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

CASE NUMBER: A61/2020

LLEWELLYN JO-PETER PHILANDER

APPELLANT

and

CHADLEY MAKIET

FIRST RESPONDENT

(AND ALL THOSE HOLDING TITLE UNDER HIM)

SECOND RESPONDENT

SWARTLAND MUNICIPALITY

THIRD RESPONDENT

Coram: Rogers J, Wille, J et Slingers, J

Heard: 28th of August 2020 (further submissions filed on the 3rd of September 2020)

Delivered: Friday 18 September (by email and by same-day release to SAFLII)

JUDGMENT

Wille J:

[1] Eviction applications frequently pit the two sides of our society against one another. The applicant is invariably the property owner who has the resources necessary to access the civil justice system. The respondent often does not have those resources, neither at the time that the initial eviction application is brought, nor thereafter. This appeal concerns such a matter as the first respondent did not have the benefit of any legal assistance.

[2] This is an appeal against the refusal to issue out an eviction order¹, by the court a quo. Initially, the matter progressed by way of application proceedings at the instance of the appellant. These proceedings morphed into application proceedings with oral evidence at the direction of the presiding officer in the court a quo.

[3] This was so, because the first respondent was unrepresented and, remains so unrepresented. In any event, certain disputes of fact emerged during the proceedings, which, in order to be resolved, required the leading of *viva voce* evidence. The central

¹ The 'order'

alleged disputes of fact are connected with the issues of as to ‘when’ and ‘how’² the first respondent became aware of the appellant’s right to obtain an eviction order.

[4] This factual matrix raises interesting legal issues that require more and careful scrutiny. The order is connected with a residential property namely, Erf [...], Darling.³ The appellant is the owner of the property, who is represented by Ms Pratt. The first respondent and second respondents⁴ are the occupiers of the property and took no part in these appeal proceedings. The third respondent is the local municipality, which similarly, took no part in these proceedings.

[5] The first respondent asserted that his rights to reside on the property had been granted to him by the former owner of the property⁵, this before the property had been sold and transferred to the appellant. It is not in dispute that the appellant purchased the property from Mr Langeveldt and that the said Mr Langeveldt was the first respondent’s uncle.

[6] The first respondent, initially resided in the property with his mother⁶, who had sought to obtain ownership of this property from the third respondent. I pause to mention that this property is what is colloquially known as a ‘RDP’ house.⁷ It is in my view, common cause, that Mr Langeveldt ‘provided’ the first respondent, and by implication, the second respondent⁸, the right to *occupy* the property. This was in the form of a personal right, akin to that of a ‘*precarium*’ to reside in the property.

² Both factually and legally

³ Also known as 7 ‘Madeliefie’ Street, Darling

⁴ The respondents

⁵ His uncle who sold the property to the appellant - Mr Langeveldt

⁶ Also, with his young sister

⁷ These houses are ‘Government Subsidy Houses’

⁸ At the very least his young niece

[7] I say this because it is alleged that the first respondent's mother had originally applied to be allocated the property in her name. She however passed away before the property was formally allocated to her by the third respondent. When she passed away, she had two dependents, the first respondent and his sister who were very young children at the time of their mother's passing.

[8] The property could not be allocated and transferred into the name of the first respondent's grandparents, as they had already been allocated a home.⁹ Mr Langeveldt was on the evidence the only adult in the family that qualified for the allocation of this RDP home.

[9] The *precarium* argument¹⁰ is that Mr Langeveldt had promised to look after the first respondent and his sister, and this was the sole reason as to why the property was allocated to him.

[10] The first respondent testified that the property could not be allocated to his grandparents and that the sole reason for the allocation of the property to Mr Langeveldt, was because he had undertaken to look after the first respondent and his sister. Mrs Langeveldt corroborated this version of events and so did the representative of the third respondent. It is common cause that no written undertaking in this connection was entered into by either of the parties. Initially, the first respondent resided in the property with the seller, Mr Langeveldt.

