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

**Case Number: 2024-044182**

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

**7 August 2025**

In the matter between:-

**DIKELEDI EDITH MOFIKO**

(In her capacity as executrix of the Estate Late  
Matsela Gladys Mfikwe)

Applicant

and

**PEARL MTHOPHE**

First Respondent

**UNLAWFUL OCCUPIERS OF:**

**ERF 7[...] JABAVU EXTENSION 2**

Second Respondent

**CITY OF JOHANNESBURG**

**METROPOLITAN MUNICIPALITY**

Third Respondent

**Coram:** Kahn AJ

**Heard:** 10 June 2025 plus supplementary Heads of Argument received on 26 June 2025

**Judgment Delivered:** 7 August 2025

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## JUDGMENT

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### **B R KAHN AJ**

1 This is an application brought by Ms Dikeledi Edith Mofiko (the ‘applicant’) for the eviction of the first respondent, Ms Pearl Mthophe, from the residential property situated at Erf 7[...] Jabavu Extension 2 Township (5[...] M[...]a Street) (the ‘property’), together with all persons claiming occupation through her. Ms Mthophe resists the applicant’s efforts to evict her.

### **The Parties**

2 The applicant in this matter is the executrix in the Estate Late Matsela Gladys Mfikwe (‘Ms Mfikwe’), who passed away on 22 January 2012 (the ‘estate’), but remains the registered owner of the property.

3 The first respondent is Ms Mthophe, who – even though there are two other respondents – I will refer to as the ‘respondent’ (in the singular) for ease of reference.

4 There are two further respondents; the second respondent (described in the singular) as being: “unlawful occupiers of: Erf 7[...] Jabavu Extension 2” – ie, the property, and the third respondent is the City of Johannesburg Metropolitan Municipality.

5 The second respondent (whoever they might be) was notionally represented by the attorneys of record for the respondent (ie, the first respondent) but save for this feature, played no role in the application.

6 The third respondent, not surprisingly, played no role in the application.

### **Preliminary Observations**

7 Eviction – to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will – is a word that is probably emotive in all jurisdictions but within the South African context, against the backdrop of our history - is especially so. The intervention of our constitutional order demands (in conjunction with legislation intended to ameliorate what could best be described as the harshness inherent in consequences that flow from an eviction order), that if such an order is requested from a Court, it is to be considered very carefully, humanely and against the backdrop of our Constitution (the shining light recognising our past and guiding our present and our future), the ‘Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998’ (‘PIE’) and a multitude of reasoned, and, on occasions, elegantly worded judgments.

8 A judgment that especially resonates is that of the Western Cape Division of the High Court, in which the appellants are not identified, but the respondents are Gerald and Lesley Cohen (first and second respondents respectively) and the City of Cape Town (third respondent), that I will henceforth refer to as ‘the Cohen judgment’. Which reads as follows:-

“Tread not the tenuous tightrope of evictions unless all is known of the rope, its strength at the centre where balance is required without falling to either side. For it’s the perch in that distraught divide that determines justice and equity to either side. A task requiring wisdom and skill, ensuring dignity in the exit of one and nurturing patience in the other till justice be seen to be done”.<sup>1</sup>

and as a preamble to what follows – and the judicial task of guiding lawyers in the discharge of their responsibilities – it is as fine a bit of prose as one could hope for.

9 In approaching this matter, I have been guided and bound by not only our Constitution and its warm embrace, but also by statute and judgments, guidance and requirements of my brother and sister judges - most of whom are more experienced in addressing the vexed issue of evictions than I – and where, how and

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<sup>1</sup> *A.P. and Another v Cohen and Others (Appeal)* (A216/2024; 21188/2023) [2025] ZAWCHC 66 para 1.

when to strike the tightrope balance if required. I say ‘if required’, because the tightrope balancing act advocated in the *Cohen judgment* is only of application once the occupation complained of is found to be unlawful. I am indebted to all of them for their wisdom, guidance and humanness.

10 It is trite that, as stated in *Lancelot Stellenbosch Mountain Retreat (Pty) Ltd v Gore N.O. and Others*<sup>2</sup> that “affidavits in motion proceedings serve to define not only the issues between the parties, but also to place the essential evidence before the court. They must contain factual averments that are sufficient to support the relief sought.”<sup>3</sup>

11 In this matter, the applicant’s founding papers fall woefully short of what a court would expect to be presented in an application of this nature, although this – in and of itself – is not necessarily dispositive of the matter. A court must have regard to all the affidavits filed in the matter and however compelling or not an applicant’s founding papers may be, the respondent – in order to protect his, her or its position – will need to respond in a way that will hopefully facilitate the proper ventilation of the issues.

