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

CASE NO: 2023-050412

In the matter between:

HIPPACHER, JOHANNES HARALD

Applicant

and

ERASMUS, MELANIE

First Respondent

NTUMBA, BETTY

Second Respondent

GUNNET, GIFT

Third Respondent

STRAO, BETHEA

Fourth Respondent

**THE FURTHER UNLAWFUL OCCUPIERS OF
ERF 7[. .] BOKSBURG NORTH EXT.**

Fifth Respondent

EKURHULENI METROPOLITAN MUNICIPALITY

Sixth Respondent

JUDGMENT

INTRODUCTION

1. This is an opposed eviction application instituted in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ('the PIE Act'). It relates to a residential property in Boksburg.

2. The application was opposed by Mr Mila Ntumba Kashala, an occupant of the property. Mr Kashala initially represented himself and filed a notice of opposition on behalf of the first to fifth respondents.

3. Some two months later attorneys filed a notice of intention to oppose on behalf of the first to fifth respondents but subsequently withdrew as the representatives of the first to fourth respondents and remained on brief only for Mr Kashala.

4. Mr Kashala stated in his affidavit that the first, third and fifth respondents were not known to him and had never communicated with him. Nothing was ever filed on their behalf. The second respondent was known to Mr Kashala, but was said to have long since vacated the property. Nothing was ever filed on her behalf.

5. Mr Kashala denied in his affidavit being an unlawful occupier, and therefore denied that he was the fifth respondent or fell within the definition of the fifth respondent, even though the attorney had, as indicated, gone on record for Mr Kashala as the fifth respondent. Nothing turned on this, however. As will appear from what follows, Mr Kashala is an unlawful occupier of the property.

6. Mr Kashala testified that the property was occupied by him, his wife, his one adult child and his minor child; and three other families about whom no detail was given. On his version none of the first to fourth respondents were in occupation of the property.

7. I was satisfied that the application, the section 4(2) notice contemplated by PIE and the notice of set down had all been properly served on any occupiers of

the property, and the application was thus opposed only by Mr Kashala, and not any other occupants.

8. When the matter was called at its allocated time of 14:00 on Thursday 21 August 2025, Mr Kashala was present, but his attorney was not. The applicant's legal representatives were present.

9. Mr Kashala advised the court that he and his attorney were present at court on Monday 18 August 2025 and had been advised, it was not clear to me by whom, that they should return for the hearing of the matter at 14:00 on Thursday 21 August 2025. Mr Kashala's attorney had told him that she was engaged elsewhere on 21 August 2025 but that he should attend court and she would attend as soon as she became free to do so.

10. Attempts were made by both the applicant's legal representatives and my secretary to reach the attorney telephonically. Their calls were not answered. I accordingly postponed the matter to 10:00 the following day in order to afford Mr Kashala the opportunity of having his attorney present. The applicant's attorney communicated this development to Mr Kashala's attorney by email.

11. At 10:00 on Friday 22 August 2025, neither Mr Kashala nor his attorney were present. I accordingly heard submissions from the applicant's counsel and granted the order which appears at the end of this judgment. I indicated I would subsequently give reasons for my order. This judgment sets out those reasons.

THE FACTS PERTAINING TO THE CURRENT OCCUPATION OF THE PROPERTIES

12. The applicant is the registered owner of the immovable property in issue in Boksburg, which comprises two semi-detached houses on a single stand. He let the properties in 2019 to the first four respondents and those leases came to an end.

13. Mr Kashala alleges to have taken occupation through the second

respondent. He stated that he rented the property with her. He says he was given a lease agreement by her (incidentally in January 2019, which would predate the conclusion of the lease between the applicant and the second respondent by several months) for a one year duration in terms of which he was to pay her R2,000/month. In January 2020 the second respondent introduced Mr Kashala to one Cyril Rubins who was described as the new owner. Mr Kashala alleged that a new lease was concluded (he does not say with whom) and that he interchangeably paid the rent in cash to the second respondent or Rubins. When there was a dispute between Rubins and the second respondent as to the entitlement to the rent from Mr Kashala, he apparently offered to purchase the property, collectively with members of his family.

