



**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 17673/2024

In the matter between:

**BAYER TRUST
(REGISTRATION NUMBER: IT 1474/94)**

Applicant

And

CHARLENE JUANITA BAYER

First Respondent

ALL OTHER OCCUPANTS OF THE PROPERTY

Second Respondent

CITY OF CAPE TOWN MUNICIPALITY

Third Respondent

Heard: 21 November 2024

Delivered: Electronically on 02 December 2024

JUDGMENT

LEKHULENI J

INTRODUCTION

[1] This is an application for the eviction of the first and second respondents from a certain farm known to the parties as Kleinbegin, Stellenbosch farm 419, Zevenwacht Link Road, Kuilsriver, in terms of section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (*the PIE Act*). The applicant (*the trust*) is the registered owner of the farm. The first respondent averred that she is not an unlawful occupier of the farm as envisaged in section 1 of the PIE Act. The central question in this application is whether an eviction order should be granted against the first respondent, who has occupied the farm since 1998.

BACKGROUND FACTS

[2] The first respondent took occupation of the property whilst married to Warwick Bayer, a trustee of the Bayer Trust (the applicant). The first respondent has been in occupation of the property for 26 years. Mr Warwick Bayer and the first respondent divorced in March 2020. Since that time, the first respondent has not made any rental payments for the property. The applicant asserted that on 31 May 2024, a written notice to vacate was sent to the first respondent via email, giving her until 31 July 2024 to vacate the farm. The applicant contended that the first respondent has neglected or refused to vacate the property as requested. As a result, the first respondent continues to occupy the property unlawfully, in violation of section 1 of the PIE Act.

[3] The applicant stated that it made several offers to the first respondent to either provide her with alternative accommodation or assist her in finding a different place to stay. This was done to resolve the matter and encourage the first respondent to vacate the property voluntarily. To date, the first respondent has failed and/or refused to accept the offer of alternative accommodation from the applicant. The applicant stated that the first respondent has an interest in the business operating from the farm, Shadowlands Wholesale Nursery. She is a shareholder and earns an income from this company.

[4] The applicant submitted that similar accommodation is available for rent in the greater Kuilsriver area. According to the applicant, the eviction of the first and the second respondents will not render them homeless as they cannot be considered extremely poor, and they do not fall into a specific vulnerable group due to poverty and being disadvantaged, as the first respondent indicated he is earning a regular income. The applicant contended that the first respondent is in no way destitute considering the assets transferred to her in terms of the Consent Paper incorporated in the final divorce order when her divorce with Mr Warwick Bayer was finalised.

[5] The applicant explained that the circumstances of this case do not trigger the third respondent's (the municipality) constitutional obligation to provide housing or emergency accommodation to the first respondent because she is able to make alternative arrangements as she has an income.

[6] The applicant further asserted that the PIE Act and section 26 of the Constitution do not provide an absolute entitlement to the first and second respondents to be provided with accommodation. From the applicant's point of view, the applicant bears no constitutional obligation to provide alternative housing to the first and second respondents and is entitled to use the farm for its own needs and purpose. Considering the facts of this matter, the applicant stated that its rights under section 25 of the Constitution are stronger than those of the first and second respondents under section 26 of the Constitution. The applicant contended that it has invested in this property and intends to generate income from it.

[7] The first respondent opposed the applicant's application and raised three preliminary points: *first*, the improper citation of the applicant; *second*, the failure to join the applicant's children; and *third*, the issue of *lis pendens*. Apropos the first preliminary point, the applicant asserted that a trust is not a legal person and cannot litigate in its name. The correct parties to any litigation involving a trust are the trustees in their official capacity. The first respondent stated that the failure to cite the trustees of the Bayer Trust in their representative capacities renders these proceedings null and void, as a non-existent party could not institute legal proceedings.

[8] Concerning the second preliminary point, the first respondent asserted that the applicant has failed to join essential parties to these proceedings, specifically her two adult children. According to the first respondent, the joinder of the two children is not merely a matter of convenience but one of necessity. The first respondent explained that the two children have resided on this property their entire lives and have established their own rights of occupation. They are both young adults pursuing tertiary education, one in her final year of law studies at Stellenbosch University and the other in her first year of a BCom Accounting degree. The first respondent stated that any eviction order would directly and substantially affect their rights and interests.

