



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: Yes/No

Case no: 5154/2023

In the matter between

SETSOTO LOCAL MUNICIPALITY

APPLICANT

And

**VARIOUS INDIVIDUAL UNLAWFUL OCCUPIERS
AND INTENDED UNLAWFUL OCCUPIERS OF THE
REMAINING EXTENT OF FICKSBURG DORP GRONDE
75, (COMMONLY KNOWN AS PEACH FARM &
IMPERANI MOUNTAIN IN FICKSBURG)**

1ST RESPONDENTS

BOIKETLONG FORUM FICKSBURG

2ND RESPONDENT

PAPALI RITTAH SESELINYANE

3RD RESPONDENT

MASUTUTSA LIPHOTO

4TH RESPONDENT

SHIFT CONSULTING

5TH RESPONDENT

HOUSING DEVELOPMENT AGENCY

6TH RESPONDENT

**DEPARTMENT OF AGRICULTURAL &
RURAL DEVELOPMENT, FREE STATE**

7TH RESPONDENT

Neutral citation: *Setsoto Local Municipality v Various Individual Unlawful Occupiers and Intended Unlawful Occupiers of the remaining extent of Ficksburg Dorpgronde 75 (commonly known as Peach Farm & Imperani Mountain in Ficksburg) and others*

Coram: PARKS AJ

Heard: 15 August 2024

Delivered: This judgment was handed down in court and electronically by circulation to the parties' legal representatives via email and release to SAFLII on 19 September 2024. The date and time of hand-down is deemed to be 09H30 on 19 September 2024.

Summary: Application[PC1] in terms of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) – condonation application, application to rescind a cost order and to strike out affidavits.

ORDER

1 Any person forming part of the first and second respondents including the third and fourth respondent who might have taken occupation of any home, dwelling and abode and/or structure on the property commonly known as the Peach Farm and Imperani Mountain, Ficksburg, Free State Province, also known as the Remaining Extent of the Farm Ficksburg Dorp Gronden, Farm Nr 75, held by Title Deed T41140/1891, are ordered:

1.1 to demolish and remove any structures it may have erected on the land by Thursday 5th December 2024

1.2 to vacate the land by Thursday 5th December 2024

2 Should any such person who might have taken occupation of any such home, dwelling, abode and/or structure on the land not vacate together with all his/her belongings, demolish and remove such structure, the Sheriff for the district of Ficksburg, assisted by the South African Police Services, is authorized and ordered to forthwith evict such respondents from such structure and to demolish and remove same from the land on any subsequent date.

3 The Applicant is ordered to provide the 3 individuals who forms part of the first and second respondent and who has applied for housing with the Housing Development Agency, with alternative accommodation until the applicant is able to supply the 3 individuals with erven.

4 No cost order made.

JUDGMENT

Parks AJ Introduction

[1] This is an eviction application in terms of s 4 or, in the alternative, s 6 of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) to evict the

first to fourth respondents from the property in question. The application was opposed by the first to fourth respondents. The fifth to seventh respondents are merely cited as interested parties and therefore did not oppose the application.

[2] The eviction application was preceded by an application to direct the manner in which to serve the Section 4(2) notice on the respective respondents. A magnitude of interlocutory applications followed by both parties respectively, which culminated the day of the eviction hearing which I will deal with in detail.

Parties

[3] The applicant, Setsotso Local Municipality (the municipality), is the registered owner of the property in question according to the title deed and is empowered to govern local government affairs in the municipal districts of Ficksburg, Clocolan, Marquard and Senekal within the Free State Province.

