

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

CASE Number: 2022 – 047372

(1) REPORTABLE: ~~YES~~/NO

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

(3) REVISED: **YES**/~~NO~~

8 August 2025

In the matter between:-

CITY OF EKURHULENI

Applicant

and

PRECIOUS SHUENYANE SAKO

First Respondent

**UNLAWFUL OCCUPIERS OF THE REMAINDER
OF ERF 4[...], EDENVALE TOWNSHIP**

Second Respondent

Summary: Eviction – section 4(7) of PIE Act considered – overall requirements of section satisfied – respondent in unlawful occupation of property – applicant entitled to eviction – personal circumstances of respondent considered – delayed eviction just and equitable in the circumstances

Eviction – municipal report with regard to temporary emergency accommodation – requirements of report considered – report inadequate – deficient report however does not prevent eviction – any deficiency mitigated by order of investigation by applicant and participation by respondent – date of eviction delayed allowing for such process

Eviction – just and equitable considered – requires balance of interest of both parties – rights of property owner must be respected – occupant must establish a proper case of personal considerations to establish homelessness as defence to eviction

Eviction – eviction order with delayed date granted – order subject to further report by applicant on temporary emergency accommodation – order further subject to participation in process by respondent

JUDGMENT

SNYMAN, AJ

Introduction

[1] The current matter concerns an application brought by the applicant for the eviction of the first respondent from the property of the applicant situate at the Remainder of Erf 4[...], Edenvale Township, Unit [...] V[...] Court, 1[...] V[...] Avenue, E[...] (the property). The application has been brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ (PIE Act).

[2] As seems to be the norm in these kinds of applications, what was sought to be presented by both parties went beyond the normal sets of affidavits in terms of the Uniform Rules of this Court. Further, the applicant complained that the first respondent sought to introduce new facts and issues for the first time in her heads of argument, which is not a permissible manner in which to place such evidence before Court. It is obviously true that heads of argument do not constitute affidavits, and new evidence cannot be placed before Court by way of heads of argument.² But what fortunately ameliorated the problem was that the applicant filed a supplementary affidavit to answer all the contentions in the heads of argument of the first respondent it complained of. In the interest of justice, and considering that the

¹ Act 19 of 1998.

² 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; *President of the Republic of South Africa v Modderklip Boerdery* 2005 (5) SA 3 (CC) at para 36.

applicant was afforded an opportunity to answer what is contained in the heads of argument, I will take all these issues into consideration. After all, eviction proceedings have a constitutional imperative,³ and in order to ensure that a complete picture is obtained before such relief is granted, some relaxation in the strict rules of presenting evidence may be justified, provided one party is not unduly prejudiced.

[3] Another preliminary issue that must be dealt with, but fortunately in this instance being a positive development, is the issue about whether the first respondent was in unlawful occupation of the property. The first respondent had specifically contended in her first answering affidavit that the applicant's case that she was in unlawful occupation of the property was not true, and that she was in fact in lawful occupation thereof. However, the first respondent's counsel, at the commencement of the matter, indicated that this issue was not being persisted with by the first respondent, and that the point was abandoned. The first respondent conceded she was in unlawful occupation of the property. This issue will accordingly be decided on the basis of this concession, which in the end, when considering the facts, was properly made.

[4] The application came before me on 30 July 2025 for determination. After hearing argument by both parties and having considered all the pleadings and documents, I indicated to the parties that I would reserve judgment, and that judgment will be handed down on 8 August 2025. I now proceed to hand down written judgment, starting with setting out the background facts.

The relevant background facts

[5] The Applicant is the lawful and registered owner of the property.⁴ Although the applicant is a Municipality, and thus part of the State, the property in question is normal commercial residential property, rented out by the applicant to tenants, and from which it earns a revenue. As stated above, it is now undisputed that the first

³ See *KSL v AL* 2024 (6) SA 410 (SCA) at para 25; *Leshabane v Minister of Human Settlements and Others* (2024) 45 ILJ 833 (LC) at para 51; *Araujo v Krige and Others* 2022 JDR 2349 (GP) at para 94.

⁴ Therefore, applicant is the person in charge of the property, as defined in section 1 of the PIE Act.

respondent is currently in the unlawful occupation of the property. As such, section 4 of the PIE Act would find application in this instance.

