

BARON AND OTHERS V CLAYTILE (PTY) LIMITED AND ANOTHER

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In July, the Constitutional Court (the Court) ruled on whether it is just and equitable to evict persons from private land in terms of the *Extension of Security of Tenure Act* (ESTA), notwithstanding the absence of alternative accommodation. The Court found that private citizens have no obligation to relocate unlawful occupiers from their land as that responsibility lies with the government.

The applicants are former employees of a brick manufacturer located on a farm. They were permitted to live on the farm in units provided by the company for the duration of their employment. Upon the termination of said employment, they were given written eviction notices but they did not vacate the premises. Instead, they proceeded to occupy the units with their families for a further three years although they were now employed elsewhere.

Claytile, the employer, instituted eviction proceedings at the Bellville Magistrates' Court. At that time, the City of Cape Town (the City) indicated that it did not have alternative accommodation to which to transfer the applicants. It attributed this absence to the long waiting list. The City also said that emergency housing was also unavailable. The Magistrates' Court considered the disruptions the move would cause and granted the eviction application because Claytile had complied with all the procedural requirements for a lawful eviction in terms of the ESTA. Section 26 of the Constitution protects persons from being evicted from their homes without a court order and after considering all the relevant circumstances. Furthermore, the applicant's termination of employment had been conducted lawfully.

ESTA requires cases concerning ESTA to be sent to the Land Claims Court on automatic review. The Bench confirmed the above ruling considering the hardship of the respondents and emphasised that the constitutional obligation in section 25 to ensure access to adequate housing lies solely with the State and not with private citizens. The Supreme Court of Appeal dismissed an application for leave to appeal.

Before the Constitutional Court, the applicants averred that the farm was the only home they had ever had and their eviction would be unjust. They said no meaningful engagement had taken place and that they would suffer greater hardships if evicted, compared to the burden Claytile would carry, if they stayed in the units. Claytile argued that the eviction was just and equitable because they had made efforts to find alternative housing for the applicants and had indicated willingness to contribute financially to the move. This was contrasted with the lack of any effort towards finding alternative accommodation by the applicants themselves. Over and above these efforts, Claytile would suffer hardship because they could not house their current employees whilst former employees lived rent-free. Some of the applicants were not even former employees. Claytile also highlighted the fact that there is no duty on private landowners to provide suitable alternative housing to people they sought to evict - that duty rests squarely on the government's shoulders.

In February of this year, the City of Cape Town offered alternative accommodation in Wolwerivier to the applicants, who rejected the offer. They cited the extra distance from their places of employment, as well as transferring their children to new schools as reasons for the rejection.

The Constitutional Court, in dismissing the appeal, said that the City is constitutionally bound and cannot escape its duty to provide suitable alternative accommodation. Not only is the City bound by the Constitution, ESTA applies too. Furthermore, ESTA's preamble not only deals with the rights of occupiers, it also recognises the right of landowners to evict persons under certain conditions.

The Constitutional Court accepted the housing at Wolverivier as a suitable alternative accommodation within the City's available resources. Claytile could not be expected to provide free housing to the disadvantage of its current employees. The occupiers could be evicted to enable Claytile to house its employees. The City was ordered to secure the alternative housing and applicants ordered to vacate the premises within 90 days.

This matter deals with an issue that will forever be contentious - the right to adequate housing - and what the right entails. The Court highlighted that access to this right is qualified in the Constitution and is reliant on the resources the relevant government arm has available. Progressive realisation exists to find means by which to realise rights that place a positive obligation on governments to provide for its people. Where resources must be provided, it is not unreasonable to place a cap on what is available. Whilst ESTA is intended to facilitate security of land tenure, it cannot usurp private property owners of their rights.