CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 186/15

In the matter between:

KAREL SNYDERS	First Applicant
SOFIA SNYDERS	Second Applicant
MINOR CHILDREN	Third Applicant
and	
LOUISA FREDERIKA DE JAGER	Respondent

Neutral citation:	*Snyders and Others v de Jager* [2016] ZACC 52
Coram:	Mogoeng CJ, Moseneke DCJ, Cameron J, Jafta J, Khampepe J, Madlanga J, Nkabinde J, Van der Westhuizen J and Zondo J
Judgments:	Zondo J (majority): [1] to [34] Cameron J (dissenting): [35] to [53]
Hearing:	Matter decided without oral hearing
Order handed down:	16 October 2015
Reasons for order:	21 December 2016
Summary:	Interim relief pending outcome of appeal — restoration of peaceful possession of property — Extension of Security of Tenure Act, 1997 — ESTA — test for interim relief — availability of alternative accommodation for new occupant of property — punitive costs order granted

JUDGMENT

ZONDO J (Mogoeng CJ, Moseneke DCJ, Jafta J, Khampepe J, Madlanga J and Nkabinde J concurring):

Introduction

[1] On 16 October 2015 this Court granted the following order in favour of the applicants:

> "(1) Pending the outcome of the applicants' application for leave to appeal to this Court against the judgment of the Supreme Court of Appeal and or judgment of the Land Claims Court and or of the Magistrate's Court in this case:
>
> (a) The respondent is ordered to take all the necessary steps to restore to the applicants on or before Tuesday, 20 October 2015 peaceful possession of the dwelling which they occupied before 1 October 2015.
>
> (b) The issue of costs is reserved."

This order was granted by the majority of this Court which comprised Mogoeng CJ, Moseneke DCJ, Jafta J, Khampepe J, Madlanga J, Nkabinde J and myself. Cameron J and Van der Westhuizen J did not agree that this order should be granted. Their view was that the applicants' application for urgent interim relief should be dismissed. We indicated then that we would provide the reasons for the order when the application for leave to appeal was disposed of. These are they.

Brief background

[2] In 2009 there was a dispute between Mr Karel Snyders, the first applicant, on the one hand, and Ms de Jager, the respondent, on the other, concerning whether the applicants were entitled to continue to occupy a certain house on a farm managed by the respondent. The farm is owned by Mr F J Stassen. The farm is in Voorbaat,

Ladismith, Western Cape. I shall refer to the farm as the "Stassen Farm" and to the house simply as "the house". The Snyders family had been living in that house continuously since 1992. This means that they had been living in the house for about 17 years. Mr Snyders had been employed on the Stassen Farm since 1992. His contract of employment was terminated on 18 April 2008 by Ms de Jager. After the termination of Mr Snyders' contract of employment, Ms de Jager did not take any steps until 2009 to get Mr Snyders and his family to vacate the house or to leave the farm. He and his family continued to live in the house.

[3] In 2009 Ms de Jager applied to the Magistrate's Court, Ladismith, for an eviction order against Mr Snyders, his wife and his minor children. Mr Snyders and his family opposed the application. On 14 November 2012 the Magistrate's Court granted an eviction order against the applicants. The order was in the following terms (my own translation from Afrikaans to English):

> "The Honourable Court finds:
>
> 1. That it is just and equitable that the 1st Respondent (and his family) vacate the premises at:
>
> Voorbaat Farm as described in the application on or before 20 December 2012; and
>
> 2. In the event that the defendant (and his family) fails to vacate the premises, the Sheriff of the above Honourable Court may execute the order on or before 12h00 on the 31st December 2012.
>
> 3. The execution of this order is suspended pending the automatic review by the Land Claims Court."[1]

[1] The Afrikaans version of the order reads as follows:

> "1. Dat dit regverdig en billik is dat die 1 ste Respondent (en sy familie) die perseel te:
>
> Voorbaat Plaas soos omskryf in die aansoek
>
> Moet ontruim voor of op 20 Desember 2012; en
>
> 2 Indien die verweerder (en sy familie) versuim om die perseel te ontruim, kan die Balju van die bogenoemde Agbare Hof die uitsettingsbevel uitvoer op of na 12h00 op die 31 ste Desember 2012.
>
> 3 Die uitvoering van hierdie bevel word opgeskort hangende die bekragtiging deur die Grondeise Hof."

