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

Case No: A268/2024

In the matter between:

CITY OF CAPE TOWN

Appellant

and

YUNUS HUSSAIN

First Respondent

SHAAKIRAH PETERSEN

Second Respondent

MUNADIYA HAFFAJEE

Third Respondent

AZRAA HAFFAJEE

Fourth Respondent

**ALL OTHER UNLAWFUL OCCUPIERS HOLDING
OCCUPATION AGAINST THE FIRST RESPONDENT**

Fifth Respondent

Coram: Lekhuleni, J et Ralarala, J

Heard on: 7 February 2025

Delivered Electronically on: 17 April 2025

JUDGMENT

LEKHULENI J et RALARALA J

INTRODUCTION

[1] This is an appeal against the whole order of the Cape Town Magistrates' Court dated 19 August 2024. In that order, instead of delivering a judgment, the magistrate postponed the matter for six months to allow for meaningful engagement regarding the intended eviction of the second respondent and her son from the leased premises owned by the appellant, the City of Cape Town (*"the City"*). The second respondent's occupation of the property stems from a written lease agreement concluded in 2004, which lasted for an initial period of five years. Clause 4 of the written lease agreement afforded either party with the option to terminate the lease on two months' notice to the other.

[2] Throughout the duration of the lease agreement, the monthly rental amount was minimal. It commenced at R3500 per month and was subject to annual escalation, eventually reaching approximately R5892.60. In November 2019, the City obtained a revised valuation of the leased property. The evaluation suggested a market-related monthly rental of R24,900. The City extended invitations to the second respondent to comment and engage with it on two separate occasions, namely on 22 November 2019 and 11 December 2019, respectively. On 17 December 2019, through her legal representative, the second respondent offered a 10% increase to the existing rental of

R5892. On 13 January 2020, and after careful consideration, the City rejected that proposal.

[3] When no further proposals for increased rental were received, the City formally cancelled the lease in writing, affording the second respondent until 6 April 2020, to vacate the property. The City brought an application on 2 December 2022, in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (*"the PIE Act"*) seeking an order to evict the second respondent from the leased premises. However, the magistrate in Cape Town dismissed the application because, in her view, the lease agreement had not been properly cancelled.

[4] On appeal to the full bench of this court, on 22 May 2023, the court upheld the appeal and confirmed that the lease agreement between the parties had been validly cancelled. The appeal court remitted the matter to the magistrate Cape Town to determine whether an eviction order is just and equitable. After the case was remitted to the lower court, the presiding magistrate directed that oral evidence be presented. This measure was taken to ensure that the decision-making process is well-informed, reflective of the findings provided by the appeal court.

[5] Evidence was presented on 8 December 2023, and 21 November 2023. On 21 November 2023, after concluding the evidence, the parties agreed to have the matter decided based solely on written submissions, without any oral arguments. Following this agreement, the magistrate postponed the case and scheduled the judgment to be delivered on 14 December 2023. Notwithstanding, the anticipated judgment was not delivered on 14 December 2023, as promised. Rather, the presiding magistrate postponed the matter for six months to allow for further engagement and the submission of additional affidavits. (*"the first judgment"*).

[6] The parties conducted discussions in accordance with the court's order and subsequently submitted affidavits that outlined their respective positions. According to the City, the second respondent was obligated to vacate the property, as it had been

designated for the use of the law enforcement, traffic, and coordination departments. Additionally, the City proposed ten alternative accommodations which the second respondent could apply for. However, the second respondent failed to pursue this option.

[7] On the other hand, the second respondent maintained that the City must either let her remain on the property with her son or be ordered to assist her to relocate to 3[...] R[...] Road Observatory, which the second respondent alleged was available to her. Despite the palpable impasse between the two parties, on 19 August 2024, the magistrate granted the second order on the same terms as the previous order and postponed the matter for another six months for further engagement between the parties (***"the second judgment"***). It is this order that the appellant seeks to assail in this appeal.

THE FACTS

[8] The first and the second respondents were married on 4 July 2004 and divorced on 8 November 2014. During their marriage, on 30 June 2004, the City and the first respondent concluded a written lease agreement for both residential and commercial purposes. The lease agreement would commence on 1 July 2004 and terminate on 30 June 2009 unless renewed for a further period as agreed upon by and between the appellant and the first respondent. Rental per month in terms of the initial rental agreement was an amount of R3 500 and escalated annually by 10 per cent. The initial period commenced on 1 July 2004 and continued for five years until it ended on 30 June 2009. During the initial period, there was, for the most part, a due and proper performance by the first respondent of his obligations under the lease agreement.

