IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case No.: 14639/2017

Before the Hon Holderness AJ
Hearing: 28 February 2018
Judgment Delivered: 20 March 2018

In the matter between:

TRANSCEND RESIDENTIAL PROPERTY FUND LIMITED Applicant

and

NORAH SIYAMTHANDI MATI First Respondent

THE MUNICIPALITY FOR THE CITY OF CAPE TOWN Second Respondent

UGOCHUKWU ONU Third Respondent

JUDGMENT

HOLDERNESS, AJ:

Introduction

[1] This is an application for the ejectment of the first and third respondents from the premises described as Flat [...] R. M., D. D., Parklands, Cape Town ('the premises').

[2] It is common ground that the first and third defendants are 'occupiers', as defined in Section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act').

[3] The initial issues which arose for determination by this court were the following:

3.1 Do the occupiers have a common law right to occupy the property?

3.2 If not, is it just and equitable that they be evicted;

3.3 If so, what would be a just and equitable period within which such eviction is to be effected?

Common cause facts

[4] The applicant is the registered owner of the property on which the premises are situated, comprising part of a residential block of flats known as Riverside Mews.

[5] On 1 March 2017, the applicant and the first respondent concluded a written lease agreement in terms of which the applicant let the premises to the first respondent ('the

agreement'). The first respondent does not oppose the relief sought in these proceedings, and was not represented at the court at the hearing.

[6] In terms of the agreement, the lease commenced on 1 March 2017 and terminated on 29 February 2018 ('the initial period'), whereafter it would continue on a month to month basis, subject to termination by either party on one calendar months' written notice.

[7] The first respondent was the lessee in terms of the agreement, and both she and the third respondent are identified as occupants under the list of occupants provided for in para 1.20 of the agreement. The third respondent's name is handwritten in under the list of occupants, together with his identity number. There is only one set of initials next to this handwritten amendment. The agreement provides for a maximum of two occupants, and required that if the occupant is a minor, the age should be indicated.

[8] In terms of clause 6.3, should the lease continue on a month-to-month basis, the provisions of section 14 will no longer apply to the lease.

[9] The monthly rental payable in terms of the agreement is R6,000, payable by the first respondent in advance without deduction or set-off on the first day of each month.

[10] In addition, the first respondent is also liable for the costs of electricity, water, sewage and other related charges in respect of the premises monthly on demand.

[11] In the event of the first respondent failing to pay any amount due to the applicant on due date during the initial period, and remaining in default for 20 business days after despatch

of a written notice calling upon her to remedy such breach, the applicant shall be entitled forthwith to cancel the lease and claim all arrear rentals and/or any other damages from her, and claim repossession of the premises.

[12] It appears that the third respondent has remained in occupation of the premises since inception of the agreement, whereas the first respondent either vacated the premises shortly after the lease was concluded, or never took occupation thereof.

The evidence of the third respondent regarding non-payment and purported cancellation

[13] It is common cause that as at 9 May 2017, the first respondent was in arrears with the rentals and related charges payable by her in an amount of R6,290.

[14] In the answering affidavit filed on his behalf, the third respondent denied that the first respondent resides or has ever resided at the premises.

[15] The third respondent averred that he paid his rental up until June 2017, whereafter he withheld his payments ‘in an attempt to compel the Applicant to enter into meaningful engagement regarding my [his] numerous unaddressed grievances.’ These grievances include the fact that his deposit was not invested in an interest-bearing account, that the applicant’s agents failed to attend to his complaints regarding lack of maintenance of the premises, and that he was being charged for parking and water meter rates without having consented thereto.

The letter of demand

[16] The applicant alleges that on 9 May 2017, it caused a letter of demand to be delivered, by hand, to the first respondent. The letter was delivered by the building manager of the applicant's managing agents, Mr. Dylan Oelofse ('Oelofse'). Oelofse filed a confirmatory affidavit confirming that the letter was delivered by hand to the first respondent. He does not state that he handed it to her personally, nor where it was so delivered.

