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**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MTHATHA]**

CASE NO. 1529/2020

CASE NO. 1789/2020

CASE NO. 2802/2020

CASE NO. 2794/2020

CASE NO. 1786/2020

CASE NO. 1779/2020

In the matter between:

**MEC FOR DEPARTMENT OF PUBLIC WORKS
& INFRASTRUCTURE, EASTERN CAPE**

Applicant

and

NOLUTHANDO NGUNUZA

1st Respondent

TEMBISA TERRESA NTLOKO

2nd Respondent

NOZIPHO TSHANDU

3rd Respondent

ZOLEKA NANCY ERASMUS

4th Respondent

JACQUELINE ADDISON

5th Respondent

BERNADETTE HORSEFIELD

6th Respondent

KING SABATA DALINDYEBO MUNICIPALITY

7th Respondent

JUDGMENT

JOLWANA J:

Introduction.

[1] The applicant instituted separate eviction proceedings against the six respondents. The applications were later consolidated and proceeded as one application under case No. 1529/2020. On the date of the hearing of the consolidated applications counsel for the applicant placed on record that the sixth respondent has since left the premises, and as such the applicant only seeks an order of costs against her. It was further placed on record that the *lis* between the applicant and the third, fourth and fifth respondents has been resolved in that these respondents have agreed that an order in terms of the notice of motion may be granted against them. In so doing they effectively withdrew their opposition to the granting of the eviction order against them. The eviction proceedings therefore proceeded on an opposed basis only in respect of the first and second respondents.

Background.

[2] The applicant instituted eviction proceedings against various individual respondents all of whom had previously concluded lease agreements for their tenancy of the respective residential properties. All such lease agreements expired some years ago after which the respondents continued being in occupation of the various properties on a month to month basis on the same terms that were agreed upon in the lease. All the eviction applications were initially opposed with opposition papers being filed and in some cases, even heads of argument being filed. However, as indicated hereinbefore, the sixth respondent left the premises at some point shortly before the hearing of this matter. The third, fourth and fifth respondents have agreed to the order sought against them. I will therefore not be dealing with the facts pertaining to these respondents. It is only the factual matrix relating to the first and second respondents that deserves consideration and analysis in some detail.

The factual matrix in respect of the first and second respondents.

The first respondent.

[3] The property concerned in respect of Ms Ngunuza is erf 2[.]3, Mthatha which is also known as No. [...] A[...] Street, Fortgale, Mthatha. This property appears to be still registered in the name of the government of the former Republic of Transkei. However, through a vesting process as provided for in Item 28(1) of Schedule 6¹ of the Constitution

¹ Item 28 (1) of Schedule 6 of the Constitution reads:

of the Republic of South Africa, 1996 which appears to be still underway, the said property is now under the care, management and control of the provincial Department of Public Works and Infrastructure, in the Eastern Cape (the department). This property is incorrectly reflected as erf 2[...]9, Mthatha in the lease agreement in what appears to be a typographical error. The physical address is reflected as No.[...] A[...] Street in the lease agreement. No issue arises or has been raised about the identity of the property concerned it being common cause that Ms Ngunuza is being evicted from No. [...] A[...] Street, Fortgale, Mthatha.

[4] On 01 March 2015 the department through its duly authorised official and Ms Ngunuza acting personally entered into a written lease agreement. The said lease was for the residential tenancy of erf 2[...]3, Mthatha, also referred to in the lease agreement as No.[...] A[...] Street, Fortgale, Mthatha. Some of the essential terms of the said lease agreement were briefly the following. The lease was to run for a period of almost two years commencing on 01 March 2015 and would expire on 31 January 2017. The property was to be used as a residential dwelling by Ms Ngunuza and her immediate family. For the period of her tenancy Ms Ngunuza agreed to pay a monthly rental of R7 700.00. The said rental would escalate at the rate of 10% on the first anniversary of the lease.

On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

[5] On its expiry on 31 January 2017 the lease agreement was not renewed and Ms Ngunuza's occupancy was thereafter regulated by common law and continued on a month to month basis. On 13 November 2019 the applicant's attorneys addressed a termination letter to Ms Ngunuza receipt of which was acknowledged by one Lindiwe Mantyi on 22 November 2019. In that letter Ms Ngunuza was given 30 days within which to vacate the property failing which legal proceedings for her eviction would be instituted. Despite being in receipt of the termination notice, Ms Ngunuza did not vacate the property.

