

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

Case Number: A2024-099415

(1) REPORTABLE: NO.
(2) OF INTEREST TO OTHER JUDGES: NO.
(3) REVISED: NO.

In the matter between:

CLAUDETTE ESTEL PETERSEN	Appellant
and	
JACOBS LARRY NICHOLAS	First Respondent
CITY OF JOHANNESBURG	Second Respondent

JUDGMENT

DREYER, J

[1] This is an appeal against the order of the Magistrate Court, Johannesburg, of June 2024, evicting the appellant from Flat 3017 Edward Flats, Westbury, Johannesburg (“the property”), where she has resided for 18 years. The respondent has leased the property from the City of Johannesburg since November 2004. The

respondent is the lawful leaseholder and occupant of the property. This is common cause.

[2] The appellant and the respondent were previously involved in a romantic relationship. The respondent and her children moved into the property with the appellant. Following the breakdown of the relationship between the parties, the respondent made multiple requests for the appellant to vacate the property, the appellant failed to do so. The appellant does not have the respondent's express or implied consent to occupy the property. This is not disputed.

[3] The appellant contends the respondent does not and has not lived at the property continuously since at least 2014. The respondent's counterargument is that he was compelled to move out of the property as the appellant obtained a restraining order for domestic violence and laid an assault charge against him. The assault charges were dismissed and the temporary restraining order discharged. The appellant remained in occupation at the property. The respondent has continued to meet his rental obligations to the owner, the City of Johannesburg, despite not residing at the property.

[4] In this appeal, the appellant seeks to discharge the eviction order granted against her. The relief the appellant seeks is final in nature. Such relief is contrary to the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ ("PIE Act") which recognises that the lawful owner or occupant may be temporarily displaced.²

[5] The Constitutional Court in the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) and Another*³ stated the position as:

"[40] It could reasonably be expected that when land is purchased for commercial purposes the owner, who is aware of the presence of occupiers over a long time, must consider the possibility of having to endure the occupation for some time. Of course, a property owner cannot be expected to

¹ 19 of 1998.

² *Msibi v Occupiers of Unit 67 Cedar Creek Trefnant Road Ormonde Ext 28 and Another* 2025 JDR 0640 (GP) at para 8.

³ 2012 (2) SA 104 (CC).

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, as Blue Moonlight's situation in this case has already illustrated. An owner's right to use and enjoy property at common law can be limited in the process of the justice and equity enquiry mandated by PIE."

[6] The rights articulated by the Constitutional Court apply similarly to the respondent, the lawful leaseholder.

[7] There is no basis in law for the appellant to remain indefinitely in unlawful occupation at the property.

[8] In the proceedings before the Magistrate Court, the City of Johannesburg compiled a temporary emergency accommodation ("TEA") report and concluded that the Appellant does not qualify for temporary emergency accommodation. This conclusion was based on facts and information the appellant provided to the report compiler, an official of the City of Johannesburg. The appellant stated that her two daughters and grandchild lived with her; she earned income from doing laundry and cleaning; her daughter, Valente, is employed and receives a salary of R7 000.00; while her other daughter Chandre, is a NSFAS-funded student who stays in student accommodation and only returns to live with the appellant during her university holidays; her grandchild, Cody, receives a foster grant. The appellant stated that in the event of her eviction from the property, she had two alternative places of accommodation, either to reside with her parents or her daughter, both of whom live in Westbury.

[9] The appellant did not dispute the findings of the TEA report, nor did she challenge its recommendation. The TEA report disposes of the appellant's defence that the first respondent failed to provide evidence that there is alternative accommodation available for her.

[10] The appellant argued that it would be difficult for her to find housing similar to the property, low-cost housing subsidised by the City. The appellant is not entitled to

housing of her choice, at the expense of the state. As the Court in *Grobler v Phillips and Others*⁴ stated:

“An unlawful occupier such as Mrs Phillips does not have a right to refuse to be evicted on the basis that she prefers or wishes to remain in the property that she is occupying unlawfully. In terms of s 26 of the Constitution, everyone has the right to have access to adequate housing. The Constitution does not give Mrs Phillips the right to choose exactly where in Somerset West she wants to live.”

[11] Additionally, the Appellant has no right to choose to continue to occupy the property.

[12] The facts elicited by the City of Johannesburg are in stark contrast to those that the appellant put up in her answering affidavit, opposing her eviction from the property. In those proceedings the appellant stated that she was unemployed and had no prospect of acquiring alternative employment or accommodation. In the face of the TEA report, the appellant persisted in this appeal with these grounds of defence, arguing that it would not be just and equitable for her to be evicted from the property.