[4] Note must be taken of the fact that in terms of this eviction order the applicants were given six or seven weeks before the Sheriff could execute the order. Executing the order would be the eviction of Mr Snyders and his family from the house if they did not vacate it on or before 20 December 2012. The Magistrate's Court referred the eviction order to the Land Claims Court in terms of section 19(3) of the Extension of Security of Tenure Act (ESTA)[2] for automatic review. The Land Claims Court considered the Magistrate's Court's eviction order in automatic review proceedings and confirmed it.

[5] The applicants applied to the Land Claims Court for leave to appeal to the Supreme Court of Appeal. The Land Claims Court granted them the required leave. The appeal was heard by the Supreme Court of Appeal on 15 September 2015. On 30 September 2015 that Court handed down its judgment. Its judgment was to the effect that the applicants had appealed to a wrong court as they should have appealed to the Land Claims Court. The order made by the Supreme Court of Appeal was to strike the matter off the roll with costs.

[6] On 1 October 2015 – that is the day after the Supreme Court of Appeal had handed down its judgment – without any notice to Mr Snyders and his family and while they were not at home, Ms de Jager caused the Sheriff to evict the Snyders family from the house. Their belongings were thrown into the street. Ms de Jager has not advanced any reason why she did not give Mr Snyders and his family the notice that obviously the Magistrate's Court's eviction order contemplated would be required before the Sheriff could evict them. That would have been about six weeks' notice. She would have been aware of that period of about six weeks that the Magistrate's Court's order had sought to give the Snyders family.

[7] It is difficult to think that Ms de Jager did not discuss her plan with her attorneys. The plan to which I refer is Ms de Jager's plan to rush to evict the Snyders family so quickly after the Supreme Court of Appeal judgment and without any notice

[2] 62 of 1997.

whatsoever to them. In all probability, the Sheriff would have been instructed by Ms de Jager's attorneys to evict the Snyders family on 1 October 2015. It would be most disappointing if any attorney was party to Ms de Jager's plan to treat other human beings so badly and in such a demeaning manner.

[8] Ms de Jager and her attorneys knew that Mr Snyders and his family were represented by an attorney. The obviously decent thing to do for anybody in Ms de Jager's position or in the position of her attorneys was for them to contact Mr Snyders' attorney and indicate that they contemplated having the Snyders family evicted so that there could be a discussion of how that could be done in as humane a manner as possible. One would have thought that, at least at a professional level, Ms de Jager's attorneys had an obligation to give notice to Mr Snyders' attorneys of their client's plan to evict the Snyders family on 1 October 2015. It is strange that they did not do so.

[9] Ms de Jager was not without a remedy if she wanted to execute the eviction order while an appeal, either to the Land Claims Court or to this Court, was pending. She could approach the relevant court for leave to execute the order in the meantime and, if she put up a convincing case, the court could well have granted her the requisite leave. Whether or not she would be able to put up a convincing case is another matter.

[10] I said earlier that, when the Sheriff came to the house, Mr Snyders and his family were not at home. After Mr Snyders' and his family's belongings had been thrown out of the house, Ms de Jager told Mr Willem Breda to move into the house. That same day Mr Breda moved into the house with his family. That was on 1 October 2015.

[11] Mr Snyders' attorney sent an email to Ms de Jager's attorney at about 14h33 in which he informed her that he had been instructed to apply to this Court for leave to appeal against the decision of the Supreme Court of Appeal. In the email he also said

that apparently the Sheriff intended evicting his client on that day. He asked Ms de Jager's attorney to instruct the Sheriff not to go ahead with the eviction as the application for leave to appeal would suspend the operation of the decision of the Supreme Court of Appeal.

[12] It seems that by 15h29 Mr Snyders' attorney had not received a reply from Ms de Jager's attorney. Mr Snyders' attorney sent off another email to Ms de Jager's attorney at 15h29. In it he said that, according to his client, the South African Police Service (SAPS) were busy throwing his client's belongings out of the house. He informed Ms de Jager's attorney once again that he had been instructed to appeal to this Court and the application for leave to appeal would be lodged in the course of the following week. He appealed to Ms de Jager's attorneys to instruct the SAPS not to continue with what they were doing. He placed on record that Ms de Jager's attorneys had not given any notice to him or his client of the intention to evict Mr Snyders and, as a result, he and Mr Snyders could not have arranged alternative accommodation. Mr Snyders' attorney also pointed out that he reserved his client's right to seek costs *de bonis propriis* against Ms de Jager's attorney.

