

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 7583/2019

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

27 MAY 2025

In the matter between:

UNLAWFUL OCCUPIERS: [...] A[...] STREET	1 ST APPLICANT
UNLAWFUL OCCUPIERS: 1[...] P[...] STREET	2 ND APPLICANT
UNLAWFUL OCCUPIERS: 2[...] M[...] DRIVE	3 RD APPLICANT
UNLAWFUL OCCUPIERS: 1[...] M[...] DRIVE	4 TH APPLICANT
UNLAWFUL OCCUPIERS: 1[...] J[...] STREET	5 TH APPLICANT
UNLAWFUL OCCUPIERS: 1[...] M[...] STREET	6 TH APPLICANT
UNLAWFUL OCCUPIERS: 1[...] K[...] STREET	7 TH APPLICANT
UNLAWFUL OCCUPIERS: 7[...] P[...] STREET	8 TH APPLICANT
UNLAWFUL OCCUPIERS: 1[...] K[...] STREET	9 TH APPLICANT

UNLAWFUL OCCUPIERS: [...] G[...] STREET	10 TH APPLICANT
UNLAWFUL OCCUPIERS: 4[...] S[...] STREET	11 TH APPLICANT
UNLAWFUL OCCUPIERS: 5[...] E[...] STREET	12 TH APPLICANT
UNLAWFUL OCCUPIERS: S[...] C[...]	13 TH APPLICANT
UNLAWFUL OCCUPIERS: 2[] P[...] STREET	14 TH APPLICANT
UNLAWFUL OCCUPIERS: U[...] B[...]	15 TH APPLICANT
UNLAWFUL OCCUPIERS: F[...] C[...]	16 TH APPLICANT

And

ROHLANDT HOLDING CC	1 ST RESPONDENT
4[...] P[...] STREET PROPERTIES CC	2 ND RESPONDENT
LANRON PROPERTIES CC	3 RD RESPONDENT
RICHMOND INVESTMENT CC	4 TH RESPONDENT
GERMISTON CENTRAL REAL ESTATE CC	5 TH RESPONDENT
LIMA JOSE MANUEL MONTEIRO	6 TH RESPONDENT
EKURHULENI METROPOLITAN MUNICIPALITY	7 TH RESPONDENT
MEC FOR DEPARTMENT OF HUMAN SETTLEMENTS	8 TH RESPONDENT
SHERIFF OF COURT GERMISTON SOUTH	9 TH RESPONDENT

JUDGMENT

Mahomed J

INTRODUCTION

[1] The applicants in this matter, seek a stay of execution of the order granted by Victor J, as she was then, for their eviction from 16 buildings in the Germiston area. Advocate Louw who represented the property owners, 1st to 6th and 10th respondents, submitted that the application has no merit, and must be dismissed. He informed the court that the unlawful occupiers by way of a mass invasion in 2017, over a period of two weeks forcefully occupied his client's buildings, forcing out paying tenants. Counsel argued that the order is clear, the court having heard submissions from all counsel, ordered the eviction of the unlawful occupiers. Advocate Sithole appeared for the 7th Respondent and contended that, his client was not ordered to provide alternate accommodation and that the occupiers simply refuse to accept the import of the order, the 7th respondent is drawn into further unnecessary litigation with no prospect of recovering its costs.

Application Postponement

[2] Mr Mhlanga who represented the unlawful occupiers, applied for a postponement of their application for a stay, on grounds that the 7th respondent's counsel on the morning of the hearing, served him with a set of papers and he had not had an opportunity to peruse them, he was of the view that he would have to respond and to obtain confirmatory affidavits from clients, therefor it was contended that the matter cannot proceed. The application was opposed, Mr Sithole submitted

that the document he handed over, was simply to assist this court on the litigation history of the matter and to highlight the issue that is before me. I read the documents and found nothing controversial which would cause the matter to be postponed, accordingly I dismissed the application and directed parties to proceed with the application before me.

