



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: 3591/2024

In the matter between

MANTSOPA LOCAL MUNICIPALITY

APPLICANT

and

ALL UNLAWFUL AND UNIDENTIFIED PERSONS

**FIRST
RESPONDENT**

**TRESPASSING AND/OR PREPARING TO OCCUPY
PORTION 20 OF FARM DORPS GRONDEN
LADYBRAND NO.451, LADYBRAND**

**SECOND TO THIRTY-
THIRD RESPONDENTS**

**ALL RESPONDENTS AS LISTED IN ANNEXTURE 'A'
ANY AND ALL UNLAWFUL AND UNIDENTIFIED
OCCUPIER(S) OF PORTION 20 OF FARM DORPS
GRONDEN LADYBRAND NO.451, LADYBRAND**

**THIRTY-FOURTH
RESPONDENT**

Neutral citation: *Mantsopa Local Municipality v All Unlawful & Unidentified Occupiers and Others (3591/2024)*

Coram: Mpama AJ

Heard: 14 November 2024
6 February 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be on 27 February 2025 at 09H30.

Summary:

ORDER

Part A:

1. Rule *nisi* granted on 5 July 2024 is hereby confirmed and made final.

Part B:

1. The second to thirty-fourth respondent and all those who occupy the Portion 20, Dorp Farm, Gronden, Ladybrand are declared unlawful occupiers.
2. The second to thirty-fourth respondents, and all those who occupy the property are ordered to vacate Portion 20, Dorp Farm, Gronden, Ladybrand on or before 15h00 on Wednesday, 30 April 2025.
3. It is further ordered that in the event that the second to thirty-fourth respondents and all those who occupy the property fail or refuse to vacate the property on or before 15h00 on 30 April 2025, the Sheriff Ladybrand, alternatively his or her duly appointed deputy together with such assistance as he or she deems appropriate are authorized and directed to evict the second to thirty-fourth respondents and all those who occupy Portion 20, Dorp Farm, Gronden, Ladybrand and to remove all the structures illegally built on the property.
4. The applicant is directed to make available to the sheriff 60 copies of this order. The order is to be served on Mr Ntoni, the second and thirty-fourth respondents by the Sheriff.
5. The sheriff is directed to attach a copy of this order at a structure found at Portion 20, Dorp Farm, Gronden, Ladybrand and at a point that is generally accessible to most occupiers in the property.
6. The sheriff is directed to read the contents of this order over a loudspeaker/megaphone to all the persons found present at Portion 20, Dorp Farm, Gronden, Ladybrand twice a day, between 7h00 and 9h00 and between 17h30 and 18h30 for five consecutive days from the date of this order.
7. The Registrar is directed to serve this judgment through electronic mail to the Head of

Department for Human Settlements, Free State Provincial Government.

8. No cost order is made.

JUDGMENT

Mpama AJ

[1] The Honourable Sachs J once held:

'In the pre-democratic era the response of the law to a situation like the present would have been simple and drastic. In terms of the Prevention of Illegal Squatting Act 52 of 1951(PISA), the only question for decision would have been whether the occupation of land was unlawful. Once it was determined that the occupiers had no permission to be on the land, they not only faced summary eviction, they were liable for criminal prosecution. Expulsion from land of people referred to as squatters was accordingly accomplished through the criminal and not the civil courts, and as a matter of public rather than of private law. The process was deliberately made as swift as possible: conviction followed by eviction. Thus, even if they had been born on the land and spent their whole lives there, persons from whom permission to remain on the land had been withdrawn by new owners were treated as criminals and subjected to summary eviction.'¹

[2] The democratic dispensation ushered in a new era in our history. Section 26(3) of the Constitution provides:

'No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.'

[3] The Constitution does not permit eviction without a court order. To reinforce this and prevent the abuses of the past, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) was enacted. A person can only be evicted if the court finds that he or she is in unlawful occupation and when it has determined that that such eviction is just and equitable.

[4] This is an application for the eviction of the second to thirty-fourth respondents

¹ *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC) para 8.

from the land situated at Portion 20, Dorp Farm, Gronden, Ladybrand (applicant's property). The application has been brought in accordance with the provisions of the PIE Act. The applicant is a local municipality duly established in terms of s 155 read with s 239 of the Constitution of the Republic of South Africa, with its principal address at 38 Joubert Street, Ladybrand, Free State.

[5] The first respondent refers to all unlawful and unidentified occupiers or persons preparing to occupy applicant's property. The second to thirty-third respondents (the respondents) are all respondents listed in Annexure 'A', a report compiled by the applicant with the details of some of the persons occupying applicant's property. The thirty-fourth respondent refers to any unlawful and all unidentified occupiers of the property or a group of persons currently residing at applicant's property.

