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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO. EL 748/2021

Of Interest

In the matter between:

**THE TRUSTEES FOR THE TIME BEING
OF THE EAST LONDON HEBREW
CONGREGATION**

APPLICANT

and

CHANOCH GALPERIN

FIRST RESPONDENT

SARA RAZELLE GALPERIN

SECOND RESPONDENT

**THE BUFFALO CITY METROPOLITAN
MUNICIPALITY**

THIRD RESPONDENT

JUDGMENT

Rugunanan J

[1] Sequel to an order in a judgment of this Court delivered on 13 May 2022 (per Hartle J), the applicant, in vindication of its right of ownership, seeks the eviction of the first and second respondents (the respondents) from its fixed residential property situated at [...] O[...] Road, Selborne, East London (the property). The eviction of the respondents is sought under and in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act).

[2] The respondents oppose the relief claimed by the applicant, contending that it would not be just and equitable. Alternatively, in the event that the relief is granted, they contend that a just and equitable date on which they be ordered to vacate the property would be 31 May 2024, it being the date on which their employment contract, concluded on 1 June 2016 with the applicant, the East London Hebrew Congregation (the Congregation), would have terminated by effluxion of time¹ and by implication over the natural duration of their right to occupy the property.

[3] It is mentioned at the outset that Hartle J made a factual finding that the first respondent's employment contract was terminated on 3 February 2020 and that the respondents' continued occupation of the property was an instance of holding over. This situation prevailed at the time the matter was argued before this Court on 14 November 2024 and continues to date. At present, the respondents have no legal or contractual entitlement to remain in occupation of the property and they do so without payment to the Congregation of rent or any other *quid pro quo*.

[4] The eviction application was fully argued before Hartle J. She found that the respondents had no defence to the application, and moreover that they were unlawful occupiers within the meaning of the Act, and that the applicant was, in principle, entitled to an eviction order subject to the constraints imposed by section 4

¹ For the commencement and termination date of the respondents' employment contract see paragraph 3 of the judgment by Hartle J (the judgment) and fn 4 thereto.

of the Act. It was in any event never disputed during argument in the proceedings before this Court that the respondents are unlawful occupiers.

[5] For present purposes only select aspects of the judgment by Hartle J (the judgment) will be dealt with in the ensuing paragraphs hereof. The historical narrative of events and factual findings should be read as if assimilated herein.

[6] For reasons dealt with at length by the learned judge she ordered that ‘The application for eviction is hereby stayed’ pending:²

- (a) The final determination of the first respondent’s appeal in the High Court, in Makhandia, case number 1340/2021; and/or
- (b) The early adjudication by the Beth-Din (by agreement between the parties) of the first respondent’s dismissal dispute; and/or
- (c) Mediation between the parties of the said dispute.

[7] The learned judge reserved the costs of the application and further ordered that the parties would be entitled to apply on notice to this Court on the same papers, duly supplemented, for a fresh consideration of the provisions of sections 4(7) and 4(8) of the Act against the context of the conditions or opportunities aforementioned.

[8] In the period 18 January 2022 to 27 October 2023, the process of seeking leave to appeal initiated by the first respondent in case number 1340/2021 was unsuccessfully exhausted all the way through to the Constitutional Court. The other remaining conditions incorporated in the order by Hartle J do not find application in the present matter. By virtue of the fact that the conditions upon which the grant of an eviction order was stayed are no longer applicable, the applicant re-enrolled the application on supplemented papers for a fresh consideration of the provisions of sections 4(7) and 4(8).

² Judgment paragraph 131.

[9] To the extent that the order made provision for a fresh consideration of the aforementioned provisions, it excludes reconsideration of the (already concluded) enquiry into the issue of the respondents' unlawful occupation of the property.

[10] The matter was argued on 14 November 2024 on a set of papers comprising of the applicant's supplementary affidavit, the first respondent's supplementary affidavit in answer, and a further supplementary affidavit by the applicant in reply. No supporting or confirmatory affidavit was filed by the second respondent. The municipality, as third respondent, has not entered the fray in these proceedings.

[11] On the papers the issues that require determination are:

11.1 whether it is just and equitable to grant an order evicting the respondents from the applicant's property in terms of section 4 (7) of the Act and;

11.2 if so, the determination of a just and equitable date on which the respondents must vacate the property as well as the date on which the eviction order shall be carried out if the respondents do not vacate the property.

