group of people; and
- **Government:** The municipality in which the land is located will have an interest in the eviction proceedings in almost all circumstances. This is because ESTA requires “suitable alternative accommodation” to be considered before an eviction order is granted and it is common for government-provided accommodation to be one of the only realistic forms of suitable alternative accommodation available to ESTA occupiers. For these reasons the provincial departments responsible for land reform and human settlements may have a direct and substantial interest in ESTA eviction cases.

It is usually in the occupier’s interests to ensure that local and provincial government is joined to the eviction proceedings. When defending against an eviction application, **it is suggested that the occupier make note of the failure of an owner to “join” relevant government stakeholders and ask the court to join them to the proceedings in her answering affidavit.**

A spouse’s right to be joined to eviction proceedings brought against his or her partner

For many years, judges in the Land Claims Court did not consider it necessary for the spouse of an occupier whose eviction was being sought to be joined to an application. This, the Land Claims Court reasoned, was because as a “household occupier” the spouse did not have a direct and substantial interest in the proceedings and only had rights in terms of ESTA “through” or “under” the primary occupier.

The Constitutional Court reversed this position in *Klaase v van der Merwe* deciding that the spouse of a primary occupier did indeed have a direct and substantial interest in the eviction proceedings.

The Constitutional Court made it clear that it did not matter why the eviction proceedings were taking place (Mr. Klaase had been dismissed and come to a settlement in the CCMA in which he agreed to vacate the property), or whether Mr Klaase was likely to be evicted. A woman in Mrs. Klaase’s position, the court reasoned, has a direct interest in the proceedings because these proceedings may result in her and her family’s eviction.



“Mrs Klaase has a direct and substantial interest in the relief sought against Mr Klaase. It is undisputed that she has lived on the farm, continuously and openly for at least 30 years, with the knowledge of the respondents. Her right to housing will be affected negatively if the eviction order is executed. It is apparent from the probation officer’s report that Mrs Klaase, together with her children and grandchildren, will be rendered homeless because of the unavailability of alternative accommodation if evicted. The Land Claims Court did not have regard to these relevant circumstances when determining the joinder application. It also did not consider the provisions of section 3(4) and (5) of ESTA, in terms of which a person in the position of Mrs Klaase would be presumed and deemed to have consent of the owner if she has continuously and openly resided on land with the knowledge of the owner.

Mrs Klaase should have been cited as a party or joined in the eviction proceedings against Mr Klaase. Separate substantive grounds for her eviction should have been alleged and eviction should have been sought specifically against her. That did not happen.”

– *Klaase and Another v van der Merwe N.O. and Others (CCT 23/15) [2016] ZACC 17; 2016 (9) BCLR 1187 (CC); 2016 (6) SA 131 (CC) (14 July 2016) -*

Mrs. Klaase’s case reveals another reason why women in her position should be joined to eviction proceedings against their partners. From the Constitutional Court’s decision in *Klaase v van der Merwe* it is clear that it cannot be assumed that over the course of time a spouse like Mrs. Klaase, who may initially have been a household occupier, does not qualify as primary occupier in her own right.

Many women, like Mrs. Klaase, will have worked as seasonal workers on farms they may have moved onto initially to live with their husbands. The court’s decision shows that if this is the case, and the owner cannot show that it was clear that she did not have independent consent to stay on the property; that women in Mrs. Klaase’s position may well be considered primary occupiers in their own right. **With this reasoning it can be argued that a spouse’s direct and substantial interest in the proceedings also stems from the fact that the magistrate or judge will have to determine whether she or he is a primary occupier in her or his own right.**