[6] It is alleged that in addition to the lease agreement having expired, Ms Ngunuza not only remained in and continued with her occupation of the property, she also failed to keep herself up to date with her rental obligations. As a result she accumulated arrear rentals in the sum of R811 154.63. Ms Ngunuza also failed to keep her water services account with the relevant water services authority up to date. As a result, as at the 31 March 2020 the water services account was in arrears in the sum of R32 381.87 which, the department had to pay to prevent its other properties from being disconnected by the water services authority. The applicant alleges that in those circumstances the department has been indirectly financing Ms Ngunuza's illegal occupation of its property. At the same time the property is depreciating as it is not being properly taken care of or maintained.

[7] Ms Ngunuza opposes her eviction from the property. To that end she filed an answering affidavit in which she sets out the basis of her opposition to the eviction

application. In essence, she gives the following background. She has been in occupation of the property since 1996 for a period of about 24 years. She took occupation thereof as a police officer under a dispensation in which police officers were assisted with accommodation by government through the department. She has been residing continuously in that property with her children and grandchildren since she took occupation with no interruption.

[8] She initially stayed with her husband and the rest of her family members. However, her husband passed away in 2004. At some point she applied for a lease agreement and was given a lease agreement by the department at a monthly rental of R1000.00. She continued to pay that amount and has been doing so ever since. She maintains the property inside and outside including repairs to the piping, broken windows, roof leakages and anything that needed to be taken care of as part of maintenance. She alleges that she was told by the department that she was on a rent to buy programme in terms of which those in occupation of the department's properties would be given the right of first refusal should the properties be disposed of. There have been some rental increases from R1000.00 to R1100.00 and ultimately to R1200.00 in terms of that lease. She is up to date with her rental obligations in respect of the above amounts and she has never missed a monthly payment as rentals are paid through direct deposits.

[9] She has written numerous letters to the department offering to purchase the property as she was renting with an intention to buy it. There were some positive responses in

terms of which it was indicated that when the properties were sold the tenants would be given first preference. In anticipation of buying the property, she remained in occupation thereof with her family for some 24 years. She contends that the eviction process instituted by the applicant is unlawful, unfair, and is based on incorrect information. As a single female person, she feels harassed by an unjust eviction process that is traumatic, discriminatory and depressing to her. She alleges that on a particular Sunday on a year she could not remember there was a meeting between the department's officials with the tenants in which they were promised that the properties they occupied would be sold to them.

[10] In dealing directly with the founding affidavit, Ms Ngunuza has raised a point in *limine* of prescription. In that point of law she seems to be suggesting that the rights of the applicant, presumably to apply for her eviction, have expired or never came into being. I do not understand what is sought to be conveyed by this submission. It is, in any event, not pursued in the heads of argument filed on Ms Ngunuza's behalf. Instead, some other points are raised ranging from section 217 of the Constitution to certain provisions of the Public Finance Management Act and even the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) without any factual basis. These submissions are incomprehensible, incoherent and appear not to have been thought through at all. Ms Ngunuza further contends that even after April 2017 she continued paying a rental amount of R1200.00 in terms of the previous lease agreement. She never paid the R7700.00 provided for in the new lease agreement. This was because the department's officials openly said that the tenants should continue paying the old

rental amounts as the new lease agreements were just for the purposes of legitimising their occupation of the respective properties.

[11] It is not in dispute that Ms Ngunuza did sign the lease agreement dated 01 March 2015 in terms of which she agreed to pay the rental amount of R7700.00 per month. However, she contends that they were requested by the department's officials to sign those lease agreements to legitimise their occupation of the properties for purposes of making them qualify for consideration for first preference should the properties be disposed of. As a result, she continued paying R1200.00. She therefore denies being in arrears of R811 154.63. She further says that the water services account with the OR Tambo District Municipality is in her name. She pays her accounts with that municipality. She therefore denies any alleged prejudice on the part of the department as she pays both the water services and electricity accounts at the respective municipal authorities.

[12] She further denies being in illegal occupation of the property. This she says is because she is paying her rentals and alleges that it is the department that should have come up with a new lease agreement when the lease agreement concluded on 01 March 2015 expired. I do not understand how Ms Ngunuza could contend that she should have been provided with a new lease agreement when the one dated 1 March 2015 expired when she admittedly did not even comply with it. Her contentions in this regard simply do not make sense. Besides, even if she was religiously complying with all the terms of that lease agreement, once it expired there was no obligation on the part of the

department to enter into another lease agreement with her or to extend that lease agreement.

