



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case Number 1489/2023

In the matter of:

**OPPERMANSGRONDE COMMUNAL
PROPERTY ASSOCIATION**

Applicant

and

FREDERICH HERBERT SMITH

First Respondent

ROBERT SMITH

Second Respondent

**ANY AND ALL IDENTIFIED OCCUPIERS,
OCCUPYING CAMP NO. 10 AREA 1245,
OPPERMANSGRONDE, FREE STATE PROVINCE,
DISTRICT KOFFIEFONTEIN
AS WELL AS UNITS 9, 10, 11, 12, 13, 14, 15, 16, 17,
18, 19 and 20 OF THE REMAINDER OF THE FARM
RORICHSHOOP, NO 191, IN EXTENT 2585,3600
HECTARES, DISTRICT FAURESMITH**

Third Respondent

CORAM: NAIDOO, J

HEARD ON: 8 FEBRUARY 2024

DELIVERED ON: 10 APRIL 2024

JUDGMENT

- [1] The applicant is Oppermansgronde Communal Property Association (the CPA), established in terms of the Communal Property Associations Act 28 of 1996 (the CPA Act). This is an application for the eviction of the first, second and third respondents from properties in respect of which the applicant has ownership rights. The applicant applied in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). Leave was granted by this court on 13 April 2023 to serve the papers in this matter upon the respondents. This was done, and the first respondent opposed the application. Before me was Part B of the application, seeking the eviction of the first, second and third respondents. As certain other facts emerged the applicant sought the same relief but only against the first respondent. I will deal further with this later. Adv S Grobler SC represented the applicant and Adv R Van der Merwe represented the first respondent.
- [2] The applicant's case is that on or about 12 July 2005, it entered into a written lease agreement with the first respondent in respect of the property identified as Camp 10, Area 1245 Oppermansgronde. The period of the lease was from 1 June 2005 to 31 May 2015. The applicant alleged that the first respondent failed to pay the rent in terms of the lease agreement but that he, in any event, had been in unlawful occupation since the expiry of the lease in 2015. In addition, the applicant held a disciplinary enquiry against the first respondent, on 7 August 2007, for alleged misconduct. As a result of the enquiry, the first respondent was found guilty and his membership of the applicant was terminated.

The first respondent, therefore, no longer had any right of occupation in respect of Camp 10.

[3] The applicant further alleged that to the best of its knowledge, the first respondent does not physically occupy Camp 10, Area 1245, but that following an arrangement with the second respondent, the latter and his family occupy Camp 10/1245. They also occupy Units 9 to 20 of the remainder of the Farm Rorichshoop of area 191, which occupation is without any permission. The occupation of the respondents is therefore unlawful and they are unlawful occupiers as envisaged in PIE. The further allegation is that the applicant, as the owner of the properties, is entitled to all the rights afforded to a registered landowner, particularly the use of the property. I mention that although the first and second respondents opposed this matter, only the first respondent filed an Answering Affidavit. The second and third respondents played no part in these proceedings and neither party mentioned the second or third respondents further. As indicated, the applicant later averred that it was seeking the eviction only of the first respondent and anyone who might occupy the property through him. I shall hereafter refer to first respondent as "the respondent"

[4] The respondent denied that the deponent to the Founding Affidavit, Clint Louis Barnes (Barnes) is authorised to bring this application as no resolution of the CPA authorising the launch of this application has been furnished. He then proceeded to set out a lengthy history of the devolution of the land in question and the in-fighting between two factions (referred to as the Opperman

group and the Barnes group) claiming rights of ownership to the land, much of which, in my view, is irrelevant for the purposes of this application, save in so far as the respondent relies on such in-fighting as a defence to this application. I will deal with this aspect later. Allied to this, the respondent raised the defence of non-joinder of the Department of Rural Development and Land Reform (the Department), which was investigating the dispute between the two factions claiming ownership rights to the property. The Department was investigating the dispute as to the Executive Committee's authority to represent the CPA and referred the dispute to its Land Rights Management Facility (LRMF) to be resolved by the Department, which has a direct and substantial interest in litigation where either of the parties purport to assert an entitlement to represent the CPA

