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“There can be no true security of tenure under conditions devoid of human dignity”.¹
(Daniels v Scribante and Another- Constitutional Court of SA)

The Constitutional Court has clarified the rights of tenants under Extension of Security of Tenure Act (ESTA) to have basic improvements made to their dwellings.

The case revolved around a domestic worker who, having failed to get the property owner to make certain repairs to her dwelling on a farm – “improvements that were no more than basic human amenities”¹ – decided to get a contractor to carry out the work herself. The property owner objected on the basis that if improvements are done on a property by a tenant, the landlord becomes liable for the cost incurred. Various courts, including the Land Claims Court and the Supreme Court of Appeal, held “that ESTA sets out the rights of occupiers and that the right asserted by [the tenant in this case] was not one of those rights.”² The case went to the Constitutional Court, which made three crucial conclusions.

- Landowners’ or property owners’ rights do not trump tenants’ rights to live in dignity.³
- Ownership is not an absolute right. This is because “the absolutisation of ownership and property and the hierarchy of rights it spawned did not fulfil the purpose of founding political and economic freedom in South Africa. To the contrary, it confirmed and perpetuated the existing inequalities in personal, social, economic and political freedom.”
- Land ownership and property ownership come with *positive* and *negative* obligations. This means that it becomes property owners’ positive duty to ensure that their behaviour in relation to the tenant does not take away the tenant’s right to dignity. As the Court put it in paragraph 49 of its judgment:

“By its very nature, the duty imposed by the right to security of tenure, in both the negative and positive form, does rest on private persons. People requiring protection under ESTA more often than not live on land owned by private persons. Unsurprisingly, that is the premise from which this matter is being litigated. And I dare say the obligation resting, in particular, on an owner is a positive one. A private person is enjoined by section 25(6) of the Constitution, through ESTA, to accommodate another on her or his land. It is so that the obligation is also negative in the sense that the occupier’s right should not be “improperly invaded”.⁴

This decision is likely to benefit thousands of tenants around the country who, up to now, have been prevented from improving their domestic conditions by the refusal of landlords to allow them to develop their homes.

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http://www.judiciary.org.za/doc/Court-Case-11-May-2017_Media-Summary_CCT50-16.pdf
<http://www.news24.com/SouthAfrica/News/domestic-worker-wins-battle-to-upgrade-her-dwelling-20170511>
<http://www.saflii.org/za/cases/ZACC/2017/13.html>
<http://constitutionallyspeaking.co.za/the-constitutional-court-speaks-about-land-and-dignity/>

¹ http://www.judiciary.org.za/doc/Court-Case-11-May-2017_Media-Summary_CCT50-16.pdf

² Ibid.

³ <http://constitutionallyspeaking.co.za/the-constitutional-court-speaks-about-land-and-dignity/>

⁴ Ibid.