

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

CASE NO: 2023-094317

(1)	REPORTABLE: NO.
(2)	OF INTEREST TO OTHER JUDGES: NO.
(3)	JUDGMENT : 13 AUGUST 2024

IN THE MATTER BETWEEN –

REDEFINE PROPERTIES LTD

FIRST APPLICANT

GGP INVESTMENTS (PTY) LTD

SECOND APPLICANT

THE PIVOTAL FUND (PTY) LTD

THIRD APPLICANT

AND

CHAUKE, JOHN

FIRST RESPONDENT

DLATA MR

SECOND RESPONDENT

ALL OTHER OCCUPIERS OF THE
BUILDINGS ENCIRCLED ON ANNEXURE 'A'
TO THE NOTICE OF MOTION, SITUATED AT 12 MAIN
REEF ROAD, GERMISTON, GAUTENG

THIRD RESPONDENTS

EKURHULENI METROPOLITAN MUNICIPALITY

FOURTH RESPONDENT

HAWK ACADEMY SCHOOL

FIFTH RESPONDENT

JUDGMENT

SNYCKERS AJ

INTRODUCTION

1. This is an eviction application brought under the provisions of the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998 ("PIE").
2. Coupled with the application for eviction relief, the applicants seek interdictory relief to prevent the respondents from conducting unlawful mining operations on the property in question.
3. The applicants between them own a portion of land in Germiston, bordering M[...] R[...] Road, namely Remaining Extent of Portion 2 of the Farm Elandsfontein 90, Registration Division IR, Province of Gauteng, and Portion 531 (a portion of portion 8) of the Farm Elandsfontein 108, Registration Division IR, Province of Gauteng. The property in question is zoned for mining. The applicants acquired their ownership of the property in 2016. The property was part of a mine operated at least at some point by an entity known as Primrose Mine. The relevant buildings in question comprise mainly a workshop that formed part of the mine.
4. The property comprises this workshop compound, an informal settlement, known as the Marathon settlement, a school (the fifth respondent), and some open land.
5. Mining has occurred on this property since the 1920s. Mining operations ceased in the early 2000s. The applicants allege that the respondents, or at least most of them, recently started occupying the property, in particular the workshop compound, in order to conduct illegal mining operations from the property. It seems

to have become common cause or accepted for purposes of argument that at least some of the occupiers were former mining employees of Primrose Mine and had formerly worked the mine in that capacity.

6. The applicants allege that the portion of the property occupied by the occupiers is intended to be used for an expansion of the school. In this they are supported by evidence obtained from the principal of the school.

7. The applicants contend that the workshop compound is not the primary residence of any of the occupiers, but that the application has been brought under the provisions of PIE “out of an abundance of caution.” It is contended that the occupiers have no legal entitlement to occupation and are accordingly unlawfully present. It is alleged that various attempts have been made to engage with the occupiers, in particular to integrate them into the Marathon settlement, but that they insist on tenure with respect to the property in question. Attempts to involve the SAPS, the DMR, the municipality (the fourth respondent), and the Department of Home Affairs in the impasse have yielded no fruit.

8. The occupiers deny that they are conducting illegal mining activities on the property. They contend that they were employees of Primrose Mine and that one Mr Hart, who they say was the owner and their employer, allowed them to occupy the property while they were working for him, and one day advised them that he was selling the property and would be paying them amounts of pay that were due to them from the proceeds of the sale. They say Mr Hart disappeared and reneged on his undertakings, and did not pay them. They say they obtained a CCMA award against Primrose mine and attach a copy of an award dated 14 March 2013 in which it was found that the employment of various named individuals had been terminated by Primrose Mine and that they were entitled to stipulated amounts of severance pay.¹ The respondents further say they will not leave the property until they are paid what Mr Hart owes them. They say some of them have family members present and that they would be rendered homeless if evicted from the premises.

