

Holiday House is not a 'Home'

Holiday home owners might wish their coastal pads were where they lived 365 days of the year, but the reality is that many are absentee landlords who visit infrequently or rent out their property for most of the year.

But whether this means that these properties can legally be referred to as homes – and the implications of this for the rights of landlords and their tenants – was raised by a recent Supreme Court of Appeal judgement.

In the September judgement, Judge F.D.J. Brand, in *Barnett v Minister of Land Affairs* [2007] SCA 95 (RSA), stated that holiday houses or cottages were not "homes" covered by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Pie Act).

The Pie Act provides for the prohibition of unlawful eviction and for procedures for the eviction of unlawful occupiers.

The case involved 16 defendants who were the occupiers of sites on the Wild Coast north of Port St Johns.

The government sought and obtained an eviction order against the defendants in the Mthatha High Court and the defendants were directed to demolish and remove all structures built on the sites.

In dismissing the appeal, Brand found the Pie Act was not applicable because the cottages were held not to be homes.

He said though the concept home was not easy to define and he agreed with the argument by the defendants that one could have more than one home, the term in his view required an element of "regular occupation coupled with some degree of permanence".

Quoting from a previous judgment, Brand said the Pie Act did not apply to holiday cottages put up for holiday purposes and visited occasionally over weekends and during vacations.

Whether or not a house classifies as a "home" is therefore important for landlords who let out holiday accommodation for long periods, especially in deciding whether or not they have to comply with the Pie Act.

Mosdell, Pama & Cox attorney Melony Paulsen said she agreed with Brand's decision because the defendants had no degree of permanence.

But she said the term "home" would have to be "broadened" because it would cause problems for landlords in getting an eviction order as they would not be able to rely on the Pie Act.

She said landlords could face consequences if they had tenants in their holiday houses and wanted to evict them, as courts might protect the tenants under the Pie Act, but not the landlord.

Speaking generally, Cape Town attorney Salvatore Puglia said it was "sad" to see the Pie Act being "abused" by some tenants.

She said there had been an increase of problems whereby tenants did not want to pay for accommodation and as a result went to court claiming they could not find accommodation.

She said this was unfair for the landlord, who ended up paying water and electricity bills.