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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES:NO

REVISED

DATE OF JUDGMENT: 22 DEC 2023

CASE NUMBER: 46150/18

In the matter between:

BLAIR ATHOLL HOMEOWNERS ASSOCIATION (NPC)

(Registration number: 2005[...])

APPLICANT

And

W S C MEYER

FIRST RESPONDENT

METROPOLITAN MUNICIPALITY

OF THE CITY OF TSHWANE

SECOND RESPONDENT

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 22 December 2023.

JUDGMENT

COLLIS J

INTRODUCTION

1. This is an opposed application seeking the eviction of the first respondent and all those who hold through him, from a house situated on the Blair Atholl Golf Estate on the basis that the first respondent is in unlawful occupation of the property.
2. The property is further described as the Gary Player House No 2 and is situated on the Remaining Extent of Erf 4[...] Blair Atholl Extension 4, being the common property of the applicant ("the property").
3. The first respondent opposes the application in essence on the ground that he is in lawful occupation of the property by virtue of a lease agreement concluded with the previous owner of the property, Blair Atholl Golf Holdings (Pty) Ltd ("BAGH"). The first respondent has also instituted a counter application in respect of an alleged lien over the property to the value of some R516 000.00.
4. As per the Joint Practice note, this Court was called upon to determine, whether the first respondent is in unlawful occupation of the property and whether as alleged by the first respondent, the applicant is indebted to the first respondent for the amounts due to him, which amounts must be paid before the applicant can regain possession of the property.
5. The Court was further called upon to determine, whether W & A Meyer & Associates CC ceded its claim against Wraypex (Pty) Ltd (*the company*) for the repayment of the purchase consideration to the first respondent.
6. In addition, whether BACH assumed responsibility for the repayment of the purchase consideration in the lease agreement concluded between the first respondent and BACH.
7. In order for the applicant to succeed with its claim for eviction the applicant should comply with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 in that the applicant must either be the owner or person in charge of the property and the occupier must have occupied the

property without the owners or person left in charge express or tacit consent.¹

8. Where the procedural requirements of PIE have been met, the applicant would be entitled to approach the court on the basis of the respondent's unlawful occupation.

9. In terms of the Act, unless the occupier discloses a valid defence warranting circumstances relevant to the eviction order, the owner or person left in charge, in principle, would be entitled to an order for eviction.²

10. A Court may thus 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 the rights and needs of the elderly, children, disabled persons and households headed by women.³

11. In the answering affidavit the first respondent relies on a lease agreement to justify his continued occupation of the property. In this regard the first respondent contended that he occupied the house in terms of a lease agreement entered into on 1 December 2011 between himself and the company. The agreement stated inter alia, that at the election of the first respondent that the lease period may be extended until payment of R2 450 000.00 and interest thereon to him.

12. It is the applicants' case that the lease agreement is not valid in that the purported *causa* therefor, i.e. the alleged indebtedness by BACH to the first respondent in the amount of R2 400 000.00, is without substance. The applicant asserts this for the following reasons namely:

12.1 The first respondent's claim letter in the business rescue records the *causa* for the indebtedness as an agreement of some sort between Wraypex, alternatively Wray (as confirmed in the Wray AOD), and himself;

12.2 This was confirmed by the acceptance of the claim for R2 400 000.00 in the business rescue of Wraypex and not that of BAGH;

¹ Ndlovu v Ngobo; Bekker v Jika [2002] 4 All SA 384 (SCA), 2003 (1) SA 113 (SCA).

² At para 19

³ Section 4(6) of PIE

13. It is on this basis that the applicant asserts that there is therefore no indebtedness by BAGH to the first respondent.

14. Moreover, the first respondent further alleges that BAGH is indebted to him on the basis of an alleged agreement between him and Wray, which was as compensation for the amounts he paid Wray in respect of the purchase of Erf 4[...] in the Golf Estate.⁴

15. This to the applicant alleges is incorrect and disingenuous as the payments in respect of the aforesaid erf was made by a close corporation, being “W and A Meyer & Associates CC” (“the close corporation”) and not the first respondent.⁵

16. The applicant further alleges that the lease agreement is also not enforceable as against the applicant for the following reasons, namely:⁶

16.1 The lease agreement was concluded between the first respondent and BAGH on the basis that BAGH was the owner of the property on which the house is situated, being Remaining Extent of Erf 4[...] Blair Atholl Extension 4;