14. He alleges that he entered into a signed offer to purchase with Rubins and attached a copy of the agreement to his affidavit. It is dated 29 November 2021 and provides for a purchase price of R1,2 million payable upon registration of transfer and subject to Mr Kashala being able to obtain loan finance for this amount within 14 days of signature of the agreement. There is no evidence that he ever obtained loan finance. Occupation was only to be given to Mr Kashala on registration of transfer. The residential address for Mr Kashala recorded on the offer to purchase is not the address of the property in issue.

15. Mr Kashala continues that as he could not afford the amount requested he arranged to have the other bedrooms occupied and the resultant four families would collectively contribute to and pay the purchase price. They initially paid Rubins R400,000 as a deposit and were to then pay him a monthly amount of R20,000 until the end of 2025 when transfer would take place.

16. Much of this is irreconcilable with the terms of the written document put up by Mr Kashala. Nor is there an explanation for how to reconcile Mr Kashala's contention that he was already in occupation at the time of concluding the offer to purchase with the indications in that document that he was not in occupation. The timing of his alleged conclusion of a lease with the second respondent is also a factual difficulty.

17. The applicant put up a printout from the deeds office demonstrating his ownership of the immovable property and produced a certified copy of his title deed. No proof of Mr Rubins' alleged ownership was adduced. On the probabilities, the applicant is the owner of the property.

18. That being so, it follows that none of the present occupiers, Mr Kashala included, are in occupation with the permission or consent of the owner of the property.

JOINDER

19. Mr Kashala contended that it was necessary for the applicant to have joined Mr Rubins to the application. I disagree. Joinder would have been necessary had Mr Rubins had a direct and substantial interest in the application.¹ As he is not the owner of the property, he cannot have an interest in the application.

WHETHER EVICTION SHOULD BE ORDERED

20. As the occupiers have no entitlement through the applicant to be in occupation, they are unlawful occupiers.² What remains for determination is thus whether it would be just and equitable to grant an eviction order taking into account all relevant circumstances, and, if so, the conditions which should attach to such an order.³

21. Mr Kashala stated that he is self-employed. He sells goods at a market at East Gate Mall. He gave no indication of his income save to state that he had always paid his share of the R20,000 monthly contribution (an amount of R5,000) but had sometimes struggled to raise his share. He alleged that his wife was unemployed. He has a school-going child who attends school '*next to this area*'. The age of the child was not provided (but from a birth certificate annexed to his affidavit she

¹ *ABSA Bank Ltd v Naude NO and Others* 2016 (6) SA 540 (SCA) at para 10

² *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) at para 19

³ *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at para 12

appears to be 13 years old), nor was I given any information as to the school the child attends or what school fees are payable. He also has an elder daughter residing with him who is unemployed and who completed tertiary education at the University of Johannesburg in 2023.

22. Mr Kashala had the means to provide for food for his family, school fees and transport. He has occupied the present property since 2019. He used money he had saved (in an undefined amount) to make unspecified repairs to the property he occupies.

23. He alleged that he had no alternative accommodation and no means to obtain alternative accommodation. All four families would be rendered homeless by an eviction order, according to him. I do not place any weight on the statement he makes concerning the other families as there was no information before the court relating to them and he did not act for them.

24. As held in *Occupiers Berea v De Wet NO and Another*,⁴ a court needs 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, under what conditions. Without this information being before the court the necessary enquiry cannot be conducted and eviction cannot be ordered. However, the obligation of placing the necessary information before the court is that of the parties to the proceedings and, more particularly, it is for the occupiers to put forward the facts and circumstances which concern them.

25. It cannot be expected of the applicant to negative in advance facts not known to him and not yet in issue between the parties.⁵

26. That there are gaps in the facts pertaining to Mr Kashala's circumstances is a consequence of the manner in which he chose to depose to his answering affidavit and his failure to appear at the hearing of this matter. He was, further, legally represented throughout the proceedings.

⁴ 2017 (5) SA 346 (CC) at para 46 and 47

⁵ *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) at para 19

27. The applicant's counsel argued that Mr Kashala could have, and should have disclosed to the court, for example, what school his child was at, what school fees were payable and who paid them, what his expenses were, and what his income is. It also seems to me that it would have been helpful to explain what qualification his elder daughter has, whether she is seeking employment, whether his wife is seeking employment and what steps have been taken, if any, to search for and secure alternative accommodation given that these proceedings came to Mr Kashala's notice in September 2023. Instead I was presented with conclusions, such as the contention that he and his family will be rendered homeless, without sufficient underlying supporting facts to enable me to determine whether the conclusion was a valid one.

