Does an ESTA occupier have a right to graze livestock?

The Land Claims Court recently gave a broader interpretation of the Extension of Security and Tenure Act (ESTA) by stipulating that ESTA occupiers also have rights to graze their livestock.

In the matter of *Moladora Trust v Mereki* [2022] ZALCC 32, the Moladora Trust, which owns a farm in the North West Province, brought an application against the children of Meriam Mereki, a former farm employee to interdict them from letting their cattle graze on the land. The Trust accepted that the family were occupiers in terms of ESTA but said their occupation rights were only for residential or housing purposes and that they had never sought nor obtained consent to graze cattle on the farm. Consequently, the Trust served eviction notices, demanding the removal of the cattle in 2018 and in 2020, but only launched the application in 2022.

Previously, courts in South Africa held that grazing was only permitted with the consent, tacit or otherwise, of the landowner but the court held in this instance that the act demands a more generous interpretation. Top of FormBottom of Form

"It will frequently be the case, at least in cattle grazing country, as in this case, that the use of the land for grazing will be linked to a right of residence in terms of ESTA.

"If an occupier is deprived against his or her will of the right to use grazing linked to such right of residence, it will amount to an eviction and, in turn, it will be subject to the protections of ESTA,"

The Trust argued that on the death of Mereki, the right to graze cattle had terminated. The court said that on the Trust's own version, there could not be any real doubt that the occupiers had tacit consent to keep and graze cattle, given that it had not taken any real action against them for four years.

Therefore, ESTA applied to the effect that a person who has continuously and openly resided on land for a year has consent to do so. This consent cannot be interpreted narrowly to apply only to a consent to being housed but must include

a consent to also use the land. The occupiers have not only openly resided on the farm but have used the land for purposes of grazing their cattle. It is then presumed that they had consent to do so.

Therefore, the guidelines vested in ESTA must be followed for their eviction as the Respondents clearly had consent to graze cattle on the farm, and there was a tacit agreement with the Trust to that effect. The application was accordingly dismissed.