16.2 BAGH became the owner of the property pursuant to the transfer thereof by the applicant to BAGH;

16.3 This transaction was set aside in terms of the arbitration award as being unlawful and the re-transfer of the property to the applicant was ordered;

16.4 The declaration of the transaction as unlawful operates from inception and thus conferred no legal rights upon BAGH in respect of the property and the house situated thereon;

17. It is for this reason that the applicant alleges, that BAGH could therefore not lawfully conclude a lease agreement with the first respondent and pursuant to the

⁴ AA, para's 9 – 17, p.236 - 238

⁵ RA, para 9, p.332, Supplementary RA, para 10, p.389; Rule 35(12) response: Annexure “A1”. See also annexures “AA1” and “AA2”, to the Answering Affidavit.

⁶ FA, para 40.1 – 42, p.19 - 21

award, the lease agreement cannot be enforced as against the applicant.

18. The said lease agreement further does not provide the first respondent with the traditional “huur gaat voor koop” defence as the applicant did not purchase the property from BAGH, but rather took re-transfer thereof pursuant to the award. The applicant is not the successor in title of BAGH.

19. In addition, the award has rendered performance by the BAGH in terms of the lease agreement, i.e. the giving of occupation, impossible, which impossibility operates from inception and thus renders the lease agreement void, alternatively voidable.

20. In addition, the applicant asserts, that the lease agreement is also void, alternatively voidable as performance by BAGH, with regard to the alleged indebtedness of BAGH to the first respondent has become impossible in that the first respondent's claim for the sum of R2 400 000.00 has only been acknowledged in the Wraypex business rescue and not in the BAGH business rescue.

21. It is on this basis that the applicant alleges the first respondents is accordingly in unlawful occupation of the property and the applicant is entitled to evict him therefrom.

DEFENCES RAISED BY THE FIRST RESPONDENT

Authority

22. The first respondent at paragraph 54 to the answering affidavit denies, the deponent's authority to institute these proceedings and to depose to the affidavit. In this regard, no such challenge against the authority to institute proceedings as set out in Rule 7(1) of the Rules of Court has been launched.

23. This step to have been taken view was first set out in *Eskom v Soweto City Council*.⁷ As stated there, if the attorney is authorised to bring an application on behalf of the applicant, there is no need for any other person, whether he be a witness to be

⁷ 1992 (2) SA 703 (WLD)

additionally authorised.⁸ This approach, if properly applied “*should lead to the elimination of the many pages of resolutions, delegations and substitutions still attached to applications by some litigants, especially certain financial institutions*”⁹

24. This approach found approval, and conclusively so, in a number of cases, namely *Ganes and Another v Telecom Namibia Ltd*,¹⁰ where it is found that it was irrelevant whether the deponent to the founding affidavit had been authorised to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised, to name but one.¹¹

25. In the absence of such a challenge, this Court finds no merit in the challenge to the deponent’s authority and consequently, this point is dismissed.

Lien

26. As per the Answering Affidavit the first respondent alleges that he has a lien over the property. The first respondent alleges, in the alternative to the above, that he has an improvement lien over the property to the value of some R516 000.00 and has instituted a conditional counterclaim that the applicant shall not be entitled to occupation and possession of the property until payment of such amount to be found by the above Honourable Court is payable in respect of his improvement lien.¹²

27. In this regard the applicant denies the improvements and the alleged lien but has, subsequent to the filing of the replying affidavit, provided security for the sum of R516 000.00. The applicant tenders to pay the sum that the first respondent may be entitled to and as determined by the court, to the first respondent.

28. The said security was subsequently paid into its attorney’s trust account, who confirmed same in an affidavit which was handed to the First Respondent’s attorneys.¹³

⁸ *Eskom* case supra at 705F - G

⁹ *Eskom* case supra at 705H

¹⁰ 2004 (3) SA 615 (SCA)

¹¹ *Ganes* case supra at 624F – 625A

¹² NOM – Counter application, p.230

¹³ p.438 - 442

29. The said affidavit, together with an amended guarantee for the interest and costs, were subsequently filed on 12 May 2020.¹⁴

30. The said payment of the lien amount together with the guarantee for the interest and costs, is adequate in law for an order that the lien be substituted by the payment and the guarantee.

31. The payment into trust and the guarantee can also be substituted in respect of improvement liens.¹⁵ In particular, the Court stated as follows in the *Pheiffer* matter:

“[20] It follows that the conclusion reached in the Bombay Properties case, that in the case of a jus retentionis based on an enrichment lien the court does not have a discretion to deprive the lien holder of his possession or that the substitute security for such a lien would be meaningless, is clearly wrong. The Sandton Square Finance case made it clear that the court does have a discretion in respect of an enrichment lien. Quite clearly once it is established that a court has a discretion in relation to a debtor/creditor lien, there is no reason why such a distinction should not extend to the enrichment lien. On appeal counsel for Pheiffer did not persist with the argument that the approach in Sandton Square was wrong. It would consequently be untenable to allow substitution of security in the one case (debtor/creditor lien) but not in the other (enrichment lien).

[21] The principle articulated in the Sandton Square Finance case is sound and based on considerations of equity and justice. I do not agree with the contention that the security tendered by the third respondent is meaningless. In my view once Pheiffer has fully quantified and proved his claim, he will be entitled to payment in respect of the improvements to the property. As soon as sufficient security has been tendered, Pheiffer has no basis to continue occupying the property. As the court below rightly held, he must vacate the property.”

32. The *bona fides* of the first respondent and the cogency of the evidence in

¹⁴ Filing sheet, p.437

¹⁵ Sandton Square Finance (Pty) Ltd v Vigliotti 1997 (1) SA 826 (W); Pheiffer v Van Wyk 2015 (5) SA 464 (SCA)

support of the lien are important factors to be taken into account in the exercising of the Court's discretion as was stated as follows in the matter of *Mancisco & Sons CC (In Liquidation) v Stone* where the Court stated as follows:¹⁶

“The normal approach that the evidence of the respondent stands where there is a dispute, would enable a respondent to stifle any exercise of the Court's power to balance undue holding on to possession and undue failure to pay the detentor. The Court must properly assess the bona fides of the detentor and the cogency of his evidence about the circumstances which allegedly caused a relationship of lienholder and the extent of the claim which is protected by the lien.”

33. In *casu* the first respondent's *bona fides* have not been shown nor does the evidence support his alleged lien.

34. This Court in line with the authorities quoted above however exercises its discretion to permit the substitution of the security provided for by the applicant to the first respondent for its lien and once proven on action the first respondent will be entitled to the quantum so proven. As such same will not be further adjudicated upon in these proceedings.

Conclusion of the lease agreement

35. In the Answering Affidavit, the first respondent sets out that he concluded a sale agreement with Wraypex, duly represented by Wray, in respect of erf 4[...] (formerly known as portion 2[...]) in the estate (“the sale agreement” and “erf 4[...]” respectively).¹⁷ At the time of deposing to the answering affidavit, the first respondent was not in possession of a copy of the sale agreement.¹⁸

36. Having paid the full purchase consideration in terms of the sale agreement to Wraypex,¹⁹ and unbeknown to the first respondent at the time, Wraypex behind his back had sold and transferred erf 4[...] to a third party (namely Mr Leggatt). This

¹⁶ 2001 (1) SA 168 (WLD) at 176C – D

¹⁷ Paragraphs 5 to 9 of the answering affidavit in the main application [p 001- 235]

¹⁸ Paragraphs 9 to 11 of the answering affidavit in the main application [p 001- 236]

¹⁹ Paragraphs 5 to 9 of the answering affidavit in the main application [p 001- 235]

implies that it was unable to give transfer of erf 4[...] pursuant to the sale agreement.²⁰

37. When he confronted Mr Wray, Wraypex and Golf Holdings about this state of affairs they subsequently bound themselves to repay the purchase consideration to the first respondent.²¹ This however did not transpire and resulted in an oral agreement being concluded between himself and Mr Wray that he would be entitled to be resident in the house until the entire outstanding amount would be repaid to him. Later this agreement was ultimately reduced in writing with the conclusion of a lease agreement dated 1 March 2014 between the applicant, Mr Wray and himself. As Mr Wray however finds himself overseas, he is unable to confirm this under oath.