[9] The first respondent averred that the *audi alteram partem* rule requires that all parties whose rights may be affected by a court order should be afforded an opportunity to be heard. By failing to join her two children, the applicant has deprived them of this fundamental right. Moreover, the applicant contended that an order made in their absence would be incompetent and unenforceable against them. According to the first respondent, the failure to join necessary parties is not a mere technical oversight but a fundamental flaw in the application. It underscores the applicant's disregard for the full scope of rights and interests vested in this property and demonstrates a lack of good faith in bringing this application.

[10] Regarding the third preliminary point, the first respondent mentioned that there is currently a pending case (Case number 21620/2014) before this court to determine the rights of the parties concerning the trust and its assets, including the property, which is the subject of this eviction application. The applicant asserted that the ownership of the impugned property owned by the applicant is disputed. This is one of the issues to be considered in the pending action under case 21620/2014. The said action has not yet been finalised, and its outcome will directly affect the rights of the parties in relation to the property. The first respondent contended that it would be premature and potentially prejudicial to her to proceed with this eviction application before the resolution of the pending action. The first respondent submitted that it would be just and equitable for this court to hold the present application over until such time as the pending action can be finally determined.

[11] Concerning the merits, the first respondent asserted that the Bayer Trust was registered on 20 May 1994. Mr Warwick Bayer and the first respondent married in 1998, four years after the trust was registered. At the time of their marriage, she and Mr Warwick Bayer were already collaborating on a nursery business together through a close corporation known as Polkadraai Nursery CC t/a Shadowlands. The first respondent was not part of the original trustees. However, she was added as a trustee on 30 September 2003. The first respondent stated that the trust did not acquire the farm, including the dwelling from which the applicant seeks to evict her, until after this was purchased with money provided by Shadowlands, which was able to procure a mortgage loan.

[12] At the time the first respondent was added as a trustee, Warwick Bayer (her ex-husband) and the first respondent entered into an oral agreement that the property (the farm) would be purchased through the trust specifically for their family to live there indefinitely and for them to conduct the business of Shadowlands Wholesale Nursery on the property. According to the first respondent, this agreement has never been cancelled or terminated. Notwithstanding the creation of the trust, the parties' true intention was always for the first respondent to have a lifelong right of occupation of the property. This agreement was not merely verbal but was evidenced by the parties' subsequent actions and the understanding of all the parties involved. The first respondent has resided on and contributed to the property for over two decades based on this agreement. The first respondent asserted that through its actions, the trust has consistently recognised this arrangement until the recent attempt to evict her from the premises.

[13] The first respondent emphasised that Shadowlands, the business entity through which Mr Warwick Bayer and the first respondent operated, was the source of funds for acquiring the farm. The trust did not have independent means to purchase the property. This arrangement further demonstrates that the trust was merely a vehicle for their joint business interests and was not intended to deprive her of her rights to the property. All the transactions through which the trust acquired assets were simulated, as those assets are, in fact, the assets of Warwick Bayer. At all relevant times, Warwick Bayer dealt with the assets of the trust as if they were his

own. The first respondent asserted that the trustee did not comply with the provisions of the Trust Property Control Act 57 of 1988, and the trust was not treated as a separate legal entity but as Mr Warwick Bayers' alter ego.

[14] The first respondent denied that she was an unlawful occupier of the property, as alleged by the applicant in the founding affidavit. In addition, the first respondent averred that she has the right to occupy the property indefinitely based on the agreement made when she was added as a trustee and the property was purchased. The first respondent mentioned that she has been living at the property since 1998, which is 26 years to date. Their children have been living on the property since birth.

[15] Pursuant to this long-term residence, coupled with the alleged extant agreement granting the first respondent the right to live in the property indefinitely, the first respondent asserts that she has established rights that are protected under the PIE Act and potentially under the Extension of Security of Tenure Act 62 of 1997. The first respondent does not dispute the allegation that no payments have been made since her divorce from Mr Warwick Bayer in 2020. However, her residence on the property is in terms of the right of *habitatio*, which was conferred upon her when the farm was acquired.

