

An Eviction, but may Different Considerations Apply in Future Cases? A Comment on *Pieterse v Drumearn (Pty) Ltd*

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Abstract

The Extension of Security of Tenure Act 62 of 1997 (ESTA) regulates the eviction of vulnerable occupiers from land in a fair manner. It also recognises the right of owners to apply to court for an eviction order in appropriate circumstances. However, ESTA does not set out procedural or substantive requirements when relocations are at stake. Instead, the practices and approaches have been developed by way of case law. Recently, the Land Claims Court (LCC) in *Pieterse v Drumearn (Pty) Ltd* had to decide whether a relocation of a long-term occupier from one house to another, which is situated on land belonging to two different entities, but with distinct cadastral descriptions, constituted an eviction under ESTA. The LCC found that a relocation from one land to the other was an eviction. Although the case note accepts that an eviction or a relocation would technically depend on the cadastral description of the property involved, it is argued that it should not be the only determining factor. The court should also consider who the registered owner of the land is to allow a relocation where two registered parcels of land belong to the same person or entity.

Keywords: Cadastral description; ESTA; eviction; land; long-term occupier; relocation; shareholding of land



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Introduction

The Extension of Security of Tenure Act 62 of 1997 (ESTA) regulates the eviction of vulnerable occupiers from land in a fair manner.¹ ESTA also recognises the right of owners to apply to court for an eviction order in appropriate circumstances.² However, ESTA does not set out procedural or substantive requirements when relocations are at stake. Instead, the practices and approaches have been developed by way of case law. Recently, the Land Claims Court (LCC) in *Pieterse v Drumearn (Pty) Ltd (Pieterse)*³ had to decide whether a relocation of a long-term occupier from one house to another, which is situated on land belonging to two different entities, but with distinct cadastral descriptions, constituted an eviction under ESTA. The LCC found that a relocation from one land to the other was indeed an eviction.⁴

Against this background, the purpose of this case note is to comment on the *Pieterse* judgment and propose what the courts should consider in future cases. Following this introduction is part two, which provides a contextual background on the issues relating to the case of *Pieterse*. Part three sets out the facts in *Pieterse* and the judgment follows in part four. A commentary on the *Pieterse* judgment is provided in part five and part six concludes the case note.

Contextual background on issues relating to the case of *Pieterse*

The definition of 'land'

Land is not defined in the ESTA.⁵ The question of whether a proposed relocation will amount to an eviction will depend on the interpretation of 'land' as mentioned in the definition of eviction in section 1 of ESTA.⁶ Section 1 defines 'eviction' as an act of depriving 'a person against his or her will of residence on land or the use of land or access to water which is linked to a right of residence'. The definition of eviction in section 1 of ESTA indicates that the basis of the right of residence is 'land' and not a

1 Preamble of the Extension of Security of Tenure Act 62 of 1997. See further T Scheepers and W du Plessis, 'Extension of Security of Tenure Act: A Bone of Contention' (1998) 61 THRHR 473 476–478; JM Pienaar, 'Farm Workers: Extending Security of Tenure in terms of Recent Legislation' (1998) 13 SAPL 423 431–433; R Keightley, 'The Impact of the Extension of Security of Tenure Act on an Owner's Right to Vindicate Immovable Property' (1999) 15 SAJHR 277 277–307; D Carey Miller and A Pope, *Land Title in South Africa* (Juta 2000) 492–516; JM Pienaar *Land Reform* (Juta 2014) 400–409; G Muller and others *The Law of Property Silberberg and Schoeman's* (6th edn, LexisNexis 2019) 707–713.

2 Preamble of ESTA; sections 9, 10 and 11 of ESTA. See further Scheepers and Du Plessis (n 1) 476–478; Pienaar (n 1) 431–433; Pienaar 2014 (n 1) 400–409; Keightley (n 1) 277–307; Muller and others (n 1) 707–713.

3 *Pieterse v Drumearn (Pty) Ltd* (LCC 135/2022; 3/2021) [2023] ZALCC 13.

4 *ibid* para 1.

5 *Dlamini v Joosten* 2006 (3) SA 342 (SCA) para 14. See further *Chagi v Singisi Forest Products (Pty) Ltd* [2007] SCA 63 (RSA) para 19; *Pieterse* (n 3) para 27.

