

Date of judgment: Judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date for hand down is deemed to be 13 December 2024

JUDGEMENT

A. PARTIES AND RELIEF APPLIED FOR

- [1] The plaintiff, City Mission trading as City Mission, Cape Town is a non-governmental organisation and a registered non-profit organisation previously known as Mission Homes for Children.
- [2] The first defendant is City Mission Educational Services trading as “CMES” a non-government and non-profit organisation that conducts business as an independent school at Erf 1[...], situated at 6[...] T[...] Road, Bridgetown, Cape Town, Western Cape.
- [3] The second defendant, the MEC for education, was joined to the proceedings due to the nature of the relief sought against the first defendant as an independent school. The Centre for Child Law, an *amicus curiae*, was similarly admitted to assist the Court in the constitutionally mandated task of safeguarding the interest of the children who attend the school operated by the first defendant. The third defendant is the Governing Body of first defendant.
- [4] The plaintiff seeks the eviction of the first defendant from the property situated at 6[...] T[...] Road, Bridgetown, Cape Town, Western Cape (“**the property**”), together with further ancillary relief concerning arrear rentals and damages resulting from the first defendant allegedly remaining in unlawful occupation of the property.

- [5] The plaintiff is represented by Adv Coston and the second defendant by Adv Mayosi. The first defendant is represented by Mr Andrew van Reenen a board member of the first defendant. The relief claimed by the plaintiff against the first defendant could have serious implications for the first defendant as an independent school. It is self evident that an independent school serves not only the best interests of the children who attend it, but also the interests of the community.
- [6] The record indicates that the Court has advised the first defendant and Mr van Reenen on various occasions to consider obtaining legal representation. At the commencement of the proceedings on Monday, 4 November 2024, I once again questioned Mr. van Reenen regarding the measures the first defendant took to secure legal representation. According to Mr van Reenen, all the endeavours were unsuccessful, and he indicated that he was prepared to proceed to trial.
- [7] On 8 November 2017, the plaintiff served its summons on the school. On 23 November 2017, Mr van Reenen entered an appearance to defend in his personal capacity on behalf of the school. Subsequently, the plaintiff applied for summary judgment. On 19 December 2017, the application for summary judgment came before the Honourable Mr Justice Papier. The Court advised Mr van Reenen to make every effort to obtain legal representation for the school at this juncture. Later, the plaintiff applied for default judgment after the school failed to file a plea. On 24 April 2018, Justice Steyn removed the application for default judgment from the roll and reserved costs. The parties were involved in interlocutory disputes regarding Mr van Reenen's authority to represent the school on different occasions. They appeared at different time before Judges Sher, Samela, Binns-Ward, Bozelek, and eventually Acting Justice Myburgh, who granted an order on 24 May 2021 regarding the joinder of the MEC and the *amicus*. The matter was enrolled for trial before Justice Steyn, who directed that the plaintiff and the school attempt to mediate the dispute. The parties appointed a mediator and commenced mediation proceedings, which terminated on the second day of the mediation without a

result due to Mr Van Reenen's withdrawal from the process. The matter was subsequently enrolled on various dates and was eventually set down for trial on November 4, 2024.

B. PRELIMINARY POINTS

[8] Three preliminary points were raised by the plaintiff at the outset. The first relates to the question of Mr. van Reenen representing the first defendant. The first defendant's response to the plaintiff's Rule 7 notice was the subject of the second. Lastly, the plaintiff contended that the first defendant was barred from serving a plea and that the matter should proceed on a default basis in the absence of an application to uplift the bar.

[9] I debated these points with the plaintiff's counsel, who correctly conceded that the bar should be set aside in the interest of justice and that the late filing of the first defendant's plea should be condoned. The first defendant is not a company but a non-profit organisation. The plaintiff's counsel similarly conceded that it was in the interest of justice for me to hear Mr van Reenen on behalf of the first plaintiff. It was not necessary to deal with the third point regarding the first defendant's reply to the plaintiff's Rule 7 notice.

[10] The fact that the first defendant failed to secure the services of a legal representative means that the pleadings in the matter do not, per the provisions of the Uniform Rules of Court, serve to clarify and distil the real disputes. The plaintiff's initial approach was that its case regarding ownership of the property, the conclusion of a lease agreement, and the first defendant's unlawful occupation thereof is common cause, and the duty to initiate would, therefore, rest upon the first defendant.

[11] It became, however, clear after hearing the plaintiff's and Mr. van Reenen's opening address that the situation was not as straightforward. The first defendant admits many elements of the plaintiff's claim, including the conclusion of a lease agreement, however, he does so only conditionally. The

plaintiff changed its approach with good reason and offered to commence with evidence.

