



CONSTITUTIONAL COURT OF SOUTH AFRICA

Jan Klaase and Another v Jozia Johannes van der Merwe N.O and Others

CCT 23/15

Date of hearing: 3 September 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 3 September 2015 at 10h00 the Constitutional Court will hear an application for leave to appeal concerning an eviction order and the interpretation of the term “occupier” in terms of the Extension of Security of Tenure Act (ESTA).

The first applicant, Mr Klaase, resided on and was employed at Noordhoek Farm in the Citrusdal district, Western Cape from 1972 until his dismissal in January 2010. The second applicant, Mrs Klaase, the wife of the first applicant, has resided with him on the farm for approximately 26 years. During that time she worked as a seasonal worker when the fruit was harvested, usually in the packaging store. The applicants live together with their three children and three grandchildren in a two bedroom cottage on the farm. In January 2014, the Clanwilliam Magistrate’s Court granted the respondents, the trustees of the trust that owns the farm, an order evicting Mr Klaase, and all persons occupying under him. The order was confirmed on review by the Land Claims Court in March 2014.

In June 2014, the applicants brought two separate applications before the Land Claims Court. Mrs Klaase applied to be joined as a second respondent to the eviction proceedings. The basis for her application was that she had an independent right to occupy the cottage on Noordhoek farm. Mr and Mrs Klaase both requested that the execution of the eviction order be suspended pending the determination of Mrs Klaase’s rights in terms of ESTA. The Land Claims Court dismissed Mrs Klaase’s application on the basis that she was not an occupier in terms of ESTA. It held that she had not been granted consent to occupy the farm and was entitled to reside on the farm only by reason

of her husband's right to family life. When Mr Klaase's right to reside on the farm terminated, so did hers.

The Land Claims Court also refused the application for a stay and Mr Klaase's application for leave to appeal to the Supreme Court of Appeal. The Supreme Court of Appeal also dismissed the applicants' application for leave to appeal.

Before this Court, the arguments are limited to Mrs Klaase's rights under ESTA and the potential prejudice to women who find themselves in similar positions to that of Mrs Klaase. The applicants submit that the Land Claims Court erred in its interpretation of the term "occupier" in terms of ESTA. They contend that Mrs Klaase is an occupier in her own right. The applicants further contend that if women in similar positions to Mrs Klaase are not afforded protection under ESTA, it will have the effect of impairing their rights to dignity, autonomy and self-worth.

The trustees submit that Mrs Klaase is not an occupier in terms of ESTA, because she did not have the trust's consent to reside on the farm as an occupier in her own right and she has never been a permanent employee of the respondents. The Cederburg Municipality has been joined to the proceedings as a respondent and has filed a notice of intention to abide by the decision of this Court. The Women on Farms Project, as friend of the Court in these proceedings, submit that this Court ought to prefer an interpretation of ESTA which promotes the security of tenure of women farm workers. They contend that such an interpretation would promote the constitutional values of equality and human dignity.