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

Case No.: 22788/2024

In the matter between:

HENDRIK GERT JAN DU TOIT N.O.

First Applicant

BRIAN WILLIAM RAFFLES N.O.

Second Applicant

MAGARIETA ALETTA RAFFLES N.O.

Third Applicant

(in their capacities as the trustees of
THE B R FAMILY TRUST (IT3587/1999))

and

ANDREW GILL

First Respondent

CAROLINE GILL

Second Respondent

**ALL PERSONS CLAIMING OCCUPATION
THROUGH FIRST AND SECOND RESPONDENTS
AND/OR UPON WHOSE BEHALF FIRST
AND SECOND RESPONDENTS CLAIM OCCUPATION**

Third Respondent

Coram: Vaughan AJ

Hearing: Wednesday, 28 May 2025

Delivered: 2 June 2025 (electronically)

JUDGMENT IN RESPONDENTS' LEAVE TO APPEAL APPLICATION

1. This is an application for leave to appeal the judgment and order granted on 9 May 2025, for the eviction of the respondents from the property commonly known as [...] S[...] Crescent, Arora, Durbanville ('the property') under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('PIE') by 7 June 2025, failing which by the Sheriff on 14 June 2025.
2. Mr and Mrs Gill again appeared in person. The Court made substantial inquiries regarding whether they wished to consider the postponement of the matter to have legal representation, and Mr Gill confirmed that he wished to proceed with the matter. The application was opposed by the applicants.
3. The leave to appeal application raises four grounds of appeal, which in summary are the following:
 - 3.1. that the court erred in not inquiring into and misinterpreting the respondents' financial and personal position and that the time frame for eviction was too short;
 - 3.2. that the court erred in granting costs against the respondents;
 - 3.3. that the court disregarded "relevant facts" in determining that their occupation was unlawful;
 - 3.4. additional 'considerations' which reference their lack of legal counsel and the reasons why they have landed in a 'desperate financial situation'.

4. Before turning to consider the grounds upon which leave to appeal is sought, I must deal with Mr Gills' submissions made to this Court during the leave to appeal application.
5. It was explained by the Court at the outset of the hearing to Mr Gill that (i) a leave to appeal application was not a re-hearing of the matter; (ii) the Court was bound to what was before it in the eviction application in considering the application; and (iii) the Court had to apply the test for granting leave to appeal in deciding the matter, namely whether there are reasonable prospects of success on appeal.
6. Nevertheless, in addressing the Court, Mr Gill raised matters outside of the bounds of the papers before the Court in the eviction application, two of which ultimately have a bearing on the decision I have reached in this matter.
7. The first related to the health of Mr Gill's mother-in-law, Ms Regina Joss, who resides on the property. While her ankle disability, need for ready access to bathroom facilities and assistance from Mrs Gill as a carer was on the evidence before me and was taken into account when I granted the eviction order, at the leave to appeal application Mr Gill advised that her condition was far more severe: She is bed-ridden, unable to feed or dress herself, and entirely dependent on Mrs Gill for care.
8. The second issue raised the risk of homelessness for the first time. Mr Gill told the Court that if the eviction was granted he, his wife and mother-in-law would be "*out on the streets*", as they "*had nowhere to go*".
9. Whilst it is trite that the Court in a leave to appeal application is bound by the evidence on which the original order was granted, where litigants in person are concerned a Court should not adopt an overly formalistic and technical approach.¹

¹ Xinwa and Others v Volkswagen of South Africa (Pty) Ltd 2003 (4) SA 390 (CC) para 13

10. Had I had the information to which Mr Gill alluded before me at the time the order was granted, I may have interrogated the relevant personal circumstances of the occupiers further. It may also indicate that another court may reasonably find that I did not make sufficient inquiries at the eviction hearing in relation to these issues and in particular the question of possible homelessness, at which hearing a judicial officer is enjoined to take on a more inquisitorial and active approach than traditionally required.² This is because a Court must be apprised of all relevant information before it can make a just and equitable order.³ Another Court could find that this inquiry should have been made by the Court, even though the respondents did not raise it pertinently on their papers, or in addressing the court regarding their financial and personal circumstances at the hearing.
11. As soon as there is a risk of homelessness, the constitutional rights of the respondents of access to adequate housing under section 26(1) of the Constitution are implicated. A Court must in those circumstances inquire into the need for emergency accommodation and the availability of land elsewhere. As was made clear in Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele [2010] 4 All SA 54 (SCA), this is so regardless of whether one is dealing with an application under section 4(6) or 4(7) of PIE.⁴
12. In this regard, I am grateful to Mr Robertson, counsel for the applicants, for bringing to my attention a decision of the Full Bench of this Division of 24 February 2025 in the matter of in A.P and Another v Cohen and Others (Appeal) (A 216/2024 ; 21188/2023) [2025] ZAWCHC 66 (24 February 2025).
13. The above judgment makes it clear that, where a risk of homelessness is raised, the Court must make the appropriate inquiry into the availability of alternative accommodation and that, in order to do so, it must have a report

² Ritama Investments v Unlawful Occupiers of Erf 62 Wynberg (30782/05) [2006] ZAGPHC 6 (27 January 2006); Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) para 36; Occupiers of Erf 101,102,104 and 112 Shorts Retreat, Pietermaritzburg v Daisy Dear Investments (Pty) Ltd [2009] 4 All SA 410 (SCA) para 14.

³ Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) para 30 – 36.

⁴ Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele [2010] 4 All SA 54 (SCA) at para 13.

from the City of Cape Town on alternative accommodation, unless there is proof that the unlawful occupier has declined the assistance of the municipality or other organ of state.⁵ In this regard, the Court does not 'condone any differentiation between the means of the occupants' – the inquiry must be made in all circumstances.⁶

14. The fact that the decision of the Full Bench concerned an application under section 4(7) of PIE does not alter the position regarding the inquiries to be made and the report to be obtained, if homelessness is raised.⁷
15. Another Court could reasonably find that, although Mr Gill in his answering papers in the eviction application accepted that they would vacate the premises if the 'solution' presented by them was not accepted by the applicants, I did not interrogate the question of alternative accommodation or the risk of homelessness sufficiently in granting the eviction application, alternatively that it was necessary to obtain a report from the City of Cape Town. It may reasonably find that this is what was required before the Court could conclude that it was just and equitable to grant an eviction order. Another Court may thus find that this Court did not have all the relevant information before it to have found that it was just and equitable to grant an eviction order, or that the date fixed for the eviction was just and equitable in the circumstances.
16. I do not believe that there is any prospect of success on appeal in relation to this Court's finding regarding the unlawfulness of the respondents' occupation. However, in view of what I have said above regarding whether the Court was correct in finding that it was just and equitable to grant the eviction order, and in setting the date for the eviction that it did, I conclude that leave to appeal should be granted.
17. In the circumstances, I make the following order:

⁵ Paras 51 – 52.

⁶ Para 49

⁷ Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele [2010] 4 All SA 54 (SCA) at para 13.

17.1. The respondents' leave to appeal application is granted to the Full Bench of this Court;

17.2. The costs of the application will be costs in the appeal.

B.J. VAUGHAN
ACTING JUDGE OF THE HIGH COURT

2 June 2025

Appearances:

For Applicants: Adv. D. Robertson

Instructed by: Willian Inglis Inc

For Respondents: In person (Mr A Gill and Mrs C. Gill).