[17] The third respondent placed this allegation in dispute. He denied that a letter of demand was delivered to the first respondent. However, he then goes on to confirm that he in fact received the letter of demand, which he said had been pushed under the door of the premises.

[18] The third respondent annexed a deposit slip reflecting a payment by him of the amount of R6,000, which was made on 23 May 2018. He alleged that by making this payment within 20 business days from receipt of demand, he paid 'almost all of the outstanding money that was owing to the applicant. He admits failing to pay the balance of R290,00, which he contends was made up of the applicant's unilaterally imposed charges for water and parking, with which he did not agree.

[19] The applicant annexed its statement for the period from April 2017 to June 2017. The payment made on 23 May 2017 does not appear on the statement, and the balance due and owing for June 2017 is reflected as being R12,580. It appears from the statement that, notwithstanding the May payment, the first respondent was still in arrears in an amount of R6,580. Suffice it say it is common cause that the first (or third) respondent failed to make

payment of the full amount due and owing to the applicant, notwithstanding the written demand which he admits having received.

[20] As a result of the failure to bring the arrears up to date within the requisite 20-day period, the applicant cancelled the agreement on 6 June 2017, exactly 20 business days after demand, by which time the first respondent's arrears had increased to R12,580.

Has the agreement been validly cancelled?

[21] The third respondent admits receiving the letter of cancellation, however he states that it was given to him by the security in the complex, and not by Oelofse as alleged by the applicant. Nothing turns on this. The fact of the matter is that he did receive it.

[22] A central defence of the third respondent is that, in terms of s 14(2)(a)(ii) of the Consumer Protection Act of 2008 ('the CPA'), the lessor is obliged to provide the consumer, upon breaching the lease agreement, an opportunity of 20 days within which to rectify such breach, before cancellation can be effected.

[23] The letter of demand, dated 9 May 2017, provides *inter alia* as follows:

'***Dear Ms NS Mati***

1) *As the managing agent duly authorised to act on behalf of the landlord hereby wishes to inform you that your account is in arrears with* ***R6,290*** *for rent and/or additional charges, arising out of your tenancy of the abovementioned premises;*

2) *You are required to pay this amount within 7 (seven) days of date hereof kindly fax/email proof of payment to the writer hereof.*

3) *Failure to effect payment as aforesaid will result in a summons being issued against you without further notification and could, in certain circumstances, result in the cancellation of any lease that may be in force.'*

[24] The third respondent did not provide any proof that he emailed or faxed proof of payment of R6,000 on 23 May 2017 to the applicant's agents. The payment was made out of the seven-day period stipulated in the letter of demand, but was within the 20 business days provided for in s 14 of the CPA.

[25] On 6 June 2017, a letter of cancellation, addressed to the first respondent, was hand delivered to the third respondent. In this letter, the applicant's agent recorded that, notwithstanding the written demand of 9 May 2017, the first respondent had failed to effect payment in full within the stipulated time period of the amount referred to therein. The applicant conveyed its election to cancel the agreement, and notified the first respondent that she was required to vacate the premises forthwith, and by no later than 15 June 2017, failing which the applicant would institute eviction proceedings against her without further notice, and at her cost.

[26] The third respondent contended that the letter fails to take into account the R6,000 payment, and is flawed for the further reasons set out hereunder.

Joinder of the third respondent

[27] On 21 September 2017 the first respondent indicated that she wished to oppose the application. The matter was postponed to 27 October 2017 to afford her an opportunity to deliver a notice of intention to oppose and an answering affidavit. She did not deliver either by such date, and does not now oppose the relief sought.

[28] On 27 October 2017, the third applicant entered the fray. He was joined in the application and the matter was again postponed to 14 November 2017 to afford him an opportunity to deliver an answering affidavit, on the basis that he was already legally represented at the time.

