IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE Numbers: 2025 – 041948
2025 – 050558
(1) REPORTABLE: **YES**/~~NO~~
(2) OF INTEREST TO OTHER JUDGES: **YES**/~~NO~~
(3) REVISED: **YES**/~~NO~~
25 July 2025

In the matter between:-

CLARENDON HEIGHTS BODY CORPORATE	**First Applicant**
START MOBILE (PTY) LTD (REGISTRATION NUMBER: 2012/155402/07)	**Second Applicant**
BASHE, MICHAEL MKUSELI	**Third Applicant**
ODE PROPERTIES (PTY) LTD (REGISTRATION NUMBER: 2019/306684/07)	**Fourth Applicant**
LIATOS, ELAINE JANE	**Fifth Applicant**

And

DUMAKUDE, MXOLELENI	**First Respondent**
H. CHONCO & 22 OTHERS DESCRIBED AND LISTED IN ANNEXURE "A" TO THE NOTICE OF MOTION	**Second Respondent**

THE FURTHER UNLAWFUL OCCUPIERS OF ROOMS OF CLARENDON HEIGHTS, ROOMS NUMBERS 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1302, 1304, 1305, 1306, 1307, 1308, 1309, 1310 **Third Respondent**

PHULWANE, NOMUSA **Fourth Respondent**

NCUBE, TRUST **Fifth Respondent**

MABINDISA, LINDELWA **Sixth Respondent**

SITHOLE, MECY SILUNGILE **Seventh Respondent**

NDLOVU, THANDAZANI **Eighth Respondent**

THE FURTHER UNLAWFUL OCCUPIERS OF FLATS 5, 104, 201, 203, 204, 503, 505, 602, 1105, 1107, 1109 CLARENDON HEIGHTS, […] B[…] STREET, HILLBROW **Ninth Respondent**

THE CITY OF JOHANNESBURG **Eleventh Respondent**

SOUTH AFRICAN POLICE SERVICE **Twelfth Respondent**

And in the matter between:

RAPID RESIDENTIAL PROPERTY (PTY) LIMITED (REGISTRATION NUMBER: 2019/054372/07) **First Applicant**

PXZ HOLDINGS (PTY) LIMITED (REGISTRATION NUMBER: 2017/032168/07) **Second Applicant**

NAIDOO, ADRIAN **Third Applicant**

CLARENDON HEIGHTS BODY CORPORATE	**Fourth Applicant**
and	
ONUOHA, EKENE MARSHAL	**First Respondent**
A PERSON KNOWN AS EMMANUEL	**Second Respondent**
THE UNLAWFUL OCCUPIERS OF FLAT 609 CLARENDON HEIGHTS	**Third Respondent**
THE FURTHER UNLAWFUL OCCUPIERS OF FLATS 205, 507 AND 609 CLARENDON HEIGHTS	**Fourth Respondent**
THE CITY OF JOHANNESBURG	**Fifth Respondent**
SOUTH AFRICAN POLICE SERVICE	**Sixth Respondent**

JUDGMENT

SNYMAN, AJ

Introduction

[1] It is true that the ultimate goal under the Constitution is that all persons in the Replublic of South Africa should have access to permanent residential structures, with secure tenure, providing convenient access to all opportunities and amenities.[1] But achieving this goal cannot come at all costs, and striving to achieve the same

[1] See *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at para 17; *Jaftha v Schoeman; Van Rooyen v Stoltz* 2005 (2) SA 140 (CC) at para 28.

must take place within the confines of available resources and with due considerations of other equally fundamental rights that may come into play. One of these is the right of any person not to be deprived of property. The difficulty caused by lack of legitimate access to housing, is that unlawful occupation of property has become an unfortunate norm, which in turn infringes on the rights of property owners. It is within the context of this tension that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[2] (PIE Act) comes into play,[3] which seeks to strike a balance between persons being left homeless and the rights of property owners, where action is taken by property owners against unlawful occupiers of property in the form of evictions.[4]

[2] Whilst the objectives sought to be achieved by the PIE Act are warranted, laudable and obviously Constitutionally sound,[5] I am concerned that its provisions may be abused by an unscrupulous criminal element seeking to hijack residential properties, especially in the inner Cities, for personal gain. This not only obviously tramples on the rights of property owners, but exposes individual occupiers at these properties to material risk, and compromises the very ability of Local Authorities to provide services to residents and then recoup reasonable revenue for the same. The only ones that win in these circumstances are the criminals. As succinctly said in *YG Property Investments (Pty) Ltd v Selota and others*[6]:

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[2] Act 19 of 1998.
[3] In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, Amici Curiae)* 2010 (3) SA 454 (CC) at para 62, it is said that: '*It is beyond doubt that the PIE Act was brought into force in order to give effect to the provisions of s 26(3) of the Constitution …*'.
[4] In *Port Elizabeth Municipality* (*supra*) at para 23, it was held: '*In sum, the Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal ownership rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather, it is to balance out and reconcile the opposed claims in as just a manner as possible, taking account of all the interests involved and the specific factors relevant in each particular case …*'.
[5] *President of the Republic of South Africa v Modderklip Boerdery* 2005 (5) SA 3 (CC) at para 36.
[6] 2022 JDR 3608 (GJ) at para 41.

> ‘The media is replete with articles dealing with building hijackings. If the courts do not intervene, this will, in my considered view, undermine our rule of law and risk this country going into chaos.’

[3] The above being said, I return to the case at hand. The matter concerns two urgent applications brought by the applicants in terms of the PIE Act. The first application, under case number 2025 - 041948, was brought on 27 March 2025. The application has a part A and a part B. Part A was brought as an urgent application, and sought various items of urgent interim relief, including interdicts against the individual respondents, and the urgent eviction of the individual respondents from the building known as Clarendon Heights in terms of section 5 of the PIE Act. Part B thereof sought the final eviction of the individual respondents from Clarendon Heights in terms of section 4 of the PIE Act, which application is to be determined in the ordinary course. The second application was brought on 10 April 2025, under case number 2025 – 050558, also in parts A and B, seeking in essence the same relief as contained in Parts A and B of the first application under case number 2025 – 041948, but with the added prayer that it be consolidated with the first application under case number 2025 – 041948.

[4] Part A of the first application under case number 2025 – 041948 came before Kuny J on 1 April 2025. The learned Judge granted an order authorising a section 5(2) notice and the manner of service thereof. The learned Judge further granted an interim order with a return date of 22 April 2025, in terms of which the individual respondent parties were interdicted from: (1) interfering with the applicants, their officers, employees or agents; (2) preventing such persons entering and conducting legitimate business at Clarendon Heights; (3) collecting rentals at such property; (4) from threatening, intimidating or assaulting the applicants or any their officers, employees or agents; and (5) interfering with the applicants’ proprietary rights in respect of the property. Further, the City of Johannesburg was directed to file a report within 10 days dealing with the availability of temporary emergency accommodation, what accommodation could made available to occupiers of the property, as well as various measures taken where it came engaging occupiers concerning such accommodation. No eviction order was granted at this stage.

[5] The second application under case number 2025 – 050558 came before Manoim J on 15 April 2025. The learned Judge granted the consolidation order, and granted the same interdictory and urgent relief as found in the order of Kuny J of 1 April 2025. By virtue of the consolidation, the return date of 22 April 2025 would also apply. Once again, no eviction was granted at this point.

[6] The consolidated application came before Fisher J on 22 April 2024, being the return date. The matter stood down to 24 April 2025 and the interim order was extended to that date. The individual respondent parties then belatedly sought to oppose the application by way of an answering affidavit filed on 23 April 2025. The applicants filed a replying affidavit the morning of 24 April 2025. It appears that after some engagement between the parties, with both parties being legally represented, a draft order was agreed to, and this order was then made an order of Court by Fisher J on 24 April 2025. It is important to record this order in full. It read:

> ‘1 The above applications are postponed sine die and the applicants are directed to approach the Deputy Judge President for a special allocation of the matters upon the filing of pleadings set out hereunder.
>
> 2 Pending the hearing of the applications, the first to ninth respondents in the application under case number 2025-041948 and the first to fourth respondents under case number 2025-050558 *(hereinafter collectively referred to* as *"the occupiers")* are interdicted and restrained from:
>
> 2.1 Interfering with the applicants, and their officers, employees or agents;
>
> 2.2 preventing the applicants and their officers, employees or agents from entering and conducting their legitimate business at the property;
>
> 2.3 from collecting any money in or at the property.
>
> 2.4 From threatening, intimidating or assaulting the applicants or any of their officers, employees or agents; and

2.5 From, in any other way, interfering with the applicants' proprietary rights to the property

3 That the Sheriff of the Court or his/her lawfully appointed Deputy is authorised and directed to give effect to the terms of this interdict, including but not limited to, the following:

3.1 Preventing any person from collecting rent form the applicants' units at the property, other than in the legitimate conduct of the applicants' business;

3.2 Removing any person from the common property who purports to hinder the applicants, their officers, employees or agents, in the legitimate conduct of their business.

