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

REPORTABLE

CASE NO: 15217/2018

In the matter between:

PURE CAPITAL PROPERTY TRADING CC

Applicant

and

SHAMIELA HANSLO

First Respondent

YUSUF HANSLO

Second Respondent

FAAQIAH HANSLO

Third Respondent

ROUGAYAH HENDRICKS

Fourth Respondent

GALIED HENDRICKS

Fifth Respondent

**ALL THOSE HOLDING OCCUPATION ON THE
PROPERTY KNOWN AS SECTION 90 IN THE
SECTIONAL TITLE SCHEME SCHOTSCHEKLOOF
(Scheme Number 14/1999)**

Sixth Respondent

CITY OF CAPE TOWN

Seventh Respondent

JUDGMENT DELIVERED ON 31 OCTOBER 2018

GAMBLE, J:

INTRODUCTION

[1] This application for eviction was set down for hearing in the Motion Court on Tuesday 9 October 2018 pursuant to the issue of an order in terms of s4(2) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 (“*PIE*”) granted on 20 September 2018. When the matter was called the applicant was represented by Adv. P.S. McKenzie but there was no appearance for the respondents nor did they appear in person. Mr. McKenzie indicated to the court that he intended moving for an order as sought in the notice of motion.

[2] The court was concerned about the legal basis for the eviction, in particular what the status of the occupants was on the premises and, further, whether (as alleged in the founding affidavit) the common law principle of “*huur gaat voor koop*” had been expressly excluded from the provisions of the sale of the property. The court considered it appropriate to appoint an *amicus curiae* to assist in the resolution of these issues and was most fortunate to notice that Adv.S.eCamara was in court to attend to another matter. Given Ms. eCamara’s experience in these sort of matters the court had no hesitation in asking counsel whether she would accept an appointment as *amicus* at short notice, which Ms. eCamara gracefully did. The matter stood down until Friday 12 October 2018 when full argument was presented. The

court is indebted to Ms.eCamara for her valuable contribution in this application, assistance which is in the finest traditions of the Bar.

RELEVANT BACKGROUND FACTS

[3] The applicant is described in the founding affidavit by its sole member, Mr. Alon Philipe Kowen, only as a close corporation carrying on business at Century City, Cape Town. Its principal business is not stated but on its website (referred to in its resolution authorizing the institution of these proceedings) at www.purecapital.co.za the applicant says that it is a

“private equity boutique with a focus on the acquisition, management and disposition of tangible asset-based opportunities that emanate from private, legal, corporate and institutional streams..”

and that it operates in a

“cyber office remotely operating with the use of innovative technology.”

[4] In the founding affidavit Mr. Kowen (who says that he is an adult male carrying on business at Century City and who is authorized to act on behalf of the applicant) states that the applicant purchased Unit [...] in a sectional title scheme known as Schotschekloof Flats (Scheme No. 14/199 and hereinafter referred to as “*the property*”) on a sale in execution on 2 May 2018. The street address of the

property appears to be [...] Drive, Schotschekloof, Cape Town, an inner city residential area on the slopes of Signal Hill known colloquially as “Bo-Kaap.”

[5] From documents lodged in the Deeds Office (and which are attached to the founding affidavit) it appears that the property was purchased by the applicant for R375 000,00 and transferred to it on 13 July 2018. Those documents also reflect that the property -

- was originally owned by the City of Cape Town;
- was transferred to Ms. Rougayah Hanslo¹ in 2003 with its value for purposes of transfer duty set at R2865,00; and
- was acquired by Ms. Nuraan Hanslo in 2014 with its value for purposes of transfer duty set at R590 000,00.

[6] The sale in execution was at the instance of ABSA Bank Ltd (“ABSA”) which the papers also show had taken judgment² against an entity known as Gaylee Civil Contractors CC³ (“Gaylee”) and the aforesaid Nuraan Hanslo⁴, a 48 year old female. The file in the principal action further shows that ABSA’s claim against Gaylee was for an overdraft which in May 2016 stood at R910 623,50 and against Ms. Nuraan Hanslo in her capacity as surety for Gaylee’s indebtedness to the bank. The

¹ It is not clear whether this is the former name of the person cited in the notice of motion as the fourth respondent, Rougayah Hendricks.

² In case no. 15381/2016 hereinafter referred to as “*the principal action*”.