[9] On the date of termination of the initial period, the parties elected to renew the lease agreement for a further and indefinite period, but otherwise on the same terms and conditions as applicable to the initial period. The first and second respondent operated a modest food kitchen from the property and resided on the upper floor of the

property. After the first and second respondent divorced, the first respondent relocated to Durban, where he has remained to date. After their divorce and the first respondent's move to Durban, the second respondent acquired all rights, title, and interest in the lease and the property from the first respondent. The first respondent severed all ties with both the property and the lease. Meanwhile, the second respondent responsibly continued to manage the lease, taking care of the property and ensuring that all monthly rent payments and utility bills were paid on time. The terms and conditions of the lease agreement have not been changed, and the rental amount has only been increased to R5892.60. No additional charges, other than for water and electricity, have ever been invoiced.

[10] According to the second respondent, the leased premises provides her with the necessary income to sustain herself and her son. According to her affidavit, should she be evicted, it would not only result in homelessness, but also leave her without any source of income, as her entire livelihood is dependent on the operation of the shop and restaurant. In addition, the second respondent asserted that she has been on the property for over two decades and has built goodwill in the community and a reputation for good wholesome food, which she would need to re-establish if required to move. The second respondent further averred that her business is well established and well known in that neighbourhood. She currently resides with her 13-year-old son. The first, third, fourth and fifth respondents are not occupying the premises.

[11] The rental amount per month in terms of the initial lease agreement was R3 500,00 and escalated annually by 10%. In 2019, it increased to R5 892,00. The appellant arranged for the property to be evaluated on 20 September 2019, and the valuation proposed a market-related rental of R24 900,00 per month. The outcome of the property valuation prompted the appellant to initiate discussions with the second respondent on 22 November 2019 and 11 December 2019. The City rejected the proposal in January 2020. Subsequent correspondence from the attorneys representing the second respondent proposed a 10% rental increase to R6481.20 per month. However, the City rejected this proposal in January 2020.

[12] As there were no further proposals, the appellant terminated the lease agreement on 6 February 2020, allowing the second respondent until 6 April 2020 to vacate the property. Subsequent thereto, on 23 March 2022, the appellant instituted an application in terms of s 4 of the PIE Act to evict the Respondents, which application was dismissed by the lower court on 7 July 2022, on the basis that the lease agreement was deemed not to have been validly cancelled.

[13] Thereafter, the appellant launched appeal proceedings against the lower court's judgment. The second respondent opposed the appeal. In its judgment of 22 May 2023, the appeal court upheld the appeal and determined that the lease agreement between the parties was validly cancelled. Furthermore, the court noted a lack of information about reasonable engagement between the appellant and the second respondent. The appeal court held that the appellant had to fulfil its constitutional obligations in terms of s 26(2) of the Constitution and to take reasonable measures, within its available resources, to achieve the progressive realisation of the right of access to adequate housing. To ensure that the second respondent's voice was heard in the matter, the appeal court remitted the matter to the magistrate's court for a determination on whether an eviction is just and equitable in the circumstances and, if so, a suitable date for eviction.

[14] On 8 August 2023, the matter resumed in the lower court. The presiding magistrate seized with the matter subsequently postponed the matter to 09 October 2023 for filing of supplementary affidavits and for heads of argument. On 09 October 2023, the matter was postponed to 08 November 2023 for the City to provide a housing report and for viva voce evidence to be led in respect of the City's housing report and the second respondent's personal circumstances before an eviction order could be considered.

[15] Pursuant thereto, viva voce evidence was led over the course of two full days. The Appellant adduced evidence of Mr Gregory Exford, who at the time was serving as

the Acting Manager for Informal Settlements associated with the Department of the Directorate of Human Settlements. Mr Exford compiled a housing report on behalf of the Municipality. In court, Mr Exford testified that the City can only accommodate the second respondent in a temporary relocation area. In those circumstances, the City furnishes the material necessary to erect an informal structure of 18 square meters, which he likened to the conventional Wendy house. In addition, he stated that the City offers communal services in respect of water and ablution facilities.