- [5] The respondent also raised as a defence that the applicant followed the wrong procedure in this application as PIE applies to residential property. He asserted that he does not reside on the property but uses it only for the purposes of grazing his animals and has done so since 2006. Having said that the respondent admits entering into the lease agreement in 2005, as alleged by the applicant, and that the lease expired through the effluxion of time. Due to the intensifying dispute between the two "factions", he was not able to determine who the lessors of the property were. Consequently, the conclusion of a further lease agreement and the payment of rental became impossible, as stern warnings were issued by both factions that occupiers of land were not to conclude lease agreements with the opposing faction. The respondent

alleges further that the applicant was aware of the material dispute of fact regarding the authority of the Executive Committee to represent the CPA when it launched this application. The respondent alleged that the applicant had failed to make out a case for the relief that it sought.

- [6] In Reply, the applicant accepted that the respondent does not reside on the property and that PIE does not apply. However, the applicant contends that the only enquiry that remains is whether first respondent and others who occupy through him have any legal right to occupy the property, in view of the fact that the respondent does not dispute that the property belongs to the CPA, that the respondent admitted that the lease agreement between him and the CPA had expired and that no new lease agreement had been entered into. The applicant contends that, as owner of the property, its common law remedy of *rei vindicatio* is not affected, and that it takes the form of an application or action for ejectment. The common law rules are subject to the provisions of PIE and the Extension of Security of Tenure Act 62 of 1997 (ESTA), hence the procedure adopted in terms of PIE is not incorrect, as PIE prescribes the procedure to be followed in eviction proceedings and does not confer the right of ownership.
- [7] In answer to the respondent's challenge to Barnes' authority, the applicant admits that there has, in the past, been in-fighting, but that the Executive Committee is still the legitimately elected representative of the CPA. This is based on the assertion that the CPA was not placed under administration, as alleged by the

respondent. The CPA holds elections every five years to appoint its Executive Committee. The last such election was held in 2019, at which the current Executive Committee was elected. Barnes is the Chairperson of the Executive Committee, and the next election is scheduled for 2024. On 5 October 2020, the Department wrote a letter confirming that officials of the Department had attended the general meetings held, that the CPA furnished documents to these officials, which proved that they had complied with their Constitution and had adhered to the provisions of the CPA Act. The Department then asserted that the applicant was compliant for 2019/2020. The applicant argues that the respondent's attack on the authority of Barnes has no merit.

[8] The issues for this court to decide are whether:

- 10.1 the deponent of the applicant's Founding Affidavit had *locus standi* to bring this application;
- 10.2 the respondents have any lawful right of occupation of the property;
- 10.3 the applicant is entitled to the relief it seeks.

[9] It is common cause or not in dispute between the parties that:

- 9.1 the parties entered into the contract of lease in respect of the property in 2005;
- 9.2 the lease expired in 2015 and no new lease agreement was entered into;
- 9.3 the respondent has failed to pay any rental in respect of the property;

9.4 the respondent does not occupy the property for residential purposes but utilises the property for grazing his animals.

[10] I pause to mention that I do not consider the respondent's points regarding the material dispute of fact or the non-joinder of the Department as deserving of special mention, as the applicant's response in Reply puts paid to those points raised. It has shown that there is a lawfully elected Executive Committee in place, so that any dispute as to the authority of the Committee is not material for the purposes of this application. In view of the Department's letter dated 5 October 2020, it is clear that it does not have a direct and substantial interest in this litigation or the outcome thereof. I will deal with each of the issues I have enumerated earlier. The respondent did not file a notice in terms of Uniform Rule 7(1), which provides that:

Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.

The respondent simply raised the challenge to Barnes' authority in his Answering Affidavit, which was answered by the applicant in its Replying Affidavit, where it explained that the Executive Committee, of which Barnes is the Chairperson, was the lawfully and duly elected representative of the CPA and was therefore authorised to bring this application.

- [11] In the face of the respondent's lack of response, either by way of notification or during oral argument, to indicate specifically, that he was not satisfied with the applicant's response and, with the leave of the court (as required by Rule 7), continues to dispute Barnes' *locus standi* until satisfactory proof thereof is furnished, the applicant and the court were entitled to accept that the respondent was satisfied that Barnes did have authority to depose to the Founding Affidavit. It was not open to the respondent to continue to dispute such authority in his Heads of Argument. I accordingly find that Barnes did have the authority to depose to the Founding Affidavit.
- [12] As I indicated earlier in this judgment, the respondent has conceded that he entered into the lease agreement with the representatives of the applicant in 2005, that the lease expired in 2015, that he has not paid rental in respect of the property since then and that he continues to utilise the property. The respondent does not deny that the applicant has ownership rights, or that in terms of the CPA Act, it may deal with the property as an owner would, subject to the agreement by its members.
- [13] The respondent has not alleged at all that the applicant is not acting according to the prescripts of the CPA Act. His defence in respect of the non-payment of rental because of the disputes between the two rival factions of the applicant, is untenable and does not assist the respondent. He opportunistically alleges that he did not know who the lessor was, when in fact the Executive Committee was duly and properly elected in 2019. Such election could only be

done with the knowledge and assent of the members of the CPA. The respondent made no attempt to approach them to sign a new lease agreement or even tender payment of the rental. He also does not dispute that his membership of the applicant was terminated in 2007, after a disciplinary hearing against him was held, yet he continued to utilise the property free of charge, to the prejudice of the applicant and, by extension, to other members of the applicant. In my view, the respondent has failed to show that he, or anyone occupying through him, has a lawful right of occupation of the property.

- [14] I turn now to deal with the issue of whether the applicant is entitled to the relief it claims, namely, the eviction of the first respondent. The applicant has alleged ownership of the property which the respondent has not denied. On his own version, in his exposition of the history of the devolution of the property in question, the respondent sets out that the land was expropriated by the government of the day and proclaimed as an area reserved for occupation by Coloured people. Restitution claims were filed by the Barnes Group and the Opperman Group. After the intervention of the Regional Commissioner (of the Department), the Barnes Group was elected to represent the entire community. The CPA was formed and established, after which a committee was successfully elected to manage its affairs, confirming the applicant's claim to ownership rights.

[15] The respondent complains that the applicant only made out a case in Reply by alleging that it pursues its common law remedy of *rei vindicatio*, which was not its case in Founding, where it simply proceeded in terms of PIE, and which it later conceded does not apply due to the respondent not residing on the property. The respondent attacks the validity of the applicant's claim on the technical ground that the case it was required to meet was in terms of PIE, and not any common law right or remedy. I set out earlier in this judgment the applicant's argument regarding the *rei vindicatio*, and that the procedure in terms of PIE is not incorrect. PIE does indeed set out the procedures to be followed in an application for the eviction of the unlawful occupier, while recognising the right of land ownership, which is not conferred by PIE.

[16] The purpose of PIE is:

"To provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto". (my underlining).

It is perhaps also useful to cite the preamble to PIE in order to give context to the current application:

"WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property; AND WHEREAS no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances;

AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate

circumstances;

AND WHEREAS special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered”.

[17] It is clear that one of the objects of PIE was to recognise the right of land owners to apply to a court for an eviction order against unlawful occupiers in “appropriate circumstances” and to regulate such eviction in a fair manner. This is in addition to and separately stated from the object of preventing the eviction of a person from his/her home or demolition of a person’s home without a court order. Bearing in mind that the common law is subject to the provisions of PIE, I am of the view that engaging the machinery of PIE in respect of the procedure to be followed in giving effect to the common law remedy of *rei vindicatio* is not an incorrect procedure. The applicant has established in its Founding Affidavit that it is the owner of the property and that the lease in terms of which the respondent enjoyed the right of occupation/possession of the property had expired, effectively terminating such right. The respondent confirmed that he was still “in occupation” of the property, as he continues to utilise the property to graze his animals. The respondent has admitted all of the elements necessary for the granting of a claim for eviction grounded in the remedy of *rei vindicatio*.

