



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Numbers: 17869/2021 to 17877/2021
17879/2021 to 17885/2021
7533/2022 to 7541/2022

In the matter between:

SARGAS (PTY) LTD

Registration Number: 1968/009480

Applicant

and

JACQUELINE CHARMAINE TIMM

1st Respondent

U PILLAY

2nd Respondent

JACQUES RICHARD BEZUIDENHOUT

3rd Respondent

HENDRICK VOS

4th Respondent

LINDIE HAMMOND

5th Respondent

F DE WET

6th Respondent

T JENNA

7th Respondent

GERRIE SWART

8th Respondent

M STEVENS

9th Respondent

IRENE MUDZINGWA

10th Respondent

ELZONIA LEANDRA JOE

11th Respondent

JACQUES BRIAN SAWALL	12 th
Respondent	
PORCIA BONNITA BENJAMIN	13 th Respondent
W SAUER	14 th Respondent
MS ASPELING	15 th Respondent
M QUINE	16 th Respondent
HILLARY CHAIMIRIRA	17 th Respondent
ROSEMARY CHIMBANI	18 th Respondent
CARMELETTE JOHNSTONE	19 th Respondent
JULINE SCHREODER	20 th Respondent
ALVIN LINKS	21 st Respondent
BARISHFIRTH POND	22 nd Respondent
DAMIAN HATTING	23 rd Respondent
NICOLAAS HULL	24 th Respondent
ZANE CAPES	25 th Respondent
AND ALL OTHER PERSONS UNLAWFULLY OCCUPYING THE PREMISES	26 th Respondent
BREDE VALLEY MUNICIPALITY	27 th Respondent

JUDGMENT DELIVERED ELECTRONICALLY ON 5 MARCH 2025

VIVIER, AJ:

Introduction

[1] The Applicant, Sargas (Pty) Ltd, is the owner of an industrial property known as Erf 8[...], Worcester. This property (*“the property”*) is 40,2926 hectares in extent and falls within the jurisdiction of the 27th Respondent, the Brede Valley Municipality (*“the Municipality”*).

- [2] The 1st to 26th Respondents (for convenience, hereinafter collectively referred to as “*the Respondents*”) are occupiers of the property.
- [3] The property comprises a commercial section with a factory building and a number of outbuildings, as well as a residential section consisting of 25 dwelling houses, which is colloquially known as “*Hextex Estate*”.
- [4] The Respondents reside in these houses. The Applicant alleges that, in July 2021, it terminated the Respondents’ right to occupy the houses. However, the Respondents failed to vacate the houses and the Applicant contends that their occupation thereof has been unlawful since July 2021.
- [5] This is an application for the eviction of the Respondents from the property, in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, No. 19 of 1998 (“*PIE*”).
- [6] The Applicant was previously known as Seardel Group Trading (Pty) Ltd (“*Seardel*”). Its name was changed to Sargas on 28 October 2015.
- [7] Seardel purchased the property from Romatex Limited on 29 September 2001, and it was transferred to and registered in the name of Seardel on 4 June 2003 (in terms of Deed of Transfer No. T48664/2003).
- [8] The business which was previously known as Hextex was conducted as a division of Seardel. In June 2015 Seardel sold this business as a going concern and an income-generating activity to Winelands Textiles (Pty) Limited (“*Winelands Textiles*”).

- [9] Winelands Textiles, which subsequently traded under the name Hextex, leased the property from the Applicant. A copy of the last contract of lease is attached to the replying affidavit. It was entered into on 31 January 2020 for an initial period of 3 years, from 1 February 2020 until 31 January 2023.
- [10] The majority of the Respondents were employed by Winelands Textiles and took up residency in their respective houses by virtue of sub-leases which they had entered into with Winelands Textiles. There is a paucity of information in the Respondents' answering affidavits in respect of their respective sub-leases. They in general rely on the bald allegation that each Respondent occupies his/her house in terms of a written or a verbal lease with Winelands Textiles, which was a benefit of their employment, without providing any further details of these sub-leases.
- [11] The Applicant is a subsidiary of Deneb Investments Ltd ("*Deneb*"). On 31 January 2020, Deneb and the Applicant sold their 100% shareholding in and loan claims owing to them by Winelands Textiles, to K2019630452 (South Africa) (Pty) Ltd.
- [12] Some of the Respondents resigned from the employ of Winelands Textiles, or were retrenched, prior to 2020. All the Respondents who were still employed by Winelands Textiles at the beginning of 2020, were retrenched in July 2020. This occurred pursuant to the restructuring of Winelands Textiles which entailed, *inter alia*, the aforesaid share sale transaction.

[13] The Applicant, as owner of the property, was not involved in any aspect of the employer/employee relationship between Winelands Textiles and those Respondents who were employed by it, nor was it involved in the landlord / tenant relationship between Winelands Textiles and any of the Respondents.

The litigation history

[14] The Applicant initiated the eviction proceedings in October 2021 when it launched separate applications for the eviction of the Respondents in terms of section 4 of PIE.

[15] Except for the 19th, 21st, 22nd, 24th and 25th Respondents, all the other Respondents delivered notices of opposition to the application.

[16] On 21 July 2022 an order was made, by agreement between the parties, that all the individual applications be consolidated and postponed for hearing on the “*semi-urgent roll*” of this Division. This order also contained directions for the further conduct of the matter, *inter alia* the delivery of answering affidavits. The 5th, 11th and 14th Respondents failed to deliver answering affidavits.

[17] The consolidated applications were enrolled for hearing on 9 September 2022. However, the matter had been allocated to a judge who could not hear it due to a conflict of interest, and it had to be postponed.

[18] The answering affidavits delivered by Langenhoven Attorneys on behalf of those Respondents it represented, contained to a large extent the

same allegations, except for the personal circumstances of the respective Respondents.

[19] The Applicant delivered one replying affidavit in respect of all the answering affidavits. There was also an overlap in the replying affidavit in response to the answering affidavits, and the only difference between the Applicant's reply in respect of each Respondent was in relation to their personal circumstances.

[20] The Respondents raised three points *in limine* in their answering affidavits, one of which challenged the authority of the deponent to the founding and replying affidavits, Mr Keith Graham Robson, to have instituted the eviction proceedings on behalf of the Applicant. The Respondents contended that the resolution relied upon by the Applicant did not allow Mr Robson to act for or institute proceedings on behalf of the Applicant, but merely authorised him to depose to an affidavit on its behalf.

[21] The application was heard on 4 November 2022. The Court was requested to determine this point *in limine* only. The point *in limine* was upheld and the application was accordingly dismissed, with costs. The reasons for the judgment were provided on 10 November 2022.

[22] The Applicant applied for leave to appeal, which was granted on 4 May 2023, to the full bench of the Western Cape High Court. The appeal was heard on 26 January 2024, and upheld in terms of a judgment that was delivered on 25 March 2024. The order of the Court *a quo* was set aside

and replaced with the following order – *“The point in limine relating to the authority of the deponent, Mr Keith Graham Robson, is dismissed with costs.”*

[23] The matter was remitted to the former Acting Judge President of the Western Cape High Court for allocation to a judge, in order to determine the future course and conduct of the eviction application.

[24] An order was subsequently granted by the former Acting Judge President, by agreement between the parties, in terms of which the matter was postponed for hearing to 5 September 2024, and the parties were directed to file supplementary affidavits, as set out in the order.

[25] A further delay occurred resulting in a postponement of the application, for which neither party was to blame. The application was eventually heard on 15 November 2024.

The position at the hearing of the application

[26] The 15th, 19th, 21st, 22nd, 24th and 25th Respondents did not oppose the application. The 5th, 11th and 14th Respondents filed notices of opposition, but failed to deliver answering affidavits. The application was therefore not opposed by the 5th, 11th, 14th, 15th, 19th, 21st, 22nd, 24th and 25th Respondents.

[27] At the hearing of the application, Ms S Bosch appeared for the Applicant and Mr G M Langenhoven of Langenhoven Attorneys appeared for the 1st, 3rd, 4th, 6th, 8th, 9th, 12th, 16th, 18th, 20th and 23rd Respondents.

[28] The 7th, 10th, 11th and 17th Respondents were unrepresented and appeared in person.

[29] It is common cause that the procedural requirements set out in section 4(2) to (5) of PIE have been complied with by the Applicant.

[30] The issues for determination are the following:

[30.1] The point *in limine* as referred to in paragraph [31.1] below.

[30.2] Whether the Applicant is entitled to an order for the eviction of the Respondents from the property, under sections 4(7) and 4(8) of PIE.

The points *in limine*

[31] In addition to the point *in limine* based on Mr Robson's lack of authority, which was eventually determined in favour of the Applicant on appeal, the Respondents raised two further points *in limine* in the answering affidavits, namely –

[31.1] the Applicant's founding affidavit was commissioned by Mr S H Killian in his capacity as the Sheriff of Worcester ("*the Sheriff*"). The Sheriff had a "*prima facie financial interest in the matter*", and the founding affidavit was therefore improperly commissioned; and

[31.2] no housing report had been provided by the Municipality, and no meaningful engagement had occurred between the parties.

[32] In the Respondents' heads of argument, they relied only on one point *in limine*, namely the Sheriff's conflict of interest which resulted in the founding affidavit not being properly commissioned.

[33] However, during argument the Respondents raised a further point *in limine*, namely that the Applicant's cancellation of the Respondents' sub-leases was invalid. It was contended on behalf of the Respondents that the Applicant had stepped into the shoes of Winelands Textiles and purported to cancel the sub-leases, which the Applicant lacked authority to do. In my view, this issue relates to the question as to whether the Respondents are unlawful occupiers, which I shall deal with below.

[34] I now turn to deal with the point *in limine* based on the Sheriff's alleged conflict of interest.

[35] The Applicant's founding affidavit was deposed to by Mr Robson and commissioned by the Sheriff on 12 October 2021.