4 That the sheriff of the Court or his lawfully appointed Deputy is authorised to approach the Johannesburg Metropolitan Police Department ("JMPD") and the South African Police Services ("SAPS") for whatever assistance might require in the circumstances.

5 The occupiers are hereby ordered to deliver supplementary answering affidavits on or before 19 May 2025, in respect of which the occupiers are to complete the forms annexed to this Order, marked as "A", and setting out each occupier's personal circumstances, enclosing the following supporting documents in respect of the occupiers of each Room/Flat at the property

5.1 ID Copy
5.2 ID copy for spouse or partner or any adult co-occupier, if any
5.3 Marriage certificate, if any;
5.4 Children's birth certificates or ID, if any
5.5 pay slip, if employed;
5.6 Bank statements;
5.7 SASSA documents in respect of any social grants received; and

5.8 The lease agreement though which they took occupation of the Flat/Room occupied by them at the property, alternatively proof of any rental payments in support of any right to occupation they may have had to that Flat/Room

6 The applicants are ordered to serve the occupiers supplementary answering affidavit, together with a copy of the Order, on the offices of the City of Johannesburg, cited hereto as the eleventh respondent under case number 2025 – 041948 and the fifth respondent under case number 2025 – 050558.

7 The City of Johannesburg is ordered and directed to carry out any additional necessary occupancy audits and assessments in respect of the occupiers and to deliver a report, by way of affidavit, in respect of such inspection, to the Honourable Court by no later than 30 May 2025, setting out:-

7.1 occupiers' personal circumstances including but not limited to:
7.1.1 The manner in which the assessment was conducted and the identity of th eoccupiers with whom the City of Johanesburg enagaged
7.1.2 Identifying every individual member of the households, including any minor children
7.1.3 Stipulating the combined monthly household income of the households
7.1.4 Enclosing all relevant documentation in support of the findings in paragraph 1.1.3 above.

7.2 Whether the occupiers, if any, qualify for the provision of temporary emergency accommodation (“TEA”). In this regard, the report must record:
7.2.1 the nature and location of the TEA that will be made available to the qualifying occupiers, when such TEA will be made available, including a positive undertaking that such TEA will be made available at this time
7.2.2 Advising if the occupiers failed and/or refused to cooperate with the City of Johannesburg; and

7.2.3 Why that particular TEA was selected.

7.3 The steps taken by the City of Johannesburg to engage with the occupiers;

7.4 The relevant documentation used by the City of Johannesburg to inform its findings.

8 Any among the occupiers who fails to furnish the duly completed form as ordered in terms of paragraph 2 above, such Respondents shall be deemed to be disqualified from the provision temporary emergency accommodation ...' (sic)

[7] In terms of the order of 24 April 2025, the consolidated application then came before me on 22 July 2025, for final determination of the relief pertaining to the urgent eviction of the individual respondents sought by the applicants under section 5 of the PIE Act. After considering the affidavits and documents filed, and after hearing argument by both parties, I granted the following order:

'1. This matter is treated as one of urgency for the purposes of Rule 6(12) of the Rules of this Honourable Court;

2. Pending the finalisation of proceedings brought in terms of Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ("*PIE*"), the first to ninth respondents under case number 2025-041948 and the first to fourth respondents under case number 2025-050558 (hereinafter collectively referred to as *"the respondents"*), and all those occupying the applicants' property, be evicted in terms of Section 5 of PIE from the units occupied by them at the applicants' property, more fully described as:

SECTIONAL TITLE SS CLARENDON HEIGHTS
SCHEME NUMBER: 97/1981
JOHANNESBURG

Situate at:
[...] B[...] STREET
HILLBROW
JOHANNESBURG
(hereinafter referred to as "*the property*")

3. The respondents, and all those occupying the property, are ordered and directed to vacate the property within 48 (forty-eight) hours of this order;

4. In the event that the respondents, and all those occupying the property, do not vacate the property in terms of prayer 3 above, the sheriff of the court, or his/her lawfully appointed deputy, is authorised and directed to evict the respondents, and all those occupying the property, from the property;

5. The Sheriff of the court, or his/her lawfully appointed deputy, is authorised and directed to approach the twelfth respondent under case number 2025-041948 and the sixth respondent under case number 2025-050558 (*"SAPS"*), for any assistance that s/he may deem necessary and appropriate to give effect to this order;

6. SAPS is ordered and directed to assist the sheriff of the court, or his/her lawfully appointed deputy, in giving effect to this order;

7. The respondents, and all those occupying the property, are interdicted and restrained from:

7.1. Interfering with the applicants, and their officers, employees or agents;

7.2. Preventing the applicants, and their officers, employees or agents from entering and conducting their legitimate business at the property

7.3 From collecting any money in or at the property;

7.4. From threatening, intimidating or assaulting the applicants or any of their officers, employees or agents; and

7.5. From, in any other way, interfering with the applicants' proprietary rights to the property.

8. The applicants are entitled to approach the court on the same papers for an order in terms of Section 4 of PIE.

9. The respondents are ordered and directed to pay the costs of this application, including the costs of Part "A" hereof, jointly and severally, the one paying the other to be absolved.'

[8] When granting the order, I indicated that written reasons for the order will be provided on 25 July 2025. This judgment now constitutes such written reasons, starting with an exposition of the relevant background facts. For ease of reference, I will refer in this judgment to all the applicants in both applications jointly as '*the owners*' and all the individual occupier respondents jointly as '*the occupiers*'. I will refer to the City of Johannesburg as '*the City*'.

The relevant background facts

[9] The owners, who brought the applications, are all property owners of individual sectional title units in Clarendon Heights, being a residential accommodation sectional title building, situate at […] B[…] Street, Hillbrow, Johannesburg (hereinafter referred to as '*the building*'). It is a high-rise building, with several hundred sectional title units / rooms. It was undisputed that the owners are the rightful and lawful owners of all the individual sectional title units / rooms concerned. The applications involve 14 of the individual units (flats) and 24 of the rooftop rooms in the building.

[10] The occupiers *in casu* all occupy these individual sectional title units and the rooftop rooms (collectively referred to as 'the units'). This occupation is unlawful, in that the occupiers have no right to be in occupation of such units. Insofar as some of

the individual occupiers had been occupying the units in the past by way of lease agreements with the owners, these occupiers had ceased paying rentals to the owners, and as result, all such leave agreements have been terminated in the course of 2024 and 2025. Most of the occupiers of the rooftop rooms occupy the rooms without even having concluded a lease agreement or paying rental to the owners.

[11] How some of the individual occupiers came to occupy the rooftop rooms, is that they had been allowed by the former caretaker of the building, being Mxoleleni Damakude (Damakude), to occupy these rooms, presumably against the payment of rental to him. Damakude occupied rooftop room 1303. These rooftop rooms are common property and accordingly belong to the body corporate. Damakude had no right to let any of the common property and no person could obtain any lawful right to occupy any rooftop rooms at the property without the consent and authority of the owners. On 1 June and 13 July 2023, letters were issued to all the occupiers of the rooftop rooms, demanding that lease agreements be concluded with the owners. This demand was never adhered to, and all these occupants remain in unlawful occupation of these rooms, without paying any rental to the owners. Insofar as it concerns Damakude himself, he was dismissed on 10 June 2023 following a comprehensive disciplinary process, and his right to occupy his rooftop room was simultaneously terminated.[7] He however remained in occupation, without paying any rental.

[12] In the answering affidavit filed on behalf of the occupiers, it is not disputed that they are in unlawful occupation of the units. No grounds or reasons have been advanced by the occupiers to legitimise their occupancy of the units. So unlawful occupation is undeniable in this instance.

[13] According to the owners, matters have now progressed to the extent that the building has been hijacked by the occupiers, who have organised themselves into a cohesive group. This is evident from a number of events, which will be addressed in more detail below. In sum, it is contended that the occupiers are rendering the

[7] Damakude has since become deceased, after the application was launched.

building ungovernable, obstructing and / or controlling access to the building by the owners, and intimidating and threatening the staff, contractors and service providers appointed by the owners, and even municipal officials. The owners are also being deprived of rental income and payments for services, such as water and electricity. And while all this is ongoing, the state of the building is deteriorating day by day, putting all persons that occupy other units in the building at material risk.

