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

CASE NUMBER: 16559/2022

(1) REPORTABLE: No

(2) OF INTEREST TO OTHER JUDGES: No

(3) REVISED

DATE 3/10/2024

SIGNATURE

In the matter between

JEANETTE JOHANNA VAN ROOYEN

APPLICANT

and

FACTOLOGIX (PTY) LTD

1st RESPONDENT

WILLIAM CORNELIUS DIXON

2nd RESPONDENT

HANLIE DIXON

3rd RESPONDENT

ALL OTHER UNLAWFUL OCCUPIERS

4th RESPONDENT

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

5th RESPONDENT

JUDGMENT

- [1] The Applicant instituted an application for the eviction of the First to Fourth Respondents from the property described as **ERF 1[...] Z[...] EXT 4, CENTURION, GAUTENG KNOWN AS 5[...] S[...] P[...] CRESCENT ZWARTKOP, CENTURION, GAUTENG** (hereinafter referred to as “the property”) in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998 (hereinafter referred to as “the Act”)
- [2] The Applicant claims to be the lawful owner of the property. A lease agreement for a period of six months, was entered into between the Applicant and the First Respondent on 26 June 2016. Upon the expiry of the six-month period, the lease agreement would continue on a month-to-month basis until it is cancelled by either party. A notice of cancellation of the lease and a notice to vacate the premises was delivered to the Respondents on 17th September 2021. The Respondents continue to remain in occupation of the property,
- [3] The Applicant launched an application in terms of section (4) of the PIE Act. An order was granted on 19 July 2022. The section 4(2) PIE Act notice was duly served on all the parties to this application.
- [4] The Applicant, having complied with the requirements of the PIE Act, states that as the Respondents have no valid defence in law, the court should find that it is just and equitable that the Eviction order be granted.
- [5] The Respondent's have opposed the granting of the eviction order by raising several *points in limine*:
- 5.1 That the Commissioner of Oaths who commissioned the affidavit of the Applicant, does not exist;
- 5.2 That the Applicant does not have the necessary locus standi to bring the application;

5.3 That the application has not been brought in conformity with the Rules;

5.4 That there is a factual dispute between the parties;

5.5 Non-joinder of the co-owner of the property;

5.6 That there is non-compliance with Section 4(2) of the Act;

5.7 That the lease was renewed on expiry; and

[7] The point raised in relation to the Applicant's affidavit was subsequently addressed and/or remedied and calls for no further adjudication thereon.

[8] In respect of the ownership of the property, the Applicant states that she is an owner, who is in control of the property. The documents submitted reflect that she is a registered owner of the property and the lease agreement that was originally entered into between the parties substantiate this. This aspect does not attract any further discussion.

[9] The challenge by the Respondents regarding the non-compliance with the Rules, by the Applicant, in launching this application is easily disposed of in that Part A of the application was adjudicated before a competent court and the order was granted in favour of the Applicant. Had the Rules not been complied with, it is unlikely that the application would have been heard, or even succeeded, as it did. In any event, the Respondent could have pursued other avenues to challenge the granting of the initial order based on the non-compliance with the Rules, which the Respondents have not done.

[10] The aspect raised by the Respondent regarding a factual dispute arising between the parties is randomly stated and does not contain sufficient substance on which the court may infer that a factual dispute has arisen. Mention is made of a lien that the Respondent has but no further details thereof are provided. The nature and the extent of the improvements that have been effected have not been specified and

remain unsubstantiated. This leaves the Applicant to make submissions based on conjecture and pure speculation. I do not deem it necessary to further canvas this aspect any further as the allegations lack substance.

[11] The new lease agreement, attached to the papers of the Respondent and that the Respondent's allege to have entered into is clearly not signed by the Applicant. The original lease was entered into for a period of six months, whereafter it continued on a month-to-month basis. The Respondent's remained in occupation of the property and are still in occupation thereof, despite a notice of termination of the lease agreement and a notice to vacate having been served on them by the Applicant in September 2021. In general, if a contract is silent about the duration, and in the absence of a contrary intention, such contract would be terminable on reasonable notice. In terms of the Rental Housing Act, Act 50 of 1999, either party wishing to cancel a lease agreement, which is silent about the duration, can do so by giving at least one month's written notice of its intention to cancel such agreement. The Applicant gave the Respondents notice of the termination of the agreement and they had more than a month to vacate the property. This notice period cannot be deemed as unreasonable.

