

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D6815/19**

In the matter between:

**THE MEMBER OF THE EXECUTIVE COUNCIL FOR
HEALTH FOR THE PROVINCE OF KWAZULU-NATAL**

APPLICANT

and

**ZANELE THEODOSIA DLAMINI
PHINDILE SIBIYA
ETHEKWINI MUNICIPALITY**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

Coram: Mossop J
Heard: 15 August 2023
Delivered: 15 August 2023

ORDER

The following order is granted:

1. The relief claimed against the first respondent is adjourned sine die.
2. The second respondent, and all other persons claiming a right of occupation through her, are directed to vacate the immovable property described as duplex HC located at the Inkosi Albert Luthuli Central Hospital residential village at 8[...] V[...] M[...] Road, Mayville, KwaZulu-Natal (the property) by 31 October 2023.
3. In the event of the second respondent failing or refusing to comply with paragraph 2 of this order, the Sheriff or Deputy Sheriff of this court is hereby

authorised and empowered to evict the second respondent, and all other persons occupying the property through her, from the aforesaid property.

4. The second respondent shall pay the costs of this application.

JUDGMENT

Mossop J:

[1] This is an ex tempore judgment.

[2] The second respondent in this application is Ms Phindile Sibiya, an adult female nursing operational manager who is employed by the applicant at the Inkosi Albert Luthuli Central Hospital (the hospital) in Durban. By virtue of her employment, she is entitled to seek permission to reside at the hospital's residential village. She presently resides in duplex HC (duplex HC). This is an application to evict her from that accommodation.

[3] This application initially had two respondents, but the first respondent, Ms Zanele Theodosia Dlamini, has retired from her employment with the applicant and has vacated the duplex that she previously occupied. Nothing further need be said about this respondent as no relief is now claimed against her and proceedings against her will be adjourned sine die.

[4] The hospital is owned by the government of this country. The hospital has an employee housing policy which is intended to regulate and manage the provision of official accommodation at the hospital's residential village and is implemented by an employee housing committee. Various types of accommodation are offered, one of which is accommodation in duplexes. As a general proposition, the duplexes are reserved for use by newly transferred staff who have yet to acquire accommodation in Durban and by visiting exchange doctors from overseas. However, from time to time, the duplexes may be offered to the hospital's members of staff. When this

occurs, the period of accommodation is restricted as it is intended, primarily, to be short term accommodation not exceeding 6 months

[5] The hospital's housing policy provides that when a duplex is allocated to an employee, the tariff paid for such occupation shall be the amount of R1 500 per month. The power to allocate duplex accommodation rests with the senior management team of the hospital.

[6] Where accommodation is allocated in a duplex to a staff member, the employee thus being accommodated is required to sign a lease agreement that stipulates the duration of their occupation of the duplex and the other terms applicable. The hospital has 6 duplexes, and duplex HC, being the one occupied by the second respondent, consists of 3 bedrooms, a kitchen, a dining room, a lounge, a bath room, one shower and 2 toilets.

[7] The second respondent first took up accommodation at the hospital in August 2005. The applicant and the second respondent concluded a lease on 1 August 2005 in terms of which she was allocated accommodation in an en-suite unit located in the hospital residential village. Unlike a duplex, an en-suite unit consists of a single room with a bathroom and toilet facility. The second respondent took up accommodation in the en-suite unit and remained so accommodated for some eight years.

[8] During September 2013, the second respondent submitted a written application to the hospital's senior management team in which she motivated her request to be granted accommodation in a duplex. I need not go into the reasons but they centred largely on social reasons concerning her niece. In making her request, the second respondent:

- (a) undertook to pay extra for the duplex accommodation; and
- (b) made the point that the accommodation was required on a temporary basis until she found a safe place to purchase.

[9] In October 2013, the second respondent was granted permission to occupy duplex unit HC for a period of six months. This appears to have been in terms of an

oral agreement as no written agreement of lease has been put up. She was thus required to vacate the duplex on or before 31 March 2014. She did not do so but remained in occupation after that date.

[10] A letter was accordingly written to the second respondent on 8 August 2015, requiring that she vacate the duplex on or before 31 October 2015. She was advised that the en-suite unit that she previously occupied was available for her to reoccupy. The demand that she vacates the duplex therefore meant that she would not be rendered homeless. The second respondent refused to vacate the duplex and that is where she remains to this day.