¹ The award as attached to the answering affidavit is not complete nor attached in proper sequence of its pages, making it difficult to distinguish between amounts said to have been the monthly salaries of certain employees and the amounts of severance pay to which certain named employees were entitled.

9. This court authorised service under s4(2) of PIE of an attached notice on 15 February 2024 (Gotz AJ). On 2 April 2024, another s4(2) order was issued (Dlamini J), with respect to an attached notice, and with directions as to what was to happen in relation to the filing of documents for the main hearing of the application.

10. The matter was enrolled for the motion week of 29 July 2024.

11. In a practice note uploaded on 16 July 2024, counsel for the respondents intimated that a postponement might be sought “for the municipal report in terms of s4(7) of PIE”. This was a reference to a report by the municipality on the question, mentioned as a factor to be taken into account by a court considering whether an eviction would be just and equitable, “*whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier.*”

12. Supplementary heads of argument were filed for the applicants in which the position was adopted that the respondents had been specifically warned² to make available all and any evidence relating to their personal circumstances, and had had ample time to have a report filed to the extent that this cast light on their position. The applicants did not themselves address the question of any attempts on their part to procure such a report. Be that as it may, the day before the matter was first heard (I had allocated it for hearing from 30 July 2024), the respondents’ attorneys uploaded a report from the municipality (the fourth respondent) on Caselines. I deal with that further below.

13. Also on 29 July 2024, the respondents uploaded a document said to be a Rule 28 notice purporting to “amend”, by notice only, the answering affidavit by raising the contention that the applicants were in the wrong court, as the matter was in fact governed by the provisions of the Extension of Security of Tenure Act 62 of 1997 (“ESTA”).

² In the latest s4(2) notice and founding affidavit.

14. A party cannot “amend” an affidavit by notice. The amendment did not even purport to be a supplementary affidavit. Be that as it may, it introduced a new potentially important consideration for this court to consider. Mr van der Merwe, who appeared for the applicants, was ready to deal with the ESTA issue. Given this development, and given the provisions of section 2 of ESTA (considered below), and this court’s more inquisitorial mandate when it came to hearing and determining PIE applications, I asked the applicants to ascertain, with reference to publicly available information, what the precise position was with respect to the declaration of townships on or around the property in question, and for this to be provided to the court and uploaded on Caselines before Friday 2 August 2024, so that the matter of ESTA’s application could be addressed more fully on that day. I asked Mr Khosa, who appeared for the respondents, whether there was any objection to this being done, and he advised that there was none. The other aspects of the matter were argued on 30 July 2024 and the matter of ESTA’s application argued more fully on 2 August 2024, an “explanatory affidavit” containing a comprehensive report by a Mr Gagy, a registered professional planner, having in the meantime been uploaded onto Caselines on 1 August 2024.

THE APPLICATION OF ESTA

15. ESTA applies in respect of the eviction of any “occupiers”, as defined in ESTA, from any land to which ESTA applies. The Land Claims Court is the court of proper jurisdiction to determine the appropriateness of an eviction of an “occupier” under ESTA.

16. There are two tiers entailed by the jurisprudential question whether ESTA applies. The first tier entails the question whether the land at issue is land to which ESTA applies. The second tier, which arises only if the answer to the first tier is in the affirmative, is whether the persons at issue are “occupiers” as defined in ESTA.

17. I raised with Mr van der Merwe my *prima facie* view that it appeared to me that this court had jurisdiction to determine the first tier question, but not the second. The reason was that this court could not find that its jurisdiction was ousted in favour of that of the Land Claims Court unless it found that the land at issue was land to

which ESTA applied, and this, according to s2 of ESTA, was a matter of the scope of the application of ESTA itself. But with respect to the second tier question, once ESTA was held to apply to the land in question, since the definition of “occupier” was a matter regulated by ESTA itself, it appeared to me that this would of needs be something the Land Claims Court, and not this court, would have to consider.

