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

CASE NO: 23092/2024

In the matter between:

GILLIAM JOHANNES SWIEGERS N.O.

First Applicant

ANNA SOPHIA MUNN N.O.

Second Applicant

CECELIA JACOBA SWIEGERS N.O.

Third Applicant

PIETER SWIEGERS N.O.

Fourth Applicant

and

I[...] A[...]

First Respondent

I[...] B[...]

Second Respondent

WAYLON BOTHA

Third Respondent

NAZEEM HENDRICKS

Fourth Respondent

MOOSA IMANI

Fifth Respondent

**ALL OTHER UNLAWFUL OCCUPIERS OF ERF 3[...],
MEADOWRIDGE, CAPE TOWN**

Sixth Respondent

THE CITY OF CAPE TOWN

Seventh Respondent

And in the intervention application of:

MANNA BOERBOKKE (PTY) LTD

Intervening Applicant

Coram: Acting Justice T Sarkas

Heard: 10 June 2025

Further written submissions: 17 June 2025

Housing report: 8 July 2025

Delivered electronically: 26 August 2025

JUDGMENT

SARKAS AJ:

INTRODUCTION

[1] This an application brought by the trustees of the Cielie Swiegers Familie Trust (**the Trust**) in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (**the PIE Act**), for the eviction of the first to sixth respondents from the property situated at Erf 3[...], Meadowridge, Cape Town (**the property**).

[2] A notice in terms of s 4(2) of the PIE Act was authorised by this Court and duly served on the respondents.

[3] The eviction application is opposed, and was met with:

- 3.1. an application for security for costs brought by the first to fifth respondents (**the respondents**), which application was abandoned the day before the hearing; and
- 3.2. an application to intervene in the eviction application, brought by Manna Boerbokke (Pty) Ltd (**MB**).

[4] There is a protracted history to the disputes between the Trust on the one hand, and the occupiers and MB on the other, spanning a number of court applications. For present purposes it suffices to reference the following background to the occupation of the property:

- 4.1. It is common cause that the Trust is the registered owner of the property.
- 4.2. MB claims a lien over the property. In this regard, MB alleges that for an extended period of time, it has been in *de facto* administrative control and possession of the property, exercising a lien based on work performed on the property. These allegations are disputed by the Trust.
- 4.3. It is also common cause that the respondents have no contractual relationship with the Trust.
- 4.4. The respondents claim they are entitled to occupy the property by virtue of the lease agreements they concluded with MB in March 2024.

[5] For purpose of this judgment, I shall assume, without deciding, that MB holds a lien over the property.

OCCUPATION THROUGH A LIEN HOLDER

[6] Essentially, the respondents contend that: MB holds a lien over the property which gives MB the right to control occupation of the property; they occupy the property under valid lease agreements concluded with MB; and until the

lien is challenged and set aside, the respondents' occupation through the lien holder is lawful.

- [7] Consequently, the key question is whether a lien holder may lawfully let the property over which a lien is being exercised to a third party.
- [8] This question was answered in *Rekdurum (Pty) Ltd v Weider Gym Athlone (Pty) Ltd* 1997 (1) SA 646 (CPD), where this court found no support for the proposition that an object over which a retention lien is being exercised may be commercially exploited by the person exercising such a right.¹ The court concluded that the statement that a lien holder is entitled to let the property over which a lien is being exercised to a third party is '*completely at variance with the law relating to liens based on enrichment*' and '*palpably wrong*'.²
- [9] This means that the lease agreements that MB concluded with the respondents are unlawful because MB was not entitled to let the property to them.

NON-JOINDER AND INTERVENTION

- [10] Before turning to the eviction application, it is necessary to deal with the non-joinder point raised by the respondents, and the application for leave to intervene brought by MB.
- [11] In opposing the evictions application, the respondents contend that there is a failure to join MB as a necessary party, given that they occupy the property through lease agreements concluded with MB. Allied to this, MB contends that it requires to leave to intervene in the eviction application in order to assert its

¹ *Rekdurum (Pty) Ltd v Weider Gym Athlone (Pty) Ltd* 1997 (1) SA 646 (CPD) at 653E.

² At 654A. This position was affirmed by the Full Court in *Passano v Erasmus* (A163/2023) [2025] ZAGPPHC 249 (12 March 2025) at para 34. See also *Guman NO v Ansari Guman NO v Ansari and others* [2011] ZAGPJHC 124 (23 September 2011), and *Miya v Matlhko-Seifert* [2022] 4 All SA 401 (GJ).

legal interests in respect of the lease agreements, and to protect its legal and commercial interests.