[29] On 14 November 2017, O'Brien AJ postponed the matter to the semi-urgent opposed roll for hearing on 28 February 2018 and further ordered the first respondent to continue paying her rentals and related charges pending the final determination of the relief sought by the applicant. In breach of this order, the enforceability of which may be questionable, neither the first nor the third respondents have paid any further rental amounts in terms of the agreement.

Further issues arising for determination

Is the third respondent a 'consumer' in terms of the CPA?

[30] The principal complaint raised by the third respondent is that, in contravention of s14(2)(a)(ii) of the CPA, in terms of which he was to be afforded 20 business days within which to rectify his breach, the applicant only allowed him a seven day period within which to do so. Following from this, the third respondent alleged that the agreement was not properly cancelled for want of proper notice in compliance with the requisite 'statutory and contractual requirements.'

[31] The so-called CPA defence was alluded to in the answering affidavit, but was not dealt with in either the applicant's nor the third respondent's heads of argument. At the request of the court, Mr Newton who appeared on behalf of the applicant, and Mr. Langenhoven, who appeared for the third respondent, undertook to furnish me with written supplementary submissions regarding this defence, and more particularly whether the third respondent could be regarded as a 'consumer' in terms of the CPA. I was only in receipt of both sets of submission on 7 March 2018, which has delayed the finalisation of this judgment, which I hoped to delivery shortly after argument was heard in the matter.

[32] I turn now to consider the relevant provisions of the CPA, in the context of the peculiar facts of this matter.

[33] In section 1 of the CPA, the relevant definition of a 'consumer' in respect of any particular goods or services, is:

'(a) ....

(b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3)

(c) if the context so required or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services.'

(d) ....'

[34] The relevant definition of 'transaction' in terms of section 1 is:

'(a) in respect of a person acting in the ordinary course of business-

(i) ...

(ii) ...

(iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration;'

[35] Mr Langenhoven contended that paragraph (c) of the definition of consumer is qualified by the words 'if the context so requires or permits'. He argued that in the context of this case, the third respondent, who is described in terms of the agreement as an 'occupant',

was clearly intended to be a beneficiary in terms of the agreement, and that it was envisaged by both parties, presumably here he is referring to the applicant and the first respondent, that he would be a beneficiary of services, and therefore falls within the definition of 'consumer' in terms of the Act. He pointed out that given that a distinction is made in the definition between 'require' and 'permit', the context of this specific transaction required that the third respondent fulfil the 'conditions' and therefore must fall within the ambit of a 'consumer'.

[36] In the alternative, he submitted that having regard to the context, it is ultimately permitted that the third respondent is defined as a consumer, as it is he who has been occupying the premises and paying the rental to the applicant.

[37] The applicant on the other hand, held the view that based on the express wording of the agreement, the third respondent is not a consumer in terms of the CPA.

[38] In his further submissions, Mr. Newton, who appeared on behalf of the applicant, pointed out the following (his underlining added):

38.1 In clause 1 of the agreement it is expressly recorded that the first respondent is the sole tenant in terms of the agreement;

38.2 The deposit, rentals and other charges payable in terms of the agreement are 'Tenant Costs';

38.3 Clause 4 of the lease provides that *'The Landlord leases the premises to the Tenant, and the Tenant hires the premises from the landlord, in terms of this Lease.'*

[39] He emphasised that every single right and obligation under the lease is either that of the applicant or the first respondent, which is underscored by the fact that clauses 24 and 25 only deal with breaches of the agreement by either the Tenant or the Landlord, who were the sole signatories to the agreement.

[40] Mr Newton argued further that the mere fact that the tenant has been notified, in advance, that the occupier (the third respondent) would occupy the premises together with the Tenant (the first respondent), cannot somehow make the occupier the tenant and saddle the occupier with the tenant's obligations, or, for that matter, clothe him with the tenant's rights.