[6] The applicant launched this application on 2 July 2024 in two parts. Part A was intended to prevent further occupation of the land and was heard on an urgent basis against the first respondent. On 5 July 2024, a rule *nisi* was issued. On 14 November 2024, the application was heard, judgment reserved and the rule *nisi* was extended to 6 February 2025, and later again to 27 February 2025. The parties were directed to file supplementary heads of argument by 18 February 2025. I am grateful to both parties for the comprehensive heads of argument filed in this application.

[7] With regards to the rule *nisi*, it appears that there is no dispute on whether it should be confirmed or not. The municipal manager of the applicant deposed to an affidavit in support of the application while Mr Setsumi April Ntoni deposed to the answering affidavit on behalf of the second to thirty-fourth respondents. The first and thirty-fourth respondents filed no opposing papers and made no appearance.

[8] The first issue the court must determine is a point *in limine* raised by the second to thirty-fourth respondents who contended that the municipality lacked authority to bring the application. The respondents abandoned the point *in limine* on its head of arguments. The applicant dealt with this issue extensively in its reply and I do not consider that it is deserving of any special mention. However, for the sake of completion, I make mention that the point *in limine* raised by the respondent is dismissed. I must also mention that the applicant had also raised a point *in limine* but withdrew it.

[9] I now turn to the merits of the application. Erasmus *Superior Court Practice*²

² Van Loggerenberg, *Erasmus Superior Court Practice* 2ed (2) at D9-1 to D9-3.

summarizes the PIE Act as follows:

'The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), which came into operation on 5 June 1998, provides for the procedures for the eviction of unlawful occupiers of land. In *Ndlovu v Ngcobo; Bekker and Bosch* the Supreme Court of Appeal, in a majority judgment held that PIE disposed of certain common-law rights relating to eviction. The majority judgment can be summarized as follows:

(a) PIE has its roots, inter alia, in s 26(3) of the Constitution of the Republic of South Africa, 1996.

(b) the definition of an unlawful occupier in s 1 of PIE relates to a person who occupies land without the express or tacit consent of the owner or person in charge of such land. In unlawful occupiers, irrespective of whether their occupation of such land was previously lawful.

(c) PIE does not protect buildings and structures that do not perform the functions of a form of dwelling or shelter for humans for example commercial properties or that are occupied by juristic persons.

(d) the effect of PIE is not to expropriate private property. What PIE does is to delay or suspend the exercise of landowner's full proprietary rights until a determination has been made whether it is just and equitable to evict the unlawful occupier and under what conditions.

(e) PIE invests in the courts the right and duty to make the order which, in the circumstances of the case, would be just and equitable, and it prescribes some circumstances that have to be taken into account in determining the terms of the eviction. In other words, the court, in determining whether or not to grant an order, or in determining a date on which the on which the property has to be vacated, has to exercise a discretion as to what is just and equitable. The discretion is one in the wide, and not the narrow sense. Consequently, the court does not have a free hand to do whatever it wishes.

(f) provided the procedural requirements laid down in PIE have been met, a landowner is entitled to approach the court on the basis of ownership and the occupier's unlawful occupation. In this regard the occupier bears an evidential onus("weerleggingslas").'

[10] The PIE Act only applies to 'unlawful occupiers'. In s 1 of the PIE Act, an unlawful occupier is defined as:

‘a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996.’

[11] The PIE Act enjoins the court to grant an eviction order only ‘if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances’ as contemplated in s 4(6), 4(7) and 6(1) of the PIE Act.

[12] For the court to grant an eviction order it must conduct two-legged enquiry. The first leg of the enquiry is whether the respondents are unlawful occupiers. Once the court has found that the respondents are unlawful occupiers, it must consider whether the eviction of the respondents will be just and equitable.

[13] In considering whether it is just and equitable to make an eviction order, the court must consider all the relevant circumstances as contemplated in s 6 of the PIE Act. Once the court has established that the eviction will be just and equitable, it must consider the date of implementation of the order.

[14] Coming to the application before me, the applicant has by way of a title deed asserted that it owns the property in question. The respondents do not deny that the applicant owns the property. Moreover, the respondents do not dispute that they have not been authorized by the owner to occupy the land in question. None of the respondents have demonstrated that they have the implied or tacit consent of the applicant to occupy the property. In the premises, the respondents are found to be unlawful occupiers.

[15] The PIE Act set out two types of unlawful occupiers, namely unlawful occupiers in terms of s 4(6) (those who have been in unlawful occupation for a period less than 6 months) and s 4(7) occupiers of the PIE Act (those who have been in unlawful occupation for a period longer than 6 months). The applicant, in its founding affidavit, averred that the respondents have occupied the land for less than 6 months and are therefore s 4(6) occupiers. It is the applicant’s case that during the period of April and May 2024 it noticed that there were people moving in and around the land in question. Upon further investigation, it found people gathering building material, some demarcating the area with boulders and erecting some shacks.

