

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

Case No: 2024/ 009866

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

22 September 2025

M. NAIR

IN THE MATTER BETWEEN:

CALC 9 (PTY) LTD
(REGISTRATION NUMBER: 2021/934260/07)

FIRST APPLICANT

AND

HLENGIWE HAPPINESS SHABALALA

FIRST RESPONDENT

THE CITY OF JOHANNESBURG

SECOND RESPONDENT

JUDGMENT

This Judgment is handed down electronically by circulation to the Applicant's Legal Representative and the Respondent's Legal Representative by email, publication on Case Lines. The date for the handing down is deemed 21 September 2025 at 10h00.

NAIR AJ

INTRODUCTION:

[1] This matter concerns an application for eviction in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the "PIE Act") of the first respondent, Ms Hlengiwe Happiness Shabalala (Ms "Shabalala"), from the premises situated at Erf 9[...] T[...] Street, P[...] G[...], Extension 12, Johannesburg (the "property"). The applicant, is the registered owner of the property. The second respondent, the City of Johannesburg Metropolitan Municipality ("the City"), is cited because of its constitutional obligations under section 26 of the Constitution of the Republic of South Africa¹ (the "Constitution") to prevent homelessness in eviction matters.

[2] At the commencement of the proceedings the parties abandoned their respective points *in limine* raised in their papers. Ms Shabalala also filed a notice of withdrawal of the application to invalidate the bidding of the property by the applicant and estate agent, Jonathan Marks, under case 2024-084619 of this court with the simultaneous withdrawal of the request that Ms

¹ The Constitution of the Republic of South Africa Act 108 of 1996

Shabalala be allowed to sell the property privately. Ms Shabalala was properly served with the application in terms of section 4(1) of the PIE Act as well as the section 4(2) notice in terms of the PIE Act.

- [3] Ms Shabalala's legal representatives failed to file heads of argument in the matter on behalf her behalf in compliance with Practice Directive 25.1.2 of the Consolidated Practice Directives 1/2024 (the "Consolidated Practice Directives") and further failed to comply with compiling a joint practice note with the applicant in compliance with Practice Directive 25.18 of Consolidated Practice Directives. Adv Kabinde, who argued on behalf of Ms Shabalala made his submissions from the bar that Ms Shabalala conceded that she was in unlawful occupation of the property, but that given her personal and socio-economic circumstances that she and her son would be rendered homeless if an order is granted ordering her eviction from the property.²

BACKGROUND:

- [4] The essential facts of this case are largely common cause. The property was previously bonded to Nedbank Limited. Ms Shabalala defaulted on her loan repayments during 2021, which culminated in judgment being taken against her. Pursuant to that judgment, the property was attached and sold at a sale in execution conducted by the Sheriff on 3 November 2023. The applicant purchased the property at the sale for R307,000. Transfer was duly effected

² First respondent's answering affidavit 02-72; First respondent's opposing affidavit 02-84

into the name of the applicant on 12 January 2024.³ The deeds registry reflects the applicant as the registered owner.⁴

[5] Ms Shabalala, who is 47 years of age, has resided at the property for approximately nineteen years. It has been her family home since acquisition. She currently lives there with her adult son. When the application was lodged by the applicant, Ms Shabalala was employed as a sales representative at Momentum.⁵ At the hearing of the matter counsel for Ms Shabalala submitted that she has since become unemployed. Ms Shabalala placed no bank statements, or supporting documentation before court regarding her unemployment. She denies that she refused to vacate the property and claimed in her papers that her son is unemployed and dependent upon her but no confirmatory affidavit was filed by Ms Shabalala's adult son to substantiate this assertion.⁶

[6] Ms Shabalala alleges that prior to the auction, she had secured prospective private buyers willing to purchase the property for approximately R800,000. However, those buyers were unable to secure bank finance and the transactions collapsed. She contends that the auction price of R307,000 was unreasonably low.⁷ She lodged proceedings to invalidate the bidding of the property by the applicant and estate agent, Jonathan Marks under, case

