

Reportable	YES / NO
Circulate to Judges	YES / NO
Circulate to Magistrates	YES / NO



IN THE HIGH COURT OF SOUTH AFRICA
[NORTHERN CAPE DIVISION, KIMBERLEY]

CASE NO: 1991/2014

In the matter between:

GAMAGARA LOCAL MUNICIPALITY

APPLICANT

And

ALL PERSONS INTENDING OCCUPYING

ERVEN 14167 AND 14409 KATHU

RESPONDENTS

Date of hearing: 14 November 2014

Date of judgment: 18 November 2014

JUDGMENT

PHATSHOANE J

- On 11 November 2014, Gamagara Local Municipality, the applicant, approached this Court on an urgent basis in terms of s 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (the PIE). The relief sought is essentially twofold. Firstly, the applicant sought an order authorising it to serve the notice motion in terms of which “All persons *intending* to occupy Erven 14167 and 14409 Kathu”, the respondents, would on 28 November 2014 be called upon to show course on 12 December 2014, why an order, *inter alia*, evicting them from the said premises; ordering that they demolish or remove any structures thereon, should not be made final. Encapsulated in the notice of motion is a Notice in terms of s 5(2) of the PIE. Section 5(2) provides that the court must give written and effective notice of the

intention of the owner or person in charge to obtain an order for eviction of the unlawful occupation to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.

2. Secondly, the applicant is seeking a prohibitory interdict on terms couched substantially as follows:
 - 2.1 the respondents are interdicted and restrained from erecting any further homes and/or abodes and/or dwellings or other structures on Erven 14167 and 14409, Kathu;
 - 2.2 the respondents are interdicted and restrained from taking occupation of and/or occupying or inhabiting any home and/or dwelling and/or abode and/or other structure which might be erected on Erven 14167 and/or 14409, Kathu;
 - 2.3 the respondents are prohibited from conducting any activity whatsoever on Erven 14167 and/or 14409, Kathu, which is aimed either directly or indirectly at establishing a home and/or a dwelling and/or abode or other structure on the said erven;
 - 2.4 the respondents are pay the costs of the application only if unreasonably opposed.
3. The order sought in the preceding paragraph is to operate as an interim interdict with immediate effect, pending final adjudication of the application for the relief set out in Part B of the notice of motion, the eviction proceedings. On 11 November 2014 I granted the order authorising service of the Notice in terms of s 5(2) of the PIE and the notice of motion in respect of the eviction proceedings. The hearing in respect of the prohibitory interdict was postponed to the unopposed Motion Court of Friday 14 November 2014. On this latter date a handful of the respondents attended Court and had not filed any opposing papers. Through their spokesperson, Ms Salvation Mogodile, they stated that they intend to oppose the prohibitory interdict on the return date.
4. A substantive point which I raised during argument with Adv Coetzee SC, for the applicant, was the citation of the respondents, in other words, the practical effect of the prohibitory interdict on the so-called “All persons (who are not in occupation but are) *intending* to occupy Erven 14167 and 14409 Kathu. It is apposite to quote *in extenso* the legal position in respect of the application of

the PIE as pronounced by Brand JA in *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) at 327-328 paras 37-40:

"[37]..... I believe it can be accepted with confidence that PIE only applies to the **eviction of persons from their homes**. Though this is not expressly stated by the operative provisions of PIE, it is borne out, firstly, by the use of terminology such as 'relocation' and 'reside' (in ss 4(7) and 4(9)) and, secondly, by the wording of the preamble, which, in turn establishes a direct link with s 26(3) of the Constitution (see eg *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA) ([2002] 4 All SA 384) in para [3]). The constitutional guarantee provided by s 26(3) is that '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'.