[13] At 15h47 Ms de Jager's attorney replied to the correspondence from Mr Snyders' attorney. She said that she had received his fax at 15h20. She also informed Mr Snyders' attorney that it was not the SAPS but the Sheriff who had evicted Mr Snyders and his family. She pointed out that the eviction had started and finished in the morning. Ms de Jager's attorney was not of any help with regard to Mr Snyders' attorney's problem.

[14] At 15h56 Mr Snyders' attorney once again sent another email to Ms de Jager's attorneys asking them to reverse the eviction but reserving his client's right to place the emails before the Court in support of a special order of costs. He sent another email again at 16h01 pointing out that the period within which his client was entitled to appeal had not lapsed and, that, therefore, his client's eviction was unlawful and

unconstitutional. He said that Ms de Jager's attorneys' conduct provided good grounds for an order of costs *de bonis propriis*.

[15] When Mr Snyders and his family returned to the house, they found that their belongings had been thrown into the street and they were not permitted to continue to occupy the house. They took their belongings and went to a neighbouring farmer, told him what had happened and asked if he could give them shelter for the time being. The farmer, a Mr Rabe, gave them a shed that was used to store goods to use for the time being.

[16] Mr Snyders said that the shed had goods in and he and his family also put their belongings in the shed. He pointed out that, as a family, they all used the balance of the space to live, cook, eat and sleep. In other words the shed served as their kitchen, lounge, dining room and bedroom. He complained that the space was too small for the whole family. He also stated that he and his wife had no privacy as husband and wife as they shared the space with their children and a grandchild. Mr Snyders urged the Court to grant him and his family interim relief pending the determination of his application for leave to appeal. The interim relief he sought for himself and his family was the restoration to him and his family of the peaceful possession of the house.

[17] Ms de Jager opposed the application for interim relief. In support of her opposition, she pointed out that Mr Breda was by then occupying the house with his family with effect from 1 October 2015. Ms de Jager said that Mr Breda had been occupying the "*saaltjie*"[3] for about a year prior to moving into the house. She said that she could not ask Mr Breda to move back into the "*saaltjie*" because the "*saaltjie*" was not fit for human habitation. She said this despite the fact that Mr Breda and his family had just moved out of the "*saaltjie*" after staying there for about a year.

[3] Literally translated, "small hall".

[18] Ms de Jager pointed out that the Bredas had an 18 month old child who was ill and had even had to be admitted to hospital in the previous three weeks or so. She said that the "*saaltjie*" had no sanitation, no running water and had cracks in the wall and that a sick child could not stay in the "*saaltjie*". Mr Snyders said that, since 1992 when he started living on the Stassen Farm, there had always been people who lived in the "*saaltjie*" and, therefore, Mr Breda should go back to the "*saaltjie*" so that he and his family could move back into the house.

[19] Mr Snyders pointed out in one of his affidavits that there were four labourers' houses on the farm. He said that one Kobus[4] occupied the first one together with the Stoffels family. He said that one Andries[5] occupied the second house. He said that the third house was the one he had occupied before. He then said that the fourth house was vacant and available for occupation by other workers.

[20] In a later affidavit that Ms de Jager filed in support of her opposition to an application for contempt of court, she referred to a wendy house which she said was vacant and said that Mr Snyders and his family were welcome to use. She said that the wendy house provided proper accommodation. Very strangely, she did not offer it to Mr Breda and his family so that Mr Breda and his family could move out of the house previously occupied by Mr Snyders and his family so that the latter family could move back into the house.

[21] The above facts, therefore, reveal that at the time that this Court had to consider whether or not to grant Mr Snyders and his family interim relief, the position was as follows—

(a) the house which the Snyders family previously occupied was occupied by the Breda family who had been permitted by Ms de Jager to occupy it.

[4] The court record proffers only the first name of "Kobus".

[5] The court record proffers only the first name of "Andries".

(b) the "*saaltjie*" was vacant and there had always been someone occupying the "*saaltjie*" at any one point in time since Mr Snyders started working on the Stassen Farm in 1992.

