IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Not Reportable

Case no: 149043/2024

In the matter between:

QAASIM ABDURAOUF N.O	First Applicant
(In his capacity as duly authorised Trustee of	
THE QAASIM ABDURAOUF TRUST: I[...])	
MAJIDA KASU N.O.	Second Applicant
(In her capacity as duly authorised Trustee of	
THE QAASIM ABDURAOUF TRUST: I[...])	

and

DEDE ARTHUR WANGA	First Respondent
(AND ALL THOSE HOLDING TITLE UNDER HIM)	
TYTY WANGA	Second Respondent
(AND ALL THOSE HOLDING TITLE UNDER HER)	

ALL THOSE PERSONS WHOSE IDENTITIES ARE TO THE APPLICANT'S UNKNOWN WHO ARE UNLAWFULLY OCCUPYING THE PROPERTY COMMONLY KNOWN AS [...] A[...] AVENUE, TURFHALL ESTATE, OTTERY EAST 7800 Third Respondent

CITY OF CAPE TOWN Fourth Respondent

Neutral citation: *Qaasim Abduraouf N.O and Another v Dede Arthur Wanga and 3 Others (Case no 2024-149043) [2025] ZAWCHC (28 AUGUST 2025)*

Coram: NJOKWENI AJ

Heard: 27 May 2025

Delivered: 28 August 2025

Summary: Unlawful occupation of residential property – Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No.19 of 1998– improvements lien – enrichment lien – s28 of the Alienation of Land Act, No.68 of 1981– just and equitable relief.

ORDER

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1. An eviction order is hereby granted against the First Respondent, Second Respondents and all other persons holding occupation under them ("the Respondents"), at the immovable property known as **ERF 1[...] WETTON TOWNSHIP, IN THE CITY OF CAPE TOWN, DIVISION CAPE TOWN, PROVINCE OF THE WESTERN CAPE, IN EXTENT 478 (FOUR HUNDRED AND SEVENTY EIGHT) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER T[...]COMMONLY KNOWN AS [...] A[...] AVENUE, TURFHALL ESTATE, OTTERY EAST 7800** ("the property").
2. The Respondents shall vacate the property by no later than 13h00 on Friday 26 September 2025.
3. Should the Respondents fail to vacate the property as mentioned in

paragraph 2 above, the Sheriff of this Court and/or his duly appointed deputy is authorised and directed to evict the Respondents from the Property on Monday 29 September 2025.

4. To give effect to this Order and to the extent necessary, the Sheriff of this Court and/or his duly appointed deputy is authorised to elicit assistance from the South African Police Services.

5. The Respondents shall pay the Applicant's costs of this application, jointly and severally, the one paying the other to be absolved, on an attorney and client scale.

JUDGMENT

Njokweni AJ

Introduction

[1] This is an application for eviction of the Respondents from the immovable property known as **ERF 1[...] WETTON TOWNSHIP, IN THE CITY OF CAPE TOWN, DIVISION CAPE TOWN, PROVINCE OF THE WESTERN CAPE, IN EXTENT 478 (FOUR HUNDRED AND SEVENTY-EIGHT) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER T[...]COMMONLY KNOWN AS [...] A[...] AVENUE, TURFHALL ESTATE, OTTERY EAST 7800** ("the property") because they are in unlawful occupation thereof.

[2] The Applicants are the Trustees for the time being of the Qaasim Abduraouf Trust ("trust"), namely: Qaasim Abduraouf and Majida Kasu and who are collectively ("the trustees"). They are both acting in their official capacity as trustees of the trust.

[3] The First Respondent is Dede Arthur Wanga, a husband to Tyty Wanga, the

Second Respondent and the Third Respondents are all persons who unlawfully occupy the property under the First Respondent, alternatively under the Second Respondent, collectively ("the Respondents"). The Fourth Respondent is the City of Cape Town ("the City") but no substantive relief is sought against it and is merely cited and joined in this application because of the nature of its duties as an Organ of State in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No.19 of 1998 ("the PIE Act").