[6] Prior to the institution of these proceedings, the first respondent had been residing at the property with her now estranged husband, Walter Sako (Sako). Sako was an employee of the applicant, and he was permitted to occupy the property pursuant to such employment. In this context, and on 1 November 2019, the Applicant and Sako entered into a written lease agreement in respect of the property. It was a lease agreement in the ordinary course, in terms of which Sako paid rental to the applicant. Sako also paid for services in respect of the property. He was all intents and purposes an ordinary tenant.

[7] In 2020, Sako retired from the employment of the applicant. Pursuant to such retirement, Sako of his own accord terminated the lease agreement, in writing, with effect from 10 December 2020. It further appears that he vacated the property, but left the first respondent behind in occupation thereof. Having remained behind in the property, so to speak, the first respondent however did not pay any rental for the property, and she never sought to conclude a new lease agreement with the applicant.

[8] The applicant then required the first respondent to vacate the property. She failed to do so. She was given written notice to vacate the property on 28 May 2021, within 30 days, failing which legal proceedings to evict her would be instituted. The first respondent still did not vacate the property. A further identical notice followed on 22 February 2022, again giving the first respondent 30 days to vacate the property. Yet again, the first respondent paid no heed to this notice. In fact, there is no evidence of the first respondent even seeking to engage with the applicant to regularize her position. And throughout, she paid no rental.

[9] Finally, and in a notice dated 22 September 2022, the applicant, through its attorneys, gave the first respondent final notice that her occupation of the property was unlawful, and she was required to vacate the property by 31 October 2022. This notice was served on the first respondent by way of the Sheriff on 3 October 2022. The first respondent did not vacate the property by the stipulated deadline. The

current application then followed on 16 November 2022, and has been pending since.

[10] As stated, the first respondent no longer disputes that she is in unlawful occupation of the property. What the first respondent has instead done is to focus her opposition to being evicted on basis that it would not be just and equitable to do so in her case, as contemplated by the PIE Act. The first respondent further contends that the matter is not ripe for hearing because of non-compliance with section 4(7) of the PIE Act. In this regard, the first respondent has set out a number of personal circumstances, elaborated on below.

[11] The first respondent states that the property has been her home since the conclusion of the lease agreement with Sako, that she is fifty years old, unemployed, and unable to find alternative accommodation. She further states that she is still married to Sako, in community of property, but the relationship has soured, the marriage is over, and there are currently divorce proceedings pending. She also provided a protection order being obtained against Sako on 29 March 2021, and contends it is impossible for her to live with him. But what she unfortunately did not do is to set out what efforts she took to find alternative accommodation.

[12] The first respondent further complained that the applicant had disconnected electricity supply to the property, despite there being a pre-paid meter at the property, and this constituted harassment and unlawful conduct. The first respondent states that her attorneys did complain to the applicant about this in writing, but nothing was done by the applicant in response.

[13] As to her further socio-economic circumstances, the first respondent added in her supplementary answering affidavit that she has been unemployed since 2017. However, she does do occasional temporary work assisting her aunt with her aunt's company's stalls at expos and worked for the IEC as election officer. This work was sporadic and not well-paid, and she only managed to pay her day to day living costs out of these earnings. As to her qualifications, she has a matric and diploma in beauty technology. She states has been looking for employment, has not been successful, but provided no particularity as to the efforts she took in this regard.

[14] According to the first respondent, she has no income and no savings, and depends on her two sisters for money. These sisters have their own families and live in Midvaal and Edenvale respectively. It is not possible for the first respondent to live with them, as there is no space for her in their homes. As to other family members, the first respondent's father lives with the first respondent's brother in a two-bedroom low cost house in Alexandra. There is also insufficient space to accommodate her in this house. The first respondent concedes that she does stay over at this house from time to time, when visiting, but when she does so, she sleeps on the floor in the living room area.

[15] The first respondent explained that due to the disconnection of electricity, it has become intolerable to stay at the property at certain times. On such occasions, she would visit at her father's house and stay there for a short period. However, there is actually no space for her there and sleeping on the floor is far from suitable. In a nutshell, she says that based on the above facts, she will be rendered homeless if eviction is granted.