[36] The Respondents contend that this constituted a conflict of interest, on the basis of the following allegations in paragraph 10 of the supplementary answering affidavit filed by the 13th Respondent:

"I aver further that the Sheriff for Worcester has a prima facie financial interest in the matter, including the prospectively (sic) potential income which he will receive in the event that he is tasked with executing an eviction order."

[37] The Respondents therefore contend that the answering affidavit “*is improperly commissioned, and thus is not an affidavit at all, for the purposes of this application*”.

[38] The Respondents allege in their heads of argument¹ that the Sheriff would be the only person entitled to execute the evictions, if ordered, of an entire community consisting of 25 households, which would result in significant charges by the Sheriff. They further allege that “*such an eventuality will result in significant charges by the Sheriff for the work to be done, which charges may easily run to in excess of R100 000*”.

[39] It was contended on behalf of the Respondents that this financial interest constituted “*a significant pecuniary interest*” which disqualified the Sheriff from commissioning the founding affidavit. These allegations are unsubstantiated. None of the answering affidavits contain any evidence in support thereof.

[40] In my view the stumbling block in the Respondents’ way to successfully raise this point *in limine*, is the provisions of regulation 7 of the Regulations which had been promulgated in terms of section 10 of the Justices of Peace and Commissioner of Oaths Act, No. 16 of 1963. It provides as follows:

“7(1) *A commissioner of oaths shall not administer an oath or affirmation*

¹ Par 41.

relating to a matter in which he has an interest.

(2) Subregulation (1) shall not apply to an affidavit or declaration mentioned in the Schedule.”

[41] The exception referred to in regulation 7(2), is described as follows in item 2 of the Schedule:

“A declaration taken by a commissioner of oaths who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty.”

[42] Regulation 7(1) therefore did not apply to the attestation of the founding affidavit by the Sheriff.

[43] The Respondents emphasised that the Sheriff was the only person who would be entitled to carry out the evictions of the 25 unlawful occupiers, in the event that the application be granted.

[44] It must be borne in mind that where an objection is taken that the provisions of regulation 7 have not been complied with, the onus is on the person who disputes the validity of the affidavit, to prove by evidence such failure.²

[45] In my view the Respondents’ allegations with regard to the alleged financial interest of the Sheriff, amounts to speculation. It is self-evident that at the time of the attestation of the founding affidavit, the Sheriff had

² **Ladybrand Hotels (Pty) Ltd v Stellenbosch Farmers’ Winery Ltd** 1974 (1) SA 490 (O) at 493C-D.

no basis to assume, and on the probabilities did not assume, that the eviction application would eventually be successful, and that he might in future earn substantial fees by carrying out evictions in the event that a substantial number of the Respondents would not comply with an eviction order.

[46] In **Tambay v Hawa**,³ it was held that “*interest*” in regulation 7(1) must be given a limited meaning and cannot be extended to cover the remote and indirect interest which an employee of an attorney has in matters dealt with in that attorney’s office.

[47] In my view, the same principle applies in the present matter. When the founding affidavit was commissioned by the Sheriff, he merely had a remote and indirect financial interest in the matter, being the fees, he stood to earn in the event of (a) an eviction order being granted and (b) a substantial number of the Respondents not complying with it.

[48] I therefore hold that there is no merit in the point *in limine*.

The Applicant’s intended use of the property

[49] All the residential dwellings on the property were constructed with asbestos roofing. According to the Applicant, these roofs pose a health risk to the inhabitants thereof. It was for this reason, as well as the fact that the Applicant intended to develop the property, that it employed an

³ 1946 CPD 866.

asbestos contractor⁴ to demolish the dwellings. From the Applicant's perspective, it became imperative to initiate eviction proceedings in terms of PIE against the Respondents, before it could proceed with the demolition of the buildings and the development of the property.

[50] On 22 December 2021 the Applicant sold the property to Duro Brick Company (Pty) Ltd for an amount of R43,5 million. This evidence appears in the replying affidavit.

[51] The presence of unlawful occupiers, from the Applicant's perspective, was disclosed as follows in clause 17 of the contract of sale:

"17.1 The Purchaser record that the Seller disclosed to it that there are unlawful occupiers occupying the Property. The Seller has instituted eviction proceedings against all unlawful occupiers that it could identify in the Western Cape High Court, which eviction proceedings are ongoing.

17.2 The Seller is liable to pursue the eviction proceedings against the unlawful occupiers in the normal course up to and until date of transfer."

[52] However, the transaction was unsuccessful. The sale fell through because the purchaser was unable to obtain the necessary funding, given the presence of unlawful occupiers on the property.

The nature of the dispute with regard to the unlawfulness of the Respondents' occupation of the property

⁴ Who was duly registered in terms of the Occupational Health and Safety Act, No. 85 of 1983 (as amended by the Asbestos Abatement Regulations 2020).

- [53] It is common cause that the Applicant is the registered owner of the property.
- [54] The Respondents who were represented by Langenhoven Attorneys, conceded in their heads of argument that Winelands Textiles was sold to a third party during 2020.
- [55] According to the disposal announcement titled *“Category 2 Disposal Announcement”* which was attached to the replying affidavit, the share sale agreement between the Applicant/Deneb and the purchaser⁵ was entered into on 31 January 2020. The rationale for this disposal was recorded as follows in this document:
- “Winelands Textiles does not meet the required return on capital hurdle rate, and the Company therefore believes it is in the best interests of the Deneb Group to dispose of the Assets at this time.”*
- [56] It is also common cause that the Respondents who were still employed by Winelands Textiles in the first half of 2020, and who occupied their respective houses as a benefit of their employment, were retrenched at the end of July 2020.
- [57] A year later, on 29 July 2021, the Applicant’s attorneys caused the following notice (on the attorneys’ letterhead) to be served by the Sheriff on the Respondents:

“We act on behalf of our clients, the registered owner of the immovable

property, SARGAS (PTY) LTD, Registration number: 1968/009480/07 ('our client').

According to a written lease agreement between yourself and Hextex, the lease is terminable with four weeks written notice given by either party to the contract. In the event that there may be a verbal lease agreement, you are given notice of the cancellation and termination of your right to occupy the property.

In the premises, kindly accept notice in your capacity as tenant, and with this formal notice to all occupants of the unit, that the lease agreement will terminate and be cancelled on 31 August 2021, and you shall have no alternative but to vacate the premises on or before the aforementioned date, failing which our client will apply for an eviction order with costs."

[58] The 3rd, 4th, 6th, 7th, 8th, 9th and 12th Respondents had either resigned or were retrenched prior to 2020. The 2nd, 17th, 18th and 23rd Respondents were never employed by Winelands Textiles, and therefore do not occupy their respective houses as a benefit of their employment.

[59] The Applicant alleges that it waited a further 12 months before it, as the owner of the property and not as the Respondents' landlord, terminated the Respondents' right to occupy their respective houses. This occurred by means of the notice dated 29 July 2021, as referred to in paragraph [57] above. I shall refer to this notice as the "*notice of termination*". The Applicant did not, for the purpose of the termination of all the

⁵ K2019630452 (South Africa) (Pty) Ltd.

Respondents' right to occupy the property, distinguish between (a) the Respondents whose employment were terminated prior to 2020, and (b) those Respondents who were retrenched in July 2020.

[60] The Respondents failed to comply with the notice of termination. The Applicant therefore contends that the Respondents are unlawful occupiers. This contention is premised on the following allegations – the Respondents and all other persons occupying the property through and under them, are in unlawful occupation of the property “... *as the lease agreement was duly cancelled, alternatively no lease agreement exists, and as a result of the subsequent failure to vacate the property*”. The words “*the lease agreement*” referred to the Respondents' respective sub-leases.

[61] With regard to the Applicant's attempt to terminate their right of occupation, by means of the notice of termination, the Respondents admitted that they received this notice, but denied that the Applicant validly terminated their right to occupy their respective houses, by means of this notice.

Are the Respondents unlawful occupiers?

[62] It is trite that the grant or otherwise of an application for eviction in terms of PIE is predicated upon a three-fold enquiry,⁶ namely –

[62.1] Does the occupier have any extant right in law to occupy the

⁶ **Head and Another v Morris NO and Others** – Appeal (A91/2022) [2023] ZAWCHC 343 (28

property, i.e. is the occupier an unlawful occupier or not. If the occupier has no such right, it is the end of the matter and the application must be refused.

[62.2] Second, would it be just and equitable that the occupier be evicted.

[62.3] Third, if this answer is in the affirmative, the terms and conditions of the eviction order must be determined.

[63] An “*unlawful occupier*” is defined in section 1 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 (Act 31 of 1996)”.

[64] In **Wormald NO and Others v Kambule**,⁷ it was held that “[a]n owner is in law entitled to possession of his or her property and to an ejectment order against a person who unlawfully occupies the property except if that right is limited by the constitution, another statute, a contract, or any legal basis”.

December 2023), at par 43.

⁷ 2006 (3) SA 562 (SCA) at par 11; see also **Ndlovu v Ngcobo**; **Bekker and Another v Jika** 2003 (1) SA 113 (SCA) at par 19; **Serné NO and Others v Mzymomhle Educare and Others** 2024 JDR 4879 (SCA) at par 28.

