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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case Number: **025803/25**

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: No
(3)	REVISED: No
DATE	SIGNATURE

In the matter between:

KGOBE MADIMETJA

Applicant

and

**THE UNLAWFUL OCCUPIERS OF THE
REMAINING EXTENT OF ERF 5[...]
CITY AND SUBURBAN**

First Respondent

THE CITY OF JOHANNESBURG

Second Respondent

MINISTER OF HUMAN SETTLEMENTS

Third Respondent

JUDGMENT

MANOIM J

[1] This matter is brought by Mr Madimetja in his capacity as the only remaining trustee of the Marshall House Property Trust. The Trust owns a property situated at 2[...] M[...] Street, Erf No 5[...] City and Suburban, Johannesburg. I will refer to this building as the Property.¹

[2] The Trust seeks to remove the first respondents, described as the unlawful occupiers, from the Property by way of an interim interdict to another building owned by the Trust in Bertrams. The Trust requires that the City pay the costs of the transport to Bertrams. In Part B of the order, to be heard on the return day, the Trust seeks to have the order made final. The Trust also seeks an order on the City to compel to file a report on how it intends to accommodate the occupiers.

[3] The first respondent whom I shall refer to as the occupiers are legally represented in these proceedings and oppose the relief. The City has neither opposed or abided.

[4] I have used the word remove advisedly. The Trust claims it is not 'evicting' the occupiers but 'evacuating' them. Of course, this might seem to be linguistic nicety since both result in the occupiers being removed from the Property. But this is not so. The choice of term has juristic implications since different statutes apply depending on whether the action taken is an evacuation or an eviction.

[5] The Trust is seeking to remove the occupants, not by relying on the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE), which is what property owners normally have to rely for an eviction, but instead seeks to rely the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) (the Act) and its regulations. That Act regulates evacuations from a property, not on the basis of unlawful occupation, but instead on the safety of occupants be they present lawfully or unlawfully. Nor does it require

¹ A challenge was made to the locus standi of Madimetja and the Trust to bring the action, but I consider this point was of no substance. There were only two trustees of the trust but one has resigned. The latter gave an affidavit to confirm this but nevertheless indicated his support of the application. Madimetja also attached the title deeds for the property indicating it is owned by the Trust.

determination of whether the removal of the occupiers is just and equitable or a weighing of hardship to the owner and occupier respectively.

[6] The question in this case is whether the Trust can rely on that section to remove the occupiers from the property instead of proceeding in terms of PIE.

Background

[7] The Trust explains that the Property was originally a warehouse but has been unlawfully converted into residential flats by hijackers without the submission of plans to the City for evaluation and approval. It now houses approximately 200 people.

[8] It has now fallen into disrepair. This is not just the Trust's opinion. On 25 November 2024 various departments of the City and officials conducted an inspection of the building. Following the inspection the City's Emergency Services officials compiled a report. They concluded that the building on the Property poses various health and safety risks to the occupiers and recommended that the Property be evacuated immediately.

[9] It is important to note the status of this report. It describes its objective as follows:

“OBJECTIVE The objective of this report is to inform the Public Safety Section 79 Committee of the contraventions at bad building Marshall House Building Stand No.5[...] situated at 2[...] M[...] Street City and Suburban Johannesburg inspected by JMPD, EMS and MMC on the 25th of November 2024 that need immediate attention or closure.”

[10] This report forms the basis for the Trust's reliance on the enforcement provisions of the Act. But the report, as the above quotation indicates, is no more than a recommendation to the relevant Committee of the City. But section 12(4) which the Trust relies on, requires a notice to the owner, not merely a report from one of its entities to its officials. I set out the relevant provision:

(12)(4) If the local authority in question deems it necessary for the safety of any person, it may by notice in writing, served by post or delivered-

(a) order the owner of any building to remove, within the period specified in such notice, all persons occupying or working or being for any other purpose in such building there from, and to take care that any person not authorized by such local authority does not enter such building;

(b) order any person occupying or working or being for any other purpose in any building, to vacate such building immediately or within a period specified in such notice.

[11] The provisions of the Act are echoed in the Regulations which the Trust also seeks to place reliance on. Regulation A 15(4) states:

"The local authority, may, by notice, in writing to the owner, order the evacuation of such building where the state of such building, equipment, installation, or facility will cause conditions which in the opinion of the local authority, may be detrimental to the safety or health of the occupiers or users of such building."

[12] There is no evidence in the record that such a notice has been given to the Trust either in terms of the Act, or the regulation. Counsel for the application conceded this but sought to argue that the Report could constitute such a notice. Unfortunately for the reason I explained it does not constitute a notice. A notice is not a mere formality. It requires the relevant functionary to have applied his/her mind to the issue and then to issue a notice which inter alia requires the owner to indicate the period in which the relevant persons must be removed.

[13] If that is the case, then the Trust cannot rely on that provision or its mirror image in the regulations to base this application on. It must either procure such a notice from the City, which regrettably despite being a respondent, and its own officials' alarming report, has remained passive in the litigation . The other choice for

the Trust is to act in terms of section 5(1) of PIE which provides such a situation of emergency, but which requires the procedures of that Act to be followed.²

“5. (1) Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that—

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;

(b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted;

And

(c) there is no other effective remedy available.”

[14] Section 5(2) of PIE then sets out the procedure for such an application which requires a court authorised prior notice to be given to the occupiers. This safeguard is significant and because PIE has not been followed in this case, this has been denied to the occupiers.

[15] It is not necessary for me then to consider any of the other issues in this case raised by the representatives of the occupiers as this is the crisp issue. Of course, the occupants could leave voluntarily given that they have been offered accommodation for free in the neighbourhood and in the view of the Trust, is superior in every respect. It does not appear that anyone representing the Occupiers has ever looked at the alternative accommodation instead they have quibbled with every

² I was advised from the Bar that such an application had been brought earlier this year but not persisted with for reasons that are disputed between the applicant and the first respondent. I need not take this issue further.

technical point imaginable except the one I have had to decide this case on. Nor do they appear to have consulted with anyone other than the deponent to the answering affidavit. She claims to represent them all, but this is by no means clear. Attached to her affidavit is a handwritten list of names of 196 people with the place for signatures next to their names left blank. The list appears to be all in the same handwriting. If this was meant to show she was authorised by all of them to oppose the application, it is unconvincing. For this reason, even though I have dismissed the claim I do not consider that costs of any more than that of a single respondent on scale B are warranted.

ORDER

1. The application is dismissed.
2. The applicant is liable for the costs of the first respondent, but limited to the costs occasioned by a single person as a respondent, on a party and party Scale B.

MANOIM J
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant:	K Maupa instructed by EMG Attorneys
For the First Respondent:	L Mhlanga instructed by Muleya Attorneys
Date of hearing:	14 March 2025
Date of Judgement:	19 March 2025