The interpretation of the Act and s 61 in particular

The applicable definitions and tools of interpretation

[41] In the recent decision of *Eskom Holdings Ltd v Halstead-Cleak*[1], the Supreme Court of Appeal**,** in interpreting the CPA, had regard to the principles enunciated in *Natal Joint Municipal Pension Fund v Endumeni*[2] and *Novartis v Maphil.*[3] It found that the interpretative process involves ascertaining the intention of the legislature, but considers the words used in the light of all relevant and admissible context, including the circumstances in which the

[1] 2017 (1) SA 333 (SCA)

[2] 2012 (4) SA 593 (SCA)
[3] 2016 (1) SA 518 (SCA)

legislation came into being. Furthermore, as was said in *Endumeni*, 'a sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results. . .'.

[42] The long title of the CPA provides that it is to promote a —

> *'fair, accessible and sustainable marketplace for consumer products and services and for that purpose to establish national norms and standards relating to consumer protection, to provide for improved standards of consumer information, to prohibit certain unfair marketing and business practices, to promote responsible consumer behaviour, to promote a consistent legislative and enforcement framework relating to consumer transactions and agreements . . .'.*

[43] Schoeman AJA, who wrote the judgment for the SCA in *Eskom Holdings Ltd v Halstead-Cleak,* referred to the Green Paper discussion of the CPA, from which it is clear that a broad spectrum of consumers needed protection:

> *'Perhaps one of the greatest pitfalls in most consumer protection laws in South Africa, is the absence of a uniform definition of a consumer. This has resulted in a difficulty for enforcers to accurately identify individuals that the State seeks to protect. Consumers must be defined broadly as individuals who purchase goods and services, and must include third parties who act on behalf of the consumer. . . .*'[4]

[44] In terms of the provisions of s 2(1), the CPA must be interpreted in a manner that gives effect to the purpose of the CPA, as set out in s 3. That purpose is to promote and

[4] Draft Green Paper on the Consumer Policy Framework, GN 1957, *GG* 26774 of 9 September 2004

advance the social and economic welfare of consumers, in particular vulnerable consumers, in South Africa.[5] If there is an inconsistency between the CPA and any other legislation both Acts apply concurrently, to the extent that it is possible. If it is not possible, the provisions that extend the greater protection to a consumer prevail over the alternative provisions.[6]

[45] Section 5 concerns the application of the CPA. The relevant provisions apply to every transaction occurring within South Africa for the supply of goods or services or the promotion of goods or services. Section 5(5) provides that if any goods are supplied within the Republic to any person in terms of an exempt transaction, those goods and the producer are nevertheless subject to s 61.

[46] In *Eskom Holdings supra*, at para 15, the Court stated as follows:

> *'The definition of 'consumer' in s 1 is a person to whom goods or services are marketed in the ordinary course of a supplier's business, or who has entered into a transaction with a supplier in the ordinary course of a supplier's business. The definition includes a person who is a user of the goods or a recipient or beneficiary of the particular service irrespective of whether that person was a party to a transaction concerning the supply of the goods or services. This has the effect that the recipient of a gift from a consumer would also be considered a consumer in terms of the Act. The important features to note are that there must be a transaction to which a consumer is party, or the goods are used by another person consequent on that transaction. '*

[5] The same purpose has been set out in the preamble of the Act.
[6] *Eskom Holdings supra* at para 12

[47] From the definitions, the preamble and purpose of the CPA, as detailed in the *Eskom Holdings* decision *supra*, and restated above, it is clear that the whole tenor of the Act is to protect consumers. A consumer is a person who buys goods and services, as well as persons who act on their behalf or use products that have been bought by consumers. There are categories of persons who fall outside this definition, but they are deemed to be consumers in terms of the provisions of s 5(6) as set out above. These purchases are made by way of transactions. The Act must therefore be interpreted keeping in mind that its focus is the protection of consumers.

[48] In light of the above, and the broad definition of 'consumer' as envisaged in terms of the CPA, in my view the third respondent falls within the definition of a consumer, and is accordingly entitled to the protection of the CPA, and, if necessary, to invoke the provisions of the CPA which are applicable to the peculiar circumstances of his occupancy of the premises.

