

JAN KLAASE AND ELSIE KLAASE V. JOZIA JOHANNES VAN DER MERWE
PRESS RELEASE

South African NGO faces Noordhoek Trust on the interpretation of an occupier, particularly for the spouses of farm workers, under ESTA

Cape Town, Thursday, 14 July 2016

On the 14th of July 2016, a month before our national Women's Month, the Constitutional Court of South Africa released its judgment in the matter of JAN KLAASE and ELSIE KLAASE v JOZIA JOHANNES VAN DER MERWE (N.O. OF THE NOORDHOEK TRUST) and JOZIA JOHANNES VAN DER MERWE under case number CC case number: 23/2015 where the court set aside the eviction application of Mrs Klaase.

This case concerns an appeal against two judgments and orders by Cape Town's Land Claims Court and the Supreme Court of Appeal that engages with the constitutional matter regarding the interpretation of an occupier and the definition of consent under the Extension of Security of Tenure Act (ESTA), especially as it pertains to the spouses of the farm workers.

In this case, the respondents brought an eviction application against one of the applicants, which required that everyone occupying "under him" also had to vacate the premises. This led to the displacement of his wife and children, in addition to himself. The wife of the farm worker, the second applicant, contended the eviction under the argument that she was an ESTA occupier in her own right, due to her employment status and residence on the farm with the owner's consent. Therefore, her husband and children should be entitled to live with her under her right to family life.

The Women's Legal Centre (WLC) represented the Women on Farms Project (WFP) who was admitted as a friend of the court. WFP provides women farm workers and/or organisations with the skills and capacity to know and understand their legal rights, to advocate for the extension and improvement of those legal rights, and to campaign for the effective enforcement and application of those rights, including particularly those rights according such women equality in the home, the workplace and the wider community.

The WLC and the WFP have a common interest to advance women's rights.

One of the WLC's primary focus areas is fair access to resources to ensure socio-economic rights for women whereby women have access to basic rights to live a decent, dignified life such as the right to housing.

Hoodah Abrahams-Fayker, an attorney at the WLC explains: “The WLC has intervened as a friend of the court on behalf of WFP because of the potential it has to affect female farm workers and their children. Female farm workers are typically un-unionized, seasonal workers who face a variety of difficulties, such as a lack of knowledge about their rights and economic dependence on their partners. This often results in economic and social marginalization.”

The current interpretation of the law reinforces the trend whereby women’s access to secure tenure and housing on farmland is embodied by a male occupier (who is usually the head of the household). It makes it virtually impossible for women to establish independent occupier status, even where they also work on the farm, and thus impacts negatively on their protection against arbitrary eviction.

The court was called upon to come to the aid of female farm workers who are reliant on their spouses and who find themselves without a home if their spouses’ job is jeopardized.

The current dispute over the interpretation of ESTA should be of concern due to the vulnerability that it brings to a rather significant portion of our society, such as those that live on other people’s land or property. Specifically, the decision on whether the definition of an ESTA occupier is given a restrictive interpretation or a more encompassing, generous definition will have serious implications for not only our client, but for rural women who find themselves in very similar situations.

“We welcome the judgement where the court held that the Land Claims Court’s finding that Mrs Klaase occupied the premises “under her husband” subordinates her rights to those of Mr Klaase and that it demeaned Mrs Klaase’s rights of equality and human dignity to describe her occupation in those terms,” Abrahams-Fayker continued. “It is line with the submission made by the WLC on behalf of WFP that the provisions of ESTA should be interpreted generously so as to afford protection to women who would not be otherwise regarded as occupiers.

We contended that the dignity of women, who are seasonal workers, is negatively impacted when the ESTA provisions do not respect their equal worth.”

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