[14] The situation is further exacerbated by the fact that four security guards employed by the applicant to render security services at the building became complicit in the hijacking and assisted the occupiers with controlling access to the property. The first applicant has since suspended these security guards, however they remain at the building at the behest of the occupiers.

[15] What has happened, as a result of the non-payment for services, is that the City has disconnected all services to the building. This however did not deter the occupiers, who have since illegally reconnected services to the building. And then, to make it worse, the occupiers are collecting rentals and payments for services from other persons that occupy other units, against the threat that their services would be disconnected if they do not pay. These amounts so collected do not find their way to the owners or the City.

[16] On 10 July 2023, the first applicant instructed Gauteng Debt Recovery Services to collect the outstanding rental (or damages in lieu of rental) owed by the occupiers of the rooftop rooms. Letters of demand were issued to all these occupiers of the rooftop rooms. The occupiers however refused to make any payment.

[17] Some individual instances of unlawful conduct were highlighted in the founding affidavit. On 22 July 2023, the first applicant employed a locksmith to change the locks to the hot tub room, and whilst at the property, the locksmith was threatened by hijackers who held him at gun point. On 21 September 2024 the first applicant engaged a service provider to deliver notices at the building, and once again, whilst at the building, the service provider was attacked by the hijackers and sustained serious injuries. In fact, Mushishini Dlamini (Dlamini), one of the errant

security guards at the building, was identified as an attacker and there is a criminal case pending against him.

[18] The owners have also received information that over the last few months, the hijackers have been going door to door in the entire building and collecting R400.00 from each individual unit occupier, and upon payment the occupier is even issued with a receipt by the hijackers. In the event that an occupier fails or refuses to pay the R400.00, the hijackers threaten to disconnect services to the unit.

[19] After Damakude's dismissal, the first applicant employed a new caretaker, Kenneth Khabo (Khabo). However, the hijackers have prevented him from fulfilling his duties. Khabo has been locked out of the building and refused access to the building by the hijackers and the complicit security guards for over a year. He has faced multiple threats and has been subjected to intimidation at the hands of the hijackers who have on occasion attended at his house threaten him. And worse still, on 12 February 2025, while in the vicinity of the property, Khabo was shot by an unidentified hijacker and was hospitalised.

[20] According to the owners, they are no longer in control of the units owned by them. These units are under control of the occupiers, all complicit in the hijacking of the building. It is contended that an ostensible committee was formed, consisting of most of the rooftop room occupiers, who have taken control of the building and are collecting rentals. The owners believe numerous other units, similarly, are controlled by these unauthorised persons. The main difficulty with inner city sectional title complexes is that individual unit owners are insufficiently resourced to resist attempts at takeover. However, and through banding together, the owners have been able to raise the funds to institute the current proceedings.

[21] According to the owners, they have been under financial pressure for some time as a result of what had transpired at the building. The costs of running a large building are substantial, and the owners cannot endure these mounting costs for much longer. The owners say that unless the matter is resolved as one of urgency, the prospect is that they will lose final control of the building which in tum will degenerate into yet another inner-city slum. Further, and each day the unlawful occupation of the

property persists it becomes further entrenched to the detriment of the owners, and the risk of further harm to them, their employees, and lawful tenants of the applicants, increases.

[22] As a result, the first application under case number 2025 – 041948 was launched on 1 April 2025, followed by the further application under case number 2025 – 050558 on 10 April 2025. As stated above, interim orders were granted, with the return date being 22 April 2025. As authorised in the two Orders of 1 and 15 April 2025, the required notices as contemplated by section 5(2) were indeed issued, and then served as also authorised in such Orders, on 17 April 2025.

[23] With the return date of 22 April 2025 then looming, and the occupiers having been served with the section 5(2) notices, the occupiers secured legal representation, and a notice of intention to oppose the application under case number 2025 – 041498 was filed on 17 April 2025. On 22 April 2025, the interim order was extended to 24 April 2025 to afford the occupiers an opportunity to file an answering affidavit, which they did on 23 April 2025, by way of their legal representatives.

[24] In this answering affidavit, deposed to by Virginia Damakude (Virginia), the spouse and now widow of Damakude, she does not dispute that she is in unlawful occupation of room 1303. She specifically pleads that section 4(7) of the PIE Act should find application and that she intends pleading '*a case of alternative accommodation*'. She makes reference to her age, her health, and her personal and family circumstances. She states that if evicted, she will not find alternative accommodation elsewhere, and would be left homeless and destitute. A further issue raised by Virginia was that Damakude (and by extension her as well) were not rent paying occupants, but she does not deal with the fact that this was because Damakude was employed by the first applicant and with his employment being terminated as far back as 2023, his right of occupation ended at that time.

[25] Virginia also indicates that she was authorised to depose to the answering affidavit on behalf of a number of the individual occupiers, and confirmatory affidavits to this effect were provided. In total, there are 27 confirmatory affidavits. In these

confirmatory affidavits, the deponents state that the units concerned are their primary residences, and should they be evicted, they would be rendered homeless and destitute. They also make common cause with the contents of the answering affidavit by Virginia. It must however be pointed out that four of these confirmatory affidavits are deposed to by persons that are not even respondents in the proceedings.

[26] Further in the answering affidavit, the occupiers take specific issue with the fact that the City had not provided a report as contemplated by paragraph 6 of the order of 1 April 2025. It is contended that without such a report, it was not permissible for the owners to proceed with the eviction. There is also a bald denial that the building is under threat or in danger. Although it does not appear to be disputed that the criminal conduct which the owners complain of existed, there is a similar bald denial of any knowledge by the occupiers of this conduct and that it has anything to do with them. It was further baldly disputed that any of the occupiers were collecting rentals. In this context, it was contended that the application should on not be decided as one of urgency under section 5 of the PIE Act.

[27] It was further stated in the answering affidavit that the occupiers consist of women, children, the disabled, the needy, and elderly persons, and as such, are the most vulnerable of society. It is also said that the occupiers have different sources of income, and some survive on grants. However, there is no evidence presented to substantiate these bald statements. All that is provided are copies of identity documents, which at best can only serve to establish the identity and age of a person.

[28] It is however conceded in the answering affidavit that the occupiers are occupying the units unlawfully and had received notices of eviction from the owners. The only defence offered to this is the application of section 4(7) of the PIE Act.

[29] The owners filed a replying affidavit the morning of 24 April 2025. In this replying affidavit the owners took specific issue with the lack of any proper substantiation of the allegations of the occupiers being left homeless and destitute, as made in the answering affidavit. The owners further pointed that previously, and before all the difficulties in this matter arose, most of the occupiers were rent paying

tenants, who had then stopped paying rental. This could either mean a rent boycott, or such occupiers are complicit with building hijackers, who are now in charge of providing the occupiers with such accommodation. The owners also provided substantiation that rentals were being collected from individual unit occupiers by the hijackers, in answer to the bald denial thereof by the occupiers.

[30] In response to the bald allegations of the occupiers relating to the conduct of Dlamini, the owners submitted substantiation of his unlawful conduct, and that he was in fact informing occupiers to confront service providers seeking to deliver notices. Also in reply to the bald allegation by the occupiers that there was in essence nothing dysfunctional at the building, the owners pointed to the fact that the insurance policy of the building was cancelled in November 2024 because the insurance assessors were refused access to the building, and that the water pump at the building was not working and could not be repaired, because contractors were denied access to the building. In September 2024, there was a fire hazard and near explosion at the electricity box of the building because of unauthorised access thereto. The attempts by the owners to attempt to deal with all these issues were ultimately scuppered by rising hostility at the building. As matters stand, the building is not safe.

[31] The owners pointed out that the eviction application did not relate to all the occupiers in the building, and was only limited to the occupiers of the 24 rooftop rooms and 14 individual units (flats).

[32] And finally, there was no opposition by any of the occupiers cited in the application under case number 2025 – 050558, and no version of their particular personal and related circumstances, and especially on the issue of being left homeless and destitute, was placed before Court.

[33] It is on the basis of all of the aforesaid pleadings that the matter came before Fisher J on 24 April 2025. However, and as touched on above, the merits of the matter were never argued before the learned Judge. Instead, the parties embarked upon discussions on how to best deal with the matter, and this led to an agreed consent order, which is the Order as set out above.

