

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NUMBER: 2020/20443**  
**NOT REPORTABLE**  
**NOT OF INTEREST TO OTHER JUDGES**  
**REVISED**

In the matter between:

**KORSEED BEGUM AHMED**

Applicant

and

**BUSISIWE Z ZUNGU AND ALL UNLAWFUL  
OCCUPANTS**

First Respondent

**THE JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

Second Respondent

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**WRITTEN REASONS**

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**HOPKINS AJ**

[1] On 14 February 2023 I made the following order:

Having read the documents filed of record, having heard counsel for the parties and having considered the matter, the following order is made:

1. The first respondent and all occupants and/or persons claiming any right, title or interest to occupy Erf [...] Malvern Township situated at [...], Malvern, Johannesburg ("the immovable property") are in unlawful occupation thereof.

2. The first respondent and all occupants and/or persons claiming any right, title or interest to occupy the immovable property are evicted from the immovable property and ordered to vacate same on or before 14 March 2023.
3. If the first respondent and all occupants claiming any right, title or interest to occupy the immovable property have not vacated the immovable property by 14 March 2023, the date so determined in paragraph 2 above, then the Sheriff of the above honourable Court is authorised and directed to carry out the eviction order, by removing from the immovable property the first respondents and all occupants and/or persons claiming any right, title or interest to occupy the immovable property, and to hand the applicant vacant possession.
4. The first respondent and all occupants claiming any right, title or interest to occupy the immovable property are ordered to pay the costs of this application jointly and severally.

[2] I gave *ex tempore* reasons in open court at the same time that I handed down the order. There was, therefore, no written judgment.

[3] On 6 November 2023, almost nine months later, I received an email from the Clerk to the Judge President of this Court advising me that an application for leave to appeal had been filed but that, because there was no written judgment, the Appeals Office was unable to process the application. I was requested to produce a written judgment. I requisitioned a transcript of the hearing that took place before me and of the *ex tempore* reasons that I delivered. On 9 November 2023, I received the transcript from the Transcription Officer of this court. Regrettably, the transcribers were only able to provide a partial transcript. In the transcriber's Certificate of Veracity, she stated that the audio was problematic because the recording was bad. Whilst that state of affairs is regrettable, I had fortunately kept relatively thorough notes which I made during the hearing of the application on 14 February 2023. I consulted those and the documents uploaded onto CaseLines to prepare this written judgment. It accords with my *ex tempore* reasons.

[4] This is an opposed eviction application instituted in terms of the Prevention of Illegal Evictions and Unlawful Occupation of Land Act No. 19 of 1998 ("the PIE"). The applicant, Ms Ahmed, is the registered owner of a residential property situated at No. 9 Eighth Street, Malvern in Johannesburg ("the property"). She sought to evict the first respondent who is described in the papers as Busisiwe Zungu and All Unlawful Occupants. The Johannesburg Metropolitan Municipality ("the municipality") is the second respondent.

- [5] For the purposes of this judgment, after carefully considering the evidence and listening to argument, I accepted that Ms Ahmed is the owner of the property. I also accepted that she had entered into oral lease agreements with some of the members of the first respondent, although she subsequently cancelled those lease agreements after her tenants fell into arrears with their rental payments. Notices of cancellation and demands to vacate the property were served on Ms Ahmed's behalf upon the members of the first respondent by the Sheriff on 4 February 2020. I accepted that from that moment onwards, the occupiers were in unlawful occupation of the property. I therefore refer to the members of the first respondent as "unlawful occupiers". I also accepted that the unlawful occupiers had been in unlawful occupation for a period of more than six months.
- [6] According to section 4(7) of the PIE, 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 their eviction if it is of the opinion that it is just and equitable to do so. The court must, however, consider all the relevant circumstances including whether land has been made available or can reasonably be made available to them by the municipality or some other organ of state for their relocation. The rights and needs of the elderly, children, disabled persons and households headed by women must also, where relevant, be considered.
- [7] In *City of Johannesburg vs. Changing Tides 74 (Pty) Ltd* [2013] 1 All SA 8 (SCA) at para 25, the Supreme Court of Appeal held as follows:

A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve the gradual realisation of the right of access to housing in terms of section 26(1) of the Constitution, is faced with two separate inquiries. First, it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in light of the property owner's protected rights under section 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 that order. Before doing so, however, it must consider what justice and equity demands 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 inquiry, 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 discreet inquiries is a single order. Accordingly, it cannot be granted until both

inquiries have 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 inquiry 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.