⁹ The 'RD' home which they subsequently sold

¹⁰ This was not advanced by the respondents. This issue emerged from the evidence

[11] It was common cause that the first respondent's grandparents and his sister vacated the property and they again occupied the property after same had been sold and transferred to the appellant and once he had initiated these eviction proceedings. During subsequent argument before us, it emerged that the appellant became aware of the first respondent's occupation of the property during November of 2018 after the property was registered into his name.

[12] A '*precarium*' falls to only be terminated on reasonable notice. The occupation of the property by the first respondents¹¹ accordingly remains a 'lawful' occupation, pending the lawful termination thereof and the lapse of a reasonable time period as set out in the appropriate notice.

[13] In the *Felix*¹² matter, the plaintiff instituted an action against the executor of the deceased estate of a person who was alleged to have purchased fixed property subject to the express oral agreement that after transfer of the property to the deceased, the plaintiff and the other co-plaintiffs would enjoy continued occupation of the property until their deaths. The executor excepted to the action on the grounds that the alleged agreement was invalid in that it failed to comply with the Alienation of Land Act.¹³

[14] The court in this case held that a person who holds the right to a personal servitude does not hold a real right, but a personal right which may only entitle him to registration of a servitude in due course.

¹¹ Together with his sister

¹² *Felix en 'n ander v Nortier N.O. en andere* [1996] 3 All SA 143 (SE)

¹³ Act 68 of 1981

[15] Similarly, in the *Brink*¹⁴ matter, the court held that an agreement in terms of which an owner of land acquires a praedial servitude over the land of another in return for a sum of money representing the price paid by the former for the grant of the servitude and ancillary rights connected therewith, fell within the ambit of section 1 (1) of Act 68 of 1957.

[16] In *Baront Investments (Pty) Ltd v West Dune Properties 296 (Pty) Ltd and Others*¹⁵, the full bench considered the question whether an oral agreement creating a servitude was capable of being enforced. The court held that such oral servitude constituted an ‘*interest in land*’ which must be in writing.

[17] It seems to me that it is settled law that a real right only comes into existence when an agreement has been registered.¹⁶ In *Robarts v Antoni N.O. and Others*¹⁷ the Supreme Court of Appeal held that an oral agreement whereby a servitude was created, was invalid and stated the following:

‘In terms of s 1(b) of the Act ‘land’ includes ‘any interest in land’ and ‘alienate’ which corresponds with ‘alienation’, in relation to land, means ‘sell, exchange or donate’. It is established that a praedial servitude (such as the height servitudes involved here) constitutes an ‘interest in land’ as envisaged in the Act’

[18] The appellant contends for the express termination of any ‘*precarium*’ ostensibly in favour of the respondents, simply on the basis that he is the new owner of the property and he is not bound by any previous rights given to the respondents to reside in the property. I agree. However, even if it is accepted that he obtained clean

¹⁴ *Brink v Stadler* 1963 (2) SA 427 (C)

¹⁵ 2014 (6) SA 286 (KZP)

¹⁶ At para [56]

¹⁷ [2014] 3 All SA 160 (SCA)

and unencumbered rights to the property on registration of transfer into his name, the issue which raises concern with me is, in these circumstances, was a reasonable period of time given to vacate the property?

[19] At the hearing of this appeal counsel for appellant was requested to submit further submissions in connection with the following questions posed by the court:

[19.1] Whether, on the evidence, the respondents' rights to occupy the property indeed constituted a *precarium*;

[19.2] If so, whether the appellant as the purchaser of the property was bound to honour such *precarium* or whether *the precarium* had lapsed simply as a result of the change in ownership;

[19.3] Whether the notice period provided by the appellant to the respondents was reasonable;

[19.4] If the notice period was not reasonable, whether the additional two months afforded to the respondents between the time that the notice was given and when the eviction proceedings commenced, could be taken into consideration for purposes of deciding whether it was just and equitable to grant an order for eviction;

[19.5] Whether an eviction order may be granted under the Regulations issued under Section 27(2) of the Disaster Management Act, 2002, published on the 18th of August 2020 in respect of Alert Level 2.

[20] The nature of a *precarium* is dependent on the intention of the parties. It can either be in the nature of a servitude, or a *precarium* proper, the latter being revocable at will.¹⁸ A *precarium* proper is purely personal to the grantee and springs from liberality or friendship. According to the older authorities the relationship of *precarium* was originally regarded as *sui generis* and binding, but not contractual in nature. In modern

¹⁸ *City of Cape Town v Abelsohn's Estate* 1947(3) All SA 429(C) at page 437

Roman Dutch Law however, it is regarded as being contractual. It can thus be created tacitly or expressly.¹⁹

[21] The appellant submits that in order to bind successors in title, a tacit re-grant of the concession under a *precarium* would be necessary, where both the grantor and the grantee have knowledge of the position. The argument being that there must therefore first be a *tacit pactum* or contract with the successor in title before he can be bound thereby. I agree. In my view the court a quo erred in its finding that in the circumstances of this case, the appellant was technically not the owner of the property. On this basis alone the judgment of the court a quo falls to be set aside.

[22] In *casu*, it is common cause that Mr Langeveldt had permitted the respondents to reside in the property for at least (8) years and that this grant was given gratuitously, in that the respondents never paid any rental for their occupation of the property.

[23] In *Dhayanundh*²⁰, the respondent had purchased a property in terms of an agreement, which stated that vacant possession would be granted to the purchaser on the signing of the agreement. The respondent initially obtained an order for the appellant's eviction, but on appeal it was held that the respondent had acquired the property with knowledge of the fact that the appellant had enjoyed an unregistered right of *habitatio* over the property for a limited period. By reason of this knowledge, the respondent was bound to 'respect' such right. The court concluded that the appellant had discharged the *onus* resting upon him to establish that the respondent had the requisite knowledge and the appeal was upheld.

¹⁹ Supra at page 438

²⁰ *Dhayanundh v Narain* [1983] 1 All SA 68 (N) at p 73 and *Phillips v Grobler* 2020 (1) All SA 253 (WCC))

[24] According to Mr Langeveldt, he had informed the first respondent at least four months prior, that he was going to sell the property. It is contended that such notice in itself, constituted a reasonable period of notice of termination of the first respondent's *precarium*.

[25] Presumably recognising the unequal battles that eviction proceedings might spawn, the Legislature has bestowed a special power on the courts in terms of section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ('PIE').²¹ A further special power has been conferred by section 4(8).

[26] The section 4(7) power directs the courts to decide whether an unlawful occupier should be evicted, the test being whether it is just and equitable to do so. All the relevant circumstances should be considered. In giving this power to the court, the legislature has given effect to, and expanded upon, section 26 (3) of the Constitution, in terms of which no-one may be evicted from their home '*without an order of court made after considering all the relevant circumstances*'.

[27] The section 4(8) power is distinct from the section 4(7) power. It comes into play after a court has decided that an eviction is just and equitable and is concerned with when and how the eviction is to occur. Again, the court is enjoined by the Legislature to consider questions of justice and equity when making that determination.

[28] That those powers are central to PIE appears from its preamble, which contemplates landowners not having an automatic right to evict, but rather having such a right only in '*appropriate circumstances*'. The preamble also endorses the imperative

²¹ A similar power is contained in section 4(6), but section 4(7) is germane to this appeal because the appellant has resided at the subject property for more than six months.

that no-one should be evicted from their homes without an order of court made after considering all the relevant circumstances.

[29] The powers in sections 4(7) and 4(8) of PIE contain a legislative recognition that, in the spectrum of eviction proceedings, what the courts will be expected to deal with is so broad and varied that it was not possible to try and legislate for every conceivable situation. The responsibility has been given to the courts to decide the unique cases, not on principles of the law of property, but on principles of fairness and equity.

[30] This legislative intent has been recognised by the courts, most prominently by the Supreme Court of Appeal in *City of Johannesburg v Changing Tides 74*.²² Wallis JA, writing for the court, said that in terms of section 4(7) of PIE ‘*an eviction order may only be granted if it just and equitable to do so*’. The Supreme Court of Appeal made the following statement regarding the law of eviction under PIE (at para [12]):

‘There does not appear to have been a consideration of the precise relationship between the requirements of s 4(7) (or s 4(6) if the occupiers have been in occupation for less than six months) and s 4(8) in the context of an application for eviction at the instance of a private landowner. In some judgments there is a tendency to blur the two enquiries mandated by these sections into one. The first enquiry is that under s 4(7), the court must determine whether it is just and equitable to order eviction having considered all relevant circumstances. Among those circumstances the availability of alternative land and the rights and needs of people falling into specific vulnerable groups are singled out for consideration. Under s 4(8) it is obliged to order an eviction “if the ... requirements of the section have been complied with” and no valid defence is advanced to an eviction order. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the

²² *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) at para [11]

owner of the property, such as the existence of a valid lease. Compliance with the requirements of s 4 refers to both the service formalities and the conclusion under s 4(7) that an eviction order would be just and equitable. In considering whether eviction is just and equitable the court must come to a decision that is just and equitable to all parties. Once the conclusion has been reached that eviction would be just and equitable the court enters upon the second enquiry. It must then consider what conditions should attach to the eviction order and what date would be just and equitable upon which the eviction order should take effect. Once again, the date that it determines must be one that is just and equitable to all parties'

[31] That the court was indeed contemplating a situation where an eviction order *might be refused* on just and equitable grounds, even where the applicant was the owner and the unlawful occupier had no legal right to remain on the property, is confirmed in footnote 22 of the judgment,²³ where Wallis JA gave the following hypothetical example:

'The right of property owners is not absolute. One can imagine cases where it would not be just and equitable to grant an eviction order at the instance of a private landowner, as in the case of a small portion of undeveloped land that the owner had allowed to be occupied for many years by former employees, who were now aged, in circumstances where the owner was not inconvenienced by their presence. But that situation has nothing to do with the availability of alternative land or accommodation'

[32] The letter sent to the respondents at the behest of the appellant expressly states that the appellant is solely relying on the advice received from Mr Langeveldt, to the effect that once the property had been transferred into the appellant's name, Mr Langeveldt and the respondents would vacate the property. Notably, this was the only letter addressed to the respondents. The letter dated the 3rd of December 2018, in

²³ At 307I-J.

essence, merely recorded what had been conveyed to the appellant by Mr Langeveldt, accompanied by a threat of eviction.

[33] The ‘*reasonableness*’ of the notice period to be given is not only entirely dependent on the facts of each case, but in certain circumstances, where the right to housing is at issue, falls to be ‘infused with constitutionality’ within the South African context.

[34] I am not by any means suggesting that it will (or should) frequently be the case that eviction orders are refused where an unlawful occupier has no defence in law to eviction proceedings against them. On the contrary, I recognise that in most cases the court’s focus will predominantly be on the section 4(8) enquiry, there being no real dispute that, for example, a tenant who holds over, must be evicted.

[35] I also do not suggest that the rights of the parties *inter se* and the law underlying those rights is irrelevant to the enquiry mandated by section 4(7). Rather, the test might be considered by asking why fairness and equity between the parties justify the ordinary legal consequences being departed from in any given case. Why, for instance, does a particular case demand that a property owner’s right of ownership give way before more general principles of justice and equity? This is the enquiry that the Constitutional Court has said must be embarked upon.

[36] As far as the reasonable period of the notice is concerned, it was held on appeal in *Taylor*²⁴, that the court a quo erred in not taking into account and giving sufficient weight to the time period that the respondents had occupied the property since being

²⁴ *Taylor v Hogg & Others* [2018] ZAECHGHC 64 (10 August 2018)

given notice to vacate. In the circumstances of this matter before us, the first respondent has been in occupation since January 2019, despite the notice to vacate.