PRINCIPAL SUBMISSIONS BY THE PARTIES

[16] At the hearing of this application, Mr Smit, the applicant's Counsel, submitted that the trust is the registered owner of the impugned property. Counsel stated that the first respondent occupied the property whilst married to Warwick Bayer, an erstwhile trustee of the trust. The marriage was dissolved by divorce in March 2020, and since the divorce, the first respondent has not paid any rental in lieu of occupying the property. Mr Smit submitted that any rights the first respondent may have had were terminated through a notice to vacate sent to the first respondent on 31 May 2024. In the premises, Counsel argued that the first respondent, having no right to occupy the property, is in unlawful occupation of the farm. The trust is entitled to have the first and second respondent evicted.

[17] Concerning the incorrect citation of the applicant, Mr Smit submitted that the applicant is cited as a trust. However, the deponent to the founding affidavit annexed a copy of the Letters of Authority, which reflects the identities, including the identity numbers of all trustees authorised to act as such on behalf of the trust. As a result, Counsel submitted that the identity of all the parties can be ascertained by having regard to the Letters of Authority. On the question of non-joinder, Counsel submitted that the two children never had any rights to occupy the property and only occupied same through and under Mr Warwick and the first respondent.

[18] Regarding the *lis pendens* defence, Mr Smit submitted that this matter is not the same as case number 21620/2014 and does not involve the same dispute as the present matter. Counsel implored the court to dismiss the points *in limine* and to grant the eviction order against the respondents.

[19] On the other hand, Mr Van Zyl, the first respondent's legal representative, argued that the applicant's application faces significant procedural hurdles. Mr Van Zyl argued that the trust lacks standing to bring these proceedings. It was Mr Van Zyl's submission that a trust lacks legal personality and cannot litigate in its name. The trustees must be cited in their representative capacity, and this failure renders the proceedings void *ad initio*.

[20] Mr Van Zyl also argued that there is a pending matter between the parties in which the first respondent questions the ownership of the property occupied by the first respondent. According to Mr Van Zyl, the issues raised in that case are intertwined with the current matter. An eviction order will be detrimental to the first respondent in that if same is granted and the first respondent succeeds in the pending action, the eviction order would prejudice the first respondent. Mr Van Zyl requested the court to dismiss the application, or alternatively, to postpone it and direct that it be heard together with the pending matter.

ISSUES TO BE DECIDED

[21] From the discussion above, this application raises three critical questions for consideration, namely:

21.1 Does the applicant lacks standing to bring this application?

21.2 Does the applicant's failure to join the first respondent's children render the applicant's application null and void?

21.3 Should this application be dismissed or postponed pending the action proceedings under case number 21620/2014, which will determine the true ownership of the farm occupied by the first respondent?

APPLICABLE LEGAL PRINCIPLES AND DISCUSSION

[22] For convenience, I will discuss the disputed issues mentioned above sequentially.

Does the applicant lacks standing to bring this application?

[23] The first respondent challenged the standing of the applicant because a trust lacks legal personality and cannot litigate in its own name. The first respondent contended that the trust's improper citation as the applicant rather than the trustees is fatal to the applicant's case. The first respondent contended that the trustees of the applicant should have been cited in their representative capacity. This omission, according to the first respondent, rendered the proceedings void ab initio.

[24] I must mention that the true legal nature of a trust has, for many years, been the terrain for some intense legal debate.¹ A trust does not have legal personality.² A trust is certainly not a legal person. A trust is a legal institution *sui generis*. Its assets and liabilities vest in the trustees.³ The trustees are the owners of the trust property for the purpose of administering the trust, but as trustees, they have no beneficial interest therein.⁴ Who the trustees are, their number, how they are appointed, and

¹ See *Honore's South African Law of Trusts* (2010) 5 ed at 67.

² *Braun v Blann and Botha* 1984 2 SA 850 (A).

³ *Cupido v Kings Lodge Hotel* 1999 (4) SA 257 (E) para 263E.

⁴ *Commissioner for Inland Revenue v MacNeillie's Estate* 1961 (3) SA 833 (A) at 840G-H.

under what circumstances they have the power to bind the trust estate are matters defined in the trust deed, which is the trust's constitutive charter.⁵

[25] I accept that it is important to cite the applicant in the manner proposed by the first respondent. Specifically, when initiating legal proceedings in the name of the trust, it is imperative to include all trustees of the trust in the citation. Furthermore, it is generally impermissible merely to cite the name of the trust.⁶ This is because the general rule is that trustees must act jointly, and unless provided for otherwise, a trust is not a legal person. The rights and obligations comprising the trust estate do not bestow legal personality on the trust. The same principle applies when suing a trust as a defendant.