[16] The applicant further stated that upon an advice from its attorney, photographs of

the area were taken by the applicant in June 2024. The photos are attached to the application.

[17] The second to thirty-third respondents disputed that they have occupied the area for less than 6 months. In their answering affidavit, the respondents averred that when they arrived at this area three years ago (2021), they found persons already in occupation.

[18] It is trite that any dispute of facts relevant must be resolved in favour of the respondents unless the assertion in question is so untenable or farfetched that it can be dismissed on the papers.³

[19] The photos attached to the founding affidavit were obtained in June 2024, according to the applicant. This has not been denied by the respondents. These photos depict some shacks and most of the shacks are half built structures. In addition, there is burnt grass on the ground and no ablution facilities can be seen on the photos. Just by looking at the photos, it is easy to detect that the area is newly established and has been occupied only recently. On account of the aforementioned, it is my finding that the unlawful occupiers have not occupied the area for more than 6 months. They are therefore s 4(6) unlawful occupiers.

[20] Section 4(6) of the PIE Act provides that if an unlawful occupier has occupied the land in question for less than 6 months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

[21] The court must determine if it is just and equitable to evict the respondents. The respondents asserted that they bought certain sites from the applicant some time ago and the applicant failed to deliver the sites to them, hence they took occupation of this property. In support of this assertion, the respondents attached five letters. The letters show that Ntobo Sechaba, Mokheseng Maserame, Setlai Koos and Maphalatsa Anna were in 2015, respectively, allocated sites at Thabong and that ME Khojane was allocated a site at Manyatseng in 2021 by the applicant. The allocation of the sites has not been disputed by the applicant. However, the applicant contended that the sites that were allocated according to these letters do not form part of the property subject of these proceedings and there is no defence available to the respondents for occupying this land.

³ *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009(2) SA 277 (SCA) para 26.

The applicant submitted during the oral arguments that the respondents' actions amount to land grabbing and should be discouraged by the court.

[22] Annexure 'A' identifies the occupants found on the land subject to these proceedings and their details. The names of the persons allocated the sites according to the respondents' letters do not appear on Annexure 'A'. The letters do not support the respondents' assertions that the unlawful occupiers are persons who bought sites from the applicant. Even if it were so, that alone would not stand as a defence to the application. Furthermore, the areas (Thabong and Manyatseng) referred to in the letters are not the same as the one being the subject of these proceedings. The letters bear no testimony to the respondents' defence.

[23] Lastly, the applicant contended that the property in question is earmarked for a housing development meant to benefit its underprivileged community. It was averred on the applicant's founding affidavit that the applicant is in the process of making an application to the Department of Agriculture, Land Reform and Rural Development (Department) to establish a township. Correspondence between the applicant and the Department was attached to the application. If the respondents are allowed to remain in this property their presence will interfere with the applicant's attempts to grapple with housing shortages.

[24] Having considered the above I am satisfied that the eviction of the respondents is just and equitable. There is no defence proffered by the respondents for the unlawful occupation of the applicant's property.

[25] The respondents have not occupied the area for a long time. However, acknowledging that there are elderly persons, children and women occupying the property I am of the view that a period of two months' notice to the respondents is sufficient.

[26] The applicant acknowledged that it has a backlog of houses and it is unable to meet the demands. The respondents are citizens of the Republic and deserve to be treated with dignity. I say this because it does not appear that the applicant, at any stage before launching the application, engaged the respondents with the intent of finding a solution. The respondents have built shacks in the area and the applicant seems to have forgotten its constitutional duty to provide proper housing to the respondents as well as other persons residing within its area. It has treated this litigation just as any other

litigation, forgetting its constitutional mandate.

[27] I wish to remind the applicant of what was said by the Supreme Court of Appeal in the case of *City of Johannesburg v Changing Tides 74 (Pty) Ltd & Others*:⁴

'The general approach of local authorities, so far as it can be discerned from the reported case, has been to file with the court a general report detailing its current housing policy without addressing the facts of that particular case. That is inadequate. In addition to such a report it must deal directly with the facts of the particular case. That report must specify

(a) The information available to the local authority in regard to the building or property in respect of which an eviction order is sought, for example, whether it is known to be a "bad building", or is derelict, or has been the subject of inspection by municipal officials and, if so the result of their inspections. (It appears from some of the reported cases, like the present one, that the local municipality has known of the condition of this building and precipitated the application for the eviction by demanding that the owners evict people or upgrade buildings for residential purposes). The municipality should indicate whether the continued occupation of the building gives rise to health or safety concerns and express an opinion on whether it is desirable in the interests of the health and safety of the occupiers that they should be living in such circumstances;