³ Applicant's founding affidavit 02-8

⁴ Applicant's founding affidavit 01-12 and 02-14

⁵ Applicant's founding affidavit 02-9; Respondent's answering affidavit 02-84

⁶ Respondent's answering affidavit 02-87 and 02-88

⁷ Respondent's answering affidavit 02-84

2024-084619 of this court with the simultaneous request that she be allowed to sell the property.⁸ These applications were subsequently withdrawn. Most significantly, Ms Shabalala avers that should this court grant the eviction order, she and her son will be rendered homeless, as she has no alternative accommodation.⁹

[7] The applicant, for its part, submits that the Ms Shabalala's occupation is unlawful and prejudicial. It contends that her defences are without merit, that her alleged hardship is unsubstantiated, and that her continued occupation denies the applicant the benefit and enjoyment of its property while burdening it with municipal charges.¹⁰

[8] The following is common cause between the parties:

[8.1] The applicant is the registered owner of the property;

[8.2] Ms Shabalala tried to negotiate a private sale of the property prior to the

sale in execution on 3 November 2023;

[8.3] The first respondent attempted to settle the arrears on the bond with Nedbank Limited prior to the sale in execution;

[8.4] The sale in execution took place on 3 November 2023;

⁸ Respondent's answering affidavit 02-85

⁹ Respondent's answering affidavit 02-89

¹⁰ Applicant's answering affidavit 02-186 to 02-187

[8.5] The Registrar of Deeds registered the property into the name of the applicant on 12 January 2024;

[8.6] The first respondent remains in occupation of the property together with her adult son.

ISSUES:

[9] The following are the key issues in dispute between the parties:

[9.1] Whether the applicant is entitled to eviction under the PIE Act;

[9.2] Whether the first respondents' circumstances justify delaying eviction or conditioning it on municipal provision of housing;

[9.3] Whether the eviction, if granted, would be just and equitable.

LEGAL PRINCIPLES:

[10] In the *Constitutional Court case of Occupiers of erven 87 & 88 Berea versus Christiaan Frederick De Wet N.O*¹¹ the court held that the starting point in eviction matters is section 26(3) of the Constitution which provides that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. Accordingly, courts seized with eviction matters are enjoined by the Constitution to consider all relevant circumstances. The court went on further to hold that the prohibition in section 26(3) of the Constitution is given effect to

¹¹ Constitutional Court case of Occupiers of erven 87 & 88 Berea versus Christiaan Frederick De Wet N.O and Others case number 108/2016 at paras 40 to 41

through the enactment of PIE. The PIE Act goes further and enjoins the courts to order an eviction only if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances as contemplated in sections 4(6) and (7) and section 6(1) of PIE.

[11] Section 6(3) of the PIE Act, stipulates certain aspects that the court must consider when it is to be decided whether an eviction will be just and equitable. Section 6(3) of PIE Act reads as follows:

“6(3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to-

- (a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;*
- (b) the period the unlawful occupier and his or her family have resided on the land in question; and*
- (c) the availability to the unlawful occupier of suitable alternative accommodation or land.”*

[12] The nature of the enquiry under section 4 of PIE was examined in the case of *City of Johannesburg versus Changing Tides*¹². The court at paragraph 12 of the judgment stated the following:

¹² *City of Johannesburg versus Changing Tides* 2012 (6) SA 294 (SCA) at par 12

“There does not appear to have been a consideration of the precise relationship between the requirements of section 4(7) (or section 4(6) if the occupiers have been in occupation for less than six months) and section 4(8) in the context of an application for eviction at the instance of a private landowner. In some judgments there is a tendency to blur the two enquiries mandated by these sections into one. The first enquiry is that under section 4(7), the court must determine whether it is just and equitable to order eviction having considered all relevant circumstances. Among those circumstances the availability of alternative land and the rights and needs of people falling into specific vulnerable groups are singled out for consideration. Under section 4(8) it is obliged to order an eviction “if the ... requirements of the section have been complied with” and no valid defence is advanced to an eviction order. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the owner of the property, such as the existence of a valid lease. Compliance with the requirements of section 4 refers to both the service formalities and the conclusion under section 4(7) that an eviction order would be just and equitable. In considering whether eviction is just and equitable the court must come to a decision that is just and equitable to all parties. Once the conclusion has been reached that eviction would be just and equitable the court enters upon the second enquiry. It must then consider what conditions should attach to the eviction order and what date would be just and equitable upon which the eviction order should take effect. Once again, the date that it determines must be one that is just and equitable to all parties”