[4] The Respondents are opposing the application and relief sought by the Applicants against them.

Facts

[5] The property was previously jointly owned by and registered in the names of both Ms. Labiebah Nasir ("Mrs Nasir") and the late Jamal Abdul Nasir ("the deceased") who had passed away on 8 August 2013. Fifteen months after his death, specifically on 7 November 2014, Mrs Nasir purported to sell the property to the First and Second Respondents for R1 300 000 by concluding a written Deed of Sale ("the impugned Deed of Sale"). In terms of the Deed of Sale, Mrs Nasir undertook to give to the Respondents vacant possession of the property on registration of transfer or on 7 November 2014. The Respondents took vacant occupation of the property on 7 November 2014. At that time, the estate of the deceased had not yet been reported to the Master of the High Court and as such, no executor or executrix had yet been appointed. Consequentially, Mrs Nasir did not have a right to sell the property absent consent of a duly appointed executor or executrix. As a result, the Applicants contend that the purported Deed of Sale is void *ab initio* due to non-compliance with the relevant provisions of the Alienation of Land Act[1], the Deed of Sale was void *ab initio*.

[6] The Respondents also claim to have effected certain improvements to the

[1] Alienation of Land Act, No 68 of 1981.("ALA")

property in the amount of R550 503 since they took occupation.

[7] In relevant part, the impugned Deed of Sale *inter alia* provides:

> *"If occupation is given to the Purchaser before the date of transfer: … the Purchaser shall not be entitled to make any alterations on the property before transfer without the prior written consent of the Seller which consent shall be at the Seller's sole and absolute discretion … the Purchaser shall be obliged to vacate the property upon cancellation of this agreement for whatsoever reason, no tenancy being created by any such prior occupation."*

[8] On 10 March 2017, the Master of the High Court duly appointed Mogamat Waqarudeen Nasir as the Executor of the deceased estate, the late Jamal Abdul Nasir and issued him with Letter of Executorship. At that stage, the deceased estate was insolvent and was administered in terms of section 34 of the Administration of Estates Act, No.66 of 1965. On 27 January 2020, Mogamat Waqarudeen Nasir ("the Executor") executed a Special Power of Attorney appointing Mustafa Mohamed ("Mr. Mohamed"), a practising attorney, to act as his attorney and agent and to do everything necessary to wind up the deceased estate. Similarly, on 2 November 2021, Mrs Nasir also executed a Special Power of Attorney appointing Mr. Mohamed to act as her agent and to effect sale of her undivided half-share in the property and to sign and execute all documents required to pass transfer of her undivided half-share in the property.

[9] On 11 July 2024 in execution of his aforesaid mandate, Mr. Mohamed sold the property to *Skyscore Investments (Pty) Ltd* ("Skyscore") for R900 000 and concluded a written Deed of Sale. In turn, on 16 July 2024, Skyscore sold the property to the Trust for R900 000 and on 11 December 2024, the transfer of the property was registered in the relevant deeds registry in Cape Town. Accordingly, the benefit and all risk in the property are transferred to the trust. However, due to unlawful occupation of the property by the Respondents, the trust was unable to take occupation and possession of the

property. And that situation still persists.

[10] On 11 October 2024, a notice to vacate the property, within 48 hours of service thereof, was duly delivered by the Sheriff to the Respondents personally. The Respondents failed to comply with the notice to vacate and remain in occupation to date of this judgment. This failure to comply with the notice led to the institution of these proceedings on 18 December 2024. The property is subject to a registered Mortgage Bond ("the Bond") in favour of ABSA Bank Limited ("ABSA ").

[11] In the circumstances, the Applicants contend that the Respondents have no legal right to remain in occupation of the property and therefore, are in unlawful occupation thereof. The application is opposed by the Respondents.

