

REPUBLIC OF SOUTH AFRICA



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

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO

16/3/18  
DATE

  
SIGNATURE

CASE NO: 97180/2016

16/3/18

In the matter between:

**CHRISTIAAN WHELPTON**

First Applicant

**SHENEEN WHELPTON**

Second Applicant

and

**JOHAN OSWALD WHELPTON**

First Respondent

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

Second Respondent

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JUDGMENT

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**MIA, AJ**

- [1] The applicants seek an order evicting the first respondent and all other persons occupying the property situated at 704 Panbult Street, Faerie Glen, Pretoria under or through the first respondent. The applicant

seeks that relief in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 (the Pie Act). The application is opposed.

- [2] An opposing affidavit was filed by Susanna Whelpton,( Ms Whelpton) the spouse of the first respondent. Ms Whelpton appeared in person after numerous attempts to obtain legal representation proved to be unsuccessful. The court was addressed on the reasons for the absence of legal representation by Ms Whelpton. Neither Legal Aid, nor the Pro Bono offices were in a position to assist Ms Whelpton. This appears due to the unavailability of legal representatives available to assist Ms Whelpton for various reasons. Ms Whelpton eventually elected to proceed in person despite her discomfort.
- [3] The issue for determination is whether the applicant was entitled to bring the application and whether the respondent and those holding occupation through him are unlawful occupiers of the premises. The respondent disputed the unlawfulness of their possession. The court was requested to grant an order for eviction in terms of section 4(1) of the Pie Act. Thus the final issue for determination was whether it was just and equitable to grant an order for eviction in the present matter.
- [4] The applicant is the brother of the respondent and his wife, who were sequestered. The applicant purchased the property to assist the respondent. The parties agreed the respondent and his family could remain on the premises provided they paid an agreed rental to cover the bond and utilities as the applicants' could not service two bonds. When the respondent began skipping rental payments, the applicants attempted to sell the property. An offer to purchase was received but the sale was not finalised as a bank evaluator was denied access to the premises and the application for finance was refused, causing the

sale to be cancelled.<sup>1</sup> This then forced the applicants to apply for the eviction of the respondent and his family.

- [5] The wife of the first respondent filed an affidavit opposing the lawfulness of their occupation. Ms Whelpton disputed that they were in unlawful occupation of the premises relying on the lease agreement which she submitted she did not sign even though she is married in community of property to the first respondent. In the affidavit dated September 2016 she denied that they were in arrears with any payments regarding rentals or that the municipal account was in arrears, however when the matter appeared before me, she conceded that they had failed to meet rental payments since approximately after September 2016. The applicants' attorneys cancelled the lease agreement in correspondence dated 10 November 2016.<sup>2</sup> They informed the applicants that the application for eviction would follow. The only issue which remained unclear before me was whether the applicants were afforded a time period to vacate the premises upon termination of the lease agreement.

- [6] Section 4(1) of the PIE Act provides:

"(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier."

- [7] Mr Jacobs appearing for the applicants submitted that the applicants were the owners of the property which is the subject of this application and the property in which they reside. They were no longer able to maintain two bonds and whilst they sought to assist the first respondent and his family, this was not possible. Even when the

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<sup>1</sup> Founding affidavit p15

<sup>2</sup> Founding Affidavit p121

applicants entered into a new lease agreement with the first respondent, he was unable to meet his obligation in terms of the agreement. The first respondent was not entitled to sublet the premises to anyone without permission of the owner in terms of the lease agreement. Thus anyone residing on the premises without the owner's permission was on the premises unlawfully and the maxim *huur gaat voor koop* was not applicable.

