

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2020-7199**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
30 October 2024	
DATE	SIGNATURE

In the matter between:

JOHANNESBURG SOCIAL HOUSING COMPANY SOC LTD

Applicant

and

MUSUNDWA SYLVIA DEMANE

First Respondent

**FURTHER UNLAWFUL OCCUPIERS OF
KLIPTOWN SQUARE, KLIPTOWN**

Second Respondent

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Third Respondent

Date of Hearing: 28 October 2024

Date of Judgment: 30 October 2024

JUDGMENT

ESTERHUIZEN, AJ

Introduction

- [1] This is an application for the Eviction of the First and Second Respondents in terms of Section 4(1) of the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act No. 19 of 1998 ("PIE Act").

Background

- [2] The Applicant was established as a social housing company in order to provide rental accommodation in the social housing category whose household income is between R1 500.00 and R7 500 per month. To provide for this, the Applicant established developments including a development at Kliptown, known as Kliptown Square Building aimed at middle income occupiers.
- [3] The First Respondent entered into a lease agreement with the Applicant in respect of a unit in the Kliptown Flats in August 2008.
- [4] By 8 August 2019 the arrears of the First Respondent in respect of rental and other obligations to the Applicant amounted to R123 772.54.
- [5] On 19 August 2019, the Applicant addressed a letter of demand to the First Respondent demanding that the First Respondent bring the arrears up to date within 7 (seven) days of date of delivery of the letter which the First Respondent did not do. Following on this and on 27 August 2019 the Applicant addressed a final notice notifying the First Respondent of the breach of the lease agreement together with a conditional notice of cancellation that if the First Respondent failed to make payment the agreement would terminate and the Respondents would be required to vacate the property. Failing to make payment the Respondents were given 30 days in which to do so.
- [6] Notwithstanding demand, the First Respondent failed to make payment of the arrears and failed to vacate the property.
- [7] The Applicant launched an application for the eviction of the First Respondent and Second Respondents in terms of the PIE Act on 2 March 2020.

- [8] The Notice of Motion, Founding Affidavit and Annexures were served on the First Respondent and Second Respondent on 18 March 2020.
- [9] The Applicant proceeded to issue an Ex Parte application for authorisation of the notice in terms of Section 4(2) of the PIE Act which order was granted on 22 July 2024.
- [10] The Sheriff served the Order in terms of Section 4(2), Notice in terms of Section 4(2) of the PIE Act, Ex Parte application, supporting affidavit, all annexures, Notice in terms of Rule 41A of the Uniform Rules of Court and Final Notice of Set Down on the First and Second Respondents on 8 August 2024. The Applicant's attorneys of record, as authorised in the July order, served the Third Respondent with the same notices.
- [11] The First, Second and Third Respondents were served not less than 14 days prior to the hearing of this application.
- [12] The Respondents have failed to serve and file an affidavit pursuant to the Section 4(2) Notice.

Discussion

- [13] The matter is being opposed only by the First Respondent who admits that she is in arrears with the payment of her rental and that she has not been paying any rental for a number of years. The reason for being in arrears and not making any payments, so the First Respondent avers, is because the rental being charged is too high compared to her other expenses. She however admits that the lease agreement still applies and that she is bound by it.
- [14] Clause 3.1 of the agreement requires that "*rental shall be paid monthly in advance on or before the 1st (first) day of each and every month following conclusion of this agreement*". In addition to this the failure to make rental payments is a material breach of the agreement (Clause 13.1 of the lease agreement) and as such a justifiable reason for cancellation. Due to the First Respondent's continued failure to make payment the Applicant on

19 August 2019, following an earlier letter to make payment, had a letter of demand delivered to the First respondent in which it was stated:

*“We refer to our friendly reminder letter dated **7 August 2019** and advise that your account is still in arrears with an overdue amount of **R123772.54**.*

We further refer to our terms and conditions where it’s stated that all rentals/levies are due and payable in advance on or before the 1st of every month and your account status is currently in breach of the contract signed.

We therefore advise that unless we receive settlement of the arrears balance within 7 (seven) days from date hereof, JOSHCO will not hesitate to exercise its rights in terms of the Agreement.

We look forward to payment per return.

If payment has been made, thank you for your patronage and kindly ignore this notice.”