12 This observation is true in all matters but is especially true in this matter, where the facts under oath are somewhat sparse but where the applicant who bears the onus has chosen – somewhat surprisingly – not to deliver a replying affidavit, with the result that the only affidavits before the court are the founding affidavit and the respondent’s answering affidavit. There has of course been some assistance gleaned from the heads of argument, but only insofar as they are a fair reflection of parties’ cases / positions made out in the affidavits as filed.

13 What renders this matter unfortunate (as will emerge from what is referred to hereunder) is that neither party appears to have the disposable income or asset base to litigate at this level, in this court, and I wonder whether, had the provisions of Uniform rule 41A been employed, time, money and anxiety might have been saved.

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<sup>2</sup> *Lancelot Stellenbosch Mountain Retreat (Pty) Ltd v Gore N.O. and Others* [2015] ZASCA 37; [2015] JOL33031 (SCA).

<sup>3</sup> Fn 2 above, at para 13

14 Having said that, it is also true that the parties have an inalienable right to approach this court for such relief to which they believe they are entitled, and where a party has a grievance or a claim to pursue, then the courts represent society's safety net – a harbour in a storm of dispute, acrimony and uncertainty.

### **The Just and Equitable World**

15 One of the themes that permeates the various reported eviction judgments has as its genesis (whether the respondent whose eviction is being sought has occupied the land in question for more or less than six months), a just and equitable requirement. S4(6) and s 4(7) of PIE both capture the just and equitable requirement, but differ in a number of respects, none of which differences are relevant to this matter.

16 Significantly, both the aforesaid subsections commence with the phrase: “if an *unlawful* occupier has occupied the land in question for....”, (My emphasis) which means, very simply, that before a court is to apply its mind to the requirements relating to the just and equitable imperative embodied in the aforesaid two subsections, the occupier (the respondent in this matter) must be in ‘unlawful occupation’ – which is what begs the very question that is to be answered in this application and I would think all other eviction applications whether opposed or not.

17 The ‘just and equitable’ world does not however exist in a vacuum; its application is to be found in an amalgam of authority, such as our Constitution, statutes, multiple judgments containing careful words, learnings, humaneness – even Ubuntu – as parts of a jigsaw puzzle that is intended to strike the tight rope balance referred to in the *Cohen judgment*, but also to recognise that, as invariably happens in eviction applications (more particularly when they are opposed), there is a natural tension between two competing Constitutional and other rights – that of the owner or applicant (on the one hand) and that of the occupant or respondent (on the other hand.)

18 Regard ought to be had as well to what is contained in a judgment by Sachs J, where it was held that: “the Court is not resolving a civil dispute as to who has rights under land law; *the existence of unlawfulness is the foundation for the enquiry and not a subject matter*”<sup>4</sup> (My emphasis) – and so, whilst the founding affidavit must contain evidence that deals with the unlawfulness of the occupation to provide the basis of the application, this in and of itself is not enough to succeed in an eviction application – it (the founding papers) must address the just and equitable requirements demanded of, inter alia, PIE as interpreted in a multitude of authorities.

19 As I read PIE (and more particularly the two subsections referred to in paragraph 15 above), the numerous reported judgments that deal with eviction – when and in what circumstances can it or should it be ordered and when and in what circumstances it cannot or should not be ordered – it seems to me that it is clear that the enquiry is (after the person who claims possession has established his/her locus standi – whether as owner or pursuant to some other jurisdictional right, such as lawful control of the property in question) a two-fold enquiry; the first enquiry is whether the occupation is unlawful or not. Only if a court finds that the occupation is unlawful, is it then required to consider the second enquiry incorporating the factors referred to in PIE (as interpreted, implemented and opined upon in numerous judgments), such as:-

19.1 where the unlawful occupiers have occupied the land in question for less than six months: “... after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women”; and

19.2 where the unlawful occupiers have occupied the land in question for more than six months: “... after considering all the relevant circumstances, including in addition to the rights and needs of the elderly, children, disabled persons and households headed by women, where the land is available or can reasonably be made available by a Municipality or other organ of State or other land owner for the relocation of the unlawful occupier”.

