



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

Case number: 2025-037004

In the matter between:

THE UNIVERSITY OF CAPE TOWN

Applicant

And

ZINZI VILLO

First Respondent

SIYASANGA MONYAI LAGU

Second Respondent

WITNESS BOTE

Third Respondent

LIZANNE ISAACS

Fourth Respondent

VICTORIA MACHIPISA

Fifth Respondent

AMUKELANI HERMANDO MAYIMELE

Sixth Respondent

NANDE MAGWA

Seventh Respondent

MARTIN KIRIINGYA

Eighth Respondent

AKINTUNDE MAKINDE

Ninth Respondent

THULANI TSHABALALA

Tenth Respondent

SILULUNDI COKI

Eleventh Respondent

LWAZI VAN STADEN

Twelfth Respondent

MVELISO KRAAI

Thirteenth Respondent

**ALL THOSE HOLDING TITLE UNDER AND UNLAWFULLY
OCCUPYING PHILIP KGOSANA RESIDENCE UNDER THE
FIRST TO THIRTEENTH RESPONDENTS**

JUDGMENT DELIVERED ON 13 JUNE 2025

VAN ZYL AJ:

Introduction

1. This application, by its nature, spotlights the reality that many South Africans have to deal with: where to live, quite apart from how to sustain the other aspects of daily life. Part of this reality is the fact that one cannot always hold on to the space that one has called home whilst a student at a tertiary institution.
2. The applicant (“UCT”) seeks the ejectment of the respondents, who are all – by now - in unlawful occupation of the UCT student accommodation known as the Philip Kgosana residence in Mowbray. As will be explained below, the residence requires repair, and no students were placed there for the 2025 academic year.

3. The first to seventh, tenth, and twelfth to fourteenth respondents oppose the application, which was instituted on 18 March 2025 and served on the respondents on 19 March 2025. The application was set down in the urgent lane for hearing on 9 April 2025. On that day, the application was postponed to 10 June 2025 to afford the respondents an opportunity to engage legal representation. A timetable was set out for the delivery of answering and replying affidavits, as well as heads of argument. All of the opposing respondents, except the seventh respondent, delivered affidavits. Some furnished the Court with heads of argument, and all of them briefly described their personal circumstances to the Court during the hearing. They did so in person, as none had obtained representation. They were dignified and sincere, and the Court was grateful for their input.
4. I proceed briefly to set out the relevant facts. A short discussion of the legal principles which govern the situation follows thereafter.

The residence

The need for renovations

5. The residence consists of three separate apartment buildings of similar scale and footprint, comprising 41 living units in total. Thirty-one¹ of those units are vacant, because the residence is in a state of disrepair, and requires substantial renovations. The structural issues are described in the papers.² They include damaged roofing, structural cracks in the staircases, and sagging flooring. The entire electrical and fire system requires replacement. The water and sanitary systems need attention. There is a myriad of other aspects to the required work which compromise the safety of the respondents, creating an environment that is unsuitable for human habitation.
6. Some of the respondents dispute UCT's claim that the state of the buildings

¹ The eighth, ninth, and eleventh respondents vacated their units prior to the hearing of the application.

² On the basis of a detailed assessment undertaken by construction consultants during 2023.

poses imminent safety risks. They say that they do not understand why the renovations are urgent, suggesting that UCT is opportunistically invoking the assessment of the buildings to compel the respondents to leave. This is, however, not the case that appears from the papers.

7. It is not disputed that UCT has a duty to provide its students with a safe living environment conducive to learning, in order to assist with academic success. A failure of this duty might have disastrous consequences. None of the respondents have adduced any evidence to counter UCT's claim that the residence is not habitable or safe in its present condition, as set out in the condition assessment report obtained in 2023. The report outlines the condition of the residence buildings, highlights the potential risks arising from such condition, and sets out the proposed maintenance interventions. It was because of the findings in the report that UCT decided in 2023 that it would close the residence for the 2025 academic year to undertake the remedial work. The report was quite obviously not compiled with the view to gain an advantage in these proceedings.
8. All of the offers for a placement at the residence for the 2024 academic year (which had been made to students in 2023 already) included a proviso that the decommissioning of the residence was planned so as to address critical maintenance issues, and that UCT could not guarantee that the offerees would be accommodated for the entirety of the 2024 academic year. The student residence is therefore not meant to be occupied at all at present.
9. The situation has, moreover, worsened since the 2023 assessment. A recent site inspection has revealed further health and safety issues and structural concerns, including mold in the bedrooms, waterproofing issues, uneven walkways, stormwater drainage that needs attention, corroded pipes, damaged roof tiles, the need for a proper fire system, and small aspects such as broken locks. These issues cannot simply be put on the back burner. Without proper waterproofing, for example, water may seep into the roof structure, causing wood rot, the rusting of metal components, and weakening of the overall structure. Moisture infiltration causes mold and mildew, which not only

damages the structure but also poses health risks, including respiratory issues and allergies.

