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

CASE NO: 2024-106527

DATE: 14 August 2025

(1) NOT REPORTABLE

(2) NOT OF INTEREST TO OTHER JUDGES

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

Applicant

and

**THE UNKNOWN INDIVIDUALS OR GROUP OF PERSONS TRESPASSING
AND OR ATTEMPTING TO INVADE WITH THE INTENTION TO OCCUPY
THE IMMOVABLE PROPERTY DESCRIBED AS ERF 1[...], RABIE RIDGE
EXTENSION 1, AND ERF 1[...], RABIE RIDGE, EXTENSION 2** First Respondent

**OCCUPIERS OF ERF 1[...], RABIE RIDGE EXTENSION 1, LISTED IN
ANNEXURE "A" TO APPLICANT'S FOUNDING AFFIDAVIT** Second Respondent

CHIEF OF POLICE, SOUTH AFRICAN POLICE SERVICE Third Respondent

Neutral Citation: *City of Johannesburg v Unknown Individuals and Others*
(2024-106527) [2025] ZAGPJHC --- (14 August 2025)

Coram: Adams J

Heard: 24 April 2025

Delivered: 14 August 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 14 August 2025.

Summary: Civil procedure – urgent application – for interim eviction – section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act) – urgent eviction order to be granted if the following requirements complied with: (a) real and imminent danger; (b) likely hardship to the owner if an order for eviction is not granted, exceeding the likely hardship to the unlawful occupier; and (c) no other effective remedy available – whether it is just and equitable to grant the eviction order would not be entirely irrelevant – the fact that the continued occupation of a property may hamper a public housing development scheme does not, in the circumstances of this matter, constitute the type of damage or injury contemplated in s 5(1) of the PIE Act – the same as regards the fact that the social housing development would suffer a knock – also, the potential damage to the applicant and its broader citizenry found not to be enough to balance out the likely hardship to the residents and their children on eviction – the requirements of s 5 not found to have been met on the evidence *in casu* –
Urgent application dismissed.

ORDER

(1). The applicant's urgent eviction application in terms of section 5(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ('PIE Act'), be and is hereby dismissed.

(2). The costs of part 'A' of the application are reserved for consideration and a decision at the hearing of Part 'B' of the application.

JUDGMENT

Adams J:

[1]. This is an urgent application by the applicant in terms of s 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ (PIE Act). The applicant applies for orders urgently evicting the first and the second respondents and all other unknown persons occupying the immovable property described as Erf 1[...], Rabie Ridge Extension 1 and Erf 1[...], Rabie Ridge Extension 2 ('the property').

[2]. The applicant is the owner of the property, which is in fact two pieces of land located and situated adjacent to Freedom Drive, between Modderfontein and Strandloper Roads, in Rabie Ridge. The stands are between formal stands in Rabie Ridge, which comprises low-cost housing – not funded by public funds but through mortgage bonds by banks, and an informal settlement known as K60.

[3]. These properties have been, according to the applicant, the subject of continuous threats of invasion, culminating in various applications for interdictory relief, at the instance of both the applicant and the so-called invaders. As far back as 2021, this Court (per Makume J) issued a *rule nisi* interdicting the invasion of the properties. During September 2023, after the lapse of the aforementioned *rule nisi*, the properties were again invaded by the respondents. The applicant alleges that it responded to the invasion of its properties by deploying its law enforcement agency and security companies to, as they put it, 'counter-spoliate' the invasion by demolishing and removing the structures that were erected on the properties, illegally so, according to the applicant.

¹ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

[4]. It conducted several counter-spoliation operations to regain possession of its properties. However, on 5 December 2023, the respondents approached this Court on an urgent basis for an order to *inter alia* declare the attempts by the applicant to evict them as unlawful, as well as for an order that the applicant restore to them peaceful and undisturbed possession of the properties. This application was struck from the roll for lack of urgency and the properties, according to the applicant, remained vacant until April 2024, when the respondents again re-invaded the properties. Again, the applicant responded by conducting what it terms an 'operation to counter-spoliate' by demolishing the structures erected on the properties by the respondents.