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<sup>4</sup> *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) para 32.

## **Section 4(2) and 4(5) of PIE – Preliminary Proceedings**

20 A preliminary observation; the applicant satisfied the requirements provided for in s 4(2) read with s 4(5) of PIE. For context purposes, an applicant in eviction proceedings must, first and foremost, follow the procedures outlined in PIE.

21 For applications instituted in the Gauteng Division of the High Court, Johannesburg, the Practice Manual together with judgments of this Division, must be satisfied.

22 There are two applications that need to be instituted to evict an occupant who is alleged to be in occupation unlawfully; these are (a) the initial ex parte application in terms of s 4(2) of PIE which, if granted, allows the applicant to proceed with (b) the main substantive eviction application which is served on a respondent (which I will call the ‘main application’ and which was argued in front of me).

## **Starting Point Once Legal Principles are Recognised**

23 Against the aforesaid backdrop, I proceed to consider the case made out by the applicant in this matter and the respondent’s answer thereto. I enquire firstly into whether the applicant has made out a case that the respondent is an unlawful occupier and:-

23.1 if so, I will address the second (just and equitable) enquiry; but

23.2 if not, the second enquiry is academic and will not be addressed.

## **Applicant’s Case and Respondent’s Answer**

24 The applicant is the duly appointed executrix in the estate. Letters of executorship were issued to her by the Master of the South Gauteng High Court, Johannesburg, on 20 April 2012. It is perhaps worth noting that the applicant wears another hat; that of the heir in the estate, although this plays no role in this judgment.

25 Ms Mfikwe was at all times material hereto, the registered owner of the property. The applicant – qua executrix – therefore has locus standi to bring this application.

26 The property was sold by the executrix (once appointed) to the respondent pursuant to a sale agreement dated 8 February 2014 (the 'sale agreement') although it is unclear from the papers whether the respondent took occupation prior to the conclusion of the sale agreement or consequent upon its conclusion. However, given the applicant's concession that the respondent's occupation of the property was at some time lawful (at least on the applicant's version – on the respondent's version the occupation remained lawful even at the time of the eviction application being launched) nothing turns thereon.

27 The reference to the sale agreement being dated in 2014 is not a typographical error – this is two years after Ms Mfikwe passed away and ten years prior to the launching of this application.

28 Even though the applicant - surprisingly - made no reference to the existence of a written and signed sale agreement (ie, the sale agreement) in her founding affidavit – more particularly given that it became common cause that the executrix / applicant (who brought the application and signed the founding papers) was the person who signed the sale agreement on behalf of the estate (ie, the seller) – the respondent, in her answering affidavit, attached a copy thereof, which was not disputed by the applicant.

29 I must therefore accept that the sale agreement attached as annexure PM3 to the respondent's answering affidavit is the document that regulated the contractual relationship between the estate (as the seller) and the respondent (as purchaser) and on the respondent's version, is the document that housed her entitlement to occupy the property and her shield against eviction.

30 The sale agreement plays an important role in this judgment given its terms and what occurred (and did not occur) subsequent to its conclusion and importantly,

pursuant to the provisions of certain of its clauses, which, given their importance / significance / relevancy, I refer to specifically hereunder.

31 Clauses 3 and 4 of the sale agreement can be conveniently read together in spite of the fact that they are inelegantly and poorly worded. They identify the purchase price, how it is to be paid as well as security for the balance. This is really the essence of these two clauses.

32 The inelegance (which results in some difficulty in interpreting same) is however academic because it is common cause that the full purchase price was paid by the respondent into the trust account of Ellahm Sentso Attorneys ('Sentso') by way of two instalments; an initial payment of R145 000 (one hundred and forty-five thousand rand) on 13 May 2014 and the balance of R35 000 (thirty-five thousand rand) on 8 September 2014, totalling R180 000 (one hundred and eighty thousand rand) in all, as required by the terms of the sale agreement. Sentso plays a small – but highly significant role – in what occurred in this matter.

33 Clause 5 of the sale agreement records that the seller appoints the conveyancers, namely Sentso, to attend to the registration of transfer, I pause to mention at this time that the obligation to deliver the property pursuant to the sale agreement – via the process / mechanism of transfer in the Deeds Office – was the applicant's. The relevancy hereof emerges from what is referred to hereunder.