[65] In **Chetty v Naidoo**,⁸ it was held as follows:

*“It is inherent in the nature of ownership that possession of the res should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right). The owner, in instituting a res vindicatio, need therefore do no more than allege and prove that he is the owner and that the defendant is holding the res – the onus being on the defendant to allege and establish any right to continue to hold against the owner (cf. *Geena v Minister of Lands* 1955 (2) SA 380 (AD) at pp 382E, 383). It appears to be immaterial whether, in stating his claim, the owner dubs the defendant’s holding ‘unlawful’ or ‘against his will’ or leaves it unqualified (*Krugersdorp Town Council v Fortuin* 1965 (2) SA 335 (T)) but it goes beyond alleging merely his ownership and the defendant being in possession (whether unqualified or described as ‘unlawful’ or ‘against his will’) other considerations come into play.*

*If he concedes in his particulars of claim that the defendant has an existing right to hold (e.g. by conceding a lease or a hire purchase agreement, without also alleging that it has been terminated: *Boshoff v Union Government* 1932 TPD 345 at 351; *Henning v Petra Meubels Bpk* 1947 (2) SA 407 (T) at p 412) his statement of claim obviously discloses no cause of action. If he does not concede an existing right to hold, but, nevertheless, says that a right to hold now would have existed but for a*

⁸ 1974 (3) SA 13 (A) at 20F-G.

termination, which has taken place, then ex facie the statement of claim he must at least prove the termination, which might in the case of a contract, also entail proof of the terms of the contract.” (Emphasis provided.)

[66] In **Dreyer and Another NNO v Axzs Industries (Pty) Ltd**,⁹ the Court referred with approval to the passage in **Chetty**, *supra*, and stated the following:

“A party who institutes the res vindicatio is required to allege and prove ownership of the thing. Since one of the incidents of ownership is the right to possession of the thing, a plaintiff who establishes ownership is not required to prove that the defendant’s possession is unlawful. In that event, the onus to establish any right to retain possession will rest on the defendant, as long as the plaintiff does not go beyond alleging ownership. But if the plaintiff fails to establish ownership, the possessor is to be absolved.” (Emphasis provided.)

[67] All the Respondents who were retrenched in July 2020, alleged that they were, at that stage, entitled to occupy their respective houses by virtue of either a written or a verbal sub-lease with Winelands Textiles. The Applicant accepts that this was the case, hence its cancellation, a year later, of the Respondents’ sub-leases by means of the notice of termination. I shall return to the question as to whether the Applicant, as owner of the property and not the sub-lessor, was entitled to cancel or

⁹ 2006 (5) SA 548 (SCA). With regard to the evidential onus on a respondent in an application

could validly have cancelled the sub-leases between Winelands Textiles and the Respondents.

[68] In my view, the enquiry with regard to the unlawfulness of the Respondents' occupation of their respective houses, should commence with the Respondents whose employment had been terminated before 2020. Was their continued occupation of their houses, notwithstanding the termination of their employment, lawful?

[69] In **Davidan v Polovin NO**,¹⁰ it was held as follows:

“[11] The jurisdictional requirement to trigger an eviction under PIE is that the person sought to be evicted must be an unlawful occupier within the meaning of PIE at the time when the eviction proceedings were launched. Section 1 of PIE defines an unlawful occupier 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’. Consent is defined as ‘the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question’.

[12] The starting point is to establish whether the appellant is an unlawful occupier under PIE. The key question is whether the appellant enjoyed a right of occupation? PIE applies not only to

for eviction under PIE, see **Ndlovu**, *supra*, at par 19.

¹⁰ 2021 JDR 1781 (SCA) at par 11 to 13.

occupants who occupied land without the initial consent of the owner or person in charge, it also applies to occupants who had consent to occupy but such consent was subsequently terminated. In both instances the occupants would be unlawful occupiers within the meaning of PIE. Consent in eviction applications is a valid defence.

[13] The first enquiry is whether the appellant had the necessary express or tacit consent to reside on the property owned by the Trust. In other words was the oral agreement established? Whether or not someone has the necessary consent to reside is a factual question.” (Emphasis provided.)

The Respondents whose employment was terminated prior to 2020

The 2nd Respondent – Ursula Alica Apollis

[70] The 2nd Respondent is a 48 year old female who took occupation of House 1A, Hextex Estate, with her ex-husband, Mr Pillay, who passed away in 2015. Mr Pillay was employed by Winelands Textiles. The 2nd Respondent alleges that the late Mr Pillay had signed a written contract of lease in 2013, but was never provided with a copy thereof. The 2nd Respondent was re-married in 2018 to Mr Christie Leonard Apollis.

[71] The 2nd Respondent was not employed by Winelands Textiles. She does not rely on a lease in her own name for her continued occupation of the house. She alleges that after her husband's passing in 2015, she agreed

with Ms Jacqui Bakkes, a representative of Winelands Textiles, that she could remain in occupation of the house. However, the 2nd Respondent adduced no evidence of when this agreement was concluded, and on what basis she was permitted to remain in occupation of the house. She merely alleges that it was agreed that she *“could tender (her) rental when and where possible going forward”*. It is unclear from her affidavit to what extent she regularly paid rent. Since July 2020 Winelands Textiles refused to accept rental from the 2nd Respondent, and she was advised that there was *“a new owner / manager”* of the property who would further communicate with her. The 2nd Respondent’s answering affidavit contains no evidence whether this in fact happened.

The 3rd Respondent – Jacques Richard Bezuidenhout

[72] The 3rd Respondent is 49 years old and unemployed. He resides in House 2A together with his wife, Abigail Bezuidenhout, age 39. The 3rd Respondent took up residence in his house in terms of *“an oral month to month lease agreement”*. The 3rd Respondent was retrenched in June 2020. He does not rely on his lease for his continued occupation of his house, after his retrenchment. I have therefore included the 3rd Respondent in this category of Respondents under discussion. The 3rd Respondent alleges, unsurprisingly, that *“there were no terms relating to the procedure should I be retrenched”*. He alleges that his oral lease was part and parcel of his employment. By necessary implication, it came to an end when he was retrenched. The 3rd Respondent did not tender rental after his retrenchment. His explanation for this omission is that he

was not informed “as to how I could continue to tender my rental”, because it had previously been deducted from his salary.

The 4th Respondent – Hendrick Vos

[73] The 4th Respondent’s answering affidavit was deposed to by his wife, Ms Juanita Vos, a 47 year old unemployed female. The 4th Respondent and his wife were both employed by Winelands Textiles. They reside in House 2, Hextex Estate. Ms Vos alleged that it was as a consequence of her employment by Winelands Textiles that she was allowed to enter into a lease with Winelands Textiles. No evidence was adduced with regard to whether it was a written or verbal lease, or the terms thereof. Ms Vos resigned in December 2019. It is unclear when the 4th Respondent’s employment was terminated.

[74] The 4th Respondent’s answering affidavit contains no evidence with regard to the basis on which the couple was permitted to remain in occupation of the house, after the resignation of Ms Vos in December 2019, bearing in mind that the sub-lease was in her name and a benefit of her employment. They paid rent until the eviction application was served on them, whereafter Winelands Textiles refused to accept any further rental from them.

The 6th Respondent – Francois de Wet

[75] The 6th Respondent is a 53 year old male and resides at House 16, Hextex Estate, together with his wife and their two major daughters and

one minor daughter, aged 13. The 6th Respondent was employed by Hextex since October 2003, and he leased his house in terms of an oral agreement. The 6th Respondent alleges that it was as a consequence of his employment and a benefit thereof that he was allowed to enter into a lease with Winelands Textiles until December 2019, when he resigned. In January 2020 the 6th Respondent obtained employment at Breede Valley Municipality.

- [76] The 6th Respondent paid no further rent after his resignation in December 2019. The explanation proffered by the 6th Respondent for this omission was that no indication was given to him *“as to how to continue tendering rental for the premises”*. The 6th Respondent’s answering affidavit contains no evidence on what basis he was entitled to remain in occupation of his house after his resignation.

The 7th Respondent – Tonderai Jena

- [77] The 7th Respondent is a 52 year old male who has been residing at Hextex Estate since 2011. No evidence was adduced in respect of the basis on which this occurred. The 7th Respondent’s three adult children reside with him. The family did not reside in one of the dwellings, but in a building described as *“the clubhouse”*. The 7th Respondent was retrenched in July 2020. The 7th Respondent alleges that *“in 2021, the clubhouse was demolished and we were offered a different unit – consequently relocating to our current space, house 15, in May 2021”*. The 7th Respondent adduced no evidence of the basis on which this

occurred. The 7th Respondent was unemployed for 2 years following his retrenchment. He again obtained employment in January 2022. The 7th Respondent did not deal in his answering affidavit with the question as to whether he paid any rental after his retrenchment. I have included the 7th Respondent in this section because, although he was retrenched in July 2020, he does not rely on any lease or other legal basis for his continued occupation of the “unit” he occupies.

The 8th Respondent – Gert Johannes Swart

[78] The 8th Respondent is a 60 year old male who resides in House 14, Hextex Estate. The 8th Respondent has been in occupation of his house since 24 June 1995, in terms of a written lease agreement. The rental was deducted from his salary. His employment was terminated in 2015, after a labour dispute with Winelands Textiles, but he and his family continued to occupy his house.

[79] The 8th Respondent alleges that “a *due representative of Hextex*” agreed that he could remain in occupation of his house, on condition that he continued to pay rent. In 2017 he started his own business. This venture failed. As a consequence, the 8th Respondent was unable to pay any rental since approximately 2018. The 8th Respondent’s answering affidavit contained no evidence on what basis he was entitled to remain in occupation of his house notwithstanding his failure to pay rent.

[80] The 8th Respondent alleges that soon after the closing of Winelands Textiles, he and other tenants formed a tenants association “*for the due*

payment of rental, as management was no longer accepting same”.

However, no evidence was adduced with regard to what was achieved by this association, if anything, in respect of the continued occupation of the houses and the payment of rental by the Respondents.

The 9th Respondent – Johanna Madelaene Mina Steven

[81] The 9th Respondent is a 55 year old unemployed female who has been residing at House 13, Hextex Estate, since approximately 2016. The 9th Respondent was previously employed by Winelands Textiles. Her rental was deducted from her wages, but she disclosed no information as to whether she occupied her house by virtue of a written or verbal lease agreement. She was retrenched in 2017. The 9th Respondent was unable to obtain any form of employment after her retrenchment.