[13] The second enquiry, which the court must undertake before granting an eviction order, is to 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. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly, it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.”*¹³

[14] In the Constitutional Court case of the *City of Johannesburg versus Blue Moonlight Properties 39 (Pty) Ltd*¹⁴ the Court was called upon to decide whether it was reasonable for the local authority to provide temporary emergency accommodation only to those occupants who were evicted from properties owned by the local authorities and not to occupants evicted from

¹³ *City of Johannesburg versus Changing Tides* 2012 (6) SA 294 (SCA) at par 25

¹⁴ *City of Johannesburg versus Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) at par 96

private property. The Court held that it was unreasonable to differentiate between these two groups.¹⁵ The effect is that the local authority has a duty to provide temporary emergency accommodation to all persons being evicted who have no alternative accommodation.¹⁶

[15] This duty must be read together with section 4(7) of the PIE Act, which provides that one of the circumstances which may be relevant to the just and equitable enquiry is whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier.

[16] Where there is a risk that homelessness, the availability of alternative accommodation becomes a relevant circumstance that must be taken into account.¹⁷ A court will not be able to decide the justice and equity of an eviction without hearing from the local authority upon which a duty to provide temporary emergency accommodation may rest.¹⁸ This duty must be read together with section 4(7) of the PIE Act, which provides that one of the circumstances which may be relevant to the just and equitable enquiry is whether land has been made available or can reasonably be made available

¹⁵ Ibid at par 95.

¹⁶ Id at para 96-7.

¹⁷ See *Changing Tides* above at para 38.

¹⁸ See *Occupiers of Erf 101, 102, 104 and 112 Shorts Retreat, Pietermaritzburg versus Daisy Dear Investments (Pty) Ltd* [2009] ZASCA 80; 2010 (4) BCLR 354 (SCA) (*Shorts Retreat*) at paras 11-4; *Changing Tides* above at para 38 and *Drakenstein Municipality v Hendricks* 2010 (3) SA 248 (WCC) at para

by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier.

- [17] In the matter of *Port Elizabeth Municipality v Various Occupiers*¹⁹ Justice Sachs of the Constitutional Court stated that following:

“Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern”.

MS TSHABALALA’S PERSONAL CIRCUMSTANCES:

- [18] In *Transnet Ltd versus Zaaiman*²⁰ the court held the following:

“The discretion conferred on a court by PIE must be exercised judicially, with full regard to the personal circumstances of the occupiers, the length of occupation, and the availability of alternatives.”

¹⁹ Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) at para 37:

²⁰ Transnet Ltd versus Zaaiman 2014 (1) SA 149 (SCA) at para 29:

APPLICATION OF THE LAW TO THE FACTS:

[19] The applicant is entitled to have unlawful occupiers of its' property evicted, but the applicant's rights must be balanced against the first respondent's constitutional rights to housing and dignity under section 26 of the Constitution.

Ms Shabalala's household only consists of the her and her adult son and she has been residing there for 19 years. I am mindful that Ms Tshabalala is a female who has since the lodgement of these eviction proceedings become unemployed. No request was made by Ms Shabalala to file any supplementary papers despite her being represented at the hearing and the court relied on the papers before it.

[20] Of concern is that there was no proof of the unemployment of Ms Shabalala. At this stage I am no wiser ass to what the reason was that caused her unemployment. It was however undisputed that at the time when this eviction proceedings were lodged, Ms Shabalala was a sales assistant at Momentum and earned a salary of approximately R6 484,70.²¹ Ms Shabalala did not provide any information to this court regarding whether she received any retirement benefits or pay-outs from Momentum when she became unemployed. She blanketly alleged that she will be rendered homelessness if an eviction order is granted in this matter.