18. Mr van der Merwe referred me to the decision of the Supreme Court of Appeal in *Frannero*,³ for the submission that both tiers were matters this court had jurisdiction, and the duty, to determine, when faced with a contention that the Land Claims Court, and not this court, was the court of proper jurisdiction.

19. A consideration of the judgment in *Frannero* leaves me with no doubt that Mr van der Merwe’s submission in this respect is correct. That decision, from a unanimous SCA, held that the respondent to an eviction application seeking to invoke the applicability of ESTA, and the ouster of the jurisdiction of the High Court, had to prove that ESTA applied, and this included proving that he or she was an “occupier” as envisaged in ESTA. Particularly paragraph 24 of this judgment makes this sufficiently clear to leave no room for my *prima facie* view on this aspect. On reflection, one reason for having both jurisdictional tiers subject to the assessment of the High Court appears to me to be the fact that one of the provisions dealing with defining ESTA land in section 2, namely section 2(1)(b), refers back to the definition of “occupier”, making it impossible to determine the ESTA application question purely with reference to the type of land in question without regard at least to the historical status of a proposed evictee as an “occupier” as defined in ESTA.

20. I must note a nuance in the invocation of *Frannero* in the instant case. At the time of *Frannero*, and also at the time this eviction application was instituted, a labour tenant in terms of the Land Reform (Labour Tenants) Act 3 of 1996 was *excluded* from the definition of “occupier” under ESTA. This exclusion was however removed effective from 1 April 2024, between the institution of proceedings and the hearing in this application. Mr van der Merwe accepted that, whatever the position might be concerning the crystallisation of a cause of action at common law (with

³ *Frannero Property Investments 202 (Pty) Ltd v Selapa & Others* 2022 (5) SA 361 (SCA).

respect to the time of institution of proceedings), it would be appropriate for a court considering the application of ESTA to any contemplated eviction to apply the provisions of ESTA as at the date the eviction was being considered, not at the date the eviction proceedings were brought. In other words, the mere fact, if it were a fact, that the exclusion would have been applicable to the respondents should not be a sufficient reason for me to ignore the potential applicability of ESTA to this eviction.

21. What *Frannero* entails for this application is that the respondents needed to prove that ESTA applied. This meant that they needed to prove, once the land in question was land to which ESTA applied, that they were “occupiers” under ESTA. This meant they needed to exclude the application of the exceptions to the definition of “occupier”, assuming the land in question was ESTA land.

22. Mr van der Merwe submitted that, whatever the position with respect to the land in question, as the respondents did not prove that they were occupiers under ESTA, ESTA could not be held applicable to their eviction.

23. The two exclusions from the definition of “occupier” in ESTA are the following –

(b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and

(c) a person who has an income in excess of the prescribed amount.”

24. The “prescribed amount” at the moment is R5000 per month. Mr van der Merwe submitted that no evidence was adduced at all as to the income of the various occupiers, and that, as they were mining, the exclusion in (b) also applied in any event.

25. The cogency of the submissions above would become relevant if it turned out that the land in question was ESTA land.

26. On this question, whether the land in question was ESTA land, one must consider the provisions of section 2 of ESTA as the section reads after 1 April 2024:

“(1) Subject to the provisions of section 4, this Act shall apply to all land other than land in a township established, approved, proclaimed or otherwise recognised as such in terms of any law, or encircled by such a township or townships, but including-

(a) any land within such a township which has been designated for agricultural purposes in terms of any law; and

(b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment, approval, proclamation or recognition.

(2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.”

27. I will deal below with the complication that section 2(1)(b) introduces into the present matter.

28. Mr Khosa for the occupiers correctly relied on the presumption in section 2(2). This must mean that, although the occupier bears the onus to prove the applicability of ESTA (on *Frannero*), when it comes to the land in question, it is for the party wishing to exclude the application of ESTA under section 2 to prove the contrary.