[26] However, the present matter, in my view, stands on a different footing. It is common cause that the application was instituted in the name of the trust. Annexure B1 to the founding affidavit is the Letters of Authority issued by the Master in terms of section 6(1) of the Trust Property Control Act 57 of 1988 which sets out the names and particulars of the applicant's five trustees. Attached to it, is a resolution dated 1 July 2024 passed at the meeting of trustees for the time being of the Bayer Trust authorising Mr Michael Edward Bayer to institute proceedings on behalf of the trust for the eviction of the respondents.

[27] It is not in dispute that the names and identities of the trustees involved in this application are clearly discernible from the Letters of Authority attached to the founding affidavit of the applicant. The failure to cite the trustees, in my view, does not automatically mean that such a failure is fatal to the applicant's case. To assert otherwise would emphasise form at the expense of substance. The situation would have been markedly different had the Letters of Authority, containing the names of the trustees, not been included in the applicant's founding affidavit. To this end, I agree with the views expressed in *Villon Family Trust v Kirby*,⁷ in which a similar argument was raised and rejected by the court. The court found that to uphold the

⁵ *Land and Agriculture of South Africa v Parker and Others* 2005 (2) SA 77 (SCA).

⁶ *Gail Wingrove Rossiter NO v Nedbank limited* (Unreported Case Number 8244/2010) (14 February 2020) (KZN) at paras 4 and 5.

⁷ (9878/2011) [2012] ZAWCHC 45 (18 May 2012).

respondent's argument would be to adopt an overly technical approach in the circumstances of the matter.

[28] Significantly, in *Standard Bank of South Africa Ltd v Swanepoel NO*,⁸ the court dealt with a case where a trust was cited as a party to a loan agreement, instead of the individual trustees in their official capacities. After examining various authorities, the court held that if the identity of all the parties can be ascertained by having regard to a trust deed or extrinsic evidence, a suretyship (as in that case) must be read accordingly. The court went on to say that even in construing a will where an estate, or its residue, is left to a trust, or a bequest is made to a trust, regard may be had to the trust deed to ascertain the identities of the trustees.⁹

[29] In this case, the trust deed was not attached; however, from the extrinsic evidence provided, the names and identity of all the trustees can easily be ascertained by having regard to the Letters of Authority issued by the Master of the High Court attached to the applicant's application. There is also considerable evidence that Mr Michael Bayer was authorised to launch the application on behalf of the trust. Annexure B1 reflects that he is a trustee of the trust. Annexure B1 clearly states that he is authorised to launch the proceedings on behalf of the trust.

[30] In my opinion, it would be unconscionable to dismiss the applicant's application solely on the technicality that it should have been filed in the name of the trustees, particularly given that the application explicitly identifies the trustees involved. It would be putting form over substance to uphold the first respondent's technical argument, as the trustees of the trust have been correctly identified in the Letters of Authority, and the first respondent has not challenged their Letters of Authority.

[31] Furthermore, had the citation remained unnoticed, the effect of any judgment granted in the proceedings would be no different from what it would have been had the trustees been cited in their official capacities. From annexure B1 attached to the founding affidavit, the respondents and the court can easily discern what the

⁸ [2000] 3 SA 379 (T).

⁹ *Kohlberg v Burnette NO and Others* 1986 (3) SA 12 (A) at 25F - 26B.

identities of the trustees are. In the circumstances, I firmly believe that the applicant's application is properly before the court, and the respondent's first preliminary point must be rejected.

Does the applicant's failure to join the first respondent's children render the applicant's application null and void?

[32] The first respondent contended that her two major children, who are currently at university, should have been joined in these proceedings out of necessity, as they have resided on the property for their entire lives and have established their own rights of occupation. According to the first respondent, the non-joinder of the two children constitutes sufficient grounds for the dismissal of this application. The first respondent relies on the common law principle of the *audi alteram partem* rule, which requires that all parties whose rights may be affected by a court order should be afforded an opportunity to be heard. The first respondent contends that by failing to join her two major children, the applicant has deprived them of this fundamental right to be heard, and any order made in their absence will be incompetent and unenforceable against them.