[16] Mr Isaac Martin who had deposed to an affidavit in support of the eviction application also gave evidence at the insistence of the presiding magistrate. Mr Martin is employed by the appellant as Head: Improved Properties and Lease-Ins within the Property Management Department. He testified that the City sought to review the lease to bring the rental on par with market-related rental. He confirmed that the proposal to the second respondent for rental of R24,000 was subject to approval. He testified further that the second respondent never raised any objections to the proposed increased rental of R24,000. He asserted that the City has no other comparable properties available to lease to the second respondent within the precinct.

[17] The second respondent also testified. In short, her testimony was that she and her former husband had bought the shop in question from the previous owner and moved into the property in 2004. She currently employs 3 people. Only she and her son occupied the property. She averred that her sole source of income is what she earns from her business. Her average monthly gross income from the shop is approximately R28,000, while her take-home income is roughly R19,000. Her average monthly expenses total was approximately R18,000. She mentioned that she accepted the City's proposed rent increase to R19,000; however, this adjustment was not implemented because the City did not send her a new lease agreement or invoice for that amount.

[18] Having heard evidence, the presiding magistrate postponed the matter to 14 December 2023 for judgment on the matter. On 14 December 2023, the magistrate did not deliver judgment as expected. Instead, on 4 January 2024, the magistrate

postponed the matter to 31 July 2024 (for six months) and directed the parties to engage meaningfully and file affidavits in that regard.

[19] The appellant filed further affidavits as directed by the court, indicating that the property occupied by the second respondent was no longer earmarked for rental purposes but for use by their Law Enforcement, Traffic and Coordination Department. The City also provided alternative accommodation for which the second respondent had to apply but had shown no interest. The appellant stated that the second respondent preferred that the appellant allow her to remain in the leased property or relocate her to a property situated at 3[...] R[...] Road Observatory.

[20] Between February 2024 and May 2024, the legal representatives of both parties engaged in meaningful discussions as directed by the court, however, these efforts did not yield any productive outcomes. On 20 June 2024, a meeting was held at the offices of the appellant's legal representative on a "without prejudice" basis, but this also did not yield any results. Resultantly, on 22 July 2024, the City delivered an affidavit deposed to by Mr Isaac Martin detailing the efforts the parties made to engage meaningfully. In the said affidavit, Mr Martin stated that the City had suggested two possibilities for accommodating the second respondent. First, a structured exit from the property. Second, an emergency housing kit based on the second respondent's disclosure that she would be rendered homeless if evicted from the property. According to the appellant, neither of these options were taken up by the second respondent.

[21] Annexed to Mr Martin's affidavit was a list of properties that the City had available to let and for which the second respondent could make application to occupy. On 30 July 2024, the second respondent delivered an affidavit in answer to Mr Martin's affidavit. The second respondent said nothing about the alternative properties, or the list of properties proposed by the appellant. Instead, the second respondent disputed the notion that the City had attempted to engage meaningfully with her.

[22] On 31 July 2024, the presiding magistrate required further clarity regarding the parties' attempt at engagement, the circumstances pertaining to the second respondent's son, and the availability of alternative accommodation within a 10-kilometer radius of the leased property. The magistrate postponed the matter for the parties to file further affidavits.

[23] On 7 August 2024, the second respondent delivered a further supplementary affidavit in which she identified two properties that she could use namely, 1[...] M[...] Road and 3[...] R[...] Road. On 14 August 2024 the City delivered its further supplementary affidavit by Mr Martin as directed by the magistrate. In the affidavit, Mr. Martin stated that the applicants' attorneys have not yet received any feedback from the second respondent or her attorney regarding the properties that the appellant proposed to lease to her. Mr Martin further stated that to the extent that the appellant was required to identify a property within proximity to the leased property, to his knowledge, the only available property for the second respondent to make a rental offer was situated at 2[...] P[...] Street Woodstock which is 120 meters from the current property.

[24] To his knowledge, there were no other properties available near the property occupied by the second respondent, which is why the appellant extended its list of properties to a radius of 10 kilometres from the location.

[25] On 19 August 2024 after considering the evidence and the supplementary affidavit, the magistrate delivered the second judgment, granting the second order and postponed the matter to 18 February 2025 for the parties to meaningful engage regarding the matter. The second judgment was virtually identical to the first written judgment. In that judgment, the magistrate indicated that he was not satisfied that meaningful engagement between the parties had occurred. According to him, the engagement process that followed involved a series of proposals and counterproposals, all of which were rejected by the other party. The magistrate concluded that there was no concrete evidence regarding the appellant's law enforcement agency taking over the leased premises occupied by the second respondent.

Preliminary point – Appealability of the postponement order

[26] The appellant appeals the magistrate's decision to postpone the matter from 19 August 2024 to 18 February 2025. The question that arises is whether such an order is appealable or not. Mr Mackenzie, counsel for the appellant, submitted that the postponement order disposes of the relief claimed to the effect that the respondents are unlawful occupiers, and that eviction is just and equitable. Mr McKenzie stated that the second order was clearly meant to address the date by which the second respondent must vacate the property. For the reasons that follow, we do not agree with this proposition. We propose to deal with this preliminary point as it is dispositive of this appeal.

[27] Rule 31 of the Magistrates' Court Rules governs the postponement of cases in the magistrates' court. Rule 31 provides as follows:

“Adjournment and postponement

- (1) The trial of an action or the hearing of an application or matter may be adjourned or postponed by consent of the parties or by the court, either on application or request or of its own motion.
- (2) Where an adjournment or postponement is made *sine die*, any party may by delivery of notice of reinstatement set down the action, application or matter for further trial or hearing on a day generally or specially fixed by the registrar or clerk of the court, not earlier than 10 days after delivery of such notice.
- (3) Any adjournment or postponement shall be on such terms as to costs and otherwise as the parties may agree to or as the court may order.”

[28] Section 83 of the Magistrates' Court Act regulates the appealability of orders from the magistrate's court. The section provides as follows:

“Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having jurisdiction to hear the appeal against —

- (a) any judgment of the nature described in section 48;
- (b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;
- (c) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs.”

[Section 82 of the Magistrates’ Court Act provides: No appeal shall lie from the decision of a court if, before the hearings is commenced, the parties lodge with the court an agreement in writing that the decision of the court shall be final.] This section is not relevant for present purposes.

[29] Section 83 of the Magistrates’ Court Act deals with appeals from a magistrates’ court and specifies which judgments are appealable. The question of the appealability of a judgment or order has been the subject of many judgments over many years.¹ The test enacted in this section to determine the appealability of orders made in a magistrate's court is whether they have 'the effect of a final judgment. A judgment or order is a decision which, as a general principle, has three key attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.² To qualify as a judgment or order, it must grant definite and distinct relief.³

¹ *FirstRand Bank Limited t/a First National Bank v Makaleng* (034/16) [2016] ZASCA 169 (24 November 2016) para 11.

² *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A) at 536B.

³ *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue and Another* 1992 (4) SA 202 (A) at 214D-G.

[30] The judgment of the court *a quo* to postpone the matter for six months does not fall within the ambit of a judgment of the nature described in section 83 of the Magistrates' Court Act. Section 83(a) described judgments envisaged in section 48 of the Magistrates' Court Act. Section 48 deals with the granting of judgment by the court as a result of a trial of an action. In this case, the postponement related to an eviction application. The postponement of the eviction application was intended to allow the court to decide on the eviction request. The hearing was rescheduled to 18 February 2025. The remand was intended to facilitate meaningful engagement. The matter is still pending in the Cape Town Magistrates' Court. Section 83(c) of the Magistrates' Court Act does not apply in this matter as it deals with exceptions. The postponement order does not meet the requirements of section 83(b) either.

[31] The order is purely interlocutory and remains susceptible to be varied by the court upon the resumption of the matter. The order does not have the effect of a final judgment as required by section 83(b) of the Magistrates' Court Act. It lacks all of the attributes of an appealable order set out in *Zweni*. The postponement order amounted to no more than a directive from the magistrate, before he could decide on the eviction application as to the way the matter should proceed.

[32] The effect of the order is to enable the parties to engage with each other to find a mutually suitable solution to resolve the impasse between them. In *Jacobs v Baumann NO*,⁴ the Supreme Court of Appeal ("*the SCA*") stated that in determining whether or not an order is final, one must have regard not only to its form but predominantly its effect. If an order irreparably anticipates or precludes some of the relief which would or might be given at the hearing it will be appealable. Similarly, in *NDPP v King*,⁵ Harms DP, as he then was, stated that the test was whether the order made was in substance, and not in form, finally in effect.

⁴ 2009 (5) SA 432 (SCA) para 9.

⁵ 2010 (2) SACR 146 (SCA) para 42.

[33] When the court *a quo* postponed the application, it determined a return date for the finalisation of the matter. The relevant part of the order stated:

“The matter is postponed to 18 February 2025 for a further 6 months for meaningful engagement to take place. Costs to stand over for later determination.”

[34] Clearly, there appear to be strong indicators in the ruling of the magistrate that the order granted was neither definitive of the rights of the parties nor intended to have the effect of disposing of any portion of the relief claimed in the eviction application. The reading of the order indicates that the matter must still be determined on the return date by the court of first instance once the parties have engaged with each other meaningfully. The court below issued a directive of meaningful engagement which had to be complied with before a final determination could be made. That directive is not determinative of the rights of the parties but instead it amounts to no more than a direction in the way the matter should proceed.⁶

[35] In our view, the postponement order issued by the magistrate is not appealable. We are fortified in this conclusion by the decision of the SCA in *FirstRand Bank Limited t/a First National Bank v Makaleng*,⁷ in which the court held that an order by the high court postponing, *sine die*, an application for default judgment, and directing the appellant to file, at the next hearing within not less than six months of the said order, an affidavit detailing attempts to prevent foreclosure, is not appealable. The SCA struck the matter from the roll for lack of jurisdiction.

[36] Furthermore, in *Grobler v MFC*,⁸ the court, relying on the dictum in *Priday t/a Pride Paving v Rubin*,⁹ denied an application for leave to appeal a decision refusing a postponement. The court reasoned that the decision did ‘not dispose of any substantial

⁶ *Absa Bank Limited v Mkhize and two similar matters* 2014 (5) SA 16 (SCA) para 59.

⁷ (034/16) [2016] ZASCA 169 (24 November 2016).

⁸ (1548 of 2019) [2021] ZAGPJHC 469 (08 December 2021) paras 10 and 11.

⁹ 1992 (3) SA 452 (C).

portion of the merits, determine their rights of the parties, or bear any of the other commonly apprehended hallmarks of finality that interlocutory orders are ordinarily required to possess in order to qualify for appealability’.

[37] In summary, the order of the court *a quo* is not final in effect. It is an interlocutory order which can be altered by the court *a quo* on the postponement date as soon as all the information is placed before it. Secondly, the order is clearly not definitive of the rights of either the appellant or the respondents. Thirdly, the order does not have the effect of disposing of at least a substantial portion of the relief claimed in the main application. It does not deal with or dispose of any of the reliefs sought by the appellant in the eviction application. The parties are at large to prosecute their cases and to direct the court to any evidence or advance any argument that they wish to raise before the court can make a final decision.

[38] We are mindful that the appealability requirements set out in the *Zweni* matter discussed above, do not constitute a close list.¹⁰ Where a decision does not dispose of all the issues in the case, s 17(1)(c) of the Superior Courts Act 10 of 2013 provides that leave to appeal may be granted if this would lead to a just and prompt resolution of the real issues between the parties.¹¹ In recent years, the role of the interests of justice in determining whether an order is appealable has received attention.¹²

[39] In *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others*,¹³ the Constitutional Court dealt with the application of the interests of justice in an appeal relating to interim interdicts. The SCA had struck a matter from its roll on the basis that the order, which was an interim interdict, was not appealable under the *Zweni* test. The Constitutional Court upheld an appeal against that judgment. It found that what is to be considered and is decisive in deciding whether a judgment is appealable, even if the *Zweni* requirements are not fully met, is the interests of justice of

¹⁰ *Cipla Agrimed (Pty) Ltd v Merck Sharp Dohme Corporation and Others* 2018 (4) SA 440 (SCA) para 36.

¹¹ *DRDGold Limited and Another v Nkala and Others* 2023 (3) SA 461(SCA) paras 22-26.

¹² *Nedbank Limited and Another v Surve and Others* [2024] 1 All SA 615 (SCA) para 16.

¹³ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC).

a particular case and whether or not an order lacking one or more of the factors set out in *Zweni* constitutes a “decision” for the purposes of s 16(1)(a) of the Superior Courts Act.

[40] The court noted that over and above the common law test, it is well established that an interim order may be appealed against if the interests of justice so dictate.¹⁴ It found further that, in deciding whether an order is appealable, the court does not exercise a discretion but rather makes a finding of law.¹⁵ The Constitutional Court concluded that the interim interdict in question was appealable because it had resulted in the infringement of the right to freedom of expression.¹⁶

[41] In the present matter, there are simply no interests of justice considerations which would justify this court allowing a piecemeal litigation by entertaining an appeal against a purely interlocutory postponement order pending the determination of the merits of the application before the Magistrates’ Court. The Constitutional Court and the SCA have repeatedly emphasised that piece meal adjudication of litigation is in fact not in the interest of justice.¹⁷ The judgment of the court *a quo* does not have the effect of a final judgment. It is not appealable. This court consequently has no jurisdiction to determine the appeal.