³ As the first judgment debtor.

⁴ As the second judgment debtor.

suretyship was secured by a mortgage bond passed by Ms. Hanslo over the property in favour of ABSA in July 2015 for R650 000 in respect of capital and R130 000 in respect of costs.

[7] The file in the principal action further shows that on 4 November 2016 judgment was granted by Smuts AJ against Gaylee and Ms. Nuraan Hanslo jointly and severally in the said amount with the property being declared immediately executable, and that on 1 February 2017 the Registrar issued a writ of execution in the said amount against Ms. Nuraan Hanslo only. In an affidavit filed in terms of Practice Note 33(2), an employee of ABSA told Smuts AJ in 2016 that the Bank did not know whether the property was being used as Ms. Nuraan Hanslo's primary residence or not.

THE TERMS OF THE SALE IN EXECUTION

[8] The conditions of the sale in execution by the Sheriff (which are also attached to the founding affidavit) reflect that the property was to be sold to the highest bidder without reserve in accordance with the provisions of Rule 46A of the Uniform Rules. Of the other 14 clauses only the following are relevant for present purposes.

"7. RISK AND OCCUPATION

7.1 The Purchaser shall be entitled to possession of the property immediately after signing these conditions of sale, payment of the Sheriff's commission and the 10% deposit and securing the balance of

the purchase price in terms of clause 4.3 hereof and thereafter the property shall be at his sole profit, risk and/or loss. The Execution Creditor and the Sheriff give no warranty that the Purchaser shall be able to obtain personal and/or vacant occupation of the property or that the property is unoccupied and any proceedings to evict the occupier(s) shall be undertaken by the Purchaser at his/hers/its own cost and expense....

9. SALE SUBJECT TO EXISTING RIGHTS

9.1 The property is further sold in accordance with the conditions and servitudes (if any) set forth in the original and subsequent Deeds of Transfer and to all such other conditions as may exist in respect thereof, including any right reserved in favour of a Developer Body Corporate in terms of Section 25 of the Section Titles Act, no 95 of 1986 if applicable. However, the property is sold free from any title conditions pertaining to the reservation of personal servitudes in favour of third parties and in respect of which servitudes, preference has been waived by the holder thereof in favour of the Execution Creditor.

9.2 Where the Property is subject to a lease agreement the following conditions apply:

9.2.1 Insofar as the property is let to tenants and the Sheriff is aware of the existence of such tenancy then:

9.2.1.1 if that lease was concluded before the Execution Creditor's bond was registered, then the property shall be sold subject to such tenancy;

9.2.1.2 if the lease was concluded after the Execution Creditor's bond was registered, the property shall be offered first subject to the lease and if the selling price does not cover the amount owing to the Execution Creditor under that bond, including interest, then the property shall be offered immediately thereafter free of the lease.

9.2.2 Should it be contended, after the sale, that the property is let in terms of a lease which was not disclosed to the Sheriff or the Execution Creditor, the property shall be deemed to have been sold free of such lease.

9.3 Notwithstanding any of these provisions, the Purchaser shall be solely responsible for ejecting any person or other occupier claiming occupation, including a tenant, at the Purchaser's cost. No obligation to do so shall vest in the Sheriff and/or the Execution Creditor....

11. CONFIRMATION BY THE PURCHASER

The Purchaser confirms that the property is sold for an amount of:

R375 000:00 (Free of Lease)

(Three Hundred and Seventy Five Thousand)....⁵

and accepts all further terms and conditions as set out herein, which acceptance is confirmed by his signature below.”

[9] At the conclusion of the document the Sheriff appended his/her signature under the following certification.

“I, the undersigned, Sheriff of Cape Town West hereby certify that the today the 2 day of May 2018 and as advertised, the aforementioned property was sold for R357 000: 00 free of lease to Pure Capital Property Trading CC”

Thereafter appears the signature of the buyer who is described as

“Paul John Colquhoun obo Pure Capital Property Trading CC”

THE MATERIAL ALLEGATIONS IN THE FOUNDING AFFIDAVIT

[10] To procure an order of eviction in terms of the provisions of PIE it is incumbent upon the applicant to establish, firstly, that the respondents are unlawful

⁵ All of that which is underlined above and below is written in manuscript in the original document.

occupiers of the property as defined in s1 of PIE⁶, and, secondly, that it is just and equitable to grant such an order.⁷

[11] In asserting that the respondents occupy the property unlawfully, Mr. Kowen makes the following repetitive allegations in the founding affidavit.

