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

CASE NO: 13785/2024

In the matter between

PURPLE BLOK PROJECTS (PTY) LTD

APPLICANT

REGISTRATION NUMBER: 2022/658905/07

And

BRIAN LUFEFE VUMAZONKE

FIRST RESPONDENT

IDENTITY NUMBER: 8[...]

GCOBISA LAVINIA LOUW

SECOND RESPONDENT

IDENTITY NUMBER: 8[...]

CITY OF CAPE TOWN

THIRD RESPONDENT

**ALL OTHER OCCUPANTS OF THE PROPERTY
HOLDING TITLE UNDER THE FIRST AND
SECOND RESPONDENTS**

FOURTH RESPONDENT/S

Date of hearing: **22 November 2024**
 3 December 2024
 11 December 2024

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**

JUDGMENT

[1] The applicant applies for the eviction of the first, second, and fourth respondents from the property located at Erf 4[...], more commonly referred to as [...] H[...] Street, Ruyterwacht, Cape Town, Western Cape ("the premises"). The first and second respondents along with their teenage daughter, reside at the premises and oppose the application.

HEARING ON 22 NOVEMBER 2024

[2] The application came before me for the first time on 22 November 2024 on an opposed basis. Adv Lawrence represented the applicant, while the first respondent appeared in person. At the commencement of the proceedings, the first respondent produced a hand-written note ostensibly written by his life partner, the second respondent, which reads:

"I Gcobisa Lavinia Louw with identity number ... would like to inform the court as the second respondent that was never served in case number 13785/24; due to work commitments I will not be able to appear in front of an honourable judge today 22-11-2024."

[3] The first and second respondents are not legally represented. However, the first and second respondents filed answering affidavits setting out their

grounds of opposition and answering *ad seriatum* to the allegations in the founding affidavit. The first and second respondents also filed heads of argument referencing *inter alia* authorities and legal argument.

- [4] Prior to the hearing, there was no indication that the first and second respondents were unprepared to proceed. Despite this, I enquired from the first respondent at the commencement of the hearing whether he was prepared to proceed. I explained the importance of obtaining legal advice and representation, emphasising why it would benefit the respondents' best interest to have such assistance.
- [5] The first respondent, hereafter, and for the first time, indicated that he was not prepared to represent himself or make submissions to the Court. He stated that he had approached "*Probono*" for legal assistance. He proceeded to apply for a postponement.
- [6] The applicant's counsel objected to the request for a postponement to obtain legal representation. I was informed that the first respondent appeared before the Honourable Lady Justice Fortuin on 10 September 2024, when the matter was postponed for argument to 22 November 2022. Fortuin J ordered the parties to exchange affidavits and file their heads of argument by specified dates. The applicant's counsel submitted that Justice Fortuin strongly advised the first respondent to seek legal advice in light of the serious allegations that he similarly made before her regarding water supply to his property, spoliation and related matters.
- [7] It further became evident that the first respondent was by no means a layperson. He obtained an LLB degree from the University of South Africa (UNISA) in 2022 and is currently employed as an organiser for a labour organisation. In light of the aforementioned, but with regard to the nature of the disputes, as they appeared from the affidavits before the Court, I refused the application for postponement.

[8] I proceeded to hear argument from the applicant regarding the eviction application. However, it became evident that the first respondent failed to bring any of the affidavits or the paginated bundle to court. He expressed his inability to follow the proceedings. The applicant's counsel accordingly requested the matter to stand down so that the applicant's attorney could prepare a copy of the indexed and paginated bundle containing the papers for use by the first respondent.

[9] When the Court resumed at 14h00 on 22 November 2024, the first respondent submitted a second application for postponement relying upon an email which he produced purportedly indicating his communications with "Pro Bono". I allowed the first respondent to address me at length. He was displeased with the earlier decision of the Court to refuse his application for postponement. The first respondent made several allegations against the applicant's counsel and the Court. During his address, it became increasingly apparent that additional correspondence had been exchanged between the first respondent and "Pro Bono" that he had not disclosed earlier. He once more requested the matter to stand down to enable him to obtain copies of the aforementioned correspondence.