[12] Before dealing with the approach to the just and equitable enquiry it is necessary to accentuate a few aspects of the judgment.

[13] Hartle J found, as a fact – whether wrong or right in the first respondent's view – that the termination of his employment by the Congregation as its rabbi on 3 February 2020 upended the contractual entitlement of both respondents to remain in occupation of the property (the first respondent's right to occupy the property was subsidiary to the employment contract and the second respondent's right of occupation was an incident of the first respondent's employment by the Congregation). In effect, in the absence of any express or tacit consent in favour of their continued occupation, the respondents' sustained occupation of the property beyond that date was and remains unlawful.

[14] The factual finding by the learned judge stemmed from her difficulty to discern the real nature of the first respondent's defence to the eviction claim. This was occasioned by his failure to appear on 29 January 2020 at an internal disciplinary enquiry relating to misconduct (the nature of which the learned judge noted was never clearly outlined by the parties in their papers before her).

[15] The precursor to the disciplinary enquiry was an arbitration before the Beth-Din on eleven counts – of which the first respondent was (initially) exonerated – involving dishonesty *inter alia* entailing inheritance benefits that accrued to him under the will of a deceased person. The arbitration award of the Beth-Din sparked a furore of litigation between the parties, including the Chevra Kadisha (also known as the East London Helping Hand and Burial Society) whose grievance against the first respondent concerned the loss of a bequest to themselves. The detail is not repeated and is extensively set out in the judgment though it is perhaps worth noting that the Beth-Din subsequently withdrew its original ruling in favour of the first respondent on the basis that new evidence emerged justifying a retrial³.

[16] At the subsequent disciplinary enquiry for misconduct, the chairperson ostensibly came to a finding in the first respondent's absence that he rendered himself guilty of allegations of misconduct and recommended the sanction of dismissal. The Congregation implemented the recommendation and dismissed the first respondent on the date aforementioned.

[17] Hartle J concluded that as employer of the first respondent, the Congregation was the proper entity to have taken that decision and that it would be inequitable to delay the eviction for what she described as 'a slim likelihood' that he may be reinstated. Holding the belief that the chairperson and the Congregation had no authority to dismiss him, and calling the termination of his services a 'purported dismissal', the first respondent reacted to the imposed sanction by referring a dispute over his dismissal to the Beth-Din on 1 October 2020. In similar vein, Hartle J reasoned that there may be an outcome that may not entail a reinstatement if the

³ Paragraphs 38-46 and 53.

Beth-Din were to deal with the impasse between the parties in terms of Jewish law and custom.

[18] The Beth-Din declined to deal with the dismissal dispute because the Congregation did not wish to submit to its ecclesiastical jurisdiction but gave its blessing and consent for the first respondent to proceed to have the labour dispute determined by the secular courts. What followed was an application in the Makhanda High Court (case number 1340/2021) in which the first respondent sought an order to compel the Beth-Din to hear his dismissal dispute. The refusal of such relief became the subject of the course of abortive attempts to seek leave to appeal all the way through to the Constitutional Court.

[19] Explicating her difficulty in attempting to fathom the first respondent's defence to the eviction, Hartle J commented:

'The first respondent appears to equivocate between a plea that suggests that the employment agreement still exists because it was not lawfully cancelled or that its cancellation was a nullity as it were (giving him and the second respondent a *right* still to occupy), and an acceptance on the other hand that the agreement was indeed cancelled, but that the termination is assailable. Allied to the latter defence is the claim that the only forum that can decide finally whether the contract was "lawfully" cancelled is the Beth-Din and that it is a pre-requisite for that dispute to be determined before the respondents can be evicted because their right to occupy rides on the coattails as it were of that dispute determination. Interestingly, and perhaps strategically so, the first respondent does not claim that his dismissal was unfair, whether substantively or procedurally, as if to avoid any concession that the termination of the employment agreement due to his claimed misconduct was to be effected through the procedures described in the Labour Relations Act, more particularly by resort to the CCMA, or the Labour Court as the case may be, to challenge his dismissal.'

[20] Hartle J went on to conclude that whereas the Congregation discharged the onus to prove the termination of both the right to occupy and of the first respondent's

employment agreement (the right to occupy being subsidiary thereto), the respondents did not discharge the evidentiary burden to allege and prove facts necessary to justify their plea that they are not in unlawful occupation of the property.