“PURPOSES OF THIS APPLICATION

12. *The Applicant purchased the property on a Sale in Execution on the 2nd May 2018. Subsequently; (sic) the property was registered in the name of the Applicant on 13 July 2018. I annex a copy of the Conditions of Sale, marked ‘APK5’. As can be deduced from the Conditions of Sale, the property was sold without a lease agreement; hence the principle of ‘huur gaan (sic) voor koop’ does not apply.*

13. *The First, Second, Third, Fourth, Fifth and Six Respondents have no agreement with the registered owner of the property, being the Applicant to occupy same, and can be termed as (sic) an unlawful occupier (sic) with due consideration to (sic) the Prevention of Illegal Eviction Act (sic). Despite the knowledge that the property was sold on auction, the Respondents have:*

13.1 failed to vacate the property; and

⁶ “Unlawful occupier” means a person who occupies the land without the express or tacit consent of the owner person in charge, or without any other right in law to occupy such land...”

⁷ City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA) at [34]

13.2 failed to take any steps to legalise their occupation or tender to pay any expenses for the property.

- 14. Further; (sic) numerous attempts had (sic) been made to legalise the occupants' rights to the property; however they refuse to deal with the new owner. Accordingly they have no right to occupy the property.*

UNLAWFUL OCCUPATION

- 15. As a result of the Respondents having no agreement with the Applicant to occupy the property, they are in unlawful occupation of same. In terms of the relevant (sic) Prevention of Illegal Eviction Act; (sic) an unlawful occupier is defined as a person who occupies the property without the consent of the registered owner. Accordingly the First, Second, Third, Fourth, Fifth, and Six Respondents are in unlawful occupation of the property.*

- 16. Further; (sic) numerous attempts had (sic) been made to legalise the occupant's (sic) rights to the property; (sic) however they refused to deal with the new owner. Accordingly they have no right to occupy the property.*

- 17. Further; (sic) in the event of the Respondents having concluded any further agreements with any third party, in terms of a rental agreement; (sic) or any right of occupation; (sic) such rights were*

terminated by virtue of the sale in execution. The principle of 'HUUR GAAN (sic) VOOR KOOP' will not apply. The respondents thus cannot raise a defence that they have any right in law to occupy the property."

WHO ARE THE OCCUPANTS?

[12] While Mr. Kowen refers to the first to fifth respondents as being in occupation of the property, he offers no explanation for any personal knowledge of this fact. His evidence is therefore, strictly speaking, inadmissible hearsay. And yet, the fact that certain of the respondents might be found at the premises must have been known to the applicant because it saw fit to cite them as respondents, and as persons allegedly in unlawful occupation thereof. Further, in para's 14 and 16 of the founding affidavit it is said that attempts were made by the applicant to legalise the respondents' rights of occupation. This implies that there were negotiations of some sort – either face-to-face or through correspondence with the occupants. The reason why the court was not informed of the details of the occupants known to the applicant, and how it acquired that knowledge, is simply not explained.

[13] The returns of service in this matter relevant to the initial application in terms of s4(2) of PIE authorizing the institution of proceedings show that all process was served by the Sheriff at the property at 18h23 on Monday 27 August 2018 as follows.

- (i) On the second respondent (Mr. Yusuf Hanslo) personally in terms of Rule 4(1)(a)(i) ;

- (ii) On the first respondent (Ms. Shamiela Hanslo) in terms of Rule 4(1)(a)(ii) through the aforesaid service on the second respondent, who is described as the husband of the first respondent and a person ostensibly older than 16 years;
- (iii) On the third respondent (Ms. Faaqiah Hanslo) similarly in terms of Rule 4(1)(a)(ii) through the service on the second respondent, who is described as the father of the third respondent;
- (iv) On the fourth respondent (Rougayah Hendricks) similarly in terms of Rule 4(1)(a)(ii) through service on the second respondent, who is described as the son-in-law of the fourth respondent;
- (v) On the fifth respondent (Galied Hendricks) similarly in terms of Rule 4(1)(ii) through service on the second respondent, who is described as the brother-in-law of the second respondent; and
- (vi) Finally, service was effected on any other occupiers of the premises similarly in terms of Rule 4(1) (ii) through the aforesaid service on the second respondent.

