

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2022-027250

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED. <i>Yes</i>
 In the matter between: SIGNATURE <i>13/06/2024</i> DATE	

In the matter between:

THE KAPRIVI INVESTMENT CORRIDOR CC

Applicant

and

HILDA MSIBI

First Respondent

PRECIOUS THENJIWE SIBANDA

Second Respondent

ALBERTINAH NTHABELENG NENZINANE

Third Respondent

NKOSANA MABHENA

Fourth Respondent

MDUDUZI NDEBELE

Fifth Respondent

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Sixth Respondent

Coram: Maenetje AJ

This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploading on Caselines. The date and time for handdown is deemed to be 10h00 on 13 June 2024.

JUDGMENT

Maenetje AJ:

Introduction

- [1] The applicant applies for two orders. First, to confirm cancellations of oral lease agreements concluded with each of the first to fifth respondents. Second, to evict the first to fifth respondents and all other persons occupying the immovable property situate at flat numbers 1 to 5, Morette Court, 141 Muller Street, Bellevue East, Johannesburg, Gauteng (**the Property**) through the first to fifth respondents.
- [2] The applicant alleges that it is the registered owner of the property. It alleges that it concluded oral lease agreements with the first to fifth respondents separately on different dates in September 2004, February 2005, March 2009, July 2012 and September 2016. It states further that the oral agreements were on a month-to-month basis. The applicant alleges that the first to fifth respondents breached the lease agreements in that they failed to pay amounts owing in respect of rental and utilities over a period of time. It served notices of breach on the first to fifth respondents and afforded them a reasonable period in which to remedy the breach, failing which it would cancel the lease agreements and

require the first to fifth respondents to vacate the property. The first to fifth respondents failed to remedy the breach and the applicant cancelled the oral lease agreements and notified the first to fifth respondents to vacate the property.

- [3] The applicant alleges that despite the cancellation of the lease agreements and the notice to vacate the Property, the first to fifth respondents and all those occupying the property through them continue to occupy the property unlawfully. It says the first to fifth respondents and all those occupying the property through them have no right in law to remain in occupation of the property. It contents that it would be just and equitably to evict the first to fifth respondents and all those occupying the property through them and to authorise the Sheriff and/or his Deputy to do all such things necessary to give effect to the eviction of the first to fifth respondents and all those occupying through them. The applicant seeks the eviction under the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (**the PIE Act**).

- [4] The breach notice or letter of demand that the applicant sent to the first to fifth respondents is dated 15 August 2022. The letter of termination is dated 26 August 2022.

- [5] In the answering affidavit, the first to fifth respondents dispute that the applicant has proved its ownership of the property. As a result, they

dispute the locus standi of the applicant to bring the application for their eviction under the PIE Act.

- [6] In relation to the lease agreements, the first to fifth respondents allege that they have written lease agreements concluded with the applicant. They give different dates for the conclusion of these written lease agreements. Although each of the first to fifth respondents dispute that they had an oral agreement with the applicant and allege that the lease agreements they concluded were in writing and give the dates when those lease agreements were concluded, none of them alleges that their respective written lease agreements are still in force. I therefore accept that the applicant has cancelled lease agreements concluded with the first to fifth respondents that were in force at the time of the cancellation.

- [7] I turn to consider each of the two orders that the applicant seeks.

Confirmation of the cancellation of lease agreements

- [8] On the facts presented by the applicant the founding affidavit, I accept that the applicant has cancelled the lease agreements it had with the first to fifth respondents. It has given the reason for termination as a failure to pay monies due for rental and utilities. It is not disputed by the first to fifth respondents such monies were not paid and they accumulated arrears. They seek to justify the non-payment on a ruling by the Housing Tribunal rendered in 2011. The ruling of the Housing Tribunal had nothing to do with the obligation to pay rental. The complaint to the Housing

Tribunal concerned the calculation of certain water charges, electricity charges, the question whether the applicant could carry out certain maintenance work on the property whilst its tenants remained in occupation of the property and charges under the Debt Collectors Act, 114 of 1998. It did not concern the entitlement of the first to fifth respondents to withhold rental for any reason. In the absence of any ruling by the Housing Tribunal to the contrary, the applicant was entitled under the common law to cancel the lease agreements with the first to fifth respondents on notice.¹

The eviction order

[9] The first to fifth respondents contend that the applicant has failed to establish its locus standi under the PIE Act to bring the eviction proceedings. They say that only an owner of land or a building, or a person in charge of such land or building has legal standing under the PIE Act to bring eviction proceedings. The PIE Act defines owner as the registered owner of land. The person in charge is defined as a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question.

