Can you evict adult non-dependant children from a farm?

First Realty (Krugersdorp) (Pty) Ltd brought an application for the eviction of various occupants situated on one of its properties in terms of the Extension of Security of Tenure Act, 62 of 1997 ("the act"). The property was a farm owned by Mr Hamman since 2011.

Hamman's application relied on sections 10 and 11 of the Act in seeking the eviction of 26 respondents residing in seven cottages on the farm. When he bought the farm, the cottages were allocated to seven of the respondents, being current or former employees, who had been living there for years with their families consisting of various combinations of spouses, adult dependents and non-dependents, and minor children. Hamman alleged that there are presently 60 occupiers, which was disputed by the respondents.

In his founding affidavit, Hamman argued that each employee's and ex-employee's right to occupy was limited to the extent that each of them was only permitted to extend their rights of occupation to their spouses and/or minor and/or dependent children stemming from an agreement between them.

Because the rights and duties of the employees and their former employer were not in writing, Hamman prepared written agreements regulating the relationship between him and his employees. This agreement was presented to the employees in October 2012. Clause 13 of that agreement stated clearly that the employee would be entitled to have relatives live on their premises, subject to the employer's prior consent.

However, in October 2015, new contracts were concluded, and in the same year, Hamman undertook a process of requesting each employee to take all necessary steps to ensure that the housing rules were complied with. This included that, once their children reached the age of majority and/or became self-supporting, those children vacated the property or that steps were taken to ensure this happened.

The eviction process dates to 11 April 2017, when notices were sent to the adult non-dependent children to vacate the property. None did so, and notices were

again delivered on 6 March 2018 to each employee and ex-employee, as well as their spouses. A final notice was sent on 30 April 2018, calling upon families to vacate the property by no later than 31 May 2018. However, the court found that none of the adult non-dependent children had been invited to the meetings.

In the court's judgment, the court indicated that the Applicant erroneously seems to regard only the employees and ex-employees as occupiers in terms of the Act. The adult non-dependent children are occupiers in their own right and cannot have their right of residence terminated by proxy through their parents.

As occupiers in their own right, the adult non-dependent children enjoyed full protection under the Act, the court found. The terms of an agreement entered into only by the parents of the adult non-dependent children could not be extended to include these children.

As a result, the application was dismissed.

Willem van der Merwe, Van Velden-Duffey Inc