[5]. The occupiers thereupon resolved to pursue their aforementioned spoliation application as an ordinary application and, at the instance of the respondents, the matter was set down on the ordinary opposed motion roll for 22 July 2024, on which date the matter was allocated to be heard by Wilson J. On 2 August 2024, seemingly after much to and fro, Wilson J granted an order in favour of the second respondents *inter alia* restoring their possession of one of the properties, being Erf 1[...], Rabie Ridge Extension 1. In terms of Wilson J's order, no one was to be evicted from this property unless by an order of Court.

[6]. Shortly thereafter, the applicant launched an application to interdict the further invasion of Erf 1[...], Rabie Ridge, Extension 1 and the complete invasion of Erf 1[...], Rabie Ridge, Extension 2. On 21 August 2024, this Court (per Makume J) issued a *rule nisi* in favour of the applicant.

[7]. Further, in an endeavour to obtain an eviction order as stipulated in the Wilson J order, the applicant, on 18 September 2024, launched this urgent eviction application in terms of s 5 of the PIE Act.

[8]. It may be apposite at this stage to cite the provisions of s 5 of the PIE Act, which reads, in the relevant part as follows: -

‘5 Urgent proceedings for eviction

(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.

(3) The notice of proceedings contemplated in subsection (2) must-

(a) state that proceedings will be instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.’

[9] In *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes & Others*², the Constitutional Court explained the principles applicable to a section 5 application as follows: -

‘[90] 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 of s 5 will be separate, independent and distinct from the substantial eviction proceedings contemplated in s 6.

The High Court found that ‘the applicants had clearly complied with the procedure laid down in s 5 of PIE’ on the basis of certain notices that had been issued by that court. One would ordinarily have expected an urgent eviction order to have been obtained upon proof of the stringent requirements of s 5 of the PIE Act, including the existence of a real and imminent danger of substantial injury or damage to any person or property. In the event, although an urgent order in terms of s 5 was applied for, no order was in fact obtained.’

[9]. In sum, the case on behalf of the applicant is that if they are not granted orders, on an urgent basis, for the ejectment of the first and the second respondents, its plans to develop mixed housing on these properties for the benefit of the broader community in the area, will be scuppered and derailed. These properties, so it is alleged by the applicant, has been identified for purposes of a mixed housing development to unlock and de-densify the identified informal settlements in the Greater Ivory Park area. The development will cater for community members within the Greater Ivory Park area who are eligible and meet a set allocation criterion for specified housing opportunities.

² *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes & Others* 2010 (3) SA 454 (CC).

[10]. Moreover, so the contention on behalf of the applicant goes, on 22 March 2018, this Court issued an order for the Municipality to provide the unlawful occupiers of Portion 44 of the Farm Allandale with alternative accommodation. These persons, so the applicant alleges, are some of the beneficiaries of the mixed housing development. The development is at the first phase and cannot proceed due to the invasion of the property. The costs associated with the first phase of the development is estimated to be in excess R8 million, which sum will be wasted if this phase is not proceeded with.

[11]. The respondents oppose the application for urgent eviction orders and they do so on the basis firstly that the application is not urgent. In sum, the ground for their opposition is that the application is not urgent because the applicant dragged its feet in coming to court. If indeed there is any urgency, so the respondents contend, such urgency is self-created, and the application should thus be struck from the roll for lack of urgency. It is also alleged by the respondents that they would be rendered homeless if evicted from the property. The respondents also deny that the 'stringent requirements of s 5 of the PIE Act' have been proven by the applicant.

[12]. Therefore, the questions to be considered in this urgent application are the following: (a) Is the applicant entitled to an order evicting the respondents? (b) Is the matter urgent and did the applicant satisfy the requirements of s 5 of the PIE Act? The latter two issues are interlinked in that the provisions of s 5 imply that, provided the stringent requirements of the section are met by the case on behalf of an applicant, the application is inherently and by definition urgent and an applicant is entitled to interim relief on an urgent basis.

[13]. These issues are to be considered and decided against the factual backdrop in the matter and the facts set out in the paragraphs which follow.