C. PLAINTIFF'S CASE

- [12] The plaintiff claims the eviction of the first defendant on the grounds that it is the registered owner of the property based upon the *actio rei vindicatio*. Alternatively, that the plaintiff and the first defendant concluded a commercial lease agreement which the plaintiff duly cancelled as a consequence of the first defendant's default in effecting payment of the agreed monthly rental and municipal account. Alternatively, that the lease agreement expired due to the effluxion of time.
- [13] The first witness on behalf of the plaintiff was Ms C T Daniels, the plaintiff's CEO. Ms Daniels has been involved with the plaintiff since 2000. She was Initially employed as a staff member, however in 2008, she became a member of the plaintiff's board. She was responsible for the administration and marketing of the plaintiff and continued to serve as a board member until 2008, when she became the CEO.
- [14] The plaintiff is a non-profit organisation. During Ms. Daniels's testimony, the plaintiff introduced two exhibits into evidence: an aerial photograph of the property forming the subject matter of the proceedings, as well as an evidence bundle, respectively marked "A" and "B". Since 1 March 2000 the plaintiff has been registered as a non-profit organisation in terms of the Non-Profit Organisation Act of 1997. However, it has a significantly longer history and existence. The plaintiff was engaged in the operation of 16 projects that provided social services for children, elderly individuals, and their families at the time of its registration. All the projects were fully managed, financed and staffed by the plaintiff. During the course of 2006 and 2007, the plaintiff, due to financial constraints, embarked upon what Ms Daniels described as an unbundling process.

- [15] The different projects were re-organised to enable them to function independently and register as independent non-profit organisations. The plaintiff was no longer responsible for financing and managing these projects, and the staff members employed by the various projects were transferred to the newly created non-profit organisations.
- [16] According to Ms Daniels, a clear example of the aforesaid unbundling process is that the first defendant was registered as an independent non-profit organisation on 14 January 2009 with registration number 065-660NPO. The first plaintiff no longer conducted business as City Mission but under the name and style of City Mission Educational Services.
- [17] The aforementioned unbundling process also resulted in the plaintiff and the first defendant concluding the lease agreement regarding the property. The lease agreement was concluded on 24 June 2013, and would endure for a period of 4 (four) years (May 2013 to April 2017). In terms of clause 3.2 of the lease agreement, the first plaintiff could, if it observes and performs all the obligations incumbent upon it in terms of the agreement, request the renewal of the lease upon the same terms and conditions.
- [18] Ms Daniels testified that the first defendant never applied for or exercised their right to extend the lease agreement. This was in part due to the fact that the first defendant defaulted in paying the agreed rental and municipal account despite demand.
- [19] Ms Daniels provided testimony regarding the minutes of board meetings of the plaintiff at which the plaintiff resolved upon the unbundling process and different examples of how the unbundling process was implemented. According to Ms Daniels, Mr van Reenen was not a party to these board decisions since he was at the time an employee of the plaintiff.
- [20] On 17 July 2017 the plaintiff directed a letter to the principal of the first defendant. The contents of which reads as follows:

“... I confirm that on 6 April 2017 CMES was informed in writing that the Board of City Mission decided that the written lease agreement entered into between City Mission and CMES for the premises situated at Erf 1[...] (6[...] T[...] Road, Bridgetown) known as GC Williams House (the premises), which lease period ended on 30 April 2017, will not be renewed for a further period. Please confirm in writing before 31 July 2017 that CMES understands that it currently does not have a lease agreement with City Mission to occupy the premises and that CMES undertakes to vacate the premises by 30 December 2017. This indulgence is only granted due to the fact that you are currently running a school on the premises.

All keys for the spaces currently occupied by CMES at the premises must be handed over to City Mission by no later than 30 December 2017 ...”

- [21] No undertaking was received, and the plaintiff served its combined summons on the first defendant on 8 November 2017. Ms Daniels further testified that the plaintiff's current constitution was adopted in February 2016. She emphasised the objectives, powers and rights of the plaintiff. the Department of Social Development accepted the plaintiff's constitution and reaffirmed its registration as a non-profit organisation with the Department. According to Ms Daniels, nothing is contained in the plaintiff's constitution, which obliges it to continue to support projects such as the first defendant.
- [22] Ms Daniels concluded her testimony by disclosing to the Court that the plaintiff attempted to mediate a settlement with the first defendant but that this effort was unsuccessful. She placed the failure of the mediation before the door of Mr van Reenen.
- [23] Under cross-examination, Mr. van Reenen put it to Ms. Daniels that the plaintiff's ownership of the property was subject to zoning conditions. According to Mr van Reenen the property was zoned as “*community 1*” and could only be utilised for certain specific purposes. Ms Daniels testified that

she was unable to provide testimony about the zoning conditions and that she relied upon the plaintiff's attorneys for guidance concerning the permitted use of the property.