[82] The 9th Respondent continued to pay rent, notwithstanding her retrenchment in 2017, until April 2019 when Winelands Textiles refused to accept any further rental from her. The 9th Respondent adduced no evidence of the basis upon which, if any, she was entitled to remain in occupation of her house, notwithstanding the fact that she paid no rent.

The 12th Respondent – Jacques Brian Sawall

[83] The 12th Respondent is a 69 year old male pensioner. He resides with his 66 year old wife, who is also a pensioner, in House 6, Hextex Estate. They have been in occupation of this house since 2011. Their grandson lives with them. The 12th Respondent was employed by Hextex from 2011

until 2019, when he retired. He alleges that the occupation of their house *“was provided on an indefinite basis”*, without explaining what this means, and that until his retirement, the rental was deducted from his salary.

[84] The 12th Respondent failed to disclose on what basis he continued to occupy his house, after his retirement in 2019. He merely alleges that prior to his retirement, he was advised by a representative of Hextex that he would not be required to continue paying rent after his retirement. However, in 2021 he discussed the matter with Mr Peter Gaal, the general manager of Hextex, *“who agreed to accept rental of R700,00 per month”*. I am not prepared to accept this evidence. It is not only hearsay, but wholly untenable, given the common cause facts that Winelands Textiles had been sold to a third party in 2020. In any event, the 12th Respondent adduced no evidence with regard to what had happened pursuant to this conversation with Mr Gaal, particularly with regard to the payment of rent.

The 17th Respondent – Hillary Chaimirira

[85] The 17th Respondent is a 25 year old self-employed male. He has resided in House 3, Hextex Estate, since 2017, with his parents. His father was previously employed by Winelands Textiles, until he resigned in December 2019. Winelands Textiles did not thereafter provide the 17th Respondent *“with an alternative account for rental payments”* and informed the 17th Respondent that it would no longer accept rental from

him. The 17th Respondent's father thereafter relocated to the Eastern Cape, in order to secure permanent employment. The 17th Respondent adduced no evidence of the basis on which he was entitled, in his personal capacity, to remain in occupation of the house that his father previously rented from Winelands Textiles.

The 18th Respondent – Rosemary Chimbani

[86] The 18th Respondent is a 36 year old female who resides in House 5, Hextex Estate, together with her husband. She has resided in this house since September 2020, when she moved in with her uncle who was employed by Winelands Textiles and rented House 5 from it, until his retrenchment in July 2020. No further rental was subsequently paid by her uncle, because Winelands Textiles *“did not advise him as to how and when to continue his rental payments”*. Her uncle relocated to Pretoria in September 2020, where he had secured new employment. The 18th Respondent likewise failed to adduce evidence with regard to the basis on which she personally was entitled to remain in occupation of House 5, after her father's retrenchment and relocation to Pretoria.

The 23rd Respondent – Damian Hattingh

[87] The 23rd Respondent is a 27 year old male who resides in House 1[...], Hextex Estate. He has resided in this house since 25 August 2021. It was previously occupied by Ms Fadila Sampson, who was employed by Winelands Textiles and paid rental to occupy the house. The 23rd Respondent adduced no evidence of how it came about that he started

occupying House 18, or on what basis he was permitted to do so. It is evident that he has never occupied the house in terms of any agreement with Winelands Textiles. He merely sought to justify his occupation of the house on the basis of the following averment – *“Hextex is aware of my occupation and have (sic) previously raised no issues in terms of same, agreeing to occupation of House No. 1[...].”*

Discussion

[88] It was conceded in the Applicant’s heads of argument that all the Respondents had the consent of Winelands Textiles, being the *“person in charge”* of the property, to occupy their houses.¹¹

[89] It is apparent from the Respondents’ answering affidavits that the inhabitants of Hextex Estate are a relatively close community. Several Respondents allege that after the retrenchment of employees in July 2020, Winelands Textiles refused to accept rental offered by them, and advised the Respondents that Winelands Textiles no longer had anything to do with the dwellings in Hextex Estate. In June 2020, the inhabitants of Hextex Estate established a committee with a view to setting up a fund earmarked for the reparation of *“breakages”* to which all the Respondents would contribute on a monthly basis. A further purpose of this fund was to establish a neighbourhood watch. The 8th and 12th Respondents were the *“driving force”* in establishing this committee. In May 2021 they approached a representative of Winelands Textiles, in order to obtain

¹¹ Heads of argument, paragraph 30.

copies of their leases. They were unsuccessful, because Winelands Textiles reiterated its position that it no longer had anything to do with the houses. On another occasion the 10th Respondent was informed that the “*new owner of the property*” would in future deal with the residents of Hextex Estate. This position adopted by Winelands Textiles must have become common knowledge to the other inhabitants of Hextex Estate, to whom it had not been directly communicated.

[90] Given these facts and circumstances, the Respondents clearly must have realised that, as far as Winelands Textiles were concerned, there were no longer valid sub-leases in place, and by necessary implication, the Respondents no longer enjoyed the consent of Winelands Textiles to occupy their houses. However, I make no finding in this regard.

[91] It is common cause that Winelands Textiles was sold in the first half of 2020. I have already alluded in paragraph [55] above to the reason for this transaction, namely that Winelands Textiles no longer achieved “*the required return on capital hurdle rate*”.

[92] In the notice of retrenchment the Respondents were advised, *inter alia*, as follows:

“Further to our recent consultations with the union and the S189 facilitation process held regarding the restructuring at Winelands Textiles (Pty) Ltd, we regret to advise you the company will be closing and operations will cease 31st July 2020. Consequently your services will be terminated due to operational requirements.” (Emphasis provided.)

[93] The Applicant alleges that after the sale of Winelands Textiles, Mr Robson, in his capacity as Chief Executive Officer of Vega Properties, being a division of the Applicant, became the person in charge of the property. This allegation has been admitted by the Respondents.

[94] It follows that when the notice of retrenchment was delivered to the Respondents at the end of July 2021, on behalf of the Applicant, no representative of Winelands Textiles was any longer a person in charge of the property. This notice, the content of which I have already quoted in paragraph [57] above, was titled, in bold print – *“CANCELLATION OF LEASE AGREEMENT AND TERMINATION OF RIGHT TO OCCUPATION: HEXTEX ESTATE* (followed by the house number of each Respondent).”

[95] It is not necessary for me to determine whether the Applicant had, after the disposal of Winelands Textiles, consented (expressly or tacitly) to the Respondents’ continued occupation of their houses. The facts suggest that it tacitly consented thereto. Be that as it may, this was conceded, by implication, on behalf of the Applicant when it was contended that the notice of termination was a general notice to the Respondents, that their right to occupy their houses had been terminated. By necessary implication, prior thereto the Respondents had the Applicant’s consent to occupy their respective houses.

[96] It is necessary, however, in order to consider the next question, namely whether the Applicant’s consent was terminated in terms of the notice of

termination, to first have regard to the explanation of the word “*consent*” by Yacoob J in **Residents of Joe Slovo Community v Thubelisha Homes**.¹²

“I agree that the Supreme Court of Appeal was correct in adopting the Oxford Dictionary meaning of the word ‘consent’.¹³ And it is in this primary sense which the concept of consent is employed in the PIE Act. What is required by the PIE Act is not just some kind of acquiescence by the owner or person in charge of land but the ‘voluntary agreement’ of the owner or person in charge. The occupier will not be on the land with the consent of the owner or person in charge if the owner simply allowed the person to stay or occupy because he, she or it had no choice but to do so, or felt under a duty to do so, or for any other reason did not agree voluntarily. Secondly, the word ‘agreement’ implies something bilateral. In other words consent as contemplated in the PIE Act is not unilateral consent but bilateral. It cannot be consent unless it was first asked for and later given, or unless it was accepted after it had been given even though it had not been requested.”

[97] However, Moseneke DCJ adopted a more expansive and generous approach to the meaning of “*consent*” in his discussion thereof:¹⁴

“It is plain that an unlawful occupier would be one who occupies land

¹² 2010 (3) SA 454 (CC) at para 55.

¹³ The Supreme Court of Appeal in **Tsaperas and Others v Boland Bank Ltd** 1996 (1) SA 719 (A) at 724G-H, said the following in this regard: “*The argument ignores the meaning of ‘consent’. Its primary meaning as a noun is, according to the Concise Oxford Dictionary, ‘voluntary agreement’.*”

¹⁴ At par 144.

without consent of the owner or without any other right in law to occupy.

The consent required is of the owner or the person in charge. It may be express or tacit and it may be in writing or otherwise. This definition is cast in wide terms. It envisages explicit consent but it also contemplates consent that may be tacit or, put otherwise, that may be unsaid but capable of being reasonably inferred from the conduct of the owner in relation to the occupier.”

[98] With regard to the termination of consent Yacoob J stated the following:¹⁵

“Even if it is so that consent ought to be more broadly defined than is considered appropriate in my judgment, it is my view that consent of that kind was terminated by necessary implication. It will be inconsistent to allow for a broad definition of consent and for a narrow definition of the method of termination.”

[99] The Applicant did not deal in the founding or replying affidavits with the fact that it did not concomitantly with the retrenchments in July 2020, terminate the Respondents’ right to occupy the property. It merely alleges in its supplementary affidavit, in respect of those Respondents who had been retrenched, that although their right to occupy the premises *“terminated with their respective retrenchments during July 2020 when Hextex was sold”*, it waited a further year (as owner of the property and not as the Respondents’ landlord) before it terminated the Respondents’ rights to occupy the property.

¹⁵ At par 84.

[100] The notice of termination, on the face of it, conveyed to each Respondent that the termination of his/her right to occupy his/her house, was as a consequence of the termination of the sub-lease. However, the notice was received by each Respondent after the events that had occurred during 2000, namely (a) the sale of Winelands Textiles, (b) the retrenchment of those Respondents still employed by Winelands Textiles, and (c) the position adopted by Winelands Textiles that it no longer had anything to do with the houses. I therefore hold that on a conspectus of all the evidence, the termination of the Applicant's consent was implicit in these events that culminated in the delivery of the notice of termination.