[37] Another aspect that deserves consideration are the Regulations under the Disaster Management Act. Regulation 53(1) provides that a person may not be evicted from his or her land or home for the duration of the national state of disaster unless a competent court has granted an order authorizing the eviction. Regulation 53(2) provides that such order of eviction ‘*may*’ be suspended or stayed until after the lapse of the termination of the national state of disaster, unless the court is of the opinion that it is not just or equitable to stay the order. Regulation 53(3) (a) to (h) sets out the factors which must be taken into consideration into not suspending or staying the order.

[38] Factually, the respondents have now had more than 18 months to find suitable alternative accommodation for themselves since expiry of the period of notification to vacate the property. I am accordingly persuaded that it would not be just and equitable to expect the appellant, under these circumstances, to continue to provide respondents, at his own cost, with free accommodation for any further extended period of time.

[39] Finally, I foreshadow and accept that I may attract some criticism for raising the issue of the ‘*precarium*’ in favour of the respondents due to the fact that this was not specifically raised by them on the papers or during their evidence in the court a quo.

[40] The position on this score has recently been eloquently formulated by Schippers JA, in the *Gun Owners*²⁵ case, as follows:

‘.....in our adversarial system of litigation, a court is required to determine a dispute as set out in the affidavits (or oral evidence) of the parties to the litigation. It is a core principle of this

²⁵ *National Commissioner of Police and Another v Gun Owners of South Africa* [2020] ZASCA 88 (23 July 2020)

system that the judge remains neutral and aloof to the fray. This court, has on more than one occasion emphasised that the adjudication of a case is confined to the issues before court'

[41] This is undoubtedly the correct legal position. I take the view that this case is somewhat different, not solely because the respondents are unrepresented, but also because in matters involving evictions, the powers in sections 4(7) and 4(8) of PIE contain a legislative recognition that what the courts will be expected to deal with is so broad and varied that it was not possible to try and legislate for every conceivable situation. The responsibility has been given to the courts to decide the unique cases, not on principles of the law of property, but on principles of fairness and equity.

[42] In the result, I am of the view that the following order should be granted, namely:

1. That the appeal is upheld;
2. That the first respondent and all those occupying through him are hereby ordered to vacate the property ***by no later than the 31st day of October 2020***, failing which the sheriff of the court is hereby duly authorized to evict them from the immovable property known as Erf [...], Darling , situated at, [...] M Street, Darling, Western Cape;
3. That there shall be no order as to costs.

Slingers J:

[43] I have had the advantage of reading the judgment of my colleague Wille J. Although I agree with the conclusion reached therein and with the order he proposes, I

am not in agreement with the reasoning which resulted therein and have therefore prepared a separate judgment.

[44] This is an appeal against the dismissal of an eviction application brought in terms of The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ('PIE') by the Magistrate's Court for the district of Malmesbury. In dismissing the application the court *a quo* found that '*...the first respondent and those who hold title under him together with those who occupy under them cannot be seen as unlawful occupiers in the property and therefore remain lawful.*' In this appeal, it has to be determined whether or not this finding was correct.²⁶

[45] The first and second respondents, who were unrepresented, opposed the eviction application but filed no papers in support of this opposition. Consequently, the magistrate allowed them to present oral evidence to substantiate their opposition to the eviction application. The first respondent, Chadley Mark Makiet ('Makiet') and his grandmother, Marilyn Ingrid Langeveldt ('Mrs Langeveldt'), testified on behalf of the first and second respondents ('the respondents') while Lereve Langeveldt ('Lereve') testified on behalf of the appellant. Sylvester Arendse, who was employed as a manager with the third respondent, was called to testify by the court.