[13] With regard to alternative accommodation Ms Ngunuza, has on two different occasions in her answering affidavit, made the averment that she is not an indigent person. However, contrariwise she also contends that her eviction from the property will render her homeless. She contends that it is the department that has an obligation to provide her with alternative accommodation and not King Sabata Dalindyebo Municipality which is the seventh respondent herein. However, she does not explain the factual basis on which she alleges that she needs alternative accommodation and the legal basis on which she alleges that it is the department and not the seventh respondent that should provide her with alternative accommodation if she is evicted.

The second respondent.

[14] The facts as they relate to the second respondent, Ms Ntloko, are the following. The applicant seeks an order for the eviction of Ms Ntloko from a property described in the papers as Erf 1[...]4, Mthatha also known as No. [...] E[...] S[...] Street, Mthatha (the property). This is consequent upon a lease agreement entered into between Ms Ntloko and the department on 01 April 2017 having been terminated. It was a term of the said lease agreement that it would not have a specific termination date but would, from the onset, be a month to month lease agreement. The monthly rental as agreed between the

parties was R5500.00 escalating at the rate of 10% from the first anniversary of the lease and annually thereafter. The property would be used as a residential dwelling by Ms Ntloko and her immediate family members.

[15] The applicant alleges that Ms Ntloko would at times fail to pay the agreed monthly rentals. This has resulted in her being in arrears in the sum of R94 281.52. On 13 January 2020 the applicant's attorneys addressed a letter to Ms Ntloko terminating the lease agreement and giving her a notice to vacate the property within 30 days of receipt of the said termination notice. Receipt of that termination notice was acknowledged by one Onesimo Ntloko on 29 January 2020 who was at the property at the time and who accepted the termination notice on her behalf. Furthermore, as at the 31 March 2020 Ms Ntloko was in arrears with her water services account with the water services authority in the sum of R68 013.94. The applicant says that the department had to pay this amount to prevent the municipality from switching off or disconnecting its services at other properties owned by the department. As a result the department found itself in an untenable situation of indirectly funding the illegal occupation of its own property by Ms Ntloko.

[16] Ms Ntloko opposes her eviction application and has filed an answering affidavit in which she makes her case as follows. She is employed as a magistrate by the Department of Justice and Correctional Services. She resides on the property. She started her affidavit by raising two points of law. The first point in *limine* is that of

jurisdiction. She seems to be suggesting that because an option to institute proceedings in the magistrates' court was made available in the lease agreement, that option somehow ousted the jurisdiction of this Court from dealing with her eviction application. This submission is absurd, to put it mildly and nothing further needs to be said about it. The second point of law is that of a dispute of fact. She creates this alleged dispute of fact by denying that she received the termination notice and therefore being aware of her obligation to vacate the property. She further denies being in breach of clauses 9.1 and 9.2 of the lease agreement.

[17] Those clauses of the lease agreement deal with sub-letting and assignment which are not at the heart of the termination of the lease and therefore these proceedings. This point, just like the first one, seems to have been craftily raised just to create a non-existent dispute of fact. The last issue raised on which the alleged dispute of fact is said to exist is her denial that the department has incurred expenses in respect of her water services account. This seems to be on the basis of her allegation that she has been paying for the water services provided to the property. None of these alleged disputes of fact come anywhere close to being genuine disputes of fact or even relevant *apropos* the eviction application. As such they are all fully deserving of being given a short shrift without further ado.

[18] The rest of Ms Ntloko's answering affidavit consists of bare denials and what appears to be legal arguments with nothing that could be said to be evidence by her of any fact

alleged or an attempt on her part to engage directly with the issues raised by the applicant. Even where she could easily disprove the applicant's allegations, she does not even try to do so. For instance, she could easily deal with being in arrears with her rental obligations and her water services account by attaching proof of payments which would show that she has always been up to date with her rentals and has been paying her water services account as she alleges. Not that any of that would have entitled her never to be evicted from the property, an issue she does not deal with.

The PIE Act.