[34] Unfortunately, none of the occupiers availed themselves of the opportunity specifically afforded to them under paragraph 5 of the order of 24 April 2025. In particular, they were required to submit temporary emergency application (TEA) application forms, with supporting documents and as substantiated by affidavit, by 19 May 2025. They failed to do so. Instead, and on 23 June 2025, the occupiers proceeded to upload TEA forms onto CaseLines. None of these forms were supported by affidavit. Several forms were incomplete, and most of the forms were also not accompanied by the supporting documentation prescribed by the Order of 24 April 2025. In fact, most of the documents submitted were ID documents and birth certificates.

[35] Some 12 units to this application have not provided any documents in respect of their personal circumstances. In particular, none of the occupants provided bank statements or salary slips to support the allegations regarding their incomes, or lack thereof, which is essential in determining whether such an occupant would qualify for assistance from the City. And finally in this regard, of the 33 occupiers that did submit forms, only 31 have provided unit numbers.

[36] The order of 24 April 2025 contained interdictory provisions relating to the right of access of owners to the property, and the immediate ceasing of unlawful behaviour. Notwithstanding, and in a supplementary affidavit, the owners indicate that they and their contractors were still being denied access to the building. For example, and on 20 May 2025, an assessor from Old Mutual attended at the building to conduct a survey, but was denied any access to the building, and in particular, the electrical boxes. The assessor conducted a visual inspection from outside the building, and noted broken window panes and bulbs hanging from the ceiling. This all resulted in a termination of the insurance. Further, the collection of rental by the unauthorised persons continued. This was al in direct violation of the order of 24 April 2025. The supplementary affidavit has not been contradicted.

[37] Finally, further notices as contemplated by section 5(2) were served on the occupiers on 11 July 2025, advising of the hearing date of 22 July 2025.

Analysis

[38] I will first deal with the general considerations of urgency as contemplated by Rule 6(12). There are as follows: (a) the applicant has to set out explicitly the circumstances which renders the matter urgent with full and proper particularity; (b) the applicant must set out the reasons why the applicant cannot be afforded substantial redress at a hearing in due course; (c) where an applicant seeks final relief, the court must be even more circumspect when deciding whether or not urgency has been established; (d) urgency must not be self-created by an applicant, as a consequence of the applicant not having brought the application at the first available opportunity; (e) the possible prejudice the respondent might suffer as a result of the abridgement of the prescribed time periods and an early hearing must be considered; and (f) the more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency.[8]

[39] *In casu*, it is my view that these requirements have been satisfied. The owners have set out why this matter is urgent. Most importantly, concerted unlawful conduct is at stake, and immediate intervention is necessary to prevent further prejudice from accruing. An important consideration in this regard is that the occupiers have blatantly ignored the Court Order of 24 April 2025 and have continued with unlawful conduct, despite being interdicted. I am further of the view that should a Court find that the circumstances as specifically defined in section 5(1) of the PIE Act exist, it carries with it an inherent quality of urgency. It is patently apparent, also from what is discussed below, that substantial relief in due course would not be available to the owners.

[40] The occupiers have referred to earlier individual eviction proceedings instituted by the owners relating to individual occupiers in the course of 2024, as a basis to illustrate that the application is not urgent. However, the comparison is not appropriate. As explained by the owners, these were individual eviction applications in the normal course, which had nothing to do with the application at hand and why

[8] See *Association of Mineworkers and Construction Union and Others v Northam Platinum Ltd and Another* (2016) 37 ILJ 2840 (LC) at paras 20 – 26.

the current application is necessary. What the current case concerns is a concerted effort by occupiers smacking of unlawfulness, which has only now escalated to the extent that urgent legal intervention is necessary. Added to this, and considering all the events leading up to the hearing of this matter on 22 July 2025, the occupiers have been afforded a proper opportunity to present their side of the case, and will thus suffer little prejudice as a result of truncated time limits and an early hearing. I am convinced that it is appropriate consider this case as one of urgency in terms of Rule 6(12).

[41] Turning then to the merits, there are two constitutional rights that come into play in this matter. First, and in terms of section 25 of the Constitution: *'No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*' Nontheless, section 26 of the Constitution guarantees the right to access adequate housing and provides:

> ‘(1) Everyone has the right to have access to adequate housing.
> (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
> (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.’

[42] As stated above, the PIE Act strikes at this tension, and in particular section 4 (which concerns general evictions) and section 6 (which concerns eviction by the State) are important. Of relevance to the current matter would be section 4, which is the section relied on by the occupiers. The relevant parts of the section read:

> ‘(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful

occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph *(a)*.

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.'

[43] The provisions of section 4, considered in the context of sections 25 and 26 of the Constitution, have been the subject matter of many judgments of the Constitutional Court. I do not intend to repeat all that has been said in this regard. I will suffice by the following reference to the recent judgment of the Constitutional Court in *Commando and Others v City of Cape Town and Another*[9], which in my view in essence says it all:

'Several defining features of the right of access to adequate housing have emerged from the jurisprudence of the courts:

(a) Section 26(2) of the Constitution requires a comprehensive and workable national housing programme for which each sphere of government must accept responsibility. It also provides access to adequate housing for people at all economic levels of society.

[9] 2025 (3) SA 1 (CC) at para 71.

(b) Measures aimed at giving effect to the right must be reasonable, both in conception and implementation. They must be balanced and flexible; must make appropriate provision for attention to housing crises and to short-, medium- and long-term needs; and must be continuously reviewed.

(c) The right of access to adequate housing must be realised progressively, by which is meant that the right cannot be realised immediately, but the state must take steps to make housing more accessible to a larger number and wider range of people as time progresses.

(d) The state's obligation does not require it to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources.

(e) The measures must be calculated to attain the goal expeditiously and effectively, but the availability of resources is an important factor in determining what is reasonable.

(f) The state's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas, and from person to person.

(g) Access to land for the purpose of housing is included in the right of access to adequate housing.

(h) The ultimate goal is access by all people to permanent residential structures, with secure tenure, and convenient access to economic opportunities and health, educational and social amenities, but because this will take time, provision must also be made for those in desperate need.

(i) In any proposed eviction which may render persons homeless, a process of meaningful engagement by the responsible authority is constitutionally mandated in terms of s 26(3).

(j) The Constitution does not give a person the right to housing at the state's expense, at a locality of that person's choice (in this case the inner city). Thus, temporary emergency accommodation is not ordinarily required to be in the inner city. However, the state would be failing in its duty if it were to ignore or fail to give due regard to the relationship between location of residence and place where persons earn or try to earn their living.

(k) In *Thubelisha Homes* this court did not require alternative accommodation to be located in a specific area. Indeed, it said that 'the Constitution does not guarantee a person a right to housing at the government's expense, at the locality of his or her choice'.

(l) In *Blue Moonlight* this court held that alternative accommodation needed to be 'as near as possible' to the property from where the occupiers were evicted. Thus, location is a relevant consideration in determining the reasonableness of temporary emergency accommodation. This is typically given effect to through orders that state that the emergency accommodation be 'as near as possible' to the property from which persons are evicted.

(m) Although regard must be had to the distance of the location from people's places of employment, locality is determined by several factors, including the availability of land.

(n) The right to dignity obliges the local authority to respect the family unit when it is obliged to supply homeless persons with temporary emergency accommodation.

(o) Majiedt J, persuasively writing for the minority in *Thubakgale*, stated that —

'the permanent accommodation to be provided by the Municipality must . . . include ensuring continued access to schools, jobs, social networks and other resources which the applicants in this case enjoy where they currently stay, and which they will lose if displaced. This interpretation is in line with spatial justice and the right to the city, and therefore also in line with the remedial and

transformative purposes of socioeconomic rights and the Constitution more broadly.

. . .

In the context of South Africa's highly segregated urban areas and scarce access to resources, it should also mean that spatial justice must be considered in determining what constitutes adequate housing.'

(p) The right to adequate housing (permanent accommodation in the context of *Thubakgale*) is not a stand-alone right that should be interpreted in isolation of other rights enshrined in the Constitution. The rights in the Constitution are interdependent, interlinked and interconnected. This is exactly what this minority judgment highlights. The right to adequate housing in the current case implicates other rights, such as the right to dignity, the right to basic education and the right to freedom of trade, occupation and profession.

(q) This court in *Grootboom* held as follows:

'Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socioeconomic rights, and, in particular, in determining whether the state has met its obligations in terms of them.'

[44] The aforesaid considerations set out in *Commando supra* would thus constitute the basic principles to be applied by any Court in assessing whether it is just and equitable to evict any unlawful occupier under section 4 of the PIE Act. However, that is not the only basis upon which eviction can be competently granted. This is where section 5 of the PIE Act comes in, which section makes it competent to grant evictions, albeit on an interim basis and pending a final enquiry under section 4, without having to necessarily satisfy all the requirements under section 4. Or in other words, it is an eviction distinct and separate from section 4 of the PIE Act. Section 5 reads:

'(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.

