

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2022/43051

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

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SIGNATURE

...09/07/2024...
DATE

In the matter between:

OKOYE, SIMON

First Applicant

OKOYE, SILINDILE IRENE IMMACULATE

Second Applicant

and

**IAN BRUCE LOCKYER
(AND ALL OTHER UNLAWFUL OCCUPANTS)**

First Respondent

**THE UNLAWFUL OCCUPIERS OF PORTION 2 OF
ERF 813 ROSETTENVILLE SITUATED AT
18 HAIG STREET, ROSETTENVILLE**

Second Respondent

THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 757 ROSETTENVILLE SITUATED AT
79 MABEL STREET, ROSETTENVILLE

Third Respondent

THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 758 ROSETTENVILLE SITUATED AT
81 MABEL STREET, ROSETTENVILLE

Fourth Respondent

THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 813 ROSETTENVILLE SITUATED AT
54 GEORGE STREET, ROSETTENVILLE

Fifth Respondent

THE UNLAWFUL OCCUPIERS OF ERF 814
ROSETTENVILLE SITUATED AT
52 GEORGE STREET, ROSETTENVILLE

Sixth Respondent

THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

Seventh Respondent

UNLAWFUL OCCUPIERS "ANNEXURE A"

Eighth Respondent

GAUTENG DEPARTMENT OF SOCIAL
DEVELOPMENT

Ninth Respondent

REASONS

Manoim J,

Background

- [1] This is an application for the eviction of the respondents from five residential properties in downtown Johannesburg. It is common cause that the eviction is governed by the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19, of 1998 ("PIE").

- [2] The matter has already served before nine judges in this division since the notice in terms of section 4(2) of PIE was authorised on 9 December 2016. This means that when the matter came before me on 31 May 2024, the application had been with the courts for seven and a half years without resolution.

- [3] The 31 May 2024 date was meant for the matter to be heard as a special motion. This means that it was considered complex enough to justify an extended time for hearing than would be allocated for ordinary opposed motions. Everything should have been ready by then. This is because provision for all outstanding filings had been arranged, first in terms of a case management meeting held on 20th September 2022, and then subsequent directives from the office of the Deputy Judge President.

- [4] Despite the lengthy list of parties cited in the headnote there are, de facto, three protagonists in this litigation each represented by a separate legal team. The applicants are a husband and wife, who jointly own the properties since they took transfer of them on 28 September 2016. They have not had access to the properties since then. The occupiers are an indeterminate number of people who variously occupy the five properties. An NGO, the Centre for Applied Legal Studies, represents at least some of them although its mandate in this respect

seems uncertain. Nevertheless, it serves as the only legal representative that the occupiers presently have. The third protagonist is the City of Johannesburg.

[5] The City is the organ of state in this case contemplated in terms of section 4(7) of PIE. Since many of the occupiers may have been in occupation for more than six months prior to the initiation of these proceedings, the City, if it is just and equitable, may be required to offer them alternative accommodation in the event an eviction is ordered. The City has a policy, which it considers constitutionally compliant, in terms of which it offers temporary emergency accommodation (TEA) to persons earning less than R 3500 per month. But the City further qualifies this by saying the obligation is only triggered if the City has the resources to do so.

[6] What led to the impasse in the evolution of this case is the triad of interests at stake; the applicants as owners seek restoration of their properties; the occupiers seek a roof over their heads; and the City claims its resources are constrained.

[7] All the facts were meant to be placed before the court by 31 May 2024, so a final determination could be made. Specifically, the City was meant to provide its TEA report. This report would state which occupants qualified for TEA and where they would be accommodated, including details about this accommodation. The City's obligations to furnish the report were known to it as the time periods were set out in a court order dated 1 September 2022. The City was to have conducted its assessment on 2 and 3 September 2022 and

presented a proposal for accommodation 14 days later. Thus, if the City had complied, all would have been achieved by mid-September 2022. It did not.

[8] On 20 May 2024, clearly in anticipation of the 31 May 2024 hearing date before me, the City wrote to all parties to request their agreement to a postponement of the hearing on the 31 May, so that the City could apply for an extension of the time period to comply with its obligations in the 1 September 2022 order. The applicants refused to agree to the postponement.

[9] When the matter came before me on 31 May 2024, the City had still not served its application for an extension. Counsel for the City requested a postponement to allow the City to file an extension. I asked the City what the basis of the extension application would be. Counsel informed me that the application was to illustrate that the City thus far had not been able to find alternative accommodation for the occupants nor was it clear how many people would qualify in terms of the TEA policy. The City he said would explain that due to recent fires in City buildings which led to many others requiring emergency accommodation, the City, at present, did not have TEA accommodation available. Counsel stated that it would take the City about 8 months to find accommodation for the qualifying occupants. The applicants opposed the application. They were not opposed to the City being given more time to find TEA but wanted a fixed date to be determined for the eviction. At my suggestion, the parties agreed to negotiate an order to meet each parties' respective needs. The parties duly negotiated. The order below is the product of an agreement reached as between the City and applicants.

- [10] The occupiers however wanted the eviction date to be conditional on the City having furnished the occupiers with alternative accommodation by then. They indicated that they were satisfied with the other terms set out in the order but insisted on this condition. The applicants were unwilling to accede to this concession. Understandably their view was that if they had to wait 8 months for the eviction date it must be final, not subject to a further condition given the history of the delays in this matter.

Analysis

- [11] There is no dispute that the occupiers occupy the properties unlawfully. The only issue is whether the terms of the order for eviction are just and equitable.
- [12] A brief history is necessary. The application for evictions relates to five adjacent properties in Rosettenville, a suburb in the south of Johannesburg. The properties are situated on the corner of two roads and hence physically represent a continuous area. According to the version of the one of the occupants in the course of this litigation there are two main houses on the property whilst two stands are empty. However, he refers to there being two granny flats and a “*couple of shacks*.” The owners contend that there are nearly 20 shacks on the properties. Given the number of people who the occupiers attorneys now contend reside on the properties, the latter number is the more likely.
- [13] The first respondent, Ian Lockyer, was the previous owner of the five properties. He was unable to repay the bond and so the properties were foreclosed by the bank which was the bondholder and sold on auction. But the new buyers at the

auction did not hold on to the properties for long, and they on sold them to the applicants, who got transfer on 28 September 2016. They found that the property was occupied. The applicants had no agreement of lease with any of the occupants. They got the sheriff to serve a letter of eviction on one of the occupiers on 3 November 2016, demanding that all the occupiers vacate the properties. The occupants refused.

[14] In an answering affidavit one of the occupants, described as the fifth respondent, says that he has been in occupation since 2011 and had an oral lease with Lockyer to whom he paid a rental of R 750 per month. However, this arrangement ended he says in 2012, when Lockyer ceased visiting the property to collect rent and they had no details of any bank account to pay him. The fifth respondent relied on the "*huur gaat voor koop*" doctrine and tendered payment of rent to the new owners i.e. the applicants.

[15] However, no payments were forthcoming and apart from one brief period, none have been paid to date. The applicants instituted these proceedings in December 2016, obtaining their first order to authorise their section 4(2) notices on 9 December 2016. Subsequently they obtained an eviction order from Judge Victor on 17 March 2017. In terms of this order the then occupants were required to vacate the properties within 30 days of service of the order. The occupants remained. A further eviction order was granted by Judge Mabesele on 22 January 2018. Again, no-one left the properties. Instead, some of the occupants, now represented, brought an application to rescind the orders of Victor J and Mabesele J. Pending these applications they brought an urgent application to restore possession of the properties to them from Sutherland J.

As part of this order the occupants who were parties to that litigation undertook to pay rental to the applicants of R 400 per month. But notably there was also a condition imposed to identify who the people were who occupied the property to ensure that occupation was limited to those so identified and who were meant to pay the agreed rentals.