(c) although it is true that Mr Breda's 18 month old child was sick, he or she had lived with his or her own parents in the "*saaltjie*" for about a year before moving into the house during which period the condition of the "*saaltjie*" had not caused her to be sick.

(d) there was a vacant wendy house available for use which Ms de Jager could have made available to Mr Breda and his family so as to make way for Mr Snyders and his family to move back into the house.

(e) Ms de Jager had not offered Mr Breda and his family the use of the wendy house or the vacant house which was available.

[22] In these circumstances we were satisfied that Mr Snyders and his family had satisfied the test for interim relief.[6] If they had not shown a clear right, they had, to say the least, shown a *prima facie* right to relief. In support of this, I refer to the reasons given in the judgment relating to the application for leave to appeal. That judgment is being handed down at the same time as this judgment. Mr Snyders and his family had been evicted from a house that had been their home for about 17 years without any notice. They were without any alternative accommodation of their own. They were living in a goods shed that was too small. The fact that Ms de Jager had a vacant house into which she could move Mr Breda and his family meant that the balance of convenience favoured the grant of interim relief rather than its refusal. There was no other satisfactory remedy available to Mr Snyders and his family.

[6] The requirements for interim relief are plainly set out by Innes, JA in *Setlogelo v Setlogelo* 1914 AD 221 at 227. These requirements were later refined in *Webster v Mitchell* 1948 (1) SA 1186 (WLD). The requirements are—

(a) a *prima facie* right, even if it's open to some doubt;
(b) a reasonable apprehension of irreparable harm if the interim relief is not granted;
(c) the balance of convenience favours the granting of an interim interdict; and
(d) the applicant has no other satisfactory remedy.

[23] I have had the opportunity of reading the judgment by my Colleague, Cameron J (second interim relief judgment). The second interim relief judgment is founded on the proposition that the interim order that was granted by the majority last year in this matter authorised and directed Ms de Jager to evict Mr Breda and his family from the dwelling that had previously been occupied by Mr Snyders and his family. This interpretation of the interim order is incorrect. To evict somebody means forcing someone out of a house or property against his or her will. That is only lawful when it is done when there is a court order authorising the eviction of that person. However, that is not the only way in which a house or property may be vacated. The owner of a property and the occupant or lessee may reach an agreement in terms of which the lessee or occupier or occupant may vacate the house or property. Indeed, it is normal that the property owner will first talk to or even negotiate with the occupant or lessee to achieve an agreement in terms of which the occupant or lessee would vacate the property on some agreed date. When the discussion or negotiations fail to produce an agreement, the property owner then approaches the courts for an eviction order.

[24] It will be seen that the interim order did not have the word "evict" or "eviction". It required Ms de Jager to take all the necessary steps to restore to Mr Snyders and his family the peaceful possession of the dwelling occupied by Mr Breda and his family. The second interim relief judgment seems to imply that the wording of the interim order necessarily meant that Ms de Jager had to forcefully move Mr Breda and his family out of the dwelling without an order of court which would have been unlawful and unconstitutional. That interpretation of the order is not justified by the wording of the interim order. An order of court must be given an interpretation that is in conformity with the Constitution and the law if there are two interpretations and one is inconsistent with the Constitution and the law while the other one is consistent with the Constitution and the law. The reference to "all the necessary steps" in the order is a reference to all lawful necessary steps. The second interim relief judgment seems to imply that the interim order required Ms de Jager to take even unlawful steps. That reading of the interim order has no basis whatsoever.

[25] The interim order meant that Ms de Jager would talk to Mr Breda, explain the situation to him and ask him to move out of the dwelling and make such other arrangements as the two could agree upon. This could have entailed that Ms de Jager made the wendy house available to Mr Breda as I say elsewhere in this judgment. The interim order meant that, if Mr Breda did not agree to vacate the dwelling, Ms de Jager could apply to court for an eviction order against Mr Breda and his family. The interim order did not authorise the Sheriff to evict Mr Breda because it was accepted that Ms de Jager would have had to obtain an eviction order if Mr Breda did not co-operate. However, since Mr Breda had come into the dwelling by agreement with Ms de Jager, it was expected that he would co-operate with Ms de Jager. Unfortunately, he did not.