Issues for determination

[12] On distillation of the above relevant facts, the issues for determination have congealed, and are set out below as being: (1) are the Respondents in unlawful occupation; and (2) if so, would it be just and equitable to grant the eviction order against the Respondents.

Applicable legal principles

Alienation of Land Act ("ALA")

[13] The Respondents' defence regarding unlawful occupation of the property is premised on the relevant provisions of the impugned Deed of Sale. Section 2(1) of ALA provides:

> ***Formalities in respect of Deeds of Alienation***
> *"2. (1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is*

contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.

(2) The provisions of subsection (1) relating to signature by the agent of a party acting on the written authority of the party, shall not derogate from the provisions of any law relating to the making of a contract in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered."

Administration of Estates Act ("AEA")

[14] *Apropos* the disposal of property of a deceased person, the relevant provisions of the Administration of Estates Act[2] ("AEA"), provides:

*"**13 Deceased estates not to be liquidated or distributed without letters of executorship or direction by Master**.*

(1) No person shall liquidate or distribute the estate of any deceased person, except under letters of executorship granted or signed and sealed under this Act, or under an endorsement made under section fifteen, or in pursuance of a direction by a Master."

Improvement liens

[15] *"[8] A lien is a right of retention which arises from the fact that one man has put money or money's worth into the property of another - United Building Society v Smookler's Trustees and Galoombick's Trustees* 1906 TS 623 at 627-628*. Liens are generally divided into debtor-and-creditor liens on the one hand and enrichment liens on the other hand.*

….

[11] Enrichment liens are generally regarded as real rights and may take the form of either improvement or salvage liens, depending on whether they relate to useful or necessary expense respectively (D Glaser & Sons (Pty) Ltd supra). They are conferred on a person irrespective of any prior

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[2] Section 13(1) of the Administration of Estates Act 66 of 1965.

relationship between him or herself and the owner of the property. To rely on a salvage or improvement lien, the lien holder must allege and prove:

(i) lawful possession of the object;

(ii) that the expenses were necessary for the salvation of the thing or useful for its improvement;

(iii) the actual expenses and the extent of the enrichment of the owner; and

(iv) that there was no contractual arrangement between the parties in respect of the expenses.

See Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons 1970 (3) SA 264 (A)*. Harms, Amler's Precedents of Pleadings, 9th Edition p 249.*

[12] Salvage and improvement liens are said to be "real" liens. They are real rights. They are not created by contract but are based on the equitable principle that by the law of nature it is only fair that nobody should become wealthier through the loss and injury of another.

See D Glaser & Sons (Pty) Ltd supra." [3]

[16] It is trite that an improvement lien is only available to a *bona fide* possessor of the property who has made improvements to that property. It is a right recognised by law as a real right which is enforceable against the whole world, however, it does not exist in a vacuum but has a basis of an underlying enrichment claim. It is a just and equitable remedy for no one should be enriched at the expense of another where the former had made improvements to a property.

[17] The general requirements for an enrichment claim as pertains to the current application are that:

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[3] *Steenkamp v Bradbury's Commercial Auto Body CC* (2882/2019) [2020] ZALMPPHC 9 (23 January 2020)

(a) the Trust must have been enriched;

(b) the Respondents must have been impoverished;

(c) the enrichment of the Trust must be at the expense of the Respondents; and

(d) the enrichment must be unjustified or *sine causa*.

Prevention of Illegal Eviction from Land Act ("PIE")

[18] In *Ndlovu v Ngcobo; Bekker and Bosch v Jika*[4], the Supreme Court of Appeal in a majority judgment, held that PIE disposed of certain common-law rights relating to eviction. The majority judgment can be summarized as follows*:*

…

(b) The definition of an unlawful occupier in s 1 of PIE relates to a person who occupies land without the express or tacit consent of the owner or person in charge of such land. In its ordinary meaning the definition of an unlawful occupier means that PIE applies to all unlawful occupiers, irrespective of whether their occupation of such land was previously lawful.