29. Gildenhuys J regarded the Act as applying to land *“in ‘n dorp of wat deur ‘n dorp omring word”* (“in a town(ship) or surrounded by a town(ship)”).⁴

30. The first question to decide in this regard is what is meant by *“encircled by such a township or townships”*. On the papers as they appeared before the ESTA matter was raised, it appeared that the erven in question, zoned for mining, were not themselves established as a township – in fact, the applicants said they intended

⁴ *Lategan v Koopman & Andere* 1998 (3) SA 457 (LCC) para 3.

proclaiming the subject property as a township. Yet on the evidence offered through Mr Nagy, it seemed clear that the erven in question were overwhelmingly encircled by proclaimed townships. There was a gap to the south west of the erven in question, which, although it was occupied by highways, did not specifically indicate proclaimed townships.

31. Mr Khosa submitted that the “encirclement” requirement required the circle in question to be fully closed. No gaps were allowed. I do not think this captures the intention of the legislature. The application section was clearly aimed at excluding land which was either itself a township or found itself so surrounded by townships as to be characterised by them in its urban character. I am satisfied that this can be said of this subject property in Germiston.

32. There is another consideration, leaving aside the “encirclement” issue.

33. The concept of a “township” in the application section is not confined to a township proclaimed as such, but extends to townships “*otherwise recognised as such in terms of any law*”. If the subject property is a township recognised as such in terms of any law, it is a township for purposes of the non-applicability of ESTA.

34. Mr van der Merwe submitted that municipal by-laws were included in the term “any law” for this purpose, and referred in this regard to *Cape Town City v Independent Outdoor Media (Pty) Ltd & Others*.⁵ I have little hesitation in accepting this submission.

35. I was then referred to the Ekurhuleni Metropolitan Municipality Spatial Planning and Land Use Management By Law of 25 July 2019, commencing 25 September 2019, which defined “township” *inter alia* as including

“any property ... to be developed ... for ... residential, business, industrial, institutional, educational, community services and similar purposes or land uses, as may be contained in a land use scheme.”

⁵ 2024 (1) SA 309 (CC), paras 43 and 45.

36. The Land use scheme in question, which according to the empowering Act of the by-law cited above has the force of law,⁶ to which I was referred and was included in Mr Nagy's affidavit, is the City of Ekurhuleni Land Use Scheme 2021. This, as well as the uses contemplated in the Regional Spatial Development Framework for Ekurhuleni, makes it clear to me beyond much room for doubt that the subject property in question falls within the definition of a "township" as contemplated in the by-law.

37. The above powerful evidence against the application of ESTA is still subject to the enigmatic proviso in s2(1)(b) of ESTA cited above, which brings land back into the ESTA fold where the township recognition in question occurred after 4 February 1997 and the person(s) in question were occupiers as defined immediately before the township recognition occurred. The evidence hastily put together, at my request, as a result of the respondents' introduction of the ESTA question on the eve of the hearing, did not establish when the townships surrounding the subject property were all proclaimed, and whether this was after 4 February 1997. The land use scheme and by-law in question were post-1997 events.

38. Although, on the overwhelming probabilities arising out of what was put before me, I am highly sceptical of any suggestion that the land in question would not, as at 4 February 1997, have fallen into the scope of "township or encircled by townships", this fact was not fully established, nor was the position of the various occupiers at the point immediately before the acts that recognised the relevant portions of land as townships. Accordingly, this being a part of section 2 subject to the presumption in s2(2), this would seem to exclude a finding that ESTA was not applicable based purely on the scope of ESTA as set out in section 2. This is unsatisfactory, as I am fairly certain that the provisions of ESTA were not intended to capture land such as this property in Germiston and that evidence to close the potential historical gaps with respect to the nature of the encircling areas as townships, if gathered at a more orderly pace and not in response to a last minute point on ESTA, would have been available.

⁶ Spatial Planning and Land Use Management Act 16 of 2013 s26(1).

39. Nevertheless, *Frannero* still required the respondents to bring themselves within the definition of “occupiers”.

40. There was no evidence at all of what they earned. An absence of evidence that the respondents earned less than the prescribed amount was fatal to the application of ESTA in *Frannero*.⁷

41. Perhaps more fundamentally, the question whether the respondents are using the property for mining lies at the heart of any ability to establish their status as ESTA occupiers. This is because of the exclusion in the definition of “occupier” where the person in question is using the property for mining.⁸ As I shall examine below, the only evidence before me warrants the finding that the respondents are conducting illegal mining on the property, and that this is the reason they are occupying it. Their bald denial of this proposition and of the evidence cited in support of it is insufficient for them to make out a case for their status as “occupiers” under ESTA.

42. In the circumstances I find that ESTA is not applicable to the current intended eviction, and it is to the provisions of PIE and their application that I must now turn.

THE ELEMENTS OF PIE

43. PIE requires an evicting applicant to establish ownership, unlawful occupation, and that it an eviction is just and equitable.

44. There was no effective dispute relating to the applicants’ ownership.

45. As to the unlawful presence of the respondents, this is disputed by the occupiers. One must accordingly examine their version in this regard.

⁷ See paragraphs 29 to 30 – this despite a hearsay statement in that case that ‘the majority of the Respondents are unemployed and do not earn an income in excess of R5000 per month’.

⁸ The inclusion where the person in question “works the land himself or herself” was not, in my view, intended to apply to mining, but to farming.

46. Their version rests on their interactions with Mr Hart (or Primrose Mine), their erstwhile employer, and the alleged previous owner or controller of the property in question. (The applicants' evidence was to the effect that they acquired ownership from S&J Investments (Pty) Ltd, not from "Primrose Mine" or Mr Hart.)

47. Had the occupiers established an agreement with the previous owner or controller that created a present entitlement to occupation, then, on the application of the principle of *huur gaat voor koop*, the applicants may have ended up being bound by such an agreement as the new owners.

48. But it is clear from the respondents' version, even if the severe flaws it contains are ignored for present purposes,⁹ that they are not alleging any such agreement with Mr Hart or Primrose Mine. Their version at best establishes that, as an incident of their employment¹⁰ and during its subsistence, they were allowed to occupy the premises, but this employment relationship came to an end, and with it any suggestion of a continued agreed entitlement to remain. They themselves decided that they would occupy the premises until such time as the money their employer promised them was paid to them. They do not even make the improbable allegation that Mr Hart, or anybody else for that matter, agreed that they could continue to occupy the property despite the fact that it was being sold and the operations were being discontinued.

49. I have little hesitation in accepting that the respondents are unlawfully present on the property.

50. The next important question is whether it is just and equitable to evict the respondents.

51. What is integrally bound up with this question is what the respondents are using the property for.

⁹ such for example as an absence of any significant or identifiable overlap between the number and identity of persons apparently the subject of the CCMA award and those listed in annexure "DLF1" to the answering affidavit as the present occupiers.

¹⁰ Or, at best, the employment of some of them.

52. The evidence in this regard was by no means as comprehensive or as cogent as would be ideal, or as evidence after a trial might have been. To an extent, the applicants, in for example relying on hearsay evidence of unnamed persons about mining equipment being surreptitiously removed from the property before an inspection, or invoking fears of violence in having refrained from gathering more compelling evidence of the nature and contents of a tunnel alleged to be the entrance to the illegal mine being used by the respondents, seek to excuse the absence of more compelling evidence by invoking such difficulties. However much such difficulties may be real, they cannot create better evidence or turn hearsay evidence of unnamed persons into evidence this court may properly accept as supporting a case that an eviction would be just and equitable.

53. Nevertheless, the applicants have presented evidence which includes the following:

53.1 a video recording of an inspection showing what certainly appears to be what the applicants allege it to be – namely the entrance, of significant size, to a tunnel appearing in the courtyard of the workshop;

53.2. the video depicting the absence of such incidents of a primary dwelling as one might expect to find, not to mention the absence of any of the occupiers from their dwellings during inspections, also alleged in the founding affidavit – as Mr van der Merwe put it, the place did not have the look about it of anybody's home;

53.3. the video depicting many blue jerry-can like cannisters, clearly indicating some or other commercial activity is occurring on the site which makes use of these cannisters, and allegations relating to the fact that these cannisters contained chemicals or used to contain chemicals;

53.4. the occurrence of sinkholes on the school property consistent with underground activity occurring in the area under these holes;

53.5. an apparent and alleged structural partial collapsing of the workshop wall attributed to the tunnel and mining activities;

53.6. evidence of an identified employee of the school, on affidavit confirmed by him, of his having observed use made of the blue jerry cans in question by the occupiers to convert soil from the tunnel into a slurry; and

53.7. denial of access to the tunnel by the occupiers since the video that was taken of it.

54. I leave out of present consideration the allegations relating to press reports of violence and dead bodies discovered 700m from the workshop and various hearsay confirmations of the activities said to be taking place on the property.

55. It is noteworthy that the occupier respondents respond to all of these allegations with a single bald denial that they are mining illegally on the property. There is no attempt made to offer any version at all with respect to the tunnel, the jerry cans, the slurry-making, or any of the other allegations relating to mining. This is not the kind of response that creates a genuine bona fide dispute of fact.

56. This is the most noteworthy aspect of the answering affidavit. It responds with one paragraph, comprising 9 lines, “ad” paragraphs 17 to 135 of the founding affidavit. It is appropriate to quote the whole 9 lines here:

“The contents of these paragraphs are unknown to myself, first and third respondents, we are not operating any illegal mining in the property, police came in multiple of times and none of us was arrested either for illegal mining or contravention of section 49 of the Immigration Act.

Some of us are staying with their children in the premises and accordingly Applicant is put to the proof thereof.

In the premises, granting the eviction order will leave myself, First and Third Respondents homeless and this application falls to be dismissed with costs.”

57. These denials and bald statements respond to inter alia the following allegations in the founding affidavit:

57.1. The rooms on the property are not the primary residences of the miners; they are used as a sleepover facility; the miners were not present and the rooms are locked when inspections were held; the miners have homes elsewhere; only males occupy the rooms; there are no indications at all of the presence of females or children.

57.2. The Miners control access to the premises and to the tunnel and refuse access to the tunnel or premises after the last inspection.

57.3. The wall is sinking into the ground where the tunnel was excavated under the wall.

57.4. The miners sell gold from the property.

57.5. The Department of Education complained about illegal mining and threatened to withdraw funding to the school unless the illegal mining ceased.

57.6. The school raised concerns about illegal mining at meetings held with the occupiers.

57.7. Occupation was taken in secret.

57.8. Efforts were made in engagement with the occupiers and the community to integrate them into the community, offers of integration and alternative accommodation were made; the occupiers insisted on permanent title to the property; this they did because they wanted to be able to continue with their illegal mining activities.

57.9. The occupiers were invited to set out their personal circumstances in answer, in particular their incomes.

57.10. The occupiers were invited to seek alternative accommodation from the city in the event that they needed it.

58. The applicants set out a history of engagement with the occupiers. They say that attempts were made to negotiate the integration of the occupiers into the Marathon settlement. The impasse occurred when the occupiers insisted on being given some species of permanent title to the property. This the applicants contend was because they wished to be able to continue with their mining activities. These contentions are also not engaged with in answer at all, and certainly not in any manner that is capable of suggesting a genuine dispute of fact relating to the nature of the activities occurring on the site.

59. I was referred to the judgment of the full court in *Sotomela v Harmony Gold*.¹¹ The following passages in paragraphs 25 to 27 were specifically emphasised by Mr van der Merwe:

“[The court] found, on balance, that the appellant had not established that she faced the risk of homelessness, if she were to be evicted from the property. We cannot fault that finding. Despite being called upon to do so by the respondent, the appellant did not disclose her or her household’s monthly income, nor provide any evidence as to the cost and/or availability of alternative accommodation. She further made bald and unsubstantiated allegations pertaining to various issues, including that certain of her family members were ‘disabled’, without providing any particularity thereof. She indicated in her papers that she intended to supplement the evidence of her personal circumstances – but never in fact did so. Indeed, her claim that she would be rendered homeless if evicted is made for the first time in heads of argument – rather than in the founding or supplementary founding affidavit.

The Municipality’s and the Court’s duty to interrogate the availability of alternative accommodation is triggered only where a proposed eviction places

¹¹ *Sotomela v Harmony Gold Company Ltd & Another* (unreported Case no. A2022-041835; 7 February 2024). Leave to appeal refused by the SCA on 25 April 2024 (Case no 181/2024) and by the Constitutional Court on 16 July 2024 (Case no. 134/24).

the respondent at risk of homelessness.¹² Since the appellant did not put up sufficient evidence to establish this risk, the court a quo was not obliged to call for more information from the Municipality, nor to engage with the adequacy of the alternative accommodation identified by it. Moreover, the invitation extended to the appellant to engage with the municipality regarding her personal circumstances, was declined.

In the circumstances, there is no basis for interfering with the discretion exercised by the court a quo, nor with the order that it gave.”

60. I am aware of the fact that it is sometimes stressed by courts that, in a PIE application, an applicant for eviction bears the onus to demonstrate that it would be just and equitable to grant the order, and has a duty to place facts before a court from which an inference can be drawn of such justness and equity.¹³ Nevertheless, the very recent remarks of the full court in *Sotomela* quoted above bear taking into account, and are in some important respects of a *fortiori* application to the present matter and the manner the occupiers have gone about in neglecting to deal pertinently with their personal circumstances and efforts to secure accommodation despite invitations and the contents of the founding affidavit.

61. I should not be taken to hold, nor to interpret *Sotomela* to hold, that a respondent must “prove” homelessness and factors that render eviction unjust, whilst an applicant may rest content with proving the unlawfulness of occupation. The duty is on the applicant to demonstrate justness. But in considering whether this has been established, a court takes into account everything the applicant has said and done on this score, and how the respondents have responded to this, and where appropriate, as here, particularly how the respondents have engaged with the issue of their personal circumstances when called upon by the applicant to do so.

62. The applicants point to severe problems with the list put up by the occupiers as “DLF1” to the answer. They point out that individuals are said to have taken up

¹² The full court cited *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC), para 96.

¹³ See Wilson J in *Madulammoho Housing Association NPC v Nephawe et al* 2023 JDR 0049 (GJ), para 9, citing *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) para 36.

employment before they were born, or when, according to their alleged dates of birth, they were 9 years old. They point out that the vague reference to “some of us have families” is supported in this list by two references to a “daughter” only, both of which indicating with the facts provided by the occupiers that the daughter in question would be around 30 years of age. They point to the complete absence of any indication of earnings. There is no attempt at all on the part of the occupiers to engage with the allegations that the rooms are not their primary residences; that they have homes elsewhere, that they do not occupy these rooms when there are inspections, that there are no signs of families or women present, that there were efforts and offers to integrate them into the community and that they were called upon to engage with the city if they needed emergency accommodation.

63. The “report” produced by the municipality is far from helpful or ideal. An official reported on his engagement with Mr Chauke at the property on 25 July 2024. Mr Chauke advised there was no need to gather their personal circumstances as “all 47 of them”¹⁴ were waiting for their pay-out before they could leave, and as soon as they received their money from their erstwhile employer, they would leave the property. One is advised that in the circumstances no report could be drawn on the personal circumstances of the occupiers, and the court is then referred to a generic report relating to the availability (or lack of availability) of accommodation dated 2021.

64. Mr van der Merwe correctly pointed out that the relevance of the report lay in the reaction the City received from Mr Chauke. This reaction does not speak to a situation of homelessness, nor to one where one can draw the inference that the property is the primary residence of the individuals holding out for their pay-out, after which they would be content to leave.

65. Mr Khosa said one could not rely on Mr Chauke’s reported statements as those of the occupiers. But it is all we have on this score, and it is significantly consistent with the attitude expressed in the answering affidavit.

¹⁴ The list DLF1 contains some 142 names.

66. I believe that a consideration of the applicants' papers and the manner the allegations were dealt with by the occupiers must lead to a conclusion that it would be just and equitable to order an eviction. The applicants made real efforts to engage meaningfully with the occupiers and to integrate them into the community; they have set out a persuasive case, especially when viewed against the occupiers' bad denial, that the only real purpose of the occupation is illegal mining, and the occupiers have neglected to offer anything at all in relation to their personal circumstances and the interactions alleged by the applicant, nor any version to address the allegations corroborating the mining allegation, save a bald denial and the sweeping assertions cited above. There is also no reason to decline to grant the interdictory relief sought by the applicants.

67. Mr van der Merwe abandoned the prayer for costs at the hearing.

68. In the event, I shall grant an order more or less in the form sought by the applicants in the draft uploaded to Caselines at 05-44 to 05-52, as set out below (note the date of eviction differs from that sought in the order on Caselines):

ORDER:

A. The first, second and third respondent (the Third Respondents as identified below) and all persons holding occupation under or through the first to third respondents ("the occupiers"), of the property being the workshop building situated on the Remaining Extent of Portion 2 of the Farm Elandsfontein 90, Registration Division I.R. Province of Gauteng, measuring 355,1240 hectares and Portion 531 (a portion of portion 8) of the Farm Elandsfontein 108 Registration Division I.R. Province of Gauteng, physically situated at 1[...] M[...] R[...] ROAD G[...] (hereinafter referred to as "the property") are to vacate the property on or before 13 September 2024.

B. In the event that the occupiers and those persons holding occupation through or under them, fail to vacate the property on the date specified in paragraph A above, the Sheriff is authorised to give effect to this order, by evicting the occupiers and all persons holding occupation through of under

them, from the property, on the first week day following the date specified in paragraph A.

C. The occupiers are interdicted and restrained from participating in, facilitating, or permitting any mining operations being conducted at the property, and in particular, at the workshop premises, on the property.

D. The occupiers are interdicted and restrained from retaking occupation of the property, or any portion thereof, including but not limited to the workshop at the property, upon the eviction being carried out, in terms of this order.

E. The Sheriff is authorised to obtain the assistance of the South African Police Services, insofar as such assistance may be required, in order to give effect to the relief granted in paragraphs A-D above.

F. The Third Respondents are identified as -

(a) The persons listed on Annexure DLF1 to the answering affidavit at Caselines 01-72 to 01-75; and

(b) The following persons:

- (i) Louis Madikana
- (ii) George Matshinge
- (iii) Joao Fernano Chauque
- (iv) Mfanelo Dsandawo
- (v) Francisci Antonio Machava
- (vi) Boaventura Luis Maticane
- (vii) Silvestre Joze Bule
- (viii) Mfanelo Tshandawo

FRANK SNYCKERS
ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION JOHANNESBURG

This judgment was uploaded onto Caselines and distributed to the parties' legal representatives by email on 13 August 2024; the date of judgment is accordingly deemed to be 13 August 2024

Heard: 30 July 2024 and 2 August 2024

Delivered: 13 August 2024

Counsel for Applicant: C van der Merwe

Instructed by: Andrew Groenewald Inc

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Instructed by: Ngobeni Ntsako Attorneys