[10] I allowed the matter to stand down so that the first respondent could print the email correspondence that he wished the Court to consider regarding his attempts to obtain legal representation. Once the matter was ready to proceed, it was already late in the afternoon, and I exercised my discretion to ensure that the application could proceed in an orderly manner. I granted an order in the following terms:

1. The eviction application in terms of the Prevention of Illegal Eviction and Occupation of Land Act, 19 of 1998 is postponed to **Tuesday, 3 December 2024** at 11:30 before the same Court.
2. The first and second respondents are ordered to appear in person or to obtain the services of a legal practitioner of their choice, who must appear on their behalf at the hearing on 3 December 2024.

3. The first and second respondents shall deliver and file an affidavit(s) by no later than 13:00 on Friday, 29 November 2024 wherein they shall address the following matters:
 - 3.1. Details of the first and second respondents' attempts to obtain legal representation, including supporting documentation;
 - 3.2. Whether there is indeed a risk of homelessness for them should the court find that they are in unlawful occupation and grant an eviction order;
 - 3.3. Details regarding the employment status and income of adult members of the household;
 - 3.4. Details regarding any claimed disability by either of the first and second respondents, including medical reports;
 - 3.5. Details of the attempts the first and second respondents have made to find alternative accommodation, including supporting documentation;
 - 3.6. Details of the first and second respondents' interactions with the third respondent (the City) as it relates to the provision of alternative and/or emergency housing;
 - 3.7. And if there is good reason for why the information cannot be furnished, that shall be disclosed in the affidavit.
4. The first and second respondents shall complete the housing questionnaire (the first respondent is authorised to do so on behalf of the second respondent if necessary) in accordance with the order by Justice Fortuin, granted on 10 September 2024, if they have not

done so yet. The applicant shall then request the third respondent to provide to the Court a housing report in respect of, and applicable to, the first and second respondents, which housing report shall be filed by 29 November 2024 and which shall address the availability of alternative and/or emergency housing.

5. It is ordered that the parties may exchange documents and affidavits via email, and the delivery of an email by one party to the other shall constitute effective delivery and service.
6. Costs of the postponement is to be costs in the application.”

[11] On Friday, 29 November 2024, the first respondent filed an affidavit ostensibly in compliance with the aforesaid order. In the affidavit, he *inter alia* refers to attempts made by him and the second respondent to search on the internet (“online”) for attorneys close to where they reside, but they were unable to find any. The second respondent reached out to Adv Ngcukaitobi SC (one of our Country’s best-known counsels) but was advised that advocates work only on a referral basis, and that the respondents would first need to secure the services of an attorney. The respondents also reached out to Webber Wentzel, another prominent and large firm of attorneys, but without success. The respondents also approached the Legal Resources Centre and the Stellenbosch University Law Clinic. The challenge faced by the respondents is that both of them are employed, and they may, therefore, not qualify according to the means test utilised by the Legal Aid Board or other institutions providing legal services to the public on a pro bono basis.

[12] On Tuesday, 3 December 2024, the hearing in the matter proceeded. The first respondent was absent, while the second respondent appeared in person. The second respondent submitted two documents to the Court: a medical certificate and a supplementary affidavit. The medical certificate issued by Dr AWS Pietersen certified that the doctor examined the first respondent on 2 December 2024 and that he was granted sick leave for 3 December 2024 due to food poisoning. The certificate indicates that the first

respondent will be fit for work on 4 December 2024. The supplementary affidavit deposed to by the second respondent indicates that the first and second respondents consulted with an attorney and counsel on 29 November 2024. I enquired from the second respondent whether this is indeed so, which she confirmed, but she informed me that the applicant's counsel indicated to their advocate that the application had been settled. This is obviously not the position, and I indicated to the second respondent that I will not entertain any side issue concerning what may or may not have been said by any of the legal representatives.