[4] The first respondent is cited as persons occupying or intended to occupy the property in question. The second respondent is a forum formed by various unlawful occupiers of the land in question and governed by its constitution dated 2 July 2023. The third respondent is allegedly the secretary of the Boiketlong Forum, Ficksburg, with the service address the same as the property in question. The fourth respondent is cited as one of the instigators inciting the first to third respondents to unlawfully occupy the land in the question. The fifth respondent is an interested party by virtue of a lease agreement entered into between itself and the applicant, dated 17 July 2019, in respect of a portion of land forming the subject of this application. The sixth respondent is the Housing Development Agency (HDA) for the Department of Human Settlements, Free State is cited as an interested party who compiled an Assessment report in respect of the property concerned on 5 July 2023 about the unlawful occupation of the applicant's land by the first to fourth respondent and is still unlawfully occupied. Lastly, the seventh respondent is the Department of Agriculture and Rural Development and cited as an interested party by virtue of its assistance with the poultry farming project for the 2022/2023 financial year.

Applicant's Case

[5] The deponent of the founding affidavit is appointed as the Municipal Manager of the municipality and was duly authorized to depose of such affidavit by virtue of her

appointment which occurred on 23 November 2022.

[6] The applicant averred that the land in question is not suitable for human settlement and not even viable for housing and or housing development since there is no infrastructure. There are no basic services relating to water, sewerage, roads and storm water systems. The applicant also averred that they have, in conjunction with the HDA Agency, a program in place where various categories of low-cost housing is made available to persons who qualify. Such qualifications include, *inter alia*, that the applicant should be a bona fide resident of the municipality. A prospective applicant will apply and if they qualify, said applicant will be registered on a waiting list. Furthermore, the applicant averred that the respondents have unlawfully occupied the land in April 2023 which had only one unoccupied erected structure whose owner is unknown to the applicant at the time. The amount of structure has since increased to around 50 structures in July 2023 and in September 2023, to 200 structures. The demarcation of plots and cordoning off of areas was not authorized by the applicant nor the erection or occupation of any structure situated on the land in question.

Report Compiled by Department of Human Settlement

[7] The applicant has requested the Department of Human Settlement to compile a report pertaining to the property in question and same dated 6 July 2023 indicated the following:

- (i) there were 40 unoccupied and incomplete informal structures at the time when assessment was done;
- (ii) the nearest primary health care, schools and community access points are approximately 4-9 kilometers from the area in question;
- (iii) There is no access to clean water and a sewer system nor access to storm water drainage systems and roads;
- (iv) The area is on a hill, steeply slope and too rocky; its full of dongas and the slope is uneven;
- (v) There are several water streams as a result of the spring water that runs from the hill which causes the area to be muddy and almost difficult to access;

- (vi) The Applicant has in 2019 entered into a lease agreement with the 5th Respondent (Shift Consulting) for a period of 10 years which relates to the property in question;
- (vii) The municipality has resolved in 2002 to earmark a portion of the area for agricultural projects known as the peach project which resulted in the Meqheleng Peach Project being handed over to the beneficiaries in 2009;
- (viii) The land is on the Restricted Development to Prohibit Further Urban Sprawl into Environmental Sensitive areas in terms of the Setsotso Local Municipality Spatial Development Framework as revised in 2022.
- (ix) Their recommendations were that it will be difficult to provide basic services, costly to close the water pans and develop the area and internal access roads. It will demand more budget to develop water control- or storm water channels. The 25 KVA electrical line which fed electricity to the peach project carries a very low capacity and cannot energize a human settlement;
- (x) They concluded that the area is not habitable or suitable for human settlement development due to the vegetation and recommend that alternative suitable land for human settlement be allocated to the occupants.
- (xi) An area was identified on the Meqheleng Spatial Development Framework (SDF) map, for township development which will yield approximately 3000 residential erven to the housing needs in Ficksburg/Meqheleng. The project is on the 2023/2024 Integrated Development Plan (IDP) and the municipality has commenced with advertisements for the service providers occurred on 21 April 2023 with closing date of 23 May 2023.