[101] With regard to the question whether the Respondents continued occupying their houses "*without any other right in law*" to do so, I have summarised the evidence of the Respondents in paragraphs [70] to [87] above. In my view, the 2nd, 3rd, 4th, 6th, 7th, 9th, 12th, 17th, 18th and 23rd Respondents have failed to discharge the onus in **Chetty**, namely "*to allege and establish any right to continue to hold against the owner*". The 8th Respondent, on his own version of his agreement with Winelands Textiles, was no longer entitled to occupy his house, since approximately 2018, when he ceased paying rent because he was unable to do so.

[102] To summarise, the Respondents under discussion in this section, did not have the express or tacit consent of the Applicant to remain in occupation of their houses, after the receipt of the notice of termination. Neither did they have any other right in law to remain in occupation of their houses. These Respondents, namely the 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 12th, 17th,

18th and 23rd Respondents, are therefore unlawful occupiers.

The Respondents who were retrenched in July 2020

The 1st Respondent – Jacqueline Timm

[103] The 1st Respondent is a 51 year old unemployed female who was employed by Winelands Textiles (and the previous owners of the factory) from 9 September 1993 until 31 July 2020, when she was retrenched. She and her husband took occupation of House 1, Hextex Estate, in April 2009. The 1st Respondent alleges that she signed “*a standard lease agreement*” but never received a copy thereof. She initially paid the rental in cash (for a period of 6 months) and thereafter it was directly deducted from her weekly wages. The last deduction was from her final wage on 31 July 2020. Winelands Textiles thereafter refused to accept rental from the 1st Respondent, and advised her that the company no longer had anything to do with the houses on Hextex Estate.

The 10th Respondent – Irene Mudzingwa

[104] The 10th Respondent is a 50 year old female who resides at House 20, Hextex Estate. The 10th Respondent and her husband were both employed by Winelands Textiles, since approximately October 2005. She alleges that “*my husband and I signed a written lease agreement with Hextex*”. Her husband resigned in 2012. They are estranged and he no longer lives in their house. The 10th Respondent was retrenched in July

2020, and she subsequently secured employment as a weaver at Svenmill (Pty) Ltd in January 2022. Since July 2020 Winelands Textiles refused to accept the rental tendered by the 10th Respondent.

The 13th Respondent – Portia Bonnita Benjamin

[105] The 13th Respondent is a 57 year old female who resides at House 7, Hextex Estate. She was employed by Winelands Textiles in August 2002, and signed a written lease agreement in respect of her house. Although the 13th Respondent resigned in 2010, she continued to occupy her house and to pay rent. She was again employed by Winelands Textiles, since 2016, until her retrenchment in July 2020. The rental was deducted from her monthly salary, and the last payment was in July 2020.

The 16th Respondent – Mercia Soorjonowa ¹⁶

[106] The 16th Respondent is a 63 year old female pensioner, who resides in House 2[...], Hextex Estate. The 16th Respondent and her husband were both employed by Winelands Textiles, since 2012. They initially rented “a shared room in house 1”, and in 2020 they moved to House 2[...] which they rented in terms of a written contract of lease entered into with Winelands Textiles on 1 February 2020. The 16th Respondent alleges that after the closure of Winelands Textiles she continued to pay rental, and she attached handwritten receipts ostensibly issued by Winelands Textiles to her answering affidavit, for the period 1 September 2020 to 31 May 2021. The 16th Respondent alleges that “from the end of May 2022”,

a representative of Winelands Textiles refused to accept any rental from her. This date is evidently a typographical error given the date of the last receipt, namely 31 May 2021.

The 20th Respondent – Juline Schroder

[107] The 20th Respondent is a 68 year old female pensioner, who resides in House 1[...], Hextex Estate, together with her 73 year old husband who is also a pensioner. She alleges that she resided in her house since July 2000. It was a benefit of her employment that she entered into a lease agreement with Winelands Textiles. Her rental was deducted from her monthly salary. The 20th Respondent was retrenched in July 2020, and she continued to pay rental until September 2020. She alleges that since October 2020 *“there were no Hextex representatives available to receive my rental, nor was I advised as to how further rental payments ought to be tendered”*. No further rental was paid by the 20th Respondent thereafter.

Discussion

[108] All the Respondents who were retrenched in July 2020, challenged the validity of the termination of their respective sub-leases, by means of the notice of termination, on the basis that the Applicant’s attorneys had no mandate to terminate the leases.

[109] The notice of termination purported to terminate a written lease

¹⁶ The surname used in the citation is the 16th Respondent’s maiden name.

agreement, alternatively a verbal lease agreement. The founding affidavit contains no evidence on what basis the Applicant, as owner of the property, was entitled to cancel the Respondents' sub-leases with Winelands Textiles. The notice of termination therefore did not constitute a valid and effective cancellation of the sub-leases.

[110] In order to overcome this difficulty, it was contended on behalf of the Applicant that the notice of termination was a general notice to the Respondents that their right to occupy their houses was terminated, and not necessarily a notice that their respective sub-leases were terminated. It was further contended that, as a consequence, the Applicant's consent in respect of the Respondents' continued occupation of their houses was revoked.

[111] In support of this contention, the Applicant relied on the meaning of the word "*consent*" as explained in **Joe Slovo**,¹⁷ and that the termination of consent can be implicit. I have already held that there is merit in this contention. However, the question arises, what was the status of the sub-leases? Did they constitute "*any other right in law*" vesting in the Respondents to remain in occupation of their houses?

[112] The core issue is whether the Respondents were, *vis-à-vis* the Applicant, entitled to continue occupying their houses, notwithstanding their retrenchment, by virtue of their sub-leases. The Respondents contend they were. The Respondents did not expressly allege on what basis they

¹⁷ At par 16.

were entitled to do so. They all rely on the implied assertion that their sub-leases remained extant, given the Applicant's invalid and ineffective attempt to cancel them.

[113] A sub-lessee's rights to the leased property are subject to those of the lessee. A sub-lessee cannot acquire more rights than the lessee has, and a sub-lessee's rights terminate when the lessee's rights come to an end.¹⁸

[114] The evidence in relation to the events that occurred in 2020, as described in paragraphs [88] to [93] above, in relation to the Respondents whose employment had been terminated prior to 2020, suggests that when the notice of termination was delivered (at the end of July 2021), the main lease between the Applicant and Winelands Textiles had come to an end. If this was indeed the case, the Respondents' rights to occupy their houses as sub-lessees were also terminated.

[115] The Applicant surprisingly adduced no evidence in the founding affidavit that the main lease with Winelands Textiles had been terminated. *Ex facie* the contract of lease, a copy of which was attached to the replying affidavit, its duration was for a period of 3 years, from 1 February 2020 to 31 January 2023. Clause 26.2 contained the following non-variation clause:

"No variation of this lease shall be binding unless it is in writing and

¹⁸ **Ntai v Vereeniging Town Council** 1953 (4) SA 579 (A) at 589A; **Ellerine Bros (Pty) Ltd v McCarthy Ltd** (245/13) [2014] ZASCA 46 (1 April 2014), at par 5; **The Law of South Africa**,

signed by both the LANDLORD and the TENANT.”

[116] The Applicant alleges in paragraph 68 of the replying affidavit:

“The applicant, furthermore, never collected rental from the respondents. The lease agreement was between the applicant and Hextex, and Hextex and the respondents had their own agreement in respect of rental and benefit of employment. I, accordingly, deny that the applicant refused to accept rental or that it was ever involved with such rentals.” (Emphasis provided.)

[117] The Applicant’s use of the past tense in relation to the existence of the main lease, may imply that it had already come to an end when this affidavit was deposed to. But these allegations appear in the replying affidavit, that was deposed to on 10 August 2022, some 10 months after the eviction proceedings had been instituted. In any event, there is insufficient evidence to conclude that the main lease had been terminated at the time that the application was launched. In fact, there is evidence that point in the opposite direction. In the contract of sale that the Applicant entered into with Durobrick,¹⁹ in terms of which it sold the property to the latter in December 2021, the word “*Tenants*” was defined as follows in clause 1.1.9 of the contract – “*Winelands Textiles (Hextex) Proprietary Limited and Ceres Fruit Juices Proprietary Limited, being the current tenants of the premises situated on the Property*”. This evidence suggests that, at that stage, the main lease was still extant.

^{2nd} Edition, Volume 14, Part II, at par 48.

[118] The Applicant has conceded in its affidavits that, at the time that the Respondents were retrenched, they occupied their houses in terms of their respective sub-leases with Winelands Textiles. The Applicant alleges, in its replying affidavit, that as a consequence of (a) the termination of the Respondents' employment and (b) the sale of Winelands Textiles, the Respondents were no longer entitled to remain in occupation of their houses. The Applicant has misconceived the legal position. An employee's right to occupy a dwelling leased from the employer, does not automatically terminate when his/her contract of employment was terminated. The right of residence must be terminated on its own in addition to the termination of the contract of employment.²⁰

[119] With regard to the Applicant's attempt to cancel the sub-leases, by means of the notice of termination, the 1st Respondent's answering affidavit contained the following allegations:

"82.4 In addition, it is denied that our lease agreements were validly termination (sic) insofar as reliance are placed on annexure KR5 (1 & 2) attached to Robson's Founding Affidavit, especially having regard to the further allegations why our evictions are necessary."

Annexure "KR5" referred to in this quotation, is the notice of termination.

[120] All the answering affidavits of the Respondents contain the following denials:

¹⁹ See paragraph [50] above.

²⁰ **Snyders and Others v De Jager and Others** 2017 (3) SA 545 (CC) at par 71 and 72.

“I admit that a notice to vacate was served on me as alleged, but deny that same served to effect valid cancellation of my rights”.