[13] Upon further enquiry, the second respondent indicated that they consulted with an attorney, Mr Ashley Leeuw and Adv Nthembeka, but that they would require additional time to raise sufficient funds to pay towards their legal representation. The second respondent therefore requested that the matter be postponed to a date in January 2025. I enquired about the employment status of the second respondent and the financial resources of the first respondent. From the questions put to her it appeared that both the first and the second respondent are gainfully employed. The second respondents earn R23,000.00 per month and owns a motor vehicle. She alleges that she does not know how much the first respondent earns, but he contributes to the monthly expenses. The second respondent is responsible for paying the previous owner of the premises a monthly rental of R7,800.00. The second respondent proclaimed that she does not know whether the first respondent earns more or less than her, though they have been in a permanent life partner relationship for more than ten years.

[14] I explained to the second respondent that the first respondent had appeared in person before the High Court on at least three previous occasions. I impressed upon the second respondent the significance of the respondents' attorney and counsel being present during the argument. Nevertheless, I exercised my discretion in granting a postponement until the first week of recess. It was ordered that the application be postponed to Wednesday, 11 December 2024, at 10h00 and that both the first and second respondents were required to appear in person, or alternatively be represented by a legal

representative of their choosing. I reserved the question of costs for later determination.

- [15] On Wednesday, 11 December 2024, the first respondent was not present, and the second respondent appeared in person. She presented a handwritten letter from the first respondent. The letter is dated 11 December 2024 and reads as follows:

“Dear honourable judge

I Brian Lufefe Vumazonke ... hereby confirm that I will not be able to attend court today due to work commitment. During my previous court appearance on 22 November 2024 I had asked that the court give us time to sort out our work commitments and legal representation which you refused.

On 3 December 2024 I fell ill and could not attend court. Last week I applied for leave to be in court and was rejected by my employer due to me being out of work the last week. Due to operations reasons we are extremely busy as most businesses are preparing to go on break for the festive season.

I hope you take this into consideration because I had informed you in advance that postponing this matter to the next court roll next year would give us enough time to apply for leave at work and for us to find legal representation. I am unable to attend today due to commitments out of my control as we have a service level agreement signed with the business I work with and failure to commit to these commitments will place me in breach of contract which will result in a financial loss for my employer and a possible dismissal for me.

Please consider my apology for unable to be present today.

Yours sincerely.”

- [16] I enquired from the second respondent why the first respondent and her attorney and counsel were not present. She informed me that no counsel was available, and their attorney had other matters to attend to. The applicant opposed the application for postponement for obvious reasons.
- [17] I adjourned the proceedings to consider the application for postponement and submissions made. The application for postponement was refused, and I ruled that the matter should proceed. However, the applicant's counsel, Adv Lawrence, requested that I allow the matter to stand down again since the second respondent did not bring copies of the papers or the respondents' heads of argument to court. The matter stood down to allow the applicant's attorney to make copies of the affidavits, heads of arguments and other documents so that the second respondent would be able to follow the argument.
- [18] The Court was eventually able to hear argument on behalf of the applicant at 12h00 on Thursday, 11 December 2024. Adv Lawrence made submissions on behalf of the applicant regarding the unlawful occupancy of the respondents as reasoned in the applicant's heads of argument. The second respondent discussed with me the merits of the respondents' opposition during the application for postponement. I asked her during the postponement application regarding the respondents' alleged right of pre-emption and she answered me on point. However, she declined to make any submissions during the arguing of the application in main. She stated that she has no legal representation and does not know what a just and equitable date would be for the respondents' eviction. She stated that she cannot argue the matter herself.