The importance of joining other occupiers whose occupation could be effected

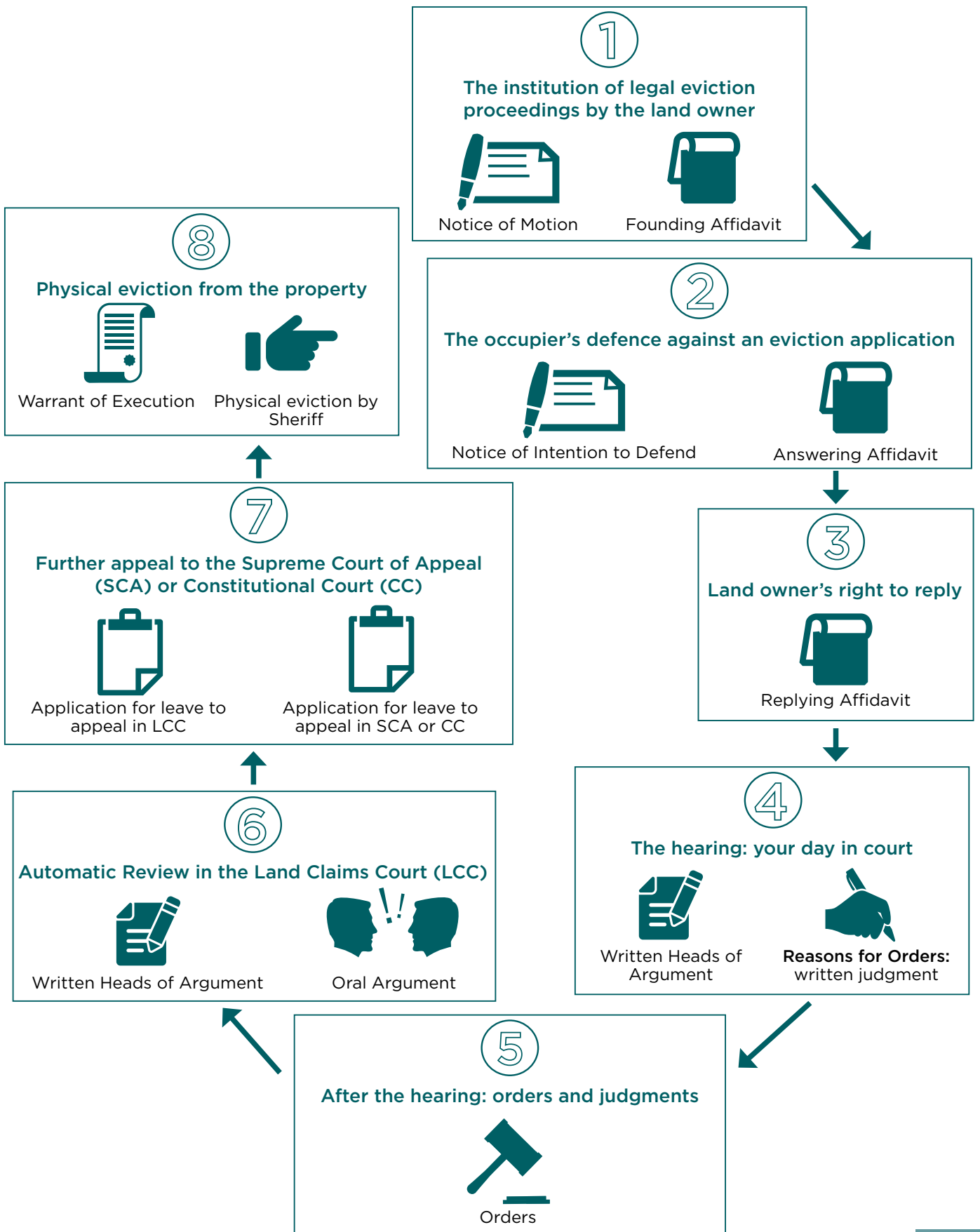
The jurisprudence of the Land Claims Court suggests that it is not uncommon for farm owners to seek the eviction of one occupier and their family by arguing that the house in question is required for another occupier who will be working on the farm and his or her family.

Even though this is not lawful, sometimes a farm owner or manager may remove a set of occupiers from the house and let another family move in even before court proceedings are finished. This was the case in *Snyders* decided by the Constitutional Court towards the end of 2016.

The *Snyders* judgment suggests that any and all occupiers on the land in question whose rights to residence may be affected in any way should be “joined” to the eviction proceedings.

How do eviction proceedings work?

The main steps to ensure the eviction case is heard in court are outlined in the flowchart below.



Step
1

The institution of legal eviction proceedings by the land owner

Eviction proceedings are initiated through an eviction application. An eviction application comprises two documents required to bring a court application to evict someone:

- ① The notice of motion; and
- ② The founding affidavit.

The Sheriff of the court will serve an eviction application on the occupier personally or stick it to the door of her dwelling. It is important that the occupier read any notice carefully to see whether it is a warning that she may be evicted at some stage, or a termination of her right to residence, or an eviction notice that formally initiates legal proceedings.

This notice is the beginning not the end of the matter, and requires the occupier to begin acting to defend herself against the potential eviction.

Notice of motion

This is the first document in the eviction application which leads to the institution of eviction proceedings in front of a magistrate.

It is the document in which the owner requests the court to evict the occupier and sets out the form of order she wants from the court .

A notice of motion is accompanied by a “founding affidavit”. When the case goes to court, it is argued by the lawyers or the parties in person. Witnesses will only be called to testify in exceptional circumstances.

Usually, eviction applications are brought on notice of motion.

There is one other way of instituting legal proceedings and that is through a “summons”.

A summons is accompanied by a “particulars of claim” and will ultimately result in a case going to trial and witnesses testifying (giving oral evidence) before the magistrate.

Founding affidavit

This is the document which supports the notice of motion.

It constitutes proof of the owner’s case against the occupier until the occupier disproves it.

If the occupier does not respond to it, the things said in it will generally be taken by the court to be the truth.

Often, there is more to the case than what the founding affidavit sets out.

An affidavit is signed under oath by a particular person called a “deponent” who can confirm the truth of its contents.

Signing an affidavit is a process called “commissioning” which must happen in front of a commissioner of oaths which could be a lawyer, a police officer or the post master at a post office.

All other affidavits we discuss below must follow the same commissioning process.

A template for a notice of motion is attached as Annexure 1.

Step 2

The occupier's defence against an eviction application

The basis of an occupier's legal defence against eviction is contained in two documents:

- ① A notice of intention to oppose; and
- ② An answering affidavit.

Once the occupier has received a notice of motion she needs to act quickly to ensure that these documents are "served" on other parties and "filed" at court.

Notice of intention to oppose

A notice of intention to oppose is a formal legal response to a notice of motion.

It is a short and simple document in which the occupier informs the farm owner and the court that she disagrees with the owner's case and that she opposes the request for her eviction.

The notice of intention to oppose must normally be delivered within five "court days" of the occupier receiving the notice of motion.

It only needs to be signed on the last page.