34 Clause 6 of the sale agreement beneath the heading 'occupation' provides that the respondent (as buyer) will be entitled to occupation of the property once transfer is registered – but it is common cause that registration of the property has not yet been transferred to the respondent (as buyer) and that – even though the date of occupation is unclear from the papers – the respondent is in occupation because of the sale agreement and the applicant has conceded during oral argument and in subsequent heads of argument (delivered pursuant to a specific request from me) that at the very least when the respondent took occupation many years ago, such occupation was lawful.

35 Clause 7 of the sale agreement beneath the heading: “risk and benefit” provides that the respondent will be responsible for rates and other taxes levied on the property and will be entitled to the income which accrues from the date of occupation (and I repeat, the date has not been identified by either party)

36 Clause 9 of the sale agreement beneath the heading: “cancellation for breach” is a relatively inelegantly worded clause, but sufficiently clear to understand that it provides for a seven day notice period to remedy any breach, failing which the aggrieved party shall be entitled, without prejudice to any other right, to cancel the sale agreement by giving written notice to that effect to the other party.

37 The rest of the breach clause is not relevant to this matter, but it is significant that it forms no part of the applicant’s case that she (ie, the estate) placed the respondent in breach (in mora) – if indeed the respondent is in breach. (To be clear; I am not required to determine whether the respondent is in breach of her obligations pursuant to the sale agreement and I therefore make no finding in this regard.)

38 What the applicant did however refer to in her founding papers is a letter dated 1 November 2019 (served by the sheriff at the property on 27 November 2019) in which the applicant makes no reference whatsoever to the sale agreement or any (alleged) breach thereof but simply asserts that:-

38.1 the property still belongs to the deceased, Ms Mfikwe (which the court notes is true);

38.2 the respondent is in occupation and/or in control of the property (which the court notes is true); and

38.3 the respondent, must vacate as the applicant (in her capacity as executrix in the estate): “is not taking control of all the assets of the estate including the property in question” and “intends to finalise the winding up of the estate” (which begs the question), which, as demands go – particularly in eviction matters – was at best, substantially wanting and at worst, quite ineffectual.

39 At some stage, the attorney nominated by the applicant – Sentso – disappeared as, sadly, did the purchase consideration paid by the respondent into her law firm’s trust account. This appears to be the nub of the applicant’s ire.

40 The papers filed in the matter do not address Sentso’s fate, so to speak; my own research reveals a judgment in the case of *Law Society of the Northern Province v Sento*<sup>5</sup> which was dated 15 October 2019 (some approximately five years after the sale agreement was concluded and the purchase price paid in full) in which Sentso is struck off the roll of attorneys.

41 It bears mention that one of the matters considered by the Court hearing the strike off application was in fact the complaint lodged with what was then the Law Society of the Northern Provinces by the applicant relating to the misappropriation of the payment made by the respondent into Sentso’s trust account as required of her in terms of the sale agreement.

42 Against the aforesaid backdrop, the applicant alleges that attempts to somehow resolve the situation that had arisen has been unsuccessful and the respondent was in occupation unlawfully.

43 There is no detail in regard to what the ‘situation’ was (although I think it would be fair to assume in all the circumstances that it pertained to the misappropriation by Sentso of the purchase consideration and what was to be done in this regard), what those negotiations were and when they occurred and perhaps even what was the point or were the points of departure between the applicant (on behalf of the estate) and the respondent.

44 At best, there is some vague reference to some discussions between the applicant and the respondent, presumably as to how to address the seemingly incompatible positions that existed; on the one hand, the respondent had paid the full purchase consideration as required (and as provided for in the sale agreement) into

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<sup>5</sup> *Law Society of the Northern Province v Sento* (84434/2016) [2019] ZAGPPHC 525 (15 October 2019).

Sentso's trust account and on the other hand, the funds had disappeared (I think it would be fair to say that the funds had been misappropriated by Sentso) and that the applicant realised that the funds that were to be received by the estate in respect of the purchase consideration for the property were no longer in Sentso's trust account and therefore were not available to be paid on transfer.

45 I should however, make it clear that the lack of detail in regard to discussions that were or may have been held between the parties in order to address what was clearly a distressing situation for both the applicant and the respondent plays no role in my findings and decision in this matter. I mention it for context and clarity.