38. In the further supplementary answering affidavit which was filed, the first respondent had indicated that he had recently found the original sale agreement,²² which indicates that W and A was the purchaser of erf 4[...] and which implies that the first respondent's initial evidence that he was the purchaser was incorrect. It also appears that at all relevant times the first respondent and his wife ("Mrs Meyer") were the members of W and A.²³

39. In the supplementary answering affidavit so filed, the first respondent sets out that during his discussions held with Mr Wray, pertaining to the repayment of the amount paid by him, he emphatically confirmed that either himself or Blair Athol Golf Holdings (Pty) Ltd would be responsible for the amount paid. Both Wraypex (Pty) Ltd and Blair Atholl Gold Holdings (Pty) Ltd were later however put under business rescue and claims for this purchase consideration so paid submitted to the business rescue practitioners. Only the claim submitted in respect of Wraypex was accepted and on this basis the first respondent alleges that the lease agreement cannot be alleged to be a fictitious agreement.

40. It is therefore the first respondents' case, that the lease agreement so concluded is a valid and binding agreement that was entered into when Blair Atholl Holdings (Pty) Ltd was the lawful owner of the property and that he will be entitled to

²⁰ Paragraphs 14 and 15 of the answering affidavit in the main application [p 001-237]

²¹ Paragraphs 16 to 20 of the answering affidavit in the main application [p 001- 238]

²² Paragraph 8 of the supplementary answering affidavit [p 011-8], read with Annexure "X5" [p 011-23]

²³ Paragraph 7 of the supplementary further answering affidavit [p 011-42], read with Annexure "X7" [p 011-45]

be in possession and occupation of the premises until the lease agreement expire on 1 March 2024. Furthermore, that if the quantum has not been repaid to him by 1 September 2023, he would have the option to extend the lease period for a further period of 10 years under the same terms and conditions.²⁴

41. The applicant denies the existence of a valid lease agreement. Support for this is found in the acceptance only of the claim by the business rescue practitioner of Wraypex, as well as from the contents of paragraph 1 of the undated acknowledgement of debt of Mr Wray, in favour of the First Respondent²⁵, wherein he acknowledged that an amount of R 2 450 000.00 was owing by Wraypex to the first respondent. Premised on this the applicant contends that it is clear, that Wraypex owed the debt.

42. The first respondent, in relying on Holdings, by simultaneously acknowledging its indebtedness to the first respondent, as a basis to conclude the lease cannot contend that the lease entered into by Holdings and first respondent, in such circumstances, was concluded in good faith.

43. In amplification the applicant had argued that, it is apparent, that Wraypex alternatively Mr Wray owed the debt. The conclusion of the lease agreement, in its specific terms, including its acknowledgement of the debt, is nothing short of contrived, as it is clear that Holdings, on the papers, did not owe the debt to the first respondent.

44. The conclusion of the lease agreement, it is clear was not concluded by parties whom at the time in law had the necessary authority to conclude such lease. It is for this reason that this Court must conclude that no valid lease agreement was concluded.

Cession

45. On the cession, it is the first respondents' assertion that Wray acknowledge in the acknowledgement of debt that he was indebted to the first respondent in the amount of R2 450 000.00 "*for payments made previously to Wraypex*".²⁶

²⁴ Answering Affidavit para 36-40. [p 001-243]

²⁵ FA, annexure FA 8, page 174

²⁶ Annexure "AA5" [p 001-273]

46. Furthermore, that Golf Holdings also acknowledge in the lease agreement that it was indebted to the first respondent in the amount of R2 450 000.00.

47. It is on this basis that the first respondent asserts that there is simply no reason why Wray and Golf Holdings would acknowledge an indebtedness of R2 450 000.00 to the first respondent if W and A had not ceded its claim for the repayment of the purchase consideration to the first respondent.

48. The existence of the cession is further confirmed in a confirmatory affidavit deposed to by Mrs Meyer which is annexed to the replying affidavit in the permission application.²⁷ In this affidavit she confirmed all the relevant facts pertaining to the cession. She further explained that in view of the fact that she and the first respondent would occupy the property, W and A, duly represented by the first respondent and Mrs Meyer, agreed to cede its claim for the repayment of the purchase consideration to the first respondent.

49. The respondents' case that supports for the existence of the cession as alleged, is found in the fact that parties to the sale agreement were Wraypex and W and A; that the payment of the purchase consideration was made to Wraypex by or on behalf of W and A and that Wraypex was unable to transfer erf 4[...] to W and A.