(2) Before the hearing of the proceedings contemplated in subsection (1), the court must give written and effective notice of the intention of the owner or person in charge to obtain an order for eviction of the unlawful occupier to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.'

[45] Section 5 of the PIE Act was considered by the Constitutional Court in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, Amici Curiae)*[10], and it was confirmed that an application under such section was distinct and separate from an eviction application under section 4. The Court pertinently said:[11]

'It is apparent that s 5(1) sets out certain very stringent requirements to obtain an urgent eviction pending the determination of proceedings for a final order of eviction of the applicants. In proceedings in terms of s 5 therefore, any issue in relation to whether an order for eviction should be granted, and, in particular, whether it is just and equitable to grant the eviction order, would be entirely irrelevant. The PIE Act contemplates that urgent proceedings in terms

[10] 2010 (3) SA 454 (CC).
[11] Id at para 90.

of s 5 will be separate, independent and distinct from the substantial eviction proceedings contemplated in s 6. ...'

[46] The aforesaid ratio in *Thubelisha Homes* has been consistently applied since.[12] In *Telkom SA (SOC) Ltd v Moeletsi and others*[13], the Court pertinently stated:

'Eviction orders under section 4 of PIE may only be granted if they are "just and equitable". It has been held, correctly I think, that this test need not be met before an urgent interim eviction order under section 5 is made. Once the jurisdictional requirements set out in section 5 itself have been met on the facts, an eviction order may follow whether or not it is "just and equitable" ...'

[47] Similarly, and in *Tshwane North Technical and Vocational Education and Training College v Madisha*[14], the Court held as follows:

'Section 5 of PIE allows for application for an urgent eviction order that may be granted without a court considering the justice and equity of the eviction in light of all relevant circumstances, as is usually required in terms of section 4 and 6 of PIE. This departure from the constitutional command in section 26(3) of the Constitution that no eviction from a home may be granted without a court having considered all relevant circumstances is off-set by the fact that section 5 allows for application only for an interim eviction order, that applies pending finalisation of an application for final eviction. Consideration of the justice and equity of the eviction is not avoided, but only postponed ...'

[48] It must follow from the aforesaid that in granting an urgent eviction order under section 5 of the PIE Act, the owners would not have to satisfy the requirements of section 4(7), and in particular, would not have to satisfy the test of it being just and equitable and that alternative accommodation may be made available. But nonetheless, the Court in *Telkom supra* believed that the issue as to whether a

[12] See for example *Mkhondo NO and Another v Mashilo and Others* 2024 JDR 5268 (GJ) at para 9.
[13] 2023 JDR 1869 (GJ) at para 10.
[14] 2019 JDR 0065 (GP) at para 34.

person would be rendered homeless by the eviction is still a factor that would need to be considered, where it was held:[15]

> '... The question of whether, and to what extent, an urgent interim eviction order would lead to homelessness is clearly relevant to the jurisdictional requirements of section 5. In assessing, for example, whether there is a real and imminent danger of substantial injury to persons or property unless an unlawful occupier is immediately evicted, consideration must obviously be given to whether an eviction would cause substantial injury to those to be evicted. In considering whether the hardship caused to the applicant if the eviction order is not granted exceeds the likely hardship to the unlawful occupier if it is, the hardship of likely homelessness is plainly a relevant factor.'

[49] I agree with the aforesaid reasoning in *Telkom*. Whether or not a person is rendered homeless and would effectively be destined for the street must be considered in the context of balancing prejudice under section 5(1), and pursuant to the Constitutional mandate under section 26(3) of the Constitution. This is especially so, considering that at this stage, the obligation of the City to investigate and provide for alternative accommodation does not yet arise. But in order for the occupiers to avail themselves of this consideration, they would have to provide evidence to the Court of their particular circumstances that would, in the event of an eviction order, render them homeless and destitute. The Court can only exercise its duties to ameliorate prejudice and conduct the balancing exercise under section 5(1), in this context, based on a proper factual foundation. Otherwise, the refusal to grant relief where the requirements of section 5(1) and (2), as they read, have been satisfied, would be nothing more than speculative and based on considerations of sympathy, which is not appropriate. In my view, and in order for this Court to properly and justly decide this very issue, was the reason why the obligation and duty was allocated to the occupiers in terms of paragraph 5 of the order of 24 April 2025. *In casu*, and in order for this Court to come to a proper and informed decision on whether or not to grant eviction, both parties, being legally represented, effectively agreed on a

[15] Id at para 11.

process to place the necessary information before Court. That process entailed that supplementary affidavits and TEA forms, as accompanied by prescribed supporting documents, be submitted by a deadline (19 May 2025). This agreed process was then sanctioned by Court Order. This approach would be in line with the following dictum in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*[16]: '*... The central task is therefore to identify those who require assistance from the local authority. What the City needs to know is who requires temporary emergency accommodation and the nature of their needs ...*'. The Court concluded:[17]

> 'Accordingly, the easiest way to obtain the necessary information and furnish it to the City is by the LRC preparing a list of those of its clients who require temporary emergency accommodation, with details of their names, ages, family circumstances, sources of income and having annexed to it appropriate proof of identity. The list and its details must be verified by an affidavit of information and belief and if possible by affidavits by the individuals concerned. There seems to be no reason why that list should not be furnished within one month of the date of this court's order. In cases where the occupiers have legal representation this will ordinarily be the most effective way in which to proceed.'

Therefore, and *in casu*, with the occupiers being legally represented, the aforesaid function could be competently executed by their attorneys, who actually agreed to the obligation.

[50] Following on the aforesaid, the insurmountable difficulty for the occupiers is that they then did not follow this process. No supporting affidavits were filed by 19 May 2025. All that happened is that on 23 June 2025, a number of TEA forms were uploaded onto CaseLines, which did not even include all the occupiers, and of the forms that were uploaded, most were incomplete and did not contain the prescribed supporting documents. And worse still, in the absence of any supporting affidavits, these forms are simply not in evidence, and the information therein is

[16] 2012 (6) SA 294 (SCA) at para 47.
[17] Id at para 48.

unsubstantiated. Insofar as it can be said that the uploading of these TEA forms is in some way still compliance with the Order (which in my view it is not), then condonation is not even asked for in respect of the failure to comply with the prescribed deadline of 19 May 2025. I asked counsel for the occupiers why effectively none of the clear terms of paragraph 5 of the Order of 24 April 2025 had been complied with, despite such Order having been made with his agreement. He was unable to provide any explanation for the failure. This unfortunately, by virtue of the paragraph 8 of the Order of 24 April 2025 itself, has an adverse consequence, being that the occupiers who fail to furnish this information shall be deemed to be disqualified from the provision temporary emergency accommodation.

[51] According to counsel for the occupiers, all that they needed to do to defeat the eviction application at this stage was to allege homelessness, which according to him they did in the answering affidavit. This proposition is legally unsustainable. As held in *Occupiers, Berea v De Wet NO and Another*[18]:

> 'As is apparent from the nature of the enquiry, the court will need to be informed of all the relevant circumstances in each case in order to satisfy itself that it is just and equitable to evict and, if so, when and under what conditions.
> .....
>
> In order to perform its duty properly the court needs to have all the necessary information. The obligation to provide the relevant information is first and foremost on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.'

[52] Further, the reliance on the answering affidavit to establish compliance with what is envisaged by the order of 24 April 2025 is misguided and inappropriate. This answering affidavit was filed before the order of 24 April 2025 was agreed to and then granted, and despite its existence, paragraph 5 was adopted. Considering that

[18] 2017 (5) SA 346 (CC) at paras 46 – 47.

the principal issue raised in the answering affidavit was homelessness, the following statement made therein is telling:

> 'I am not able at this point under the limited time given to place all the occupiers personal circumstances, and I am unable to proceed on the defence of homelessness, without a report filed by the City of Johannesburg as directed and demanded in the Constitutional judgment of Occupiers of Erf 87 and 88 Berea Township // Christiaan De Wet and other CCT 108 / 2016. Which judgment cements the position that homelessness and destituteness are valid defences to a case of eviction.' (sic)

[53] Surely, this is exactly why the Order of 24 April 2025 was framed as it was, with the agreement of the occupiers' legal representatives. The terms of this Order was the enabler for the report that the occupiers were insisting upon. It enabled the occupiers to place their personal circumstances before Court and the City. And once that was done, it enabled the City to come up with the report. And all this would be done by prescribed deadlines, which would meet the aspirations of the owners that this be expeditiously dealt with. It was a win - win for all. Yet it is spurned by the occupiers. They, in the circumstances, simply cannot come and cry foul when they are then evicted, on the basis that they would be homeless and destitute, when they did not even prove this, as they were required to do.