10. In the circumstances, the urgency and necessity of the remedial work cannot be denied, and the respondents' continued occupation exacerbates the risks associated with the deteriorating condition of the buildings, including the health and safety risks to the respondents themselves, and their dependants.

The placement process at UCT

11. As indicated, the 2025 academic year had been earmarked for the undertaking of this remedial work, and no new students were placed in the residence for 2025. The initial decision to close the residence was communicated to all students who were offered a residence placement at the residence for the 2024 academic year, and they were advised to make alternative arrangements for 2025. Despite this, UCT has encountered significant resistance from the respondents. They ask the Court to be compassionate, because they have nowhere else to go. None of them suggests that they have made any plans as yet. A strong underlying theme of the respondents' submissions is that they are entitled to remain in the residence as long as they wish to study, and because UCT has previously allocated their units to them, they should be allowed to remain in occupation indefinitely.
12. This entitlement is not apparent when one considers UCT's placement process. The provision of student accommodation is time-bound and is subject to rotation. UCT prioritises its student accommodation for students who, absent such accommodation, would not have access to further education. Its student residences fall within three tiers: first-tier residences accommodate undergraduate students, second-tier residences accommodate senior undergraduate and postgraduate students, and third-tier residences accommodate senior postgraduate students, most of whom are older than 30 years old. Should students have spouses or children, they are allocated what are referred to as family units.

13. UCT regulates access to student accommodation in terms of its institutional rules, which encompass UCT's Student Housing Admission Policy for 2022 to 2026 and its General Housing Information Handbook 2024. The housing system requires both newly entering and returning students annually to apply for residence accommodation. Housing offers for residences are made in the preceding year. The Housing Handbook prescribes the length of the residence year, and also makes provision for students to apply for vacation accommodation, which falls outside of the official student residence year. Student housing offers are subject to the following conditions:
- 13.1. UCT reserves the right to change the residence allocation should the need arise, and no room is permanently reserved for a specific student.
 - 13.2. Students need to have an academic offer or be eligible to continue or renew registration as a student.
 - 13.3. Students who have fees outstanding will have their offer cancelled.
 - 13.4. Students who take up a residence place and do not complete academic registration will be required to leave the residence, and will be liable for the accommodation costs for the duration of their stay.
 - 13.5. The use of university accommodation during the residence year is for registered students only.
 - 13.6. If the academic registration of a student lapses or is cancelled at any time, all rights to accommodation cease, and the student must vacate the residence immediately.
 - 13.7. Returning students are required to re-apply for accommodation each year, which is subject to availability and to their continued enrolment at UCT.
 - 13.8. Those who say that they cannot leave the student residence for any

reason, have an option to book vacation accommodation, as is the ordinary operating procedure with students who want to stay at UCT during the vacation period.

14. All students who receive and accept offers for residence placements are deemed to have read, understood and accepted the conditions in the Handbook as well as the Admission Policy once they signed the letter of acceptance of offer of a place in any of the UCT residences. As such, any breach or non-fulfilment of any of the conditions may lead to UCT either cancelling or withdrawing the student housing offer. Similarly, those who apply for vacation accommodation agree to be bound by the terms and conditions of the vacation accommodation application, the General Rules and the relevant Handbook, as well as any other applicable residence rules, policies and procedures.
15. Anyone who takes up a residence place but who fails to complete the relevant academic registration requirements within 14 days after the start of the lectures for undergraduates, or by the end of the first week of March for postgraduates, is required to leave the residence. UCT may further cancel the residence offer made to any new or returning occupants who signs into residence but fails to complete academic registration by 22 February in the relevant year.
16. All of these conditions are in place to enable UCT to meet its primary goals in providing student housing. Students admitted to a student residence are subject to these conditions, to the rules and policies of the residence, and to UCT's General Rules and Policies.
17. While the original circumstances leading to each respondent's occupation of the residence differ, none of the respondents have UCT's consent for their continued occupation of the student residence. There is some dispute on the papers as to whether certain of the respondents are currently registered students at UCT. This issue does not, however, take matters any further because, whilst only registered students are allocated accommodation, the mere fact that one is registered as a student does not entitle one to placement at the residence. It is common cause that none of the respondents was

allocated a place in the residence for the 2025 academic year.