[12] Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, provides:

“(7) If an unlawful occupier has occupied the land in question for more than six months at a 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 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.

(8) If the court is satisfied that all the requirements of this section has 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) In determining a just and equitable date contemplated in section (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.”

[13] In *Andries van der Schyff en Seuns (Pty) Ltd t/a Complete Construction v Webtrade Inv No 45 (Pty) Ltd and Others*¹ it was said:

“The purpose and meaning of PIE and how it is to be applied by our courts is dealt with in *PE Municipality v Various Occupiers* [2004] ZACC 7; 2005(1)SA 217 CC

As the Constitutional Court says, the “manifest objective” of PIE is to overcome the abuse permitted by PISA and to ensure that the eviction of unlawful occupiers takes place in a manner consistent with the Constitution. In essence, what the Constitutional Court held is that PIE is directed at ensuring that justice and equity prevail in relation to all concerned in the eviction process. Justice and equity do not require that the Respondent’s in this matter be protected from their unlawful conduct. In my view respondents are not in dire need of accommodation and do not

¹ (1277/06)[[2006]ZAGPHC 43; 2006(5) SA327(W) (1 February 2006)

belong to the poor and vulnerable class of persons whose protection was foremost in the Legislative's mind when PIE was enacted"

The Respondents in this matter are affluent private owners of the property which they occupied in the midst of a dispute surrounding workmanship and money. In utilizing the provisions of PIE, the second respondent seeks to shield himself against his own unlawful conduct.

The protection under PIE was clearly not intended to protect affluent property owners who deliberately place themselves in unlawful occupation of their own property."

[14] In *Wormald and Others v Kambule*² the court states:

"PIE therefore requires a party seeking to evict another from land to prove not only that he or she owns such land and that the other party occupies it unlawfully, but also that he or she has complied with the procedural provisions and that on a consideration of all the relevant circumstances{and according to the *Brisley* case, to qualify as relevant the circumstances must be legally relevant], an eviction order is 'just and equitable.'

The court goes on further to state:

"[20] It is clear that she is not in dire need of accommodation and does not belong to the poor and vulnerable class of persons whose protection was obviously foremost in the Legislature's mind when it enacted PIE. To my mind, her situation is essentially no different from that of the 'affluent tenant' occupying luxurious premises, who is holding over, discussed in the *Bekker* case (para 17), in respect of whom the court held that the 'relevant circumstances' prescribed in s4(7) of PIE do not arise 'save that the applicant is the owner, that the lease has come to an end and that the tenant id holding over'

² (524/2004)[2005]ZASCA84:[2005]4AllSA629(SCA);2006(3)SA562(SCA)(22 September 2005) at para [11]

- [15] Although the Applicant made the necessary request to the Fifth Respondent (The City of Tshwane) on 1st September 2023 to provide a report regarding the availability of alternate accommodation for the Second and Third Respondents, no such report has been furnished. Several written requests were also met with no response. The last correspondence in this regard was received by the Applicant on 9 November 2023 when it was communicated that the request was submitted to the Department of Housing and Human Settlements. I deem it apposite, therefore, to dispose of this application without the report that has been requested.
- [16] This court has a duty to consider whether the eviction of the Respondents would be just and equitable in the circumstances that has been placed before it. It is trite that parties who oppose applications in terms of PIE must adduce facts relating to their personal circumstances such as age, gender, relationship to each other, their financial dependency on each other, as well as the particulars of their assets and liabilities. The court should further be apprised of any health conditions or disabilities and how these factors may have a bearing on their ability to relocate to alternate accommodation and also factors relating to the availability of alternative accommodation. The Respondent's have failed to place these factors before the court with sufficient particularity for this court to adjudicate thereon.
- [17] The Respondents have been in occupation of the property for more than six months and there is no evidence that this property is being utilised as a primary residence. The Respondents have not demonstrated that they will be rendered homeless if the eviction order is granted³
- [18] There is no valid defence that the Respondent's have raised in their lengthy responses to this court. The test that the court applies in the adjudicating the present application is similar to that as is applicable to summary judgment

³ Arendse v Arendse 2013(3) SA347(WWC)

applications⁴. The defence raised by the Respondents herein is vague and laconic and devoid of substance, despite the verbosity therein contained.