“I deny that I am in unlawful occupation of the property as alleged, cancellation not having been properly effected.”

[121] The Applicant did not deal with these denials in the replying affidavit. It merely took the position that the Respondents’ continued occupation of their houses was unlawful, for the reasons stated in paragraph [118] above.

[122] In its supplementary affidavit the Applicant reiterated its position that the Respondents’ right to occupy the premises terminated as a consequence of (a) their retrenchment and (b) the sale of Winelands Textiles. The Applicant further asserted that it granted an indulgence of 12 months to the Respondents, as the owner of the property and not as their landlord, before it terminated their right to occupy their houses. However, the Applicant again failed to adduce evidence with regard to the termination of the main lease. The Court is left in the dark with regard to this important aspect.

[123] As stated in **Chetty**, when an owner of immovable property “*goes beyond alleging merely his ownership and the defendant being in possession*”, and concedes that “*a right to hold would have existed but for a termination*”, the owner must prove the termination.

[124] The Applicant, having conceded that the Respondents had an existing

right by virtue of the sub-leases to occupy their houses, therefore bore the onus of alleging and proving that the sub-leases had been validly terminated. The Applicant failed to discharge this onus. The 1st, 10th, 13th, 16th and 20th Respondents were therefore lawful occupiers at the time that the eviction proceedings were launched.

Whether it would be just and equitable to grant an eviction order

[125] The relationship between subsections 4(7) and (8) of PIE,²¹ as explained in **City of Johannesburg v Changing Tides 74**,²² is the focus of this enquiry.

[126] As pointed out by Horn AJ in **Port Elizabeth Municipality v Peoples' Dialogue on Land and Shelter and Others**,²³ when a court has to adjudicate upon an application for eviction under PIE, it is dealing with two diametrically opposed fundamental interests. On the one hand there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other hand there is the genuine despair of people in dire need of adequate accommodation.

²¹ "(7) 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 landowner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) 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)."

It is therefore the duty of the Court to apply the requirements of PIE in order to balance these opposing interests and bring out a decision that is just and equitable. This requirement relates to both interests, that which is just and equitable not only to the persons who occupy the land illegally, but to the landowner as well. The Court must therefore refrain from applying a purely legalistic approach and have regard to extraneous factors such as morality, fairness, social values and implications and circumstances which would necessitate bringing out an equitable principled judgment. Each case must be decided on its own facts.

[127] This approach was endorsed by SACHS J in **Port Elizabeth Municipality v Various Occupiers**.²⁴ It was held that PIE expressly requires the Court to infuse elements of grace and compassion into the formal structures of the law. The Court must balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The spirit of Ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order.

[128] In **City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Others**,²⁵ it was emphasised that a court must consider an “*open list of factors*” in the determination of what is just and equitable in terms of section 4(7) of PIE.

²² 2012 (6) SA 294 (SCA), par 25.

²³ 2000 (2) SA 1074 (SECLD) at 1079.

²⁴ 2005 (1) SA 217 (CC) at 231B and 232B-D.

²⁵ 2012 (2) SA 104 (CC), at par 39.

[129] The availability of alternative land for the relocation of the Respondents, looms large in this matter. As is apparent from the reports filed by the Municipality, which I refer to in paragraph [161] below, the Municipality's position is that there is no medium or long term accommodation available for the relocation of the Respondents. There is, however, an emergency option available on non-serviced land in an informal area with communal services.

[130] In **Changing Tides 74**,²⁶ the Supreme Court of Appeal provided guidance in respect of the aspect of the availability of alternative accommodation, in the context of an eviction at the instance of a private landowner.²⁷ The Court, at the outset, emphasized that the effect of PIE is not to expropriate private property. PIE merely delays or suspends an owner's full right of ownership in respect of his land, until a determination has been made whether an eviction would be just and equitable, and under what conditions.

[131] The availability of alternative accommodation is but one of the factors to be considered in the enquiry under section 4(7). It should not be elevated to a precondition for an eviction order.²⁸ This factor assumes greater importance, however, in the second enquiry, namely what is a just and equitable date for eviction.²⁹ With regard to the first-mentioned aspect, the Court stated –

²⁶ *Supra*.

²⁷ *Supra*, at par 16.

²⁸ This principle was re-affirmed in **Baron v Claytile** 2017 (5) SA 329 (CC), at par 17.

²⁹ **Changing Tides**, *supra*, at par 20.

*“The Constitutional Court has said that private entities are not obliged to provide 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 the property in order to accommodate the immediate needs of the occupiers. That approach makes it difficult to see on what basis the availability of alternative land or accommodation bears on the question whether an eviction order **should** be granted, as opposed to the date of eviction and the conditions attaching to such an order.”*

[132] With regard to the weight to be attached to the availability of alternative accommodation as part of the section 4(7) enquiry, the Court stated –

“First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner’s protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, it must be considered what justice and equity demands in relation to the date of implementation of that order and it must consider what conditions

must be attached to that order."³⁰ (Emphasis provided.)

[133] I therefore approach the first enquiry on the basis that a limitation of the Applicant's rights of ownership in respect of the property, in order to accommodate the Respondents' constitutional right of access to adequate housing, can only be of limited duration. There is no obligation on the Applicant to continue providing free housing to the Respondents indefinitely. It has already done so for a substantial period. A refusal to order eviction because there is no alternative accommodation available to the Respondents, would effectively amount to an unjust expropriation of the Applicant's property. This not the effect of PIE, which cannot be used to expropriate a landowner indirectly.³¹ The landowner retains the protection of section 25 of the Constitution, not to be arbitrarily deprived of property.

[134] These principles were recently re-affirmed in **Grobler v Phillips**.³²

*"Who then bears the obligation to provide alternative accommodation? Section 4(7) of PIE clearly states that such obligation lies with a 'municipality, or organ of state or another land owner'. PIE was enacted to prevent the arbitrary deprivation of property and is not designed to allow for the expropriation of land from a private land owner from which property the eviction is being sought. In **Ndlovu** the Supreme Court of Appeal held that '(t)he effect of PIE is not to expropriate the land owner*

³⁰ At par 25. This summary of the nature of the first enquiry under section 4, was referred to with approval in **Occupiers, Berea v De Wet** 2017 (5) SA 346 (CC), at par 44.

³¹ **Ndlovu v Ncobo, Bekker and Another v Jika**, *supra*, at par 17; **Wormald NO and Others**

*and cannot be used to expropriate someone indirectly and the land owner retains the protection of [section] 25 of the Bill of Rights'. This court, in **Blue Moonlight**, held that 'a private owner has no obligation to provide free housing' and that '(u)nlawful' occupation results in a deprivation of property under [section] 25(1)' of the Constitution. Section 26(2) of the Constitution guarantees the right to access to adequate housing and places a positive obligation on the state to realise that right."*

[135] More than 4 years have lapsed since the sale of Winelands Textiles and the retrenchment of those Respondents who were still employed by it in 2020. Notwithstanding these events, the Applicant accommodated the Respondents and delayed the termination of its consent in respect of their continued occupation of the property, for one year, until August 2021. The Applicant's subsequent attempt to sell the property to Durobrick, was thwarted by the Respondents' continued occupation of the property. The Applicant alleges in the supplementary affidavit that for a period of 4 years it has not had the benefit of possession of the property, not received any rental income in respect thereof, and been unable to sell the property or to demolish the existing buildings, as planned. Half of this time was taken up by the Applicant's successful appeal against the judgment upholding the Respondents' point *in limine*,³³ which challenged Robson's authority to have instituted the eviction proceedings. In the meantime it had to continue paying expenses such as security costs and

v Kambule, *supra*, at par 15.

³² 2023 (1) SA 321 (CC), at par 37.

³³ As referred to in paragraph [21] above.

municipal services. These allegations have not been challenged by the Respondents in their supplementary affidavits. In my view a further delay or suspension of the Applicant's rights of ownership can no longer be justified, given the footing upon which I must consider this aspect, namely that such delay or suspension will ordinarily be limited in duration.

[136] I now turn to the Respondents' personal circumstances that are relevant to the first enquiry, in addition to what I have already referred to in paragraphs [70] to [87] above.

[137] The information with regard to the Respondents' financial circumstances, as set out in the answering affidavits and supplemented in their supplementary affidavits, have been summarised in an annexure to the Applicant's heads of argument. I requested the Respondents' attorney to indicate to what extent the Respondents disagree with any information recorded in this document. No error or disagreement was pointed out to me.

The 2nd Respondent – Ursula Alica Apollis

[138] The 2nd Respondent's husband is employed³⁴ as a glass fitter and earns an income of approximately R6 500,00 per month. The 2nd Respondent has five children. The youngest two children are still minors. The household receives a contribution of approximately R2 000,00 per month from one of the children. All the 2nd Respondent's children, some of them with their partners, reside with the 2nd Respondent. The household's

monthly income is approximately R15 500,00 and their monthly expenses amount to approximately R11 350,00. The 2nd Respondent suffers from hypertension, and her husband has undisclosed “*back issues*” that detrimentally affects his ability to work.

The 3rd Respondent – Jacques Bezuidenhout

[139] The 3rd Respondent has been unable to obtain employment since his retrenchment, and has been doing “*odd jobs*” to generate an income. His household is supported by his wife, who has been employed, since June 2018, by Wine & Olive Tourism in Worcester. Her monthly net income amounts to approximately R7 500,00. The couple’s monthly expenses amount to approximately R6 000,00. The 3rd Respondent’s wife has been diagnosed with tuberculosis of the bone and joints. She also suffers from an auto-immune disease known as systemic lupus erythematos.

The 4th Respondent – Hendrick Vos

[140] The 4th Respondent is currently employed as a mechanic and earns a net income of approximately R17 300,00 per month. The couple’s 19 year old son lives with them. He is doing casual work to earn pocket money, and does not contribute to the household expenses. The household’s monthly expenses amount to approximately R16 620,00. The 4th Respondent suffers from hypertension, gout and diabetes, and his wife suffers from

³⁴ By GH4 Graham Harvi.

gout and hypertension.