18. On UCT's papers, the first and third respondents were moved from UCT's Dullah Omar student residence to the residence in the beginning of 2023, whilst they sorted out their academic registration issues. They did not, however, complete their registration as students, and were not offered a residence allocation for the 2024 or 2025 academic year. They are not currently registered students at UCT.
19. The second and fifth respondents received offers for the residence for the 2024 academic year, subject to the conditions referred to earlier. As indicated, all offers for a placement at residence for the 2024 academic year included a proviso that the residence would have to be decommissioned to address the maintenance issues referred to. UCT expressly did not guarantee that the offerees would be accommodated for the entirety of the 2024 academic year. The second and fifth respondents' offers were in any event revoked because they failed to register as students for the 2024 academic year. They are not registered students at UCT.
20. The fourth respondent received a placement in the residence in 2023 after appealing UCT's decision not to allocate her a student residence placement. The fourth respondent was not offered a residence allocation for the 2024 academic year, and her appeal against the non-allocation was unsuccessful. She also failed to register as a student for the 2024 academic year, and is not currently a registered student.
21. The sixth, seventh and tenth respondents received a residence offer for the residence for the 2024 academic year, subject to the proviso referred to in relation to the planned decommissioning of the residence. The sixth and tenth respondents are not registered students at the University, whilst the seventh respondent has registered for a part-time degree.
22. The twelfth respondent was temporarily placed in the residence at the end of 2024 because his allocated residence, the TB Davie residence, was being deep

cleaned. He has since refused to vacate the residence, and is not a registered student.

23. The thirteenth respondent was temporarily placed in the residence after not having received a residence offer for the 2024 academic year. He has since refused to vacate the student residence. The thirteenth respondent indicates that he is in fact a registered student, but UCT has not been able to confirm that that is the case.
24. It appears from the papers that numerous engagements with the respondents have taken place to resolve the situation without resorting to litigation. UCT is a public institution with a limited budget, and the costs incurred in taking legal steps would come from the Student Housing and Residence Life budget at the expense of its other housing programmes. The record sets out the various attempts, communications, and demands in detail. The fact that these negotiations took place is common cause.
25. Many of the respondents raise their alleged academic exclusion from UCT in answer – they say that, because they cannot pay their fees, they cannot register as students, and thus cannot obtain student accommodation. The respondents' fee block disputes are not before this Court for determination. They are without a doubt in an unenviable situation, but that does not elevate their position to one of automatic entitlement to student housing.

The consequences of the respondents' occupation of the units

26. Their lack of placement notwithstanding, the respondents have refused to vacate the units previously allocated to them. Those units are spread throughout the three buildings. The effect of the respondents' holding over is that the remedial work cannot be undertaken in any of the buildings, because the affected systems are interconnected. For example, all three of the blocks are fed from the same electrical incomer. The electrical system is not compliant with current standards, and has to be upgraded. There is no fire detection or public announcement system for any of the blocks. This makes the buildings

non-compliant from a fire safety compliance perspective, which in turn has potential liability risks for UCT if there is an injury or harm to the current occupants as a result of these deficiencies. No new occupants will be permitted in the residence until the buildings are compliant and UCT has obtained new occupancy certificates.

27. The work must be undertaken as soon as possible, because the closure of this residence exacerbates the dire, and well-publicized, shortage of student accommodation. The delay in the effecting of the repairs will without a doubt compromise students who seek access to student housing in 2026. It is a well-known fact that many students are unable to pursue their tertiary studies if they do not have access to student accommodation. As counsel put it, the accommodation offered in student residences forms part and parcel of, and is directly linked to, its academic offering. The provision of such accommodation fosters access to UCT's academic programmes, and ensures that a wider array of people have the opportunity to study at UCT than would otherwise be the case.
28. Space is limited, and demand far exceeds capacity. This is part of the reality to which I have referred at the outset of this judgment. In UCT's case, about two-thirds of the available residence space are occupied by eligible returning students, leaving the remaining space available for new applicants each year. Within this context, the respondents' occupation of the units has a prejudicial effect upon the wider student community.
29. In fact, the respondents' failure to follow UCT's prescribed procedures allow them to benefit from free accommodation at the expense of not UCT, but also incoming students whose access to tertiary education is contingent upon access to student accommodation.
30. The respondents' continued occupation of the residence has obvious financial implications for UCT, including the significant operating expenses for staff to safeguard the buildings, and the costs of the utilities incurred as a result of having to keep the residence accessible to the respondents. These costs are

additional costs, not costs in the normal course, that have been incurred due to the respondents' unlawful occupation, and the funds therefor have to be diverted from other important student housing programmes and initiatives that have been budgeted for. The costs further include administrative and legal expenses related to resolving the situation, and the cost of providing temporary accommodation for students displaced by the respondents' holding over.