²¹ Respondent's answering affidavit 02-89

[21] The court in *Die Dros (Pty) Ltd versus Telefon Beverages CC*²² held the following:

“It is trite law that the affidavits in motion proceedings serve to define not only the issues between the parties, but also to place the essential evidence before the court (See: Swissborough Diamond Mines (Pty) Ltd & Others v Government of the Republic of South Africa & Others 1999(2) SA 279 (W) at 323G) for the benefit of not only the court, but also the parties. The affidavits in motion proceedings must contain factual averments that are sufficient to support the cause of action on which the relief that is being sought is based. Facts may either be primary or secondary. Primary facts are those capable of being used for the drawing of inferences as to the existence or non-existence of other facts. Such further facts, in relation to primary facts, are called secondary facts (See: Willcox & Others v Commissioner of Inland Revenue 1960(4) SA 599 (A) at 602A; Reynolds N.O. v Mecklenberg (Pty) Ltd 1996(1) SA 75 (W) at 78I). Secondary facts, in the absence of the primary facts on which they are based, are nothing more than a deponent's own conclusions (See: Radebe v Eastern Transvaal Development Board 1988(2) SA 785 (A) at 793C-E) and accordingly do not constitute evidential material capable of supporting a cause of action.”

[22] Ms Shabalala did not provide any information regarding her financial position as a result of her unemployment or her adult sons circumstances and whether

²² 2003 (1) All SA 164 (C) at pa 28

he has been seeking employment or not or whether he has since the lodgement of these eviction proceedings gained employment. Her attorneys came on record in February 2024 and one would expect that if there was any additional evidence relevant for this court to consider that such evidence would have been filed through supplementary and confirmatory affidavits but this was not done.

FINANCIAL HARDSHIP:

[23] There is a dispute of fact between the applicant and Ms Shabalala as to whether Ms Shabalala is experiencing financial hardship and whether she would be rendered homeless if evicted from the property. When dealing with disputes of fact the court in *Plascon-Evans Paints Ltd versus Van Riebeeck Paints (Pty) Ltd*²³ had the following to say:

“Ordinarily, the Court will consider those facts alleged by the applicant and admitted by the respondent together with the facts as stated by the respondent to consider whether relief should be granted. Where, however, a denial by a respondent is not real, genuine or in good faith, the respondent has not sought that the dispute be referred to evidence, and the Court is persuaded of the inherent credibility of the facts asserted by an applicant, the Court may adjudicate the matter on the basis of the facts asserted by the applicant.”

²³ *Plascon-Evans Paints Ltd versus Van Riebeeck Paints (Pty) Ltd* [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E-635C, discussed and approved in *Rail Commuters Action Group and Others versus Transnet Ltd t/a Metrorail and Others* [2004] ZACC 20; 2005 (2) SA 359 (CC); 2005 (4) BCLR 301 (CC) at para 53

[24] Ms Shabalala stated that her financial position deteriorated during the Covid-19 pandemic, making her unable to service the bond. She acknowledges her previous employment as a sales representative but has not disclosed her earnings by means of a salary advice. At the hearing of the eviction application it was argued on her behalf that she was currently unemployed. Applying the *Plascon-Evans* rule, I accept Ms Shabalala's claim of financial distress.

RISK OF HOMELESSNESS:

[25] Ms Shabalala asserts that she and her son will be rendered homeless if evicted. Applying *Plascon-Evans*, I accept her assertion that she fears homelessness. Yet her evidence is vague and unsupported. She has not demonstrated attempts to secure alternative accommodation since she was served with the notice of the eviction application. This was whilst she was still employed. She also provided no financial disclosures, or filed any confirmatory evidence from her son. In the case of *Occupiers of Berea*²⁴ *supra*, the Constitutional Court made clear that courts must interrogate allegations of homelessness, but that bald assertions cannot outweigh established ownership rights.²⁵ To my mind a legal representative has a duty to place essential facts before a court where the possibility of homelessness exists. It is common cause between the parties that Ms Shabalala attempted

²⁴ *Occupiers of Berea v De Wet* NO 2017 (5) SA 346 (CC)

²⁵ See also *Luanga versus Perthpark Properties Ltd* 2019 (3) SA 214 (WCC)

to make arrangements with Nedbank Limited to pay off the arrears on the home loan. This to my mind is an indication that Ms Shabalala was not so destitute that she would not have been in a position to secure alternative rental accommodation if she offered to pay an amount to reduce the arrears on the bond.