[38]Though the concept 'home' is not easy to define and although I agree with the defendants' argument that one can conceivably have more than one home, the term does, in my view, require an element of regular occupation coupled with some degree of permanence. This is in accordance, I think, with the dictionary meanings of: 'the dwelling in which one habitually lives; the fixed residence of a family or household; and the seat of domestic life and interests' (see eg *The Oxford English Dictionary* 2 ed vol VII). It is also borne out, in my view, by the following statement in *Beck v Scholz* [1953] 1 QB 570 (CA) at 575 - 6:

'The word "home" itself is not easy of exact definition, but the question posed, and to be answered by ordinary common sense standards, is whether the particular premises are in the personal occupation of the tenant as the tenant's home, or, if the tenant has more than one home, as one of his homes. Occupation merely as a convenience for . . . occasional visits . . . would not, I think, according to the common sense of the matter, be occupation as a "home".'

[39] Moreover, within the context of s 26(3) of the Constitution - and thus within the context of PIE - I believe that my understanding of what is meant by a 'home' is supported by Sachs J, speaking for the Constitutional Court, in *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) (2004 (12) BCLR 1268) in para [17], where he said:

'Section 26(3) evinces special constitutional regard for a person's place of abode. It acknowledges that a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people, in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that has established itself on a site that has become its familiar habitat.'

5. A case made out in the applicant's papers is that there is at present an invasion of Erven 14409 and 14167 in that there are persons *intending* to occupy and are "planting" markers/poles and/or beacons on the stands for purposes of demarcation of individual stands. It further states that it had established that there were 20 to 30 demarcated areas on Erf 14409 whereas on Erf 14167 there were some 100 demarcated stands and some 30 to 40 structures, some partially in the process of erecting shacks for future accommodation. The applicant further states:

“The respondent is quite clearly intending to demarcate stands and erect structures thereon for purposes of taking occupation of the stands. I repeat that none of them have yet been occupied and none of them seem to have any furniture or household equipment or apparel”.

6. The essence of a case for the applicant as set out in the preceding paragraph is not without problems regard being had to the application of the PIE to the eviction of persons from their homes but their further primary quandary lies in the citation of the respondents. It escapes me how this prohibitory interdict, if granted, is to be effective against any unknown persons still intending to occupy the premises but not presently in any unlawful occupation.
7. Although I am in serious doubt about the sustainability of the legal course the applicants chose to follow, I am of the view that, during this interim phase, doors should not be closed to them. This is so because it is a fundamental principle of our law that a person may not take the law into his/her own hands. *Prima facie*, the applicant's land is being invaded by certain persons as more fully depicted on the photographs attached to their founding papers. The threat of further invasion is forever present and cannot be ignored. For this reason alone a rule nisi is to issue.
8. In the result the following order is made.

Order:

1. A rule nisi be and is hereby issued calling upon the respondents to appear before this Court on 28 November 2014 at 09h30 in order to show cause, if any, why the following orders should not be made:
 - 1.1 the respondents are interdicted and restrained from erecting any further homes and/or abodes and/or dwellings or other structures on Erven 14167 and 14409, Kathu;
 - 1.2 the respondents are interdicted and restrained from taking occupation of and/or occupying or inhabiting any home and/or dwelling and/or abode and/or other structure which might be erected on Erven 14167 and/or 14409, Kathu;

- 1.3 the respondents are prohibited from conducting any activity whatsoever on Erven 14167 and/or 14409, Kathu, which is aimed either directly or indirectly at establishing a home and/or a dwelling and/or abode or other structure on the said Erven;
- 1.4 the respondents pay the costs of the application only if unreasonably opposed.
2. The order set out in para 1.1- 1.3 above shall operate as an interim interdict with immediate effect, pending final adjudication of the application for the relief contained in Part B of the notice of motion, eviction proceedings.
3. A copy of this order is to be served forthwith on the respondents in accordance with the uniform Rules of this Court.

PHATSHOANE J
NORTHERN CAPE DIVISION

For the applicant: Adv W.L. Coetzee SC instructed by Duncan & Rothman

For the Respondent: Ms Salvation Mogodile (in person)