31. This is the factual position, essentially common cause. I turn to the respondents' legal position.

What about the law?

32. The respondents' principal defence is that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") applies to these proceedings. This is because the respondents regard the residence as their home. They submit that they and their dependants have nowhere else to go.
33. One has compassion for the respondents' situation, but the Supreme Court of Appeal has laid down the law.
34. In *Stay At South Point Properties (Pty) Ltd v Mqulwana and others (UCT intervening as amicus curiae)*³ the SCA held that PIE does not apply to the unlawful occupation of student accommodation by persons in the position of the respondents. The SCA held⁴ that:

"[13] ... the provision of student accommodation is for a finite period of time and it has a limited and defined purpose, that is, to accommodate students for the duration of the academic year and thereby assist them to study at the university. The arrangement is by its nature temporary and for a purpose that is transitory. Students who are assisted by CPUT with accommodation are well aware that this valuable benefit is of limited duration."

³ 2024 (2) SA 640 (SCA).

⁴ *Stay at South Point supra* para 13. Emphasis supplied.

35. The SCA accepted that the provision of student accommodation must be considered within the context of the Higher Education Act 101 of 1997. It held,⁵ in that context, as follows:

“[14] ... UCT, for example, provides student accommodation, both on and off campus, to 8040 students of some 28 000 students who are registered at the university. The amicus submitted that student accommodation is primarily an incident of the right to access to higher education, and higher-education institutions, such as UCT, regulate access to student accommodation in terms of its institutional rules.

[15] In this regard, the amicus referred to the Policy on the Minimum Norms and Standards for Student Housing at Public Universities (the Policy). The Policy, in relevant part, states as follows:

‘The Policy is applicable to all public universities and privately owned accommodation accredited by public universities. These Norms and Standards should be incorporated into the criteria developed by each public university and stipulated in the university's policy and rules. Private providers shall establish clear and comprehensive standard lease agreements after consultation with relevant University officials and student representatives. Universities should rate and differentiate off- campus student accommodation according to standards set by each University.’”

36. In the context of the current scarcity of student housing in the higher education sector in our country, the SCA stated⁶ that:

“[16] ... Those who are fortunate enough to benefit from accommodation provided by CPUUT know full well that each and every year new students come to the university who legitimately look to the university for the very assistance that the respondents enjoyed. Equity requires that those who have had the benefit of accommodation should yield to those who have not. And nothing about the position of the respondents suggests that this equitable principle should not continue to apply. It is also for this reason, as the amicus reminded

⁵ *Supra* paras 14-15.

⁶ *Supra* para 16. Emphasis supplied.

us, that student accommodation forms part of the larger policy framework of higher education.”

37. The SCA emphasized that:

“[17] These features of the student accommodation made available to the respondents indicate that this accommodation is not a home. It is a residence, of limited duration, for a specific purpose, that is time-bound by the academic year, and that is, for important reasons, subject to rotation.”

38. The SCA thus appreciated and highlighted the fact that, by its nature, student accommodation is primarily an incident of the right to access to further education. It interpreted the provisions of PIE within this context, leading to the conclusion that student accommodation is not a “home” for purposes of PIE. The reference to such accommodation being “subject to rotation” is a frank reminder of the fact that the right to further education of other students will be infringed, and in some instances denied altogether, if they are precluded from being allocated student accommodation as a result of former or current students holding over.
39. The respondents argue that, because they have dependents, the principles set out in *Stay at South Point* do not apply to them. I do not think the argument is sound. The respondents' dependents hold title under the respondents, who had been allocated family units in the residence precisely because they had families. The purpose of the accommodation initially having been granted to the respondents remained that of the provision of student accommodation, that is, to enable the respondents - as students - to further their education. The accommodation was provided following compliance with the relevant rules and policies governing UCT's offers of student housing. For the reasons set out earlier the respondents no longer qualify for accommodation at the residence. The respondents' intentions in relation to their occupation of the units do not convert the intrinsic nature of the student accommodation into something that it is not.