Unlike an affidavit, it does not require the full commissioning process which includes initials on every page.

Once the occupier has served and filed the notice of intention to oppose she will need to begin working on an answering affidavit.

If the occupier has access to a lawyer she will be able to complete the serving and filing process for you.

Answering affidavit

Fifteen court days after the notice of intention to oppose is served and filed, an answering affidavit must be served and filed.

The answering affidavit is sometimes also called the opposing affidavit.

It is a document written in the name of and signed by the occupier.

It sets out the occupier's defences or arguments against what is said in the founding affidavit.

The contents of an answering affidavit are important because it will act as the factual basis for any legal arguments that the occupier wants to make about termination of her right to residence or defences against eviction.

It is a good idea to respond one by one to each factual claim made in the founding affidavit. The occupier may deny the truth of a claim, accept that it is true or simply take note of something that is said in the founding affidavit.

In applications initiated by notice of motion, if there is a clash between the facts that the occupier sets out (in the answering affidavit) and those which the farm owner sets out (in the founding affidavit) a court is generally required to go with the version of the occupier in the opposing affidavit.

This is because of a legal rule known as the Plascon-Evans rule which will apply unless the allegations or denials made by the occupier are extremely far-fetched.

A template for notice of intention to oppose is attached at Annexure 2.

How to serve and file without a lawyer

- Sign the original documents.
- Make copies of the originals – one for each of the other parties and keep one for yourself.

Serving:

- Take a physical copy of the documents to all the other parties or their attorneys, and have them sign the original document and your copy.
- Make sure you keep one copy and the original.

Filing:

- Take the copy and the original to the Magistrate's Court (civil section) and have the clerk stamp your copy plus put the original in the court file.

Step 3

The land owner's right of reply

Within five court days of receiving the occupier's answering affidavit, the owner has the opportunity to respond in a replying affidavit.

In the replying affidavit, the owner cannot introduce any new arguments or information which is not strictly necessary to respond to the contents of the answering affidavit. If new arguments or information is introduced in the replying affidavit, the occupier can file an affidavit objecting to the new material and/or responding to it.



What are court days?

A court day is different to a “calendar day”. A calendar day is an ordinary day of the week and includes Saturdays, Sundays and public holidays.

A “court day” does not include weekends and public holidays. It also leaves out the first day on which a document was filed or served.

Example: If you receive a notion of motion on Friday 18 March you will have five court days to file a notice of intention to oppose. In counting court days, exclude weekends and public holidays. The 21st of March is Human Rights Day which is a public holiday.

| MARCH | | | | | | |
|---|--|--|--|---|---|---|
| FRIDAY | SATURDAY | SUNDAY | MONDAY | TUESDAY | WEDNESDAY | THURSDAY |
| 18 0 Court days <i>(first day excluded)</i> | 19 0 Court days <i>(weekends excluded)</i> | 20 0 Court days <i>(weekends excluded)</i> | 21 0 Court days <i>(public holiday excluded)</i> | 22 1 Court day | 23 2 Court days | 24 3 Court days |
| 25 4 Court days | 26 4 Court days <i>(weekends excluded)</i> | 27 4 Court days <i>(weekends excluded)</i> | 28 5 Court days | 29 Late apply for condonation | 30 Late apply for condonation | 31 Late apply for condonation |

Late serving and filing: Application for condonation

If for any reason you miss a deadline for a document to be filed or served you will need to include an **application for condonation** to the court to ask it to excuse the violation of a court rule.

An application for condonation will take the same form as an affidavit and should, in as much detail as possible:

- 1 Explain the reasons for the delay;
- 2 Explain why no other party will be negatively affected by the delay;
- 3 Clearly ask the court to excuse the delay; and
- 4 Suggest that it is possible you will succeed in convincing the court of the case that you are making.

Step
4

The hearing: your day in court

There are two parts to the hearing process: written argument and oral argument.

The Magistrates' Court will inform the occupier of the day that a magistrate will hear the application for her eviction in court.

Written argument: heads of argument

To assist the magistrate to understand the occupier's arguments it is best to file heads of argument before the day of the hearing which set out the legal defences that she will raise in court.

These arguments should be filed before the hearing to give the magistrate an opportunity to read and consider them. They should also be served on the other parties to the case.

In other courts, such as the High Court, the Supreme Court of Appeal and the Constitutional Court the occupier will be required to submit written heads of argument and will be given a deadline for her submission.

If the occupier misses this deadline she will have to submit an application for condonation to these courts.

Oral argument in court: your day in court

These are the submissions made in court in response to the magistrate's questions and according to the heads of argument.

Like the written heads of argument, oral argument can be presented by a lawyer or legal representative.

Oral argument can help clarify the occupier's case so that the magistrate can understand it better.

The judgments of the Land Claims Court often say that it is better for occupiers to present more information in court. This is important because it ensures that magistrates are aware of all the relevant circumstances and can make informed decisions.

As explained, the occupier should bring it to the Land Claims Court's attention if the magistrate did not request or receive a probation officer's report.

Step
5

After the hearing: orders and judgments

After the hearing the magistrate will make a decision about whether the eviction application is successful or not.

She will do this by issuing an **order** and written reasons for that order in a judgment. This may not happen immediately and the magistrate may indicate that the judgment is "reserved". This means that the order and the judgment will be made at a later date on which the occupier will be informed to come back to court.

