

Eviction proceedings during a labour dispute

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Can a farm owner launch eviction proceedings before a labour dispute is settled? The short answer is no.

A court may grant an eviction order in terms of the *Extension of Security of Tenure Act, 1997 (Act 62 of 1997)*, or the *ESTA*, if:

- A farm dweller's right of tenure has been legally terminated.
- The farm dweller refuses or fails to vacate the farm after his/her right of tenure has been terminated.
- The conditions of an eviction order have been met.
- The landowner or person in charge has given the occupier, local municipality and provincial office of the Department of Rural Development and Land Reform two calendar months' notice of his/her intention to obtain an eviction order.

The process of eviction

The termination of a farm dweller's rights on the farm is therefore the first step in the prescribed process that follows. This article deals only with the case where a farm dweller's right of tenure arises from a service agreement and where a landowner launches eviction proceedings against such a dismissed farm dweller.

In this regard, it is important to analyse the provisions of section 8(2) and (3) of the *ESTA*:

- Section 8(2): "The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the *Labour Relations Act*."
- Section 8(3): "Any dispute over whether an occupier's employment has been

terminated as contemplated in subsection (2) shall be dealt with in accordance with the provisions of the *Labour Relations Act*, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act."

Section 191(1)(b)(i) of the *Labour Relations Act, 1995 (Act 66 of 1995)*, or the *LRA*, stipulates that an aggrieved employee can refer a dispute regarding unfair dismissal to the Commission for Conciliation, Mediation and Arbitration (CCMA), or a bargaining council with the required jurisdiction, within 30 days of termination of employment.

Section 190(1) of the *LRA* describes the date of dismissal as the date on which the employment contract was terminated or the date on which the employee left the service of the employer, whichever comes first.

Termination of tenure

If a farm dweller has been dismissed and wants to dispute the fairness of the dismissal, it is, according to the provisions of section 8(2), crucial to remember that a labour dispute must be settled before the farm dweller's right of tenure on the farm in terms of the *ESTA* can be terminated.

In other words, if the occupier whose right of tenure arises by virtue of a service agreement disputes his or her dismissal, the dispute regarding the fairness of dismissal must first be settled before the landowner or person in charge may terminate the occupier's right of tenure.

The result is that the owner or person in charge will be obliged to provide accommodation to the dismissed employee, until such time as the dispute regarding the validity of the dismissal in question has been settled.

Consequently, the *ESTA* does not provide for the termination of a farm

dweller's right of tenure while the labour dispute is unresolved. Should an owner attempt to terminate rights before the dispute is resolved, he or she will run the risk that all steps in the eviction proceedings may be undone.

Disputing a dismissal

With regard to section 8(3), the Land Claims Court does not have the legal jurisdiction to decide whether the termination of the farm dweller's employment relationship was performed in accordance with the *LRA*. If a farm dweller wishes to challenge the lawfulness of his/her dismissal, he/she will have to challenge the termination of service in accordance with the procedures as prescribed by the *LRA*.

However, it is important to remember that if a farm dweller fails to take the necessary steps in time to challenge his/her dismissal, the court will accept the dismissal as fair.

Consequently, when an occupier has been dismissed (or has resigned), an owner or person in charge will have to wait until the period in terms of section 191(1)(b)(i) of the *LRA* has expired, before the occupier's right of tenure can be terminated in terms of the *ESTA*, so that there is no dispute pending when eviction proceedings are launched.

Once the 30 days (after the date of dismissal) have lapsed, and assuming that the dismissed employee does not refer the dispute and asks for condonation for non-compliance with the prescribed time frame, the termination of the right of tenure as well as further steps in terms of the *ESTA* may continue. 🟡

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