40. Whilst the object of the establishment of higher education institutions “*is to provide higher education and thereby to fulfil the constitutional objective that access to further education be made available by the state to everyone*”, the resources which are required do so are significant. Unlike schools, universities are not within reasonable proximity of every local community and are not able to offer courses in every learning speciality that a student might wish to pursue. A particular student may therefore have to attend a geographically remote university to pursue a desired course. Higher education facilities are also generally situated in larger towns and cities, and students from outside those centres need accommodation when they are away from their homes to attend university during termtime.⁷ It is thus:

“ ... to address those obviously incidental requirements for the adequate fulfilment of their intended purpose of providing higher education that student halls of residence are a universally encountered feature of establishments for higher learning. The provision of such accommodation is integral to the central purpose of universities and other institutions of higher learning. Student residences provide not only necessary material assistance for students in need of accommodation, they also provide a measure of moral support by nurturing a sense of community.”⁸

41. If PIE applied in those instances where UCT offered family accommodation for post-graduate students, the consequence would be that the university would have to institute separate proceedings under PIE in relation to a former student's dependents, with all of the attendant delays and its requirements relating to alternative accommodation. In that event, the right to further education expressly protected by section 29(1)(b) of the Constitution, and which informed the decision in *Stay at South Point*, would be rendered nugatory for many other deserving students.⁹

⁷ See *Ma-Afrika Hotels (Pty) Ltd v Cape Peninsula University of Technology* 2023 (3) SA 621 (WCC) para 33.

⁸ *Ma-Afrika supra* para 33.

⁹ The Constitutional Court has emphasised the critical importance of the right to education in a young democracy like ours. Our Constitution explicitly recognises the transformative nature of education and entrenches it as a socio-economic right: there “*are few things as important for the flourishing of a society and its people as education.*” See *Moko v Acting Principal of Malusi*

42. As PIE is not applicable, UCT must meet the requirements for an order for ejectment under the common law, namely that it is the owner of the residence, and that the residence is occupied by someone else. Where there has been a right to occupation the owner must, in addition, prove that the right no longer exists or is no longer enforceable.¹⁰ This UCT has done on the papers.

Conclusion

43. Upon consideration of the matter, UCT has made out a proper case for the relief sought. It has met the common law requirements to obtain an order for the ejectment of the respondents. UCT is the lawful owner of the residence, and the respondents have no consent or any other right in law to remain in occupation thereof.
44. Counsel indicated at the hearing that the renovations were scheduled to commence during August 2025, and that the respondents could thus be afforded the opportunity of staying at the residence until the middle of that month. I think, however, that the respondents should be allowed to vacate the residence by the end of August 2025. Requiring them to leave in mid-August – halfway through the month - will simply add to the difficulty of obtaining alternative accommodation.

Costs

45. UCT has not sought costs against the respondents. I am in any event, in the exercise of my discretion, not inclined to grant a costs order.

Order

46. The following order is accordingly granted:

¹⁰ *Secondary School and others* 2021 (3) SA 323 (CC) para 1.
See the discussion in *Ndlovu v Ngcobo, Bekker and another v Jika* 2003 (1) SA 113 (SCA), in particular the judgment of Olivier JA.

- 46.1. It is declared that there is no agreement in place, and no right exists in law, for the continued occupation by the respondents of the applicant's Philip Kgosana residence situated at 22 Main Road, Mowbray, Cape Town ("the student residence").
- 46.2. The first to seventh, tenth, and twelfth to fourteenth respondents ("the respondents") must vacate the student residence by no later than **18:00 on Sunday, 31 August 2025**.
- 46.3. This order shall be served by the Sheriff delivering a copy thereof to each of the respondents personally. Should such personal service not be possible, the eviction order shall be served on the respondents by:
- 46.4. the Sheriff affixing copies of the order to the doors of the rooms occupied by each of the respondents as set out in the applicant's notice of motion; and
- 46.5. attaching a portable document format copy of the order to an email to be sent by the applicant's attorney of record to the email addresses of each of the respondents as set out in the notice of motion.
- 46.6. Should the respondents fail to comply with the order in paragraph 46.2 above, the Sheriff of this Court, with the assistance of the South African Police Services, to the extent necessary, is authorised to give effect to the order by taking all steps necessary to eject the respondents from the student residence, and to remove all of the respondents' belongings from the student residence.
- 46.7. It is recorded that the eighth and ninth respondents had vacated the student residence prior to the institution of the eviction application being instituted, and the application has been withdrawn in respect of those respondents. It is further recorded that the eleventh respondent vacated

the student residence prior to the hearing of the application.

46.8. There shall be no order as to costs.

P. S. VAN ZYL

Acting Judge of the High Court

Appearances:

For the applicant:

Ms M. O'Sullivan, instructed by Fairbridges
Wertheim Becker

The first to seventh, tenth, and twelfth to fourteenth respondents in person

No appearance for the eight, ninth and eleventh respondents