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

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| (1) | NOT REPORTABLE |
| (2) | NOT OF INTEREST TO OTHER JUDGES |

CASE NUMBER: 13125/2022

In the matter between:

CORE DEVELOPMENT CC

(Registration no. 1995/052399/23)

Applicant

and

**THE UNLAWFUL OCCUPIER/S OF NO.[...] AND NO.[...]
LOCH AVENUE, PARKTOWN**

First Respondent

KHOZA₁ SOPHIE.

Second Respondent

MAINE, MOTENA

Third Respondent

MOEKENA, TEBELLO LUCKY

Fourth Respondent

**BAROVILLE TRADE AND INVESTMENTS 02 (PTY) LTD
(Registration no. 2012/085074/07)**

Fifth Respondent

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Sixth Respondent

Delivered: 13 May 2024 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 13 May 2024

Summary: Eviction – Prevention of Illegal Eviction of Unlawful Occupiers Act 18 of 1998 – occupants evaluated by City inspectors and most do not meet the threshold for temporary emergency accommodation – eviction granted - factors to consider when setting date for implementation of eviction order.

JUDGMENT

Turner AJ

- [1] The applicant is the registered owner of the properties located at [...] and [...] Loch Avenue, Parktown, being Erf 7[...] and 7[...] Parktown Extension (“the properties”). It applies to evict all persons in occupation of the properties.

- [2] It is common cause that until late 2016, many of the occupiers had been tenants, paying rent to the applicant. In October 2016, the occupants of the properties (which included a number of current occupiers) were informed that their occupation would terminate on 31 January 2017. No rent has been paid to the applicant in respect of the properties since 2016.

- [3] In 2018 and 2019, letters requesting the occupiers to vacate the properties were served by the Sheriff on the occupiers. Letters demanding that they vacate were again delivered in 2021. Ultimately, in April 2022, the applicant applied to evict the first to fifth respondents. In doing so, the applicant complied with the formalities required by the PIE Act.

- [4] In September 2022, the occupiers delivered an answering affidavit. The affidavit does not establish that the occupiers have any lawful right to occupy the properties. They resist the application on the basis that if they are evicted, they will be homeless.

- [5] After the applicant brought an application to compel delivery of heads of argument, the respondents delivered their heads of argument in May 2023 and the matter was set down for hearing in August 2023. However, when the matter was called, it was postponed *sine die* and the sixth respondent (“the City”) was ordered to conduct an inspection at the properties and to deliver a report on various issues, to be confirmed on affidavit.
- [6] The City’s report was delivered in November 2023. The report records that there are 14 households with a total of 32 occupiers, occupying the rooms in the houses and each of the garages at the properties. The properties have no electricity supply and lack consistent and reliable water supply. The absence of electricity and water was noted as a substantial safety and wellbeing concern for occupiers, particularly for the minor children. The report noted that the properties are in a state of severe disrepair and neglect and there are structural issues, such as damaged roofing and deteriorating infrastructure which compromise the safety of the occupiers and create an environment that is unsuitable for habitation.
- [7] Particular concern was raised in relation to the minor children, aged between 9 months and 16 years, that reside at the properties. The report records that the unsafe and unsanitary living conditions, combined with the lack of basic amenities, pose a significant risk to their health, wellbeing and overall development.
- [8] I summarise below the details of the members of each household provided by the City’s investigators. No evidence has been produced by the applicant or the other respondents to contradict these details. In addressing the status of each household, reference is made to the two types of housing offered by the City: temporary emergency accommodation (TEA) for those households that earn a monthly income below the qualifying threshold; and “affordable housing” offered by the Johannesburg Social Housing Company to households which earn above the qualifying threshold. I highlight whether the report concludes that the relevant household meets the qualifying threshold or not.

- [9] The head of the first household is Ms Sophie Khosa, who has been residing on the properties for 19 years. She shares the residence with Kenneth Khosa (58 years old) and a 10-year-old minor. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [10] Ms Khosa was a rent-paying tenant before October 2016. The applicants contend that Ms Khosa has held herself out as the owner of the properties, has charged rent to other occupants and, at some point, has operated a business from the properties. These allegations are denied in the answering affidavit. For the reasons set out below, I find it unnecessary to resolve these factual disputes.
- [11] The second household is headed by Ms Thandi Mukansi, also known as Thandi Khosa, a 23-year-old female. The other members of her household are a 30-year-old adult female and a 9-month-old child. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [12] The head of the third household is Ms Mbali Ndlovu, a 38-year-old female. On the evidence obtained by the investigators, Ms Ndlovu earns less than the qualifying threshold for TEA and if TEA were not granted, she would be rendered homeless.
- [13] The head of the fourth household is Ms KN Mokoena, a 23-year-old female who has been living on the property for 17 years. The other two members of her household are a 22-year-old male student and a one-year-old child. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [14] The head of the fifth household is Mr CM Sibiya, a 57-year-old male who is unemployed and has been disabled due to a stroke. He has been residing on the property for 23 years. Mr Sibiya earns less than the qualifying threshold and the investigators confirm that he would be rendered homeless if evicted.