[19] In the circumstances, the court finds that the Applicant has complied with the provisions of the PIE Act. It is just and equitable that the Eviction Order be granted.

[20] It is customary that costs awards are considered at the conclusion of legal proceedings but they are no less significant than the actual merits of the main litigation process. In *Public Protector v South African Reserve Bank*⁵ Mogoeng CJ (in a minority judgment with Goliath AJ agreeing) stated that several factors must be considered when a costs order is made:

“[41]...They are the economic realities that apply at the time of awarding costs; the capacity or predictable incapacity to pay; and whether that order serves as a constructive or corrective punishment, in addition to the inescapable wrapping (*sic*) over the knuckles that accompanies it, or whether it is in effect an instrument of destruction or irreparable damage. That would explain why, using crime as a comparator, removing people’s limbs or organs is never an option and the possibility of being released on parole exists even for murderers. To this end, convicts are kept in centres for rehabilitation known as correctional facilities with programmes designed to achieve change or correction, not permanent damnation. No costs order ought ever to be made regardless of its consequences or impracticability or the injustice and inequity it would yield. Costs are all about justice and equity.”

[21] It has regularly been emphasised that in awarding costs, the court has a discretion that has to be exercised judicially, upon a consideration of the

⁴Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers of the Newtown Urban Village 2013 (1) All SA 192(GSJ)

⁵ Public Protector v South African Reserve Bank [2019] ZACC29; 2019(9)BCLR1113(CC)2019(6)SA253(CC)

facts of a case, to arrive at an award that results in fairness to both sides.⁶ A deviation from the general rule that costs follow the result requires a court to be meticulous in its assessment so as to arrive at a just and fair result.

[22] In the present case the First and second Respondents plainly do not have a defence, yet they chose to delay these proceedings by opposing this application. The Answering Affidavit consisting of 248 pages served to raise seven points *in limine* which necessitated a reply from the Applicant.

[23] The conduct of the Applicant has been to follow the practices and procedures and walk this lengthy route to ensure that her rights to her property are protected. This has come at a high cost to her when one considers her personal circumstances of being a single mother who desires to sell a property to survive.

[24] I see no reason why costs should not be awarded on the scale as prayed for by the Applicant.

[25] In the circumstances, it is ordered that:

1. The First Second, Third and Fourth Respondent's application in terms of Rule 6(5)(e) is granted.

2. That the First, Second, Third and Fourt Respondents be evicted from th property situated at Erf 1[...] Z[...] Ext 4 known as No 5[...] S[...] P[...] Crescent, Zwartkop, Centurion ("the property")

3. That the First, Second, Third and Fourt Respondents vacate the property on **31st October 2024**

4. That upon failure of the First, Second, Third and Fourth Respondents to comply with paragraph 3 *supra*, the Sheriff of this

⁶ Norwich Union Fire Insurance Society Ltd v Tut 1960(4)SA851(A)at 854D

Court is ordered and authorised to evict the First, Second, Third and Fourth Respondents from the said premises on **15 November 2024**.

5. That the First, Second, Third and Fourth Respondents are to pay the costs of this application on the scale as between attorney and client.

A.K. RAMLAL AJ

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email. The date and time for hand-down is deemed to be 11h00 on 3 October 2024

Matter heard on: 27 May 2024

Judgment granted on: 03 October 2024

Appearances:

On behalf of the Applicant

Instructed by:

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On behalf of the Respondent

Instructed by:

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Phosa Loots Incorporated

Withdrawal as Attorneys of Record filed on 27 June 2024

First and Third Respondents

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