[14] Service of the order granted by Nuku J in terms of s4(2) of PIE was effected by the Sheriff at the property at 06h56 on Thursday 27 September 2018 as follows.

- (i) On Ms.S.Hanslo (probably the first respondent) personally in terms of Rule 4(1)(a)(i); and

- (ii) On each of the second to sixth respondents through service on the said Ms.S.Hanslo in terms of Rule 4(1)(a)(ii), who is described as the occupant of the property at the time of service and ostensibly a responsible person in control thereof and older than 16 years of age.
- (iii) It is expressly recorded that the other respondents were not in occupation of the premises at the time of service.

[15] In the circumstances, the returns of service suggest, firstly, that the property is occupied by some members of the Hanslo family and possibly their relatives. What is troubling is the fact that, other than the first and second respondents (who were apparently not together at the property at the same time), none of the alleged occupants were at the property at the time of day that one might expect occupants to be in residence (dinner time and/or early morning).

[16] Secondly, what the court does not know is whether (or how) the alleged occupants are related to the former owner of the property, Ms. Nuraan Hanslo. Thirdly, the fact that the applicant has cited the sixth respondent in the terms generally used in matters such as this suggests that there may be other persons in occupation of the property whose names the applicant does not know. Fourthly, the court does not know either whether these persons are related to the other respondents. Fifthly, the court is not informed what the ages of the occupants are, and so the court does not know whether there are children or elderly persons in occupation of the property. Sixthly, the court does not know whether there are any

disabled persons on the property and, finally, the court does not know who the head of the household is and whether that person is a female.

[17] Simply put, the court has scant knowledge of essential details of the occupiers of the property in circumstances where these are material to the exercise of the court's discretion under the provisions of PIE.

UNLAWFUL OCCUPATION

[18] In the notice of motion the attention of the respondents is drawn to the provisions of s4(6) of PIE. This means that the applicant claims that the respondents have been in occupation of the premises for less than 6 months. Yet, Mr. Kowen does not say when, or under what legal right, the applicant alleges that the respondents obtained occupation of the premises. And, importantly, he does not allege when that right to occupy was terminated, or under what circumstances. This is an important factor in PIE matters because of the import of the distinction between ss4(6) and (7), which places a different evidential burden on a party seeking to evict in the case of illegal occupation of 6 months or more.

[19] All that the applicant asserts in this matter is that the common law principle of "*huur gaat voor koop*"⁸ does not apply given that Mr. Kowen claims that

⁸ "*Hire takes precedence over sale*" per Corbett CJ in Genna-Wae Properties (Pty) Ltd v Medio-Tronics (Natal) (Pty) Ltd 1995 (2) SA 926 (A) at 932E

the property was sold without a lease. The application of that common law principle was defined thus in Genna-Wae⁹

“...(I)n terms of our law the alienation of leased property consisting of land or buildings in pursuance of a contract of sale does not bring the lease to an end. The purchaser (new owner) is substituted ex lege for the original lessor and the latter falls out of the picture. On being so substituted, the new owner acquires by operation of law all the rights of the original lessor under the lease. At the same time the new owner is obliged to recognise the lessee and to permit him to continue to occupy the premises in terms of the lease, provided that he (the lessee) continues to pay the rent and otherwise to observe his obligations under the lease. The lessee, in turn, is also bound by the lease and, provided that the new owner recognises his rights, does not have any option, or right of election, to resile from the contract. This is the impact of huur gaat voor koop in our modern law.”

[20] In light of the fact that the court does not know what the basis was for the right of the respondents to occupy the property, one cannot even begin to evaluate the potential application of the “*huur gaat voor koop*” principle. It is trite that in motion proceedings the affidavits serve as both the pleadings and the evidence.¹⁰ As the *amicus* pointed out, in the absence of the inter-relationship between Ms. Nuraan Hanslo (*qua* owner) and the respondents (*qua* occupiers) having been pleaded, this court does not know whether they occupy the property in terms, for

⁹ At 939A-C

¹⁰ Masstores (Pty) Ltd v Pick 'n Pay Retailers (Pty) Ltd 2017 (1) SA 613 (CC) at 625I-J

example, of a written lease, an oral lease, with tacit consent, under a personal servitude of *habitatio* or, at the very least, under the rights accruing from a *precarium tenens*.