[15] Having received no response or payment pursuant to this demand the Applicant on 27 August 2019 had a Final Notice delivered informing the First respondent:

*“1. We note with concern that despite our previous demands you have refused, failed and/or neglected to pay your arrear rental including/excluding the current rent and that the amount due has now escalated to **R123772.54**.*

*2. We therefore demand, as we hereby do, that you pay 50% of the amount in arrears **PLUS** your current rental, failing which we shall not have an alternative but to cancel your lease and institute legal action against you thru [sic] a court of law for **legal eviction, attachment of your salary through your employers or attachment of your income if self-employed**.*

*3. Please be advised that **should you fail to comply with the above demand within 7 (seven) days from date hereof**, your actions will be*

viewed as occupying the unit illegally and **you'll be required to voluntary vacate the unit within 30 (thirty) days of failing to remedy the breach** as provided herein above.

We trust that you will take this notice in a more serious light."

[16] The receipt of these letters is not disputed and the First Respondent's reasoning is that she did not make payment as she was not able to pay the total amount within 7 days as per the demand. The abovementioned notices by the Applicant were sent in compliance with the requirements of the agreement.

[17] Notwithstanding the Applicant having complied with the requirements of the PIE Act and notwithstanding the First Respondent not having raised a valid defence the enquiry does however not stop there as it must still be determined whether and eviction would be just and equitable (*Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) para [3]). Section 4(7) of the PIE Act provides:

"(7) If an unlawful occupier has occupied the land in question for more than six months at the 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 other 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."(Own Emphases)

[18] In determining what is just and equitable it requires a consideration as to whether eviction is just and equitable to all parties meaning both the landlord and the unlawful occupiers (See *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others (Socio-Economic Rights Institute of South Africa as amicus curiae)* 2012 (11) BCLR 1206 (SCA) at para [12]). Where an occupier opposes an eviction at the very least the occupier is required to lay sufficient factual foundation upon

which the Court can make a finding. In *Ndlovu supra* the Supreme Court of appeal held:

“[19] Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.”

[19] The following considerations are relevant to establish whether an eviction in this instance is just and equitable:

- a. The First Respondent admits that she has failed to pay any rental for several years. What the First Respondent does not disclose is why she ceased to make payment other than that it was too high, what her income is, especially under circumstances where it is alleged that the rental amounts are too high compared to her other expenses. The mere fact that it is alleged that it is too high does not mean that the First Respondent cannot afford it. The First Respondent does not mention what these ‘other expenses’ are and how it impacts her ability to pay rent. When faced with a demand for arrear payments the First Respondent states that she could not be expected to pay the amount of R123,000.00 within seven days (as demanded in 2019) but fails to provide any explanation as to why no attempt to contact the Applicant was made to discuss possible alternatives.
- b. The eviction notices were served as early as 2019, but the Applicant provides no evidence nor makes any submissions with regard the availability of or costs of alternative accommodation. The First Respondent cannot cease payment and expect to remain in occupation indefinitely. This is even more so where various steps by the Applicant were being taken, of which the First Respondent was aware, to evict her from the premises.

- c. The First Respondent is in material breach of the lease agreement, which she admits still applies to her, and the Applicant is within its right to cancel the agreement and ask for an eviction.
- d. The Applicant provides affordable rental for a lower income market. However, the non-payment by any one or more of the occupants of this accommodation causes prejudice not only to the Applicant in that it receives no income to maintain and to pay expenses in relation to the building but the non-payment by a tenant also impacts the other occupants who are then by implication cross subsidising the non-paying tenants and it in turn results in the Applicant not achieving its objectives in providing low cost housing.

[20] I am thus convinced that the First Respondent's reasoning for failing to make any rental payments for a number of years does not constitute a valid defense.

[21] Because all the requirements of section 4 of PIE have been complied with and because the First Respondent has raised no valid defence, section 4(8) of PIE determines that the court must grant an order for the eviction and in doing so must consider what is a just and equitable date on which the occupier must vacate the land.

[22] In considering this it is important to consider the temporary Emergency Accommodation Report ('TEA') compiled by the Department of Human Settlements at the City of Johannesburg Metropolitan Municipality pursuant to the Applicant's application for the eviction of the First Respondent. The duty to report is described in the report itself as follows:

"In line with the principles as set out by the Constitutional Court in the matter of Occupiers of Erven 87 & 88 Berea v Christiaan Frederick De Wet N.O, in a matter where there is a possibility or an allegation of possible homelessness, the City is required to provide the Court with a report wherein it sets out whether

or not the occupiers facing eviction will indeed be rendered homeless. If the City concludes that the occupier(s) will indeed be rendered homeless on eviction, the City is then required to indicate what temporary emergency accommodation ("TEA") it will make available to said occupier(s) on eviction."