6 *Chagi* (n 5) para 9; *Pieterse* (n 3) paras 23–29.

dwelling.⁷ The court in *Dlamini v Joosten*⁸ has interpreted ‘land’ as the land registered in the name of the owner because ESTA regulates the relationship between an occupier of land and an owner of land.⁹ This means that ‘land’ entails the registered unit of land as demarcated in the Deeds Registry and described on the title deed.¹⁰

The distinction between a relocation and an eviction in ESTA

A relocation is not defined in the ESTA. The definition of a relocation as developed in case law under ESTA is confined to the movement of occupiers from one house to another on the same land.¹¹ This differs from the definition of an eviction under ESTA, which is confined to the movement of occupiers from one house to another on a different piece of land.¹² When occupiers are relocated from one area to another, the right of residence is not terminated. In contrast, the right of residence is (lawfully) terminated when an eviction is granted.¹³ Furthermore, there are no specific requirements set out for relocations under ESTA, while there are substantive and procedural requirements that must be complied with for the eviction of occupiers.¹⁴ In eviction applications, the whole list of factors relating to suitable alternative accommodation must be considered. On the other hand, in relocations, these factors are not considered. This means that an eviction may be affected by the list of factors, whereas relocations would not be similarly affected.¹⁵

7 *Chagi* (n 5) para 9. See also C Pienaar, ‘Farm Dwellers: Eviction Versus Relocation’ (2023) 13 Stockfarm 67.

8 *Dlamini* (n 5).

9 *ibid* para 14. See further *Chagi* (n 5) para 19; *Pieterse* (n 3) para 29.

10 *Dlamini* (n 5) para 14; *Chagi* (n 5) para 19; *Pieterse* (n 3) para 29.

11 *Pharo’s Properties CC v Kuilders* 2001 (2) SA 1180 (LCC) para 13; *Pretorius v Beginsel* (LCC94R/01) [2001] ZALCC 52 para 2; *Drumearn (Pty) Ltd v Wagner* 2002 (6) SA 500 (LCC) 504F; *Chagi* (n 5) paras 19–20; *Mjoli v Greys Pass Farm (Pty) Ltd* [2019] ZALCC 25 para 11; *Oranje v Rouxlandia Investments (Pty) Ltd* 2019 (3) SA 108 (SCA) para 10; *Boplaas Landgoed (PTY) Ltd v Jonkies* (LCC 37/2022) [2022] ZALCC 38 para 12; *Pieterse* (n 3) para 32; *Du Plessis v Kriel NO* (LCC88/2022) [2023] ZALCC 43 paras 33 and 70. See further Pienaar 2014 (n 1) 401, 436 and 700.

12 *Kuilders* (n 11) para 13; *Wagner* (n 11) 504F; *Chagi* (n 5) paras 19–20; *Mjoli* (n 11) para 11; *Oranje* (n 11) para 10; *Jonkies* (n 11) para 12; *Pieterse* (n 3) para 32; *Du Plessis* (n 11) 70.

13 Section 8 of ESTA. Section 1 defines ‘terminate’ as the withdrawal of consent to a person to occupy or use land. The question of whether s 8 applies to relocations was heard in *Du Plessis* (n 11). In this case, the majority of the court found that s 8 was applicable not only to terminations of rights of residence, but also to the termination of rights of residence of a house on land even where the right of residence on the land was not being terminated. The minority judgment found that a relocation was not an eviction and therefore not a termination of rights of residence. I am of the view that the majority judgment was incorrect, and the interpretation adopted by the minority should be followed. This is because the interpretation of s 8 advanced by the minority better promotes the spirit, purport, and objectives of ESTA.