[24] Mr van Reenen questioned Ms Daniels as to why she failed to mention during her examination in chief that the school occupies not only units 1, 4 and 7 on the property but also unit 2. The witness explained that the lease agreement was silent on the unit numbers and only referred to the property. Ms Daniels stated that the plaintiff had never granted the first defendant use of unit 2 and that the unlawful occupation of unit 2 had formed the subject of a spoliation application in the Magistrate's Court that was decided in favour of the plaintiff. Ms Daniels further refuted the suggestion by Mr van Reenen that the increase in the monthly rental was due to an agreement between the plaintiff and first defendant wherein the first defendant would occupy unit 2 in exchange for payment of the higher rental.

[25] The cross-examination of Ms Daniels further dealt with the history of the plaintiff's ownership of certain church buildings. The church buildings, according to Ms Daniels, were also "*unbundled*" during the 1970s and 1980s. A similar process was followed as in the case of the plaintiff's projects that became autonomous and unbundled during 2006 and 2007.

[26] Ms Daniels conceded that some children who were cared for by the children's home known as "*The Homestead*" attended the school. Mr van Reenen continued to spend a large part of his cross-examination confronting Ms Daniels with different instances in which he alleged to be involved in the unbundling process. Ms Daniels admitted that the unbundling process was difficult but persisted that it was eventually successfully concluded.

[27] I have no reason to doubt the credibility of Ms Daniels's evidence. She conceded that she did not have personal knowledge of all the allegations with which Mr van Reenen confronted her since she had not always been involved in the plaintiff's operations.

- [28] The plaintiff then called Mr Ashley John Potz, who was employed as the plaintiff's Head of Child and Youth Care from 2003 to 2008. Mr Potz also served as the manager and a member of the board of the non-profit organisation, which is currently known as Athol Youth Care Centre. Mr Potz explained his involvement in the unbundling process in both his capacities as a staff member of the plaintiff and manager and board member of Athols Place. Following the unbundling, Athols Place became an independent non-profit organisation, complete with its own registration number. The name was changed from Athols Place to Athol Youth Care Centre. The unbundling process provided the projects with greater independence and autonomy in managing their finances, conducting their own fundraising campaigns and registering as NGOs with the Department of Social Welfare. He explained that the plaintiff was not legally obliged to support its erstwhile projects subsequent to the unbundling process, but that the plaintiff remained willing to assist. To this end, the plaintiff, for example, assisted Athol Youth Care Centre to acquire the property on which the youth centre is located. The Athol Youth Care Centre raised all the funds to pay for the transfer costs and duties, but the plaintiff donated the property to Athol Youth Care Centre.
- [29] Mr Potz elaborated under cross-examination that the plaintiff's action to grant transfer of the property ought to be understood within the historical context of Athols Place. The history differed materially from that of the first defendant. He rejected the contention that somebody could merely acquire ownership of a property by leasing it for an unspecified period.
- [30] Athols Place was built on the land where Pastor Athol constructed a house, which is why the land was donated to Athol Youth Centre. He refuted Mr van Reenen's allegation that property belonging to an NGO could only be "*handed over*" to a "*like minded project*". He explains that this was only the case in the event of the liquidation of a non-profit organisation, which was not relevant to any of the first defendant's claims. According to Mr Potz, the plaintiff held the custodianship over several churches associated with the mission. He confirmed the testimony of Ms Daniels that the plaintiff, during the 1970s and 1980s, decided to transfer ownership of the churches to the church groups

while maintaining management of the missions or projects. This came to an end as a result of the unbundling process in 2007 and 2008.

[31] The final witness for the plaintiff was Mr Dumisani Matombene. The plaintiff employs him as a Property Manager, and he is responsible for inter alia the maintenance of the property. He disputed that the school occupied unit 2 and confirmed that the number of scholars attending school ranged between 40 and 60 learners. In addition to the school, the first defendant operates an adult learning and skill development centre at the property that serves the educational needs of young adults (not children of school-going age).

[32] Apart from units 1, 4 and 7, several other units on the property are occupied by various community support and development projects such as the projects named “*Ambassadors through sports*” and “*Ashes to Beauty*.” On weekends, between 4 to 6 children are cared for in the hostel by one Raymond Brug and his wife, who resides on the property together with this family. Other families also reside on the property, but he is unfamiliar with their details.

[33] Under cross-examination, the witness clarified that unit 2, where he resides, had formerly served as halfway house for persons released after their incarceration in prison. The halfway house was not in operation when he occupied unit 2. Mr Matombene further conceded that some of the people who reside on the property may be in the employ of the first defendant.

D. FIRST DEFENDANT’S EVIDENCE

MR ANDREW CHARLES VAN REENEN

[36] Mr van Reenen testified on behalf of the school. He disputed the validity of the lease agreement since the plaintiff started the school before the unbundling process that, in his view, caused havoc. The school allegedly hesitated to sign the lease agreement and eventually did so under duress. There was a conflict of interest within the plaintiff’s board, and Mr. van Reenen testified that he believed that the lease agreement was void due to

what he described as nepotism and a conflict of interest between the board members. He referred to other projects of the plaintiff in Khayelitsha, where the unbundling process faced challenges. He stated that the current action fails to take into account the children's interests.

[37] Mr van Reenen further alleged that the premises is zoned for use as “*community 1*” which does not make provision for any commercial activities. He, therefore, questions how it is possible that the lease agreement, which is articulated in commercial tones, can be valid. According to him, the children who attend the school are between the ages of 14 and 18 years, and some of the children indicated to the *amicus* that they would not have nowhere else to go should the school close. He further testified that several persons were staying on the premises, but that they were not sub-letting from the school. The school employs these persons and they fulfil duties as caretakers or hostel parents. He made mention of a gentleman by the name of James and his wife, as well as one Raymond and Belinda. Mr van Reenen admitted that the school was in arrears with the payment of the municipal account.

[38] Under cross-examination, Mr van Reenen conceded that he cannot dispute that the unbundling process commenced in 2006 and was finalised around 2007. He had no involvement with the plaintiff in any official capacity during 2007. He re-engaged with the plaintiff in 2009. In 2014, he was appointed as the plaintiff’s operational manager, but he was retrenched on 31 July 2016. Following his retrenchment, he became involved with the school. Mr van Reenen, during his tenure as Operational Manager, signed the lease agreement with the school on behalf of the plaintiff. He was unable to clarify why he signed the lease agreement on behalf of the plaintiff if he believed that it was immoral, contrary to the law or illegal. Mr Coston further confronted him with email correspondence he directed on behalf of the school to the plaintiff after his retrenchment. No mention is made in the correspondence of the illegality of the lease agreement. It escaped Mr van Reenen that if the lease agreement is void, the plaintiff remains the owner of the property, and the school still has no justifiable basis upon which it can occupy the premises.

- [39] Mr van Reenen had to concede that the school failed to pay its arrear rentals and outstanding amounts due to the municipality. He admitted that the plaintiff forewarned the school governing body that it would terminate the lease agreement or the school's right to occupation unless the school provided concrete evidence of the steps it intends to take to bring the arrear rental and municipal account up to date.
- [40] Mr van Reenen was cross examined regarding his knowledge of the number of scholars who attend the school. He replied that he relies upon communication received from the Department of Education and the reports by the *amicus* to determine how many children are attending the school. He failed to take any measures to acquaint himself with the present conditions at the school, the number of scholars or related aspects. In response to a question posed by the Court regarding the number of members on the school governing board and their names, Mr van Reenen replied that there are four board members, but he found it difficult to recall all of their names.
- [41] The second witness on behalf of the defendant was Mr Z Lightingford. He was the plaintiff's CEO in 2006. The witness stated that he declined to implement the unbundling process, and his employment with the plaintiff was subsequently terminated. He objected to the unbundling process because he believed that, based upon the information at his disposal, it was immoral, contrary to the objects of the plaintiff and in violation of labour laws.
- [42] During cross-examination, he admitted that he had no dealings with the plaintiff following his departure from the plaintiff's employment, and he could not dispute that the unbundling process was completed in 2007. He was confronted with Mr Potz's testimony, that the unbundling process successfully made certain of the projects financially viable as independent non-profit organisations, which he admitted.

E. SECOND DEFENDANT'S EVIDENCE

[43] The MEC called Ms Govender, who is a Chief Educational Specialist. She has been employed by the Department of Education for 38 years and holds several tertiary qualifications. She explained the difference between public and independent schools as well as the fact that some independent schools receive subsidies from the State. Concerning the relocation of a school from one premises to another, there are certain statutory and regulatory requirements that must be fulfilled regarding the suitability of the premises, health and safety, fire, etc. The entire process to approve a new school premises can take several months and involve the Department of Education, the city, and other regulatory bodies. She introduced into evidence a bundle of documents containing an affidavit by her and her colleagues regarding the current amount of scholars enrolled at the school. Additionally, it contained important information regarding public schools in the Athlone area that could accommodate the children if the school is evicted.

[44] Several factors must be taken into account when relocating a scholar to a different school. This includes whether the parents wish the child to attend an independent or a public school, the grade the child attends, and the school's curriculum offered. Ms Govender, however, reassured the Court that the Department is committed to placing all of the children in the schools that she identified within the Athlone district should the parents decide that their children should attend public schools. She further mentioned that other independent schools are situated within the Athlone area. However, the Department of Education is not in a position to provide housing or hostel accommodation facilities. She emphasised that it is in the children's best interest that, should they need to move from one school to the other, such a change occurs at the beginning of a school year rather than during the course thereof. If an eviction order is to be granted, it would be preferable if it could be granted prior to the beginning of the new school year.

[45] During cross-examination Ms. Govender testified that, contrary to what Mr van Reenen indicated, Mr Ramadiz was not the principal of the school since he did not hold the necessary teaching qualifications. According to Ms. Govender the school principal was a Mr Da Silva. She explained that the

Department bases its information on information received from the school and so-called “*headcounts*” conducted from time to time. She denied that the placement of the 77 scholars who currently attend the school will be affected by possible budget cuts in the future.

- [46] The Court enquired from Ms Govender regarding practical measures that could be implemented to ensure that, should an eviction order be granted, the scholars and their parents are informed of the possibility that the children, should they so choose, to be accommodated in the public schools in the Athlone area identified by the Department. Ms. Govender proposed that a questionnaire and document be circulated to all parents that would include all the essential information. She also volunteered that the Department would designate a person or office to act as a liaison between the parents and the Department about children’s possible placement in different schools.

F. UNLAWFUL OCCUPATION

- [47] Mr van Reenen testified and argued that while the plaintiff is the registered property owner, it may only exercise its right of ownership subject to certain specific conditions. He could, however, not advance clear evidence regarding the nature of the said conditions or provide proof of their existence. The simple fact that the plaintiff describes the lease agreement concluded between it and the school as a “*commercial lease*” is unimportant. On Mr van Reenen’s own evidence, it was envisaged prior to the unbundling that the plaintiff would remain the owner of its properties and conclude lease agreements with the new to-be-created projects and NPOs.
- [48] The alternative argument presented by Mr. van Reenen, asserting that the lease agreement is void because of the alleged conflict of interest, allegations of nepotism, and contravention of the zoning conditions, would mean that the lease agreement is voidable, but this would not miraculously change the reality. If there was no lease agreement concluded, it would mean that there is no legal basis upon which the school could have occupied the premises. Moreover, Mr van Reenen had to concede under cross-examination that there

could be no objection to why the plaintiff could not lease out the premises to a different non-profit organisation to operate an independent school. Therefore, the school is in unlawful occupation of the premises. The consent granted for the use of the premises subsequent to the unbundling process in 2007 has been lawfully terminated after the school was granted ample opportunity to regularise its relationship with the lawful owner.

G. BEST INTEREST OF THE CHILD

[50] The *amicus* relied on the judgment of Justice Kollapen in *Section 27 and others v Minister of Education and another*¹ where the Court stated that education is not only the means by which individuals are able to fulfil their potential, it also provides in a wider sense the basis for development and upliftment. Education is not a privilege but a right creating obligations and the Court must craft the necessary remedies where the right is infringed.

[51] In *AB and another v Pridwin Preparatory School and others*,² The Constitutional Court determined that the rights referenced in sections 28(2) and 29(1) of the Constitution, when read together with s 8(2), make it clear that the rights contained in the Bill of Rights can, depending on the nature of the rights and the duties imposed by them, be applied horizontally to bind private parties. Section 8(2) of the Constitution imposes constitutional obligations on private entities such as the plaintiff and the school.

[52] The Constitutional Court in *Governing Body of Juma Musjid Primary School and others v Essay and others NNO*³ Court was faced with the eviction of a public school from private property after the Provincial Department failed to conclude a lease agreement. The Court was alive to the question as to

¹ Case number 24565/2012 (GNP) See also *Minister of Basic Education v Basic Education for All* (20793/2014) [2015] ZASCA 198; [2016] 1 All SA 369 (SCA); 2016 (4) SA 63 (SCA) (2 December 2015)

² [2020] ZACC 12 at para 126 and 146 *AB and Another v Pridwin Preparatory School and Others* (CCT294/18) [2020] ZACC 12; 2020 (9) BCLR 1029 (CC); 2020 (5) SA 327 (CC) (17 June 2020)

³ [2011] ZACC 13 *Governing Body of the Juma Musjid Primary School & Others v Essay N.O. and Others* (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC) (11 April 2011)

whether the common law remedy of *rei vindicatio* ought to be developed in circumstances where a learner's rights to a basic education might not be realised due to an eviction. The Constitutional Court aimed to strike a balance between the right to basic education on the one hand and property rights on the other. The court found within the context of the facts in the case before it that the common law remedy of *rei vindicatio* had to be developed and, in appropriate circumstances, curtailed where the exercise of that remedy may adversely impair a learner's rights to a basic education. The Court further determined that there is no fundamental positive obligation on the private landowner to provide basic education to learners being taught on privately owned land by such an owner. The fundamental positive obligation rests with the National and Provincial Governments.⁴

[53] The Constitutional Court therefore decided that the landowner had a negative obligation not to impair the learner's right to basic education. The content of this negative duty was that after the owner had allowed the school to be conducted on its property, the owner should minimise the potential impairment of the learner's right to basic education. In that matter the Constitutional Court held that the landowner acted reasonably in pursuing the eviction of the public school from its premises. This conclusion was based on the timeline of events, noting that the application for eviction was lodged in July 2008 more than two years earlier. The landowner did not seek the eviction of the school with immediate effect, and there were protracted negotiations with the MEC regarding the conclusion of a formal lease. However, it could not be expected of a landowner to continue with negotiations indefinitely and it was decided that the eviction of the school was just and equitable in the circumstances.