[16] On 4 March 2019 Lamont J set aside the Victor J and Mabesele J orders. But following a further application by the owners, the order of Sutherland J was restored by Keightley J. This time however the Gauteng Social Development Department was joined as a respondent. The City was placed on terms to prepare a report on which occupants qualified for TEA support. Thus, at this stage of the litigation the issues now were focussed not on the lawfulness of the occupation, but on a just and equitable remedy.

[17] The reason the case has not been concluded is due to the failure of the City to fulfil its obligations to present a TEA report. The City says its officials visited the property in about March 2021 to assess which occupants qualified to emergency accommodation. According to counsel's submission only 12 people qualified. CALS acting for some of the occupants filed an affidavit dated 16 April 2021 which contains a list of 71 names of heads of households. The number of occupants in these households varies between 1, and in one case, 10. It is not clear whether this informal census is current nor whether it is accurate in terms of its numbers, numbers of dependants and the income reflected.

[18] What is not contested is that the applicants are receiving no income from the properties but are still liable for their expenses. Given the overcrowding on the

property, the number of shacks erected, and the cessation of municipal services to them, there is little doubt that whatever equity once existed in the properties in 2016 – the date of the purchase- has diminished. Moreover, the applicants have been deprived of the benefits of ownership for a period of more than eight years by the time the eviction order takes effect in January 2025. The applicants' rights of ownership in terms of section 25 of the Constitution have been compromised and severely curtailed.

[19] I accept that the occupiers whose present details are not known may have amongst them persons who cannot afford housing. How many fit into this category is presently unclear. At the beginning of the hearing CALS advised the court that the number of people was 51. Later in the morning I was told that this figure was to be corrected – the number was 51 households not 51 persons. CALS was not able to tell me the aggregate figure. It is apparent that they have limited information as do the other two parties to the litigation the applicants and the City.

[20] The only issue in this case is whether the order is just and equitable. But the dispute is now even narrower. Given that both the City and the applicants have agreed to the terms of this order, the occupants represented by CALS have narrowed the dispute to one of whether the eviction order should remain conditional lest the City has not complied with its obligations to provide alternative suitable housing for the occupants.

[21] But in terms of the order there are still eight months before the eviction date. In this period the City has to attend at the premises and assess which of the

occupants qualify for TEA. A date of 22nd and 23rd June 2024 has been agreed upon for this purpose. These dates are on a weekend to allow those who work to be assessed on their day off. Prior to that date CALS will have been given the opportunity to notify the City of the names it has of an additional 15 unlawful occupiers.

- [22] There has also been specific allowance for two elderly persons who are named in the order who may take up accommodation if they so wish at accommodation provided at a home of safety and care or an old-aged home provided by the Province.
- [21] But assuming the worst-case scenario for the some of the occupants; if the City fails to identify persons who ought to qualify for TEA or if they do qualify, fails to provide TEA in terms of its own policies prior to the date on which they must vacate, there is sufficient time for the occupants to bring a mandamus against the City to do so.
- [22] There is no reason to expect the applicants who have waited 8 years unrewarded to continue to provide accommodation to the occupants. No occupant is presently even complying with the Sutherland JP order to pay rent until alternative accommodation is found. The concept of what is just and equitable is not just viewed from the consideration of occupants but also the owners of the property. As the Constitutional Court noted in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*¹ “31 The provisions of PIE are not designed to allow for the

¹ 2012 (2) SA 104 (CC)

expropriation of land. A private owner has no obligation to provide free housing.”²

[23] But the court also stated:

“Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient, and accept that the right to occupation may be temporarily restricted, as the Blue Moonlight’s situation in this case has already illustrated. An owner’s right to use and enjoy property at common law can be limited in the process of justice and equity enquiry mandated by PIE.”³

[24] In the present case the applicants cannot be accused of impatience. They have waited eight years to get an order of eviction, and having got one, will wait another eight months still to be able to enforce it. They cannot be expected to delay their right to occupy any further on a conditional basis when they have no role in seeking fulfilment of the condition. They are entitled to finality and that is what the order provides, whilst still providing temporary accommodation for the occupants, special provision for those identified as elderly, and a mechanism for the others who may qualify for TEA.