[54] In my view, the owners were very much alive, despite launching the application in terms of section 5, that they would ultimately need to satisfy the requirements of section 4(7) to show that final eviction would be just and equitable.[19]

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[19] In *Changing Tides* (supra) at para 25, the Court held: '*… A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve the gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution, is faced with two separate enquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or*

That is why they brought the City into the proceedings from the outset, and raised the issue of the obligation of the City to provide alternative accommodation to qualifying occupiers. As held in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*[20], in the context of what is just and equitable under section 4(7):

> 'In order to conclude whether eviction by a particular date would in the circumstances of this case be just and equitable, it is mandatory to consider 'whether land has been made available or can reasonably be made available'. The City's obligations are material to this determination.'

[55] It is clear to me that in the proceedings leading up to the return date on 22 April 2025 and despite the obligations on the City to report as contained in the orders of 1 and 15 April 2025, it would have been a virtually impossible task for the City to complete such a report, without any cooperation and participation from the occupiers themselves. Once again, that is precisely why the order of 24 April 2025 came about in the clear terms that it contained. In essence, it first placed the obligation on the occupiers to cooperate and participate by providing the necessary information in the prescribed form by 19 May 2025. Once that was done, the obligation then shifted on to the City to conduct an investigation pursuant to what it had been provided, and then, by 30 May 2025, provide its report. But if the occupiers did not comply with the first leg of this process, then the second leg was impossible.[21] This must result in a negative inference being drawn again the occupiers where it came to these considerations. In *Mayekiso and Another v Patel NO and Others*[22] the Court held:

> 'Dolamo J went on to refer to the litigation in which Mr Mayekiso had immersed his family while not taking the court into his confidence regarding their personal circumstances. The inference which therefore can fairly be

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need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity. …'.

[20] 2012 (2) SA 104 (CC) at para 41

[21] See *Changing Tides* (*supra*) at para 40, as to what such a report should contain and deal with.

[22] 2019 (2) SA 522 (WCC) at para 68.

> drawn is that it was not convenient to set out personal circumstances such as income and expenditure because these would not have sustained the bald allegation of homelessness. Similarly, a list of failed attempts to secure alternative accommodation might have assisted the court. Once again, the absence thereof in the papers speaks volumes ...'

[56] Similarly, and in *Shanike Investments NO 85 (Pty) Ltd and Another v Ndima and Others*[23] the Court had the following to say, as part of the Court's reasoning in granting an urgent eviction:

> 'I am satisfied that if any of the respondents seriously intended to engage the applicants and raise a bona fide defence to the ejectment sought then they had ample opportunity to do so. The failure to file any such affidavit setting out the position of the individual respondents against whom urgent eviction orders were sought is not explained. Nowhere is it suggested that they were unable to file an affidavit in good time or that there was insufficient time to do so within the two-week period between receiving the application and the date of hearing. There is no application for condonation. ...'

[57] As is clear from the answering affidavit, the occupiers rely on the judgment in *Occupiers Berea* supra as a basis to assert that mere allegations of homelessness must be accepted as it stands. But this reliance is entirely misplaced. In *Occupiers Berea*, an eviction order had been granted on the basis that the occupiers in that case had agreed to the terms of the order. The very question whether their consent to being evicted in terms of an agreed Court Order was valid.[24] Due to a number of factors, the Court decided that the occupiers were not aware of the full extent of their rights and that the persons who appeared on their behalf in Court (they were unrepresented) were not mandated to agree to the order.[25] The Court concluded that there was no consent to the eviction order.[26] It is in this context that the Court then

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[23] 2015 (2) SA 610 (GJ) at para 42.
[24] See para 23 and 32 of the judgment.
[25] Paras 8 and 28 – 29.
[26] Id at para 38.

continued to decide what should have been considered by the High Court, in the absence of consent, for the granting of eviction, and concluded:[27]

> 'As is apparent from the nature of the enquiry, the court will need to be informed of all the relevant circumstances in each case in order to satisfy itself that it is just and equitable to evict and, if so, when and under what conditions. However, where that information is not before the court, it has been held that this enquiry cannot be conducted and no order may be granted. …'

[58] The case *in casu* is entirely different. The occupiers were all legally represented from the point of filing an answering affidavit, and in particular, when the order of 24 April 2025 was granted by way of the consent order agreed to between the legal representatives of the respective parties. The order agreed to was designed to place the necessary information the Court would consider when deciding the eviction, before Court. The occupiers, without cause, reason or explanation, simply flouted the very order they had agreed to. As such, the judgment in *Occupiers Berea* does not assist them.

[59] Nonetheless, counsel for the occupiers persisted with a contention that by virtue of paragraph 6 of the order of 1 April 2025, despite the occupiers not having complied with the order of 24 April 2025, the City continued to have an obligation to report on its obligations to provide alternative accommodation, and without this report, eviction was not competent. This contention was simply wrong, for a number of reasons. First, the order of 1 April 2025 was no longer extant. It was an interim order, wholly substituted by the order by Fisher J of 24 April 2025. To simply illustrate the point, it is impossible to marry the obligation on the City to provide a report in 10 days as contemplated by the order of 1 April 2025, with the obligation on the City to provide the same report by 30 May 2025 as contemplated by the order of 24 April 2025. Second, surely it cannot be said that the Citty has an obligation to provide such a report entirely in vacuo. How would it even know who is eligible for assistance or who is even seeking assistance, especially where the occupiers themselves complain that they did not have the opportunity to provide such

[27] Id at para 46.

information. That must surely require actual participation by the occupiers, but none was forthcoming. As such, and at this stage, the issue of exploring alternative accommodation for the occupiers is not a relevant consideration. In any event, and as said in *Grobler v Phillips and Others*[28]:

> 'In *Port Elizabeth Municipality* this court stated that an offer of alternative accommodation is not a precondition for the granting of an eviction order but rather one of the factors to be considered by a court ...'

[60] All said, the occupiers have failed to prove that they would be rendered homeless. That being so, as held in *Stay at South Point Properties (Pty) Ltd v Mqulwana and Others*:[29]

> 'It has been found that where one cannot demonstrate that one would be without alternative accommodation, and thus be rendered homeless, the protection of s 26(3) does not find application.'

[61] This leaves the only remaining question, namely whether the owners have satisfied the requirements of section 5 itself. It was undisputed that the requirements of section 5(2) had been satisfied. For the reasons to follow, I believe that the requirements of section 5(1) were also satisfied.

[62] First, and on the facts, it is apparent to me that what has been happening over the last few months leading up to the applications is a systemic hijacking of the building by an organised group of occupiers, that have effectively taken control of the building. In doing so, they physically bar access to anyone not approved by them, and in particular the owners, their agents, service providers, and contractors. This access is being barred *inter alia* by way of rogue security personnel, engaged by the occupiers themselves. They are collecting rentals from unit occupiers, but do not pay for any services or pay anything across to the owners. Whilst this is all ongoing, the building is not being maintained, and the current caretaker is being refused access.

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[28] 2023 (1) SA 321 (CC) at para 38.
[29] 2024 (2) SA 640 (SCA) at para 9.

As matters stand, property insurance for the building has been cancelled, solely as a result of the unlawful conduct of the occupiers. And to put matters over the top, so to speak, is that the occupiers have ignored the Court orders of 1, 15 and 24 April 2025 that prohibited this unlawful conduct.

[63] The above state of affairs is to the prejudice of other occupiers of units that simply want to get on with their lives and genuinely pay for what they receive in occupation and services. Whilst all this ongoing, the rights of these other occupiers are eroded. In particular, they would be exposed to all the ramifications of a building that is not being maintained and where the providing of the municipal services is done illegally at the whim of the criminal element. The conduct thus has a broader ramification.[30]

[64] Despite the unsafe conditions caused by a lack of maintenance, the situation is exacerbated by the fact that Municipal services are not being paid for, and then, when this is disconnected by the City, it is illegally reconnected with all its adverse implications. Illegally reconnected services is a recipe for disaster and causes unacceptable risk to occupants of the building. There has already been one incident of a near fire as a result of unlawful access to the electricity boxes. There is a water pump that is not working, and which cannot be repaired because access to the building is prevented. If this allowed to continue, I believe there is some substance to the owner's contentions that the building could turn into an inner-city slum. That will not be in the interest of any of the other occupiers of units the building, and will materially prejudice the rights of the owners of the units.

[65] It is undeniable that the owners are suffering material financial harm. They are expected to honour all their financial obligations relating to the building and the units (such as for example bond and rates payments) without getting any revenue for the occupation thereof. It was undisputed that the occupiers were not paying any rental to the owners. This is made worse by the fact that the occupiers did pay rental in the

[30] See *Nyathi v Tenitor Properties (Pty) Ltd* 2015 JDR 1296 (GJ) at para 33.

past, but this stopped when the hijack ensued. As said in *Nyathi v Tenitor Properties (Pty) Ltd*[31]:

> '... the occupants are not paying for their occupation, nor is anyone else paying for it; while the respondent is availing the building for their occupation. This fact represents an economical aberration for which there is, objectively, no justification.'

And in *Mkhondo NO and Another v Mashilo and Others*[32] it was held that:

'I find myself in agreement with these submissions. In *YG Property Investments (Pty) Ltd v Selota*, it was held that harm to commercial interests may constitute the type of damage or injury contemplated in s 5(1) of the PIE Act.'

[66] It should also be considered that the owners did not immediately launch into eviction proceedings. The occupiers were given several opportunities to legitimize their occupation of the rooms / units in the building, through concluding proper lease agreements with the owners and / or to simply pay the arrear rentals and services due. If they had acceded to these efforts, they would not be facing eviction. But instead, they remained steadfast in their unlawful behaviour. As such, they can only have themselves to blame for the predicament they now find themselves in.

[67] In my view, the above facts and circumstances satisfy all the requirements as contemplated by section 5(1) of the PIE Act. I am satisfied that there would be real and imminent danger of substantial injury or damage, not only to the building itself, but also to all the other individual occupiers of units in the building, as well the owners and their proxies and service providers, if the eviction of the occupiers in this case is not carried out. The eviction will restore control to the owners, their agents, service providers and contractors, who will then be in a position to exercise the necessary due care over the building to ensure the elimination of health and safety risks to all occupiers. Needless to say, the substantial risk of injury or even death to

[31] 2015 JDR 1296 (GJ) 32. See also *Citiq Residentials (Pty) Ltd v Mulumba* 2018 JDR 2188 (GJ) at para 13.
[32] 2024 JDR 5268 (GJ) at para 25.

the service providers and contractors of the owners who seek to access the property would be removed. Further violence and intimidation would be curtailed. There also can be little doubt that the prejudice to the owners if eviction is not granted far exceeds the likely hardship to the occupiers if an order for eviction is granted. And lastly, there is certainly no other alternative remedy available, especially considering all the other efforts the owners have already taken.

[68] In *Shanike Investments supra*, the Court dealt with a similar situation. In that case, the Court dealt with facts quite similar to the case *in casu*. In particular, it was contended by the applicants that the respondents in that case infringed on their rights by attempting to make the complex unmanageable and uneconomical and embarked upon conduct directed at subverting the applicant's right of ownership so that the complex may be taken over by others who have no legal rights. This was also accompanied by acts of intimidation of others.[33] The Court called this: '*... a classic case which s 5(1) was intended to address...*'[34]. The Court concluded as follows, in granting an urgent eviction order:[35]

> 'The provisions of s 5(1) seek to balance the rights each individual unlawful occupier may have to claim protection under PIE, against the interests of ensuring that, in according those rights, a landlord is not remediless if the latter can satisfy a court that the occupier falls within s 5(1). The section appears to weigh all relevant considerations and, to the extent that it might affect a protected right under the Constitution (and counsel referred to the right to dignity and housing), I am satisfied that the legislation itself balances the competing rights, and such limitations as may affect an occupier's rights are not by reason of the legislation itself ...'

[69] In *Tenitor Properties supra* the Court adopted a similar approach in similar circumstances. In particular, the Court had specific regard to the following factors, in granting an urgent eviction order, which are equally apposite *in casu*:[36]

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[33] See paras 47 – 49 of the judgment.
[34] Id at para 54.
[35] Id at para 108.
[36] Id at pas 33 – 34.

> ‘Second, the scale on which such conduct is occurring is significant. One is not dealing with a single occupant in a block of flats. That scenario might, depending on the circumstances, have been manageable. Here a whole building is involved.
>
> Third, the fact that the appellants' continued occupation is maintained by violence is relevant. This represents a degree of anarchy which is fundamentally incompatible with the founding value of s.1(c) of the Constitution, which is the supremacy of the Constitution and the rule of law (emphasis added).’

[70] A final reference I wish to make is to the judgment in *Tshwane North Technical and Vocational Education and Training College v Madisha* [37] . In considering an urgent application for eviction where the building concerned was falling into a state of disrepair, the Court held that:[38]

> ‘A balancing of likely hardship also favors the Applicant. Apart from the actual damages to life and limb of students for whom the Applicant is responsible that may result from an accident or fire, in such an event the Applicant will face civil liability and criminal sanction. The repair and refurbishing required is too extensive for it to be done while the students are resident - and the Applicant maintains in any event that it does not have the money to do it. The Respondents are in any event likely to leave the hostel for family homes during the festive season and can upon their return make alternative arrangements.
>
> There is no other remedy available to the Applicant, satisfactory or otherwise. It appears from the papers that numerous attempts have been made to get the Respondents to leave voluntarily, but these have all failed. The section 5 application seems tailor made for the situation that the parties find themselves

[37] 2019 JDR 0065 (GP).
[38] Id at paras 40 – 41

> in. It is unclear from the papers what the position would be of the Respondents would they be evicted temporarily - whether, that is, they would be rendered homeless. ...'

In my view, quite similar considerations apply *in casu*.

[71] As alluded to at the commencement of this judgment, there has unfortunately been a recurring theme of the provisions of the PIE Act being used by occupiers of properties for nefarious purposes. This kind of legislative abuse should be discouraged. I unreservedly accept that the objectives of the PIE Act are essential to give effect to the Constitutional imperatives found in section 26, and that it is an essential tool to prevent arbitrary, unlawful, and even entirely unreasonable conduct by property owners. But this pendulum should not be allowed to swing too far to the other side, thereby rendering the legitimate exercise of their rights by property owners effectively nugatory. I will explain my view in this regard below.

[72] It is of course undeniable that that past inequalities, discriminatory conduct, and the plight of the homeless and impoverished have let to occupation of land and buildings out of what is nothing short of necessity. In most of these instances, one had to do with vacant land or unoccupied or dilapidated / derelict buildings. In many instances, the occupation of such properties had been going on for years, without anything being done about it. This kind of situation is in essence the bulk of what the Constitutional Court had to deal with where it came to evictions under the PIE Act,[39] and in that context, the conclusions reached are fully understandable, and, with respect, unassailable. In *Blue Moonlight supra*, the following pertinent statements were made:[40]

> 'PIE was adopted with the manifest objective of overcoming past abuses like the displacement and relocation of people. It acknowledges their quest for homes, while recognising that no one may be deprived arbitrarily of property. The preamble quotes ss 25(1) and 26(3) of the Constitution. In *PE*

[39] See *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC); *Port Elizabeth Municipality* (*supra*); *Thubelisha Homes* (*supra*).
[40] Id at paras 36 – 37.

Municipality it was stated that the court is required 'to balance out and reconcile the opposed claims in as just a manner as possible, taking account of all of the interests involved and the specific factors relevant in each particular case'.

Unlawful occupation results in a deprivation of property under s 25(1). Deprivation might, however, pass constitutional muster by virtue of being mandated by law of general application and if not arbitrary. Therefore PIE allows for eviction of unlawful occupiers only when it is just and equitable.'

[73] But what of the case where one has normal rental paying occupants in a residential building fit for purpose, who simply decide, for ulterior reasons, in an organised fashion, to stop paying rental, and to exclude the owner of the building from the management and control thereof, for their own benefit. In my view, this is the kind of conduct that flies directly in the face of what is contemplated by section 25 of the Constitution, and should not be worthy of protection of occupation under section 26 of the Constitution. But unfortunately, and in these circumstances, the provisions of section 4 of the PIE Act are abused as a practical stratagem to frustrate the building owner, even for years, and so remain in occupation of the building. I believe this is the very reason why section 5 of the PIE Act was enacted in the form that it was.