46 It appears that the applicant – not having been able to come to some or other arrangement with the respondent that she considered appropriate given the misappropriation of the funds comprising the purchase consideration (whatever that arrangement might have been – the papers are silent in this regard) – determined that the only avenue open to her to enable her to dispose of the property (and thereby on her – the applicant's – version, to enable her to continue with or to finalise the winding up of the estate) would be to sell the property to a third party (and so presumably obtain payment from the third party) but to enable her to do so – at least as the applicant views the matter – the respondent would need to vacate, which she clearly refused to do so – hence the eviction application.

47 It was approximately ten years after the respondent had paid the full purchase consideration that the applicant launched eviction proceedings, but no explanation is tendered by the applicant as to the reasons for the delay or what efforts were made – and when those efforts were made – to resolve what she calls in paragraph 11.8 of her founding affidavit, the: "aim of solving the matter", but she alleges that the respondent was not cooperative in finding: "the solution". What that solution is – at least as perceived by or hoped for by the applicant – is not identified.

48 Save for some reference in the papers as to both the applicant and the respondent approaching the Legal Practitioners Fidelity Fund (the 'Fund') it is clear that – at least as at the date of issue of the application – the Fund has not refunded

the stolen monies to either the applicant or the respondent. The reason I say 'either' one or the other is because:-

48.1 the applicant approached the Fund for compensation, which advised her (rightly or wrongly) that it was for the respondent – not the applicant – to apply for a refund; and

48.2 there is nothing contained in either the founding affidavit or the respondent's answer that informs me whether the respondent approached the Fund or not,

although I must be absolutely clear that a finding as to whether it is the applicant or the respondent who would have a claim against the Fund is not required – at least based on the affidavits in this matter – and I consequently do not make a finding in this regard.

### **Is the Sale Agreement Extant or Not?**

49 In considering this matter following upon oral argument, it seemed to me that the question as to whether the sale agreement was or was not extant was a matter that had not been raised by either of the parties in their papers, heads of argument or during oral argument and I considered that it was highly relevant in the context of this matter.

50 As a result, a few days after the hearing of this matter, I asked counsel for the parties to furnish supplementary heads of argument in regard to the following enquiries addressed to them:-

50.1 was I able to find, based on the papers, that the sale agreement is extant?; and

50.2 if extant or not extant, how does that affect the lawfulness of the respondent's occupation of the property?

51 Both legal teams responded to the request referred to in paragraph 50 above.

52 The applicant, in its supplementary heads of argument:-

52.1 accepts that a written and signed offer to purchase (the sale agreement) exists;

52.2 asserts that the only evidence that is before this court is: “in respect of the sale of agreement entered into between the applicant and the respondent, proof of two payments to the transferring attorney and attempt to transfer thereon which was never completed concluding the sale of the property in question”, an argument or proposition that is difficult to understand, but whatever the applicant intends it to mean, it certainly does not mean that the sale agreement has terminated; and

52.3 concludes (after a somewhat tortuous logic) that: “the alleged sale agreement does not meet the requirements of the Alienation of Land Act and cannot be regarded as extant at law”, but it was never part of the applicant’s case that the sale agreement does not meet these requirements and this is not the case the respondent was called upon to meet.

53 The applicant is not able to demonstrate that the sale agreement (which the applicant herself concluded in her capacity as executrix on behalf of the estate, and pursuant to which the respondent was in occupation,) had on some or other basis, terminated. Indeed, the applicant advances no legitimate argument to suggest that the sale agreement is not extant.

54 The respondent of course argued that the sale agreement was extant – and I think it fair to say – correctly so.

### **Respondent’s Occupation of the Property; Lawful or Not?**

55 As stated above, before I even address the question of whether an order for eviction would be just and equitable, I need to conclude that the respondent’s

occupation is unlawful. It follows of course that if I do not find that the respondent's occupation is unlawful, the question of justice and equity does not arise.

56 If the original occupation of the property by the respondent was lawful (and I repeat that this is common cause), when did the occupation become unlawful? – if it ever did become unlawful. It is here that the sale agreement and what the parties (and perhaps the applicant in particular) did or did not do in regard thereto becomes relevant.

57 For context purposes, I have borne the following in mind:-

57.1 the sale agreement is dated 8 February 2014;

57.2 the demand addressed to the respondent on behalf of the applicant (referred to in paragraph 38 above) is dated 1 November 2019 and served on 27 November 2019 – almost six years after the sale agreement was concluded and the full purchase price paid; and

57.3 the eviction application was issued on 23 April 2024 – some four and a half years after the demand to vacate had been served on the respondent but had not elicited the desired response.