Applicant's Replying and Further Affidavit

[8] The applicant, in relation to the issue of meaningful engagement raised by the respondents, avers further in her replying affidavit¹ that there was an attempt at the court appearance of 25 January 2024 between the applicants' counsel to obtain a list of all people present in order to determine whether they have applied for housing and whether they were on the waiting list; this was unsuccessful. Some of the attendees' present supplied their details but the respondents present later scratched out the names on the

¹ Page 376-389 of indexed bundle C.

list making it difficult to read the names on the list.² This resulted in the applicant being able to confirm that only three names on coincided with the waiting list of people who applied for houses.

[9] The applicant, furthermore, averred in her affidavit³ that a site inspection was conducted on Tuesday, 7 May 2024, where it was established that only eight people were found on the peach farm: three were occupiers and five were present to erect additional structures. Photos were also taken and indexed⁴ which shows that there were approximately 160 structures which were uninhabitable and not capable of occupation, except for five structures which might be habitable, but had not yet been occupied. Some structures were also destroyed by the weather conditions and there were no ablution facilities, except for a sole latrine, which naturally, allows for severely unhygienic conditions susceptible to the creation of a serious environmental hazard.

[10] It has been established that the fourth respondent resides in Meqheleng, not the land in question. It is further averred in the confirmatory affidavit of Mr Radiopane⁵ who regularly travels on the road next to the land that at night only two to four fires were noticed on the land in question. This supports the view that the land is not occupied by the number of people as alleged by the respondents.

[11] Subsequent to the site visit were various derogatory comments posted on a Facebook page of the second respondent marked 'FNM7'⁶ and a radio interview conducted and transcribed record marked 'FNM9'⁷ which shows the purpose of unlawfully occupying the property has a political agenda in that the community is encouraged to occupy the property in question and not fear that they will be evicted since nothing will happen to them.

[12] The applicant, in conclusion, averred that they will only be able to supply alternative accommodation to the three individuals who form part of the second respondent, has applied for houses and are on their waiting list and not to the remainder of the unlawful occupiers who have failed to comply with the established modes of recourse, namely to apply for houses with the Housing Development Agency

² Page 423 of indexed bundle C.

³ Page 434-447 of indexed bundle C.

⁴ Pages 469-569 of indexed bundle C.

⁵ Page 454 of indexed bundle C.

⁶ Pages 570-573 of indexed bundle C.

⁷ Pages 577-580 of indexed bundle C.

[13] Lastly, the applicant did not oppose the respondents' condonation application for the late filing of their answering affidavit and simply wanted adjudication in respect of Part B of the application to be dealt with.

Respondents' Case in Respect of the Eviction Application

[14] The deponent of the answering affidavit has been authorized by a resolution taken at the meeting held on 6 March 2024 of the Boiketlong Forum Ficksburg and is also the treasurer of the latter forum.

[15] The respondents raised certain points *in limine*, in that:

- i) the applicant has failed to comply with the s 4(2) notice by not notifying any or all of the respondents about the relief claimed; failed to announce the terms of the order granted under Part A, and the terms of the notice under Part B by loudhailer in English and Sesotho, and failed to affix a copy of the notice of motion and order on four prominent places on the land
- ii) the applicant has failed to embark on a process of meaningful engagement and/or mediation with the respondents before resorting to eviction proceedings

[16] The respondents averred the land they occupied was vacant even though leased to the fifth respondent and was not in use by the applicant or the fifth respondent. They are from impoverished backgrounds and lived in overcrowded and unsuitable conditions with their relatives for many years. They decided to leave and occupy the land in question as they were in desperate need of the shelter to live with their families. They have occupied the vacant land in order to realize their right to adequate housing as enshrined in s 26 of the Constitution of the Republic. They are willing to be relocated to any alternative accommodation until they have applied and are provided with housing in terms of the Housing Development and Allocation Programme.

[17] When they started to occupy the land in question in April 2023, there were approximately 10 structures erected which increased to more than 240 at the time when eviction proceedings were instituted in September 2023. These structures are occupied by elderly people, minor children and single women headed households of which the latter are in the majority.

[18] The respondent further avers that the applicant will have to put certain measures in place to ensure they are supplied with water and other related services. They collect water from a nearby well and have no proper toilets.