[26] Interestingly, the parties also understood the interim order to mean that, if Mr Breda did not agree to vacate the dwelling, Ms de Jager's next step would be to institute eviction proceedings against Mr Breda. It was not their understanding that the order required Ms de Jager to evict Mr Breda and his family without a further court order authorising his eviction. Ms de Jager says in her affidavit that she did think about instituting eviction proceedings against Mr Breda and his family but the reason why she did not pursue that route was that she thought that there were no reasonable prospects of success. Mr Snyders or his attorney says in his affidavit that Ms de Jager should have instituted eviction proceedings against Mr Breda and his family and her failure to take that step meant that she was guilty of contempt of court.

[27] From what I have said above it will be seen that, contrary to the view expressed in the second interim relief judgment, there is a long distance between the interim order and a disregard of section 26(3) of the Constitution. The Court that would consider all the relevant circumstances referred to in section 26(3) is the Court that Ms de Jager would have approached for an eviction order against Mr Breda and his family. The second interim relief judgment also criticises the majority on the basis that the interim order was granted without hearing Mr Breda and without joining him.

Once again, the second interim judgment misconstrues the position. Mr Breda was going to be heard by a court that would be asked to grant an eviction order against him. The interim order was not an eviction order and it did not entail that Ms de Jager should forcefully move Mr Breda and his family out of the house. At that stage this Court did not need to hear Mr Breda or to have him joined in the proceedings because this Court did not contemplate making an eviction order against him or any order against him at all.

[28] The second interim judgment quotes a passage from my joinder judgment and says that the interim order did exactly what the joinder judgment says cannot and should not ever be done. Once again, the second interim relief judgment misconstrues the interim order. I think that the second interim judgment misunderstands what is contemplated in that passage by the reference to "an order which either directly or indirectly requires someone to be evicted". As I have said, the interim order did not contemplate the eviction of Mr Breda and his family either directly or indirectly. It contemplated that there would be eviction proceedings against him if he refused to vacate the dwelling when approached by Ms de Jager.

[29] The second interim relief judgment criticises Mr Snyders and his attorney a lot on the basis that they should have communicated with Ms de Jager's attorneys on the day that the Supreme Court of Appeal handed down its judgment (that is 30 September 2015) or the following morning and told them that Mr Snyders intended to appeal to this Court against the decision of the Supreme Court of Appeal. It is implied that this was so as to avoid the demeaning manner in which Mr Snyders and his family were kicked out of the house by Ms de Jager and the Sheriff. It is not clear how it is thought that Mr Snyders and his attorney would have predicted that Ms de Jager would choose not to give Mr Snyders and his family any notice at all that she intended to evict them.

[30] The demeaning manner in which Ms de Jager treated Mr Snyders and his family on 1 October 2015 – opening the house in their absence, giving them no notice

and throwing their belongings out into the street deserves to be condemned in the strongest possible terms by all. It is to be noted that the second interim judgment does not anywhere criticise Ms de Jager's unacceptable conduct and the conduct of the Sheriff in this regard.

[31] The way in which Ms de Jager treated Mr Snyders and his family on the day she evicted them was reminiscent of the evictions under apartheid.

Reserved costs

[32] In the interim order that we granted we reserved costs. We are of the view that Ms de Jager should be ordered to pay costs on the scale as between attorney and client. Mr Snyders' attorney gave a warning in the emails he sent to Ms de Jager's attorney that he reserved his client's right to place the emails before the court so as to seek a special order of costs. The need for Mr Snyders and his family to approach this Court for interim relief arose out of the fact that Ms de Jager caused Mr Snyders and his family to be evicted before the litigation could reach its end. Ms de Jager knew that the Magistrate's Court's order contemplated that Mr Snyders and his family would be given about six weeks before the Sheriff could be asked to evict them and yet she chose not to give them any notice at all. Ms de Jager caused the belongings of the Snyders family to be thrown out of the house. In seeking to evict the Snyders family, Ms de Jager failed to instruct her attorneys to notify Mr Snyders' attorney of her intention.

[33] Immediately after the belongings of the Snyders family had been thrown out of the house, Ms de Jager caused Mr Breda and his family to move into the house when there was a vacant house which she could have given to the Bredas to use so that the house would become vacant for the Snyders to move back into. Ms de Jager treated Mr Snyders and his family in a demeaning manner. As a mark of its disapproval for Ms de Jager's conduct, this Court should order that she pay the costs of this application on a scale as between attorney and client.