[18] For the sake of completeness, I mention that 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 other right in law to occupy such land...” The Oxford English Dictionary defines an

“occupier” as “a person or company residing in or using a property as its owner or tenant, or (illegally) as a squatter”. While admitting that the lease agreement entitling him to possession and/or occupation to the property has expired, the respondent has failed to show that he has any other right in law to occupy the property, thus rendering him an unlawful occupier. The fact that the applicant did not mention its common law right of ownership, which entitles it to enforce the remedy of *rei vindicatio*, is of no moment. Inelegant drafting or inattention to accuracy in drafting does not alter the fact that the applicant’s common law rights were inherently apparent from what was pleaded in Founding.

- [19] Section 4(7) of PIE stipulates that where an unlawful occupier has occupied the land in question for more than six months, the court is required to consider all the relevant circumstances in order to decide whether it is just and equitable to grant an order for eviction. The respondent in this matter has utilised the land belonging to the applicant free of charge for years, and has made no attempt to either enter into a new lease agreement or pay to the applicant the very nominal amount stipulated as rental, in spite of the Executive Committee being properly and lawfully elected in 2019. He tenders a spurious explanation for such non-payment and proffers unmeritorious defences in support of his request that the application be dismissed. What the respondent, in effect, asks is that the court should deny the applicant’s legitimate right to access and possession of its property, while allowing the respondent to continue with his unlawful occupation of the property in order to improperly benefit himself financially. In my view, the facts of this matter, as set out earlier,

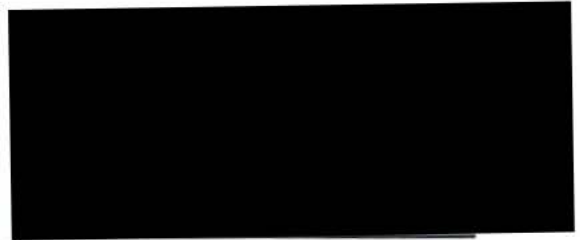
present the “appropriate circumstances” referred to in the preamble of PIE, warranting the granting of an eviction order against the first respondent. I am, consequently, of the view that the applicant is entitled to the relief it seeks.

[20] In the circumstances I make the following order:

- 20.1 The first respondent and all persons occupying through him are declared to be unlawful occupiers of Camp 10 of Area 1245, Oppermansgronde in Extent 248 hectares, district Koffiefontein, Free State Province as well as Units 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the Remainder of the Farm Rorichshoop No. 191, in extent 2585,3600 hectares, district Fauresmith, Free State Province;
- 20.2 The first respondent and all other persons occupying the property through him are ordered to vacate the property no later than Sixty (60) days from the date of this order;
- 20.3 The first respondent and all other persons occupying the property through him are ordered to remove all movable property belonging to them from the property no later than Sixty (60) days from the date of this order;
- 20.4 In the event of the first respondent or any of the occupiers occupying through him, failing to comply with this order, the Sheriff of the court is authorised and directed to evict them, and remove

any movable property belonging to them from the property forthwith;

20.5 The first respondent is ordered to pay the costs of this application.



S NAIDOO J

On Behalf of the Applicants:**Instructed by:**

Adv S Grobler SC

Kramer Weihmann Incorporated

24 Barnes Street

West Dene

Bloemfontein

(Ref: J Nortje/N06035/cup)

On Behalf of the 1st Respondent:**Instructed by:**

Adv R Van Der Merwe

EG Cooper Majiedt Inc

17 Third Avenue

Westdene

Bloemfontein

(Ref: NO/ /EA0899)