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

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates	NO

CASE NUMBER: 2024-133489

In the matter between:-

**GOLDEN HARVEST MEDICAL CENTRE APPLICANT
PROPRIETARY LIMITED (REGISTRATION NUMBER:
2019/159465/07**

Applicant

and

PETER NTSANU

1st Respondent

**ALL UNLAWFUL OCCUPIERS PORTION SECOND
RESPONDENT 622 (PORTION OF 94) OF THE FARM
BOSCHKOP NUMBER 1[...] SITUATED AT
M[...] DRIVE RANDBURG**

2nd Respondent

JUDGMENT

FMM REID J

[1] This is an application to evict the 1st and 2nd respondents from occupying Section 622 (Portion of 94) of the Farm Boschkop Number 1[...] situated at M[...] Drive Randburg (“the property”).

[2] The applicant seeks the following relief:

“1. Declaring the recent occupation for the First and Second Respondents and anyone occupying 622 (PORTION OF 94) OF THE FARM BOSCHKOP NUMBER 1[...] SITUATED AT M[...] DRIVE RANDBURG, immovable property in the name of the applicant to vacate the property.

2. This order is suspended for the period of 3 months in the event that the applicant construction project commence until the First and Second Respondents find an alternative accommodation.”

[3] The application is brought in terms of section 5 of the **Prevention of Illegal Eviction and Occupation of Land Act** 19 of 1998, which reads as follows:

“5 Urgent proceedings for eviction

(1) Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that-

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;

(b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and

(c) there is no other effective remedy available.

...”

[4] It is common cause that the respondents occupy the property unlawfully and has been doing so since the applicant purchased the property.

[5] The applicant has decided to use the property for the purpose of construction of a private hospital. There has been an agreement between the applicant and construction company pertaining to the construction of a private hospital and the construction company is ready to commence with their work in the beginning of June 2025.

[6] The 1st respondent, and some of the other illegal occupants, attended the court proceedings. The 1st respondent said that the applicant undertook to assist the respondents in approaching the local municipality, and / or the Department of Housing, to secure alternative accommodation for them. Their argument is that they are not refusing to leave, but cannot leave if they have nowhere to go.

[7] In the matter of **Groengras Eiendomme (Pty) Ltd v Elandsfontein Unlawful Occupants and Others** 2002 (1) SA 125 (T) it was held that the court is to ensure that any eviction is effected in such manner that fairness and human dignity prevail. The Court specifically held that in terms of the **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act** 19 of 1998 (the PIE act) an urgent application for eviction in terms of s 5(1) the court must be satisfied that the 3 factors mentioned in sections 5(1)(a), (b) and are (c) present before the court grants an order.

[8] Section 5 thus places specific requirements to be met, for the court to consider an application for eviction that is brought on an urgent basis.

[9] The specific requirements are:

9.1. That a real and imminent danger of substantial injury or damage to a person or property exist in the absence of an eviction order;

9.2. That the likely hardship to the owner if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and

9.3. There is no other effective remedy available.

[10] On my understanding of the PIE Act, section 5 is in the alternative to section 4 of the PIE Act. Section 5 is not to be followed in addition to section 4 of the PIE Act. Section 5 sets out circumstances where evictions can be affected on a speedy basis without following the process prescribed by section 4 of the PIE Act.

[11] In application of the requirements stated in section 5 of the PIE Act, I find that:

11.1. There is a real and imminent danger of substantial injury to the occupants should the building begin before they have been evacuated. The respondents' mere presence on a construction site would endanger them.

11.2. Should the order be granted, the likely hardship of the respondents outweighs the likely hardship to the applicant. The respondents have indicated that they are willing to move, but alternative accommodation is a problem as they are unemployed and have children attending school.

11.3. However, I find that there is another remedy, and that is the use of section 4 of the PIE Act.

[12] On the basis that the applicant falls short on one out of the three requirements to meet for an eviction order in term of section 5 of the PIE Act, the application cannot be successful.

Costs

[13] The general principal is that the successful party is entitled to its costs incurred in the application.

[14] I find no reason why the general principal should not be applicable.

[15] The applicant should be ordered to pay the respondents' costs.

Order

In the premise, I make the following order:

- (i) The application is struck for want of urgency.
- (ii) The applicant is ordered to pay the costs of the application.

**FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION JOHANNESBURG**

DATE OF ARGUMENT: 15 MAY 2025

DATE OF JUDGMENT: 27 MAY 2025

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FOR THE RESPONDENT: 1ST RESPONDENT IN PERSON