…

(c) The effect of PIE is not to expropriate private property. What PIE does is to delay or suspend the exercise of a landowner's full proprietary rights until a determination has been made whether it is just and equitable to evict the unlawful occupier and under what conditions.

…

(f) Provided the procedural requirements laid down in PIE have been met, a landowner is entitled to approach the court on the basis of ownership and the occupier's unlawful occupation. In this regard the occupier bears an evidential onus...".

… The purpose of this requirement is to provide protection to occupants by alerting them to the threat to their occupation and the basis thereof; alerting

[4] Ndlovu v Ngcobo, Bekker and Bosch v Jika 2003 (1) SA 113 (SCA).

them to the provisions of and the protections and defences afforded to them by PIE; advising them of their rights to legal representation; and informing them of the date and place of the hearing and 'to afford the respondents in an application under PIE an additional opportunity, apart from the opportunity they have already had under the Rules of Court, to put all the circumstances they allege to be relevant before the court. In addition, the period of notice provided for permits the municipality and the occupants concerned to investigate the availability of alternative accommodation or land and to explore the possibility of mediation in terms of s 7 of PIE. The notice requirement applies even to proceedings leading to the grant of a rule nisi against occupants.

… the 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 the rights and needs of the elderly, children, disabled persons and households headed by women. In addition to these requirements the court is required to consider whether land has been made available or can reasonably be made available by a municipality or other organ of state or another landowner for the relocation of the defendant, if the latter has been in unlawful occupation for longer than six months. The period of occupation is calculated from the date that the occupation becomes unlawful.

… ***If the requirement of s 4 of PIE are satisfied and no valid defence to an eviction order has been raised, the court 'must', in terms of s 4(8), grant an eviction order****. When granting such an order the court must, in terms of s 4(8)(a) of PIE, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises…".*

Application of Law to Facts

[19] It is undisputed that the Respondents reside on the property, and that the applicant is its registered owner. The Applicant has provided incontrovertible documentary proof of ownership of the property by the trust.

PIE compliance

Unlawful occupation

[20] The Respondents justify their unlawful occupation of the property on two grounds that, they: (1) gained possession of the property in terms of the impugned Deed of Sale; and (2) have made improvements in the property to the value of R550 503.

The impugned Deed of Sale

[21] The Respondents gained possession of the property when they purported to conclude the sale of the property through the impugned Deed of Sale of 7 November 2014. The purported sale of the property to the Respondents is null and void *ab initio*. This is because section 13(1) of AEA expressly prohibits disposal of property of a deceased person *except under letters of executorship granted or signed and sealed under this Act, or under an endorsement made under section fifteen, or in pursuance of a direction by a Master*. It is not in dispute that Mrs Nasir was not issued with *Letters of Executorship* when she signed the impugned Deed of Sale. Equally, she did not act as *an endorsement made under section 15, or in pursuance of a direction by a Master*. Moreover, the impugned Deed of Sale obliges the Respondents to vacate the property upon cancellation of this agreement for whatsoever reason, no tenancy being created by any such prior occupation.

The improvements made to the property

[22] Tangentially and in relevant part, the impugned Deed of Sale provides:

> *"If occupation is given to the Purchaser before the date of transfer: … the Purchaser shall not be entitled to make any alterations on the property before transfer without the prior written consent of the Seller which consent shall be at the Seller's sole and absolute discretion…".*

[23] Neither Mrs Nasir, the Executor, nor Mr. Erasmus ever furnished the Respondents with prior written consent to make the claimed improvements.