An order is the decision of the magistrate. The magistrate may grant any one of a variety of different orders, for example:

- ① Dismissing the eviction application;
- ② Granting the eviction application and ordering that eviction take place at a specified date;
- ③ Granting the eviction application but subject to conditions of when and how an eviction can take place, including requiring the provision of alternative accommodation; or
- ④ Postponing the proceedings with or without giving another hearing date.

It is also possible that a magistrate provides an order immediately and indicates that written reasons in the form of a judgment will only be provided at a later date.

If a magistrate grants an eviction order

What happens next?

If the eviction is granted, the magistrate will make an order requiring the occupier to leave the property.

According to section 19(3) of ESTA the occupier is entitled to an automatic review in the Land Claims Court if an eviction order is granted against her. **The occupier cannot be evicted until this process has taken place.**

Step
6

Automatic review in the Land Claims Court

To ensure that the rights of occupiers are well protected, ESTA provides for the **automatic review** of all eviction applications.

The purpose of automatic review, according to the Land Claims Court is that “the legislature ... clearly intended” that “the Land Claims Court must scrutinise the records of those cases to ensure that the provisions of ESTA were correctly applied”.

– *Skhosana and others v Roos t/a Roos se Oord and others*, (LCC50/99) [1999]
ZALCC 22 (10 May 1999); 2000 (4) SA 561 (LCC) –

Automatic review is the process whereby the court papers in an eviction application are sent to the Land Claims Court so that the court can decide whether the magistrate has made the correct decision. This requires the court to “scrutinise” the records and magistrate’s decision closely and carefully.

A judge of the Land Claims Court can either confirm the eviction order, set it aside or vary it. This means that even if a magistrate has granted an eviction on automatic review, a judge of the Land Claims Court can overrule this decision completely or confirm it subject to new conditions and requirements.



Recently, in *Snyders v De Jager*, the Constitutional Court decided that these “review” powers are “as wide as any powers that a court usually has in deciding an appeal” and are therefore “not limited”.

– *Snyders and Others v De Jager and Others (Appeal) (CCT186/15) [2016] ZACC 55 (21 December 2016)* –

In the Land Claims Court the occupier will need to provide the judge with written heads of argument and oral arguments. The judge’s attention should be drawn to problems that the occupier may have with the way in which the magistrate came to her decision and any factors or circumstances that ESTA required her to deal with more comprehensively.

A judge of the Land Claims Court should always provide written reasons in the form of a judgment for her decision on automatic review of a Magistrates’ Court decision.

Step 7

Further appeal to the Supreme Court of Appeal or the Constitutional Court

Once the Land Claims Court has completed an “automatic review”, if it has decided to confirm the eviction order of a Magistrates’ Court, the occupier will be able to apply for leave to appeal in the Supreme Court of Appeal or the Constitutional Court.

Court rules and procedures

Court rules and procedures can be confusing and technical. The assistance of a lawyer can be useful in ensuring compliance with these rules and procedures. The occupier can also ask the registrar of a particular court for advice on how that court’s process works.

The occupier should be aware that different courts have different rules. The procedure to be followed in the Magistrates’ Court will be different to that in the Land Claims Court. The Supreme Court of Appeal and Constitutional Court also have their own rules and procedures to be followed.

If court procedures are not followed then a magistrate or judge might sometimes throw the case out of court.

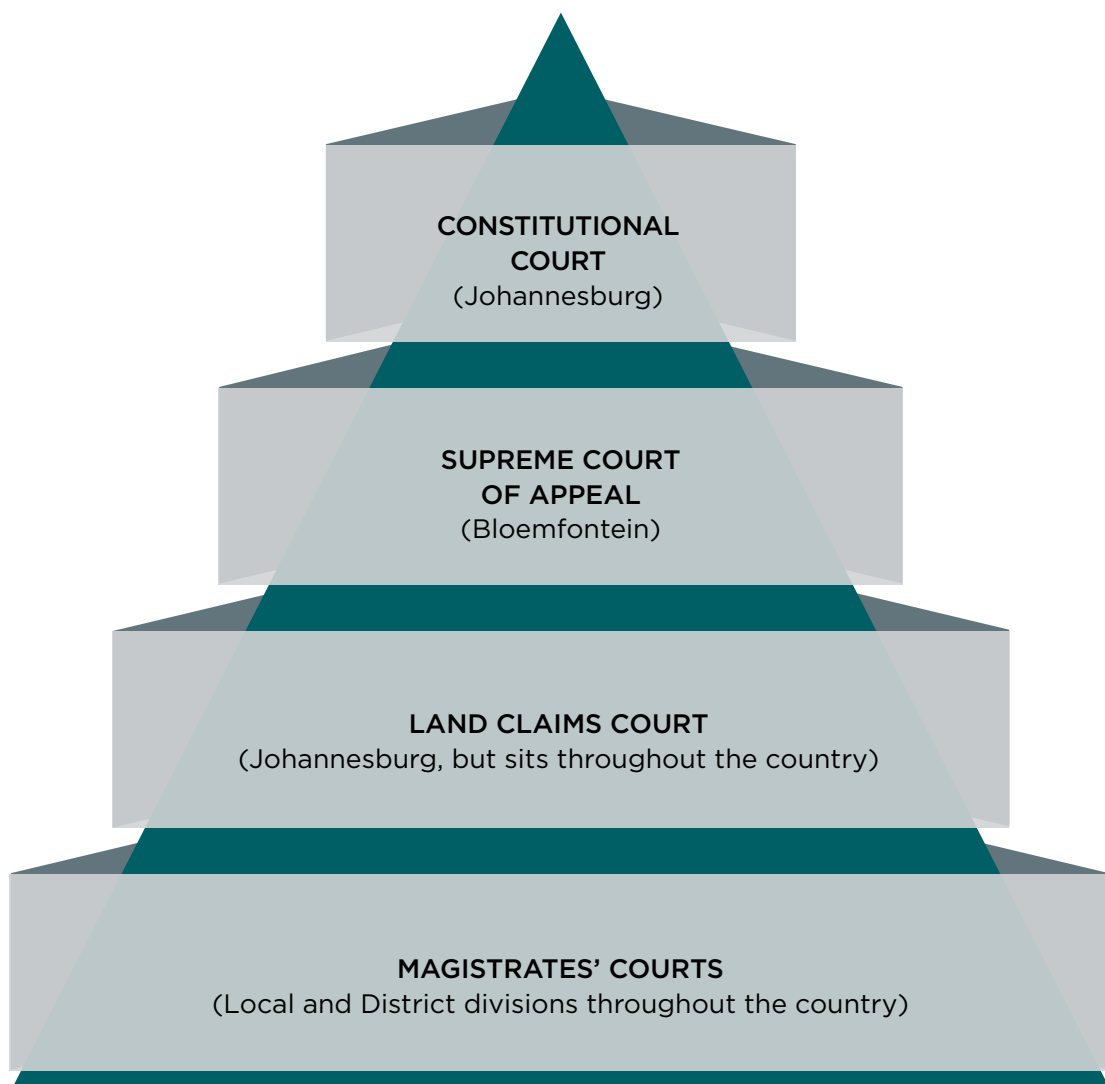
The higher up the hierarchy of courts, the more advisable legal assistance becomes.