[16] In reply to the aforesaid contentions by the first respondent, the applicant argued that the first respondent is still married to Sako, in community of property, and as such he is obliged to maintain her, yet she took steps to enforce this obligation. The applicant further suggests that the first respondent could impress it upon Sako that he has a duty to provide her with alternative accommodation. The applicant also said that although not ideal, it was possible for the first respondent to live with her father. As to all the personal circumstances set out by the first respondent, articulated above, the applicant basically contends those are not sufficiently substantiated by bank statements, proof of actual income received, or other supporting documents relating to applications for employment. The applicant is also critical of the first respondent's failure to supply supporting documents concerning her divorce proceedings.

[17] The applicant also refers to an affidavit by a neighbour that the first respondent has not been seen at the property for some time, which suggests she was not living there. This contention is supported by a further statement by the

applicant that when officials of the applicant visit the property, as they did on numerous occasions, there is never anyone there and the premises is locked, which equally suggest that the first respondent was mostly not living there, and simply refuses to return the property to the applicant. Added to this, the applicant finally contends that the first respondent is being deliberately obstructive where it comes to making herself available to the applicant to be interviewed and to participate in an investigation as to temporary emergency accommodation as contemplated by the PIE Act, in an attempt to scupper her eviction.

[18] As to the disconnection of the electricity, the applicant has stated that a valid consumer agreement must be in place, and therefore it disconnected the electricity supply until a new tenant takes occupation and concludes a consumer agreement. The first respondent made no attempt to conclude such a consumer agreement.

[19] It should also be considered that in this case, the first respondent had been residing at the property since the beginning of 2021, without paying any rental, and without making any effort to at least negotiate with the applicant concerning a possible lease agreement and / or the payment of rental.

[20] Ultimately, the applicant provided two reports as contemplated by section 4(7) of the PIE Act with regard to temporary emergency accommodation in respect of the first respondent. The first report is dated 8 July 2025, and the second report is dated 11 July 2025. These reports will be dealt with later in this judgment.

[21] And finally, notice as contemplated by section 4(2) of the PIE Act was served on the first respondent on 14 April 2025, by affixing the same to the door of the premises, as an authorised method of service, as she could not be found despite several attempts, advising of the hearing date of 28 July 2025. As stated, the first respondent did appear at Court on the hearing date, duly represented by two counsel.

Analysis

[22] Before dealing with the merits of the application, the first respondent, in her first answering affidavit, raised a point concerning the non-joinder of Sako. Then, and in her heads of argument, she raised a further technical point, never raised in any of her answering affidavits. This point related to disputing the veracity of the founding and replying affidavits, by challenging the personal knowledge of the deponents where it came to the facts deposed to. However, and when the matter was argued before me, these points were wisely not persisted with. There can be no doubt that, on the facts, considering what the first respondent herself said about her relationship with Sako, and that he had long ago vacated the property, Sako would not have any interest in the outcome of this matter. And as to the issue of the irregularities relating to deponents to the founding and replying affidavits, this was effectively disposed of by the applicant's supplementary affidavit, which I have already said should be allowed in the circumstances. These points consequently do not stand in the way of the determination of this case on the merits.

[23] Turning then to the merits of this case, 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.'* Nonetheless, 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.'

[24] The PIE Act strikes at the tension that obviously arises when giving effect to the two rights as set out above. In a nutshell, it provides that the rights of the property owner must still be respected, and that where an occupier is in unlawful occupation of the property without a valid defence, eviction in the ordinary course would be competent. The balance struck then comes in where the eviction is however made subject to it being required to be just and equitable, in all the

circumstances.⁵ ‘Just and equitable’ is not an *ad infinitum* obstacle to eviction, as this would permanently deprive a property owner of its rights, which is not the intention of the PIE Act. What is at stake is by its very nature a temporary measure to mitigate excessive harm to occupants, and the required measures would ordinarily serve to delay eviction until it is just and equitable to do so. The position was succinctly summarized in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*⁶ as thus:

‘... 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 need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries

⁵ In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at paras 36 – 37, the following pertinent statements were made: ‘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 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.’

⁶ 2012 (6) SA 294 (SCA) at para 25.

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. ...'

[25] Turning now to the specific provisions of section 4 of the PIE Act, the relevant parts thereof provide as follows:

'(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.'

[26] 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*⁷, which in my view in essence summarizes 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.

(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.

⁷ 2025 (3) SA 1 (CC) at para 71.

(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.'