The 6th Respondent – Francois de Wet

[141] The 6th Respondent is employed by the Municipality as a senior store clerk, and earns a gross income of R9 366,80 per month.³⁵ His wife, aged 52, is unemployed. She was formerly employed by Winelands Textiles, but retrenched in 2017, and has been unemployed ever since. Their two major daughters, aged 28 and 21, reside with them, as well as their youngest daughter, aged 13. The household's monthly expenses amount to approximately R10 500,00 (a surplus of R5 100,00). The 6th Respondent suffers from diabetes.

The 7th Respondent – Tonderai Jena

[142] The 7th Respondent resides with his three adult children in House 1[...]. The 7th Respondent's youngest child is unemployed. His second child works part time and earns approximately R5 000,00 per month, and his eldest child is a student at the University of the Western Cape. The 7th Respondent's net income is approximately R7 000,00 per month. The total net income of the household is therefore R12 000,00 per month, and their monthly expenses amount to approximately R3 700,00 (a surplus of R3 245,00).

The 8th Respondent – Gert Johannes Swart

³⁵ In the answering affidavit this income was stated as R13 020,30. According to a pay slip attached to the affidavit, the gross income was R18 018,29 and the net income was R12 520,94.

[143] The 8th Respondent is employed and earns approximately R12 000,00 per month. The 8th Respondent and his family resides in House 1[...]. His family comprises of his wife, their eldest son with his partner and their two minor children. Another grandchild, the 8th Respondent's second son's child aged 15, also resides with him. This child attends high school. The couple's third child lives and works in Hermanus, and earns approximately R1 000,00 per month. The couple's eldest son is unemployed. His partner is employed as a contract worker at Rainbow Chickens (since approximately December 2022) and earns approximately R1 700,00 per week. The household's monthly income is approximately R18 800,00, and the expenses approximately R12 500,00 (a surplus of R6 300,00). The 8th Respondent is unhealthy. He suffers from diabetes, oedema, cellulitis, venous ulcers, mild psoriasis and cholesterol.

The 9th Respondent – Johanna Madelaene Mina Steven

[144] The 9th Respondent, who is unemployed, resides in her house together with her two adult daughters and their five minor children. The 9th Respondent's daughters are 39 and 33 years old respectively. The former is unemployed. The latter is employed at Pool Transport³⁶ and earns approximately R5 500,00 per month. She is the family's sole provider. The income is supplemented by the SASSA grants for the minor children, in a total amount of R4 450,00 per month. The household's monthly income is approximately R9 950,00 and their expenses approximately R6 350,00 (a surplus, including SASSA grants, of R3 600,00). The 9th

Respondent suffers from the following chronic medical conditions – osteoarthritis, type 2 diabetes, asthma, hypertension and cholesterol.

The 12th Respondent – Jacques Brian Sawall

[145] The 12th Respondent and his wife, aged 69, are both pensioners. They receive a combined monthly pension of R4 360,00. They have two adult children who do not reside with them. They are raising and caring for one grandchild, aged 17, who lives with them. His mother contributes R2 000,00 per month to the household's expenses. The couple's monthly expenses amount to approximately R5 200,00 (a surplus of R1 160,00). The 12th Respondent is a diabetic who has also been diagnosed with hypertension and cholesterol.

The 17th Respondent – Hillary Chaimirira

[146] The 17th Respondent is a self-employed casual worker and earns approximately R4 000,00 per month. The 17th Respondent has no dependents. His two cousins reside with him in his house. They are both domestic workers, and earn R1 000,00 and R4 000,00 per month respectively. The household expenses amount to approximately R6 800,00 per month (a surplus of R2 200,00).

The 18th Respondent – Rosemary Chimbani

[147] Both the 18th Respondent and her husband are employed. She is a domestic worker and earns R4 500,00 per month, and her husband is

³⁶ Where is doing her "practical" for her studies in computer information.

employed as a delivery driver who earns approximately R4 500,00 per month.³⁷ The couple has a 4 year old daughter who resides with them. The 18th Respondent's brother, aged 27, also resides with them. He is employed as a general worker for a construction company and earns approximately R4 000,00 per month. The 18th Respondent's 42 year old sister, who is unemployed, and her 16 year old daughter also reside with them. The joint household income is R13 000,00 per month, and the expenses approximately R6 850,00 (a surplus of R6 150,00).

The 23rd Respondent – Damian Hattingh

[148] The 23rd Respondent resides in House 1[...], Hextex Estate, together with his wife, aged 27, and their two minor daughters, aged 4 years and 8 months respectively. The 23rd Respondent is employed as an internal auditor at Agrimark Operations and he earns a net monthly income of R21 000,00. His wife is employed as a general worker at Rainbow Chickens and earns R7 500,00 per month. Their monthly expenses amount to approximately R16 500,00 per month (a surplus of R11 950,00).

The Respondents who did not oppose the application

[149] The Municipality stated in all three municipal reports that it has been unsuccessful to obtain any information from the 4th, 15th, 22nd and 24th Respondents with regard to their personal circumstances, despite several attempts to obtain such information from them.

[150] The 5th, 19th, 21st and 25th Respondents provided the following information with regard to their personal circumstances, to the Municipality:

[150.1] The 5th Respondent occupies House 3[...]. His household consists of five adults, one of which is a pensioner, and two minor children. The household income amounts to approximately R26 000,00 per month.

[150.2] The 19th Respondent occupies House [...]. Her household consists of two adults, one of which is a pensioner, and three minor children. The household income amounts to approximately R11 900,00 per month.

[150.3] The 21st Respondent occupies House 1[...]. His household consists of three adults, one of which is a pensioner, and two minor children. The household income amounts to approximately R13 000,00 per month.

[150.4] The 25th Respondent occupies House 2[...]. His household consists of three adults and three minor children. The household income amounts to approximately R16 700,00 per month.

Other relevant circumstances

[151] The Respondents occupy houses that served as accommodation for employees of the factory previously operated by Winelands Textiles. Most

³⁷ The employer was referred to as "Mr D", and no further details were disclosed.

of the Respondents, irrespective of whether they initially took up residency in their houses in terms of a written or verbal lease, concede that this was a benefit of their employment. This concession does not apply to the 2nd Respondent, who was not employed by Winelands Textiles. The 4th Respondent's wife, and deponent to his answering affidavit, resigned in 2019. The 6th Respondent also resigned in 2019. The 7th Respondent did not explain on what basis he occupied "*the clubhouse*", or moved to another unit in 2021. The 8th Respondent's employment was terminated in 2015. The 9th Respondent was retrenched in 2017. The 12th Respondent retired in 2019. The employer/employee relationship, which underpinned these Respondents' right to occupy their houses, had come to an end long before the sale of Winelands Textiles and the retrenchment of the other Respondents in 2020.³⁸ This does not apply to the 3rd Respondent who, on his own version, was not entitled to remain in occupation of his house after his retrenchment. The 17th, 18th and 23rd Respondents were not employed by Winelands Textiles. They have no right to occupy their houses in their personal capacities.

[152] The Respondents are not people who cannot fend for themselves. Their ages vary between 48 and 60, except for the 12th Respondent who is 69 years old. The 9th Respondent is unemployed and the 12th Respondent is a pensioner. All the other Respondents are gainfully employed. I have already alluded to the committee which they established in June 2020, led by the 8th and 12th Respondents, with a view to setting up a fund to

³⁸ Except for the 3rd Respondent who, on his own version, was not entitled to continue

repair “*breakages*” at the houses. They also established a neighbourhood watch and liaised with the South African Police Services to obtain formal approval thereof. When overhead cables were damaged during a storm in June 2021, they repaired the damage themselves, by employing the services of a private contractor. Each household contributed an amount of R2 340,00 to the costs of the repair work. In September 2021 two garages and a clubhouse were demolished. The Respondents mobilised themselves and made enquiries at the Municipality as well as the Heritage Western Cape Offices in Cape Town, whether the demolition work was lawful.

[153] The Respondents must have realised that the events that occurred in 2020 would have jeopardised their continued occupation of the houses. Yet they seemingly did not make much effort to find alternative accommodation.

[154] With regard to the availability of alternative accommodation, the 1st Respondent relied on the following assertions in her second answering affidavit:

“105. I aver that an abundance of rental properties does not translate to an abundance of suitable and affordable accommodation.

106. The majority of the rentals in the area, that remain close to my children’s school and place of employment, are in the general amount of R3 500,00 upwards (for a one bedroom house) and R9 000,00 (for a two

occupying his house after his retrenchment.

bedroom flat), as opposed to my erstwhile rental of R1 100,00 per month for my three bedroom house. Annexed hereto as 'A2' is a copy of the available rentals in Worcester as per Gumtree and Property24 on 7 June 2022.

107. I aver thus that if there are rental properties available, they are unaffordable for my family and I at this juncture.” (My emphasis.)

[155] The answering affidavits of the 2nd, 4th, 6th, 7th, 8th, 9th, 10th and 12th Respondents contain paragraphs with exactly the same allegations. This was evidently as a consequence of a “*copy and paste*” exercise. Be that as it may, none of the Respondents put up any evidence of what efforts were made by them since July 2021, when they received the notice of termination. The 3rd Respondent filed a relatively short answering affidavit. His affidavit does not contain the aforesaid allegations. However, he also adduced no evidence of what efforts he made, if any, to find alternative affordable accommodation.

[156] The represented Respondents filed supplementary affidavits pursuant to the court order, as referred to in paragraph [24] above. In these affidavits, the Respondents again failed to put up any evidence of this nature. This is unsatisfactory. An unlawful occupier in an eviction application under PIE should place the necessary information in this regard before the Court, as a relevant consideration.³⁹

³⁹ See **Patel NO and Others v Mayekiso and Others**, unreported WCC case number 3680/16, delivered on 23 September 2016.