CONSTITUTIONAL RIGHT TO LEGAL REPRESENTATION

- [19] Each person is constitutionally entitled to legal representation. This right, however, is not absolute and cannot be used to frustrate proceedings before a Court of law. In the matter of *Nkuzi Development Association v Government of*

South Africa the Land Claims Court determined that section 34 of the Constitution confers a right to legal representation at the expense of the state in civil proceedings, at least in respect of land tenants in the circumstances of that case.¹ The learned authors of the Standard Work: Constitutional Law of South Africa² states that the right to legal representation in civil suits is not absolute. In the civil context, the concept of equity necessitates the consideration of factors that are distinct from those that are relevant when determining whether substantial injustice will occur if an individual is not legally represented in the criminal context. The Legal Aid Board currently provides significantly less assistance in civil matters and prioritises criminal legal aid. In terms of the Legal Aid Board Act, legal aid is only rendered to "*indigent*" persons. The Court in *Smith v Mutual and Federal Insurance Company Limited*³ distinguished between "*indigent*" and "*poor*." The judge clarified that "*indigent*" refers to being in dire need or want, while "*poor*" refers to having few possessions or nothing."

[20] In *B v S*⁴, the court held, regarding a magistrate's refusal during criminal proceedings of a further remand of the case for legal representation, that the question was whether the trial was fair when the right to legal representation was not given effect. The Court followed a three-pronged test by considering, first, the case's complexity, second, if the unrepresented person could conduct their own case, and third, the severity of the consequences flowing from a conviction. This is not a criminal trial, but the same principles are relevant herein.

[21] The Supreme Court of Appeal similarly considered in *Navy Two CC v Industrial Zone Ltd*⁵ a request for a postponement by an unrepresented litigant. The majority held, per Mthiyane, JA, that the application for a postponement (that was refused by the court a quo) had to satisfy two

¹ *Nkuzi Development Association v Government of the Republic of South Africa and Another* (LCC10/01) [2001] ZALCC 31; 2002 (2) SA 733 (LCC) (6 July 2001)

² Juta, second edition, volume 4, original service 11-07 at 59 - 71

³ 1999 JDR 0671 (C)

⁴ [2003] 3 ALL SA 274 (E)

⁵ [2005] JOL 15585 (SCA)

requirements: first, that the delay or failure was not wilful and second, that it has a bona fide defence. The court reaffirmed that litigants cannot divest themselves of their responsibilities in relation to the action (or application) and then complain vis-à-vis the other party that their legal representative to whom they have apparently vested sole responsibility have failed them⁶. The court held that the postponement was correctly refused because there was no frank and honest disclosure or explanation for the delay and no bona fide defence. The minority judgment agreed with the conclusion of the court upon different considerations. Ponnann, JA, in the minority judgment, held:

‘...In my view, the real issue is whether the appellant suffered any prejudice as a result of Brassey AJ’s failure to afford Mr Nannen the opportunity to address the court on the issue of a postponement. In other words, it is unnecessary to consider the circumstances in which the so-called rule barring a non-legal person from representing a corporate entity may be relaxed. Even if it is accepted in the appellant’s favour that Brassey AJ misdirected himself in this regard it does not follow that the appellant would have been entitled to the postponement it now seeks on appeal.’

....

[28] In short, the appellant has failed miserably to explain its tardiness. A postponement was not there for the asking. The appellant had to make out a proper case in support of its application for postponement. That it failed to do. Not only did it fail to explain with sufficient candour why no further steps had been taken by it in the matter but the affidavit ultimately filed on its behalf fails far short of establishing that it has a bona fide defence to the respondent’s claim.⁷

[22] The respondents are neither indigent nor poor. Whilst their living standard may be modest, they certainly do not represent the epitome of the extreme end of poverty by any stretch of the imagination. The Constitutional right and

⁶ At [15] and *De Wet and others v Western Bank Ltd* 1979 (2) SA 1031 (AD) at 1044C

⁷ *Navy Two CC Ebit* [25] and [28]

conceptual obligation that rests upon the State to provide legal assistance in civil litigation should be distinguished from a party's right to be legally represented. There exists a distinction between being provided with an opportunity to obtain legal representation and indefinitely delaying proceedings before a Court of law so that a litigant's wishes to obtain funds can be fulfilled to instruct a legal representative of their choice or for such a legal representative to be available at his convenience.