- [15] The head of the sixth household is Ms DB Sithole, a 42-year-old female. The other members of her household are a 22-year-old adult male student and a 10-year-old child. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [16] The head of the seventh household is Ms ME Maine, a 42-year-old female who has resided at the property for 20 years. She has three minor children in her care: 16-year-old, a 13-year-old and a 3-year-old. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [17] The head of the eighth household is Mr SS Nxumalo, a 41-year-old male. The other members of his household are a 36-year-old female, a 19-year-old male student and a 4-year-old child. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [18] The head of the ninth household is Mr Jan Mokoetli, a 51-year-old unemployed male who has resided at the properties for 22 years. He is the only member of his household and the investigators record that his income is less than the TEA threshold. Consequently, he is eligible for emergency accommodation and the investigators have determined that he would be rendered homeless if evicted from the properties.
- [19] The tenth household is headed by Ms TL Mokoena, a 27-year-old female. The investigators concluded that Ms Mokoena earns a monthly income above the TEA qualifying threshold . Although she does not qualify for TEA, the investigators have noted that if her employment contract was not renewed in December 2023, this may have changed.
- [20] The eleventh household is headed by Mr L Qetho, a 46-year-old male who is employed as a security guard and has lived at the property for 11 years. He shares his household with a 40-year-old female. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.

- [21] The head of the twelfth household is Ms N Sophazi, a 43-year-old female who has lived at the property for seven years. She resides with an 18-year-old female student. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [22] The head of the thirteenth household is Mr WC Raunds, a 48-year-old male who has lived at the properties for 11 years. He shares his household with a 38-year-old female. The investigators concluded that the household earns a monthly income above the TEA qualifying threshold.
- [23] The fourteenth household is headed by Ms NK Sophazi, a 23-year-old adult female who has lived at the property for seven years. The other member of her household is a 2-year-old minor child. The investigators have concluded that Ms Sophazi earns less than the qualifying threshold and would be rendered homeless if an eviction order were granted.
- [24] The inspectors concluded that the dilapidated condition of the properties together with the lack of water and electricity supply is highly problematic and, with the presence of minor children and disabled persons residing on the properties, the circumstances warrant “drastic legal attention”. They point out that the unfavourable living conditions increase the risk of accidents, injuries and the spread of contagious disease.
- [25] Notwithstanding the findings in the report, the deponent to the City’s affidavit records that the City does not have TEA or alternative accommodation available. As a result and notwithstanding the dilapidation and health risks, it asks that the occupiers be given an “extension of time of at least 12 months in an endeavour to find alternative accommodation.”
- [26] The Constitutional Court in *Occupiers Berea*¹ confirmed the *dicta* of the SCA in *Changing Tides*², identifying the two separate enquiries that must be

¹ *Occupiers of Erven 87 & 88 Berea v CF de Wet NO and others* [2017] ZACC 18

undertaken by a court when considering an application for eviction from residential premises:

- a. First the court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors;
- b. Second, if it decides that an eviction order should be granted, the court must apply principles of justice and equity in determining the date of implementation of that order and whether any conditions should be attached to that order.

[27] When undertaking these inquiries, the Court will consider all relevant factors, apply constitutional principles and look to mitigate the impact of any order made, where that impact may be felt by vulnerable members of society.

[28] It is apparent from the facts set out above that the occupiers do not have a lawful basis on which to occupy the properties. The dilapidated state of the properties and the lack of services mean that continued occupation by these occupiers is undesirable and may be unsafe, particularly for the minor children. The City's evidence is that most of the households in occupation earn above the TEA threshold and consequently should, theoretically, be able to find alternate accommodation. Many of them paid rent up to 2016 and should be able to do so if they find alternate accommodation.

[29] Even though there are households that do not earn an income that meets the TEA threshold, there does not appear to be a justification for treating them differently from those whose income does exceed the threshold, for purposes of the eviction order. If they were to remain in occupation, they would likely lose the support currently provided by the presence of their co-habitants and the applicant would continue to be deprived of its properties. Those occupants would be better served by active efforts to find them alternate accommodation.

² *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) paras 11 - 25

[30] In weighing up the competing rights and interests when determining the first inquiry, I conclude that it is just and equitable to grant an order for eviction against all the respondents.