[19] The applicant has explained in some detail how the PIE Act has been complied with in respect of all the respondents. None of the respondents have come up with any cogent reason for any suggestion that the PIE Act may not have been complied with. In any event, even if non-compliance with the PIE Act was not raised by any of the respondents, this Court would still have had to be satisfied that it has been complied with before it entertains the applications for the eviction of the respondents. Compliance with the PIE Act is not one of the defences that, if not pleaded, the court may not, *mero motu*, consider or raise it. Courts are obliged to ensure that they do not grant orders for the eviction of any person unless they are satisfied that the PIE Act has been complied with.

[20] This was explained in some detail in *Changing Tides*² in which the Supreme Court of Appeal stated the legal position as follows:

“In terms of s 4(7) of PIE an eviction order may only be granted if it is just and equitable to do so, after the court has had regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If the requirements of s 4 are satisfied and no valid defence to an eviction order has been raised the court ‘must’, in terms of s 4(8), grant an eviction order. When granting such an order the court must, in terms of s 4(8)(a) of PIE, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The court is empowered in terms of s 4(12) to attach reasonable conditions to an eviction order.”

I am satisfied that the applicant has complied with the PIE Act in every material respect in respect of all the respondents. No relevant circumstances have been brought to the attention of the court by the respondents, having been given an opportunity to do so in the appropriate fashion.

The analysis.

[21] The next issue for consideration is whether any of the respondents has, on the papers, raised a valid defence to the eviction orders. On the day of the hearing of this matter, there was no appearance by a legal representative on behalf of Ms Ngunuza. Her last attorneys of record withdrew as her attorneys of record in September 2021. When the matter was due to be heard on 10 August 2023 she was not legally represented. On

² *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) at 304 D-E.

that day the hearing was postponed to the 2 November 2023. It appears from the return of service in respect of the notice of set down for the 2 November 2023 that the deputy sheriff served the notice of set down on one Nozuko Matshoba who is described therein as a nephew notifying Ms Ngunuza about the new date of hearing.

[22] However, on 2 November 2023 Ms Ngunuza was not in attendance. Instead, another person who introduced herself as Nozuko Tshoba and Ms Ngunuza's niece, who seemingly was the same person on whom the notice of set down was served, was in attendance in court. She was asked about the whereabouts of Ms Ngunuza. She informed the court that Ms Ngunuza was on her way travelling to Mthatha. The matter proceeded on the basis that Ms Ngunuza had not attended the hearing, having been made aware that her eviction application would be heard on 2 November 2023. I have carefully considered her answering affidavit and I have dealt with all her major contentions raised therein. I am of the view that none of them are a valid defence or stands in the way of the eviction order being granted against her.

[23] Ms Ntloko has also not made out a case in her answering affidavit. I have already demonstrated elsewhere in this judgment that the answering affidavit consists of incomprehensible and unmeritorious points of law being raised. Secondly, she dealt with the case against her through bare denials with no real attempt to deal with the applicant's allegations or confronting them. Even in the heads of argument filed on her behalf, a lot of submissions are being made about Ms Ntloko not being in arrears with her rentals.

However, there is no reference to any evidence of the payments that were made on the basis of which her contentions of not being in arrears are founded. Besides, she seems not to understand the fact that she is being evicted mainly on the basis that the lease agreement between her and the department has been terminated. Therefore, even if she were to prove that she was not in arrears with her rental obligations, that would not render her immune from eviction. She does not deal with this fundamental issue in her papers. These serious shortcomings in her answering affidavit and the defence sought to be championed therein as well as the submissions made on her behalf by her counsel during the oral hearing of this matter do not assist her in preventing the granting of the eviction order.

[24] On the basis of all the bare denials made in her answering affidavit an attempt is made to raise a spurious point about a dispute of fact. The point raised about a dispute of fact can simply be disposed of with reference to the well-known case of *Plascon – Evans*³ in which Corbett JA stated the legal position which still holds true even today as follows:

“... [W]here in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact If in such a case the respondent has not availed himself of his right to apply for the deponents concerned to

³ *Plascon – Evans Paints (Pty) Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (AD) at 634 H to 635 A-C.

be called for cross-examination under Rule 6 (5) (g) of the Uniform Rules of Court ... and the Court is satisfied as to the inherent credibility of the applicant's factual averment, it may proceed on the basis of the correctness thereof and include this fact among those upon which it determines whether the applicant is entitled to the final relief which he seeks. ... Moreover, there may be exceptions to this general rule, as, for example, where the allegations or denials of the respondent are so far-fetched or clearly untenable that the Court is justified in rejecting them merely on the papers. ..."