50. The evidence of the cession is in response to the applicant's contention that, notwithstanding the fact that the lease agreement expressly indicated that Golf Holdings owed the purchase consideration to the first respondent, no debt is owed to the first respondent, as alleged by the applicant which "*demonstrates that the lease ... was not in accordance with the good faith principle*".²⁸

51. The first respondent conceded that the evidence of the cession should have been contained in the further answering affidavit but was inadvertently left out by the first respondent's legal representatives who drafted the further answering affidavit,²⁹

²⁷ Annexure "RA2" [pp 011-120 and 011-121]

²⁸ Paragraph 11.2.6 of the supplementary founding affidavit in the main application [p 001-413]

²⁹ Paragraph 6.2 of the founding affidavit [p 011-60]

which evidence is disputed by the applicant.³⁰ This is so on the basis that the first respondents' legal representative has not filed a confirmatory affidavit to support this assertion.

52. In the absence of such confirmatory affidavit having been filed by the erstwhile attorney of the first respondent, or a cogent for its failure to have been filed, this Court must accept that no corroboration therefore exists.

53. In addition, a party relying on a contract of cession, must allege and prove the contract of cession, that is a contract in terms of which a personal (and not a real) right against a debtor is transferred from the creditor (cedent) to a new creditor (cessionary).³¹

54. The production in evidence of an apparently regular and valid cession provides prima facie proof, whereupon the evidentiary burden shifts to the party disputing the cession.

55. The confirmatory affidavit deposed to by Mrs Meyer and made reference to in the para 48 *supra*, does not annexed to it a copy of the cession. In the absence thereof, this Court cannot come to the aide of the first respondent in placing reliance on a cession.

Huur Gaat Voor Koop Principle

56. The first respondent further premised his defence on the "*huur gaat voor koop*" principle. This principle entails that normally a purchaser steps in the shoes of the lessor with regard to a lease agreement. However, there is a proviso to the general principle, namely that the lease has to have been concluded in good faith and not in fraud of creditors³² ("*the good faith principle*").

57. In this regard the first respondent asserts that because of the retransfer of the property to the applicant, the applicant stepped into the shoes of Blair Atholl Golf

³⁰ See paragraph 6.2 of the founding affidavit [p 011-60] and paragraph 24 of the answering affidavit [p 011-88]

³¹ Lief NO v Dettmann [1964] 2 All SA 448 (A).

³² Voet, (Percival Gane's translation) at 19.2. 17:

Holdings (Pty) Ltd (“Holdings”) insofar as it is the lessor. It is further asserted that in this regard, the applicant must therefore be regarded as the lessor in terms of the lease agreement and on that basis that the lease is protected by the rule “huur gaat voor koop”.

58. Furthermore, the first respondent asserts that although the rule referred only to sale, that it applied to all forms of alienation and not only to a purchaser, but to any singular successor such as a usufructuary, legatee or donee.

59. In rebuttal the applicant had argued that the lease agreement is not enforceable against it, alternatively the “huur gaat voor koop” principle is not applicable in that the applicant is not a successor-in- title to BAGH as envisaged with the “huur gaat voor koop” principle, as it is neither an universal nor a singular, whether onerous or gratuitous, successor-in-title. Here the applicant’s succession, is seen in the context of the particular factual matrix of this matter, and is in fact *sui generis in nature*.

60. In addition, the applicant contends that the lease agreement was furthermore not concluded in accordance with the good faith principle for the following reasons, namely:

60.1 On the first respondent’s own version, Wraypex, alternatively Mr Wray owed the debt to the first respondent;

60.2 this was subsequently confirmed by the business rescue practitioner of Wraypex by accepting the first respondent’s claim in the business rescue of Wraypex;

60.3 The first respondent, in relying on BAGH, in:

60.3.1 purporting to simultaneously acknowledge its indebtedness to the first respondent, as a basis to conclude the lease;

60.3.2 as well as the basis for the various periods of the lease to the first respondent cannot contend that the lease entered into by BAGH

and the first respondent, in such circumstances, was concluded in accordance with the good faith principle.

61. It is on this basis that the applicant asserts that the conclusion of the lease agreement, in its specific terms, including its acknowledgement of the debt, is nothing short of contrived, as it is clear that BAGH, on the papers, did not owe the debt to the first respondent. This is further supported by the fact that the moneys allegedly paid by the first respondent, as a basis for the alleged debt owed to the first respondent by BAGH, were in fact paid by another entity and not the first respondent.³³

62. It is significant that the first respondent in answer to the above allegations, has failed to deal with these allegations comprehensively, save for a bare denial. The only real response is that the lease agreement was an arms-length transaction and that the evidence of Mr Wray will be required, which has been stated before is not before this Court.³⁴

63. The failure by the first respondent to comprehensively deal with these allegations save for a bare denial, is not sufficient to set out a valid defence when faced with a claim for eviction unless of course, there is no other way open to the respondent and nothing more can be expected of him or her.³⁵ This is not the case *in casu*, and in the absence thereof, it follows that eviction has to follow.