[33] It is trite law that the test for joinder is whether a party has a direct and substantial interest in the subject matter of the action, that is, a legal interest in the subject matter of the litigation, which may be affected prejudicially by the judgment of the court.¹⁰ For certainty, the test for joinder was restated by Brand JA, as he then was, in *Bowring NO v Vrededorp Properties CC*,¹¹ as follows:

“The substantial test is whether the party that is alleged to be a necessary party for purposes of joinder has a legal interest in the subject-matter of the litigation, which may be affected prejudicially by the judgment of the Court in the proceedings concerned. . .”

¹⁰ *South African Archive Trust v South African Reserve Bank* 2020 (6) SA 127 (SCA) at 30; *Absa Bank Limited v Naude* N.O 20264/14 [2015] ZASCA 97 (1 June 2015).

¹¹ 2007 (5) SA 391 (SCA) at para 21.

[34] In this case, the first respondent contended that an order of eviction would directly and substantially affect the children's rights and interests. I do not agree with this proposition. While the first respondent asserts that the children have lived in this property since their birth, she has not alleged nor provided any proof that any of the children continue to occupy the property with her. The first respondent's children did not file any confirmatory affidavit to confirm the averments of the first respondent.

[35] Furthermore, the two children had no right to occupy the property and only occupied the same through and under the first respondent. If at all the children reside in the property, they do so through and under the first respondent and are therefore included in the citation of the second respondent. I agree with the views expressed by Mr Smit that it is conceivable that the first respondent would at least have informed them of this application. Notwithstanding, the two children elected not to file supporting answering affidavits or confirmatory affidavits nor did the first respondent cause any such affidavits to be filed by the two children.

[36] Significantly, on the respondent's version as reflected in her answering affidavit, she stated that she bears no knowledge of other occupants of the property. From this response, it is abundantly clear that the two children who are said to be at university are not occupying the property with the first respondent. In the circumstances, the first respondent has failed to establish that the two children have a legal interest in the subject matter of this application, which may be affected prejudicially by the judgment of this court, and therefore, this point *in limine* must fail.

Whether this application should be dismissed and or postponed pending the outcome of case number 21620/2014 (Lis pendens)

[37] This preliminary point is inextricably intertwined with the merits of the application, and for convenience, I will deal with them jointly. The first respondent argued that there is a pending matter between them in this court under case 21620/2014, which involved ownership of the property from which the applicant seeks to evict her. The first respondent stated that in that case she challenged the trust's ownership of the property.

[38] The first respondent acknowledged her occupation of the property during her marriage to Mr Warwick Bayer. However, she contested the assertion that Mr Warwick Bayer's position as a trustee of the trust was the basis for her occupation of the property. The first respondent contended that the property was acquired with funds from their shared business, Shadowlands, and was intended for their residency and business operations, in accordance with their mutual agreement.

[39] As previously stated, the first respondent's preliminary point on *lis pendens* is predicated on the grounds that the ownership of the farm and other assets held by the applicant are issues that are pending before this court under case number 21620/2014. At the hearing of this matter, this court was informed that the matter under case number 21620/2014 has been declared trial-ready and that a trial date is to be allocated soon. Mr Van Zyl submitted that this matter should be dismissed alternatively, be postponed and that the eviction application should be heard together with case 21620/2014. I agree with Mr Van Zyl's argument that this matter should be postponed and be dealt with together with case number 21620/2014 for the following reasons:

[40] The first respondent questioned the trust's ownership of the property. The first respondent averred that the trust operated as Mr Warwick Bayer's *alter ego*. Mr Bayer was her husband until they divorced in March 2020. In eviction applications, previous relationships between parties remain relevant.¹² In this case, the first respondent and Mr Warwick Bayer bought the property through the business entity Shadowlands, while the first respondent was married to Mr Warwick Bayer. The first respondent's contribution to Shadowlands enabled the first respondent to acquire equitable interest in the property, which cannot be easily overlooked or discounted. The first respondent has been in occupation of the property for 26 years now. During this period, the property served a dual purpose: as a matrimonial residence and as a base for their commercial venture conducted through Shadowlands.