[14]. I do not agree with the contentions on behalf of the applicant that, for the reasons mentioned above, the matter is indeed urgent as contemplated by

s 5(1) of the PIE Act. I do not accept the submission by the applicant that because the land in question is not yet serviced and there is no water and electricity, that this amounts to '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', as contemplated by s 5(1)(a). Far from it. This court (per Wilson J) has already found that the respondents have been in occupation of the property – on and off – since during or about September 2023. There have not been any major disasters during that period. It is not so, as the applicant would have the Court believe, that the land is thus not yet habitable and that it has to be accepted that it poses a health risk to any occupants who occupy it in its current state. I also cannot accept, as a fact, without more the allegation by the applicant that there are threats of violence and ongoing criminality on the properties. How, I ask rhetorically, is this different from everyday life in South Africa.

[15]. I therefore do not believe that, as contended on behalf of the applicant, the only way to prevent further unnecessary deaths and to restore law and order on the properties is for this Court to grant the orders sought by the applicant and to do so on an urgent basis. It is indeed regrettable that the respondents seemingly are the ones who took the law into their own hands by occupying the property earmarked for a housing development project, which would benefit the community as a whole and not just a few individuals, whose actions *in casu* amount to 'jumping the queue'. However, this in and of itself does not warrant this Court's intervention in terms of s 5 of the PIE Act.

[16]. In *Telkom SA (SOC) Ltd v Moeletsi and Others*³, this Court (per Wilson J) held as follows: -

'(13) Applications under section 5 of PIE, especially those which rest on claims of the nature Telkom makes in this case, warrant close scrutiny. Any substantiated claim of imminent risk to a person's safety and property obviously demands serious consideration. It is equally obvious,

³ *Telkom SA (SOC) Ltd v Moeletsi and Others* 2023 JDR 1869 (GJ).

though, that an applicant in a section 5 case has an interest in emphasising the imminence of any potential risks to life and limb in order to obtain an urgent interim eviction order.

(14) This difficulty is compounded by the fact that many, perhaps most, eviction applications under section 5 of PIE will be heard without formal opposition. They will generally be brought on a very short notice by people with the resources necessary to engage the urgent mechanisms PIE provides. Unlawful occupiers faced with a section 5 eviction claim will seldom have the wherewithal to obtain the representation necessary to contest the applicant's version, especially when that version rests on expert evidence.

(15) It is accordingly incumbent on a court to evaluate the applicant's factual claims carefully. Counsel for the applicant is also under a heightened duty to present the case fairly, by making arguments that go no further than are reasonably justified by the facts alleged, and by drawing the court's attention to any fact that might count against an urgent interim eviction order.'

[17]. What was held by Wilson J is *Telkom* finds equal application *in casu*.

[18]. The applicant's application therefore stumbles at the first hurdle posed by s 5(1)(a) of the PIE Act. The applicant's case fares no better if one has regard to further facts in the matter and its application to s 5(1) of the PIE Act. I now proceed to deal with those facts and the application of the said section thereto.

[19]. During July 2020 and in response to the COVID-19 pandemic, the Gauteng Provincial Government resolved to find other solutions aimed at preventing or at least curtailing the further spread of the *Corona* virus in highly congested areas. Rabie Ridge and Ivory Park were identified as some of the densely populated areas, which required to be uncompressed in order to curb the spread of the virus. The province accordingly resolved to build Temporary Relocation Units ('TRU's') with the purpose of facilitating the reduction of the

density and overcrowding in informal settlements. The properties in question were identified for the purpose of providing TRU's to the affected communities. The project aimed at moving people from informal settlements so as to address the difficulty associated with social distancing.

[20]. The intention of the applicant was to complete the project in 2020 within a period of three months of its inception. The project however suffered some delays in relation to its finalization, which meant that the land could no longer be utilised for the initially intended Covid-19 uncompressing purpose. It was therefore decided that the land would be utilised for the benefit of the members of the Greater Ivory Park community. To that end a National Upgrading Support Programme ('the NUSP') was initiated with a view to implementing the Upgrading of Informal Settlements Programme ('UISP') in the identified informal settlements in the Greater Ivory Park Area. The Municipality accordingly entered into an agreement with the Housing Development Agency ('the HAD') to jointly plan for a mixed housing development on the properties. There are town planning processes that are yet to be finalised in this regard.