[13] Whether it is just and equitable to grant the eviction of an unlawful occupant is a two-pronged enquiry.⁵

[14] The first leg of the enquiry is whether it is just and equitable to grant eviction having regard to all the relevant factors under PIE. These factors include rights of the elderly, the disabled, children and women-headed households. The latter two factors are relevant in this instance. The appellant is the head of her household. She has one minor child, Cody who resides with her at the property. The TEA report took these factors into consideration. The weight to be given to these factors must be balanced against the protection afforded to property owners under section 25 of the Constitution. Such protection is also available to a lawful leaseholder, such as the

⁴ 2023 (1) SA 321 (CC) at para 36.

⁵ *Occupiers, Berea v De Wet NO And Another* 2017 (5) SA 346 (CC) accepted the two-pronged enquiry, relied on the matter of *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA), at paras 44-45.

Respondent, as he is “the person in charge” of the property.⁶ There is no dispute that the respondent is the lawful leaseholder of the property. It is only once a court decides that there is no defence to the claim for eviction that a court can find it would be just and equitable to grant the order. If the court does so, it is obliged to grant the order.

[15] The appellant has no defence as to why she should remain indefinitely in unlawful occupation of the property. The appellant fails the first leg of the two-pronged test. In these circumstances I find it is just and equitable for the appellant to be evicted.

[16] The second leg of the enquiry is to consider what is just and equitable in relation to the date of the implementation of the order and the conditions to be attached to that order.

[17] While the appellant has resided at the property for 18 years, any consent she had from the respondent to continue to reside there has long been withdrawn. The appellant has remained in unlawful occupation of the property for over a year, since the court *a quo* granted the order evicting her from the property in June 2024. The Appellant did not dispute the TEA report findings or recommendations. In these circumstances, a fair and equitable time to require the appellant to vacate the property is a period of one month.

[18] The appellant instituted the appeal proceedings in circumstances where she recognised the respondent as the lawful occupant of the property, failed to be candid and honest with the court regarding her true circumstances and proffered no defence as to why she should remain in occupation of the property, indefinitely to the detriment of the respondent. In these circumstances, the appellant should bear the costs associated with the appeal, as well as the costs as ordered by the court *a quo*.

⁶ A “person in charge” is defined in the Pie Act 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. See also *Hohenfelde Dohne Merinos (Pty) Ltd v Louw and Others* 2023 JDR 4205 (WCC) at paras 20-23.

[19] Counsel for the respondent informed the court that she acts *pro bono*. Section 92(1) of the Legal Practice Act⁷ recognises that when legal services have been rendered for free, and a court awards the litigant costs, the costs are deemed to be ceded to the legal practitioners who provided the free legal services.⁸ This provision finds application in this matter, as far as it relates to the costs of counsel.⁹

ORDER

[20] In the result, the following order is proposed:

1. The appeal is dismissed.
2. The order of the court *a quo* is amended by substituting the date of 26 July 2024 with the date of 12 October 2025, the order to read that:
 - 2.1 The appellant and all those who occupy through her are ordered to vacate the property at 3017 Edward Flats, Westbury Extension 2, Johannesburg, on or before 12 October 2025.
 - 2.2 In the event that the appellant and all those who occupy through her do not vacate the property mentioned above by 12 October 2025, the sheriff of the court is ordered to effect eviction on 12 October 2025.
 - 2.3 The appellant is ordered to pay the respondent's costs incurred both in the Magistrate's Court and the costs of this appeal on a party and party scale, costs of counsel to be paid on scale B.

**C DREYER AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION**

I AGREE AND IT IS SO ORDERED.

MMP MDALANA-MAYISELA J

⁷ 28 of 2014.

⁸ The section reads: Whenever in any legal proceedings or any dispute in respect of which legal services are rendered for free to a litigant or other person by a legal practitioner or law clinic, and costs become payable to that litigant or other person in terms of a judgment of the court or a settlement, or otherwise, that litigant or other person must be deemed to have ceded his or her rights to the costs to that legal practitioner, law clinic or practice.

⁹ *Mudau v Municipal Employees' Pension Fund and others* [2023] 11 BLLR 1109 (CC); [2023] JOL 60371 (CC); [2023] ZACC 26 (CC) at 78.

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION**

For the Applicant: Advocate BZ Bobison-Opoku
Instructed by: A J Venter & Associates Inc

For the Respondent: Advocate EM Mogolane
Instructed by: Pro Bono Office

Hearing date: 5 August 2025
Judgment handed down: 12 September 2025