[41] The first respondent explained that the acquisition of the property was funded entirely through Shadowlands, a Close Corporation, in which both spouses (first

¹² *Baron v Claytile* 2017 (5) SA 329 (CC).

respondent and Mr Warwick Bayer) held equal membership interests. The first respondent asserted that while the legal title vested in the trust, the trust made no financial contribution towards the purchase of the property. At the time of her appointment as a trustee, she and Mr Warwick Bayer entered into an oral agreement stipulating that the property would be acquired through the trust for the explicit purpose of providing a permanent residence for their family. Furthermore, this property was to serve as the operational site for Shadowlands Wholesale Nursery. Notwithstanding the creation of the trust, the true intention was always for her to have a lifelong right of occupation of the property.

[42] To this end, the first respondent contended that she acquired a right of *habitatio*, which is a personal right and not a real burden on the land.¹³ The said agreement has never been cancelled or terminated.

[43] I am mindful that the applicant disputes the first respondent's version on the purchase of the property, however, it cannot be said that the first respondent's allegations do not raise a real, genuine or bona fide dispute of fact. It cannot be said that the respondent's allegations are so far-fetched or untenable that the court can easily reject them outright.¹⁴

[44] The first respondent's version is supported by the fact that she has occupied the property for 26 years. She also owns shares in a business that operates on the farm. The applicant failed to provide a plausible explanation for why the first respondent has been able to remain on the property for such a long time without facing any threat of eviction proceedings. What militates in favour of the first respondent are the provisions of section 7(4) of the PIE Act. For brevity, section 4(7) of PIE provides:

“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

¹³ *Felix v Notier* 1994 (4) SA 498 (SE).

¹⁴ *Plascon-Evans Paints Ltd v Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C.

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.”

[45] This section requires a court to consider the rights and needs of the elderly, children, disabled persons, and households headed by women. Section 4(7) also requires that before an eviction order is granted, the court must be satisfied that such an order will be just and equitable to the applicant and the unlawful occupier. Evidently, in terms of section 4(7) of the PIE Act, the first respondent’s long-term occupation of the property requires heightened protection. In the circumstances of this case, I am of the view that it will not be just and equitable to grant an eviction order against the first respondent.

[46] As correctly pointed out by Mr Van Zyl in the written submissions, like roots that have grown deep and intertwined with the soil, the first respondent’s rights to this property have become inextricably bound through time, contribution, and constitutional protection. This exemplifies why section 26(3) of the Constitution, and the PIE Act exist to prevent arbitrary eviction that will do violence to established rights and relationships. This court is obliged to protect established rights of long-term occupiers like the first respondent.

[47] Considering the Constitutional Court decision in *Port Elizabeth Municipality v Various Occupiers*,¹⁵ this court is enjoined by the Constitution to consider all relevant circumstances before ordering eviction. The Constitution and PIE Act require that, in addition to considering the lawfulness of the occupation, the court must have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values to produce a just and equitable result.¹⁶ The circumstances pertinent to this matter significantly favour the first respondent. She has occupied the property for a duration of 26 years without

¹⁵ 2005 (1) SA 217 (CC).

¹⁶ *Occupiers of erven 87 & 88 Berea Christian Frederick De Wet N.O* 2017 (5) SA 346 (CC) at para 42.

encountering any threats of eviction from the applicant, even after her divorce from Mr Bayer in March 2020. She had business operations intertwined with the property.

[48] Furthermore, the first respondent's rights stem from both contribution and the alleged habitation agreement. She disputes the trust's ownership of the property. If an eviction order is granted in this matter and the first respondent succeeds in her challenge of the trust's ownership of the property at the hearing in due course, this order would be prejudicial to the first respondent. I am of the firm view that the interest of justice demands that the issue of ownership of the property be dealt with first before the eviction application is finalised. In the circumstances, it cannot be said that the first respondent is an unlawful occupier, as envisaged in the PIE Act.

[49] Whilst the issues relating to ownership of the property are pending, it is my considered view that it will not be just and equitable for the respondent to be evicted from the farm. In my opinion, the eviction application must be held over pending the finalisation of case number 21620/2014.

ORDER

[50] Given all these considerations, the applicant's application is postponed *sine die* pending the finalisation of case 21620/2014.

50.1 It is ordered that the first respondent will remain in occupation of the impugned property pending the outcome of case number 21620/2014.

50.2 Costs will stand over pending the outcome of case number 21620/2014.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Mr Smit

Instructed by: Rackley Attorneys Inc

For the Respondent: Mr Van Zyl

Instructed by: KJ Bredenkamp Attorneys