- [23] Considering the aforementioned, the respondents have been adequately informed to set aside funds and approach a legal representative of their preference. They have failed to do so despite being provided with a fair opportunity. They were served with the s 4(2) notice in terms of PIE during August 2024, which informed them of their right to legal representation and provided them with contact details of, inter alia, the Legal Practice Council, Legal Aid Board and UTC Legal Clinic. On 10 September 2024, Lady Justice Fortuin again advised the first respondent to obtain legal representation. Three months have passed, since the last appearance without even attorneys placing themselves on record. There is no plausible basis upon which it can be found that an injustice will incur if the matter proceeds and is finalised without affording the respondents an additional postponement.

CHRONOLOGY

- [24] The first and second respondents executed a written lease agreement with Goodfind Properties (Pty) Ltd, the property's prior owner, on 1 December 2020. The lease would commence on 1 December 2020 and terminate on 1 December 2021. Thereafter, the agreement would be renewed on a month-to-month basis upon the conclusion of the initial period. The property was sold on 22 November 2023 and registered in the Deeds Office in the applicant's name on 28 February 2024. A copy of the electronic Deeds Office search reflecting the applicant as the registered owner together with the Deed of Transfer are annexed to the applicant's founding affidavit. The applicant contends that upon transfer of the property, the lease agreement between the previous owner and the respondents were ceded to the applicant. In March

2024, the applicant extended an invitation to the first and second respondent to enter into a new written lease agreement. The first and second respondents, however, declined to accept or discuss the offer with the applicant even though the terms offered to the respondents were identical to the previous terms of the lease agreement with Goodfind Properties (Pty) Ltd.

- [25] On or about 10 April 2024, the applicant served a notice on the respondents by Sheriff, informing them that they failed to make payment of the rental *in lieu* of their continued occupation, that they failed to conclude a lease agreement, and that any and all lease agreements are accordingly revoked. The respondents were afforded one calendar month to vacate the property. On 19 April 2024, the applicant's attorney received an email from the first respondent confirming the cancellation notice. On 22 April 2024, the applicant's legal representative again emailed the first respondent confirming the notice of cancellation and that they are required to vacate the premises by 31 May 2024. The applicant contends in its founding affidavit that there exist no legal obligation or duty to provide the respondents with free accommodation. The applicant is the registered owner of the property and possess the authority to deal with it. The respondents are in arrears in an amount of R74,628.05 and the lease agreement was therefore duly cancelled.

RESPONDENTS' OPPOSITION

- [26] The first and second respondents oppose the relief on the basis that there is a valid lease agreement in place with the previous owner, Goodfind Properties (Pty) Ltd. The first respondent further alleges that he accepted an offer to purchase from Goodfind Properties (Pty) Ltd during 2021, to purchase the property at R795,000.00. It is common cause that no valid Deed of Alienation or sale agreement, in any form was concluded between the first respondent and Goodfind Properties (Pty) Ltd. On the respondents' own version, the property was offered for purchase, but there is no clear evidence that the first respondent accepted the offer, or that any valid sale agreement in compliance with the statutory provisions prescribed by the Alienation of Land Act 68 of 1981 was ever concluded.

[27] The respondents further rely upon the following terms contained in the written lease agreement concluded with Goodfind Properties (Pty) Ltd:

“If the Landlord receives from a third party a bona fide offer to purchase the Premises in writing (“the Trigger Offer”), before the Landlord may accept the Trigger Offer, the Landlord must first provide written notice to the Tenant of said offer which notice must be provided in writing with 5 (five) days of receipt of the Trigger Offer. The Tenant shall within 15 (fifteen) days from the date of receipt of the Trigger Offer, provide to the Landlord a written offer to purchase, upon the same terms and conditions as recorded in the Trigger Offer (“First Refusal Offer”). If the Tenant fails to provide the First Refusal Offer within the 15 (fifteen) days as provided herein, the Landlord may accept the Trigger Offer.”