[21] Turning to the issues for determination in the present proceedings, section 4(7) of the Act reads:

‘If an unlawful occupier has occupied the land in question for more than six 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, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.’

[22] Section 4(8) provides further:

‘If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).’

[23] It has been held that the proper approach in the determination of an application for eviction is that a court is obliged to investigate and address considerations of justice and equity. Under the Act the only test for determining whether an unlawful occupier is to be evicted is whether the eviction would be just and equitable. In that enquiry a court should be mindful that it has a discretionary power to impinge on the property owner’s common law right to obtain possession of the property, to the extent that considerations of justice and equity demand. In

employing the test the court is required to consider 'all the relevant circumstances', which include but are not limited to the factors mentioned in section 4(7). In the just and equitable enquiry the weight to be accorded to the mentioned circumstances and the determination of such further circumstances as might be relevant as also the weight to be accorded to them, are matters left entirely to the judgment and discretion of the court⁴.

[24] The abovementioned legal prescripts however cannot operate to deprive a private owner of its property arbitrarily or indefinitely. If it did, it would simply mean that unlawful occupants are recognised as having stronger title to property that they do not own. The owner would in effect be deprived of its property by a disguised form of expropriation. And to a greater degree if no rental is paid, such expropriation will also be without compensation. The result would not achieve a balancing of rights of the respective parties but an annihilation of the owner's rights.⁵

[25] As for the first respondent's approach to the justice and equity enquiry envisaged in section 4(7) of the Act, this inclined toward illuminating his apparent disputes with the Congregation and the Chevra Kadisha concerning his purported unlawful dismissal and inheritance under the will in an attempt to demonstrate that the Congregation did not effect a valid termination of his services and that he was entitled to employment benefits and arrear remunerations from 3 February 2020 until 31 May 2024. In heads of argument it was submitted for the respondents that this approach militates against an eviction order, and in the investigation of all the relevant circumstances as contemplated in the relevant legislation, it constitutes a valid defence to eviction raising equitable considerations that attach to the finding of unlawful occupation arising from their holding over upon termination of the employment contract.

[26] In that regard it is pertinent to refer to the first respondent's supplementary answering affidavit for discerning his approach to these proceedings. Drawing attention to paragraph [28] read with footnote 6 of the judgment by Hartle J, he states:

⁴ *Absa Bank Ltd v Murray and Another* 2004 (2) SA 15 CPD para 21.

⁵ *Van Der Valk N.O and Others v Johnson and Others* [2023] ZAWCHC 20 para 26.

‘After noting that my services were terminated and justified by certain alleged misconduct on my part, which was not disclosed in the applicant’s founding papers, the court then stated how, in its replying affidavit, applicant “sets the record straight” by alleging that I “was found guilty on 11 separate charges involving *inter alia* dishonesty, which were not limited only to the steps taken by me to benefit from the will of the late Mr Israel Bayer.” ’

[27] Having attached a series of annexures⁶ to his affidavit, he invites the Court to approach the matter in the following manner:

‘The court will respectfully be requested to determine from what follows below, whether the applicant did set the record straight, and/or whether or not the applicant deliberately and tendentiously withheld the whole truth from the court.

...

The purpose of introducing the attachments above is not to ask this Honourable Court to make a finding on the fairness of my dismissal, which I recognise is a right to fair labour practices and is determinable within another specially established jurisdiction, but rather to establish the reason why the full extent of the misconduct dispute ventilated in the disciplinary enquiry was deliberately covered up by the applicant in these proceedings.’

[28] In heads of argument, the submission is made that this Court will be requested to determine whether there was any substance to the Commissioner’s rejection of a submission made by counsel as regards the observation by Hartle J that the first respondent was ostensibly exonerated of the claims against him in the proceedings before the Beth-Din and that this Court’s perception be fortified and substantiated in relation to the observation made by the learned judge. It is not intended to repeat the contents of the annexures to the first respondent’s affidavit or to unpack the findings or to question the approach adopted by the presiding Commissioner in the disciplinary proceedings. The first respondent’s labour dispute

⁶ A, B, C, D, E, and F.

with the Congregation as well as the will dispute between himself and the Chevra Kadisha are irrelevant to the determination of the issues that fall to be identified in these proceedings. There is moreover no explanation by the first respondent as to why the material contained in the attachments now relied upon were not placed before the Court initially when he filed his main answering affidavit. The first respondent's invitation to the Court and the oversubtle reach in his heads of argument may prompt findings that may either engineer further delays in the eviction, or set up points to be taken on appeal and in that way preserve the status quo for the respondents' continued holding over leaving the right of the Congregation to reclaim its property, unresolved indefinitely.