[21] The bald allegation in the founding affidavit that one must deduce from the deed of sale that the property was sold without a lease is not sufficient in my view to establish that fact. So, for example, if there was a lease in existence which had not been cancelled, it was not open to the Sheriff to unilaterally put an end to that lease by simply declaring that the property was to be sold without a lease. That would be counter to the general provisions of cl 9 of the conditions of sale and would impinge on a lessee's rights under the common law principle of "*huur gaat voor koop*".

[22] The *amicus* also drew the court's attention to the provisions of clauses 9.2.1.1 and 9.2.1.2 of the conditions of sale set out above which she suggested might find application in this matter because of ABSA's mortgage bond over the property. The effect thereof is that if the property is let to tenants and the Sheriff is aware of the existence of such tenancy, the property must be sold subject to such tenancy if the lease predated the registration of ABSA's bond. This is, similarly, an issue which has not been clarified for the reasons which follow.

[23] In the principal action, a copy of ABSA's bond is attached to the plaintiff's particulars of claim. It appears to have been registered in July 2015. The Deeds Office printout annexed to the founding affidavit shows that the property was transferred to one Rougayah Hanslo in 2003. Having regard to the returns of service referred to earlier, it is possible that this was the family name of the fourth respondent, given her alleged affinity to the second and fifth respondents: the court just does not

know. But if it is so, there exists the possibility that the provisions of cl 9.2.1.1. apply and that the right of occupation of one (or more) of the respondents has not lapsed.

[24] In the result, I am unable to conclude that the applicant has established on a balance of probabilities that the respondents are unlawful occupiers of the property. The application for eviction under PIE must therefore fail on this basis.

JUST AND EQUITABLE?

[25] If I am wrong in relation to my assessment of the alleged unlawful occupation, I consider, in any event that the applicant has not established that it would be just and equitable to evict the respondents at this stage. I alluded earlier to the difference in approach between ss4(6) and (7) of PIE. In both instances the court is enjoined to grant an order that is just and equitable after considering all the relevant circumstances including the rights and needs of the elderly, children, disabled persons and households headed by women.

[26] However, under s4(7), in circumstances where the unlawful occupation has endured in excess of 6 months the court is required to consider, in addition, whether land can reasonably be made available by a municipality or organ of state for the relocation of the unlawful occupiers. But, the latter enquiry under s4(7) does not apply in circumstances where the land is sold in execution pursuant to a mortgage. As I have said, in the absence of an allegation as to precisely when the respondents' occupation of the property became unlawful (and they were manifestly not deemed to be in unlawful occupation by Ms. Nuraan Hanslo), the court does not know whether the matter was properly brought under s4(6). That having been said, upon perusal of

the file in the principal action it appears that ABSA sought the right to immediately sell the property when the matter was before Smuts AJ. In the circumstances it is to be assumed that the enquiry as to alternative land being made available by the City of Cape Town is not mandated *in casu*. The criteria in this matter therefore appear to be those set out S4(6) regardless of the duration of the unlawful occupation.

[27] Once a court is satisfied that all of the requirements of s4 as a whole have been met, and importantly that no valid defence has been raised by the occupiers, s4(8) directs that it must grant an eviction order on a date which is considered to be just and equitable in the circumstances. And, in considering what date is just and equitable the court is required to consider all the relevant factors, including the period the unlawful occupiers and their family have resided on the land in question.

[28] It will be seen that there is therefore a two-fold test of justice and equity to be undertaken by the court and that enquiry requires the court “*to make a value judgment on the basis of all relevant facts.*”¹¹ In Changing Tides the Supreme Court of Appeal stressed¹² that it was for the applicant for eviction to place such facts before the court as may fall for consideration in the exercise of the aforementioned discretions and that an applicant would ordinarily have some knowledge of the persons that it would wish to evict from its premises. Importantly, the court noted¹³ that in circumstances where an applicant failed to satisfy the court that it was just and equitable to evict in the circumstances, it was proper to refuse the application.

