

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Case no: **D10106/22**

In the matter between:

JACOBUS WILLEM VENTER N.O.

FIRST APPLICANT

JUSTI STROH N.O.

SECOND APPLICANT

**(In their capacity as joint liquidators of JUBILEE
PLANT HIRE SA CC (IN LIQUIDATION))**

and

LOVENDRAN MARIMUTHU

FIRST RESPONDENT

(Identity number 8[...])

RAMONA BUDDEN

SECOND RESPONDENT

(Identity number 8[...])

eTHEKWINI METROPOLITAN MUNICIPALITY

THIRD RESPONDENT

**THE MASTER OF THE HIGH COURT, KWAZULU-
NATAL**

FOURTH RESPONDENT

Coram: Mossop J

Heard: 7 May 2025

Delivered: 7 May 2025

ORDER

The following order is granted:

1. In terms of s 4(8) of the Prevention of Eviction from and Unlawful Occupation of Land Act 19 of 1998, the first and second respondents, and any person occupying through them, are ordered to vacate the immovable property with the address of Unit [...], P[...] of U [...], [...] L[...] Drive, U[...] R [...], KwaZulu-Natal (the apartment) by 30 June 2025.
2. In the event of the first and second respondents failing to vacate the apartment as ordered, the sheriff of this court is directed to eject and evict them from the apartment together with any other person claiming a right of occupation through them.
3. The first and second respondents are directed to pay the applicants' costs, jointly and severally, the one paying the other to be absolved, on the scale as between attorney and client, with such costs to include the costs reserved on 26 April 2023, 24 July 2024 and 9 December 2024.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgement.

[2] The applicants, who are the joint liquidators of Jubilee Plant Hire SA CC (Jubilee) seek the ejectment of the respondents from the immovable property with the address of Unit [...], P[...] of U [...], [...] L[...] Drive, U[...] R [...], KwaZulu-Natal

(the apartment) in terms of the provisions of s 4(8) of the Prevention of Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act). Their entitlement to do so is based upon the fact that the apartment is owned by Jubilee.

The basis for the application

[3] The ownership mentioned above is not disputed, nor is the fact that Jubilee is in final liquidation and that the applicants are the duly appointed joint liquidators of Jubilee.¹ The applicants assert that the first and second respondents are in unlawful occupation of the apartment. In the performance of their official duties, the applicants seek to sell the apartment as an asset in the insolvent estate of Jubilee and for this to occur they require the respondents to vacate the apartment.

[4] As regards the first and second respondent's unlawful occupation of the apartment, the applicants observe that:

‘Five years after the winding up of Jubilee, the first and second respondents still occupy the Property unlawfully.’

And, further, they mention that:

‘There is no lease agreement in place with the first and second respondents or any other occupant of the Property nor has the first and second respondents, or anyone else, ever compensated Jubilee for the occupation of the Property.’

The apartment

[5] The apartment is in a well-known, expensive, and prestigious building located in the upmarket suburb of Umhlanga Rocks. The apartment has been valued at between R7,5 million and R10 million by a professional valuator appointed by the applicant and that valuation, replete with photographs, is before the court. The accuracy of that valuation has also not been challenged by the respondents.

¹ Initially, a Mr Cloete Murray was appointed as one of the joint liquidators of the close corporation, but he was tragically murdered, along with his son, a killing that enjoyed national notoriety and publicity. The presently named first applicant, Mr Jacobus Willem Venter, was substituted in the place and stead of the late Mr Murray.

The respondents' approach to the applicants' allegations

[6] The first respondent has elected not to directly challenge the allegations made by the applicants by delivering an answering affidavit. Instead, the strategy employed by him and the second respondent, to whom he is married, was for the second respondent to deliver an answering affidavit and for him to merely deliver a confirmatory affidavit in which he confirms all references made to him in the answering affidavit delivered by his wife. There are, as a matter of fact, but three direct references to the first respondent in the second respondent's answering affidavit.

[7] The difficulty that this occasions for the first respondent is that where the second respondent fails or neglects to address an allegation in the founding affidavit, he, too, does not address it. He has thus wedded himself entirely to his wife's version. Any shortcomings in her answer becomes his shortcoming.

The second respondent's allegations

[8] In her answering affidavit, the second respondent admits her occupation of the apartment. What she says in justification of this is the following:

'I respectfully submit that I have historically been in lawful occupation of the said property independent of the First Respondent and such lawfulness of my occupation of the said property has not been disturbed.'

[9] A point of considerable interest, and significance, is what right the second respondent claims to have entitling her to occupy the apartment against the wishes of the applicants and when, and how, she acquired that right. The applicants can have no personal knowledge of the claimed right given that the alleged acquisition of the right appears to have predated their appointment. The information relating to the right that the second respondent claims is personal to herself and must be facts uniquely known to her.