14 Sections 9, 10 and 11 of ESTA. See further *Chagi* (n 5) para 20; Pienaar 2014 (n 1) 400; Pienaar (n 7) 67.

15 Section 1 of ESTA defines ‘suitable alternative accommodation’ as the ‘alternative accommodation which is safe and overall not less favourable than the occupiers’ previous situation, having regard to

The rights protected by ESTA and affected by a relocation or an eviction

ESTA is legislation enacted to give effect to the constitutional right to security of tenure contained in s 25(6) of the Constitution of the Republic of South Africa, 1996 (Constitution). Section 25(6) provides that a ‘person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.’ Section 6(2)(a) of ESTA affords security of tenure as envisaged in s 25(6) of the Constitution to occupiers who reside on land they do not own.¹⁶

The right to security of tenure is closely related to several other fundamental rights contained in the Constitution or ESTA. As a result, relocations and evictions do not only negatively affect the right to security of tenure, but could also affect other rights such as the right to human dignity.¹⁷ In *Daniels v Scribante*,¹⁸ the Constitutional Court emphasised the link between the right to security of tenure and human dignity in the following terms: ‘[a]n indispensable pivot [of the] right [to security of tenure] is the right to human dignity. There can be no true security of tenure under conditions devoid of human dignity.’¹⁹ It also stressed that when one takes away ‘the home that is the fulcrum of security of tenure, the way of life of an occupier will be dislocated. And that will offend her or his human dignity.’ ESTA therefore intends to protect the rights of occupiers against any unlawful interference.

The facts in *Pieterse*

The appellant was Mrs Pieterse, a 61-year-old pensioner.²⁰ She acquired the status of being a long-term occupier as espoused in s 8(4) of ESTA and lived on the farm Blauwkrans for 21 years.²¹ Mrs Pieterse and her late husband were employed by

the residential accommodation and land for agricultural use available to them prior to eviction, and suitable having regard to –
 the reasonable needs and requirements of all of the occupiers in the household in question for residential accommodation, land for agricultural use, and services;
 their joint earning abilities; and
 the need to reside in proximity to opportunities for employment or other economic activities if they intend to be economically active.’

16 In terms of section 6(1) of ESTA, an occupier has the right to reside on and use land belonging to another and to have access to services that have been agreed upon (whether expressly or tacitly) with the owner or person in charge.

17 *Oranje* (n 11) paras 17–18.

18 2017 (4) SA 341 (CC).

19 *Daniels* (n 18) para 2.

20 *Pieterse* (n 3) para 5.

21 *ibid* para 6. Having lived on the farm for 10 years, and reached the age of 60, Mrs Pieterse had obtained the status of long-term occupier as espoused in s 8(4) of ESTA, whose right of residence may not be terminated unless she had committed a material breach as contemplated in section 10(1)(a), (b) or (c). Section 8(4) read with sections 6(3) and 10(1)(a), (b) or (c) provides that the right of residence of an occupier who has resided on the land belonging to another for 10 years and who

Drumearn (Pty) Ltd as production manager and domestic worker for James Raubown-Viljoen and his wife.²² She lived in house No. 4 on Blauwkrans farm owned by Drumearn (Pty) Ltd.²³ The Pieterse family were granted the right of occupation of the house as part of Mr Pieterse's contract of employment as a production manager.²⁴ In 2003, Mrs Pieterse was diagnosed with acute arthritis in her hips and relieved from her duties due to this disability.²⁵ In July 2016, Mr Pieterse was diagnosed with lung cancer and he passed away in August 2016.²⁶

The first respondent was Drumearn (Pty) Ltd, a company with registration number 1962/00367/07 and with registration address at Helderfontein farm, Elgin, Grabouw.²⁷ Drumearn was the registered owner of Blauwkrans farm described as portion 84 of farm Palmiet River No. 319, Division of Caledon.²⁸ The second respondent was Helderfontein Farm (Pty) Ltd, a company with registration number 1965/0017817/07 and with registration address at Helderfontein farm, Elgin, Grabouw.²⁹ Helderfontein Farm was the registered owner of Helderfontein farm described as portion 64 of farm Palmiet River No. 319, Division of Caledon.³⁰ The third respondent was Brandon Craig Myburgh. He was employed by Drumearn as its operational farm manager and was the person in charge of the first respondent.³¹

In October 2016, the third respondent convened a meeting with Mrs Pieterse and her daughter to discuss their occupation of the house.³² She was informed that the house was required for the accommodation of a new production manager that was employed to replace Mr Pieterse.³³ Mrs Pieterse and her daughter were therefore supposed to look for alternative accommodation.³⁴ Several meetings were convened to establish Mrs

has reached the age of 60 years may not be terminated, unless that occupier intentionally and unlawfully harmed other occupiers, damaged the property or allowed unauthorised persons to erect a dwelling on the land, committed a material breach of contract or a material breach of the relationship between him or herself and the owner or person in charge. The same provisions apply to an occupier who is an employee or former employee of the owner or person in charge and who, as a result of ill health, injury or disability, is unable to supply labour to the owner or person in charge.