COMPLIANCE WITH PIE

64. Prior to the hearing of the main application the applicant served the necessary notice in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") on the first respondent. This Court is satisfied that service had taken place as directed by the Court.

65. A Court once concluding that no valid defence had been proven by the unlawful occupier must then determine as to whether it would be just and equitable to evict the

³³ Supplementary Replying Affidavit, para's 10.1 – 10.4, p.389; First Respondent's Rule 35(12) response – Annexure "A1"

³⁴ AA, para's 6 – 13, p.424 - 426

³⁵ *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) at 375G; *National Scrapmetal (Cape Town) (Pty) Ltd v Murray & Roberts Ltd* 2012 (5) SA 300 (SCA) at 305E.

unlawful occupier. The phrase “just and equitable” was defined as follows by the Supreme Court Appeal in the matter of *Wormald NO and Others v Kambule*:³⁶

“[17] It now remains to consider whether it would be just and equitable to grant an eviction order. Sachs J, dealing with the concept ‘just and equitable’ in the context of PIE in Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) (2004 (12) BCLR 1268), referred with approval to the comments of Horn AJ in Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others 2000 (2) SA 1074 (SE), stating in para [33]:

‘. . . (I)n matters brought under PIE, one is dealing with two diametrically opposed fundamental interests. On the one hand, there is the traditional real right inherent in ownership, reserving exclusive use and protection of property by the landowner. On the other hand, there is the genuine despair of people in dire need of adequate accommodation. . . . It is the duty of the court, in applying the requirements of the Act, to balance these opposing interests and bring out a decision that is just and equitable. . . . The use of the term “just and equitable” relates to both interests, that is, what is just and equitable not only to persons who occupied the land illegally but to the landowner as well.’”

66. The applicant submitted that the application is just and equitable in that the lease agreement is void, alternatively confers no right of occupation on the first respondent that supersedes the applicant’s ownership, further that the applicant has not consented to the first respondent occupying the property.³⁷

67. In addition the applicant further submitted that the property is situated on the common property of the applicant and is earmarked for use by the applicant and that the continued occupation of the property is to the prejudice of the applicant in that the first respondent has been occupying the property without paying any rental or levies in respect of such occupation for more than five months, which outstanding levies at the time that the application was issued, i.e. July 2018, amounted to R52 249.98 and is

³⁶ 2006 (3) SA 562 (SCA) at para 17

³⁷ IA, para’s 42 – 43, p.261 - 263

now in the region of R170 000.00.³⁸

68. In terms of Section 4(8) of PIE if a court is satisfied that all the requirements of section 4 have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier. From what has been set out in the respective affidavits this Court concludes that it is warranted to grant the eviction order in the present circumstances.

ORDER

69. In the result the following order is made:

69.1 The point of lack of authority is dismissed.

69.2 The first respondent and all those who occupy the property through the first respondent is evicted from the premises cited as the Gary Player House No. 2 situated on the Remaining Extent of Erf 4[...] Blair Atholl Extension 4, within 30 days, of date of service by Sheriff on the first respondent.

69.3 The Sheriff is authorised to request any person, including members of the South African Police Services, to assist him in the eviction of the first respondent from the premises described in para 69.2 above.

69.4 the conditional counter application is postponed sine die.

69.5 the first respondent is ordered to pay the costs of the main application, including the costs of two counsel where so employed.

69.6 the costs of the counter application is reserved for the action proceedings to be instituted in respect of the counter application.

COLLIS J
JUDGE OF THE HIGH COURT GAUTENG

³⁸ FA, para 47, p.21 - 22

APPEARANCES:

Counsel for the Applicant: Adv T. Ohannessian SC Adv M. Reineke

Attorney for the Applicant: Riaan Bosch Attorneys

Counsel for the First Respondent: Adv HF Oosthuizen SC

Attorney for the First Respondent: Naude and Naude Attorneys

Date of Hearing: 4 October 2022

Date of Judgment: 22 December 2023