[28] The erstwhile owner of the property did not offer the property to the respondents for purchase before selling it to the applicant. However, there is no allegation in the respondents’ answering affidavit to the effect that the applicant was aware of the aforementioned special condition in the lease agreement. The applicant purchased multiple properties in a single commercial transaction from Goodfind Properties (Pty) Ltd and took simultaneous cession of the corresponding lease agreements in respect thereof. The applicant alleges in its replying affidavit that the special condition regarding the Trigger Offer was only contained in the respondents’ lease agreement and that they were unaware of its existence.

[29] The respondents further contend that they agreed in 2021 to purchase the property. As proof thereof that the first respondent, the respondents rely upon email correspondence, copies of which are annexed to the first and second respondents’ answering affidavits. In these emails dated respectively 25 August 2021, 5 and 15 October 2021, the first respondent enquires not only about the possibility and value of the property that forms the subject matter of this application, but also other properties. It is evident from the email correspondence that no sale was concluded during 2021, irrespective of

whether such an agreement would be legally enforceable in the absence of a deed of sale. In this regard, I note that more than three years have passed and that any claim that the respondents may have regarding the alleged purchase of the property in 2021 may have become prescribed, but I make no finding.

[30] The applicant relies upon the judgment by the then Appellate Division in *Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Backerein (Pty) Ltd en 'n Ander*⁸ in which it was held that if a seller concludes a contract of sale with a third party contrary to a pre-emptive right the purchaser can step into the shoes of the third party by a unilateral declaration of interest. If delivery or registration took place, the holder of the right would not be able to pursue the merx in the hands of the third party with his personal right unless the latter was aware of the existence of the pre-emptive right. Ironically the first and second respondents in their heads of argument rely upon the judgment by the Constitutional Court in *Mokone v Tassos Property CC* and another⁹ in which the Court referred with approval to the *Oryx* judgment. However, the facts in this application are distinguishable from those that served before the Constitutional Court. There is no allegation by the respondents that the applicant was not an innocent purchaser who was unaware of the pre-emptive right. The respondents have not instituted any proceedings based upon the alleged breach against the previous owner of the property or to enforce whatever personal rights they may have against any other party. There is no allegation that the respondents intend to institute any civil proceedings, and unlike in *Mokone*, there is no request that these proceedings be held in abeyance pending the finalisation of other proceedings.

[31] I must reiterate that the respondents relied in their heads of argument on the judgment of the Constitutional Court in *Mokone* and other related authorities dealing with the right of pre-emption. The respondents, especially the first respondent, have recognised the law regarding pre-emptive rights and have

⁸ 1982 (3) SA 893 (AD) at 907D to 909E

⁹ [2017] ZACC 25

put forth an argument addressing it. I have thoroughly examined the respondents' affidavits and legal arguments. Although the respondents are aware of the law and their rights, they have failed to take any action to enforce their claims. I am obligated to make a decision based on the facts presented before the court, and I will do so.

[32] The respondents have to date not taken any action against the erstwhile owner of the premises. If the respondents intended to enforce their purported right of first refusal, they could and should have done so. This again emphasises the importance of the fact that the first respondent, despite being advised on numerous occasions to obtain legal advice, decided to represent his family in person. The belated attempt to obtain legal advice and the first respondent's absence during the proceedings leave me in doubt regarding the respondents' bona fides. This is a case of when the proverbial shoe pinches, the excuse of lacking legal representation is used in an attempt to force the court to grant a postponement¹⁰.

[33] There are numerous other disputes on the affidavits regarding inter alia the water supply to the premises, unauthorised access to the property, etc. However, none of these disputes are relevant to the legal question of whether the respondents are in unlawful occupation.

[34] I am unable to arrive at any other conclusion than that the applicant and the respondents do not have a valid lease agreement. The respondents defaulted in paying rent to the applicant, but apparently persisted in paying rent to the previous owner. The respondents refused to negotiate with the applicant regarding the conclusion of a new lease agreement, or regularising their arrear rental and continued occupancy

[35] The first respondent is obstructive, uncooperative, and refuses to listen to any reason. In an attempt to avoid the ongoing dispute, the applicant proposed the respondents purchase the property at the amount at which the property

¹⁰ Take & Safe Trading CC & Others v Standard Bank of SA Ltd [2004] JOL 12516 (SCA)

was offered to the first respondent in 2021. The respondents declined the offer to purchase the property or to negotiate a lease agreement and, therefore, now find themselves facing eviction from their residence as unlawful occupiers.