Respondents' Condonation Application to Rescind the Cost Order and to Strike Out Certain Affidavits

[19] The respondents brought a condonation application for the late filing of the rescission of a cost order granted on 25 January 2024; an application in terms of rule 6(15) or common law to strike out the applicants' founding affidavit to file a further affidavit with its annexures; to strike out the applicant's replacing replying affidavit with annexures; to strike out the applicant's further affidavit, to strike out the photos filed and to strike out the service affidavit filed. They based their application for rescission of the cost order granted on 25th January 2024 in terms of rule 42(1)(a) of the Uniform Rules or, alternatively, in terms of common law, on an *iustus error*. They averred that the order was erroneously granted in the absence of the first to third respondents.

[20] The fourth respondent, in his founding affidavit, is authorized by a resolution taken on 30 June 2024 marked 'ML1' and confirmed that he was present at court on 25 January 2024, accompanied by one Messrs. Taylor and Tshabalala and requested for a postponement on said day.

[21] It is averred by the respondents that when their legal representative withdrew as attorney of record, they were no longer legally represented and as a result became absent at court when the costs order was erroneously sought by the applicant and granted by the court against them severally and jointly.

[22] The reasons for the averment are the following :

- (i) the presiding judge was not aware that the s 4(2) notice were not complied with and not served on the respondents;
- (ii) the presiding judge has committed a serious procedural error or irregularity by denying them their section 34 constitutional right which is access to court and a right to a fair public hearing by not having the proceedings interpreted in the official language of choice which is Sesotho and failed to give them who were present, an opportunity and a fair chance of hearing and procedure to address her on the cost order and should have

issued a *rule nisi* which should have been served on all respondents;

- (iii) by failing to conduct an enquiry and explaining the effect of the cost order to them;
- (iv) by deciding who to interact with as the spokesperson on behalf of the respondents without having a mandate to speak on behalf of the respondents, neither Messrs. Tshabalala nor Taylor had such authority.

[23] They further averred that they informed their erstwhile attorney on 23 January 2024 that they were unable to place them in funds to proceed with the matter. It resulted in an engagement with the applicant's counsel to agree about a postponement and a draft order was sent on 24 January 2024 to their legal representative marked 'ML3'.⁸

[24] The respondents did not agree with the draft order and believed that their attorney would have reverted back to them regarding the aspect of costs. They were henceforth informed by applicant's attorney that they do not agree to a postponement of the matter on 25 January 2024. The respondents subsequently, due to their inability to properly instruct their erstwhile attorney due to funds, notified their attorney to withdraw on 25 January 2024 and requested their members to be present on said day in order to request a postponement themselves. The transcribed record marked 'ML8' reflects that the respondent's counsel was present and requested to withdraw as attorney of record and informed the presiding judge that the first to fourth respondents were present in court⁹ and same was confirmed by various people present on behalf of the respondents. The fourth respondent confirmed that a total of eleven individuals were present.

[25] The respondents in conclusion averred that they were not given an opportunity to address the court on the cost order, to express themselves in the language of choice and the applicant would not be prejudiced if the cost order stood over for later adjudication.

[26] The applicant's application to strike out various affidavits are based on the following averments:

- (i) the founding affidavit in the interlocutory application to file further affidavit has not been properly attested, doesn't satisfy the requirements as set out in the Regulations governing the Administration of an oath and affirmation and is irrelevant
- (ii) the confirmatory affidavit again doesn't comply with the requirements as set

⁸ Page 648 of indexed bundle D.