- [26] The City of Johannesburg Temporary Emergency Policy (the “City’s Policy”) approved on 25 February 2021²⁶ sets out the criteria that temporary emergency accommodation will be provided to households with an income of less than R3500,00 per month²⁷ and also that it will not be provided to affected persons that are capable of addressing their housing need out of their own financial or other resources.²⁸

CONCLUSION:

- [27] In my view the applicant is entitled to eviction as it was conceded on behalf of Ms Shabalala at the commencement of the hearing that she and her adult son are unlawful occupiers. It was further not in dispute that Ms Shabalala is an unlawful occupier as defined in the PIE Act and entitled to the protection of its provisions.

²⁶ Applicant’s replying affidavit 02-220

²⁷ Applicant’s replying affidavit 02-227 par 8.1

²⁸ Applicant’s replying affidavit 02-227

[28] The authorities are clear that this eviction can only occur under terms that are just and equitable. At the hearing of the matter it was not argued on behalf of Ms Shabalala that it was not just and equitable to be evicted from the property but merely that Ms Shabalala and her son would be rendered homeless if they were to be evicted. Ms Shabalala's son is an adult and it was submitted that he was unemployed. I have taken into account the submission that Ms Shabalala is also now unemployed but this in my view does not automatically justify temporary emergency accommodation to be provided by the City unless Ms Shabalala will be rendered destitute. Surprisingly there was no submission made on behalf of Ms Shabalala that the City should be requested to provide a report and temporary emergency accommodation in respect of Ms Shabalala's homelessness. Instead it was argued that it would be just and equitable if Ms Shabalala was given a minimum of six months to get her affairs in order so that she may be given sufficient time to obtain alternative accommodation. This in my view indicated to the court that she wanted to find her own alternative accommodation but merely required the time to save up to do this. It is not a sign of someone who is destitute. As indicated earlier, Ms Shabalala also did not disclose whether she received any benefits from her previous employer when she became unemployed. A perusal of the main reason why she initially opposed this eviction application was because she wanted to sell the property privately instead of the property being sold in a sale in execution so that she could make some profit off the sale. This to my mind is not indicative of someone who is destitute but of someone who merely wished to make a profit from the sale and protect her financial interests.

[29] From what is set out above I find that Ms Shabalala will not be destitute and will not be rendered homeless if an eviction order is granted. I therefore find that it is just and equitable to order her eviction. It is therefore not necessary to obtain a report from the City regarding Ms Shabalala's homeless as I find that she will not be rendered homeless. The proportionality balance here favours the applicant. The question that remains is what is a fair, reasonable, just and equitable date for eviction. Given the fact that the applicant only requests time to find alternative accommodation and the fact that she has had since January 2024 to sort out alternative accommodation, I am of the view that an appropriate date for eviction would be 30 November 2025.

COSTS:

[30] The applicants seek the costs of the eviction application on scale A. It is a natural consequence of litigation that costs should be granted in favour of the successful party.

ORDER:

[31] In the result the following order is made that:

[31.1] The first respondent and all persons occupying the property situated at Erf 9[....] T[...] Street, P[...] G[...], Extension 12, Johannesburg through

and under the first respondent, are declared unlawful occupiers of the property;

[31.2] The first respondent and all those occupying the property through or under the first respondent are evicted and ordered to vacate Erf 9[...] T[...] Street, P[...] G[...], Extension 12, Johannesburg on or before 30 November 2025 which is a just and equitable date for eviction;

[31.3] In the event of the first respondent and all those occupying the property situated at Erf 9[...] T[...] Street, P[...] G[...], Extension 12, Johannesburg failing to vacate the said property on or before 30 November 2025, the Sheriff, his duly authorised Deputy Sheriff for the area within which the property is situated is authorised to evict the first respondent and all persons residing at the property through and under her;

[31.4] The Sheriff or his Deputy Sheriff for the area where the property is situated is authorised to engage the assistance of the South African Police Service in order to give effect to this eviction order, in the event that such assistance is required;

[31.5] The first respondent is ordered to pay the costs occasioned by the eviction application on scale "A".

M NAIR
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

Date of appearance: 11 June 2025

Date Judgment delivered: 21 September 2025

Appearances:

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