[34] In the circumstances I conclude that there was proper justification for the grant of the interim relief. In the result Ms de Jager is ordered to pay the applicants' costs of this application on the scale as between attorney and client.

CAMERON J (Van der Westhuizen J concurring):

[35] What this Court did in this case was truly extraordinary. After a protracted dispute between the first applicant, Mr Karel Snyders, and the respondent, Ms de Jager, the manager of a farm where Mr Snyders had been employed, he and his family were evicted from their home on the farm on the afternoon of Thursday, 1 October 2015. That was after the Magistrate's Court had ordered their eviction on 14 November 2012, which the Land Claims Court (LCC) confirmed on 13 February 2013.[7]

[36] When Mr Snyders next sought to appeal to the Supreme Court of Appeal (SCA), with the leave of the LCC, the SCA resolved a matter that had been much in doubt amongst practitioners and judges, and on which conflicting decisions had been given.[8] Does an appeal lie to the SCA against an order of the LCC merely confirming an order of eviction granted by a Magistrate's Court? Or must the eviction order, as confirmed, first be appealed to the LCC itself, after which a further appeal lies to the SCA? The SCA endorsed the second approach. It held that no appeal lay against the confirmation order: the eviction order, despite being confirmed by the LCC, must itself first be appealed to the LCC. The accompanying judgment of this Court, in which I concur, holds otherwise.[9] It finds that an appeal lies against the LCC confirmation order.[10] But, when the SCA judgment was handed down on

[7] The LCC provided its reasons on 13 August 2013.

[8] See, for example, *Magodi v Van Rensburg* 2002 (2) SA 738 (LCC) at para 12 and *Brummer v Joostenberg*, unreported judgment of the Land Claims Court of South Africa, Randburg Case No 16R/2013 (20 February 2015) at para 8.

[9] *Snyders v de Jager* [2016] ZACC 55 (eviction judgment).

[10] At para 49.

30 September 2015, it was the first authoritative determination of the point. The consequence of the SCA's finding on appealability was that it struck Mr Snyders' application from its roll. Mr Snyders, if he wished to appeal, had first to return to the LCC to challenge the Magistrate's eviction order there.

[37] The SCA delivered its judgment on the morning of Wednesday, 30 September 2015. The next morning, with the help of the Sheriff of the Court, the eviction was carried out. Mr Snyders and his family were cast from their home. At 14h33 on 1 October 2015, Mr Snyders' attorney sprang into action. In an email sent at that time to Ms de Jager's attorney, he recorded that he had just ("*so pas*") received instructions to note an appeal to the Constitutional Court. The application would be delivered in the course of the following week.

[38] The main judgment singles out Ms de Jager and her attorneys and faults them for not notifying Mr Snyders' attorney of the impending eviction.[11] That's not fair. Both sides can be faulted. This includes Ms de Jager, whose handling of the eviction was harsh and perhaps precipitate. As she however later pointed out, "[t]he whole sequence of events could have been prevented if Mr van der Merwe [Mr Snyders' attorney] immediately on receipt of the judgment of the SCA telephoned my attorney in an effort to make an arrangement that the execution of the Magistrate's eviction order be held in abeyance".

[39] Both parties could have avoided the later events if they had notified the other of their intent in the immediate aftermath of the SCA's decision. As events occurred, Mr Snyders' attorney failed to promptly contact Ms de Jager's attorney to say that further proceedings were or might be envisaged. He chose to send an email, more than 28 hours after the SCA judgment was handed down. Given the long, acrimonious dispute – exacerbated by his own rancorous and litigious approach throughout the proceedings – that was obviously imprudent.

[11] See [6] – [8] above.

[40] The first Ms de Jager's attorney heard of the further proceedings was when she, the attorney, saw the email at 15h20.[12] By then, it was too late.[13] The Snyders were out. Incensed, their attorney brought an urgent application before this Court. He sought an interim order restoring the Snyders family to occupation of their dwelling. So obtrusive was his interposition of himself into the litigation that he omitted to append confirmatory affidavits from his clients, a lapse he was later obliged to remedy.