22 *Pieterse* (n 3) paras 5 and 11.

23 *ibid* para 5.

24 *ibid* para 5.

25 *ibid* para 11.

26 *ibid*.

27 *ibid* para 7.

28 *ibid*.

29 *ibid* para 8.

30 *ibid*.

31 *ibid* para 9. A 'person in charge' is defined in section 1 of ESTA as a 'person who at the time of the relevant act, omission or conduct had or has legal authority to give consent to a person to reside on the land in question.'

32 *Pieterse* (n 3) para 12.

33 *ibid*.

34 *ibid*.

Pieterse's progress in finding alternative accommodation.³⁵ There was no progress in finding alternative accommodation and Mrs Pieterse refused to leave the house.³⁶ A notice of termination of the right of residence in terms of s 8(5) of ESTA was served on Mrs Pieterse.³⁷ In May 2017, she was informed that she could stay in the house until July 2017 and thereafter would be moved to Helderfontein farm for the remainder period of her year notice ending in September 2017.³⁸ Mrs Pieterse refused to move voluntarily to Helderfontein farm and then negotiations collapsed.³⁹

The respondents launched an application at the Magistrate's Court in Grabouw for a mandatory interdict in terms of s 19(1)(b) of ESTA to relocate Mrs Pieterse and her daughter from a manager's house in Blauwkrans farm to a labourer's house on Helderfontein farm.⁴⁰ The respondents argued that although the farms were owned by different companies, the shareholding in both companies was the same, therefore both farms were owned by one shareholder.⁴¹ Since the shareholder was farming the farms as a single unit, the respondents argued that the farms must be treated as a single unit for the purpose of the relocation.⁴² Furthermore, the respondents submitted that Mrs Pieterse may be relocated because her human dignity would not be impaired by the relocation.⁴³

The relocation order was granted.⁴⁴ In granting the order, the court *a quo* held that the farms were owned by the same shareholder even though the registered owners were different entities and therefore the relocation was not an eviction.⁴⁵ The court *a quo* further held that the relocation would not impair Mrs Pieterse's dignity and her entitlement to the house was contractually linked to her deceased husband's employment as a manager, which employment was terminated upon his death.⁴⁶ On appeal, the LCC had to consider whether the relocation of a long-term occupier from one house to another, which is situated on land belonging to a different entity, but with distinct cadastral descriptions, constituted an eviction as contemplated by ESTA.⁴⁷ The respondents contended that a relocation did not constitute an eviction and this

35 *Pieterse* (n 3) para 12.

36 *ibid.*

37 *ibid.* In terms of s 8(5) of ESTA, the spouse of an occupier, as in this case, who is 60 years and older and has lived on the land for more than 10 years, or of an employee who cannot provide labour because of ill health, is allowed to remain on the land and the right of residence can only be terminated on 12 calendar months' written notice, unless the spouse has committed a material breach under s 10(1) of ESTA.

38 *Pieterse* (n 3) para 12.

39 *ibid* para 13.

40 *ibid* paras 14 and 17.

41 *ibid* para 18.

42 *Pieterse* (n 3) para 18.

43 *ibid.*

44 *ibid* para 2.

45 *ibid* paras 3 and 19.

46 *ibid* para 3.

47 *ibid* paras 1 and 4.

position should be extended to include shareholding of land (in this case, land owned by two different entities, but with the same shareholders).⁴⁸

The judgment in *Pieterse*

The LCC confirmed that the term ‘land’ means land registered in the name of the owner because ESTA regulates the relationship between an occupier’s right of residence and an owner’s right to property in terms of the same land.⁴⁹ As such, a relocation does not constitute an eviction if an occupier is moved from one house to another in the same registered unit of land.⁵⁰ *In casu*, the intention was to relocate an occupier to another land owned by a different legal entity.⁵¹

The LCC found that the court *a quo* erred in accepting that the ‘land’, even though registered in the name of different entities, was owned by one owner and that the relocation would not amount to an eviction because the farms were operated and managed as a single unit.⁵² The LCC held that the farms were owned by two different entities and had distinct cadastral descriptions.⁵³ The LCC reaffirmed that a relocation from one house to another in a single unit of land did not amount to an eviction. However, a relocation from one land to another registered in the name of a different person or entity did constitute an eviction.⁵⁴

A comment on the judgment in *Pieterse*

Is the decision in Pieterse correct?