[21]. The mixed housing development will unlock informal settlements in the Greater Ivory Park area and the applicant will be able to de-densify the identified informal settlements. This development will cater for community members within the Greater Ivory Park area who are eligible and meet a set allocation criterion for specified housing opportunities.

[22]. It is this mixed housing development plan which is scuppered by the invasion of the properties, which, in turn, means that the development cannot be proceeded with. Allowing the property to remain invaded, so the applicant submits, makes it impossible for it to implement the development since the properties are key to the intervention. Additionally, this means that the Municipality will be unable to comply with the 2018 order of this Court referenced *supra*.

[23]. There are also other considerations, so the applicant contends, which favour the granting of an eviction order in terms of s 5(1) of the PIE Act, notably the fact that there have been several acts of criminality and violence that accompany the invasions.

[24]. The applicant contends that the foregoing amount to prove of compliance with the requirements in s 5(1) of the PIE Act. I disagree. It cannot, in my view, be said with any conviction, if one has regard to the facts in the matter, that there is a real and imminent danger of damage to the property and harm to the community in the area at large. Nor can it be said that the hardship to the applicant and the other residents in the area exceed the potential harm to the respondents who do not have any right to occupation. Far from it. The evidence indicates that the respondents run the real risk of being rendered homeless in the event of their eviction. The potential harm to be suffered by the applicant if the relief sought by it is not granted, pales into insignificance, if one considers the fate to these 250 + individuals.

[25]. 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.

[26]. I conclude therefore that the applicant has not made out a case for the relief it seeks in terms of s 5 of the PIE Act. It is so, as contended by Mr Mokhare SC, who appeared for the applicant, together with Mr Mutenga, in this matter, that the continued occupation of the properties is an impediment to the resolution of the chaotic situation created by the respondents. As long as

they remain in occupation, the applicant will not be able to regain control of the properties. However, this does not, in my view, translate into prove of compliance with the very stringent requirements of the said section.

[27]. As for the requirement in s 5(1)(c), I am of the view that the applicant indeed has available to it other effective remedy in the form of a s 4 eviction application, which will be heard in due course. Moreover, I understand that there is at present an appeal to the Supreme Court of Appeal pending against the decision of this Court (per Wilson J) referred to *supra*. That can and should, in my view, be regarded as an alternative remedy available to the applicant.

[28]. For all of these reasons, I come to the conclusion that the applicant has not met any of the requirements of s 5 of the PIE Act. Its application therefore falls to be dismissed.

[29]. As for costs, I am of the considered view that the Court adjudicating the part 'B' of the application would be in a much better position to decide the issue of the costs relative to the urgent s 5 application.

Order

[30]. Accordingly, I make the following order:

- (1). The applicant's urgent eviction application in terms of section 5(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ('PIE Act'), be and is hereby dismissed.
- (2). The costs of part 'A' of the application are reserved for consideration and a decision at the hearing of Part 'B' of the application.

L R ADAMS

*Judge of the High Court
Gauteng Division, Johannesburg*

HEARD ON:	24 April 2025
JUDGMENT DATE:	14 August 2025 – Judgment handed down electronically
FOR THE APPLICANT:	W Mokhare SC, with H Mutenga
INSTRUCTED BY:	Koikanyang Attorneys, Riviera, Johannesburg
FOR THE FIRST AND SECOND RESPONDENTS:	T Mirtle, with M Sebola
INSTRUCTED BY:	Paul T Leisher & Associates Attorneys Incorporated, Bassonia, Johannesburg
FOR SOME OF THE FIRST AND SECOND RESPONDENTS:	N Nkosi
INSTRUCTED BY:	Nkosi (Nonhlanhla) Attorneys, Tembisa, Kempton Park
FOR THE THIRD RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance