



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

DELETE WHICHEVER IS NOT APPLICABLE

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

19 October 2024
DATE


SIGNATURE

CASE NO. 32219/2018

In the matter between: -

CAPRICORN FARMS CC

Applicant

AND

DAVID HENRY LEVINSON

First Respondent

BIG CREEK TRADING 29 CC

Second Respondent

TONDOZEST (PTY) LIMITED

Third Respondent

MARK ACLAND TANTUM

Fourth Respondent

EMFULENI LOCAL MUNICIPALITY

Fifth Respondent

JUDGMENT – APPLICATION FOR LEAVE TO APPEAL

1. This is an application for leave to appeal against an order granted by me dismissing an application by the Applicant for the eviction of the First Respondent from the property known as Portion 97 (a portion of Portion 62) of the Farm Kaalplaats 577, Registration Division IQ, Transvaal, in extent 4287 hectares, situated at 97 Kaalplaats, Vanderbijlpark (hereinafter referred to as "the property"), for its failure to comply with the provisions of section 4 of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.
2. The First Respondent opposes the application for leave to appeal. He however does not challenge my findings that he is in unlawful occupation of the property.
3. In order to succeed the Applicant needs to demonstrate, in terms of the provisions of section 17 of the Superior Courts Act 10 of 2013, that it has a reasonable prospect of success, or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.
4. While a number of grounds of appeal are advanced in the application for leave to appeal, they all stem from the fact that I dismissed the application for failure by the Applicant to comply with the provisions of the PIE Act, in particular section 4 thereof.

5. A number of cases were cited in the Applicant's heads of argument in support of the grounds set out in the application for leave to appeal. They all essentially boil down to the contention that in the circumstances of this case the Applicant was excused from complying with the provisions of the PIE Act, in particular service of the notices contemplated in section 4(2) thereof, as the first Respondent was at all times adequately legally represented, was aware of his rights in terms of PIE, and that formal compliance with the provisions of PIE would have constituted wasteful expenditure. It is further contended that the onus was on the first Respondent, and not me, to raise the issue of non-compliance with the provisions of PIE, if he felt prejudiced by such non-compliance.
6. The Applicant takes issue with my "mero motu" reliance on paragraphs [11] and [20] of the SCA judgment in *Cape Killarney Property Inv (Pty) Ltd v Mahamba* 2001 (4) SA 1222 (SCA), in the light of subsequent judgments and judicial pronouncements. The Applicant's counsel goes so far as to contend that "Cape Killarney is nonsensical in its approach to opposed evictions in regard to the service of the Section 4(2) Notice". I find this submission disturbing not only because the judgment in *Cape Killarney* emanates from the second highest court in the land but it has been referred to with approval by numerous judgments including subsequent SCA judgments. These include the judgment relied upon by counsel for the Applicant, namely *Vacation Import (Pty) Ltd v Bumina and Others*; *Vacation Import (Pty) Ltd v Ngaleka and Others* (3852/2022;3855/2022) [2023] ZAWCHC 44 (3 March 2023). In that case

the court sanctioned a process which achieved the same objectives as those set out in section 4(5) of the PIE Act.

7. At paragraph [7] of Vacation Import it is stated that:

“In the current cases it was abundantly clear on the facts that service of a notice on the respondents in terms of s 4(2) of PIE would be a wasteful and unnecessarily costly supererogation. That they were adequately informed in a manner that would satisfy the object of the requirements of s 4(5) of PIE was confirmed by their appearance in court with legal representation and the terms of the order taken from Saldanha J which established an agreed tailor-made framework for them to pursue their intended opposition to the applications. It would be absurd in the circumstances to decline to entertain the applications when they came up for hearing after answering papers and counterapplications had been delivered and the respondents appeared represented by counsel instructed to deal with the eviction applications on their merits. It is also evident from the fact that the municipality delivered affidavits in both matters that it has been adequately apprised of the eviction applications.

(My emphasis)

8. It is noted that in the present case no notice of set down was served on the Emfuleni Local Municipality, despite it being cited as a Respondent in the proceedings.
9. While I readily concede that other court sanctioned processes and remedies may be substituted for the formal notification requirements set out in section 4(2) of the PIE Act which have the same effect, this does not, in my view, detract from the peremptory nature of these requirements. At the very least, in my view, only a court has the power to sanction non-compliance with these requirements and should only do so on good cause shown. No such good cause has, in my opinion, been demonstrated in this case unlike those in the Vacation Import matter.
10. As stated in the main judgment, my concern was not only for the first Respondent, but also his family and employees whom I held may also have required an opportunity to put relevant circumstances before court pertaining to his eviction application, and that the notification requirements of the PIE Act may also apply to them as far as their security of tenure on the property is concerned. I may have been wrong in this conclusion and find that there are reasonable prospects that another court may well come to a different conclusion in this regard.
11. The Applicant also takes issue with my dismissal of the application despite my finding that the first Respondent was in unlawful occupation of the property. Upon closer reflection, I find there may be merit in this

argument. The court hearing the appeal of this matter may reasonably find that after declaring the first Respondent to be in unlawful occupation of the property, I should have postponed the eviction application itself until such time as there had been compliance with the requirements of the PIE Act.

12. In the premises I make the following order:

- 12.1 The applicant is granted leave to appeal the judgment and order of the 6th of March 2024 to the full bench of the Gauteng Local Division, Johannesburg.
- 12.2. The costs of the aforesaid application for leave to appeal shall be costs in the appeal.

CAJEE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION
JOHANNESBURG

DATE OF HEARING:	12 th July 2024
DATE OF JUDGMENT:	19 th October 2024

REPRESENTATIVES OF THE PARTIES

For the Applicant:	Adv. M. Amojee 081 341 7635
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For the 1 st Respondent:	Adv. B. Bhabha
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CAJEE AJ
ACTING JUDGE OF THE HIGH COURT
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For the Applicant:	Adv. M. Amojee 081 341 7635
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For the 1 st Respondent:	Adv. B. Bhabha 083 291 2873
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