EVICTON AS CAUSE OF ACTION

[36] The eviction of an unlawful occupier of premises can be obtained by means of the *rei vindicatio*, which is based upon the plaintiff's ownership, or through a possessory claim. The last mentioned claim relies upon allegations asserting that the right of a defendant to possess the property is founded upon an agreement between the parties, that such contractual right was validly terminated, and that the occupier continues to occupy the property.

[37] In *Serné NO. and others v Mzamomhle Educare and others*¹¹ the Supreme Court of Appeal per Ponnán JA dealt with a claim for eviction based upon the *rei vindicatio*. The Court referred with approval to the judgment by Jansen JA in *Chetty v Naidoo* in which it was held that:

"It is inherent in the nature of ownership that possession of the res should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The owner, in instituting a *rei vindicatio*, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the res - the onus being on the defendant to allege and establish any right to continue to hold against the owner."¹²

[38] Furthermore, Ponnán JA, with reference to *Chetty*, held that an occupier cannot simply deny the existence of a lease agreement and continue to occupy the property indefinitely without any legal basis, even if the right of ownership is conceded. In the absence of a successful challenge to the

¹¹ 2024 JDR 4879 (SCA)

¹² 1974 (3) SA 13 (A) at 20B to D

manner in which the plaintiff obtained ownership of the property, the registration of the property by the Registrar of Deeds remains valid until set aside by an order of Court. The Constitutional Court held in *Mighty Solutions CC trading as Orlando Service Station v Engen Petroleum Limited and another*¹³ that a challenge to the title of a lessor by the lessee is no defence to an eviction application. This is so because the right to hold a property against an owner derives from an agreement such as a lease agreement. In the absence of a valid lease agreement or where a lease agreement had run its course by effluxion of time and had not been renewed, there is no lawful basis for the continued withholding of possession from the owner.¹⁴

UNLAWFUL OCCUPANCY

[39] After careful consideration of the aforesaid, I have determined that the first and second respondents are in unlawful occupation of the premises. The respondents argue that the previous owner should have offered the property to them for purchase, which is the sole premise for their dispute that the applicant is the registered owner of the property. As stated previously, the respondents did not execute a valid Deed of Alienation in 2021, with the previous owner and whatever contractual rights they may have in terms of the so-called “trigger clause” are directed against the previous owner. The respondents cannot dispute that the applicant is the registered title holder, as evidenced by the deed of registration attached to the applicant’s founding affidavit. The lease agreement was duly terminated.

[40] The respondents were in arrears at the time of the cancellation of the lease agreement and continue to remain in arrears. They stubbornly persist in denying the applicant’s rights and attempts to conclude a new lease agreement. It is ironic that the lease agreement offered is essentially identical to the previous lease agreement, similar to the offer that was made by the applicant to the respondents to purchase the property, which they declined. .

¹³ 2016 (1) SA 621 (CC)

¹⁴ Serné *ibid* at para [28] to [30].

IS IT JUST AND EQUITABLE TO GRANT AN EVICTION ORDER

[41] In considering whether it is just and equitable to grant an eviction order, the history and background of the matter becomes pertinent and relevant. Regardless of the serious allegations made by the first respondent against the applicant, its employees, legal representatives, as well as the previous owner regarding the disconnection of water supply to the property, the respondents have not taken any steps to enforce their rights. Claims based upon the right of first refusal is not unknown to our Courts, however, the respondents failed to take any action to assert their purported claim against the previous owner.

[42] In *Port Elizabeth Municipality v Various Occupiers*¹⁵ Justice Sachs stated as follows:

“[35] ... The phrase ‘just and equitable’ makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing. The necessary reconciliation can only be attempted by a close analysis of the actual specifics of each case.