²⁶ Paragraph 2 of the Notice of Appeal, record: 100

Background

[46] The biological mother of Makiet, Ms Simonita Cleophas ('Cleophas'), applied for a house in terms of the RDP housing scheme. Unfortunately, Cleophas passed away before she could be allocated a house in terms of the RDP housing scheme. However, as the result of Mrs Langeveldt's intervention, an RDP house situated at Erf [...], Darling, which is more commonly known as [...] M Street, Darling, Western Cape ('the property'), was allocated to Lereve. The property was allocated to Lereve to enable him to look after Makiet and the latter's younger sister. Makiet at that time was eight years old, turning nine, while his sister was four or five years old. Mrs Langeveldt was disqualified from receiving the property as she had previously been allocated a house in terms of the RDP housing scheme, which she later sold.

[47] After the property was allocated to Lereve, Makiet together with his younger sister and his grandparents (Mr and Mrs Langeveldt) moved onto the property with him. At some stage Makiet's grandparents and his younger sister vacated the property and moved to Caledon where they stayed with Mrs Langeveldt's aunt. It is common cause that Makiet's younger sister attended school in Caledon.

[48] The respondents fervently believed that the property belonged to Cleophas and not to Lereve because she had originally applied for the property that was allocated to him. Further, the respondents were of the view that as the property belonged to Cleophas, its ownership should pass to Makiet and his younger sister and that the property did not belong to Lereve. Therefore, he was not legally entitled to sell it. This was the basis of the respondents' opposition to the eviction application.

[49] In June 2018 Lereve sold the property to the appellant, and it was transferred to him on 15 October 2018. Thereafter, during April 2019 Makiet's grandparents and younger sister returned to the property to assist him in retaining it.²⁷

[50] In his founding affidavit in the eviction application, the appellant stated that during November 2018 he called at the property and told Makiet that he would need to vacate. The latter refused, saying that the property belonged to his late mother (Cleophas). On 3 December 2018 the appellant caused his legal representatives to notify Makiet and all those occupying through him that their right to occupy the property had been terminated and that they were afforded until 31 December 2018 to vacate. As the respondents failed to vacate the property, eviction proceedings were instituted on 28 February 2019, with judgment in the court *a quo* being delivered on 15 November 2019.

The merits

[51] It is undisputed that Makiet's younger sister and grandparents were not residing on the property when it was sold and transferred to the appellant. Furthermore, by that time Makiet was 19 years old and no longer a minor.

[52] PIE defines an unlawful occupier as '*a person who occupies land without the express or tacit consent of the owner or person in charge, or without any right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provision of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996.*'

²⁷ Record: pg 64-ln12- pg 65, ln5

[53] In light of Makiet's evidence that he had no agreement or arrangement with the appellant authorising him to stay on the property, it can be accepted that neither he nor those occupying the property under him had the express or tacit consent of the owner (the appellant) to stay on the property.²⁸

[54] At most the respondents could have occupied the property by way of a *precarium*, which would have regulated their right to occupy the property with Lereve. This is the view my colleague take in his judgment. However, I do not think that this is necessarily the correct characterisation of the basis on which they occupied the property prior to its transfer to the appellant. The evidence presented in the court *a quo* is not consistent with the respondents having occupied the property by way of a *precarium*. A *precarium* is a concession granted upon a request. The right to occupy the property did not result from a request directed by the respondents to Lereve. When Makiet and his sister began occupying the property with Lereve, they were children. They were in no position to conclude contracts. They were more in the nature of dependent members of Lereve's household. Further, the respondents never occupied the property on an understanding that they were granted such a right by Lereve. They occupied the property in the mistaken belief that Makiet was the owner thereof, and that such occupation was not dependent on the grace and good nature of Lereve.