⁹ Page 659 of indexed bundle D, line 19 of transcribed record.

out the Regulations governing the Administration of an oath and affirmation and is irrelevant

(iii) the 'new/replacing/replying affidavit' is defective and ought not to be admitted since the rules doesn't make provision for the replacement of an affidavit, the replacing affidavit supplements the applicant's weak case, is irrelevant and prejudices the respondents in the defence of their case

(iv) the 'further affidavit' which deals with the current status of the land invasion, address the issue of alternative accommodation and the service affidavit is defective and irrelevant

(v) the respondent in conclusion averred that the interlocutory application to file a further affidavit' should be dismissed on the grounds raised *supra*

ISSUES

[27] The first to fourth respondents brought the following interlocutory applications:

- (i) a condonation application in respect of the rescission of the cost order granted on 25th January 2024;
- (ii) an application to strike out various affidavits;
- (iii) the dismissal of the applicant's interlocutory application to file a further affidavit.

[28] The applicant requested that the eviction order be granted and the first to fourth respondents be evicted from the property in question

Law

[29] Uniform Rule 27(3) stipulates that 'a court may, on good cause shown, **condone** any non-compliance with these rules'. It was held in *TLE (Pty) Ltd v The Master of the High Court and Others*¹⁰ that good cause requires that the application be bona fide and in *Express Model Trading 289 CC v Dolphin Ridge Body Corporate*¹¹ the Court held that

¹⁰ *TLE (Pty) Ltd v The Master of the High Court and Others* [2011] ZAGPJHC 238; 2012 (2) SA 502 (GSJ) para 12.

¹¹ *Express Model Trading 289 CC v Dolphin Ridge Body Corporate* [2014] ZASCA 17; [2014] 2 All SA 513 (SCA).

sufficient cause includes the applicant's prospects of success. Furthermore, the Court held in *Van Heerden and Another v Master of the Eastern Cape High Court, Port Elizabeth and Others*¹² that condonation will be granted if it is in the interests of justice to do so.

[30] Both rule 31(2) and rule 42(1)(a) of the Uniform Rules cover the application to **rescind** a judgement but different requirements are applicable and one similarity is that the judgement must have been granted in the absence of any party affected. The former rule pertains to supplying a reasonable explanation for the delay and showing that the application is bona fide without the intention to delay the claim, whereas the latter rule caters for the correction of a mistake. In this regard, the court retains a discretion to grant such an order and such order must be exercised judicially.

[31] A court is, in terms of common law, entitled to rescind a judgment obtained in default of appearance, provided sufficient cause is shown. Sufficient cause includes a reasonable and acceptable explanation for the default. In exceptional cases a judgement may be rescinded if it was obtained as a result of *iustus error*. In addition, Rule 6(15) of the Uniform Rules stipulates the circumstances under which a court may **strike out** from an affidavit any matter which is scandalous, vexatious or irrelevant. Such an application may not be granted unless the court is satisfied that the applicant will be prejudiced if the application is not granted.

[32] Section 26 of the Constitution provides that everyone has the right to have access to adequate housing and that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. PIE gives legislative effect to the aforementioned section by carefully addressing the issue of housing and the demarcation of powers to limit s 26. Pie holds in s 4 and s 6 that 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 the rights and needs of the elderly, children, disabled persons and households headed by women.

[33] Section 6(1) of PIE permits the granting of an eviction order (eviction) if (a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or (b) it is in the

¹² *Van Heerden and Another v Master of the Eastern Cape High Court, Port Elizabeth and Others* [2023] ZAECQGBHC 59; [2023] 4 All SA 875 (ECP) at [37].

public interest. Section 6(2) goes further and defines 'public interest' to include the interest of the health and safety of those occupying the land and the public in general, and s 6(3) highlights which factors the court must consider to determine what is just and equitable to grant an eviction order such as the circumstances under which the unlawful occupier occupied the land, the period the unlawful occupier resided on the land in question and the availability of suitable alternative accommodation.

Various Interlocutory Applications

[34] When considering a **condonation application**, I exercise my discretion in conjunction with the facts of the respondents' case. The respondents only became aware, in May 2024 after consultation with their legal representative, which is three months later, of the consequences of the costs order granted against them. Their attorney subsequently communicated with the applicant's attorney, requesting to agree to the rescission of the cost order which was unsuccessful. This resulted in further costs to the respondents to secure the transcribed record and on 20 June 2024, the respondents were ordered by Daffue J to file their interlocutory application on a due date which they did not comply with and only filed same a few days later.