[10] To resist the allegations of the applicants that there is no basis in law for her occupation of the apartment, the second respondent should have been entirely frank

and forthcoming with the court and should have provided full particularity of her alleged right of occupation to permit it to be examined. She did not embrace this approach and the vague, and slightly coquettish, reference to an historical right of occupation is as far as she goes. The obvious inference to be drawn therefrom is that there is no right worthy of disclosure or, if such a right does exist, that it would not survive the slightest scrutiny if it were disclosed and examined.

[11] The second respondent does assert, however, that the applicants have fallen short in framing their case against herself. She explains this as follows:

‘The applicants conveniently fails (sic) to place before this Honourable Court any documentation and or any allegation in their founding affidavit to suggest that I am in unlawful occupation of the subject property.’

[12] One is forced to ponder what documentation could the applicants produce to show that she is in unlawful occupation? Reference has already been made to the applicants’ allegation that there is no lease in place. The lack of any such documentation, as alleged by the second respondent, ironically, may very well establish the unlawfulness of her occupation. The proper question to be asked, in my view, is the obverse of the question that the second respondent poses, namely what documentation exists to establish the right claimed by her? If there is documentation that establishes the lawfulness of her occupation, the second respondent was required to produce it or, if she did not have it, she was required to indicate where it could be found. She did not do either of these things.

[13] Furthermore, the second respondent is seriously mistaken when she asserts that the applicants have not suggested that she is in unlawful occupation of the apartment. The founding affidavit literally groans with the weight of such references. Two such examples from the founding affidavit will suffice:

(a) At indexed page 10, paragraph 15:

‘The first and second respondents are in unlawful occupation of the Property ...’;
and

(b) At indexed page 11, paragraph 20:

‘The first and second respondents are in unlawful occupation of the Property and are liable to be evicted.’

[14] It may legitimately be inquired as to what defence has been raised by the respondents. No factual defence has been raised. Instead, the second respondent has devoted five pages of her nine page answering affidavit to submissions of an entirely legal nature. The second respondent does not disclose that she has any legal training yet has seen it fit to make submissions and advance legal argument that only a person trained in, and skilled in, the law could make.

[15] However, for the purpose of completeness, I shall consider the legal point raised by the second respondent. To do so, it may assist by first considering a brief chronology of the more salient facts of this matter:

- (a) The application papers were served upon the first respondent and second respondent by the sheriff on 18 November 2022 by affixing to the main door of the building in which the apartment is situated;
- (b) On 29 November 2022, both the respondents caused their attorney to deliver a notice of intention to defend the application on their behalf;
- (c) The first date of appearance was 20 January 2023, but because of the filing of the respondent’s notice of intention to defend the matter, it was properly removed from the roll;
- (d) The respondents delivered their answering affidavits on or about 26 April 2023; and
- (e) On the same date, 26 April 2023, M E Nkosi J granted an order authorising the service on the respondents by the applicants of the notice contemplated by s 4(2) of the Act.

[16] With those dates in mind, I address the point taken by the second respondent in her answering affidavit. It appears to relate to service of the notice in terms of s 4(2) of the Act. If I correctly understand that point, it is that the original application papers did not include a draft of the s 4(2) notice. I must accept that this was the case since the sheriff’s return of service makes no reference to serving such a document on either of the respondents. What effect does that have on the facts of this particular case?

[17] In my view, the purpose behind the prescribed formalities to be found in the Act are intended to protect both the owner and the alleged unlawful occupier. Experience teaches us that very often, those in unlawful occupation are the least fortunate citizens who find themselves in straitened financial circumstances and may, in addition, not be aware of their legal rights. Thus, s 4(2) of the Act requires a landowner to ensure that unlawful occupiers are:

- (a) Given proper and sufficient notice of the proceedings intended to result in their eviction;
- (b) Made aware of the date and time upon which the eviction hearing will be conducted;
- (c) Informed of the grounds upon which their eviction is being sought; and
- (d) Fully informed of the right to legal representation and of their right to appear in person and to dispute the granting of the order of eviction being sought and that if they desire to have legal representation but cannot afford it, that they may approach Legal Aid South Africa and seek assistance there.

[18] The legal argument advanced by the second respondent alleges that there has not been compliance with the procedural requirements of the Act. Accepting, as I do, that the blank s 4(2) notice did not accompany the application papers when they were first served, I fail to understand what prejudice she or the first respondent have suffered as a consequence. The s 4(2) notice would have been inchoate at the commencement of the application. It could not have stated when the matter was going to be heard for the simple reason that the date was not known at that time. The respondents, in any event, had their own legal representatives from the outset and were consequently not persons who had to be alerted to the possible availability, and whereabouts, of Legal Aid South Africa for legal assistance. They have always been represented by independent attorneys of their own choice and the matter has been defended since the application papers were first served.