Unlike the automatic review process, which does not need to be initiated by the occupier and is a legal requirement in all cases, an appeal to the Supreme Court of Appeal or the Constitutional Court will only be undertaken if proactive steps are taken in the form of an application for leave to appeal. This is the occupier's method of challenging the eviction order.

If the occupier wishes to appeal a decision of the Land Claims Court the first step is to apply to the Land Claims Court itself for leave to appeal against a judgment of a judge of that court.

If this application is denied she can then apply directly to the Supreme Court of Appeal or to the Constitutional Court for leave to appeal against a Land Claims Court decision. This application for leave to appeal will only be set down for oral argument with the permission of the court that the occupier applies to if the court decides that it is in the interests of justice to hear the appeal and there are reasonable prospects of winning on appeal. There is not automatic right to have these appeals heard, unlike in the case of automatic review to the Land Claims Court.

The Constitutional Court has indicated that in most cases the occupier should apply to the Supreme Court of Appeal first before approaching the Constitutional Court. This is in keeping with the hierarchy of South African courts which is illustrated below.



Step
8

Physical eviction from the property

If the Land Claims Court confirms an eviction order against the occupier and she is not granted leave to appeal in the Supreme Court of Appeal and the Constitutional Court, then all potential legal options to resist eviction will have been exhausted.

Nevertheless, even with an eviction order, the owner cannot require occupiers to be removed from the property which they are occupying without a **warrant of execution**.

What is a warrant of execution?

A warrant of execution (sometimes called a “writ of execution”) is a court document which an owner will take to the clerk of the Magistrates’ Court to sign. The document authorises the Sheriff to physically remove the occupier, their family and their belongings from the property.

The owner may not simply physically remove an occupier from the property or get private security or police to do so. All lawful evictions must take place in a dignified, humane manner that shows care, concern and respect for the occupier and her family.

If the occupier does not leave the property by the date set in the eviction order, and if there is no appeal or review, the owner is entitled to go back to the court and obtain a warrant of execution against the occupier.

Once the owner has obtained a warrant of execution, a Sheriff will present it to the occupier on the property and may then lawfully proceed to physically remove her from the property.

Who is the Sheriff?

A Sheriff or Deputy Sheriff is an officer of a South African Court tasked with serving and executing documents issued by courts including court orders.

All Sheriffs and Deputy Sheriffs must carry a valid Identification Card issued by the South African Board for Sheriffs while on duty and must be able to produce it on request.

All Sheriffs must at all times treat you with dignity, care, respect and concern.



CONTACT DETAILS









Organisations that research and advocate for farm workers' rights

The Commercial, Stevedoring, Agricultural and Allied Workers Union (CSAAWU)






CSAAWU is a registered trade union. It was founded to protect and advance the interests of farm workers and labourers in the Western Cape. CSAAWU is active on farms and in agriculture related industries in the Boland area in the Western Cape. Its members are among the most disadvantaged and underrepresented workers in the country, including manual labourers, casual workers and factory workers. CSAAWU organises strikes and protest action and assists its members in acquiring legal protection against evictions and abuses of their rights.

This guide was developed in consultation with CSAAWU.