[25] The above legal position was referred to with approval by the Constitutional Court in *Rail Commuters*⁴ in which the court said:

"... [T]he Court will consider those facts alleged by the applicant and admitted by the respondent together with the facts as stated by the respondent to consider whether relief should be granted. Where however a denial by a respondent is not real, genuine or in good faith, the respondent has not sought that the dispute be referred to evidence, and the Court is persuaded of the inherent credibility of the facts asserted by an applicant, the Court may adjudicate the matter on the basis of the facts asserted by the applicant."

[26] The case of Ms Ntloko is clearly such a case which should be determined on the basis of the inherent credibility of the facts asserted by the applicant. One of the alleged disputes of fact relates to the service of the termination notice which Ms Ntloko says was not served personally on her. The assertion that there should have been a personal service of the termination notice is misplaced and ill-advised. In any event, not only was the termination notice properly served as indicated before but also she has since been served with the summons. There have been numerous postponements of this matter which gave her more than ample time to consider her position since 2020 when these proceedings were instituted. The alleged disputes of fact must be rejected as must all the other spurious defences she has attempted to raise both in her answering affidavit

⁴ *Rail Commuters Action Group v Transnet Ltd t/a Metrorail* 2005 (2) SA 359 (CC) at 392 C - D.

and in her heads of argument as well as during the oral submissions made in court on her behalf during the hearing of this matter.

[27] Some of the defences raised could not have been genuinely raised or with any sense of conviction about their correctness as they lack factual grounding and legal merit. For instance, a point was raised, for the first time in court, in which it was sought to argue that the lease agreement in question should not have been entered into and that Ms Ntloke should not have signed it seemingly on the basis that the property is currently not registered in the name of the department. None of this was raised in the answering affidavit or at the very least, in the heads of argument. It must therefore be rejected on that basis alone. In addition to that it surely cannot be correct for a tenant to say that she or he is not bound by a lease agreement she or he signed because the property does not belong to the applicant. This submission ignores the fact that ownership is not a requirement for a lessor to enter into a lease agreement with a third party. Therefore, lack of ownership, even where it is proved, does not take the matter any further regarding the issue of whether or not an eviction order should be granted.

[28] In dealing with this point, counsel for the applicant immediately provided an authority pointing to the fallacy in that argument. He referred the court to the case of *Boomporet Investments*⁵ in which Van Heerden JA stated the legal position as follows:

⁵ *Boomporet Investments (Pty) Ltd and Another v Paardekraal Concession Store (Pty) Ltd* 1990 (1) SA 347 (AD) at 351 H-I.

“It is, of course, true that in general a lessee is bound by the terms of the lease even if the lessor has no title to the property. It is also clear that when sued for ejectment at the termination of the lease it does not avail the lessee to show that the lessor has no right to occupy the property.”

Conclusion.

[29] With all of this having been said, I must point out that there was no merit in any of the other arguments made on Ms Ntloko’s behalf. Resisting the application for eviction was clearly not made on the basis of the existence of some genuinely held belief on her part that the applicant was not entitled to apply for her eviction. It was made, disingenuously it would seem, to prolong her unlawful occupation of the property even as she was evidently not being religious in paying her rentals in circumstances in which she could afford to pay rentals. In doing so, she was taking advantage of the historically poor administration and mismanagement in respect of a number of government entities to whom some properties have been entrusted. I must say that she, as a magistrate, should have known better and acted more honourably than adding to the prevailing lawlessness and malfeasance which inevitably results in many government properties being illegally occupied. This lawlessness must be deprecated whenever it is identified, regardless of whomsoever is involved.

[30] The same applies to Ms Ngunuza. She was a police officer until she retired. She stayed on the property for more than twenty-four years paying, on her own submission, a

paltry rental of R1000.00 and at some stage R1200.00. It needs no rocket scientist to see that that was, from the beginning, far below a market related rental. This is besides the fact that she did not provide any evidence of the existence of the said lease agreement or her compliance with it. It appears that the department tried to regularise that situation by concluding lease agreements with its tenants instead of evicting them. In those lease agreements a reasonable rental of R7700.00 and R5500.00 was required and Ms Ngunuza and Ms Ntloko agreed to those terms of the lease which they never honoured. They evidently failed to pay those agreed rentals.