[29] Although Hartle J observed that the congregation set the record straight only in its replying affidavit when it made disclosure of certain misconduct pertaining to the labour dispute between itself and the first respondent, my sense is that it was not necessary for the applicant to detail same in any manner whatsoever in his supplementary papers, nor to set out fully the basis upon which the first respondent's contract of employment was terminated. In this regard Hartle J correctly found *inter alia* in paragraphs 76 and 86 of her judgment that the first respondent's employment was as a fact terminated and that unlike other statutes there is no provision in the Act to the effect that the determination of the labour dispute is a precondition for terminating an employee's subsidiary rights to occupy a property arising from an ordinary employment agreement, where the claim for eviction is based on the *rei vindicatio*.

[30] There is another reason why in my view the determination of the disputes with the Chevra Kadisha and particularly the labour dispute with the Congregation are irrelevant to these proceedings. Straightforwardly, on his own version, the first respondent's employment contract terminated on 31 May 2024. While the supplementary papers demonstrate at length an explanation purporting to exculpate him of the alleged misconduct for which he was dismissed, sight should not be lost of the fact that it is not open to this Court to second guess the findings by Hartle J, in particular, that the respondents are unlawful occupiers consequent to the factual termination of the first respondent's employment contract, and furthermore that the procedural requirements in section 4 of the Act have been duly complied with. The

staying of the application for eviction – as is apparent from the order by Hartle J – does not, in my view, invite a reconsideration of her findings on these aspects. Nor, as was correctly conceded by counsel for the respondents, is it competent for this Court to make a finding on the lawfulness or fairness of the first respondent's dismissal.

[31] Furthermore, some three years and ten months after his dismissal by the Beth-Din, the first respondent's attempt to refer his dismissal dispute to the CCMA on 4 December 2023 has also been unsuccessful for the reason that his application for condonation for the late referral of the dispute was dismissed by the presiding Commissioner.

[32] The hard reality of these remarks is that the first respondent can never obtain an order that he be reinstated in his employment as rabbi. It is not disputed that such an order will not be granted beyond the period or point at which a fixed term contract has expired⁷, notwithstanding his intention to review the Commissioner's ruling.

[33] In argument much emphasis was laid by the respondents on the fact that they are elderly and that the first respondent did not in the period 3 February 2020 until 31 May 2024 receive monthly emoluments. The contention is that his dismissal dispute is live (presumably, due to the contemplated review) and until such time that it is finally determined with an accrued emoluments award in his favour, he does not have funds to hire alternative premises and it would not be just and equitable to order an eviction. Implicit in the argument is that the eviction must be delayed until the labour dispute is finally determined.

[34] The fact that the first respondent is without financial means and that he and the second respondent are aged persons in their sixties cannot delay the eviction indefinitely. While it is not in dispute that they are unlawful occupiers they have placed scant information about their personal circumstances before the Court to justify their ongoing occupation save to contend that their eviction would not be just and equitable. There are no children residing in the property or other identified

⁷ *Toyota SA Motors (Pty) Ltd v Commission for Conciliation, Mediation and Arbitration and Others* [2023] ZALAC 5.

persons who can be said to be dependants. The respondents have provided no tangible detail of their financial and living circumstances, or of their health and disability status (if any), or of their ability to rely on family⁸, friends and loyal congregants or benefactors⁹ for assistance whether financial or in kind. They have not disclosed the source of the financial means for their payment of the municipal charges for water and electricity being supplied to the property. Other than the first respondent stating that he studies and deals with congregants on a daily basis, there is insufficient detail of the substance of his interaction with them with no detail proffered of the second respondent's activities. Furthermore there are no disabled persons residing in the property and the household cannot be deemed to be headed by women.