-  4th floor, Regkam Building Corner Vootrekker and Kort Street, Belville, Cape Town.
-  Trevor Christians, CSAAWU General Secretary: 083 546 2911
-  csaawutav@gmail.com
-  <https://twitter.com/csaawu>
-  <https://www.facebook.com/vivacsaawu/>
-  <https://csaawu.wordpress.com/>







Women on Farms Project

The Women on Farms Project strives to strengthen women who live and work on farms to claim their rights and fulfil their needs. It combats issues of abuse and vulnerability experienced by women in the workplace, home and farming community and ensures their leading role in accessing services and securing employment, land and housing. It conducts socio-economic rights-based and gender education, advocacy and lobbying, case work and support for the building of social movements of farm women. It promotes self-reliance, accountability and sustainability of organisations so that women can organise themselves, speak for themselves and mobilise resources to support their needs and aspirations.

-  32 Four Oaks Building c/o Bird & Molteno Streets, Stellenbosch, 7600, Western Cape, South Africa.
-  021 887 2960/1/2
-  wfp@wfp.org.za
-  <https://www.facebook.com/Women-on-Farms-Project-118004724902439/>
-  <http://www.wfp.org.za/>


Institute for Poverty, Land and Agrarian Studies (PLAAS)

PLAAS conducts research, policy engagement and training on the dynamics of chronic poverty and structural inequality in Southern Africa with a particular emphasis on restructuring and contesting land holding and agro-food systems. Its focus is on the analysis of marginalised livelihoods in Southern Africa, especially of subsistence and smallholder farmers and farm workers, of coastal and inland artisanal fisheries and fishing communities and of informal self-employment in rural and urban areas.

-  2nd Floor, Main Hall, University of the Western Cape, Robert Sobukwe Road, Bellville 7535, Cape Town, South Africa.
-  021 959 3733
-  info@plaas.org.za
-  <https://twitter.com/plaasuwc>
-  <https://www.facebook.com/PLAASuwc/>
-  <http://www.plaas.org.za/>

Phuhlisani Solutions







Phuhlisani Solutions works with other organisations to provide comprehensive services and support for land reform and integrated rural development in South Africa, predominantly in the Northern Cape, Eastern Cape and Western Cape. It also produces research publications on land reform.

-  85 Durban Rd, Mowbray, Cape Town, 7700
-  021 685 1118
-  david@ phuhlisani.co.za
-  <https://twitter.com/PhuhlisaniNPC>
-  <http://www.phuhlisani.org.za/default.asp>

Human rights organisations providing legal assistance, advice and representation






Socio-Economic Rights Institute of Social South Africa

The Socio-Economic Rights Institute of Social South Africa (SERI) is a human rights organisation based in Johannesburg. It operates throughout South Africa and presently has clients in seven of nine provinces. SERI specialises in litigation, research and advocacy related to land, housing, basic services, protest and workers' rights. SERI works closely with CSAAWU and has represented farm workers in a wide range of cases including evictions and dismissals.

-  6th Floor Aspern House, 54 De Korte Street, Braamfontein 2001, Johannesburg, South Africa.
-  011 356 5860
-  sanele@seri-sa.org
-  https://twitter.com/SERI_RightsSA
-  <https://www.facebook.com/SocioEconomicRightsInstitute>
-  <http://seri-sa.org/>


Legal Resources Centre

The Legal Resources Centre (LRC) has offices in Cape Town, Durban, Johannesburg and Grahamstown. It has clients from all over the country and deals with a very wide range of human rights issues including housing and land reform.

-  15th and 16th Floor, Bram Fischer Towers, 20 Albert Street, Mashalltown, Johannesburg.
-  011 836 9831
-  https://twitter.com/LRC_SouthAfrica
-  <https://www.facebook.com/LRCSouthAfrica/>
-  <http://lrc.org.za>

Lawyers for Human Rights

Lawyers for Human Rights (LHR) has offices in Cape Town, Johannesburg, Pretoria, Durban, Upington and Musina. LHR has clients from all over the country and deals with a wide range of human rights issues including social and economic rights. It operates both a “Land and Housing Unit” and a “Security of Farm Workers Project”.

 Kutlwanong Democracy Centre, 357 Visagie Street, Pretoria 0002.

 +27 12 320 2943


 https://twitter.com/LHR_SA


 <https://www.facebook.com/LawyersForHumanRights/>

 <http://www.lhr.org.za/>

University Law Clinics


Stellenbosch Legal Aid Clinic


 44 Banhoek Road, Stellenbosch, Cape Town, South Africa

 0218083600

 rhkadmin@sun.ac.za

University of Cape Town Legal Aid Clinic


 Kramer Law School Building, Middle Campus, University of Cape Town, 1 Stanley Road, Rondebosch, 7701.


 0216503775

 uctlawclinic@uct.ac.za

University of the Western Cape Law Clinic

 University of the Western Cape, Private Bag X17, Bellville, South Africa, 7535

 021 959 3291

 amrhoda@uwc.ac.za

Association for Rural Advancement

AFRA is a land rights advocacy non-governmental organisation (NGO) working to support rural people, with a focus on farm dwellers. It works intensively with communities in and around the uMgungundlovu District Municipality in KwaZulu-Natal, providing support and advice. AFRA can assist in ensuring that farmworkers within KwaZulu-Natal obtain legal advice and assistance when facing evictions in terms of ESTA. Over nearly 40 years AFRA has also produced a wealth of research on rural land and development issues which are accessible on its website or by following this link <https://sites.google.com/site/afralibrary/research-reports>.