Application R45 A

[3] This court is asked to stay the execution of an order for eviction in terms of the Rule 45 A of the Uniform Rules of Court. Mr Mhlanga informed the court that there is no written judgment only an order was granted, as the usual order marked "X," delivered ex tempore. Counsel conceded that the order does not include an order for the provision of alternate accommodation. However, he contended that during his submissions to the court in 2018, the court had engaged fully and extensively on the provision of alternate accommodation for his clients. He informed me that his clients are in the process of obtaining a transcript of the hearing before Victor J, however it is a long record of a few thousand pages and the transcription services are working on it.

[4] He contended that Victor J, suspended the execution of her order for three months to allow the 7th respondent time to provide his clients with alternate accommodation. He conceded that the 7th respondent was not ordered to provide alternate accommodation but argued that if the court had regard to the transcript, which he is loaded on a compact disc and which is being prepared for the court, it will become clear that the court was of the mind that the 7th respondent is to provide his client's with alternate accommodation.

[5] Advocate Sithole relies on the order:

It is hereby ordered that:-

" 1. The eviction of the occupants of the following immovable properties by the sheriff ... is hereby ordered subject to the provisions of paragraph 3 below:-

... ..

3. The respondents are to vacate the properties on 22 February 2019, failing which the Sheriff of the above Honourable Court or such competent authority

shall be authorized to immediately execute the provisions of paragraph 1 above.” He insists that his client was not ordered to provide the occupiers accommodation. He referred to the judgment of Wilson J, on facts like those in casu and where that court refused to interfere with the court’s judgment, it understood that it was not a court of appeal. I shall return to the judgment later.

[6] Mr Mhlanga argued that if the order were be executed his clients would be homeless and threatened that they “would waste no time in approaching the urgent court for relief.” Counsel referred the court to the provisions of R45 A of Uniform Rules of Court, which provides:

“the court may suspend the execution of any order for such period as it may deem fit.”

[7] The general principles for the granting of a stay in execution were summarised in GOIS T/A SHAKESPEARE’S PUB v Van Zyl 2011 (1) SA 148 LC at 155H-156B, where the court stated:

- (a) *A court will grant a stay of execution where real and substantial justice requires it or where injustice would otherwise result.*
- (b) *The court will be guided by factors which are usually applicable to interim interdicts, except where the applicant is not asserting a right, but attempting to avert injustice.*
- (c) *The court must be satisfied that:*
 - (i) *The applicant has a well-grounded apprehension that the execution is taking place at the instance of the respondents; and*
 - (ii) *Irreparable harm will result if the execution is not stayed and the applicant ultimately succeeds in establishing a clear right.*
- (d) *Irreparable will result if there is a possibility that the underlying causa may ultimately be removed, i.e. where the underlying cause is the subject of an ongoing dispute between the parties.*
- (e) *The court is not concerned with the merits of the underlying dispute- the sole inquiry is simply whether the causa is in dispute.”*

[8] Mr Mhlanga contended that he was clear in his mind that the court in 2019 held the view that the municipality was to provide his clients with alternate accommodation, it simply was not included in the order. However, it remains unclear why at the time the order was granted, nothing was done to clarify the meaning and import of that order, if it is “incomplete” as is contended. Counsel expects the court to rely on his say so. It is also concerning that counsel for the parties hold such divergent views on a matter they all appear to have been involved in over the years. Advocate Louw persisted with his view that the applicants are simply stalling, and that his clients have no other recourse, except to pursue damages claims against the city.

[9] Mr Sithole argued that there is no merit in the application and referred this court to a judgment by Wilson J when a similar dispute was before that court. I noted that in that matter Wilson J had the benefit of a reasoned judgment by Molahlehi J who refused to order the municipality to provide alternate accommodation, as the learned judge was concerned that such an order “would encourage the unlawful occupation of other properties in similar circumstances and imperil the rule of law.” Wilson J held that he could not revisit an issue which was already ventilated and for which a court had granted an order.

Res judicata

[10] The learned Victor J ordered, under two case numbers, 43010/17 and 40089/17, the eviction of the applicants, suspended for three months, although no judgment with reasons is before this court, the applicants insist that the learned judge “intended” to order that the eviction is subject to the 7th respondent providing them with alternate accommodation. The evidence is that the 7th respondent’s management were before the court in 2019, the court considered all submissions made and granted the order which was suspended for three months. I noted Mr Mhlanga’s explanation for the three month suspension; however, it may well be that the suspension was in place to allow the applicants’ time to vacate the property.