58 I have carefully considered the:-

58.1 affidavits filed by the parties;

58.2 parties' heads of argument;

58.3 oral arguments presented by the parties' legal representatives; as well as

58.4 parties' supplementary heads of argument,

and I am satisfied that the respondent is not an unlawful occupier.

## **Reasons for Lawful Occupation Finding**

59 The reasons that follow cannot of course be viewed in a vacuum; they need to be viewed against the backdrop of the findings, observations and common cause facts referred to above.

60 The applicant alleges and it is the applicant who must prove. This is trite law. The applicant's papers however fall far short of the evidence required to discharge the onus in regard to the initial enquiry (after establishing locus standi) – ie, whether the respondent's occupation is unlawful.

61 It was difficult – nay, impossible – to discern from the applicant when and in what circumstances the respondent's occupation – which the applicant conceded was at least initially lawful – became unlawful but having regard to the applicant's founding papers (and I repeat, the respondent's version in her answering affidavit was not in any way rebutted by the applicant because she did not deliver a replying affidavit), the applicant simply says that the respondent is occupying the property: "without lease agreement" (paragraph 8.1 of the founding affidavit) and in paragraph 10.2 of the founding affidavit, the allegation is made that the occupation of the property is: "without any agreement" or the applicant's: "direct express for them to do so", and therefore the applicant concludes they (the respondent and any other occupiers) are occupying the property illegally. The applicant is however wrong about there being no agreement; it is common cause that there is. It is the sale agreement dated 8 February 2014; see, inter alia, paragraph 26 above.

62 The applicant has chosen to rely solely on the fact that in her capacity as executrix, she must finalise the winding up of the estate and by implication (and perhaps I am being generous to the applicant in this regard) – she seems to suggest that because the purchase consideration paid by the respondent is no longer available to the estate, the respondent must vacate the property to enable her – the applicant – to wind up the estate but she, the applicant, does not explain why she has delayed for approximately ten years after the sale agreement was concluded and payment of the full purchase consideration made, and now wishes to proceed to discharge her duties as executrix in the estate.

63 These allegations are however decisively rebutted by the respondent who asserts that her occupation of the property was taken, and continues to be enjoyed pursuant to the sale agreement. The applicant (who actually signed the sale agreement following upon the death of Ms Mfikwe and after letters of executorship had been granted to her) made no reference to the sale agreement in her founding papers.

64 There is also no allegation by the applicant that the:-

64.1 respondent was placed in mora, whether in terms of the breach clause in the sale agreement (referred to in paragraph 37 above) or otherwise;

64.2 applicant had taken any steps to terminate the sale agreement; and

64.3 sale agreement has terminated,

65 Because the sale agreement had not been terminated prior to this application having been launched (and I must make clear that I am not suggesting there was or was not a legal basis for the applicant to bring about a termination; I am not required to opine on this aspect and therefore I make no finding), I am guided by the reported judgments of *Mashao John Thepangeyga N.O and and Another*<sup>6</sup> v *Herman Letsoalo and os, as well as Transnet Ltd v TJ Thebeke and Another*<sup>7</sup>, both of which find that an eviction application that is issued prior to a contract (pursuant to which the occupant / respondent enjoys the right of occupation) terminating, cannot be granted whilst that agreement is extant or, put another way, until that contract is lawfully terminated.

66 Consequently, I find that the sale agreement is extant and continues even now to regulate the relationship between the seller (the applicant) and purchaser (the respondent). The fact (a) that the respondent took occupation pursuant thereto

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<sup>6</sup> *Mashao John Thepangeyga N.O and and Others* (73/2021) [2022] ZASCA 30

<sup>7</sup> *Herman Letsoalo and os, as well as Transnet Ltd v TJ Thebeke and and Others* (35/12) [2012] ZASCA 197

(when she took occupation is not relevant to the lawfulness thereof), (b) the applicant's concession that the occupation was at some time lawful, and (c) there is nothing to demonstrate that what was lawful occupation became unlawful, leads me to the conclusion that the respondent is in lawful occupation as are those claiming occupation through her, and that this application must therefore fail.

## **Order**

67 In the result, it is ordered that the:-

67.1 application is dismissed; and

67.2 applicant is to pay the respondent's costs on scale A.

**B R KAHN AJ**

Judge of the High Court

Johannesburg

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