[54] A similar matter was heard in the South Gauteng High Court in Johannesburg in the matter of *United Apostolic Faith Church v Boksburg Christian Academy*⁵. Willis J, as he was then, dealt with the issue of ownership of property that vested in a church that sought the eviction of a school that had

⁴ Juma Musjid *ibid* para 7, 57, 59, 62 to 73.

⁵ 2011 (6) SA 156 (GSJ) See also *United Apostolic Faith Church v Boksburg Christian Academy* (08/18662) [2011] ZAGPJHC 43; 2011 (6) SA 156 (GSJ) (2 June 2011)

been operating on its land. The Court granted an eviction order providing specifically that the pupils could complete their second term of the academic year with the minimum of disruption and to transfer to another school elsewhere in time for the beginning of the third term. Similar to what happened in this trial, Justice Willis held as follows:

“... it is clearly apparent that Mr and Mrs Hill are the directive minds behind the school. Both Mr and Mrs Hill at all times attended the trial proceedings and gave testimony on behalf of the school. They are undoubtedly acutely aware of the relevant issues and actively participate in the current proceedings. From the evidence of Mrs Hill it emerged that when the first request was communicated that the school should vacate the property, a meeting of parents and members was called and they were informed of that intention. It seems that none of any subsequent communications regarding the eviction of the school were sent to the parents or to anyone else for that matter. It further transpired from her evidence that no one other than herself and her husband knew, authorized or ratified the institution of the counterclaim by the school.”

[55] In this matter, the Court is confronted with the predicament that failing to grant an eviction order and permitting the school to continue occupying the premises at the start of the new academic year could result in the children facing the school's eviction later in the academic year. This would not serve the children's best interests by disrupting their education during the academic term. This means that while the plaintiff has the right to evict an unlawful occupier from their property, an eviction order may take effect only one year later if it is not granted promptly.

[56] Given the evidence and undertaking of Ms Govender on behalf of the MEC that the children will be accommodated in public schools in the same geographic area should they choose to do so, I believe that it is in the best interest of the children that certainty be attained. This will afford them and their parents the opportunity to make an informed decision with regard to their future education. While navigating this delicate balancing act between the

interest of the children and the plaintiff as landowner, I remain mindful that both the plaintiff and the school are non-profit organisations. It is unfortunate that the plaintiff did not inform the Court of its intention with the property. The Court was left uninformed by both the plaintiff and the school to a large extent regarding their day-to-day operations with specific reference to basic education. Apart from the reports filed by the *amicus* and the testimony by Ms Govender on behalf of the MEC, the children were voiceless and the victims of what transpired to be a commercial dispute at best and, at worst, a personal crusade by Mr van Reenen. Confronted with a choice between two undesirable options, I find that it is just and equitable that the school be evicted. The school failed to place evidence before the Court regarding exactly who resides on the property. I am therefore, not convinced that an eviction order can be granted against all individuals who reside through or under the school without them first receiving the necessary statutory notices and be afforded a hearing in accordance with the provisions of PIE. There can, however, not be much doubt that all these persons came to reside on the premises solely because they, according to Mr van Reenen, are employed by the school. No children who reside on the property in the hostel may be evicted and I will provide in the order granted specifically for a mechanism to protect their rights.

H. COSTS

- [58] It speaks for itself that the entitlement of the costs of the action is self evident. When the question arises whether such costs should be granted on a punitive scale and whether it should include costs *de bonis propriis* against Mr. van Reenen.
- [59] Mr van Reenen left a notable impression on the Court as an intelligent and articulate individual who, regrettably, often resorted to broad generalisations concerning serious issues such as allegations of conflict of interest and nepotism. Mr. van Reenen is deeply connected within the community and obviously cares for the plight of disadvantaged children. He claimed to have only good intentions in ensuring that street children be educated to prevent

them from turning into gangsters. However, it is greatly concerning that Mr van Reenen based the whole of the school's defence to the eviction proceedings on personal disagreements from nearly 15 years ago. He was unable to provide personal testimony regarding the number of children at the school and instead depended on the second-hand information presented in the amicus in MEC's evidence.