[35] I am, therefore, of the view that the respondents' condonation application is not mala fide in view of the fact that they attempted to resolve the interlocutory application with the applicant prior to commencement of litigation. The respondents' delay is not extreme' it was only a few days late and were they able to adequately explain the reason for their delay. I find, in conclusion, that the granting of the condonation is in the interest of justice and therefore grant the condonation for the late filing of the rescission of the cost order.

[36] When considering the **rescission of the cost order**, I must exercise my discretion judicially and consider the facts of the respondents' case. It is not in dispute that on the day when the respondent's attorney withdrew and the respondents appeared in person requesting a postponement, a number of individuals were present in court. It is clear from the transcribed record that certain individuals present were identified as Messrs Taylor, Tshabalala and the fourth respondent, who interacted with the presiding judge. The third respondent was absent even though the attorney, prior to withdrawing, informed the presiding judge that the first to fourth respondents were present in court.

[37] Two of the three individuals requested to proceed in the language of their choice, which was Sesotho, and the presiding judge nevertheless proceeded in English without obtaining the service of an interpreter to translate what transpired in court. The applicant's counsel subsequently requested a cost order against the respondents and their response against such request were not obtained from them respectively. This resulted in a cost order for wasted costs against the first to fourth respondents jointly and severally occasioned by the postponement, the one paying the other to be absolved.

[38] A cost order was granted against the third respondent, despite her absence. In addition, none of the respondents were given an opportunity to respond to the request for a cost order by the applicant. The consequences of such an order was not explained to them and the proceedings were not interpreted in the language of their choice.

[39] In *Biowatch Trust v Registrar Genetic Resources and Others*,¹³ it was held that the general rule in constitutional litigation was that an unsuccessful litigant ought not to be ordered to pay costs to the state unless the application was frivolous or vexatious or in any other way manifestly inappropriate. I therefore set aside the cost order granted on 25 January 2024 against the first to the fourth respondents jointly and severally due to the following grounds: the granting of the cost order occurred in the absence of the third respondent who is affected by such order; the non-adherence to the *audi alteram partem* rule by not asking the respondents' response to the applicants request to the cost order; not proceeding in the respondents language of choice in order to understand the nature of the proceedings; and the interests of justice demand that the cost order be set aside.

[40] In considering another interlocutory application by the respondents to **strike out** the applicant's further affidavit, rule 6(15) specifies instances when a court may strike out an affidavit. I have, in particular, considered the contents of the further affidavit filed by the applicant which in this instance, answered the questions raised by the respondents, as well as by the various presiding judges, concerning the status of the land occupied by the respondents, the issue of alternative accommodation and whether service was executed effectively.

[41] As a result, I cannot find that the further affidavits filed by the applicant are

¹³ *Biowatch Trust v Registrar Genetic Resources and Others* [2009] ZACC 14; 2009 (10) BCLR 1014 (CC) para 46.

scandalous, vexatious or irrelevant because they, ultimately, assisted me to come to a well-informed conclusion in the main action and, therefore, to dismiss the respondents' application for the applicant to file further affidavits and to strike out the further affidavits.

THE EVICTION APPLICATION

[42] It is common cause that the respondents have erected and inhabited structures on the property in question without the authorisation of the applicant. The number of structures increased from 10 in April 2023 to more than 200 in September 2023. It can therefore be deduced from the facts that the occupiers on the property in question falls under the definition of unlawful occupiers as defined in section 1 of the PIE Act. Furthermore, it is not disputed by the respondents that they have not applied for housing with the Housing Development Agency and no reasons have been advanced why they should be given preference above the qualifying applicants who applied for houses with the Department of Housing Agency.