[11] It is unclear as to why the applicants/owners waited this long to execute the order, but it cannot be disputed that they have been deprived of their property for an

unreasonably long time, they carry the burden of the state and have reserved their rights in that regard, the 7th respondent must take heed. Advocate Louw argued that the applicants argued the same case as before Victor J, their issues were fully ventilated and determined by Victor J, they argue the matter is *res judicata*.

[12] Mr Mhlanga contended that his clients have been living there for a long while, their children attended schools in the area and this court must consider the collateral damage that they will suffer if they are evicted, many hold jobs in the area, and some residents are disabled. The occupiers service the areas around the Germiston and Johannesburg.

[13] Mr Mhlanga contended that his clients have been living there for a long while, their children attended schools in the area and this court must consider the collateral damage that they will suffer if they are evicted, many hold jobs in the area, and some residents are disabled. The occupiers service the areas around the Germiston and Johannesburg.

[14] I considered the judgment by Wilson, J and am of the view that it is distinguishable, in that the Wilson J, had a basis and reasons before him, which must stand, the court correctly stated that it was not an appeal court and therefore the order stands until set aside. It is noteworthy that a consent order, albeit unlawful, was pursued, however it is not for this court to speculate as to the facts relied on for the order to have been made.

[15] Given the nature of the dispute, and the applicants' argument that the record will "reveal" the applicant's rights as ordered, the underlying *causa* is in dispute and a dismissal of the application, will likely result in an injustice which will be widespread given the number of applicants in *casu* and the various categories of vulnerable persons who occupy the property.

[16] I am of the view that the execution must be stayed for 4 months from date of this order. The applicants have failed to pursue their remedies regarding the order that is in dispute, it is their choice on their next course, but this court cannot permit a revisit of the hearing of the matter. The order was granted in 2018, and the

applicants appear to be in no hurry to “prove” their case regarding their alleged right to alternate accommodation. See *Stoffberg NO and Another v Capital Harvest (Pty) Ltd* 2021 JDR 1664 WCC on a court's power to regulate its processes. The preparation of a “long record” has been their excuse for delay in the resolution of the matter, however it appears to me to be opportunistic.

[17] At this juncture, I must make mention that the owners of the buildings have their constitutional rights for protection of their property. Advocate Louw contended that his clients have voiced their intention to claim damages for losses suffered and the municipality will be well advised to take this issue seriously.

[18] An injustice will ensue, should this court allow the evictions to proceed having regard to the fact that the legal representatives cannot agree that the order granted is “complete”, I cannot determine the outstanding issue of the provision of alternate accommodation, it “allegedly” has been dealt with by Victor J, but not included the order she granted. The record must be made available to the respondents within 2 months of this judgment.

[19] The applicant cannot be permitted to hold this court and the respondents to any further delays, which might suit their case. Litigants are entitled to the finalisation of disputes, and the court roll must be relieved of the burden of lengthy delays, and long records that sometimes by design, serve the interests of certain litigants.

Accordingly, I make the following order:

1. The order granted under case numbers 43010/2017 and 40089/2017 on 28 September 2018 is hereby stayed for four (4) months, from date of this order.
2. The record of the proceedings must be delivered to the respondents within two months of this order.
3. A copy of this order is to be affixed to entrances to all buildings occupied by applicants.
4. The parties are to approach the secretary of this court by 3 October 2025, for further directions to the finalisation of this matter.

Mahomed J
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of hearing: 12 February 2025

Date of Judgment: 27 May 2025

Appearances:

For Applicants: Mr Mhlanga instructed by Precious Muleya Attorneys

For 1st to 6th and 10th Respondents: Advocate Louw instructed by JHS Attorneys

For 7th Respondent: Advocate Sithole instructed by Steven Maluleke Attorneys

For the Applicant:

Adv Blou SC and Adv C Bester instructed by Fluxmans Inc

For the Respondent:

Adv Daniels SC instructed by Eversheds Sutherland Inc