[10] It is common cause on the affidavits that the applicant is the entity that concluded the lease agreements with the first to fifth respondents to entitle them to occupy the property, whether in writing or orally. Each of

¹ *Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd* 2012 (3) SA 531 (CC) para 29.

the first to fifth respondents alleged that the applicant concluded written lease agreements with them, which entitled to them to occupy the property. They provide the dates when such written lease agreements were allegedly concluded. In addition, the applicant has expressly alleged that it is the owner of the property. Even if it may be accepted that the applicant has failed to provide written proof of ownership, it is clearly the person in charge as defined in the PIE Act because it is common cause that at the relevant times it had legal authority to give permission to the first to fifth respondents to occupy the property by means of the lease agreements concluded with them. Furthermore, the Housing Tribunal ruling on which the first to fifth respondents rely dealt with the applicant as the lessor against whom the complaints were raised. I therefore find that the applicant has legal standing under the PIE Act to seek the eviction of the first to fifth respondents from the property.

- [11] The difficulty for the applicant is the lack of relevant facts on affidavit upon which the Court is legally obliged to make a determination whether an eviction is just and equitable and whether the timing of the eviction, to be implemented within ten days of the grant of the order, would be just and equitable. In the absence of these relevant facts, which the court is statutorily required to consider in coming to its decision, the order of eviction cannot be granted.

- [12] The courts have clarified that in terms of sections 4(7) and (8) of the PIE Act, 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 alternate land or accommodation to which the unlawful occupiers may be relocated and the rights and needs of the elderly, children, disabled persons and households headed by women.²
- [13] These factors are not addressed at all in the affidavits filed for the applicant and the affidavits filed for the first to fifth respondents. When this issue was raised with counsel with for the applicant, her submission was that it was not possible for the applicant to access the property in order to obtain the relevant facts. Even if this could constitute an excuse, it is not stated in any of the applicant's affidavits, which include a founding affidavit, a supplementary affidavit and a replying affidavit.
- [14] Under section 4(8) of the PIE Act, if the Court is satisfied that all the requirements of the 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 occupiers, and determine a just and

² *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others (Socio-Economic Rights Institute of South Africa as amicus curiae)* [2013] 1 All SA 8 (SCA) para 25 (**Changing Tides**).

equitable date on which the unlawful occupier must vacate the property under the circumstances; and the date on which an eviction order may be carried out if the unlawful occupier has not vacated the property on the date contemplated.

[15] Under 4(9) of the PIE Act, in determining a just and equitable date contemplated in subsection (8), the Court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

[16] The SCA has explained that the order that a court grants in respect of these two discrete inquiries is a single order. Accordingly, the order 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.³ In the same judgment, the SCA emphasised that the implication of this is that, in the first instance, it is for the applicant to ensure that the information placed before the court is sufficient, if unchallenged, to satisfy the Court that it will be just and equitable to grant an eviction order. Both the

³ *Changing Tides* para 25.

constitution and PIE require that the court must take into account all relevant facts before granting an eviction order.⁴

[17] In *Occupiers of Erven 87 and 88 Berea*,⁵ the Constitutional Court explained at paragraph 54 of its judgement that the application of PIE is mandatory, and courts are enjoined to form the opinion that it is just and equitable to order an eviction. The opinion to be formed is that of the court and not the respective parties. Accordingly, a court is not absolved from actively engaging with the relevant circumstances even where parties purport to consent to an eviction. It confirmed further that where the relevant information is not before the court, the required inquiry cannot be conducted and no order may be granted.⁶

[18] In the present case, the Court is not able to conduct the required inquiry because the relevant facts have not been placed before the Court by both parties. The order for eviction can therefore not be granted. If the applicant wishes to persist with the eviction, it must approach court on full facts, placing all the relevant factors before the court. It may also seek an order to compel the sixth respondent to conduct an inspection of the property, assess the personal circumstances of those occupying the property and present a report to the court. The applicant has not done this. It is clear from the wording of the order that the applicant seeks that it envisages that there may be other allegedly unlawful

⁴ *Changing Tides* para 30. *Ekurhuleni Metropolitan Municipality and another v Various Occupiers, Eden Park Extension 5* [2014] 1 All SA 386 (SCA) para 21.

⁵ *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* 2017 (5) SA 346 (CC).

⁶ *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* 2017 (5) SA 346 (CC) para 46.

occupiers of the property in addition to the first to fifth respondents who occupy the property through the first to fifth respondents. In this regard, the applicant requires the eviction order to operate also against those that may be occupying the property by, through or under the first to fifth respondents. These people may conceivably include children, people with disabilities or the elderly. The Court is uninformed of these relevant facts on the papers before it.

[19] Since the main purpose of the application was to obtain the eviction of the first to fifth respondents, and this was unsuccessful, I am of the view that it would be just and equitable that each party bears its own costs.

[20] In the circumstances, I make the following order:

- (1) Cancellation of the oral lease agreements concluded between the applicant and the first to fifth respondents is confirmed.
- (2) The balance of the orders sought are dismissed.
- (3) Each party is to bear its own costs.



NH MAENETJE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing : 11 June 2024

Date of judgment : 13 June 2024

For the applicant: U Madhoo
Instructed by Singh & Madhoo Inc

For the respondent: LR Matshidza
Instructed by