[49] In the event of this court finding that the third respondent is a consumer, and that the cancellation was invalid as it did not specify that he had 20 days within which to remedy this breach, the applicant relied, in the alternative, on the provision in section 5(3)*(o)* of the Rental Housing Act 50 of 1999 ('the Rental Housing Act').

[50] Section 5(3)*(o)* of the Rental Housing Act provides that:

> *'should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord*

established that the tenant had vacated the dwelling but in such event the landlord retains all his or her rights arising from the tenant's breach of the lease;'

[51] Relying on the aforementioned section, Mr. Newton contended that the lease terminated on the date on which the third respondent's answering affidavit was served on it, as this was the first time it became aware that the first respondent had never taken occupation of the premises.

[52] My view is that, in the peculiar circumstances of this case, it would not be appropriate to invoke section 5(3)*(o)*. However, in light of my finding that the agreement has been validly cancelled, it is not necessary in any event to make a finding in this regard.

[53] Proceeding from the premise that the third respondent is a consumer, and was accordingly entitled to 20 business days' notice in terms of section 14 of the CPA, the next question which arises for determination is whether he *de facto* received such notice, notwithstanding the erroneous reference in the letter of demand to seven days within which he was required to remedy his breach.

[54] Section 14(2), read with section 14(2)(*a)*(ii) of the CPA, provides that if a consumer agreement is for a fixed term, the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time.

[54] The somewhat formalistic argument relied upon by Mr. Langenhoven is that the cancellation is a nullity, or the agreement was never validly cancelled, because the applicant

failed to inform the first respondent, and by implication him, of the right to remedy the breach within 20 days. In terms of the letter of demand the first respondent was notified that she has seven days within to remedy the breach.

[56] To my mind this reads too much into what is required in terms of the CPA. There is no requirement, express or implied, that the consumer must be expressly notified of the fact that he has twenty business days to remedy his defect. The fact of the matter is that the letter of cancellation was only delivered after the full 20 business days had elapsed, and he therefore had the full statutorily prescribed period within to remedy his defect. It is common cause that neither he nor the first respondent made payment of the full amount due and owing to the applicant within the 20-day period. To my mind the applicant was therefore entitled, in terms of section 14 of the CPA, to cancel the agreement, and the cancellation was accordingly valid.

[57] It follows that from the date of cancellation, neither the first respondent, nor the third respondent who occupied the premises through the first respondent, had any right in law to remain in occupation thereof.

[58] The applicant is the owner of the property. The third respondent has no lawful title to remain in occupation of the property. He is an unlawful occupier as envisaged in the PIE Act, and the applicant is entitled to an order evicting him from the premises.

[59] The only questions which therefore remain are whether it is just and equitable to evict the third respondent, and if so, what date will be just and equitable for such eviction to be carried out.

[60] Mr. Langenhoven enjoined the court, if it was decided that the third respondent is to be evicted, to only grant such an order after consideration of all relevant circumstances.

[61] The agreement commenced on 1 March 2017. These proceedings were initiated on 15 August 2017. Accordingly section 4(7) of the PIE Act, which provides that where an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women, does not apply.

[62] Section 4(6) of the PIE Act, which finds application in the present matter, provides that if an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

[63] The question of the availability of land for the relocation of the third respondent and his family does not arise, notwithstanding the third respondent's contention to the contrary.