[35] Of note is that the respondents do not say what steps they have taken to source the availability of alternative accommodation¹⁰ nor do they expressly contend in their supplementary papers that they would be rendered homeless if evicted. Even if I am mistaken in having made the latter observation, imminent homelessness does not appear to be a likely consequence of an eviction, notwithstanding the first respondent's protestations of being without an income since his dismissal and for that reason he did not have the funds to secure alternative accommodation. My sense is that the issue of homelessness due to lack of financial means does not come into the picture. This is suggestive by the fact that the respondents have at all times been actively litigating with the assistance of attorneys and counsel (including senior counsel) translating to clear proof of the availability of financial resources which could be directed towards the payment of rental to avoid homelessness. They are certainly not poverty stricken.

[36] Given the paucity of information provided it is necessary to underline that where an eviction is opposed, legal practitioners representing a respondent are

⁸ Children residing in the United States of America.

⁹ Locally resident in East London.

¹⁰ In *Van Der Valk N.O and Others* fn4 supra, reference is made at para 40 to *Patel N.O. and Others v Mayekiso and Others* (citation omitted for present purposes) in which the court recognised the obligation of an occupier alleging potential homelessness, and by extension any further prejudice, to place the necessary information before the court: 'But the Mayekisos have not attempted to show how their eviction would render them homeless save to say that all the assets were tied up in the insolvent estate. This is not sufficient. What they had to show us how they have tried and failed to find alternative accommodation within their available resources.'

under a positive duty, as officers of the court, to ascertain the relevant facts and to place them before the court so that the justice and equity of ordering an eviction can properly be interrogated and evaluated. The onus is not entirely on the applicant to do so. Absent full and proper disclosure of tangible detail as indicated above, bald and unsubstantiated averments regarding deprivation of income and may incline a court to justifiably conclude that the respondent's dispute is not genuine and credible.¹¹

[37] In the context of what is said in the preceding paragraphs, the essential question that must be asked is whether the respondents might be rendered homeless should they be evicted. On my assessment of the matter, this does not appear to be the case. On the facts, there can be no suggestion that the Act was designed to protect persons in the position of the respondents. The Act is intended to protect vulnerable persons who may be rendered homeless in the event of an eviction order being granted against them.

[38] The Congregation is a voluntary association. It does not operate within a certain level of government and it does not have the status of an organ of state. It is not obliged to provide accommodation¹² or to indefinitely endure the respondents' unlawful holding over. Referring to sections 9(1) and 9(2) of the Bill of Rights, the Supreme Court of Appeal in *Modderfontein Squatters*¹³ observed that everyone is equal before the law and has the right to equal protection and benefit of the law and that equality includes the full and equal enjoyment of all rights and freedoms. This is nonetheless subject to minor qualifications depending on the circumstances as was explained by the same court in *City of Johannesburg v Changing Tides*¹⁴:

'The position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The Constitutional Court has said that private entities are not obliged to provide

¹¹ *Luanga v Perthpark Properties Ltd* [2018] ZAWCHC 169 paras 47 and 48.

¹² See in this regard *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) para 17.

¹³ *Modderfontein Squatters, Greater Benoni CC v Modderklip Boerdery (Pty) Ltd (Agri SA & Legal Resources Centre, Amici Curiae): President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd* 2004 (6) SA 40 (SCA) at 57C.

¹⁴ *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) para 18.

free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising, or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers.’

[39] The crucial factors in the matter are that Hartle J already determined that the respondents are unlawful occupiers and that the issue about fairness of the first respondent’s dismissal does not alter the premise that his employment was as a fact terminated. To the extent that the learned judge found that the respondents are unlawful occupiers, they should be treated as such until the conclusion of these proceedings. I hold the view that the findings by the learned judge are foundational to the justice and equity enquiry and that this Court cannot go beyond the limited facts put up by the respondents where there was a positive duty on their legal representatives to have properly ascertained and presented them. The contentions of homelessness due to lack of means are made with the cynical view of preventing or delaying an eviction order from being granted.

[40] I have considered the interests of the respondents against the Congregation’s claim of ownership and its need for the return of the property as the designated residence for a newly appointed rabbi to fulfil the spiritual needs of its congregants. Having weighed the factors and circumstances relevant to this matter and finding no compellable reason not to evict, I find it just and equitable to grant an eviction order. The final leg of the enquiry into what justice and equity demands is in relation to the date of implementation of the eviction. I recognise that the respondents have been in occupation of the property for a substantial period of time and that the impact of an eviction order may be a thunderclap. Faced with this reality they may need adequate time to organise their relocation. I do not believe that three weeks which the Congregation proposes is adequate.