[60] He was unable to recall the surname of one of his fellow board members and testified that the board convened *"informally"* more than six months prior to the trial. His evidence is palpably rejectable as lacking credibility given that the version he testified to is clearly contradicted by email correspondence he authored regarding the school's arrears and the possible cancellation of the lease agreement prior to the institution of these proceedings. He was unable to provide a credible explanation for why he signed the lease agreement on behalf of the plaintiff as its former Operational Manager, the same lease agreement he now claims was signed under duress, without calling any witnesses or Mr Ramadiz who signed the lease on behalf of the school to clarify the nature of the duress or undue influence they experienced. This is despite the fact that Mr Ramadiz attended the court on all the days that evidence was led. Regardless I will afford Mr Van Reenen a further opportunity to advance reasons why he should not be ordered to pay the costs with the school.

[61] I gave ex-tempore reasons for finding that the first defendant is in unlawful occupation on Monday, 9 December 2024. The eviction order was, however, immediately suspended pending the finalisation of a draft order that I requested the parties to prepare. Counsel for the plaintiff and the MEC provided a proposed draft order, which order I granted on Monday afternoon, incorporating certain amendments in the terms as set out hereunder.

[62] The plaintiff's attorneys are further directed to serve forthwith the order as per paragraph 8 thereof, and a copy of this judgment must be served on Mr Van Reenen per paragraph 12 of the order

[63] In the premises, an eviction order is granted in terms of the Court order dated 9 December 2024 in the following terms and subject to the conditions stipulated therein:

HAVING considered the evidence presented by the parties and after having heard closing argument by the representatives on record **IT IS ORDERED AS FOLLOWS:**

1. The second defendant's application in terms of Rule 38(2) is granted and the affidavits by the following persons are admitted into the evidence:
 - 1.1. Ms Kubeshini Govender
 - 1.2. Mr Malcom Williams
2. It is declared that the First Defendant (and all other occupiers who came to occupy by, through or under it) is in unlawful occupation of the Plaintiff's property known as GC Williams House and further described as Erf 1[...] situated at 6[...] T[...] Road, Bridgetown (*'the property'*).
3. Save for as provided for in paragraphs 5 and 7 below in respect of the learners who are currently enrolled according to the Second Defendant's records with City Missions Educational Service trading as CMES, the First Defendant (and all other occupiers by, through or under it) are ordered to vacate the property and shall vacate same by no later than Monday, 15 February 2025,
4. If the First Defendant (and all other occupiers by, through or under it) fail to vacate the property on the date determined in paragraph 3 above, the Sheriff (or his lawful deputy) for the area within which the property is situated is authorised and directed (with the assistance of the South African Police Service, if necessary) to forthwith evict the First Defendant and all those holding title under it from the property.

5. The eviction of the First Defendant (only in terms of its schooling activities and in respect of the learners who are currently enrolled according to the Second Defendant's records with the First Defendant) is suspended pending the return date on 28 March 2025 at 10:00 before this court and the Second Defendant, without delay, taking all reasonable steps to place/relocate the First Defendant's learners (whose parents or legal guardians have agreed in writing to do so) in appropriate schools for the 2025 school year by no later than Monday, 17 February 2025.
6. To enable the Second Defendant to comply with paragraph 5 above, the First and Third Defendants are ordered to without delay and before Friday, 13 December 2024:
 - 6.1. Inform in writing and deliver by email or prepaid registered post and/or by hand to the parents or legal guardians of any learners currently enrolled with it for schooling for the 2024 and 2025 academic year in writing that:
 - 6.1.1. the First Defendant is being evicted from the property; and
 - 6.1.2. the parents or legal guardians can elect to make their own alternative arrangements regarding their children's schooling and enrolment for the 2025 school year alternatively consent to the placement of the learners by the Second Defendant in the nominated public schools for the 2025 school year; and
 - 6.1.3. the accompanying document prepared by the Second Defendant, and annexed hereto as "**A**" ('the form'), must be completed by the parents or legal guardians of the learners and thereafter submitted to the Second Defendant in one of the following ways by no later than Monday, 13 January 2025:
 - 6.1.3.1. completing the form and placing same in a collection box set aside for this specific purpose at

Bridgeville Primary School which is situated at 58 Kiewiet Road, Bridgetown, Cape Town; or

6.1.3.2. completing the form and delivering it to the Western Cape Education Department's District Office situated in Maitland at the c/o Haven Road & Swallow Street, Maitland, Cape Town ('the District Office'); or

6.1.3.3. scanning the documents and emailing same to the email addresses of Mr. Wayne Abrahams at W[...] or to Ms. Brenda Robertson at: B[...].

6.1.3.4. Should the learners' parents or guardians request the Second Defendant to place/relocate their child, they should complete annexure "**B**" hereto, (the late admission form) and submit same to the District Office or by email as set out in paragraph 6.1.3.3 above for the attention of Mr. Wayne Abrahams or Ms. Brenda Robertson on or before Monday, 13 January 2025.