Enrichment claims and lien

[24] The Applicants were not enriched by the claimed improvements. The parties that were enriched by the alleged improvements (if any) are Mrs Nasir and the deceased estate. Therefore, the Respondents do not have any lien against the property of the trust. The trust's deprivation of use and enjoyment of its own property by the Respondents is unlawful. The Respondents have no legal right to occupy the property of the trust and do so without the consent of the Applicants, the trustees of the trust. The Respondents have been in unlawful occupation of the property since the trust purchased the property from Skyscore on 26 July 2024.

[25] Accordingly, the Respondents are unlawful occupiers as envisaged in PIE. That being the case, a written and effective notice of the proceedings must be served on both the unlawful occupier and the municipality having jurisdiction at least fourteen days before the hearing of the proceedings for the eviction of the defendant. The Applicants have given effective notice of the application to the Respondents.

The Respondents' personal circumstances

[26] The purported personal circumstances of the Respondents have been considered. The current occupants of the property are the First and Second Respondents, their two adult children (aged 23 and 25), and their two minor grandchildren (aged 7 and 4 months). The First Respondent is employed by the United Nations, and the Respondents have offered to purchase the property for R1,000,000. They claim that eviction would render them homeless. However, the court finds their claims implausible because: (1) The First Respondent is employed, reducing the likelihood of homelessness; (2) The Second Respondent has not disclosed her employment status but still offered to buy the property; (3) The employment status of their adult

children is undisclosed; and (4) They have not explained their legal obligation to financially support their adult children or grandchildren.

[27] Courts must balance the rights of landowners and unlawful occupiers with grace and compassion, promoting a caring society based on good neighbourliness and shared concern, as emphasized in Port Elizabeth *Municipality v Various Occupiers*[5].

[28] In cases where no valid defense is raised, courts may grant eviction orders but ensure occupiers are given sufficient time to find alternative housing, as noted in *Resnick v Government of South Africa*[6].

[29] The Respondents were informed of their right to present personal circumstances, such as the risk of homelessness, to the court. A Personal Circumstances Questionnaire was provided to assess their need for alternative accommodation. The Respondents did not complete or submit the questionnaire, despite multiple opportunities, making it difficult to assess their risk of homelessness. The Applicants argue that they cannot be expected to provide free housing indefinitely, especially as they are suffering financial losses due to the Respondents living rent-free and the legal costs incurred in pursuing eviction.

Conclusion

[30] For reasons stated above, I am satisfied that the order I make below is just and equitable.

In the result, I make the following order:

1. The eviction order is hereby granted against the First Respondent, Second Respondents and all other persons holding occupation under them ("the Respondents"), at the immovable property known as **ERF 1[...] WETTON**

[5] 2005 (1) SA 217 (CC) at paragraph 37.
[6] (A536/2011) [2012] ZAWCHC 395; 2014 (2) SA 337 (WCC) (12 October 2012).

TOWNSHIP, IN THE CITY OF CAPE TOWN, DIVISION CAPE TOWN, PROVINCE OF THE WESTERN CAPE, IN EXTENT 478 (FOUR HUNDRED AND SEVENTY EIGHT) SQUARE METRES HELD BY DEED OF TRANSFER NUMBER T[...]COMMONLY KNOWN AS [...] A[...] AVENUE, TURFHALL ESTATE, OTTERY EAST 7800 ("the property").

2. The Respondents shall vacate the property by no later than 13h00 on Friday 26 September 2025.
3. Should the Respondents fail to vacate the property as mentioned in paragraph 2 above, the Sheriff of this Court and/or his duly appointed deputy is authorised and directed to evict the Respondents from the Property on Monday 29 September 2025.
4. To give effect to this Order and to the extent necessary, the Sheriff of this Court and/or his duly appointed deputy is authorised to elicit assistance from the South African Police Services.
5. The Respondents shall pay the Applicant's costs of this application, jointly and severally, the one paying the other to be absolved, on an attorney and client scale.

P NJOKWENI

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant : M Holland

Instructed by : Vezi & De Beer Inc.

For the Respondent : R Randall

Instructed by : Jason Freel & Associates Inc