

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 124591/2023

DATE: 22-01-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 22 January 2025

10 In the matter between



SIGNATURE

STEVEN VICTOR SCHUBACH

Applicant

and

TLR INDUSTRIAL (PTY) LTD & OTHERS

Respondents

J U D G M E N T E X T E M P O R E

20 WILSON, J: The applicant, Mr Schubach, owns a property in Petervale Township in the northern part of Sandton. He sold that property to the first respondent, TLR Industrial, for the sum of R4.3 million. The purchase was arranged for the benefit of the second respondent, Ms Seletswana. Ms Seletswana and her children took occupation of the property in terms of the sale agreement. The full purchase price could not initially be raised by TLR Industrial, and it was

arranged that a deposit be paid and a bond be procured for the remainder of the purchase price. It turned out that a bond could not be procured for the difference between the deposit and the full purchase price, and TLR Industrial was left in some difficulty in meeting its obligations under that agreement.

Nonetheless, Mr Schubach agreed to continue to allow Ms Seletswana to occupy the property in return for occupational rent payments, which were funded by drawing
10 down from the deposit paid against the purchase price. In a series of addenda to the sale agreement, this arrangement was extended from time to time until the deposit itself was completely exhausted and neither TLR Industrial nor Ms Seletswana could produce the balance of the purchase price owing under the agreement.

At that stage, Mr Schubach decided to terminate the agreement. He now sues for Ms Seletswana's eviction and the eviction of all those holding occupation under her. The application is brought in terms of the Prevention of
20 Illegal Eviction from an Unlawful Occupation of Land Act 19 of 1998. There are essentially three requirements under that legislation that matter in this case. The first is that the respondents be unlawful occupiers – that they are present on the property without the consent of the owner or person in charge and without any other right in law to occupy.

Secondly, the unlawful occupiers sought to be evicted must receive written and effective notice of the proceedings for their eviction, and of any date on which they will be required to appear in court. Thirdly, an eviction order must be just and equitable in all the circumstances.

In this case, the first requirement is clearly satisfied. Ms Seletswana is unlawfully in occupation of the property. The only rights she could have claimed to occupy the property would have been those afforded to her under
10 the addenda to the sale agreement. There can be no dispute that the sale agreement and its addenda have been validly cancelled. That leaves Ms Seletswana without a lawful right of occupation. There can be no serious suggestion that Mr Schubach any longer consents to Ms Seletswana's occupation of the property.

The second requirement is that the unlawful occupiers sought to be evicted receive written and effective notice of the application. Ordinarily, the requirement is that a court provide such notice. In this case, a court did
20 provide such notice but the date of which it gave notice was ultimately not the date on which the application was determined. The application was postponed *sine die* and the question that originally animated me was whether, properly construed, section 4(2) of the Act requires the court once again to issue an additional notice of the date on

which the application is ultimately set down.

Whether or not a court is required to do that, I think that the allocation of today's hearing date by the Deputy Judge President of this Court and the notice of that date given by the Deputy Judge President's office to Ms Seletswana's erstwhile attorney in November last year counts as written and effective notice given by the court under the statute. I might also add that Ms Seletswana was herself given further notice by email last December and was
10 physically served a copy of the notice of set down last week.

Furthermore, Mr Hoffman, who appeared for the applicant, informed me after the matter was called that Ms Seletswana had been telephoned shortly before I walked into court and had said that she knew that the matter was in court today and was not planning to attend. Mr Hoffman assured me that he overheard that conversation and can vouch for the account of it that he gave me.

In all those circumstances, Ms Seletswana has
20 plainly been given not just written and effective notice under the statute, but repeated notice that the matter would be in court today and that she was entitled to come and place such circumstances as she wished before me. There is no indication that her election not to do so is anything other than free and voluntary. For that reason, I must

conclude that she is voluntarily in default of appearance.

Nonetheless, eviction orders are not given by default. The statute requires me to weigh the equity of an eviction whether or not an eviction application is opposed, and whether or not the unlawful occupiers appear before me to argue their case. The court exercises an equitable discretion primarily to protect unlawful occupiers from homelessness. Constitutionally, a court may not grant an eviction order where there is a real prospect that an
10 eviction would lead to homelessness. If it does so, the court grants an order which is unjust and inequitable, contrary to the statute.

In this case, however, I am satisfied that there is no appreciable prospect that the eviction order I intend to grant will lead to homelessness. The circumstances of the case themselves suggest that Ms Seletswana is an affluent tenant who benefited from a transaction of some value apparently through TLR Industrial. The probabilities in all the circumstances of the case are that Ms Seletswana will
20 not be rendered homeless by an eviction, albeit that she may not be able to find accommodation of a similar standard to the home she currently possesses,

She may have to downsize, but the fact that her occupation of the property has, for a very long period, been subsidised not only by Mr Schubach, but by rental payments

of some value, suggests to me that it is within her grasp to find accommodation that costs considerably less than the home she presently occupies. The answering affidavit Ms Seletswana filed does nothing to disturb those probabilities. There is a suggestion in the answering affidavit that Ms Seletswana has fallen on hard times, and that she and TLR Industrial had every intention of honouring the sale agreement and ultimately taking ownership of the property, but that, through a series of misfortunes, they
10 were unable to do so.

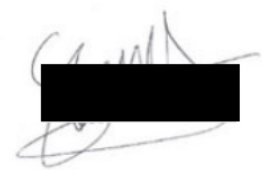
None of that, in and of itself, however, indicates an appreciable risk of homelessness – that Ms Seletswana will literally have nowhere to go if she is removed from the property on adequate notice. Put simply, this is not the sort of case that the anti-homelessness protections embedded in PIE were meant to apply to. Ms Seletswana does not live in an informal settlement. She does not live in an abandoned building. She does not live in a part of town or in an area of the countryside, or in other circumstances, that would
20 suggest that she is impecunious and unable to find accommodation for herself. For all those reasons, I conclude that an eviction order in this case is just and equitable, and I intend to make one.

I am finally required by the statute to set a just and equitable date by which Ms Seletswana will have to vacate

the property, or face eviction. Given the length of her occupation of the property, I think a period of six weeks to vacate would be appropriate. This is more than enough time to allow her to find other rental accommodation, which I have already held is within her grasp, and to make such other arrangements as she may need to make in order to vacate the property and move into that accommodation.

There has been a draft order placed in front of me that sets a just and equitable date of 7 March 2025 for the
10 vacation of the property. I intend to endorse that draft. I will also direct that the order be served on Ms Seletswana forthwith. Mr Hoffman will no doubt see to that.

In all those circumstances, I make an order in terms of the draft handed up by counsel, which I have signed, dated and marked "X".



.....
WILSON, J
JUDGE OF THE HIGH COURT
22 January 2025