[11] Whilst she continues to occupy the duplex, the second respondent does not pay the full rental amount of R1 500 per month. Due to some anomaly, a maximum amount of R900 per month may be deducted from an employee's salary in respect of accommodation provided. There is thus a short fall each month of some R600 in respect of the second respondent's accommodation that she has not paid, apparently since first occupying duplex HC, notwithstanding her undertaking when she first sought accommodation in a duplex. As at July 2019, the second respondent owed the applicant R42 000 in respect of such unpaid rental. It has undoubtedly now increased beyond this amount. The second respondent moreover, receives a housing allowance of R1 336.32 each month.

[12] The second respondent is also not without the means to pay for her accommodation, whether in the hospital residential village or elsewhere. Her salary advice of 25 February 2019 indicates that she is paid an amount in excess of R35,000 per month.

[13] The second respondent has delivered a one-page statement under oath that makes reference to an annexure, which is not under oath, but which explains her history of accommodation at the hospital residential village. Neither of these documents serves to rebut the allegations made by the applicant. The second respondent has not addressed any of the allegations made by the applicant in the founding affidavit and merely lists a litany of social troubles that occasioned her to initially acquire accommodation in the hospital residential village. She has made no

attempt to set out any legal basis for her continued occupation of the duplex given that her six-month occupation of duplex HC expired more than nine years ago. Her employer, the applicant, continues to offer her accommodation in the en-suite unit that she previously occupied.

[14] Section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) provides that:

‘If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including . . . whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.’

[15] The approach to determining applications brought in terms of this section of the PIE Act was set out by Wallis JA in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others*,¹ where the learned judge held that the provisions of this section trigger a two-stage enquiry:

‘A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve a gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution, is faced with two separate enquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner’s protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant the order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete

¹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) para 25.

enquiries is a single order. Accordingly, it cannot be granted until both enquiries had been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.'

[16] In *Ndlovu v Ngcobo; Bekker and another v Jika*,² the Supreme Court of Appeal, considered what would constitute relevant circumstances that a court should consider when determining whether it would be just and equitable to order eviction and held the following:

'Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.'

[17] In my view, the second respondent has no existent right to remain in occupation of duplex HC. She knew full well when she first assumed occupation thereof that her accommodation would be for a limited period but she has managed to remain in occupation for almost a decade notwithstanding her own acknowledgment at the commencement of her occupation that she would be seeking other accommodation. It appears to me that the applicant has contributed to its own misfortune in this regard for it seemingly has not properly administered its housing and it certainly has not timeously taken steps against those staff members who do not comply with agreements concluded with it that regulate their occupation of hospital housing. Nonetheless, the applicant is entitled to determine who occupies the duplexes and for how long. The duplexes are required to offer accommodation, inter alia, to doctors coming to this country who are to render services at the hospital. The hospital is intended to operate for the benefit of the general community as a whole and to do so needs to attract medical personnel who can deliver medical services to that community. By defiantly remaining in occupation, the second respondent makes this objective difficult to achieve.

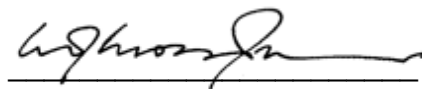
² *Ndlovu v Ngcobo; Bekker and another v Jika* 2003 (1) SA 113 (SCA) para 19.

[18] In the circumstances, there being no legal basis upon which the second respondent may legitimately remain in occupation of duplex HC, it is just and equitable that I grant an order for her eviction.

[19] Given that there is immediate accommodation available to her within the hospital residential village, it is in my view reasonable to afford her a brief period within which to plan her move. I accordingly direct that she vacates duplex HC within 14 days of the date of this order.

[20] I accordingly grant the following order:

1. The relief claimed against the first respondent is adjourned sine die.
2. The second respondent, and all other persons claiming a right of occupation through her, are directed to vacate the immovable property described as duplex HC located at the Inkosi Albert Luthuli Central Hospital residential village at 8[...] V[...] M[...] Road, Mayville, KwaZulu-Natal (the property) by 31 October 2023.
3. In the event of the second respondent failing or refusing to comply with paragraph 2 of this order, the Sheriff or Deputy Sheriff of this court is hereby authorised and empowered to evict the second respondent, and all other persons occupying the property through her, from the aforesaid property.
4. The second respondent shall pay the costs of this application.



MOSSOP J

APPEARANCES

Counsel for the applicant	:	Ms N Bhagwandeem
Instructed by:	:	S D Moloi and Associates
		39 St Thomas Road
		Musgrave
		Durban
Counsel for the second respondent	:	No appearance
Instructed by	:	Not applicable
Date of argument	:	15 August 2023
Date of Judgment	:	15 August 2023