6.1.4. furthermore, that the parents or guardians of each learner must sign a copy of the First Defendant's letter as contemplated above (with their name, surname and contact number) confirming receipt of same and the form (as annexed hereto as annexure A).

6.2. The First and Third Defendant shall provide the Second Defendant with an updated contact list of the parents and/or legal guardians of the learners, and copies of receipt of Annexure A by no later than 20 December 2025;

- 6.3. The First and Third Defendants must file an affidavit reporting on their compliance with paragraphs 6 to 6.2 by no later than Friday, 10 January 2025.
 - 6.4. In the event a parent and/or legal guardian of a learner does not, for whatever reason, complete and/or submit the form by the time provided for in this Order, the Second Defendant shall contact the learner's parents or legal guardians from the contact details provided by the First Defendant and request the parents or guardian to complete the form, failing which it will be accepted that the Second Defendant's offer to place/relocate the learner(s) has been formally rejected by the parent or guardian of the learner(s).
7. The Plaintiff and Second Defendant shall ensure that if any minor children are enrolled with the First Defendant and reside at the property as of the date of this order and who do not have alternative accommodation or leave the property for the December school holiday:
 - 7.1. Those children are referred to the Provincial Department of Social Development ("*DSD*") for an assessment of the minor child and their parents to be undertaken, including options for alternative accommodation of the minor child.
 - 7.2. The Plaintiff and Second Defendant shall consider the DSD report, engage with the child and their parents or caregivers and, if appropriate in light of the child's age, the child, about alternative accommodation options.
 - 7.3. The Plaintiff shall on or before 28 February 2025 file an affidavit with the Court, setting out detail of any such children and the assessment by DSD, its engagement with any child and the parents or caregivers and the outcome of the engagement process.

- 7.4. The Court shall determine the date of the eviction of any minor child and the alternative accommodation the child be offered if any.
 - 7.5. To this end the First and Third Defendants will co-operate with the Plaintiff, the Second Defendant and DSD to ensure that there can be meaningful engagement with any child who resides at the property and the DSD.
 - 7.6. No children are to be evicted from the property until the above process is completed.
8. This order shall be served on the First and Third Defendants and notice thereof be given in the following manner:
 - 8.1. By serving a copy of this order upon the First and Third Defendants.
 - 8.2. By affixing a copy and displaying it prominently at each of the entrances to the property.
 - 8.3. By affixing a copy and displaying it prominently at each of the buildings, classrooms and offices occupied by the First Defendant at the property.
9. Pending the eviction of the First Defendant (and all other occupiers by, through or under it), the First Defendant and all its authorised representatives are interdicted and restrained with immediate effect:
 - 9.1. From inviting members of the public to enrol their children with the First Defendant for the 2025 school year at the property; and
 - 9.2. From taking any steps to enrol new learners for the 2025 school year at the property.

10. This interdict as set out in paragraphs 9.1 and 9.2 above shall operate in the interim and with immediate effect pending the return day of March 28, 2025 before this court.
11. The First and Third Defendants are ordered to pay jointly and severally, the one paying the other to be absolved, the Plaintiff's costs of suit on the scale as between attorney and client.
12. Mr. Andrew Charles van Reenen (Identity number: 6[...]) is called upon to show cause on Friday, 18 March 2025, at 10:00 before this court why he should not be ordered to be liable jointly and severally with the First and Third Defendants for the Plaintiff's costs *de bonis propriis* on the scale as between attorney and client.
13. This Court shall retain supervision of the implementation of the order on the following terms:
 - 13.1. The Second Defendant shall on or before 28 February 2025 file an affidavit with this Court specifying which of the children, parents or legal guardians accepted the Second Defendant's offer to place/relocate their child and the details thereof in compliance with paragraphs 5 and 6 above.
 - 13.2. The amicus is requested to consider the affidavit of the Second Defendant provided for in paragraph 13.1 above and furnish the Court with a report in response thereto.
 - 13.3. The Plaintiff, First and Third Defendants are granted leave to file an affidavit regarding the contents of the Second Defendant's affidavit provided for in paragraph 13.1 by no later than 21 March 2025
 - 13.4. The Court shall consider the affidavits and make any further order it deems including terminating its supervision.

13.5. Any party may, at any stage, and on notice to the other parties, approach the Court for the variation of this order.

14. The relief sought in prayers (c)(i) and (ii) and (d) of the Plaintiff's Amended Particulars of Claim is postponed *sine die*.

VAN DEN BERG AJ

PLAINTIFF

ADV P COSTON

MARIAS MULLER HENDRICKS KUILS RIVIER

SECOND DEFENDANT

ADV T MAYOSI

STATE ATTORNEY, CAPE TOWN

MARAIS MULLER HENDRICKS KUILS RIVER

C/O MMH CAPE TOWN

4th FLOOR, GENERAL BUILDING

42 BURG STREET

BOX 88