[31] The founding affidavit explains how the current head of department and the applicant identified this problem when they got appointed. They identified it for what it is. The theft or misuse of government properties which seems to be fuelled by the historical and endemic malfeasance as well as the general maladministration besetting most government entities. Those who have continued to enjoy the results of this lawlessness seek to prolong this situation and continue benefitting at the expense of the taxpayers of this country. This is untenable and cannot be countenanced. The applicant must succeed in its application for the eviction of all the respondents from the properties they occupy.

The result.

[32] In the result the following orders shall issue:

1. The lease agreement entered into between the Department of Public Works & Infrastructure and the first respondent, Noluthando Gladys Ngunuza for the residential tenancy of Erf No. 2[...]3, Mthatha also known as No. [...] A[...] Street, Fortgale, Mthatha (the property) has been terminated by the effluxion of time and/or cancelled by notice.
2. The first respondent, Noluthando Gladys Ngunuza and all other persons occupying the property be and are hereby directed to vacate the said property within 30 (thirty) days from the date of the service of this order.
3. The lease agreement entered into between the Department of Public Works & Infrastructure and the second respondent, Tembisa Teressa Ntloko for the residential tenancy of erf No. 1[...]4, Mthatha otherwise known as No.[...] E[...] S[...] Street, Mthatha (the property) has been terminated by the effluxion of time and/or cancelled by notice.
4. The second respondent, Tembisa Teressa Ntloko, and all other persons occupying the property be and are hereby directed to vacate the said property within 30 (thirty) days from the date of the service of this order.

5. The lease agreement entered into between the Department of Public Works & Infrastructure and the third respondent, Nozipho Elisa Tshandu for the residential tenancy of Erf No.8[...]5, Mthatha otherwise known as No. 4[...] R[...] N[...] Street, Northcrest, Mthatha (the property) has been terminated by the effluxion of time and/or cancelled by notice.
6. The third respondent, Nozipho Elisa Tshandu and all other persons occupying the property be and are hereby directed to vacate the said property within 30 (thirty) days from the date of the service of this order.
7. The lease agreement entered into between the Department of Public Works & Infrastructure and the fourth respondent, Zoleka Nancy Erasmus for the residential tenancy of Erf No.8[...]5, Mthatha, otherwise known as No. 7[...] M[...] Street, Northcrest, Mthatha has been terminated by the effluxion of time and/or cancelled by notice.
8. The fourth respondent, Zoleka Nancy Erasmus and all other persons occupying the property be and are hereby directed to vacate the said property within 30 (thirty) days from the date of the service of this order.
9. The lease agreement entered into between the Department of Public Works & Infrastructure and the fifth respondent, Jacqueline Addison for the residential

tenancy of Erf No. 1[...]8, Mthatha, otherwise known as No. 2[...] E[...] S[...] Street, Mthatha (the property) has been terminated by the effluxion of time and/or cancelled by notice.

10. The fifth respondent, Jacqueline Addison and all other persons occupying the property be and are hereby directed to vacate the said property within 30 (thirty) days from the date of the service of this order.

11. In the event that the first, the second, the third, the fourth and the fifth respondents and/or any other person or persons occupying the properties referred to above fail to vacate them within 30 (thirty) days from the date of the service of this order, the sheriff or his deputy is authorised and directed to evict the respondents and all and any other person or persons occupying the said properties or being found therein.

12. The sheriff or his deputy and the applicant's security officers and/or persons appointed by the applicant and members of the South African Police Service, are authorised to:

12.1 Remove any person or persons found to be in breach of this order; and

12.2 Remove materials and possessions of the first to fifth respondents and all other persons occupying the properties, not removed by them and found at the said properties and to dispose of them within a period of 1 (one) week should they not have been claimed by the lawful owners thereof.

13. The first to fifth respondents are directed to pay the costs of this application including the costs of two counsel where so employed.

14. The sixth respondent is ordered to pay the costs of the application excluding the costs of the hearing of this matter on 02 November 2023.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances

Counsel for the applicant : M Gwala SC with O Makiwane

Instructed by : Mvuzo Notyesi Inc.

Mthatha

Counsel for the 2nd Respondent : L Matotie with G Madubela

Instructed by : W Quluba Attorneys

Mthatha

Counsel for the 3rd, 4th & 5th : Z.N. Dumalisile

Instructed by : Z.N. Dumalisile Attorneys Inc.

Mthatha

Date heard : 02 November 2023

Date delivered : 23 January 2024