[36] The court is thus called upon to go beyond its normal functions, and to engage in active judicial management according to equitable principles of an ongoing, stressful and law-governed social process. This has major implications for the manner in which it must deal with the issues before it, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make. The Constitution and PIE require that in addition to considering the lawfulness of the occupation the court must

¹⁵ 2005 (1) SA 217 (CC) para 35.

have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values, so as to produce a just and equitable result.”

[43] However, in *Hattingh and others v Juta*¹⁶ the Constitutional Court held:

“[32] In my view the part of section 6(2) that says: “balanced with the rights of the owner or person in charge” calls for the striking of a balance between the rights of the occupier, on the one side, and those of the owner of the land, on the other. This part enjoins that a just and equitable balance be struck between the rights of the occupier and those of the owner. The effect of this is to infuse justice and equity in the inquiry ... ”.

[44] Therefore, a just and equitable order is one that considers not only the rights of the unlawful occupier, but also acknowledges the rights of the landowner. Section 4(6) of PIE provides that if an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, the Court may issue an eviction order if it is of the opinion that it is just and equitable to do so, taking into account all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women. The provisions of s 4(7) do not apply to the input of the City of Cape Town, even though the Court afforded the respondents the possibility of exploring this opportunity. Both the first and second respondents are gainfully employed and have one teenage daughter aged 14 who will be in Grade 10 in 2025. The respondents’ daughter suffers from asthma and eczema but she receives medication for this. No evidence was presented that her health would be adversely affected should the family be required to relocate. The respondents were allowed to place evidence before me per my order of 3 December 2024 regarding the circumstances the court should consider, including their financial position, personal circumstances and alternative accommodation. They subsequently filed two

affidavits but did not disclose any other relevant facts. There is sufficient evidence before the Court of alternative accommodation being available in the same area. The respondents view this as a matter of principle, as they refuse to consider any alternative accommodation but insist upon remaining on the property.

- [45] Considering the aforesaid, I am satisfied that it is just and equitable to grant an eviction order. I will allow the respondents until Friday, 28 February 2025, to vacate the property, failing which, the Sheriff or his deputy may execute the eviction order. In deciding upon the date of eviction I have considered that the respondents have occupied the property for an extended period and the fast approaching festive season.

COSTS

- [46] The first respondent did everything within his power to oppose, delay and obstruct the finalisation of this application. He abused the leniency shown by Courts in assisting lay litigants who appear in person.
- [47] I intend to grant a cost order that aims to strike a balance between the rights and interests of both the applicant, the first and second respondents. The applicant was successful and is entitled to the relief claimed. The first and second respondents should be held liable for the costs associated with this application, including all of the postponements that occurred on the dates that this matter was heard before the Court. The applicant did not apply for any punitive cost order and Adv Lawrence submitted that cost on scale A would be appropriate.

RELIEF AND ORDER GRANTED

- [48] Considering the aforesaid an order is granted as follows:

- 1) That the first, second and fourth respondents be evicted from the premises situated at Erf 4[...] more commonly known as [...] H[...] Street, Ruyterwacht, Cape Town, Western Cape (“the premises”).
- 2) An order directing the first, second and fourth respondents to vacate the premises on or before Friday, 28 February 2025.
- 3) In the event of the first, second and fourth respondents failing to vacate the premises as set out in paragraph 2 above, the Sheriff of the above Honourable Court be authorised and directed to evict the first, second and fourth respondents from the premises together with their possessions and place the applicant in possession thereof on Monday 3 March 2025.
- 4) The first and second respondents are ordered to pay the costs of the application including any and/or all wasted costs occasioned by the standing down or postponement of the application on 22 November 2024, 3 December 2024 and 11 December 2024 on scale A.
- 5) The applicant’s attorney is directed to serve a copy of this order forthwith on the first and second respondents and at the premises by affixing a copy thereof to the front door and handing copies thereof to any and or all occupiers present

VAN DEN BERG AJ

Appearance for applicant:

Adv A Lawrence

Instructed by:

Toefy Attorneys

Appearance for first and second respondent: In person