² Ibid, at paragraph 31.

³ Ibid at paragraph 40.

[25] The City has agreed to tender costs. I set out again below the order I delivered on 31 May 2024.

ORDER:-

[26] In the result the following order is made:

1. All Unlawful Occupiers, and all those persons in possession of and/or occupying and/or holding the following immovable properties by, through or under the Unlawful Occupiers, are hereby ordered to vacate the following immovable properties by no later than 31 January 2025:

PORTION 2 OF ERF 813 ROSETTENVILLE;

REMAINING EXTENT OF ERF 757 ROSETTENVILLE;

REMAINING EXTENT OF ERF 758 ROSETTENVILLE;

REMAINING EXTENT OF ERF 813 ROSETTENVILLE; and

ERF 814 ROSETTENVILLE ("**the properties**").

2. The Sheriff for the area within which the properties are situated is hereby authorized and directed to forthwith evict all Unlawful Occupiers, and all those persons in possession of and/or occupying and/or holding the immovable properties by, through or under the Unlawful Occupiers in the event of them failing to vacate the property in terms of paragraph 1 above.
3. The Sheriff for the area within which the properties are situated is hereby authorized and directed to enlist the services of members of the South African Police Services, or any other person of service, to assist him/her in the eviction as envisaged in terms of paragraph 2 above.
4. All Unlawful Occupiers who have been assessed and who qualify for Temporary Emergency Accommodation ("**TEA**") in terms of the report dated 17 May 2021 and issued by the Seventh Respondent, shall be given a place

of accommodation by the Seventh Respondent on or before **31 January 2025**.

5. All Unlawful Occupiers who have not yet been assessed as to whether they qualify for TEA by the Seventh Respondent shall be so assessed on 22 and 23 June 2024 from 10h00am onwards.
6. The Seventh Respondent shall put up a notice of the date and time of the aforesaid assessment at the main entrance/(s) to the properties as well as on the doors of every unit on or before 7 June 2024 informing the Unlawful Occupiers of the date and time of the assessment.
7. All Unlawful Occupiers who have been assessed on 22 and 23 June 2024 and who qualify for TEA, shall be given a place of accommodation by the Seventh Respondent on or before **31 January 2025**.
8. Every Unlawful Occupier who does not qualify for TEA, shall be evicted from the properties by the Sheriff in terms of paragraph 1 to 3 above.
9. The Ninth Respondent shall provide SOPHIE ANOSTER (with ID NO: 610808 0253 086) with a place of accommodation in a Home of Safety or Care Centre on or before **31 January 2025**, if she desires to take up such accommodation.
10. The Ninth Respondent shall provide NOMPI GUMA (with ID NO: 591221 0256 088) with a place of accommodation in a Home of Safety or Care Centre on or before **31 January 2025**, if she desires to take up such accommodation.
11. The Ninth Respondent shall provide all Unlawful Occupiers who qualify for TEA and who are recipients of an Old Age Grant with a place of accommodation in a Home of Safety or Care Centre or Old Age Home on or before **31 January 2025**, if they/he/she desires to take up such accommodation.
12. A copy of this Court Order shall be served on all the Unlawful Occupiers in the following manner:

- 12.1. By service on CALS via email; and
- 12.2. By attaching a copy of this Order at the main entrance/(s) to the properties.
13. CALS shall provide to the Seventh Respondent a list of the names and identity numbers of the 19 additional unlawful occupiers as at the date of this Court Order, on or before close of business on Tuesday, 4 June 2024.
14. The Seventh Respondent shall pay the Applicants' costs of the eviction application on a party and party scale.


N. MANOIM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of hearing: 31 May 2024

Date of Reasons: 09 July 2024

Appearances:

Counsel for the Applicant:

C. Dénichaud

Instructed by.

Kinstler Inc

Counsel for the Second to Sixth Respondents:

M. Marongo

Instructed by:

Centre for applied legal studies

Counsel for the Seventh Respondents:

MC. Makgato

Instructed by:

Mnchunu Attorneys