[31] As principles of justice and equity also govern the separate decision as to when the order for eviction should be implemented, the various factors to be considered may bear different weight in the second inquiry. In this regard, I consider the following factors to be relevant in the current matter:

- a. Most of the occupants have stayed on the properties for many years.
- b. The City has not notified the occupants who qualify for TEA of any arrangements to assist the qualifying occupiers with temporary emergency accommodation.
- c. The City has stated in November 2023 that it needed time to find accommodation for the occupants who qualify for TEA.
- d. The applicant did not act with great haste to evict the occupiers when their tenancy came to an end in 2016. A relatively short additional delay in achieving eviction will not prejudice the applicant unduly.
- e. Although many of the households have a combined income that exceeds the City's TEA threshold, the amounts earned by these households are unlikely to be significant and they are likely to struggle to find affordable accommodation. A delay, with a fixed deadline, enables them to undertake that search and make alternative arrangements.
- f. Lastly, the winter season is approaching and I consider that the harshness of the Johannesburg winter to people without adequate shelter is also an important consideration. The relative safety of these undesirable premises is likely to be a better option for the minors and elderly during winter than being homeless during this period.

[32] I consider a period of four months to be sufficient for the purpose of giving the occupants and the City an opportunity to make alternate arrangements. I consequently order that the occupants must vacate the properties on or before 15 September 2024. If they do not vacate, the applicant is entitled to appoint the Sheriff to carry out the eviction.

[33] I consider it appropriate that the following additional orders be made:

a. The City is required to take steps, on an urgent basis, to find accommodation for the qualifying occupiers, Mr CM Sibiya, a 57-year-old male who is unemployed and has been disabled due to a stroke; Ms NK Sophazi, a 23-year-old adult female and her 2-year-old minor child. The City is required to file an affidavit on or before 31 July 2024 recording the steps taken and the accommodation identified to receive these occupants.

b. The City is also required, through its Department of Human Settlements, to visit the property once a month from May to August 2024. At those visits, the inspectors are required to evaluate the health and safety of the minor children and to report on the general living conditions to their superiors within the Department. Copies of the reports prepared prior to 31 July 2024 must be delivered with the affidavit referred to in (a) above.

[34] I note that the obligations imposed on the City by these two additional orders do not in any way undermine (or render conditional) the finality of the eviction order or the date on which that eviction may be implemented. The additional orders relate to the obligations of the City towards the occupants and not to the right of the applicant to have possession of his property restored to it.

[35] These orders also do not, in any way, limit the City's obligation to assist those who qualify for TEA or limit the City's obligation to assist those who don't qualify for TEA with affordable alternate accommodation.

[36] The applicant seeks a costs order against the occupiers and, having been successful in the litigation, asks that costs follow the result. Given the evidence of the respondents' respective incomes and the importance of having funds available as they seek alternative accommodation, I do not consider it just or desirable to impose an additional burden of a costs order on the respondents, notwithstanding their failure to have vacated when called upon to do so. This order does not however prevent the applicant from recovering the costs associated with the eviction process from occupiers that do not vacate the properties by 15 September 2024.

[37] In the circumstances, I consider that each party should bear their own costs in the application. I urge the adult occupiers to use the additional time to act responsibly and proactively to find alternative accommodation, including by approaching the City's Department of Human Settlements.

[38] I make the following order:

(1) The second, third, fourth and fifth respondents and any other persons occupying the property situated [...] and [...] Loch Avenue, Parktown, being Erf 7[...] and 7[...] Parktown Extension ("the properties") are evicted from the properties.

(2) The respondents are required to vacate the properties on or before 15 September 2024.

(3) Should the respondents or any other person occupying the properties fail to comply with the order to vacate the property by 15 September 2024, the Sheriff for the area where the property is situated is hereby authorised to do all things and take all steps necessary to give effect to the eviction of the occupiers.

(4) The City, through the Department of Human Settlements, is required to take steps, on an urgent basis, to find accommodation for the following occupiers: Mr CM Sibiya, a 57-year-old male who is unemployed and has been disabled due to a stroke; Ms NK Sophazi, a 23-year-old adult female and her 2-year-old minor child.

(5) The executive head of the Department of Human Settlements is to ensure that employees in his department visit the properties once a month from May to August 2024. At those visits, the employees are required to evaluate the health and safety of the minor children and to report on the general living conditions to their superiors within the Department.

(6) The executive head of the Department of Human Settlements is required to file an affidavit on or before 31 July 2024: recording the steps taken and the accommodation identified to accommodate the occupants identified in (4) above; and attaching copies of the reports prepared following visits made pursuant to (5) above.

(7) Each party is to bear its own costs.

DA TURNER AJ

Gauteng Division, Johannesburg

HEARD ON:	24 January 2024
JUDGMENT DATE:	13 May 2024
FOR THE APPLICANT:	Adv L Hollander
INSTRUCTED BY:	Allan Levin & Associates
FOR THE RESPONDENT:	Adv S Mathiba
INSTRUCTED BY:	Victor Nkwashu Attorneys