

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 047020/2025

DATE: 08-05-2025

(1) REPORTABLE: YES / **NO**.

(2) OF INTEREST TO OTHER JUDGES: YES / **NO**.

(3) REVISED.

DATE 22/5/2025

SIGNATURE

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In the matter between

DOLSID INVESTMENTS (PTY) LTD
Registration number 1980/003178/07

Applicant

and

THOURY HASSAN T/A
LITTLE VOICE DAY CARE CENTRE

First Respondent

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CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

Second Respondent

J U D G M E N T

NEUKIRCHER, J: On 14 April 2025 Nyathi, J granted an order in terms of section 5(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The notice informs the first respondent and all occupiers through him that the applicant will seek their eviction on 29 April 2025.

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A separate notice of set down for 6 May 2025, in other words, in my urgent application court, was served on the first respondent's premises. A notice to oppose the eviction application was served on behalf of the first respondent by Kirpal Attorneys and his answering affidavit (unsigned) was served on 25 April 2025.

10 According to the applicant the signed answering affidavit was served on 30 April 2025 and the signed copy was uploaded to CaseLines on the date of hearing on 6 May 2025.

It is common cause that the parties entered into a written lease agreement on 8 February 2018 in respect of the premises situated at 5[...] F[...] B[...] Street, Arcadia, Pretoria. It is not disputed that:

- 20 a) the applicant is the registered owner of the premises;
- b) the written lease was for a period of five years commencing on 1 February 2018 and terminating on 31 January 2023 with an option to renew;
- c) the lease was not renewed, instead it continued on a month-to-month basis;
- d) the first respondent would pay rental to the applicant as well as other charges and with an annual escalation of eight percent by the first day of each month;
- 30 e) various warranties were given by each party vis-à-vis the condition of the property;
- f) the applicant had sent the first respondent a final notice of termination (there being one sent already on 2 December 2024) on 14 December 2024, which the first respondent

states “clearly indicates that the property needs to be vacated by 31 May 2025.”

According to the first respondent these termination notices were based on arrear rentals which he says he has paid. Ostensibly as proof of payment he attaches an invoice from the applicant for the month of April 2025 which indicates an amount due and payable of R67 514.30. He also attaches a proof of payment dated 24 April 2025 of R33 000. Thus, based on this invoice, an amount of
10 R34 514.30 remained unpaid.

The first respondent has also failed to attach the termination letters of 2 December 2024 and 14 December 2024, however, it is not disputed that the lease was terminated by the applicant due to non-payment of the rental amount and it is also not disputed that he is to vacate the premises by 31 May 2025, which is an indulgence given to him by the applicant.

20 The first respondent argues that as he has until 31 May 2025 to vacate the premises, this application is premature and not urgent.

What precipitated the application was that the applicant states that on approximately 1 April 2025 it came to its attention that the first respondent was participating in what it calls various illegal activities:

- 30 a) illegal trading and other structures have been erected without approval, making them non-compliant with the material building standards and codes and thus requiring their removal;
- b) the installation of various dangerous illegal electricity connections, which renders occupation of the premises unsafe and a fire hazard to not

only the property, but those properties next to it and in its proximity;

- c) the unsafe and unhygienic living conditions of the occupants of the properties.

On 3 April 2025 the applicant delivered a “Notice to vacate with immediate effect.” The relevant portions of this notice state the following:

10 “This letter serves as a notice to inform you that we cancel the month-to-month lease with immediate effect. You need to vacate the premises, 5[...] F[...] B[...] Street, Arcadia, Pretoria, 0083 with immediate effect.

This notice is due to:

- 20 - Illegal trading and structures which have been erected, without prior approval, making the structure illegal and non-compliant with the national building standards and codes, thus requiring the removal thereof.
- Electricity theft alternatively installed various dangerous illegal electricity connections.
- The living standards of how the occupants are currently living on the premises.
- 30 - This is, with respect, unacceptable and without reason not in the best interest of the, of any person/occupant currently residing on the leased premises and as is evident has not only become an unsafe and a health issue but a fire

hazard as well to itself and adjoining properties.

Please note that should the premises not be vacated with immediate effect, legal steps will be taken against you and all costs will be for your account.

10 All damages to the premises will be recovered from your deposit, and any additional costs will be claimed from you.”

Thus, although the first respondent has interpreted this as a termination letter due to arrear rental (which he disputes) it clearly is not. It is a notice to vacate based on the conditions found on the premises which constitute a fire, health and safety hazard to all the occupants.

20 The applicant argues that the first respondent’s conduct constitutes a flagrant breach of clauses 8 and 9 of the original lease which places the burden of maintenance and repair of the premises squarely in the first respondent’s lap, for example:

“8.4. The lessee also agrees to keep the area adjacent to its portion of the leased premises clean and tidy and free from refuse and shall not permit persons to loiter in such area.

30 8.11. Not change or interfere with or overload the electrical installation in the leased premises.

9.1. The lessor shall keep the exterior of the leased premises in good order and repair and the lessee undertakes to notify

the lessor in writing of any defects to the exterior of the leased premises and/or improvements to the property which become apparent to it during the period of this lease, in which event the lessor shall remedy the defect within a reasonable time.”

These are but a few mentioned.