- [12] The test for whether there has been non-joinder, and also in an application for leave to intervene, is whether or not the party has a direct and substantial interest in the subject matter of the litigation, i.e. a legal interest in the subject matter of litigation, which may be affected prejudicially by the judgment of the court.³
- [13] In this matter, and contrary to what is submitted by the respondents' counsel, it is not necessary to adjudicate the lien dispute prior to determining the eviction application. This is because, even assuming in favour of MB and the respondents that MB holds a lien over the property, as a matter of law MB was not entitled to let the property to the respondents. Furthermore, an eviction order will not affect the alleged lien held by MB.
- [14] Consequently, MB is without any legal interest in the outcome of the eviction application. Its interests are no more than financial, and interests of this nature are insufficient to justify its joinder.⁴
- [15] Leave to intervene is also sought on the basis that the Trust has made unsubstantiated, disingenuous and defamatory allegations concerning the role and conduct of MB. This contention does not entitle MB to intervene because none of those allegations are directly in issue between the litigating parties in the eviction application, nor do the impugned allegations have to be decided in the determination of the merits of the eviction application.⁵

THE ENQUIRY UNDER THE PIE ACT

³ *Judicial Service Commission and Another v Cape Bar Council and Another* 2013 (1) SA 170 (SCA) at para 12; *South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others* 2017 (5) SA 1 (CC) at paras 9-10. See also *Matjhabeng Local Municipality v Eskom Holdings Ltd* 2018 (1) SA 1 (CC) at para 92.

⁴ *Aquatour (Pty) Ltd v Sacks* 1989 (1) SA 56 (A) at 61J-62G.

⁵ *SA Commercial Catering and Allied Workers Union v Lehapa N.O. (Mostert N.O. Intervening)* 2005 (6) SA 354 (W) para 6.

[16] In the eviction application, the enquiry is three-fold:

- 16.1. First, the court is called upon to determine the lawfulness of the occupation.
- 16.2. Second, if the occupation is unlawful, the court must determine whether an eviction order is just and equitable.
- 16.3. Third, if an eviction order is just and equitable, the court must determine a just and equitable date for the implementation of the eviction order.⁶

Lawfulness of the occupation

[17] The jurisdictional requirement to trigger an eviction under the PIE Act is that the person sought to be evicted must be an unlawful occupier within the meaning of the PIE Act at the time when the eviction proceedings were launched.⁷ The following definitions in s 1 of the PIE Act are relevant to this enquiry:

- 17.1. An unlawful occupier is defined as '*a person who occupies land without the express or tacit consent of the owner or person in charge or without any other right in law to occupy such land.*'
- 17.2. Consent is defined as '*the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question.*'
- 17.3. An owner is defined as '*the registered owner of land, including an organ of state.*'
- 17.4. A person in charge is defined as '*a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question.*'

⁶ *Transcend Residential Property Fund Ltd v Mati and Others* 2018 (4) SA 515 (WCC) at par 3.

⁷ *Davidan v Polovin N O and Others* [2021] 4 All SA 37 (SCA) at par 11.

- [18] The respondents are in occupation of the property without the express or tacit consent of the owner of the property, namely the Trust. The respondents do not contend otherwise.
- [19] The respondents' reliance on the lease agreements concluded with MB to demonstrate the lawfulness of their occupation is misplaced. A lien holder does not fall within the definition of a person in charge as contemplated in the PIE Act because of the absence of the requisite legal authority on the part of the lien holder.
- [20] It follows that the respondents are unlawful occupiers as contemplated in the PIE Act because they occupy the property without the consent of the Trust or any other right in law to do so.

A just and equitable order

- [21] In its determination of a just and equitable order, the enquires that must be undertaken by a court in proceedings brought in terms of the PIE Act are:⁸

21.1. First, the court must decide whether it is just and equitable to all parties to grant an eviction order, having regard to all relevant circumstances. Among those circumstances, the availability of alternative land and the rights and needs of people falling in specific vulnerable groups are singled out for consideration.

21.2. Second, and once the conclusion has been reached that eviction would be just and equitable, the court 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.⁹ In this second enquiry, the court must consider the impact of an eviction order

⁸ *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) ('*Changing Tides*') at para 12-25.

⁹ *Id.*

on the unlawful occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere.¹⁰

[22] At the hearing of the matter, the respondents were directed to complete the Personal Circumstances Questionnaires necessary for the seventh respondent, the City of Cape Town (**the City**), to prepare a housing report that takes these circumstances into account. These questionnaires were duly completed by the respondents. At the same time, the respondents delivered further affidavits setting out their personal circumstances. Thereafter, the City delivered the housing report.

[23] Their contents are summarised below.

The first respondent

[24] The first respondent is 36 years old, and states in his affidavit that he is self-employed and earns approximately R15,000.00 per month.