[55] However, and assuming for the moment the existence of a *precarium*, the *precarium* would have obliged Lereve, and not the appellant, to give the respondents reasonable notice of the termination of their right to occupy the property. It could not and would not regulate the respondents' right to occupy the property insofar as the appellant was concerned. The rule *huur gaat voor koop* is confined to leases. For a

²⁸ Record: pg 55, ln 20- pg 58, ln 25

precarium to bind the appellant as a successor in title, there would have to have been a tacit re-grant of the *precarium*, with both the (new) grantor (the appellant) and grantee (the respondents) having knowledge thereof²⁹. This is not the position in the present matter as it is undisputed that the appellant had no knowledge of the first respondent's pre-existing arrangement and/or entitlement to occupy the property and that at no stage after taking transfer did he grant Makiet or anyone else the right to occupy the property. It follows that the appellant was under no contractual duty to give the respondents reasonable notice to vacate, though the circumstances under which they had previously occupied the property could no doubt properly be taken into account in determining the date by which they should vacate for purposes of PIE.

[56] As the respondents did not have the appellant's/owner's express or tacit consent to occupy the property and it was not their case that they were occupiers in terms of the Extension of Security of Tenure Act or that they fell under the protection of the Interim Protection of Informal Land Rights Act, 1996, it follows that they were unlawful occupiers as defined in PIE.

[57] Therefore, the magistrate erred in her finding that the first respondent and those holding title under him were not unlawful occupiers. In my view, they became unlawful occupiers for purposes of PIE as from the date on which the appellant took transfer, 15 October 2018, because as from that date they ceased to occupy the property with the consent of the owner and person in charge.

[58] The respondents were given informal notice to vacate during November 2018 and formal notice to vacate the property on 3 December 2018, with the eviction

²⁹ *City of Cape Town v Abelsohn's Estate* 1947 (3) All SA 429 (C) at 439

proceedings being instituted on 28 February 2019. Consequently, section 4(6) of PIE is applicable and an order for eviction may be granted if it is just and equitable to do so. In determining whether or not the grant of an eviction order is just and equitable, all the relevant circumstances should be considered.

[59] After considering *inter alia* the following factors:

[59.1] Makiet's younger sister and grandparents vacated the property some time before the property was transferred to the appellant and returned thereto simply to assist Makiet in frustrating the appellant's use and enjoyment of the property;

[59.2] the appellant paid a purchase price of R80 000 for the property when the deed of sale was concluded on 8 June 2018;

[59.3] Makiet was no longer a minor when the eviction proceedings were instituted; and

[59.4] the appellant had no knowledge of the arrangements pertaining to Lereve looking after Makiet and his younger sister.

I am of the view that it would be just and equitable to grant an eviction order.

[60] In accordance with the provisions of section 4(8)(a) of PIE, a just and equitable date on which the respondents must vacate the property has to be determined. It is evident from the respondents' version that they were aware of the appellant's title to the property by October/November 2018. This conclusion is corroborated by the undisputed fact that Makiet's grandparents and younger sister returned to the property to assist him in retaining it.

[61] Furthermore, Makiet's grandparents and younger sister had alternative accommodation for approximately a year before they returned to the property.

[62] I am also cognisant of the fact that the appellant has been deprived of the use and enjoyment of his property for a period approaching two years, despite the fact that he has remained responsible for paying the rates and taxes on the property. To the extent that the opening paragraph of my colleague's judgment implies that this case involves a mismatch between a well-resourced property owner and indigent occupiers, I do not believe that the evidence supports such a view. The appellant seems to be from the same relatively modest economic circumstances as the respondents. His patience must have been sorely tested by the long legal road he has had to travel. He has placed his faith in the legal system; he has not tried to take the law into his own hands. His counsel informed us that she and her instructing attorneys have for all practical purposes been acting for him *pro bono*. She recognised that there was little purpose in asking for a costs order in favour of the respondents. Although the magistrate investigated the circumstances of the case with commendable thoroughness, the end result of her labours was, I fear, unjust, and it remains for us to correct the injustice.

[63] Having regard to all the circumstances, including regulation 53 promulgated under the Disaster Management Act, I am of the view that it would be just and equitable for the respondents to vacate the property by no later than 31 October 2020.

Rogers J:

[64] For the reasons stated by Slingers J, I concur in the order proposed by Wille J in para 42 of his judgment. An order is thus made in those terms.

Rogers J

Wille J

Slingers J