[64] Mr Langenhoven relied on the following passage in the SCA judgment in *The Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele*[7], in support of his submission that this court should, in addition to the factors listed in section 4(6), also have regard to the availability of alternative land:

> *'In terms of s 4(7) a court is obliged, in addition to the circumstances listed in s 4(6), namely, the rights and needs of the elderly, children, disabled persons and households headed by women, to give due weight to the availability of alternative land. There is nothing to suggest that in an enquiry in terms of s 4(6), a court is restricted to the circumstances listed in that section. The court must have regard to all relevant circumstances. The circumstances identified are peremptory but not exhaustive.*[14] *The court may, in appropriate cases, have regard to the availability of alternative land. However, where the availability of alternative land is relevant, then it is obligatory for the court to have regard to it.'*

[65] He further relied on the recent Constitutional Court decision in *Occupiers Erven 87 and 88 Berea v Christiaan De Wet*[8], the court held that:

> *'The court will grant an eviction order only where: (a) it has all the information about the occupiers to enable it to decide whether the eviction is just and equitable; and (b) the court is satisfied that the eviction is just and equitable, having regard to*

[7] (102/09) [2010] ZASCA 28
[8] 2017 (5) SA 346 (CC) at para 48, and the authority cited there

the information in (a). The two requirements are inextricable, interlinked and essential. An eviction order granted in the absence of either one of these two requirements will be arbitrary. I reiterate that the enquiry has nothing to do with the unlawfulness of occupation. It assumes and is only due when the occupation is unlawful.'

[66] Mr. Newton in turn referred to the recent decision in this division of *Jacobs v Communicare and Another*[9] where the court (per: Gamble J and Kose AJ) stated the following in relation to the distinction between applications under section 4(6) and section 4(7) of the PIE Act:

'In light of the fact that the appellant's period of unlawful occupation did not exceed six months, the first respondent was entitled to approach the court in terms of the provisions of s 4(6) of PIE to secure his eviction from the premises. In such circumstances there was a duty on the magistrate to consider 'all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women', whereafter an order could be made on condition that it was just and equitable to do so. Because the appellant's occupation had been unlawful for fewer than six months, the magistrate was not statutorily enjoined to consider the question of whether alternative accommodation could be made available by a municipality or another organ of state: that enquiry is compulsory only where the occupier has been in unlawful occupation in excess of six months and where the provisions of s 4(7) of PIE are triggered.'

[9] 2017(4) SA 412 (WCC)

[67] Once the magistrate was satisfied that all the requirements of s 4 of PIE had been complied with and that no valid defence had been raised by the appellant, he was compelled to ('must') grant an order for eviction. When doing so the magistrate was required, by virtue of the provisions of s 4(8) of PIE, to determine:

> *'(a)* a just and equitable date on which the unlawful occupier must I vacate the land under the circumstances; and
>
> *(b)* the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph *(a)*'.

[68] In determining what a just and equitable date might be, the court is required, under s 4(9) of PIE, to 'have regard to all relevant factors, including the period the unlawful occupiers and his or her family have resided on the land in question'. In the case of the appellant, that would be a period exceeding 12 years.

[69] Turning to the purpose of requiring a local authority to furnish such information, the Supreme Court of Appeal in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*[10] observed as follows:

> *'In considering the grant of an eviction order the court is concerned with the plight of those who, as a result of poverty and disadvantage, are unable to make alternative accommodation arrangements themselves and require assistance from the local authority to do so. It is particularly concerned to ensure, so far as possible, that those who face homelessness are provided at least with temporary emergency accommodation.'*

[10] 2012 (6) SA 294 (SCA) at para 47

[70] Several of the cases to which I was referred by Mr. Langenhoven are clearly distinguishable from this matter, on the facts. They involve occupiers who indeed face a real risk of homelessness. That is clearly not so in the case of the third respondent, and his protracted opposition of the application strikes me as opportunistic.