- [8] In her founding affidavit, Ms Ahmed listed the relevant circumstances that she submitted the court should take into account when determining whether it would be just and equitable to evict the unlawful occupiers and, when a just and equitable date for their eviction should be determined. As is so often the case in these types of matters, applicants simply do not know enough. For that reason, Ms Ahmed invited the unlawful occupiers to place additional relevant information and/or equitable circumstances before the court which could mitigate against an eviction. They were invited to do this in an answering affidavit. According to *Ridgeway vs. Janse van Rensburg* 2002 (4) SA 186 (C) at 191I-192A and *FHB Management (Pty) Ltd vs. Theron N.O. & Another* 2004 (3) SA 392 (C) at 405B it is incumbent on the occupiers to disclose to the court all relevant circumstances in support of why an eviction order should not be granted. Provided the procedural requirements in the PIE have been met, an applicant who is the owner of the occupied property is entitled to approach the court on the basis of her ownership and the occupiers' unlawful occupation. Then, unless the unlawful occupiers oppose their eviction and disclose circumstances relevant to the eviction order, the owner, in principle, is entitled to an order for their eviction. Relevant circumstances are nearly always, without fail, facts that fall within the exclusive knowledge of the occupiers. It cannot be expected of an owner, in advance, to know what those facts and circumstances are. Ms Ahmed's invitation to the unlawful occupiers of the property was thus correctly made. Courts are, however, also obliged to probe and investigate the personal circumstances of unlawful occupiers. This was made clear in *Pitje vs. Shibambo* 2016 JDR 0326 (CC) at paragraph 19.
- [9] In the heads of argument submitted on behalf of the unlawful occupiers, their counsel states that all relevant facts and circumstances were placed before the court, presumably in the answering affidavit, sufficient to oppose the application on the basis that it would be unjust and inequitable to evict them. The answering affidavit, which was deposed to by Mr Royal Mchunu, placed very few facts before the court about why an eviction would be unjust and inequitable a la section 4(7) of the PIE. The answering affidavit focussed instead on other factual matters which I need not engage here in view of my findings that Ms Ahmed is the owner of the property and that the members of the first respondent were in unlawful occupation of her property and had been for a period of more than six months.

[10] I nevertheless considered the limited information put forward by Mr Mchunu, as confirmed by some of the other occupiers in confirmatory affidavits. I also considered the prejudice that Ms Ahmed has suffered in consequence of having her property unlawfully occupied for a significant period of time. Not only is she not receiving any rental income, but she is also liable to pay the municipal accounts associated with the property.

[11] It is also necessary for me to say something about the manner in which the members of the first respondent have approached this litigation. There was an earlier hearing of this application on 19 October 2021 where the same answering affidavit first featured with its scant content on the section 4(7) factors. That earlier hearing took place before Judge Meier-Frawley. She made the following order in relation to the municipality:

1. Within 30 days of the date of service of the order, [the Johannesburg Metropolitan Municipality] must conduct a full investigation into the personal and socio-economic circumstances of the members of the first respondent [in other words the unlawful occupiers] including the rights and needs of the elderly, children, disabled persons, households headed by women, and whether land has been made available or can reasonably be made available by the second respondent or other organ of state or another land owner for the relocation of the unlawful occupiers of No. 9 Eighth Street, Malvern, Johannesburg.
2. [The Johannesburg Metropolitan Municipality] must meaningfully engage with all of the willing occupiers of the property and report on the findings of the full investigation as referred to above, including but not limited to the personal information of each occupier and any other relevant circumstances as envisaged in section 26(3) of the Bill of Rights in order to assist this honourable Court in the exercise of its discretion in eviction matters.
3. Within 60 days of the date of service of the order [the Johannesburg Metropolitan Municipality] must provide the attorneys of the applicant [Ms Ahmed] and the first respondent [the unlawful occupiers] and this honourable Court with a copy of the written report referred to above, and upload same to CaseLines.
4. In the event of unwilling occupiers refusing to participate in the conduct of the full investigation as referred to in paragraphs 1 and 2 above, indicate same in the written report in order for the honourable Court to consider same at the hearing of the eviction application in the exercise of its discretion.