(b) such information as the municipality has in regard to the occupiers of the building or property, their approximate number and personal circumstances (even if described in general terms, as, for example by saying that the majority appear to be unemployed or make a living in informal trade), whether there are children, elderly or disabled people living there, and whether there appear to be households headed by women;

(c) whether in the considered view of the local authority an eviction order is likely to result in all or any of the occupiers becoming homeless;

(d) if so, what steps the local authority proposes to put in place to address and alleviate such homelessness by way of the provision of alternative land or emergency accommodation;

⁴ *City of Johannesburg v Changing Tides 74 (Pty) Ltd & Others* [2012] ZASCA 116; 2012 (6) SA 294 (SCA).

- (e) the implications for the owners of delay in evicting the occupiers;
- (f) details of all engagement it has had with the occupiers in regard to their continued occupation of or removal from the property or building;
- (g) whether it believes there is scope for a mediated process, whether under s 7 of PIE or otherwise, to secure the departure of the occupiers from the building and their relocation elsewhere and, if so on what terms and, if not why not.⁵

[28] At para 41 the court went further and said:

‘ . . . The more comprehensive the report furnished by the local municipality at the outset, the less likely that it will become embroiled in lengthy and costly litigation, so that the additional effort at the outset should diminish costs in the long run and enable eviction cases to be dealt with expeditiously in the interests of all concerned.’

[29] I am mindful that the respondents have occupied the applicant’s property for less than six months; however, it remained the duty of the municipality to place before court as much information as it is possible about the unlawful occupiers’ contrary to the applicant’s belief that it is the respondents who should place this information before court. It was for this reason, *inter alia*, that I requested the parties to file supplementary heads of argument. Section 7 of the PIE Act provides for a mediation process in circumstances of this nature. The applicant neglected the provisions of the PIE Act as it did not at any instance try to mediate the matter.

[30] In the circumstances, the following order is made:

Part A:

1. Rule *nisi* granted on 5 July 2024 is hereby confirmed and made final.

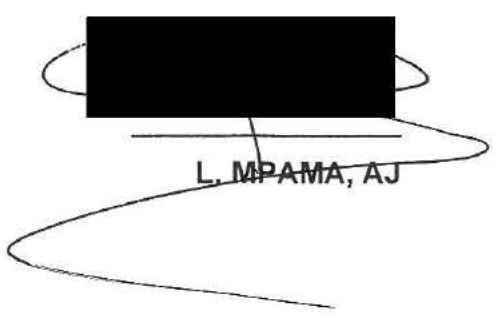
Part B:

1. The second to thirty-fourth respondent and all those who occupy the Portion 20, Dorp Farm, Gronden, Ladybrand are declared unlawful occupiers.
2. The second to thirty-fourth respondents, and all those who occupy the property are ordered to vacate Portion 20, Dorp Farm, Gronden, Ladybrand on or before 15h00 on

⁵ Ibid para 40.

Wednesday, 30 April 2025.

3. It is further ordered that in the event that the second to thirty-fourth respondents and all those who occupy the property fail or refuse to vacate the property on or before 15h00 on 30 April 2025, the Sheriff Ladybrand, alternatively his or her duly appointed deputy together with such assistance as he or she deems appropriate are authorized and directed to evict the second to thirty-fourth respondents and all those who occupy Portion 20, Dorp Farm, Gronden, Ladybrand and to remove all the structures illegally built on the property.
4. The applicant is directed to make available to the sheriff 60 copies of this order. The order is to be served on Mr Ntoni, the second and thirty-fourth respondents by the Sheriff.
5. The sheriff is directed to attach a copy of this order at a structure found at Portion 20, Dorp Farm, Gronden, Ladybrand and at a point that is generally accessible to most occupiers in the property.
6. The sheriff is directed to read the contents of this order over a loudspeaker/megaphone to all the persons found present at Portion 20, Dorp Farm, Gronden, Ladybrand twice a day, between 7h00 and 9h00 and between 17h30 and 18h30 for five consecutive days from the date of this order.
7. The Registrar is directed to serve this judgment through electronic mail to the Head of Department for Human Settlements, Free State Provincial Government.
8. No cost order is made.



L. MPAMA, AJ

Appearances:

For the Applicant:	Adv K Naidoo
Instructed by:	Rampai Attorneys Westdene Bloemfontein
For the 2nd to 33rd Respondents:	Mr MW Mukhawana
Instructed by:	MW Mukhawana Attorneys Ficksburg c/o Thebe Attorneys Westdene Bloemfontein
For the First and Thirty-fourth Respondents:	No appearance