

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

Case Number: **2023-02223**

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

In the matter between:

GRAHAM ERROL TRUSLER Applicant

and

AURALITE LED LAMPS (PTY) LTD First Respondent

IVAN ISAAC CODRON Second Respondent

**THE UNLAWFUL OCCUPIERS OF S[...] C[...],
2[...], R[...] C[...], EXTENSION 1[...],
5[...] CORRESPONDING TO 1[...] C[...],
K[...] C[...], R[...]** Third Respondent

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Fourth Respondent

STANLEY GEORGE GEER Fifth Respondent

Date of Hearing: 31 October 2024

Date of Judgment: 1 November 2024

JUDGMENT

ESTERHUIZEN, AJ

Introduction

[1] This is an application for the eviction of the First and Fifth Respondents from a residential property belonging to the Applicant, following the termination of the lease agreement due to the failure to pay rental.

[2] Only the Fifth Respondent opposes the application.

[3] The application has been withdrawn against the Second Respondent.

Background

[4] The Applicant is the owner of the property in River Club and in November 2012, the Applicant concluded a lease in respect of the property with the First Respondent, who was at the time represented by the Second Respondent. The lease was set for a fixed period of one year, commencing on 1 December 2012 and expiring on 30 November 2013. In terms of the lease, the First Respondent was to pay a rental of R8 500.00 per month, in advance, on the 1st of each month. The First Respondent was also liable for the relevant fees for water, electricity, sewage, refuse disposal, and other utilities ('additional amounts').

[5] The lease provided that should the First Respondent remain in occupation, beyond termination of the lease, whether or not it disputed the termination, it would

still be obliged to continue paying the monthly rental and the additional amounts until it vacated the premises. The Applicant would be entitled to recover and accept such payments without prejudice to his rights. The lease also provided that no concession or indulgence made by the Applicant would be deemed to be a waiver of any right, nor would it affect, prejudice, or derogate from the Applicant's rights in terms of the lease.

[6] The First Respondent took occupation of the property in January 2013 and at the same time the Fifth Respondent and his then wife moved into the property and began residing there. The Fifth Respondent continues to reside there. The fixed period of the lease with the First Respondent expired on 30 November 2013. It was not renewed for another fixed period nor was a further lease concluded in writing. The lease continued thereafter on a month-to-month basis as provided for in section 5(5) of the Rental Housing Act 50 of 1999.

[7] The Fifth Respondent remained in occupation of the property and all the payments that were made to the Applicant were made by the Fifth Respondent.

[8] Despite being fully aware of his obligations, from 2014 onwards the payments made by the Fifth Respondent were irregular, incomplete, or missed entirely. The payments he did make were late, and usually made only after repeated demands by the Applicant. As at 21 December 2022 the unpaid amount was R139 896.00 excluding interest.

[9] By the time the Applicant deposed to his affidavit in the application in terms of section 4(2) of PIE, the outstanding rental and additional amounts, excluding interest, had increased to R245 660.66.

[10] An order in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") was granted on 14 September 2023 by this Court and was served on, amongst others, the Fifth Respondent on 15 October 2024 being not less than 14 days prior to the hearing of this application as prescribed by section 4(2) of PIE.

[11] The Respondents, more particularly the First Respondent, have failed to serve and file any further affidavits pursuant to the Section 4(2) Notice.

Discussion

[12] The Fifth Respondent delivered his notice of intention to oppose this application on 25 April 2023 and his unsigned answering affidavit on 7 September 2023 which was significantly late and without a condonation application.

[13] The contents of the answering affidavit provide little to no assistance and comprises in essence a list of bare denials. Apart from his bare denials the Fifth Respondent raises three 'defences' which I deal with as they were raised.

a. Firstly, the Fifth Respondent makes the bold statement that the Applicant agreed that he could remain in the property indefinitely. Apart from making the allegation that he could remain on the property indefinitely, he provides no details regarding such purported agreement. Counsel for the Applicant referred to the Judgment of *Davids and Others v Van Straaten and Others* 2005 (4) SA 468 (C) where the respondent in that case made the same argument that the lease was for an indefinite period. The Court concluded that:

"A lease for an indefinite period is not known in our law... 'the lease must be for a period of limited duration, since it is an essential feature of the contract that the lessor parts with the use and enjoyment of the thing merely temporarily.'"

(Own emphasis)

I further agree with counsel for the Applicant that even had such an agreement been reached, of which there is no evidence, it would have been conditional upon the Fifth Respondent's continued payment of rental. The Fifth Respondent does not allege that the Applicant agreed he could reside in the property free of charge. Such agreement can also not be implied as the Applicant has routinely been attempting to

collect payment of outstanding rental since 2014. The Fifth Respondent thus fails to make out a valid defence by alleging an indefinite agreement.

- a. Secondly, the Fifth Respondent alleges that the Applicant did not provide him with one month's notice to vacate the property and for this reason he can remain in occupation. This statement too is made without providing any facts to support it. The undisputed facts however show the opposite. On 31 August 2021, the Applicant sent the Fifth Respondent a WhatsApp message (which is not denied) stating:

“George unless a substantial payment is made today to help clear some of the outstanding arrears owing on rental and electricity (R20 000 minimum) accept this notice as the start of the notice period of one month to vacate the property..”