[42] We have noted that in the alternative, the appellant has implored this court to invoke its review powers framed in section 22 of the Superior Courts Act 10 of 2013. We are of the view that this argument is mistaken and unsustainable. This argument does not adequately recognise that the magistrate who presided over this matter was not cited and has not had the opportunity to respond to the review proceedings. It appears that the invitation for this court to exercise its review powers was an afterthought or a subsequent consideration by the appellant, rather than part of the appellant's original intentions. This conclusion is supported by the observation that the argument is

¹⁴ At para 45.

¹⁵ At para 40.

¹⁶ At para 45.

¹⁷ *Minmetals Logistic Zhejiang Co Ltd v The Owners and underwriters of the MV Smart and Another* 2025 (1) SA 392 (SCA) paras 32 to 33.

articulated solely within the appellant's heads of argument and is absent from the founding documents.

[43] Finally, there is an issue that requires the consideration of this court. We have noted that relevant evidential material was placed before the magistrate. After the matter was remitted from the High Court for the determination of the question whether it was just and equitable to grant an eviction order, the magistrate called for viva voce evidence and the filing of supplementary affidavits. Extensive evidence was led for two days from officials of the City and from the second respondent.

[44] Upon the conclusion of the evidence, the magistrate noted on record that he would be ready to deliver judgment on 14 December 2023. He directed the parties to file their heads of argument, and they obliged. Notwithstanding, he did not give the anticipated judgment. Instead, on 4 January 2024, without any forewarning, the magistrate postponed the matter for six months for further engagements and for filing of further affidavits. The parties engaged in meaningful discussions and held meetings on a without prejudice basis as directed by the court. The relevant affidavits requested by the magistrate were filed by the respective parties. Nonetheless, the magistrate postponed the matter for another six months.

[45] It is important to emphasise that the process of meaningful engagement should not be equated to compel the parties to reach a settlement. Meaningful engagement is not merely about process but about finding sustainable solutions.¹⁸ Engagement is a two-way process in which the City and those about to become homeless would talk to each other meaningfully to achieve certain objectives.

[46] There is no closed list of the objectives of engagement. In *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street*

¹⁸ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* 2008 (3) SA 208 (CC) para 14.

Johannesburg v City of Johannesburg and Others,¹⁹ the Constitutional Court observed that some of the objectives of engagement in the context of a City wishing to evict people who might be rendered homeless consequent upon the eviction would be to determine —

- (a) What the consequences of the eviction might be;
- (b) Whether the city could help in alleviating those dire consequences;
- (c) Whether it was possible to render the buildings concerned relatively safe and conducive to health for an interim period;
- (d) Whether the city had any obligations to the occupiers in the prevailing circumstances; and
- (e) When and how the city could or would fulfil these obligations.

[47] The court stated that engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are willing to participate in the process. The court asserted that people about to be evicted may be so vulnerable that they may not be able to understand the importance of engagement and may refuse to take part in the process. If this happens, a municipality cannot walk away without more. It must make reasonable efforts to engage, and it is only if these reasonable efforts fail that a municipality may proceed without appropriate engagement.

[48] In the present matter, the parties engaged in meaningful discussions for an extended period without success. Cumulatively, the magistrate postponed the matter for a year for meaningful engagement. The decision to postpone the application for an additional six months, following a prior six-month delay, is quite concerning. Accordingly, the court below had a duty in applying the requirements of the PIE Act to balance the opposing interests of the appellant and the respondent and to bring its unbiased mind to bear and decide as to what was just and equitable.

¹⁹ Note 18, paras 14 and 15.

[49] Notwithstanding, the outcome of this appeal, we impress upon the magistrate to apply his mind in this matter and decide the matter on its merits on the material before him.

ORDER

[50] In the result, the following order is granted:

50.1 The appeal is hereby struck off the roll.

50.2 The appellant is ordered to pay the costs of this application.

LEKHULENI JD
JUDGE OF THE HIGH COURT

RALARALA NE
JUDGE OF THE HIGH COURT

APPEARANCES

For the Appelcant: Adv MacKenzie
Instructed by: Van der Spuy Attorneys

For the Respondent: T J C Dunn
Instructed by: T J C Dunn Attorneys