[41] Before concluding, there is the issue of costs.

[42] There is no reason to depart from the general rule that the successful party be awarded costs.

[43] The consensus between the parties is that scale C should be applicable for counsel.

[44] I agree. Although the proceedings did not involve the determination of unusual or novel aspects of the law or the interpretation of new legislation, this was not a run-of-the-mill matter.

[45] The Congregation argued for a two-tier costs order on a party and party scale and on a scale as between attorney and client. In the period 14 June 2021 until 27 October 2023, the latter being the date upon which the Constitutional Court dismissed the first respondent's application for leave to appeal, it was argued for the Congregation that the respondents should be directed to pay the costs of the eviction proceedings on a party and party scale with such costs to include the costs of the application on notice in terms of section 4 (2) of the Act. In dealing with matters procedural, Hartle J dealt with the costs of two such notices. Although having found that the procedure adopted by the Congregation was unconventional, the learned judge was of the view that the respondents were afforded sufficient opportunity to oppose the substantive application with adequate opportunity having been given to them well in time before the hearing to state why they should not be evicted. Having made the determination that effective notice of the proceedings was given to the respondents, Hartle J concluded that they were not prejudiced but elsewhere in her judgment she indicated that it would be unfair to mulct the respondents with the costs occasioned by two notices. My order at the conclusion of this judgment accords sufficient recognition to this sentiment.

[46] On the second tier – effectively from 1 November 2023 – costs were sought on the attorney and client scale for the reason that the respondents had no defence to the eviction application and the opposition thereto was vexatious and without merit. Reference was also made to a series of correspondence directed to the respondents' attorneys. Initially the congregation proposed that each party pay their own legal costs when the Constitutional Court dismissed the first respondent's application for leave to appeal. In a subsequent letter the Congregation repeated this proposal when it reacted to the first respondent's supplementary affidavit in which he submitted that if eviction is to occur it would be just and equitable for him and the

second respondent to vacate by 31 May 2024. While emphasising that there would be success in obtaining an eviction order, the proposal was made because of the impracticality of obtaining a court hearing or ruling on the eviction prior to that date. It appears that the proposals were met with no meaningful response and the Congregation was obliged to proceed to secure a date for the hearing of the matter on a contested basis.

[47] On the other hand, since Hartle J was concerned about the lack of information put before her by the Congregation, the respondents contended that it was incumbent on the applicant to come back to court on supplemented papers.

[48] The differing contentions advanced by the parties are not without merit. I am of the view that costs must follow the result but am of the opinion that a two tier costs order, in particular a component providing for attorney and client costs is not warranted.

[49] In the result I make the following order:

1. The first and second respondents and any and all persons occupying with and through them are hereby evicted from the immovable property situated at [...] O[...] Road Selborne, East London hereinafter referred to as 'the property'.
2. The first and second respondents and any and all persons occupying the property with and through them are ordered to vacate the property no later than 12h00 on Friday, 4 April 2025 and not to return thereafter.
3. In the event that the first and second respondents and any and all persons occupying the property with and through them do not vacate the property as directed, the sheriff or the sheriff's duly appointed deputy together with such assistance as he/she deems appropriate is authorised and directed to evict the respondents from the property.

4. The first and second respondents jointly and/or severally are ordered to pay the costs of this application as between party and party including reserved costs, such costs shall include the costs of the first application in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act) and shall exclude the costs of the second application in terms of section 4(2) of the Act.
5. The costs in respect of the fees of counsel shall be taxed on scale C.

M. S. RUGUNANAN
JUDGE OF THE HIGH COURT

Appearances:

For Applicant: *S P Pincus SC*, Instructed by Stirk Yazbek Attorneys, East London (Ref: G J Stirk; Tel: 043-726 8310; Email: karen@stirkyazbek.co.za).

For the First and Second Respondents: *N Schultz* (heads of argument by *M Donen SC*), Instructed by Wheeldon Rushmere & Cole (Ref: B Brody; Tel: 046-622 7005; Email: lit5@wheeldon.co.za) c/o Lionel Trichardt & Associates, East London.

Date heard: 14 November 2024.

Date delivered: 27 February 2025.