¹¹ Changing Tides at [29]

¹² At [31]

¹³ At [30]

[29] In Berea¹⁴ the Constitutional Court was confronted with a mass eviction under s4(7) of 184 unlawful occupiers from a block of flats who had concluded an agreement to vacate with the legal representatives of the owner in circumstances where they themselves did not enjoy legal representation. They later sought to avoid the consequences of their consent.

[30] The court conducted a thorough review of all the case law over the past 15 years or so and, affirming the approach in Changing Tides, stressed that where the eviction sought was from a person's residence, and particularly where that person was not legally represented, the duty was on the court to conduct its own investigation so as to consider what was just and equitable in the circumstances.

“[46] It deserves to be emphasised that the duty that rests on the court under s26(3) of the Constitution and s4 of PIE goes beyond the consideration of the lawfulness of the occupation. It is a consideration of justice and equity in which the court is required and expected to take an active role. In order to perform its duty properly the court needs to have all the necessary information. The obligation to provide the relevant information is first and foremost on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction. This may be difficult, as in the present matter, where the unlawful occupiers do not have legal representation at the eviction proceedings. In this regard, emphasis must be placed in the notice provisions of PIE, which

¹⁴ Occupiers, Berea v De Wet NO and Another 2017 (5) SA 346 (CC)

required that notice of the eviction proceedings must be served on the unlawful occupiers 'and must state that the unlawful occupier... has the right to apply for legal aid'.

[31] And, in conclusion the court observed as follows –

“[48] 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; (b) the court is satisfied that the eviction is just and equitable, having regard to the information in (a). The two requirements are inextricable, interlinked and essential. An eviction order granted in the absence of either 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 unlawful.”

[32] During the hearing of this application the court enquired of Mr. McKenzie whether he could furnish any information as to the age of the occupiers, the presence of children or disabled persons on the property or whether the head of the household was female. Counsel was unable to assist the court in this regard and did not seek an opportunity to procure any of that information by way of a further affidavit. In such circumstances, as Berea cautions, an order for eviction would be arbitrary and manifestly not just and equitable.

[33] The Bo-Kaap area is a suburb that is close to the High Court in Cape Town – indeed one of its main arteries, Leeuwen Street, runs down to the steps of the

Court's main entrance. Bo-Kaap has a long and fascinating history¹⁵ dating back more than 250 years when the first Malaysian slaves were accommodated there. It has a predominantly Muslim community and is sometimes casually referred to as "*The Malay Quarter*", enticing dozens of tourists daily who visit Bo-Kaap's various cultural sites, colourfully painted houses and mosques. It is essentially an apartheid construct, formerly promoted for its cultural heritage and, ironically, it is that very identity which spared it the ravages of the notorious Group Areas Act removals in the 1960's and 1970's.

[34] As an area close to the city centre Bo-Kaap has increasingly become attractive to property investors, speculators and developers and much has been said in the media and elsewhere about the so-called "*gentrification*" of the area¹⁶. This has raised the ire of many residents who are desperate to preserve the cultural identity of the area and who have, from time to time blocked off streets and even conducted protest action outside specific developments, thereby necessitating the intervention of this court on occasion.¹⁷

[35] The residents of the area are, generally speaking, not wealthy and Bo-Kaap is home to many poor and working-class people. An eviction of the type sought in this matter, in which a group of related persons appear to occupy a family home that was acquired from the City of Cape Town some time ago, might well render them

¹⁵ Wikipedia On-Line Encyclopedia sv Bo-Kaap

¹⁶ See <https://mg.co.za/article/2012-10-18-the-bar-that-caused-all-the-trouble-in-the-historic-bo-kaap>

¹⁷ See for example SJJMC (Pty) Ltd v Bo -Kaap Civic and Ratepayers Association and 5 Others, Human Rights Commission Intervening Case No 11843/2018, an urgent application brought during recess which was heard in the Fast Track on Friday 6 July 2018.

homeless or at the very least require them to relocate to one of the outlying suburbs that are now home to the many who fell foul of the Group Areas Act. If those circumstances obtain, a court would be required to think long and hard about the justice and equity of ordering people to vacate a dwelling, long occupied, which has been snapped up by a buyer distant to the neighbourhood for investment or development potential. Certainly, it is to be expected of such buyers that when they seek to move established families out of their homes, they do their homework properly and place all relevant facts before the court.

ORDER OF COURT:

The application is refused.

GAMBLE, J