[157] In June 2022 the Applicant's attorney contacted the Respondents' attorney in order to discuss the matter. The Applicant's attorney enquired from his counterpart, *inter alia*, "*whether the settlement of these proceedings is possible*". The Respondents' attorney indicated that he would take up the matter with his clients and revert, which never happened. The Applicant adduced this evidence in the replying affidavit. The Respondents failed to engage with this evidence in their supplementary affidavits.

[158] On 2 December 2022 the Applicant made a "*with prejudice*" offer to the Respondents to assist them in finding alternative accommodation. The offer comprised, *inter alia*, that (a) the Respondents should vacate the property on or before 30 April 2023, (b) the Respondents would not be held liable for "*any rental or utilities*" until they would have vacated the property, (c) the Applicant would pay an amount of R10 000,00 to each household, and (d) the Applicant would pay the Respondents' costs on a party and party scale up to and until 4 November 2022 when the application was heard. All the Respondents received this offer. It was open for acceptance until 13 January 2023. The Respondents rejected the offer, made no counter-proposal and failed to tender rental, or to make a contribution to the municipal services account.

[159] It is regrettable that this offer did not result in further negotiations between the parties in an attempt to resolve the *impasse*. It would perhaps have been prudent of the Applicant to have taken the initiative in this regard at a much earlier stage. Instead, the Applicant attempted to cancel the sub-

leases, with no apparent consideration for the fact that the sub-lessor was a different legal entity, albeit a subsidiary jointly owned by Deneb and the Applicant. However, this does not detract from the essence of the matter, namely the continued *de facto* expropriation of the Applicant's property, as a consequence of the Respondents' continued occupation thereof.

[160] I therefore consider that it would be just and equitable not to further allow the interests of the Respondents to prevail over those of the Applicant. As stated in **Changing Tides**, *supra*,⁴⁰ where a private owner of a property seeks the eviction of unlawful occupiers and demonstrates a need for possession of the land, and there is no valid defence to that claim, it will be just and equitable to grant an eviction order. This is consistent with the jurisprudence that has developed around this topic.

The municipal reports

[161] In the course of the litigation, the Municipality filed two reports in respect of the availability of alternative accommodation for the Respondents, in the event of an eviction order being granted. The first report⁴¹ was filed on 26 August 2022, and the second report⁴² was filed on 31 July 2024. Notwithstanding the fact that the second report was filed almost 2 years after the first report, the content thereof, in relation to the availability of alternative accommodation, was for all intents and purposes the same.

⁴⁰ At par 19.

⁴¹ Dated 25 August 2022.

⁴² Dated 30 July 2024.

Accordingly, when the matter was heard on 15 November 2024, I made an order that the Municipality should file a supplementary housing report on or before 15 January 2025, and that the parties may file supplementary written submissions and/or supplementary affidavits in response thereto. On 15 January 2025 the Municipality filed a third report.⁴³

[162] In all three reports the Municipality addressed the availability of alternative accommodation in two categories, namely “*Emergency Options*” and “*Medium to Long Term Options*”. The medium to long term options are the following: (a) accommodation in informal areas on serviced sites; (b) individual housing subsidy to purchase a house; and (c) provision of housing based on the equitable allocation of houses from the waiting list. These options arise from two housing projects that the Municipality has implemented, known as New Mandela and Transhex. The first project only focusses on the current occupiers on serviced plots, and in respect of the second project only 190 houses have been completed and handed over to the beneficiaries. However, no building contractor has as yet been appointed for the next stage, phase 2 of the project. In any event, in order to receive assistance in the Transhex project, an applicant must qualify for a housing subsidy, the “*Project Link Subsidy*”. The Municipality alleges that applications for this subsidy “*is currently closed*”. The Municipality also owns and manages

approximately 2 400 rental units, which are all currently occupied. Units that become available are allocated on a first come, first serve basis from a waiting list in terms of the Municipality's housing policy. The outstanding waiting list has 5 896 applicants. The Municipality's position is that it is unable to assist the Respondents with any of the options in the "*medium to long term*" category.

[163] The emergency options are the following: (a) accommodation on non-serviced land in informal areas with communal services; (b) possible accommodation in rental units based on availability at the time that an eviction order may be granted; and (c) accommodating evicted Respondents temporarily in community halls.

[164] With regard to the first emergency option, the following information is provided:

"The Municipality has an informal housing area in De Doorns East (Stofland); unfortunately, in this area there are no vacant plots and the remaining plots are earmarked for development. The households do not have access to direct municipal services and use communal ablution facilities and water points. A significant part of the area has no electricity. Some parts of the area only have access to street lighting through the provision of high mast lights. If a household is evicted and relocated to the area, the Municipality will only be able to provide the communal ablution and water points. All parts of the area that has electricity, are

⁴³ Dated 14 January 2025.

occupied and the Municipality will not be able to provide electricity to the area soon. The household will, if ordered to move to this area, be living in makeshift structures of corrugated iron or wood in less than 30 square metres accommodation. The family will be provided by the Municipality with emergency housing kits which consist of 4 x 76mm x 2,7m poles, 1 x 3m x 15m Plastic (250 microns), 1 x 500g 75mm nails, 1 x 500g 50mm nails 1 x 500g 100mm clout nails and 5 x 610 x 3,1m galvanised roof sheets. Alternatively, or in addition to the emergency kit, they can add their own material to construct the structures, however no permanent dwellings are allowed on the land.”

[165] According to the housing report, the third emergency option, i.e. accommodating families temporarily in community halls, is an exceptional and very temporary option which the Municipality employed in cases of disasters or other life-threatening situations. In such event people are housed only for a few days until accommodation in the informal area are constructed or repaired.

[166] Notwithstanding the second emergency option described above, the report concludes as follows:

“The only area where we will be able to provide a plot is in the Rohlihlahla informal settlement area in Avian Park, Worcester, hence this area is known for gangsterism and all sorts of social ailments. All parts of the area that has electricity, are occupied and the Municipality will not be able to provide electricity to the area soon.” (Emphasis provided.)

[167] This is unacceptable. Given the personal circumstances of the Respondents, it is difficult to fathom how the Municipality can regard this area as suitable emergency housing. Moreover, no reasons have been advanced by the Municipality as to why the development of the “*remaining plots*” in the De Doorns East (Stofland) informal housing area, cannot be suspended in order to provide emergency housing for the Respondents.

[168] The Applicant and the represented Respondents both filed supplementary heads of argument, in response to the third municipal report. In their heads of argument, the Respondents strongly criticised several aspects of the report, and contended that the Municipality has not complied with its constitutional duties to provide acceptable alternative accommodation to the Respondents. However, not to grant an eviction order because of this breach by the Municipality of its constitutional obligations towards the Respondents, would result in the further *de facto* expropriation of the Applicant’s property. In **Baron v Claytile**,⁴⁴ the Constitutional Court emphasised that a constitutional duty rests on an organ of state where occupiers are legally evicted and rendered homeless, to provide suitable alternative accommodation. It cannot escape this obligation by simply submitting reports indicating that there is no suitable alternative accommodation available.

⁴⁴ 2017 (5) SA 329 (CC), par 46.

[169] I have great empathy for the plight of the Respondents. Most of them are of an advanced age, and many of their households include minor children. Many of the Respondents suffer from serious health issues. I have given careful consideration to their personal circumstances set out in the answering and supplementary affidavits. It is safe to assume that the emergency housing presently offered by the Municipality at the Rohlihlala informal settlement area, as referred to in paragraph [166] above, is the last place that they would wish to be relocated to. Irrespective of this consideration, it would be very difficult for most of the Respondents to be uprooted from Hextex Estate and relocated to alternative accommodation. On the other hand, they have known for more than 4 years that the Court may eventually evict them. The Respondents could not simply have assumed that this would never happen. I also appreciate that the Applicant has reached the end of its tether, with regard to the Respondents' continued unlawful occupation of the property. However, it has not demonstrated a specific urgent need for an eviction order.

[170] In the light of these circumstances, and in order to afford the Municipality more time to comply with the constitutional obligations it owed to the Respondents, I consider a period of 6 months to vacate the property to be just and equitable.

[171] The application was unsuccessful in respect of the Respondents who were retrenched in July 2020. However, the fact that these Respondents have enjoyed free accommodation on the Applicant's property, at the

Applicant's expense, for more than 4 years, justify a departure from the general rule that costs should follow the event. In respect of these Respondents, the parties should pay their own costs.

[172] With regard to the costs of those Respondents who unsuccessfully opposed the application for their eviction, they should not be mulcted in costs, notwithstanding the fact that they have enjoyed free housing at the expense of the Applicant for many years. In fairness to both sides, these Respondents should rather be permitted to utilise their surplus income for their relocation to other accommodation.

[173] In the result, I make the following order:

1. The 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 12th, 17th, 18th and 23rd Respondents, as well as the Respondents who have not opposed the application, namely the 5th, 11th, 14th, 15th, 19th, 21st, 22nd, 24th and 25th Respondents as well as all persons holding under them (hereinafter collectively referred to as "*the Occupiers*"), are evicted from Erf 8980, Worcester.
2. The Occupiers are ordered to vacate Erf 8980, Worcester, by no later than Friday, 12 September 2025, failing which the eviction order may be carried out.
3. In the event that the relief as set out in paragraphs 1 and 2 above should render the Occupiers homeless and should they apply and qualify for emergency housing assistance, the 27th Respondent is

ordered and directed to assist the Occupiers with emergency housing, in terms of its emergency housing programme.

4. The parties shall pay their own costs.

VIVIER, AJ

APPEARANCES

For the Applicant:	Adv S Bosch
Instructed by:	Steyn Attorneys Inc

For the Respondents:	Att Mr G Langenhoven
Instructed by:	Langenhoven Attorneys Inc