[19] In any event, the completed s 4(2) notice, with the date of the hearing inserted, was approved by this court and was served upon the respondents on 4 June 2024 in compliance with the order of M E Nkosi J. Factually, that service was entirely redundant because all the information contained in the s 4(2) notice therein

was already either known to the respondents, or had no relevance to them, and had been dealt with by them in their answering affidavits. That is the only defence that has been raised by the respondents.

A further defence?

[20] The applicants have teased out a further potential defence that they speculate may have been raised by the first respondent. It is alleged by the applicants that the apartment is Unit 4 in the building known as 'Pearls of Umhlanga'. When he delivered his confirmatory affidavit to the second respondent's answering affidavit, the first respondent stated that his address was Units 1 and 2 in the 'Pearls of Umhlanga'. Thus the applicants concluded that he did not stay at the apartment. I do not take the same view.

[21] There were several allegations made in the founding affidavit that the first and second respondents both resided at the apartment. Those allegations were never denied by either of the respondents. In my estimation, a married couple ordinarily reside together. If that is not the case, and if it is the case here that they reside separately from each other in the same building but in different units, I would expect to be explicitly informed of this. I am not so informed and I take it therefore to be admitted that the respondents reside together in the apartment.

[22] Even should that not be the case, an order for the ejectment of the first respondent would be competent based upon the dicta of Didcott J in *Lurlev (Pty) Ltd v Unifreight General Services (Pty) Ltd and others*,² where he stated that the primary object of an ejectment order

'...is to put the party obtaining it in possession of the premises to which it relates. So that this may be achieved, the right of the claimant instead of the other party to possess the premises must first be acknowledged and proclaimed. That is accomplished by the judicial declaration implicit in the order. The other party, if he occupies the premises, must then be compelled to vacate them, and the command which the order embodies attends to that. But

² *Lurlev (Pty) Ltd v Unifreight General Services (Pty) Ltd and others* 1978 (1) SA 74 (D) 79.

the order's transcendent and more enduring effect, even when such is the case and *a fortiori* when it is not, is the confirmation of the claimant's better title to their possession which the declaration signifies. These consequences would ensue from the grant of an ejectment order in the present case. In particular, the order would uphold the plaintiff's cause of action in all its essentials, vindicate the plaintiff's cancellation of the tenancy by reason of the first defendant's breach of the lease, and recognize that the plaintiff rather than the first defendant was entitled to occupy the premises. All this would then be *res judicata*. An order with that import would be no *brutum fulmen*. It would serve a definite and real purpose, even if it is true that the first defendant does not occupy the premises and there is thus no occasion for its physical removal from them.

I have therefore come to the conclusion that the award of an ejectment order against the first defendant does not depend on its actual occupation of the premises, and that the second defence is no answer to the claim for that relief.' (Authorities omitted)

Conclusion

[23] Nothing of any legal significance has been advanced by the respondents to justify their continued occupation of the apartment. They are clearly people of substantial means: the first respondent, on his own version, apparently occupies two units in the same building and drives a Lamborghini. He is described in the founding affidavit as being a 'socialite', an epithet that he has chosen not to deny. There is consequently no prospect that either of the respondents will be rendered homeless by the order sought.

[24] I am, in the circumstances, satisfied that it will be just and equitable to order the eviction of the respondents from the apartment. This application has been looming for a substantial period of time. The respondents have thus had sufficient time to consider the acquisition of alternative accommodation. However, based upon what the first respondent states in his confirmatory affidavit, they could notionally only be required to move one door down from the apartment to acquire new accommodation. Not much time will be required to achieve that. In my view, the

submission of Mr Smit SC, who appears for the applicants, that the respondent be ordered to vacate the apartment by 30 June 2025 is more than generous and will meet the need.

Costs

[25] It is not in dispute that the respondents are people of means and appear to enjoy a monied lifestyle. They have occupied the apartment unlawfully for over five years without paying a sou for that occupation and they have opposed this application without having any grounds to do so simply, it would appear, to extend their gratis occupation of the apartment for as long as possible. Decisions to conduct oneself in that fashion must have consequences. The consequence in this instance is that the respondents must pay the applicant's costs on the scale as between attorney and client, including all costs previously reserved.

Order

[26] I accordingly grant the following order:

1. In terms of s 4(8) of the Prevention of Eviction from and Unlawful Occupation of Land Act 19 of 1998, the first and second respondents, and any person occupying through them, are ordered to vacate the immovable property with the address of Unit [...], P[...] of U[...], [...] L[...] Drive, U[...] R[...], KwaZulu-Natal (the apartment) by 30 June 2025.
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MOSSOP J

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