Technically, an eviction or a relocation would depend on the cadastral description of the property involved. If the removal is from one registered parcel of land to another, then that would constitute an eviction and not a relocation. This means that the decision in *Pieterse* is correct. Whether it is an eviction, or a relocation should thus not, strictly speaking, depend only on the cadastral description of the property involved. However, the courts should also consider who the registered owner of the land is considering the meaning of ‘land’ and the underlying relationship that ESTA was enacted to regulate. Courts should therefore not elevate the cadastral description of property as the exclusive method of determining what ‘land’ is for the purposes of a relocation in future cases. This is because such a decision would have far-reaching and chaotic consequences that could never have been envisaged by the Legislature when it enacted ESTA. For example, the continued residence of Mrs Pieterse in a manager’s house free of charge may cause the first respondent not to be able to provide accommodation to the new

48 *Pieterse* (n 3) paras 20 and 33–34.

49 *ibid* para 29, citing *Dlamini* (n 5) para 14; *Chagi* (n 5) para 19.

50 *Pieterse* (n 3) para 29, referring to *Chagi* (n 5) paras 19–20; *Oranje* (n 11) para 10. See further *Kuinders* (n 11) para 13; *Wagner* (n 11) 504F; *Mjoli* (n 11) para 11; *Jonkies* (n 11) para 12.

51 *Pieterse* (n 3) para 32.

52 *ibid* para 37.

53 *ibid*.

54 *ibid* para 38, referring to *Chagi* (n 5) paras 19–20; *Oranje* (n 11) para 10.

production manager, contrary to its employment and/or housing policy. This would cause undue hardship for both the new production manager and the owner in that the new production manager may report late for work or be absent because of the lack of accommodation at the place of employment and the owner may start to lose money due to slow production. An approach that elevates the cadastral description of the property is therefore not well balanced nor does it add value into the enquiry of whether a move is an eviction or relocation.

May different considerations apply in future cases?

In future cases, it is proposed that the courts should consider relocations in instances where the two registered parcels of land belong to the same person or entity. The underlying reasons for why such a relocation should be treated differently from an eviction are as follows. Relocations are a simpler and more straightforward way to move occupiers around on land. This is because ESTA does not set out procedural and substantive requirements for relocations. In eviction, there are procedural and substantive requirements that must be met before an eviction can be granted. Although the lack of procedural and substantive requirements in the case of relocations may result in some exploitation and hardship, the relocation in any event also includes the balancing of rights and when the interdict is applied for, the relevant facts and circumstances must be considered carefully by the court before such order is granted. Therefore, the chances of occupiers being placed in a worse position than their previous situation if the two registered parcels of land are owned by the same person or entity are slim.

Conclusion

Although none of the statements in *Pieterse* are new, they are a reminder of the particular context within which relocations and evictions must be understood in the constitutional dispensation. *Pieterse* does not provide a rich analysis of why different entities cannot be allowed to secure the relocation of occupiers such as Mrs Pieterse, but at least the LCC acknowledged that different considerations may apply in future cases.⁵⁵ Such considerations could possibly be applied in instances where the two registered parcels of land belong to the same person or entity. It is for the court to analyse what this different consideration would entail for legal certainty, especially within the legislative framework of ESTA. Perhaps it is time to develop a specific procedure applicable to relocations of occupiers in the ESTA domain. It will be interesting to see whether the courts may in future expand the prevailing legal position to include shareholding of land in instances where the two parcels of land are owned by the same entity (or person). Therefore, because we have not seen a similar case in the past, it remains questionable what practical implications this judgment will have for future cases in the context of ESTA relocations and evictions.

55 *Pieterse* (n 3) para 40.

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