[8] The Pie Act provides in section 4(7) and 4(8) as follows:

- “(7) 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, except where the land is sold in a sale of execution pursuant to a mortgage, 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.**(My emphasis)
- (8) If the court is satisfied that all the requirements of this section 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, and determine—
  - (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
  - (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

[9] Having regard to the above sections Mr Jacobs submitted that it was just and equitable to evict the first respondent and those holding under him when regard is had to the facts as follows:

1. The first respondent and his wife were earning an income from selling clothes and working at a garage and paying no rent;
2. They received a "rental" income from the gardener and domestic helper and did not pay any monies to the applicants;
3. One of the children resided in boarding school;
4. The parties could find alternative rental accommodation according to their means;
5. Ms Whelpton's mother, an elderly lady, was visiting family in the George and thus had access to alternative accommodation;

In view of the above the court was requested to grant an order for eviction in terms of section 4(1) of the Pie Act.

[10] Ms Whelpton conceded that they were not unlawfully residing in the premises. Much of her submissions were not supported by evidence. The new information included information such as the new development that her husband found employment recently. She agreed that her younger child was at boarding school but pointed out that it was a temporary arrangement. Her older child was experiencing problems due to their financial problems. Her mother was visiting in George and was due to return home. Ms Whelpton submitted that they resided in this property for 28 years. They regarded it as their home and accumulated things over this period. She requested the opportunity to be afforded time to get back on her feet to get her life back in order. She submitted they would not be able to rent a property with four to five bedrooms in the area and be close to schools at an affordable price. Further they would not qualify as tenants at this stage because both she and the first respondent were sequestrated. Whilst

they were assisted by the Chistelike Maatskaplike Raad, the assistance was temporary. She intended to seek more work with property agencies doing inspections. In view of the above she requested the opportunity to pay the rental to the applicants and to permit them to sell the house at its true value.

[11] Ms Whelpton's submissions contained new information which had not been attested to under oath. However I accept the veracity of same. Mr Jacobs for the applicants did not question the content or request the opportunity to test the veracity thereof through cross examination or to be afforded an opportunity to reply via affidavit. The issues such as Ms Whelpton's ill health, her son's stress and mental anguish, her husband's health condition. These are all issues which accompany the stressors the Whelpton family have faced in the past namely sequestrations and a loss of income and depressed financial wellbeing, relationship strain and ill health amongst others. The possible move is another huge stressor in the life of a family or individual. In the present case the family of the first respondent have come to their assistance and have now drawn a line in the sand indicating that they are not able to carry the responsibility of looking after the first respondent and his family any further.

[12] Having regard to what is just and equitable in terms of section 4(7) and (8), I am satisfied that the applicant as the owner is entitled to an eviction order to gain the full use of the property. I have considered the circumstances disclosed by the first respondent through the submissions of Ms Whelpton, as indicated above the applicants have assisted the first respondent and his family to the best of their ability. The first respondent has not complied with the terms of the agreement. As proposed by Mr Jacobs for the applicant I have afforded a longer period to enable the first respondent and those holding under him to vacate the property. Ms Whelpton sought an alternative date until

November 2018. I am of the view that date will be too burdensome on the applicants.

- [13] There were no submissions that the normal costs order should not follow.

**ORDER**

- [14] For the reasons above I make the following order:

1. The first respondent and all occupying under him are evicted from the property and buildings erected on the property situated at 704 Panbult Street, Faerie Glen, Pretoria;
2. The first respondent and those holding under him are ordered to vacate the premises on or before 30<sup>th</sup> of June 2018.
3. In the event that the first respondent and those holding title under him do not vacate the property on the above date, the Sheriff of the Court or his lawfully appointed deputy are authorised and directed to evict the first respondent and those holding under him from the property.
4. The first respondent is to pay the costs of this application.



S C Mia

Acting Judge of the High Court, Pretoria

**Appearances:**

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|-----------------------------|---|------------------------------------------------|
| On behalf of the applicant  | : | Adv TL Jacobs                                  |
| Instructed by               | : | STOPFORTH, SWANEPOEL &<br>BREWIS INC, Pretoria |
| On behalf of the respondent | : | Susanna Whelpton                               |
| Instructed by               | : | In Person                                      |
| Date of hearing             | : | <del>27</del> February 2018                    |
| Date of judgment            | : | <del>16</del> March 2018                       |