[12] The order of Meier-Frawley J was served on the municipality on 29 October 2021. However, as is apparent from the municipality's report, the unlawful occupiers and their attorney, Mr Hadebe, refused to cooperate with the municipality's officials. During the hearing on 14 February 2023, Ms Gumbi, who appeared for the municipality, advised me that on a number of occasions the municipality tried to engage with Mr Hadebe. The municipality's officials tried to secure a date for the assessment and made a number of telephone calls and addressed a number of emails to him until, eventually, they got a response on 24 January 2022. Mr Hadebe undertook that he and his clients, the unlawful occupiers, will be available at the property on 4 May 2022 to assist the municipality and to cooperate with its officials for the purposes of the doing assessment and preparing the report directed by Meier-Frawley J. However, when the municipality's officials arrived at the property on 4 May 2022, nobody was home and the premises were locked. The assessment could not be done. The municipality then tried to set up a new time and date for the assessment, this time it proposed 16 May 2022. However, Mr Hadebe did not respond. Then, on 20 June 2022, further communications were sent to Mr Hadebe requesting further dates. More correspondence followed on 27 June 2022. Eventually, the parties agreed that the assessment would be conducted on 4 July 2022. Again, Mr Hadebe informed the municipality that the unlawful occupiers will make themselves available for the assessment. When the municipal officials arrived at the property on 4 July 2022, only some of them were there. Those who were there refused to be assessed by the municipality's officials. Again, the assessment could not be conducted. Apparently, the few unlawful occupiers who were present on the day told the municipal officials to deal directly with Mr Hadebe. Ms Gumbi says, however, that Mr Hadebe never responded to numerous requests made directly to him by the municipality for information. In the circumstances, the municipality was left with little option but to compile a report with little or no information and even less assessment value. The attitude of the unlawful occupiers and, quite frankly, their attorney made it impossible for a proper assessment to be done.

[13] Paragraph 4 of Meier-Frawley J's order provided that:

In the event of unwilling occupiers refusing to participate in the conduct of the full investigation as referred to in paragraphs 1 and 2 above, indicate same in the written report in order for the honourable Court to consider same at the hearing of the eviction application in the exercise of its discretion.

[14] As I have stated above, with reference to *Ridgeway* (supra) and *FHB Management* (supra), it was incumbent on the unlawful occupiers, when faced with an eviction application under the PIE, to provide the court with sufficient facts to explain their personal circumstances. If they want to resist an eviction, they need to explain, fully, why it would be unjust and inequitable for them to

be evicted. The unlawful occupiers in this case did not do that. They were given plenty of opportunity to do so. As I have also stated above, this time with reference to *Shibambo* (supra), it is incumbent upon the court to probe these circumstances by ensuring that a proper investigation into their personal circumstances is done. In that regard, we know that this court per Meier-Frawley J, sought to do precisely that. She ordered the municipality to conduct a full investigation and to do a full assessment into the personal circumstances of the unlawful occupiers and then to report back to the parties and the court. All of this was done in contemplation of the requirements in section 4(7) of the PIE a la paragraph 25 of *Changing Tides* (supra). The court therefore did what it needed to do in order to have all of the relevant factors properly ventilated. However, the unlawful occupiers refused to cooperate. They deliberately stymied the court's ability to consider a full assessment. It was, of course, incumbent on them to cooperate. That they did not do so meant that I did not have sufficient facts before me to suggest that it would be unjust or inequitable to order their eviction.

- [15] In the circumstances I ordered their eviction on the terms articulated in the court order that I made on 14 February 2023 (which I quoted at the outset of this judgment).
- [16] I began this judgment by explaining that I was asked to write it by the Appeals Registrar, despite handing down *ex tempore* reasons, because the first respondent - Busisiwe Zungu and All of the Unlawful Occupiers - have applied for leave to appeal my order. It is in the interests of justice that this matter be finalised as soon as possible. Litigants are entitled to finality. In the circumstances, I will arrange with the Appeals Registrar for a date to be allocated on which the application for leave to appeal can be argued as soon as is practically possible.

**K. HOPKINS**  
Acting Judge of the High Court  
Gauteng Local Division, Johannesburg

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| <b>Heard:</b>             | 14 February 2023 |
| <b><i>Ex Tempore:</i></b> | 14 February 2023 |
| <b>Written Reasons:</b>   | 15 November 2023 |

**APPEARANCES**

|                       |                     |
|-----------------------|---------------------|
| <b>For Applicant:</b> | Adv. T Steyn        |
| <b>Instructed by:</b> | Yammin Hammond Inc. |

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| <b>For First Respondent:</b> | Mr T Hadebe        |
| <b>Instructed by:</b>        | T Hadebe Attorneys |

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| <b>For Second Respondent:</b> | Adv. S Jabulisile Gumbi |
| <b>Instructed by:</b>         | Kunene Ramapala Inc.    |