Even after this notice the Applicant on various occasions continued to expressly indicate that he wanted the Fifth Respondent to vacate the property. The exchange of messages between the Applicant and Fifth Respondent confirms that the Applicant at no point in time retracted the notice to vacate but continuously reminded him to vacate without any success. The Applicant for example had an in-person meeting with the Fifth Respondent in March 2022 where it was agreed that he would pack his belongings to vacate the premises and if he paid R12 000 towards the arrear rental by 11 March 2022, he could remain in the property until the end of that month. He agreed to vacate the property if he did not make payment on 11 March 2022. Needless to say, he did not make payment and did not vacate the property. Instead, he requested a further indulgence to give him more time to find alternative accommodation, the Applicant refused the request. The so called ‘no notice defence’ therefore also does not constitute a valid defence against the Fifth Respondent’s eviction.

- b. Thirdly the Fifth Respondent alleges that it will not be just and equitable to evict him because of his age and because he is unable to find suitable alternative accommodation. He provides no detail regarding either of

these. Because I must determine whether an eviction is just and equitable I deal with this defence below.

[14] Notwithstanding the Applicant having complied with the requirements of the PIE Act and notwithstanding the Fifth Respondent not having raised a valid defence the enquiry does not end there as it must still be determined whether an 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)

[15] 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.”

[16] Other than the question of whether the eviction will be just and equitable I have dealt with the only other defences raised by the Fifth Respondent above and for the reasons stated no valid defences were raised. In determining whether an eviction is just and equitable the age of the occupier is a factor to be considered but it is not determinative as all available information regarding both the occupier and owner need to be considered to determine whether an eviction is a just and equitable. The Fifth Respondent provided no other information as to why his age is relevant other than stating that his age must be considered.

[17] The Fifth Respondent makes a bold allegation that he cannot find alternate accommodation but again provides no evidence to support this. This notwithstanding the fact that the Fifth Respondent, as early as March 2022, acknowledged that he knows that he must seek alternative accommodation but until date hereof he has taken no steps to do so. The Fifth Respondent provides no reasons which I can consider for his failure to do so. Had it been a real concern it would have been expected that the Fifth Respondent would have at least provided some evidence of attempts made to find alternative accommodation; reasons why he was not successful, deterrents such as costs or his income. I am simply provided with nothing other than the bold allegation that the Fifth Respondent cannot find alternative accommodation.

[18] *In Iliad Trading supra* the Court made the following remark in considering the question of alternative accommodation when it was raised as a defence for eviction:

“The Respondents cite to the difficulties in obtaining alternative accommodation as the principal ground for their refusal to vacate. This generalised statement is not supported by any facts demonstrating efforts that the Respondent have made to find alternative accommodation.” (Own emphases)

[19] Accordingly, the Fifth Respondent was obliged to allege and explain the efforts he has made to find alternative accommodation. He did not do so.

[20] The Fifth Respondent does not deal with and it can thus not be assumed that affordability is a deterrent. The undisputed evidence presented by the Applicant in any event support a conclusion that the Applicant was still generating significant income, at least until January 2023, where in a WhatsApp conversation with the Applicant the Fifth Respondent referred to customers he was working with and that he was expecting some R250 000 as payment which would be used towards his arrear rental.

[21] Therefore, despite his age, the Fifth Respondent is fully capable of obtaining alternative accommodation. He simply elects not to do so, because he obviously benefits from residing on the property without paying. By contrast, if the Fifth Respondent is allowed to remain on the premises, the Applicant will continue to be unable to benefit from his property, will be liable to the relevant authorities for the unpaid utilities, and will be unable to supplement his own income.

[22] It is also a relevant consideration that the Fifth Respondent's breaches go as far back as 2014. The Applicant has thus for many years been attempting to resolve this matter amicably and without resorting to an eviction. The Applicant's last and only resort left is eviction.

[23] 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.

[24] The Applicant seeks an order whereby the First and Fifth Respondents are to be evicted by 14 November 2024. In my view this date is not reasonable and that more time should be provided to the First and Fifth 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 Fifth Respondents until 31 January 2025 to vacate the premises.

Costs

[25] The lease provided that the Applicant would be entitled to costs on an attorney and client scale, and the Applicant still seeks those costs. I agree with counsel for the Applicant that the court must show its displeasure with dilatory conduct by the Fifth Respondent in this application. His answering affidavit was almost 4 months late and consists of mostly bare denials without any substantive reasoning for the court to consider, the Fifth Respondent had to be compelled to file heads of argument so that the matter could be enrolled, as with the answering affidavit the heads of arguments were of little assistance to the court and at the date of the hearing of this matter the Applicant and his legal representatives failed to attend court without any warning that it would not attend. In light hereof a punitive cost order is justified.

I therefore make the following order:

Order

1. The First and Fifth Respondents and all persons holding occupation of the property through or under the First Respondent, or by virtue of their occupation of the property, be evicted from the property described as Scheme Name S[...] C[...], Scheme Number 2[...], R[...] C[...] Extension 1[...], 542, measuring 121m² corresponding to unit 1[...] C[...], K[...] C[...], R[...] C[...], Johannesburg, Gauteng, on 31 January 2025.
2. In the event that the First and Fifth Respondents and all persons holding occupation of the property through or under the First and Fifth Respondents, or by virtue of their occupation of the property, do not vacate the property on 31 January 2025, the Sheriff of this Court or his or her lawfully appointed Deputy is to enter upon the property and evict the First and Fifth Respondents and all persons holding occupation of the property through or

under the First Respondent or by virtue of their occupation of the property, on 1 February 2025.

3. A copy of this order is to be served on the First and Fifth 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.

4. The First and Fifth Respondents shall pay the costs of this application, including the application in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, on an attorney and client scale.

5. The Fifth Respondent shall pay the costs of the application to compel the filing of his heads of argument, which costs were reserved in terms of the order of Ford AJ on 20 March 2024, on an attorney and client scale.

**ESTERHUIZEN AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG**

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