



4 March 2022

MEDIA STATEMENT

LEGAL AID SA CHALLENGES THE CONSTITUTIONALITY OF SECTION 15 OF THE EXTENSION OF SECURITY OF TENURE ACT 62 OF 1997

The newly established Land Rights Management Unit within Legal Aid South Africa (Legal Aid SA) has instructed a private attorney to represent farm occupiers and challenge the constitutionality of section 15 of the Extension of Security of Tenure Act 62 of 1997 (ESTA).

This is in line with Legal Aid SA's additional mandate to provide legal representation and mediation services in land related disputes, for those who are not able to afford the cost of their own legal representation.

Capespan Agri (Pty) Ltd trading as Applethwaite Farm brought an application in the Land Claims Court for the immediate eviction of Patricia Matthys, Patricia Swartland and Danvino Jemaine Swartland from the property known as portions 12, 13 and 22 of the farm Van Aaries Kraal situated in the Western Cape.

On 10 February 2022, the Land Claims Court granted the eviction order. The order states that: "Pending the grant of a final eviction order [Patricia Matthys, Patricia Swartland and Danvino Jemaine Swartland] and all those holding title under them, are evicted from the property known as portions 12, 13 and 22 of the farm Van Aaries Kraal, farm number 455, Caledon RD, Western Cape, also known as Applethwaite as contemplated in section 15 of the Extension of Security of Tenure Act 62 of 1997".

The application for eviction was brought due to allegations of assault of one of the farm occupiers by Patricia Swartland and Danvino Jemaine Swartland. The criminal case was opened by the farm occupier against Patricia Swartland and Danvino Jemaine Swartland. Danvino Jemaine Swartland then opened a criminal case against the farm occupier.

Section 15 of the ESTA allows the courts to grant the order for the immediate removal of any occupier from land, pending the outcome of proceedings for a final order. It provides that: "*Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that—*

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land; (b) there is no other effective remedy available; (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted”.

This section does not make provision for the courts to consider the availability of suitable alternative accommodation for the occupier before granting the order for the immediate removal of the occupier. This is not in line with section 26(3) of the Constitution, which provides that: “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”.

The availability of suitable alternative accommodation is one of the relevant circumstances to be considered in all eviction matters. In several cases, the Constitutional Court has held that if there is a risk that the occupier will be rendered homeless when evicted, the Municipality must provide alternative accommodation.

Furthermore, the ESTA was promulgated to give effect to section 25(6) of the Constitution: “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”.

Legal Executive: Land Rights Management, Mr Thabiso Mbhense, says: “If Patricia Matthys, Patricia Swartland and Danvino Jemaine Swartland are successful in this challenge, the judgment will have a significant impact on the lives of all farm occupiers in South Africa”.

– Ends –

Issued by the Communication Department of Legal Aid South Africa.

For more information or a media interview opportunity with our Land Rights Management Unit, please contact Legal Aid South Africa’s Acting Communication Executive and National Spokesperson Ms Janeske Botes on 011 877 2153/060 980 5452 or the Media and Marketing Manager Mr Godfrey Matsobe on 011 877 2382/066 481 6792

Visit our website at www.legal-aid.co.za or call the Legal Aid Advice Line on 0800 110 110

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