[43] There cannot be any doubt that the occupiers of the property in question were not aware of the eviction application or subsequent proceedings due to the following reasons:

'[69.1] the returns of service¹⁴ in respect of the hearing of 6 October 2023 were 36 in total and served on a few people other than affixing on door due to unavailability;

[69.2] the returns of service¹⁵ in respect of hearing of 30th November 2023 occurred on 10th October 2023 amounting to 13 filed and served on various individuals

[69.3] the return of service in respect of 25 April 2024¹⁶ served on 10 October 2023 indicating that most of the structures were found unoccupied, word spread about the sheriff trying to serve a document which resulted in people arriving and the nature of the document explained to everyone in Sotho and English by the sheriff

[69.4] various members were present at the court hearing on 25th January 2024 and confirmed by Mr Lephot¹⁷ in his founding affidavit for the rescission application who was also authorized by the second respondent to depose to such affidavit

[69.5] an answering affidavit was deposed to by Mr Tshabalala¹⁸ dated 20th March 2024 who was

¹⁴ Pages 155-191 of Indexed Bundle A.

¹⁵ Page 339-351 of indexed Bundle B.

¹⁶ Page 323 of Indexed bundle B.

¹⁷ Pages 585-643 of Indexed Bundle D.

¹⁸ Page 239 – 263 of Indexed Bundle B.

authorised by the members of the second respondent¹⁹ and was formed by the members who were part of the first respondent.

[69.6] The eviction application did not proceed in the absence of the first to fourth respondents, they were at all times present including the day of the 25th January 2024 and represented by a legal representative on subsequent court appearance and the day of the actual hearing.'

Therefore, the argument raised as a point *in limine* that the s 4(2) notice was not effected properly cannot stand and is dismissed.

[44] The second point *in limine* raised by the respondents, namely that there was no meaningful engagement between the applicant and the first to fourth respondent, does not have any merit either. Except for the fact that the applicant via the legal representative has attempted to engage with the respondents, albeit unsuccessfully, at the court appearance of 25 January 2024 and two attendance lists²⁰ attached to the affidavit clearly show that the applicant has attempted, on several occasions, to engage with the community and there was no engagement forthcoming from the respondents. In the result, this point *in limine* is dismissed as well.

[45] I will deal henceforth with the last part of my ruling which is to determine whether its 'just and equitable' and in the interest of justice to grant the eviction order whilst considering all the relevant circumstances. Sachs J remarked in *Port Elizabeth Municipality v Various Occupiers*²¹ that when considering whether it is 'just and equitable' to make an eviction order in terms of s 6 of the Act, the responsibilities that municipalities, unlike owners, bear in terms of s 26 of the Constitution are relevant. As *Government of the Republic of South Africa v Grootboom*²² indicates, municipalities have a major function to perform with regard to the fulfilment of the rights of all to have access to adequate housing. Municipalities, therefore, have a duty to systematically improve access to housing for all within their area. They must attend to their duties with insight and a sense of humanity and this duty extends beyond the development of housing schemes, to treating those within their jurisdiction with respect. Where the need to evict people arises, some attempts to resolve the problem before seeking a court order will ordinarily be required.

¹⁹ Boiketlong Forum, Ficksburg.

²⁰ Pages 122-123 of Indexed bundle A.

²¹ *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC).

²² *Government of the Republic of South Africa and Others v Grootboom and Others* [2000] ZACC 19; 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC).

[46] In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*,²³ Yacoob J held that the conditions of life in the Joe Slovo settlement were unhygienic. There was no water-borne sewerage, the area was unsafe, the applicants lived in deplorable circumstances unfit for reasonable human habitation, the unlawful occupiers occupied the property due to dire need, had nowhere to go and resided in the area for a period of 15 years. The court held that moving the occupiers was inevitable but necessary, given the circumstances, and ordered the vacation of land within certain time frames.