[27] A few things must be disposed of first in this matter. The first respondent has contended in her answering affidavits that the mere contention of homelessness automatically triggers the obligation of the applicant to provide her with temporary emergency accommodation. However, this contention cannot be correct. As held in *Occupiers, Berea v De Wet NO and Another*⁸:

'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.'

[28] It follows that even though an applicant for eviction must satisfy a Court that it is just and equitable to do so, it cannot be expected of such an applicant to also be required to prove the negative so to speak, in the sense that it must prove that considering all the personal circumstances of the occupier, the occupier will not be left homeless. The reason why this would be the case is logical, in that much of that information would be in the personal knowledge of the occupier. Accordingly, it must be accepted that there is an evidentiary burden on the occupier to provide and then

⁸ 2017 (5) SA 346 (CC) at paras 46 – 47.

establish (by way of proper proof) such personal circumstances sufficient to convince the Court of homelessness, in order for the protections under the Constitution and the PIE Act to apply.⁹ As held in *Stay at South Point Properties (Pty) Ltd v Mqulwana and Others*:¹⁰

‘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.’

[29] So, and conducting a determination of what is just and equitable *in casu*, what has been placed before this Court? Or, differently said, has the first respondent done enough where it comes to the duty that rests on her in this respect. In my view, I do not believe the first respondent has simply provided bald assertions or made out no case as to her particular circumstances, being the kind of failures on the part of occupiers many judgments are critical of. She has offered, considering the facts as set out above, a comprehensive explanation as to her personal circumstances, and if true, these are the kind of circumstances that could likely lead to her being homeless, if evicted.

[30] Insofar as there exists a factual dispute concerning what the first respondent has put forward to substantiate why she would be left homeless, it must be remembered that these are motion proceedings in which the applicant seeks final relief. As such, the well-established principles in *Plascon Evans Paints v Van Riebeeck Paints*¹¹ find application, where the Court held:

‘... These principles are, in sum, that the facts as stated by the respondent party together with the admitted or facts that are not denied in the applicant party’s founding affidavit constitute the factual basis for making a determination, unless the dispute of fact is not real or genuine or the denials

⁹ Compare *Mayekiso and Another v Patel NO and Others* 2019 (2) SA 522 (WCC) at para 68; *Shanike Investments NO 85 (Pty) Ltd and Another v Ndima and Others* 2015 (2) SA 610 (GJ) at para 42; *Luanga v Perthpark Properties Ltd* 2019 (3) SA 214 (WCC) at paras 44 – 45.

¹⁰ 2024 (2) SA 640 (SCA) at para 9.

¹¹ 1984 (3) SA 623 (A) at 634E-635C.

in the respondent's version are bald or not creditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable, that the court is justified in rejecting that version on the basis that it obviously stands to be rejected ...'

[31] As to when a factual dispute raised by the respondent party may not be considered to be real or genuine, the Court in *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another*¹² provided the following guidance:

'... the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected ...'

[32] Considering the version of the first respondent in her answering affidavits, it simply cannot be said that it obviously fictitious, far-fetched, implausible or untenable. It would be wrong to say that what the first respondent described as her personal considerations could not resort in the realm of what would be plausible and real, considering the undisputed facts of what happened between her and Sako, her age, her level of qualifications, and the unemployment rate in the Country. It also cannot be ignored that the applicant could not put up actual contradictory facts in reply. The applicant's opposition on the facts is more akin to making submissions off the facts proffered by the first respondent. I am satisfied that all considered, there is no reason why the version offered by the first respondent as to her personal circumstances should be rejected. As held in in *TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another*¹³:

¹² 2009 (3) SA 187 (W) para 19. See also *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 13; *Minister of Home Affairs and Others v Jose and Another* 2021 (6) SA 369 (SCA) at para 20.

¹³ (2017) 38 ILJ 2721 (LAC) at para 29.

‘... Credibility is only capable of being addressed on paper when the assertions are palpably absurd or demonstrably false. The threshold that had to be cleared is ‘wholly fanciful and untenable’. Moreover, the appetite to resolve paper contests by reference to the probabilities, though ever present, is not appropriate. ...’

[33] Yes, the applicant’s criticism of the first respondent needing to do more to substantiate what she is saying about her personal circumstances has some justification, but certainly enough has been said by her to at least trigger the obligation of the applicant to conduct an investigation as to temporary emergency accommodation as contemplated by section 4(7) of the PIE Act.¹⁴ As held in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*¹⁵, 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.’

[34] It is now more or less trite that part and parcel of the section 4(7) determination is the issue of temporary emergency housing. In this respect the applicant, who is also the Municipality, must enter the equation and investigate whether the first respondent would indeed qualify for temporary emergency housing and / or whether it is available. This investigation must then culminate in the providing of a report to indicate if the first respondent objectively qualifies for it, and if so, what is the availability thereof. Ironically, the complaint of the applicant about the lack of substantiating information is something that could be properly addressed in the compilation and providing of this report.

[35] What did the applicant then provide in the form of such a report, considering it had the obligation to do so? As touched on above it provided two reports. The first

¹⁴ I may add that in the replying affidavits filed by the applicant, it had undertaken to provide such a report. On this basis alone, it must be held to this bargain, and a proper report must thus be done.

¹⁵ 2012 (2) SA 104 (CC) at para 41

report, provided on 8 July 2025, appears to be a generic report in general terms. It explained all the challenges associated with the applicant having to obtain the necessary information from occupiers to compile reports, especially considering the large number of occupiers that have come to the fore needing assistance. The report then sets out the general position of the applicant where it comes to available housing, indicating that the housing database of people awaiting housing reflects 366 148 such people. It is further indicated that there are no vacant units available within the applicant's rental stock, and it has an estimated waiting list of 3 622 occupants, with an average waiting period of 3 to 5 years. The report concludes by stating that the applicant is currently not in a position to offer alternative accommodation due to a lack of readily available resources, and contends that the exercise of obtaining personal circumstances of occupiers would thus be futile.

[36] I must confess that I have difficulties with this kind of generic report. Whilst the information concerning the general status of available housing is useful in making a determination, the fact that the applicant believes it would not have anything available does not detract from its obligation to nonetheless investigate the personal circumstances of each individual occupier. That is what the law expects it to do, even if it is difficult or may likely not have a positive outcome. To describe it simply, a particular situation may be so bad that a plan must be made, at least for temporary accommodation of some kind, even if there is not an immediately 'vacant unit' available. To hide behind a general contention of non-availability and operational challenges is a cop-out, and constitutes a failure to discharge the constitutional duty that rests on the applicant in this regard.¹⁶

[37] I can only presume that the applicant must have appreciated that it was skating on thin ice in seeking to rely on such a general report. I believe that is why there was the second report of 14 July 2025. In this report, it is indicated that one of the applicant's officials conducted a site visit at the property on 11 July 2025, but found it locked with no occupants. According to the report, a neighbour witnessing this came out and informed the official that the first respondent has not been staying at the property for some time and that they do not know her whereabouts. This led

¹⁶ See *Changing Tides* (*supra*) at para 40.

the applicant to conclude that the first respondent will not be rendered homeless should the eviction be granted, and it then deferred to the first generic report.

[38] As correctly suggested by the first respondent, what the report from the applicant actually needed to contain was summarized in *Changing Tides supra* as follows:¹⁷

‘(a) The information available to the local authority in regard to the building or property in respect of which an eviction order is sought, for example, whether it is known to be a 'bad building', or is derelict, or has been the subject of inspection by municipal officials and, if so, the result of their inspections. (It appears from some of the reported cases, like the present one, that the local authority has known of the condition of the building and precipitated the application for eviction by demanding that owners evict people or upgrade buildings for residential purposes.) The municipality should indicate whether the continued occupation of the building gives rise to health or safety concerns and express an opinion on whether it is desirable in the interests of the health and safety of the occupiers that they should be living in such circumstances;

(b) such information as the municipality has in regard to the occupiers of the building or property, their approximate number and personal circumstances (even if described in general terms, as, for example, by saying that the majority appear to be unemployed or make a living in informal trades), whether there are children, elderly or disabled people living there, and whether there appear to be households headed by women;

(c) whether in the considered view of the local authority an eviction order is likely to result in all or any of the occupiers becoming homeless;

¹⁷ Id at para 40.

(d) if so, what steps the local authority proposes to put in place to address and alleviate such homelessness by way of the provision of alternative land or emergency accommodation;

(e) the implications for the owners of delay in evicting the occupiers;

(f) details of all engagement it has had with the occupiers in regard to their continued occupation of or removal from the property or building;

(g) whether it believes there is scope for a mediated process, whether under s 7 of PIE or otherwise, to secure the departure of the occupiers from the building and their relocation elsewhere and, if so, on what terms and, if not, why not.'

[39] Obviously, in my view, not all the above requirements for a report, as articulated in *Changing Tides*, would always be relevant. Particular circumstances would dictate which of these considerations need to be addressed in a report. For example, an individual eviction of a single non-paying tenant from a housing unit (such as a flat) in an ordinary and maintained residential building would not require the report to deal with the state of the building, or health and safety considerations. But certainly, dealing with the personal circumstances of the occupant and whether that occupant would be left homeless are issues that must always be dealt with.

[40] The above being said, I have little hesitation in concluding that the two reports by the applicants are non-compliant. But that is not the end of it for the applicant and does not mean it must now be non-suited where it comes to the eviction sought by it. The purpose of the report is not to stop eviction. The purpose of the report is to determine whether eviction should be delayed and / or whether temporary emergency accommodation should or could be provided. As said in *Grobler v Phillips and Others*¹⁸:

¹⁸ 2023 (1) SA 321 (CC) at para 38. See also *Blue Moonlight (supra)* at para 96.

‘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 ...’

[41] And recently, the Full Court on appeal in *Msibi v Occupiers of Unit 67 Cedar Creek Trefnant Road Ormonde Ext 28 and Another*¹⁹ held that:

‘The fact whether land has been made available or can reasonably be made available for the relocation of the unlawful occupier and the rights and needs of the mentioned persons, is not a requirement but a circumstance that may be brought for the consideration of a Court minded to grant the order of eviction. In my judgment, subsection (7) cannot be read to mean that if an applicant is unable to show that a land has been made available or is capable of being made available, such an applicant must be non-suited as if he or she failed to satisfy a Court that all the requirements of the section have not been complied with. Subsections (7) and (8) shares an inextricable relationship.’

The Court in *Msibi* concluded:²⁰

‘Turning to second reason of the lack of report, this Court categorically states that the availability of a report by a municipality is not a legal requirement to obtain an eviction order. In *Drakenstein Municipality v Hendricks and Others* the Court confirmed that there is no general duty on a municipality to report in all cases before an eviction order may issue. In *Absa Bank Limited v Murray and Another* an order was issued in the absence of a municipality report. When regard is had to the provisions of subsection (7), the issue of the availability of land, it being made available, or reasonably being made available falls squarely on the shoulders of three bodies; namely; (a) the municipality; (b) organ of state; or (c) another land owner. That being so, why is it not a requirement that a report must be obtained from the organ of state

¹⁹ 2025 JDR 0640 (GP) at para 22.

²⁰ Id at para 31

or another land owner before it could be considered just and equitable to order eviction.' (emphasis added)

[42] A further factor to consider is that the first respondent has been in occupation of the property for close on five years (a point harped on by the applicant's counsel) without paying one cent in rental, or even attempting to do so, or at least try and make arrangements with the applicant with regard to settle what is due. The Court in *Nyathi v Tenitor Properties (Pty) Ltd*²¹ dealt with this as follows:

'... 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.'

[43] The first respondent was given more than ample prior warning to at least attempt to make arrangements for alternative accommodation, of her accord, prior to being faced with an eviction application. She was given three sets of eviction notices in 2021 and in 2022. She thus had years to make such arrangements. She did nothing.²² However, and when faced with an actual eviction application, her first approach was to say that she is entitled to stay there and she is in lawful occupation, when that was clearly not the case, especially considering that she was relying on the former lease agreement between the applicant and Sako which required the payment of rental which she knew she was not paying. This conduct and what is nothing else but an undue benefit she enjoyed for years must be thrown into the mix when conducting the balance evaluation at this stage.

[44] However, the five years odd delay that has occurred in this case may also be a double-edged sword, especially where it comes to the absence of a proper report on temporary emergency accommodation by the applicant, in respect of the first

²¹ 2015 JDR 1296 (GJ) at para 32. See also *Citiq Residential (Pty) Ltd v Mulumba* 2018 JDR 2188 (GJ) at para 13.

²² There was no explanation in the answering affidavits of what the first respondent did when she received the eviction notices. Other than a bald statement that she could not find alternative accommodation, no particulars of efforts taken in this regard was provided by the first respondent.

respondent. To state it simply, the applicant has been waiting for five years. It waited for two years before even bringing an eviction application. So, what can be wrong in exercising a final bit of patience and wait a few months more, just to ensure that a proper report comes to hand before the first respondent is finally ejected from the property. As succinctly said in *Blue Moonlight supra*:²³

‘Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient, and accept that the right to occupation may be temporarily restricted ...’

The Court ultimately concluded²⁴

‘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 ...’.

[45] This then brings me to another cause of complaint of the applicant. It contends that the first respondent has been deliberately avoiding its officials for the purpose of frustrating the eviction. In this respect, there is also evidence of not only the officials of the applicant, but also the Sheriff, attending at the property on a significant number of occasions, however the first respondent is never found there. The first respondent has not disputed that evidence. She has however explained that because the electricity has been disconnected, she would from time to time go to her father’s house if things become too intolerable. This explanation is thin, but not implausible. But at least the facts raise a reasonable suspicion that the first respondent does not live at the property all the time, and only sometimes. This also deserves consideration.

[46] The applicant has also sought to rely on a letter it wrote to the first respondent’s attorneys on 5 March 2025, *inter alia* stating that despite repeated

²³ Id at para 40.

²⁴ Id para 100.

attempts by the applicant's officials to contact the first respondent on the telephone number given to them by the first respondent's attorneys, the applicant's officials have been able to contact the first respondent at such number provided. It was requested by the applicant's attorneys that they be provided with an alternative contact number for the first respondent, or that three different dates / times, and a suitable venue be provided for her to meet with the first respondent. An answer from the first respondent's attorneys was forthcoming on 12 March 2025. In this answer, the first respondent's attorneys indicated that the first respondent had answered the call when they called at the number given, and that the matter could be resolved if the applicant tendered alternative accommodation. The letter however does contain an admission that the first respondent does not reside at the property all the time, because the electricity was cut off. There was no response to the request for suggested dates and times for a meeting between the applicant and the first respondent. According to the applicant, this all indicated that the first respondent was deliberately avoiding the applicant's officials and obstructing the process.

[47] There may be some substance in these complaints by the applicant. The fact that the first respondent immediately answers a call from her attorneys made to the same number is not an explanation, but an indictment. It likely shows that the first respondent chooses not to answer calls from the applicant's officials, knowing she is facing eviction and that she does not reside at the property all the time. And the contention by the first respondent's attorneys that the matter could be settled if the applicant tendered 'alternative accommodation' is telling, and suggests she wants the applicant to put her up indefinitely at its cost. The same thing can be said about failing to engage with the applicant's attorneys to arrange for a meeting with the first respondent. In my view, and with an eviction looming, to which there was no lawful defence, other than the just and equitable considerations under section 4(7) of the PIE Act, the first respondent's attorneys were obliged to do a lot more. I believe they should have, once the applicant had made its concerns clear to them, proactively engaged with the applicant to ensure that proper information concerning the personal circumstances of the first respondent was provided to the applicant. It should have taken it upon themselves to set up a consultation between the first respondent and the applicant's officials. The failure to do so, considered in the context of the applicant's legitimate complaints as aforesaid, is a factor that weighs

against the first respondent in the balance. For example, and as said in *Changing Tides supra*:²⁵

‘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.’

[48] In order to short-circuit any blame possibly attributed by one party to the other about what must be done going forward in this matter, what is needed is a definitive order obliging the applicant to conduct the investigation, and then providing a compliant report, by a stipulated deadline. Conversely, the first respondent must be obliged by way of the same order to co-operate in the process, and provide the applicant with all the information necessary, as properly substantiated, to enable the applicant to properly and effectively fulfil its tasks.

[49] In the end, when I consider all the above factors as a whole, I arrive at a number of conclusions. First, there can be no doubt that as a matter of general principle, the applicant is entitled to an eviction order, as the first respondent is in unlawful occupation of the property with no defence for it, and the applicant is entitled to regain possession of the property so it can earn a revenue from it.²⁶ The first respondent has been in unlawful occupation for some five years, without any

²⁵ Id at para 48.