-  123 Jabu Ndlovu (Loop) Street, Pietermaritzburg, 3201, KwaZulu-Natal, South Africa.
-  +27 33 345 7607 / +27 33 345 8318
-  <https://twitter.com/AFRAKZN>
-  https://www.facebook.com/KZNAFRA/?hc_ref=SEARCH
-  <https://afra.co.za/>

Government departments and state entities responsible for land and housing






National Departments

The Department of Rural Development and Land Reform has established the Land Rights Management Facility which provides legal representation and mediation services to farmworkers. It also runs a Call Centre or “Eviction Hotline” which is designed to increase access to these legal representation and mediation services and to allow people to report any land rights violation, including illegal evictions.

National Department of Rural Development and Land Reform





-  140 Pretorius St, Pretoria, 0001
-  0800 007 095 (Toll Free Eviction Line) or 0123387000
-  queries@drdlr.gov.za
-  https://twitter.com/drdlr_online
-  <https://www.facebook.com/Department-of-Rural-Development-and-Land-Reform-279632028822386/>
-  <http://www.ruraldevelopment.gov.za/>

National Department of Human Settlements





-  Govan Mbeki House, 240 Justice Mahomed Street, Sunnyside, Pretoria, 0002
-  0800146873
- Fraud & Corruption:** 0800701701
-  info@dhs.gov.za
-  <https://twitter.com/humansettlement>
- <https://www.facebook.com/pages/Department-of-Human-Settlements/232184616874804>
-  <http://www.dhs.gov.za>

There are provincial departments that deal with issues relating to rural development, land reform and human settlements in each of South Africa’s nine provinces. To get contact details for provincial departments please use the national departments details provided above.

Western Cape Department of Rural Development and Land Reform

-  120 Plein Street, Floor 1 Room 103-107, Cape Town, 8000
-  0214610815
-  queries@drdlr.gov.za
-  <https://www.westerncape.gov.za/facility/department-rural-development-and-land-reform-provincial-office>







Western Cape Department of Human Settlements

-  27 Wale Street, Cape Town, 8001
-  021 483 3911
-  Human.Settlements@westerncape.gov.za
-  <https://www.westerncape.gov.za/dept/human-settlements/contact-us>






Chapter 9 Institutions

There are provincial offices for the South African Human Rights Commission, the Public Protector and the Commission for Gender Equality. To get contact details for provincial department's please use the national departments details provided below.

The South African Human Rights Commission:

-  Braampark Forum 3, 33 Hoofd Street, Braamfontein
-  011 877 3600
-  info@sahrc.org.za
-  <https://twitter.com/SAHRCommission>
-  <https://www.facebook.com/SAHumanRightsCommission>
-  www.sahrc.org.za

The Public Protector:

-  0800 11 20 40 or 012 366 7143
-  customerservice@pprotect.org
-  <https://twitter.com/PublicProtector>
-  <https://www.facebook.com/Public-Protector-South-Africa-151917688203257/>
-  <http://www.pprotect.org/index.asp>

The Commission for Gender Equality:



2 Kotze St, Johannesburg, 2001



0800 007 709 or 0800 204 968 or 011 403 7182



<https://twitter.com/cgeinfo>



<https://www.facebook.com/Gender-Commission-of-South-Africa-223546294482972/>



<http://www.cge.org.za/>

Land Claims court and Magistrates' Courts

Land Claims Court

The Land Claims Court was established in 1996. It specialises in dealing with disputes that arise from laws that underpin South Africa's land reform initiative. These include the Restitution of Land Rights Act, 1994, the Land Reform (Labour Tenants) Act, 1996 and the Extension of Security of Tenure Act, 1997. The Land Claims Court has the same status as any High Court.

Eviction cases in terms of ESTA are heard first in Magistrates Courts but, as this guide details, must be confirmed on automatic review in the Land Claims Court.

The Land Claims Court can and does hold hearings in any part of the country if it thinks this will make it more accessible and it can conduct its proceedings in an informal way if this is appropriate. Its main seat is in Randburg, Johannesburg, South Africa.



Randburg Mall, Kent Ave & Hill Street, Randburg, 2194



011 781 2291



SCindi@judiciary.org.za



<http://www.justice.gov.za/lcc/>

Magistrates Courts

According to the website of the Department of Justice and Constitutional Development there are over 700 Magistrates Courts throughout South Africa. For a full list of Magistrates' Courts, see http://www.justice.gov.za/contact/lowercourts_full.html or contact the Department of Justice and Constitutional Development



329 Pretorius Street (c/o Pretorius and Sisulu Streets), Pretoria



012 315 1111/1004/1002



servicedelivery@justice.gov.za



https://twitter.com/DOJCD_ZA



<https://www.facebook.com/DoJCD>



http://www.justice.gov.za/contact/contact_list.html



ANNEXURES

ANNEXURE 1: NOTICE OF INTENTION TO OPPOSE

ANNEXURE 2: NOTICE OF MOTION

ANNEXURE 1:

**IN THE MAGISTRATES COURT FOR THE MAGISTERIAL
DISTRICT OF JOHANNESBURG**

(HELD AT ROODEPOORT)

CASE NO: 1234/17

(INSERT CASE NO)

In the matter between:

FARM OWNER

Applicant

(INSERT NAME OF APPLICANT IN PLACE OF "FARM OWNER")

and

JOHN NGUBANE

First Respondent

*(INSERT NAME OF RESPONDENT OR PERSON BEING EVICTED IN PLACE OF "JOHN NGUBANE"
. IF THERE IS MORE THAN ONE PERSON CITED ON THE NOM THEY SHOULD ALSO BE LISTED
AS RESPONDENTS)*

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

(INSERT NAME OF RELEVANT METROPOLITAN MUNICIPALITY)

**PROVINCIAL OFFICE OF THE
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM**

Third Respondent

NOTICE OF INTENTION TO DEFEND

PLEASE TAKE NOTICE THAT and application will be made by the above-named applicant on _____ day of _____ 2017 at 09:00 am or as soon thereafter as Counsel may be heard for an order in the following terms:

- a) That the respondent be evicted from the property ERF 15 Alsef Agricultural Holdings, Roodeport Township, commonly known as 15 Johan Road, Alsef Agricultural Holdings, Roodepoort;
- b) Costs of the application only in the event of opposition;
- c) Further and/or alternative relief.

TAKE FURTHER NOTICE THAT the founding affidavit of John Odendaal will be used in support thereof.

TAKE FURTHER NOTICE THAT the applicant appoints Neville Attorneys at its attorneys of record with the address below for service of all notices and correspondences in relation to this application.

DATED AT _____ ON THIS THE _____ DAY OF _____ 2017

(INSERT INFORMATION OF LEGAL REPRESENTATIVES OF THE RESPONDENTS. FOR EXAMPLE:)

SERI LAW CLINIC

First respondent's Attorneys
54 De Korte Street
Braamfontein
2001

TEL: 011 356 5860

FAX: 011 339 5950

TO: **THE CLERK OF THE COURT**
ROODEPOORT MAGISTRATES COURT
(INSERT INFORMATION OF THE COURT)

AND TO: **JOHN NGUBANE**
First Respondent
15 Johan Road,
Alsef Agricultural Holdings,
Roodepoort.

AND TO: **THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**
Second Respondent
Metropolitan Centre
158 Loveday Street, Braamfontein
(INSERT INFORMATION OF CITY)

AND TO: **PROVINCIAL OFFICE OF THE**
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM
Third Respondent
184 Jeff Masemola Street
Pretoria
0001
(INSERT INFORMATION OF PROVINCIAL DEPARTMENT)

ANNEXURE 2:

**IN THE MAGISTRATES COURT FOR THE MAGISTERIAL
DISTRICT OF JOHANNESBURG**

(HELD AT ROODEPOORT)

CASE NO: 1234/17

(INSERT CASE NO)

In the matter between:

FARM OWNER

Applicant

(INSERT NAME OF APPLICANT IN PLACE OF "FARM OWNER")

and

JOHN NGUBANE

First Respondent

*(INSERT NAME OF RESPONDENT OR PERSON BEING EVICTED IN PLACE OF "JOHN NGUBANE"
. IF THERE IS MORE THAN ONE PERSON CITED ON THE NOM THEY SHOULD ALSO BE LISTED
AS RESPONDENTS)*

THE CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

Second Respondent

(INSERT NAME OF RELEVANT METROPOLITAN MUNICIPALITY)

**PROVINCIAL OFFICE OF THE
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM**

Third Respondent

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT and application will be made by the above-named applicant on _____ day of _____ 2017 at 09:00 am or as soon thereafter as Counsel may be heard for an order in the following terms:

- a) That the respondent be evicted from the property ERF 15 Alsef Agricultural Holdings, Roodeport Township, commonly known as 15 Johan Road, Alsef Agricultural Holdings, Roodepoort;
- b) Costs of the application only in the event of opposition;
- c) Further and/or alternative relief.

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TAKE FURTHER NOTICE THAT the applicant appoints Neville Attorneys at its attorneys of record with the address below for service of all notices and correspondences in relation to this application.

DATED AT _____ ON THIS THE _____ DAY OF _____ 2017

NEVILLE ATTORNEYS

Attorneys for the applicant

80 Exner Street

ROODEPORT

email: Neville@nevilleattorneys.co.za

Tel: (011) 025 5991

Fax: 086 652 8771

TO: **THE CLERK OF THE COURT**
ROODEPOORT MAGISTRATES COURT

AND TO: **JOHN NGUBANE**
First Respondent
15 Johan Road,
Alsef Agricultural Holdings,
Roodepoort.

AND TO: **THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY**
Second Respondent
Metropolitan Centre
158 Loveday Street, Braamfontein

AND TO: **PROVINCIAL OFFICE OF THE**
DEPARTMENT OF RURAL DEVELOPMENT
AND LAND REFORM
Third Respondent
184 Jeff Masemola Street
Pretoria
0001

For more information about this guide or to order copies of the guide visit SERI's website <http://seri-sa.org/> or contact using the following platforms.

Address:

6th Floor Aspern House,
54 De Korte Street,
Braamfontein 2001,
Johannesburg,
South Africa.

Telephone:

011 356 5860

Email:

timfish@seri-sa.org

Twitter:

https://twitter.com/SERI_RightsSA

Facebook:

<https://www.facebook.com/SocioEconomicRightsInstitute>

A product of partnership between the Commercial Stevedoring and Allied Workers Union and the Socio-Economic Rights Institute of South Africa.

Accurate as of 30 June 2017

SERI
socio-economic rights institute
of south africa