[74] I will illustrate the point by way of a practical example. Accept that in a particular case, the occupiers of the building are not paying any rental or costs for services, without any cause or reason for doing so. This is despite the fact that they had been compliant in the past. As a result, their right of occupation is terminated, so that the property owner can secure new occupants that will pay. But when the building owner seeks their eviction, they oppose eviction and plead that to evict them would not be just and equitable and they will be rendered homeless and destitute, under circumstances where they were the very cause of such possible eventuality. That results in the State having to come into the matter with all the expense associated with it, and all the considerations under section 4 of the PIE Act having to be applied. This all results in years of litigation and appeals. And all the while, the occupiers remain in occupation of the building, pay for nothing, maintain nothing,

whilst the property owner, in order to at least offer some protection of its investment, must pay for the costs and expenses associated with the building. The possibility of a later damages claim against the occupiers is simply not a realistic or viable prospect, as it will only result in more costs, with the very real likelihood that the defendants in such a case would be unable to pay the judgment debt. This is simply wrong, and in my view, nothing short of an abuse of what the PIE Act really intended.

[75] But I believe it goes further than that. It is common knowledge the housing crisis has not been resolved.[41] As such, the building of more accommodation is essential to give effect to section 26 of the Constitution. Whilst the State undoubtedly has an obligation in this regard, the importance of the private sector cannot be countenanced. And this is where the problem lies. What private investor would want to invest (including building) in property consisting of high density accommodation for lower income earners, only to be exposed to the risk of tenants organising themselves into a rental boycott and building hijack, and it then taking years to resolve the situation, during which the investor is left materially financially compromised. I am pretty sure the answer would be very few, as the risk is simply too great. So, the upshot of this would be that such accommodation is not built / provided, and resolving the housing crisis is derived of what would be a valuable resource. In my view, the following remarks in *Emfuleni Local Municipality v Builders Advancement Services CC and Others*[42] are insightful:

> ‘As it is with employment, so it is with housing: one does not, in my view, 'save' jobs by making it more and more difficult to dismiss employees, and one does not make housing more widely available by rendering the ownership of property which is let to tenants a serious economic hazard. Why would any sensible person take the risks of employing people when it can be potentially ruinous to do so? Why buy or build housing to let to tenants, if the fundamental link between tenancy and the payment of rentals to landlords is

[41] In *City of Cape Town v Various Occupiers* 2024 (5) SA 407 (WCC) at para 2, it was said: ‘*… What was true in 1997 remains true today. While conditions for millions have improved, still millions of people in South Africa live in poverty with inadequate housing, water, healthcare and food. The Constitution's call to remedy those conditions remains no less urgent …*’.
[42] 2010 (4) SA 133 (GSJ) at para 19.

> undermined? Why invest in property if there is a serious risk that the 'investment' will be worthless? Obviously, economic freedom is not to be confused with economic chaos: economic freedom must function within a legal matrix. Nevertheless, matrices, in order to be nurturing, must allow room for growth and development. If not, they can suffocate. If we want an African Renaissance to emerge, we shall have to place our faith in greater economic freedom, and not less ...'

[76] Accordingly, and in my view, it is thus clear why the considerations as contemplated by section 4 of the PIE Act should not apply to the kind of situation I have described above, where the property owners seek immediate and urgent relief under section 5 of the PIE Act. This is because it restores, at least on an interim basis, effective control over the property back into the hands of the property owner, by removing the wrongdoers from the property. That way, the owner is in the position to mitigate any damages it may suffer as a result of the delays occasioned by the pending final eviction dispute. Of course, the provisions of section 5(1) are such that the Court is able to still make a proper determination of the facts in order to guard against abuse by unscrupulous property owners, undue prejudice to occupants and to give effect to section 26(3) of the Constitution. That is why the homelessness enquiry remains relevant in such context. But in these cases, and considering why the eviction came about in the first place, the burden should be on the occupiers to establish that they would be entitled to relief on this basis.

[77] It cannot be ignored that as matters stand, the occupiers have raised no defence or case opposing the clear assertion that their occupation of the various properties is unlawful and they are not paying the owners for any rental and services. That being so, and as said in *Blue Moonlight supra*[43]: '*… Unlawful occupation results in a deprivation of property under s 25(1) …*'. In turn, the only remedy for this state of affairs is eviction. It is not the objective of the PIE Act to turn what is unlawful occupation into de facto Court endorsed occupation by refusing eviction just because

[43] Id at para 37.

the occupiers may baldly assert that they would be homeless, as is the case *in casu*.[44] As held in *Changing Tides supra*:[45]

> 'In most instances where the owner of property seeks the eviction of unlawful occupiers, whether from land or the buildings situated on the land, and demonstrates a need for possession and that there is no valid defence to that claim, it will be just and equitable to grant an eviction order. That is consistent with the jurisprudence that has developed around this topic. In *Ndlovu v Ngcobo* Harms JA made the point that ownership and the lack of any lawful reason to be in occupation are important factors in the exercise of the court's discretion.'

[78] The real objective of the PIE Act is to delay eviction to the appropriate point in time so as to allow for proper engagement between the parties, to allow for the exploration of alternative means to accommodate the persons evicted, and to ensure eviction is just and equitable. *In casu*, and at a level of principle, eviction is justified as matters now stand. In *Blue Moonlight supra*, the factual circumstances were comparable to the case *in casu* with occupation that was once lawful but becoming unlawful, however in that case the conditions of the building in which the occupiers lived was described as 'abysmal'.[46] In considering section 4 of the PIE Act, the Court accepted that in these circumstances, the requirements of 'just and equitable' and the obligations of the City relating to alternative accommodation were material considerations.[47] Whilst finding that the City in that case had failed in its obligations relating to alternative accommodation, where it came to the actual eviction order itself, the Court held that:[48]

> '... To the extent that it is the owner of the property and the occupation is unlawful, Blue Moonlight is entitled to an eviction order. All relevant circumstances must be taken into account though to determine whether,

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[44] See *Grootboom* (*supra*) at para 92; *Port Elizabeth Municipality* (*supra*) at para 20.
[45] Id at para 19.
[46] See paras 7 – 10
[47] Paras 33 and 41 of the judgment.
[48] Id at para 96.

> under which conditions, and by which date, eviction would be just and equitable. The availability of alternative housing for the Occupiers is one of the circumstances.'

[79] All that the Court required from the property owner in *Blue Moonlight* was described as : '*Although Blue Moonlight cannot be expected to be burdened with providing accommodation to the Occupiers indefinitely, a degree of patience should be reasonably expected of it …*'.[49] Obviously, and *in casu*, the urgency of the matter makes the inclination not to require such patience justified. But the point is that it does not detract from the suitability of eviction**.**

[80] Finally, and as counsel for the owners point out, it is not the end of the road for the occupiers. The order sought is interim in nature, in that it is made pending a final determination of the eviction application under section 4 of the PIE Act. In the course of participating in those proceedings, the occupiers would still be in the position to place all the necessary information relating to their particular circumstances, and whether they would be homeless or have alternative accommodation available, before Court. Once that is done, the City would then still have to report with regard to alternative accommodation, as required by law. In short, the occupiers can still be accommodated. In *Madisha supra* the Court held as follows:[50]

> 'In addition one must not lose sight of the fact that the application for final eviction must still be determined. In those proceedings the justice and equity of the eviction will be considered and the Respondents would have the opportunity to regain their residence in the hostel ...'

[81] Overall considered, I thus conclude that the owners have satisfied the requirements of sections 5(1) and (2) of the PIE Act. As such, they are entitled to an eviction order, as an interim order, pending the conclusion of the final eviction proceedings under section 4 of the PIE Act. I am also satisfied that the terms of the

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[49] Id at para 100.
[50] Id at para 42

eviction order, as proposed by the owners, is in line with the jurisprudence where it comes to granting such orders under section 5.

Costs

[82] This only leaves the issue of costs. In this context, it must be remembered that this is not a case where a group of lay litigants sought to defend a case by themselves. They were, when it counted, legally assisted. As such, costs should follow the result. That being said, and in coming to a decision to make a costs award against the occupiers, I take into account their conduct of simply blatantly ignoring the terms of the order of 24 April 2025 their legal representatives had agreed to, without any explanation for this failure. I also consider that the occupiers continued to insist on the application of section 4 of the PIE Act, and in particular a bald allegation of homelessness, when it must have been clear that these considerations simply could come to their assistance. A costs order against the occupiers is thus justified.

[83] It is for all the reasons as set out above, that I made the order that I did as reflected in paragraph 7 of this judgment, *supra*.

SNYMAN AJ
Acting Judge of the High Court of South Africa
Gauteng Division, Johannesburg

Appearances:

Heard on:	22 July 2025
For the Applicants:	Advocate L Peter
Instructed by: Attorneys	Vermaak Marshall Wellbeloved Inc
For the Individual Respondents:	Advocate L Mhlanga

Instructed by:	Precious Moleya Attorneys
Attorneys Judgment:	25 July 2025