[47] Presently, the first to the fourth respondents have occupied the property in question at the time when litigation commenced for a period less than six months. This area is beneficial for agricultural purposes, not for human habitation. The erection of structures has increased gradually starting from one in April 2023 to approximately fifty in July 2023 and two hundred in September 2023 when litigation commenced. The report compiled in July 2023 by the Department of Human Settlements indicates that there were 40 unoccupied and incomplete structures on the property in question and the site inspection conducted in April 2024 highlights that five structures are habitable, but not occupied.

[48] The area where structures have been erected is the subject of a lease agreement, is not conducive for habitation due to the various reasons mentioned in the report of the Department of Human Settlement and is not capable for housing development either. However, the applicant has identified an area for township development which will yield approximately 3000 residential erven to the housing needs in Megheleng and commenced with the project by advertising for service providers in April 2023 already.

[49] The respondents were not homeless or in dire need of accommodation but chose to move from their place of abode that they shared with their families due to overcrowdedness. The respondents moved to an area where there was no water or sewerage facilities, but conveniently expects the applicant to supply them with such services. It, therefore, cannot be said that the respondents are destitute because they chose to pay for a legal representative to assist them whereas the option of applying to Legal Aid South Africa to assist them was refused.

²³ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC).

[50] The right to housing in terms of section 26 of the Constitution is validated further to include the right to adequate housing which cannot be construed to live in conditions as depicted in the photos, structures that cannot endure severe weather conditions, such as wind or provide shelter when it rains and does not have any access to water and sanitation. In addition, it cannot be in the interest of the health and safety of the occupiers as defined in s 6(2) of the PIE Act, to reside in an area where there is no water and no sanitation.

[51] Apart from three individuals, none of the other respondents applied for housing with the Housing Development Agency. This clearly indicates that they do not want to abide by processes implemented by the applicant that regulates fair allocation of houses. They do not want to cooperate in order to secure a house for themselves, but nonetheless expects the applicant to supply them with alternative accommodation once evicted.

[52] The respondents' various interlocutory applications, their failure to adhere to time frames for [PC2] filing of their papers, the slandering of the applicant on social media and the radio interview demonstrates the respondents' unwillingness to work with the applicant to resolve the issue amicably. They implemented various delaying tactics at the expense of the various occupiers, whereas a middle ground could have been reached between themselves and the applicant.

[53] It must be borne in mind that, ultimately, the respondents invaded a piece land which they had no permission to occupy. They resided in an area which is not conducive for habitation, wanted the applicant to supply them with services but did not want to apply for housing or wait for applicant to supply them with erven/houses. They grab land in an attempt to jump the proverbial queue of the allocation of houses.

[54] After consideration of all the circumstances, I find it is just, equitable and in the interest of justice to grant the eviction order.

[55] I accordingly make the following order:

1 Any person forming part of the first and second respondents including the third and fourth respondent who might have taken occupation of any home, dwelling and abode and/or structure on the property commonly known as the Peach Farm and Imperani Mountain, Ficksburg, Free State Province, also known as the Remaining Extent of the Farm Ficksburg Dorp Gronden, Farm Nr 75, held by Title Deed T41140/1891, are

ordered:

1.1 to demolish and remove any structures it may have erected on the land by Thursday 5th December 2024

1.2 to vacate the land by Thursday 5th December 2024

2 Should any such person who might have taken occupation of any such home, dwelling, abode and/or structure on the land not vacate together with all his/her belongings, demolish and remove such structure, the Sheriff for the district of Ficksburg, assisted by the South African Police Services, is authorized and ordered to forthwith evict such respondents from such structure and to demolish and remove same from the land on any subsequent date.

3 The Applicant is ordered to provide the 3 individuals who forms part of the first and second respondent and who has applied for housing with the Housing Development Agency, with alternative accommodation until the applicant is able to supply the 3 individuals with erven.

4 No cost order made.


CS PARKS AJ

Appearances

For the Applicant:

Adv Grobler & Adv Le Roux

Instructed by:

Ponoane Attorneys
BLOEMFONTEIN

For the First to Fourth Respondents:

Adv Merabe

Instructed by:

Salakuva Attorneys
BLOEMFONTEIN