28. There are also the unanswered questions of whether the families who were to assist him in purchasing the property would be able to accommodate him or support him or his family. No indication is given as to how utilities (which presumably are still being supplied to the property) are paid for. No information is given regarding what assets the Kashala family might have.

29. On Mr Kashala's version, he ceased paying Rubins when the eviction of the occupiers was sought by the applicant. There thus ought to be accumulated savings available to Mr Kashala, and the other families, to assist them in securing alternative accommodation.

30. The inference the applicant urged me to draw seems correct, namely that were there more which could have been said in Mr Kashala's favour on these issues, it would have been.⁶

31. There is no explanation for why the other families have chosen not to place their facts and circumstances before the court, despite notice having been served on them.

⁶ *Mayekiso and Others v Patel NO and Others* 2019 (2) SA 522 (WCC) at para 66

32. Eviction will not be just and equitable if it will result in homelessness.⁷ Despite Mr Kashala's contention that he would be rendered homeless, I am not prepared to find that an eviction in the present circumstances will result in homelessness.

33. Homelessness must mean that there is no reasonable prospect between the date on which the court order is made, and the date that the occupier is to vacate the property of the occupier being able to find alternative accommodation of a comparable standard.⁸

34. The respondents have failed to take the court into their confidence and have not proffered sufficient facts to establish that they will be rendered homeless.⁹

35. The lack of participation in the application by the sixth respondent meant that I had no information available to me regarding the availability of either temporary emergency accommodation or accommodation generally. I was informed from the bar by the applicant's counsel that the amount of R5,000 which Mr Kashala was able to pay monthly, on his version, to Rubins, exceeds the earnings threshold for temporary emergency accommodation.

36. Had Mr Kashala considered that the sixth respondent had a duty to or the capacity to house him and his family, he could have taken the initiative to engage with it in that regard.¹⁰ There is no evidence that he has done so.

37. The Kashala family has further not given any evidence that they have tried and failed to find alternative accommodation within their available resources.¹¹

38. Nevertheless, I accept that there is a minor child who, if possible, ought not to have her schooling disrupted at this time of year.

⁷ *Arendse v Arendse and Others* 2013 (3) SA 347 (WCC)

⁸ *Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers of the Newtown Urban Village* 2013 (1) SA 583 (GSJ) at para 85

⁹ *Shezi v LVL and Another* [2023] ZAGPJHC 373 at para 18

¹⁰ *Ives v Rajah* 2012 (2) SA 167 (WCC) at para 26

¹¹ *Mayekiso supra* at para 67

39. The applicant has not indicated to the court what purpose he will put the property to should eviction be ordered nor has he indicated that he has any particular urgent need for the vacant occupation of his property. This is thus a case where he will have to be a little patient and have his rights temporarily restricted for a little longer.¹²

ORDER

40. For the reasons set out in this judgment, I thus granted the following order:

40.1. The First to Fifth Respondents (“the Respondents”) and all those occupying the properties by, through or under them, are evicted from the properties situate at 80 & 80A 6TH STREET BOKSBURG NORTH, JOHANNESBURG, more fully described as ERF 7[...] BOKSBURG NORTH EXT. TOWNSHIP, REGISTRATION DIVISION I.R., GAUTENG (hereinafter referred to as “the properties”);

40.2. The Respondents and all those occupying the properties by, through or under them are ordered to vacate the properties on or before 31 October 2025;

40.3. In the event that the Respondents and all those occupying the properties by, through or under them do not vacate the properties on 31 October 2025, the Sheriff of the Court or his lawfully appointed Deputy is authorised and directed to evict the Respondents and all those occupying the properties by, through or under them from the properties;

40.4. The Fifth Respondent(s) are directed to pay the costs of this application, including the costs of the application in terms of Section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, jointly and severally, the one paying the other to be absolved.

K D ILES

Acting Judge of the High Court, Johannesburg

¹² *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at para 40

Appearances:

On behalf of the applicant: L Peter

Instructed by: Vermaak Marshall Wellbeloved Inc

On behalf of the 5th respondents: No appearance

Instructed by: Kagiso Rakhuba Attorneys

Date of hearing: 21 and 22 August 2025

Date of order: 22 August 2025

Date of reasons: 7 September 2025