[25] The first respondent further states that:

25.1. He has three minor children, aged 10, 8 and 4 years old, who attend school in the area, and who reside at the property with him and their mother.

25.2. He suffers from hypertension which requires medication.

25.3. Should they be immediately evicted from the property, he and his family will be rendered homeless as he does not have family members who can accommodate his family nor any additional funds to secure alternative accommodation.

25.4. He will need time to accumulate funds to secure alternative accommodation.

¹⁰ *Id.*

25.5. An eviction order will disrupt his children's education and his religious observances at the mosque situated in the area, and sever community connections.

[26] The applicants dispute the veracity of these statements, pointing to *inter alia* inconsistencies with the respondents' averments in other litigation, the details in the Sheriff's returns of service, the unlikelihood of his family residing with him and the other respondents given that the property consists of only three bedrooms, and the first respondent's failure to make full disclosure of the information required in the questionnaires.

[27] However, I am prepared to accept at face value the personal circumstances set forth by the first respondent in his affidavit and the questionnaire, including that he has three minor children who reside with him at the property. The fact that the first respondent earns R15,000.00 per month is indicative that the first respondent has the means to meet his family's housing needs, particularly when regard is had to the questionnaire he completed, wherein he indicates that he pays a rental of R10,000.00 per month.

[28] It is also noteworthy that the first respondent fails to complete the section of the questionnaire requiring information on the steps taken in the meantime to obtain alternative accommodation.

The second respondent

[29] The second respondent is 58 years old, and states in his affidavit that he is self-employed and earns approximately R15,000.00 per month.

[30] The second respondent further states that:

30.1. He has three dependents for whom he is responsible. The questionnaire completed by the second respondent reflects that these dependants comprise one minor child aged 16 and two adult children aged 20 and 24, who it seems reside at the property.

- 30.2. Should he be immediately evicted from the property, he will be rendered homeless as he does not have family members who can accommodate him nor any additional funds to secure alternative accommodation with immediate effect.
- 30.3. An eviction order will disrupt his religious observances at the mosque situated in the area, and sever community connections.

[31] In the case of the second respondent, the personal circumstances set forth by him in his affidavit and the questionnaire reflect that he earns R15,000.00 per month, which is indicative that the second respondent has the means to meet his housing needs, particularly when regard is had to the questionnaire he completed, wherein he indicates that he pays a rental of R10,000.00 per month.

[32] Again, it is noteworthy that the second respondent fails to complete the section of the questionnaire requiring information on the steps taken in the meantime to obtain alternative accommodation.

The third respondent

[33] The third respondent is 32 years old, and states in his affidavit that he is currently unemployed, but is occasionally employed on a part-time contractual basis, earning approximately R4,000.00 to R5,000.00 per month when he is working.

[34] The third respondent further states that:

- 34.1. He is responsible for two dependants who reside with him at the property, though he fails to provide details of their ages.
- 34.2. Should he be immediately evicted from the property, he and his dependants will be rendered homeless as he does not have family members who can accommodate him nor any additional funds to secure alternative accommodation.

- [35] The paucity of information furnished in relation to his dependants extends to the third respondent's failure to complete the section of the questionnaire requiring information on the steps taken in the meantime to obtain alternative accommodation.
- [36] However, in the questionnaire completed by the third respondent, he indicates that he pays a rental of R2,000.00 per month. Given content of the housing report, the third respondent may avail himself of the social housing programme to meet his housing needs.

The fourth respondent

- [37] The fourth respondent is 54 years old and states in his affidavit that he is employed on a part-time contractual basis, with an income of between approximately R4000.00 and R5000.00 per month.
- [38] He alleges in his affidavit that he has four dependents, and in his questionnaire indicates that he has no dependants who reside with him at the property.
- [39] The fourth respondent further alleges that:
- 39.1. He suffers from hypertension and diabetes.
 - 39.2. Should he be immediately evicted from the property, he will be rendered homeless as he does not have family members who can accommodate him nor any additional funds to secure alternative accommodation with immediate effect.
 - 39.3. An eviction order will disrupt his religious observances at the mosque situated in the area, and sever community connections.
 - 39.4. His ability to earn would be severely compromised because his landscaping work is conducted in and around the area where he resides.

[40] The fourth respondent fails to complete the section of the questionnaire requiring information on the steps taken in the meantime to obtain alternative accommodation.

[41] However, the personal circumstances set forth by the fourth respondent in his affidavit and the questionnaire reflect that he earns at least R4,000.00 per month, This is indicative that the third respondent has the means to meet his housing needs, particularly when regard is had to the questionnaire he completed, where he indicates that he pays a rental of R2,000.00 per month, and to the content of the housing report, which explains that income levels of between R1,501.00 and R15,000.00 are required to qualify for the social housing programme.