[41] Unfortunately, the Court found itself drawn into this imbroglio. In the eviction judgment, this Court finds that the Snyders family should not have been evicted. The statutory requirements had not been fulfilled and the Magistrate's Court's eviction order was wrong.[14] But that was not the question before us then. The Court was asked to issue an immediate order – *before* we had considered the appealability question, and *before* we considered whether, if the LCC confirmation order was appealable, the eviction was justly ordered. On that question, we then had only a few sparse facts available to us.

[42] The application for an urgent interim order was filed on 5 October 2015. On 9 October 2015, Ms de Jager lodged a notice of intention to oppose. Three days later, on 12 October 2015, this Court issued directions inviting Ms de Jager to file a response to the urgent application. The directions were issued at 15h36 on Monday, 12 October 2015. Ms de Jager was given until the next day to do so – 13 October 2015. She did so. Three days later, on 16 October 2015, this Court issued

[12] The attorney's email reply refers to a "*faks*", but the record has only the email exchange.

[13] In the application he brought to commit Ms de Jager for contempt, Mr Snyders' attorney, Mr van der Merwe, deposed to a replying affidavit, in which he contended:

> "The respondent did not explain why she took no steps (after becoming aware of the intention to appeal on 1 October 2015, as is common cause) to prevent Mr Breda to move into the dwelling, which only occurred on 2 October 2015."

It may have been too late to prevent the eviction of the Snyders, but Mr van der Merwe says it may not have been too late to prevent the conflict with the Bredas. And so the recriminations may be multiplied. The point is that either party could have avoided the conflict – whether by providing earlier notice or applying more prudence.

[14] Eviction judgment above n 9 at para 71.

an interim order, over two dissenting votes. Though the main judgment sets it out, it is worth recording its main portion here, too. Reserving costs, it ordered Ms de Jager, pending consideration of leave to appeal—

> "to take all the necessary steps to restore to the applicants on or before Tuesday, 20 October 2015 peaceful possession of the dwelling which they occupied before 1 October 2015".

[43] What is extraordinary about this order? Well, first, the distance between it and disregard of section 26(3) of the Constitution, as embodied in ESTA, if any, is paper-thin. Section 26(3) provides that no one may be evicted from their home without an order of court made *after considering all the relevant circumstances*.[15] Presumably "relevant circumstances" includes the circumstances of anyone directly affected by an eviction order. How could it not?

[44] When it required of Ms de Jager that she take "all the necessary steps" to restore the Snyders family to their dwelling on the farm, this Court knew that the dwelling wasn't empty. It was occupied. When the Snyders family was evicted, Ms de Jager's employee, Mr Breda, moved into the house they had occupied. He did so with his family. More particularly, even, the Court also knew, since Ms de Jager told us, that the Bredas' three minor children were part of the family that moved in – and that the youngest child, then 18 months old, was "rather ill and [had] been hospitalised twice during the last three weeks".

[45] Despite this admonition, the Court required Ms de Jager to take "to take all the necessary steps" – not all *reasonable* steps; all *necessary* steps – to restore the Snyders family to the dwelling. All this, within four short days. The imperative, disregardful ring to the injunction is unavoidable. It seemed to mean ensuring, by one means or

[15] Section 26(3) of the Constitution provides:

> "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."

another, that the Bredas got out of their home. Without a hearing. Without process. Without consideration of their circumstances. The short time frame the interim order granted accentuated the menace implicit in the injunction "to take all the necessary steps". This wording did not, as the main judgment suggests, imply its limitation. It implied the opposite.

[46] The Bredas were never given the opportunity to place their section 26(3) "circumstances" before this Court. The first we heard from them on this was in April 2016, six months after the Court issued the interim order affecting them.[16] They were denied both the human consideration and the legal necessity of being heard and seen and considered (*audi alteram partem*) that having their circumstances considered "relevant" entailed. The failure to afford the Bredas this opportunity meant that this Court was not in a position to consider "all the relevant circumstances" when granting the order.

[47] In effect, the Court granted the Snyders family a spoliation order, letting them back into their former home, as though the Breda family were invisible. As though they did not exist. The Bredas were given a chance only later. In the joinder judgment, in which I concur, the Court says that in eviction—

> "a court may not competently make an order that either directly or indirectly requires someone to be evicted without that person having been joined in the proceedings and heard. To do otherwise would mean that a court may in effect directly or indirectly order someone's eviction without the person having been given an opportunity to be heard. Indeed, that would mean that the court would be making an eviction order against someone without it having heard from that person in regard to all his or her circumstances that the court is enjoined by section 26(3) of the Constitution to consider."[17]

[16] The Court, by directions dated 2 March 2016, invited the Breda family to indicate why they should not be joined to the eviction proceedings against the Snyders.

[17] *Snyders v de Jager* [2016] ZACC 54 at para 10.

[48] Well, quite. The interim order did exactly what the joinder judgment says cannot and should not ever be done. It required Ms de Jager to ensure the Bredas left their home without their having been heard and given an opportunity to place their circumstances before the Court. So clearly did the order mean this – that the Bredas should be made to move without ado – that Mr Snyders' attorney brought proceedings for contempt against Ms de Jager when she failed to promptly oblige. Her protestations that she repeatedly instructed Mr Breda to leave, with the later help of the Sheriff, and that he refused each time to do so, in part precisely because of his ailing child, made no impression.[18]

[49] The contempt proceedings the attorney insisted on bringing were thoroughly ill-conceived. The Court in an accompanying judgment, in which I also concur, rightly concludes that Ms de Jager was not guilty of contempt.[19] Not nearly, I would add. The attorney should in my view pay the costs of those proceedings from his own pocket.

[50] It is possible to go on like this. And to cite the floribundant declarations, appearing lavishly throughout this Court's evictions jurisprudence, whose spirit and letter the interim order violated. But enough. The interim order should never have been granted. It was wrong then, and it is still wrong now.

[51] This is particularly so since this Court is ill-suited to hear urgent applications.[20] It is "not designed to act in matters of extreme urgency" – particularly during recess,

[18] Mr Snyders' attorney suggested, placing mistaken reliance on *Pharo's Properties CC v Kuilders* [2001] ZALCC 1; 2001 (2) SA 1180 (LCC), that moving an occupier protected by ESTA from one dwelling to another on the same farm need not constitute an "eviction", and, equally mistakenly, suggested that Ms de Jager could obtain an urgent eviction order against the Bredas in the Magistrate's Court, whereas the jurisdiction for that court to do so does not exist.

[19] *Snyders v de Jager* [2016] ZACC 53 at para 9.

[20] In *African National Congress v Chief Electoral Officer, Independent Electoral Commission* [2009] ZACC 13; 2010 (5) SA 487 (CC); 2009 (10) BCLR 971 (CC), at para 11, the Court noted that ordinarily, "this Court is not suited to hear urgent matters, because of its composition and functions".

when its members "disperse to their homes"[21] and are not gathered together for ease of reflective discussion and deliberation.

[52] The eviction appeal should have wended its way, exactly as it did, through the cumbersome and frustrating processes of the law. Ms de Jager should have had the chance to explain, exactly as she did, why the Snyders family was evicted as it was, and why accusations that she acted in bad faith, then or later, were misconceived. The Snyders family should have had a chance, exactly as they have, to show that the SCA's interpretation of its appellate powers after the LCC confirms a Magistrate's Court's eviction order was not optimal, and that, in fact, the better reading of the legislation makes the confirmation order appealable. The Bredas should have had the chance to be heard before an order affecting them so radically was issued.

[53] The interim order should not have been granted. I dissented then and I dissent now.

[21] In *President of the Republic of South Africa v United Democratic Movement* [2002] ZACC 34; 2003 (1) SA 472 (CC); 2002 (11) BCLR 1164 (CC), at para 30, the Court said expressly that the "Constitutional Court is not designed to act in matters of extreme urgency" during recess:

> "It consists of eleven members and a quorum of the Court is eight of them. This Court is in recess for some months of each year and during those times its members disperse to their homes which, in some cases, are a considerable distance from the seat of the Court in Johannesburg. Members of the Court are however obliged to be available for recall to the seat of the Court at short notice. However, it is not always possible to convene a quorum of the Court at very short notice during a recess. If the High Court is not able to grant an interim order in an urgent case where there is a justifiable fear of irreparable harm, a person who might be prejudiced by an act flowing from the legislation might well be left without an effective remedy. That would be an unfortunate consequence which should not lightly be held to be an inevitable consequence of the provisions of the Constitution."

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