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The photographs attached to the founding affidavit speak to a building in various stages of disrepair and neglect: brick dwellings with tin roofs, rusted doors and crumbling mortar are depicted.

The illegal electricity connections show long extension cords draped across tin roofs exposed to the elements and descending from large holes in ceilings and tied to pipes inside and outside the structures.

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The living conditions in the photographs point to structures in varying stages of serious neglect: peeling plaster, water damage to ceilings, crumbling plasters, leaks and missing tiles.

Interestingly the first respondent does not take issue with the photographs. The high-water marks of his defence are:

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- a) the lease was not validly immediately terminated on 8 April 2025 as he has been given until 31 May 2025 to vacate the premises;
- b) the property “currently has 22 families residing there and being fully dependable on the property. From these families there are various

children, sickly persons, old people, babies, four paraplegics, all of which, all of who will need alternative accommodation as they will be left homeless and left on the street”;

c) he is busy effecting repairs to the premises.

The first respondent, however, provides not one shred of proof for his allegations:

10 a) he takes no issue with the photographs or the state of disrepair of the building or the dangerous electrical connections, this aside from whether or not they are or are not illegal in the first place;

b) he provides no proof of the extent of the alleged repairs he intends to effect and this allegation must also be rejected as on his own version he says that he must vacate by 31 May 2025, in other words, by the end of this month;

20 c) there is not one affidavit, letter, statement or any shred of proof from any of the alleged 22 families occupying the premises;

d) he does not say he is providing free housing for these occupants and therefore the inescapable conclusion is that the occupants indeed pay rental to him, which was conceded in court.

The argument was also that:

30 a) the applicant has failed to prove a risk of imminent danger or harm to the occupiers as is required by section 5(1)(a) of PIE;

b) that an eviction will leave the 22 families without accommodation and this will infringe on their right to adequate housing;

c) that no report has been sought from the municipality to address the suitable alternative

housing issue. See *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2011 (4) SA 337 (SCA);

d) the “imminent danger” issue is not new as:

“The occupiers have occupied the building since August 2018 and no incidents or fires have been reported” - this was stated in argument.

The last submission is based on *White Wall Trading (CC) and Another v Biyela and Others* (090403/2023) [2024] JAGPJHC 54 (26 January 2024) in which the court stated the following:

“The applicants rely on imminent danger and reference the fires occurring in the city. That a fire occurred elsewhere is insufficient to satisfy the test of imminent danger or harm. A fire could occur anywhere in the city. In these buildings, however the report shows no evidence other than the normal disintegration and crumbling of a building neglected over time and subjected to inappropriate use. This is no indication of imminent danger.”

But in my view, none of the quoted authorities are relevant to the facts at hand:

- a) it is common cause that the first respondent pays rent. He therefore has the means to obtain suitable alternative accommodation not only for himself, but anyone who occupies through him (as that appears to be the present situation);
- b) it is admitted by him that the lease was cancelled on 14 December 2024 and that the first respondent has known that he must vacate the

premises on 31 May 2025. Thus he, and all those who occupy through him, have had five months to find suitable alternative accommodation for themselves;

c) also, the applicant's agreement is with the first respondent. If he has agreements with the other occupiers, it is he who owes any possible responsibility towards them, not the applicant;

10 d) the undisputed photographs evidence a troubling state of disrepair and dangerous circumstances in which these alleged 22 families live.

To allege that a fire has not yet broken out, simply displays in my view a very cynical view of these facts. It also displays a lack of concern for the occupants of the premises, which is troubling.

20 In my view the notice to immediately vacate dated 3 April 2025 stands on good grounds. A breach notice was unnecessary as the lease had already been cancelled in December 2024 and it was only the notice to vacate on 31 May 2025 that was moved up because of section 5(1)(a) of PIE.

The applicant seeks an order that the first respondent and all occupiers are to vacate within seven days of date of this order. It argues that each day that passes is a day in which a fire could break out and spread
30 not only within the premises itself but to the adjoining and adjacent buildings.

This is a concern. But this court must also balance the first respondent's interests and that is to find alternative

accommodation and move out. Of course, as I have said, the first respondent has known for almost five months of the impending end date of this lease and there is no evidence that there has been any attempt to find alternative accommodation.

Thus, to give the first respondent and any occupiers a last gasp, I am of the view that it is fair and reasonable to vacate within two weeks of date of this order.

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Clause 13.8(a) of the agreement provides that an “aggrieved party” shall be entitled to recover from the defaulting party attorney and own client costs of any legal proceedings. In my view attorney and own client costs are not appropriate, but attorney and client costs, are given the first respondent’s conduct.

Thus, an order is granted as follows:

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1. Confirmation of cancellation of the lease agreement entered into between the applicant and the first and second respondents on 7 February 2018.

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2. The first respondent and all those living through or under them are ejected from the premises situated at 5[...] F[...] B[...] Street, Arcadia, Pretoria, Gauteng Province, together with any moveable property that is or that is on or in the premises in terms of section 5(1) read together with 5(1)(a) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 within two weeks from date of this order.

3. The first respondent is ordered to pay the attorney and client costs of this application.

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NEUKIRCHER, J

JUDGE OF THE HIGH COURT

Judgment handed down: 8 May 2025

Transcript revised: 22 May 2025