The fifth respondent

[42] The fifth respondent is a 31 year old Bangladeshi. He states in his affidavit that he is employed on a part-time contractual basis, with an income of between approximately R4000.00 and R5000.00 per month.

[43] In the personal circumstances completed by the fifth respondent, he indicates that he pays a rental of R2,000.00 per month.

[44] The fifth respondent states that should he be immediately evicted from the property, he will be rendered homeless as he does not have family members who can accommodate him nor any additional funds to secure alternative accommodation.

[45] It is again noteworthy that the fifth respondent fails to complete the section of the questionnaire requiring information on the steps taken in the meantime to obtain alternative accommodation.

[46] The issue of alternative accommodation for the fifth respondents is addressed in the housing report.

The housing report

- [47] The housing report sets out the respondents personal circumstances as detailed in the questionnaires they completed. It is reported that the first, second, third and fourth respondents will not be assisted with an emergency housing kit, and it is recommended that these respondents be referred to the Social Housing Programme.
- [48] As to the fifth respondent, the City reports that in order for it to consider providing alternative accommodation or a housing kit, the City requires the fifth respondent's identity documentation or any other legal documentation indicating that he is legally in the country.
- [49] In this regard, an offer of alternative accommodation is not a pre-condition for the granting of an eviction order but rather one of the factors to be considered by a court.¹¹
- [50] Furthermore, where the affidavits in eviction proceedings are silent on matters which the respondents should be able to address with relative ease, a satisfactory explanation should be provided for the omission, and in the absence thereof a court will be justified in drawing the inference that a bald assertion of impecuniosity or homelessness is not genuine or credible.¹²
- [51] The facts show that there is a reasonable possibility that the first to fifth respondents will be able to secure alternative accommodation, including through the social housing programme in the case of the first to fourth respondents. The respondents have not explained how they have tried and failed to find alternative accommodation within their available resources, when it is incumbent on them to have done so.¹³

¹¹ *Grobler v Phillips and Others* 2023 (1) SA 321 (CC) at par 38.

¹² *Luanga v Perth Park Properties Ltd* 2019 (3) SA 214 (WCC) at par 48.

¹³ *Patel N.O. And Others v Mayekiso and Others* (WCC 3680/16, delivered on 23 September 2016) at para 33.

- [52] The respondents have no defence to the claim for eviction because their lease agreements with MB are unlawful, and there are no factors justifying the respondents' ongoing occupation of the property.
- [53] The trustees have explained that the Trust has suffered substantial financial prejudice as a consequence of the respondents' occupation of the property, and it continues to suffer financial prejudice due to lost rental income and having to pay rates and municipal service charges in respect of the property. As the registered owner of the property, the Trust has a right to constitutional protection
- [54] I am therefore satisfied that in these circumstances it is just and equitable to all parties to grant an eviction order.
- [55] Given the litigation history between the parties, the applicants ask that this court direct that the respondents be evicted forthwith.
- [56] However, according to the respondents' account of their personal circumstances, minor children will be impacted by an eviction order. To ameliorate any prejudice they may suffer as a consequence of the impact of an eviction on their schooling, it is necessary to make an order that ensures that the timing of the eviction provides sufficient time for the affected respondents to either secure alternative accommodation in the area where they currently reside, or to arrange alternative schooling for the minor children closer to where they are able to secure alternative accommodation.
- [57] The respondents, on their own version, can afford alternative accommodation from their own resources in that they can afford to pay the rental amount they state that they are paying to MB, and will therefore not be rendered homeless if they are evicted.
- [58] In the circumstances, it is just and equitable to provide for the implementation of the eviction order two months from the date of the granting of this order.

[59] As regards the issue of costs, there is no reason why costs ought not to follow the result.

ORDER

[60] **I accordingly make the following order:**

1. The application for leave to intervene is dismissed with costs, including the costs of counsel on Scale 'B'.
2. The first to sixth respondents are directed to vacate the property situated at 2[...] T[...] Way, Meadowridge, Cape Town, also known as Erf 3[...], Meadowridge, Cape Town (**the property**) on or before 27 October 2025.
3. In the event that any of the first to sixth respondents fail to vacate the property on or before 27 October 2025, the Sheriff of this Court or his/her deputy is authorised and directed to evict the such respondents from the property.
4. The first to fifth respondents are directed to pay the costs of the application for eviction and the application for security for costs, including the costs of counsel on Scale 'B', jointly and severally, the one paying, the other to be absolved.

ACTING JUDGE T SARKAS

For applicants: Adv DJ **Van der Merwe**

Instructed by: Wayne Hufkie Attorneys

For respondents: Adv DM **Nyathi**

Instructed by: TJC Dunn Attorneys

For intervening applicant: Adv **Abbas**

Instructed by: C Adams