



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

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

SIGNATURE

DATE: 2 September 2024

Case No. 2024-090272

In the matter between:

CITY OF JOHANNESBURG

Applicant

and

**UNLAWFUL OCCUPIERS OF VARIOUS UNITS
AT THE DONOVAN MACDONALD RETIREMENT CENTRE** First Respondents

TASHREEKS HANSLOW AND 24 OTHERS Second Respondents

JUDGMENT

WILSON J:

- 1 The Donovan MacDonald Retirement Centre is a 183-unit older persons home in Florida, to the west of Johannesburg. The applicant, the City, owns and operates the Centre. The City says that units at the Centre are allocated by reference to its “vetting and selection criteria”. These criteria are presumably

deployed to ensure that only those genuinely in need of accommodation at the Centre are allowed to take occupation of its units.

2 In this application, however, the City all but admits that it has lost control of the Centre, and that it can no longer say who resides there. The City alleges that a number of units and the common areas at the Centre are poorly maintained or have been vandalised, although there is no suggestion that the condition of the buildings at the Centre is such as to present a risk of harm to its residents. Some of the units have become illegally occupied. Others are said to be used to peddle drugs. One unit is alleged to accommodate sex work. The City's papers do not adequately explain how this happened. The City itself has taken no responsibility for allowing the conditions at the Centre to deteriorate to the extent that they have.

3 The City is nonetheless clear about what it wants to do to bring the Centre back under its control. On 20 August 2024, it applied in my urgent court for an eviction order under section 5 of the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998 ("the PIE Act"). The effect of the order the City asks for would be to remove everyone currently resident at the Centre, save for those who are registered on the City's list of "vetted" occupants. The City cannot say how many individuals it wishes to evict. Nor can it identify those individuals with any precision. It nonetheless undertakes, before executing the eviction order, to consider their eligibility for alternative accommodation in terms of its temporary emergency accommodation policy, and to provide such accommodation to any of the unidentified occupants who are found to qualify for it.

- 4 Orders under section 5 of the PIE Act authorise the urgent eviction of unlawful occupiers in circumstances where the applicant cannot be expected to wait for the outcome of an eviction application brought in the ordinary course. Section 5 orders may only be granted if three jurisdictional requirements are met. The first of these is set out in section 5 (1) (a), which requires the City to show a “real and imminent danger of substantial injury to persons or property unless an unlawful occupier is immediately evicted”. This means that a rational factual link must be drawn between “a real and imminent danger of substantial injury” on the one hand, and an identified “unlawful occupier” on the other.
- 5 The City’s papers do not come close to meeting this requirement. It is in fact clear on the papers that the relief the City seeks would result in the eviction of entirely innocent occupants who, while not on the City’s list of “vetted” residents, have nothing to do with the conduct the City seeks to eliminate.
- 6 Mr. and Mrs. Adonis are two such occupants. They appeared in person before me. They reside in unit 34 at the Centre with Mrs. Adonis’ mother, Mary-Ann. Mr. Adonis is 69 years old. Mrs. Adonis is 59 years old. Mary-Ann is 82 years old. She has Alzheimer’s disease. Mr. and Mrs. Adonis live with Mary-Ann in her unit to help her feed, bathe and dress herself, and to protect Mary-Ann from the obvious dangers that living on her own would present. Mr. Nhutsve, who appeared for the City before me, conceded that the Centre is not equipped to provide this level of care for Mary-Ann. Ordinarily, Mary-Ann would have been moved to another facility capable of providing more intensive support, but that has not happened. The City does not explain why.

- 7 Accordingly, I must accept on the evidence before me that Mr. and Mrs. Adonis are the only source of care and support Mary-Ann has. They also pose no risk, substantial, imminent or otherwise, of any injury to persons or property. Mr. Nhutsve could not suggest that they did. He nonetheless persisted in an order ejecting Mr. and Mrs. Adonis from the Centre, solely on the basis that they are not “vetted” residents. He could give no undertakings that Mary-Ann would receive the care she needs from some other source. He did not undertake that the City would provide such care.
- 8 Because the City’s papers do nothing to isolate and identify the individual occupants of the Centre who are the source of the unlawful conduct of which it complains, I cannot say how many other “vetted” residents of the Centre are similarly dependent on “unvetted” members of their family or other carers who are present at the Centre technically unlawfully. The City’s own investigations, (summarised in a report authored by a company called “Phoka Forensics” which was attached as annexure “PP5” to its founding affidavit), suggest that there is a large number of people resident at the Centre with family members. Without any sense of who these people are, and whether or not they are the source of the conduct of which the City complains, it is impossible to identify to whom any eviction order should apply.
- 9 Mr. and Mrs. Adonis were but two of several people who appeared in person before me, none of whom seemed to me to be the source of any threat of real and substantial injury to persons or property. Nor could Mr. Nhutsve say that they were the cause of any such threat.

- 10 For at least these reasons, the application must fail. It would be wrong to dispose of this case without pointing out that the City appears to have both caused and exacerbated the problems it says this application is meant to address. Whatever the extent of the deterioration of living conditions at the Centre, the City must take its share of the responsibility for failing to prevent that deterioration. It is, after all, the City that owns the Centre, and the City which ought to have put in place the controls necessary to ensure that its use is properly regulated. Having failed to do that over what seems like an extended period, the City now seeks relief which would, on its face, endanger the safety and well-being of the very people the City says it wishes to protect.
- 11 The application is dismissed.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 2 September 2024.

HEARD ON:	20 August 2024
DECIDED ON:	2 September 2024
For the Applicant:	E Nhutsve Instructed by BMK Attorneys Inc
For the Respondents:	Several residents in person