[71] In the *Berea v De Wet Non* case *supra*, the provisions of section 4(7) of the PIE Act applied. The court was accordingly statutorily enjoined to consider the availability of alternative accommodation. Furthermore, the Constitutional Court observed as follows:

> *'on the facts before it homelessness was an undisputed risk. An order that will give rise to homelessness could not be said to be just and equitable, unless provision been made to provide for alternative or temporary accommodation. That risk triggered the duty to join the City as the authority that would have to take reasonable measures within its available resources to alleviate homelessness*[11].
>
> *It follows that where there is a risk that homelessness may result, the availability of alternative accommodation becomes a relevant circumstance that must be taken into account. A court will not be able to decide the justice and equity of an eviction without hearing from the local authority upon which a duty to provide temporary emergency accommodation may rest. In such an instance the local authority is a necessary party to the proceedings. Accordingly, where there is a risk of homelessness, the local authority must be joined.*[12] '

[11] at para 57
[12] at para 61 and the authorities cited in footnote 53

[72] Does such a risk exist in the present matter? The third respondent is employed as a designer and earns approximately R8,230 per month. His wife, who is also a foreign notional, is employed as a call-centre operator, and earns approximately R7,000 per month. Their combined household income is in excess of R15,000 per month. They have an infant son, who was seven months old when the answering affidavit was deposed to, and who resides with them. There is another occupier, an adult female described on the papers only as 'Cebile', who is working and studying according to the third respondent. It is not clear what the basis of her occupation is, whether she has pays rental to the third respondent, and whether the first respondent has ever been aware that there is an additional person residing on the premises together with the third respondent and his family.

[73] The third respondent claims that he uses his income to pay the rental and support his family, and that his wife's income is used to pay all further expenses. He avers that they therefore do not have a deposit saved to secure alternative accommodation.

[74] What the third respondent fails to say is that he has not paid any rental since 24 May 2017, a period of almost ten months. He has been living rent free in the premises, at the expense of the applicant. He therefore should have in excess of R60,000 available as a 'saving' to secure new premises. His explanation and claim that an eviction will render them homeless accordingly does not bear scrutiny.

[75] The last arrow in the third respondent's quiver is that, owing to the fact that he and his wife are foreign nationals, an eviction order 'without sufficient time to secure alternative accommodation or to explore the possibility thereof through meaningful engagement with the applicant and the second respondent, will render us homeless and effectively on the streets.'

[76] The third respondent was able to secure the premises as a ‘stand in’ for the first respondent, and has not furnished any details of attempts made to secure alternative premises, notwithstanding that he has been aware of these proceedings for his eviction since the middle of last year.

[77] His son would not yet have been enrolled at school and there is no reason given why he would not be able to secure alternative premises if not in the area in which he is living, then in another suitable area.

[78] The third respondent’s attorneys sought to raise a number of further formalistic , and in opinion, baseless arguments relating to the applicant’s failure to maintain the premises and to ‘meaningfully engage’ with him regarding his further occupation.

[79] The third respondent has made no attempt to pay any amount whatsoever towards the arrear rental due and owing. When questioned in this regard at the hearing, his attorney was unable to furnish an explanation for such failure. These arguments to my mind are without any merit and need not be dealt with further.

[80] Having considered the third respondent’s and his family’s circumstances, I am of the view that it is just and equitable to grant an eviction order.

[81] I consider that a period of six weeks should suffice for the third respondent to secure alternative accommodation.

[82] I am not inclined to grant a punitive costs order as sought by the applicant, however there is no reason why costs should not follow the result.

[83] In the circumstances, the following order is made:

83.1 The first and third respondents and all those claiming occupation through and under them are evicted from Flat [...] R. M., D. D., Parklands, Cape Town, and are ordered to vacate Flat [...] R. M., D. D., Parklands, Cape Town before 1 May 2018.

83.2 In the event of the first and third respondents and all those claiming occupation through and under them failing to vacate Flat [...] R. M., D. D., Parklands, Cape Town on or before 1 May 2018, the Sheriff of the above Honourable Court or his lawful deputy is authorised, directed and empowered to carry out the eviction order on the 03 May 2018;

83.3 The third respondent is ordered to pay the costs of this application.

_____

HOLDERNESS AJ

APPEARANCES

For the Applicant:	Adv A Newton
Instructed by:	Lamprecht Attorneys
For the Third Respondent:	Mr Langenhoven
Instructed by:	Langenhoven Attorneys