[23] There is no need to incorporate the whole report and I refer only to the conclusion and recommendations made following the Department of Human Settlements investigation:

- "21. Based on the findings gathered during the occupancy audit, it became apparent that the 1st respondent is an able person who earns a monthly salary, which indicates that she is able to afford a new rental unit within her means.*
- 22. Moreover, although the income of the 1st respondent has not been specifically mentioned, she appears to be a working woman.*
- 23. Therefore, an inference can be made that the eviction in question would not render the occupiers/evictees homeless provided it is not abrupt and immediate.*
- 24. The occupiers do not qualify for Temporary Emergency Accommodation.*
- 25. TEA is a scarce resource, and the city is confronted with a waiting list of more than 4777 households and priority is given to the poorest and the most vulnerable with zero options for accommodation.*
- 26. The 1st respondent should be able to source alternative and cheaper accommodation.*
- 27. It is therefore recommended that should the court grant the eviction, perhaps the eviction be postponed to such a time that the court would deem fair and just, so as to allow the respondent/s an opportunity to source alternative and cheaper accommodation."*

[24] In the TEA report the Department of Human Settlements proposed that where an eviction is ordered that the respondents must be afforded sufficient time to source alternative and cheaper accommodation as they do not qualify for Temporary Emergency Accommodation. The Applicant seeks an order whereby the First and Second respondents are to be evicted by 2 December 2024. In view of the recommendation contained in the TEA Report it is my view that this date is not reasonable and that more time should be provided to the First and Second respondents to seek alternative accommodation and to move out of the premises being unlawfully occupied. In my view a just and equitable order would be to provide the First and Second Respondents until 31 January 2025 to vacate the premises.

Costs

[25] Regarding the costs of the application, I do not consider the usual order that costs follow the outcome as appropriate in the circumstances of this matter. The evacuation and relocations are obviously coupled with financial implications and the significant amount still due to the Applicant for the arrear rental is also relevant. What cannot be ignored is the fact that the Applicant had to come to court to have the First Respondent evicted after she failed to pay rent for a number of years. These facts considered it is not in the interest of justice that the First and Second Respondents be ordered to pay the costs of the application, including all reserved costs in full, but that the costs be limited to all the disbursements incurred by the Applicant's attorney including any and all disbursements which have been incurred up to date and which may still be incurred should the Applicant have to employ the services of the Sheriff to evict the First and Second Respondents.

[26] Therefor I make the following order:

Order

1. The Applicant's late filing of its Replying affidavit is condoned.

2. That the First Respondent be evicted from the property known as UNIT 004 BLOCK 05, KLIPTOWN SQUARE, KLIPVALLEY ROAD, KLIPTOWN (hereinafter referred to as "the property").
3. Further occupiers who may be occupying the property unlawfully under the First Respondent, being the Second Respondent, be evicted from the property.
4. The First and Second Respondents are ordered to vacate the property on or before 31 January 2025.
5. In the event that the First and Second Respondents do not vacate the property by 31 January 2025. the sheriff of the Court or their lawfully appointed deputy is authorized and directed to evict the First and Second Respondents from the property.
6. The First and Second Respondents are interdicted from entering the property at any time after they have vacated the property or been evicted therefrom by the Sheriff of the Court or their lawfully appointed Deputy.
7. In the event that the First and Second Respondents contravene the order contained in the paragraph above, the Sheriff of the Court or their lawfully appointed Deputy is authorised and directed to remove them from the property as soon as possible after their reoccupation thereof.
8. A copy of this order is to be served on the First and Second Respondents by the Applicant in accordance with the provisions of Rule 4(1)(a)(i) or (ii) of the Uniform Rules of Court within 14 days of it being issued.
9. The First and Second Respondents are directed to pay the costs of this application and all previous reserved costs, such costs being limited to the disbursements of the Applicant's attorney including any disbursements which may be incurred should the Applicant have to employ the services of the Sheriff to evict the First and Second Respondents.



ESTERHUIZEN AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:

Mrs Dhlshad Hoosen (Attorney with Right of
Appearance) of
Nchupetsang Inc Attorneys

For the Respondent:

No Appearance