²⁶ In *Changing Tides (supra)* at para 19, it was held: ‘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 ...’.

attempt to pay rental or regularise the situation, or even to find alternative accommodation herself. Nonetheless, the *prima facie* indication is, as matters now stand, that she could be left homeless if evicted. But I do accept that she does not reside at the property all the time, which mitigates her prejudice, as she is at least, partly, living somewhere else. Although the applicant did not provide a compliant report, this should not non-suit it where it comes to eviction. Instead, fairness and equity dictate that the applicant be required to conduct an investigation into and then provide a report as to whether the first respondent qualifies for temporary emergency accommodation and / or whether it is available, once she is required to vacate the property. Therefore, and whilst eviction is justified, it would be just and equitable to delay it for a period of time, so as to allow the applicant to fulfil the aforesaid tasks.²⁷ As made clear in *Msibi supra*:²⁸

‘On the strength of *Changing Tides*, which was a binding authority to the Court below, the enquiry related to possible homelessness is directed to the question of the implementation date of the eviction as opposed to the granting of the eviction order. ...’

[50] In conclusion, I am satisfied that the applicant has made out a proper case for an eviction order to be granted, and for the first respondent to be evicted from the property. However, I consider it just and equitable that the date of eviction be delayed for three months. In this period of three months, the applicant shall engage with the first respondent, and the first respondent shall reciprocate, on the basis as set out in the order crafted at the conclusion of this judgment. This will allow the issue of temporary emergency accommodation for the first respondent to be explored, which can then apply, if applicable, immediately upon her having to vacate the property. I believe this would be a just and equitable solution, balancing the interests of all parties.

Costs

²⁷ See *Msibi (supra)* at para 32.

²⁸ *Id* at para 27.

[51] Where it comes to the issue of awarding costs, I enjoy a wide discretion.²⁹ Whilst it is true that the applicant was successful in securing an eviction, I must take into account that it was not an unqualified victory. I further consider the applicant's own failures where it comes to the providing of the report discussed above. But I also consider the first respondent's conduct in avoiding her own obligations in this respect. On the evidence, the first respondent is not a person of means, and considering that she will be evicted by virtue of the order granted, I simply do not believe it would be fair to compound her difficulties with a costs order. Another consideration against making a costs order is the fact that first respondent, responsibly, did not persist in seeking to challenge her eviction on the basis that she was in lawful occupation of the property, which was obviously an untenable proposition. In the balance, I therefore exercise my discretion as to costs by making no order as to costs.

[52] In all the circumstances as set out above, the following order is made:

Order

1. The first respondent, Precious Shuenyane Sako, is evicted from the immovable property situate at Remainder of Erf 4[...], E[...] Township, Unit [...] V[...] Court, 1[...] V[...] Avenue, E[...] (the property).
2. The first respondent is ordered to vacate the property by no later than 8 November 2025, failing which the eviction order may forthwith be carried out and executed.
3. The applicant, being the City of Ekurhuleni, is ordered to engage with the first respondent and conduct an investigation into whether the first respondent qualifies for temporary emergency accommodation and whether

²⁹ As recently said by the Full Court in *Mineral-Loy (Pty) Ltd v Highveld Steel & Vanadium Corporation Limited and Another* 2025 JDR 0442 (GP) at para 56: '... It is trite that a court has a wide and unfettered discretion in awarding costs ...'.

such accommodation is available to be provided to the first respondent, which process of engagement shall include convening and conducting an interview with the first respondent in person, before 1 September 2025.

4. The first respondent is ordered to co-operate and engage with the applicant and its officials in providing a date and time for the interview, when requested to do so by the applicant. The applicant may direct this request to the first respondent's attorneys, which attorneys shall be obliged to assist the applicant in this regard.

5. The first respondent shall provide the applicant with all information and / or documents requested by the applicant in the interview convened with her, either in the interview itself or within 14(fourteen) days of the date of the interview.

6. The applicant shall prepare a report whether the first respondent qualifies for temporary emergency accommodation and whether such accommodation is available to be provided to the first respondent, and shall provide such report to the first respondent's attorneys and file the same in Court, on or before 8 October 2025.

7. Should the report as contemplated by paragraph 6 of this order reflect that the first respondent qualifies for temporary emergency accommodation and that such accommodation is available, the applicant shall provide the first respondent with such accommodation upon her vacating of the property on 8 November 2025.

8. There is no order as to costs.

SNYMAN AJ

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

Appearances:

Heard on:	30 July 2025
For the Applicant:	Advocate K Potgieter
Instructed by:	DDV & Chiba Attorneys
For the First Respondent:	Advocate E Webber together with Advocate L Mokwena
Instructed by:	Chen & Lin Inc Attorneys
Judgment:	8 August 2025