

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

Case No: 2021/11293

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

17 September 2025

IN THE MATTER BETWEEN:

**MI PROPERTY HOLDINGS (PTY) LTD
(REGISTRATION NUMBER: 2014/108415/07)**

FIRST APPLICANT

**LANDSEC (PTY) LTD
(REGISTRATION NUMBER: 2012/020068/07)**

SECOND APPLICANT

AND

WILFRED TSHABALALA

FIRST RESPONDENT

TENJIWE NCUBE

SECOND RESPONDENT

RICHARD NDLOVU

THIRD RESPONDENT

OTSHUDI KAYENDE PAPITHSO

FOURTH RESPONDENT

SINDISIWE FELICIA MSANI

FIFTH RESPONDENT

JOEL MGCINI NGWENYA

SIXTH RESPONDENT

WAKHIWE NKOMO

SEVENTH RESPONDENT

THE CITY OF JOHANNESBURG

EIGHTH RESPONDENT

FLOYD BRINK N.O

NINTH RESPONDENT

**(In his capacity as Municipal Manager of the
City of Johannesburg)**

JUDGMENT

NAIR AJ

INTRODUCTION:

- [1] This is an application for the 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 to seventh respondents from the premises at unit 6[...], unit 6[...], unit 6[...], unit 6[...], unit 6[...], unit 6[...] and unit 6[...] Manhattan Place of Erf 1[...] Berea Township, Registration Division IR Gauteng situated at Corner J[...] Road and L[...] Avenue, B[...], Johannesburg (the “property”). There are a total of seven units which form the subject matter of this eviction application and they are all situated on the same property but occupied by the various respondents in this application. The second, third, fifth and seventh

respondents have since being served with this application vacated the property. The applicants, as registered owners of Manhattan Place, seek the eviction of the first, fourth, and sixth respondents who currently still reside in their units. The eighth 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 there was no appearance by the first, fourth and sixth respondents or their legal representative. Counsel for the applicants, Advocate Leon Peters, commenced to argue the merits of the application before me. Prior to Adv Peters finalising his argument, counsel for the first and sixth respondent, Adv Mhlanga, arrived at court citing logistical issues with transportation as the reason for his lateness and requested to address me in argument on the merits of the matter. This request was made despite the fact that the first and sixth respondents failed to file heads of argument in the matter 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. The fourth respondent who 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 failed to attend court on the date set down for

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

hearing of the matter.² The application proceeded in the absence of the fourth respondent as I was satisfied that the fourth respondent had knowledge of the date for the hearing of the matter.

- [3] The first and sixth respondents raised various points *in limine* in their papers, however, at the hearing of the application, Adv Mahlanga who appeared for the first and sixth respondents submitted that the first and sixth respondents conceded that they were in unlawful occupation of the respective units of the applicants property at Manhattan Place, but that given the personal and socio-economic circumstances of the first and sixth respondent that they would be rendered homeless if an order is granted ordering their eviction.

BACKGROUND:

- [4] MI Property Holdings (Pty) Ltd (registration number: 2014/108417/07) (the “first applicant”) is the registered owner of The Manhattan Place which is a multi-unit residential property situated at Erf 1[...] Berea Township, Registration Division IR Gauteng situated at Corner J[...] Road and L[...] Avenue, Berea, Johannesburg. The second applicant is Land Securities Management (Pty) Ltd (registration number: 1989/001797/07) who is the managing agent of the first applicant.³ The respondents are/ were tenants at the property. Mr Wilfred Tshabalala (the “first respondent”) occupied unit 6[...], Mr Otshudi Kayende Papitsho (the “fourth respondent”) occupied unit 6[...]

² Fourth respondent's acknowledgment of receipt of the section 4(2) notice in terms of the PIE Act 029-1 to 029-3

³ Applicants' founding affidavit 002-8 to 002-9

and Mr Joel Ngwenya (the “sixth respondent”) occupied unit 6[...]. The lease agreements entered into with the respondents were terminated in February 2021 due to non-payment, but despite demand the first, fourth and sixth respondents remain in occupation.⁴ The second, third and fifth respondents having vacated their units after the institution of this eviction application.

[5] An earlier order of this court, granted by Opperman J on 25 October 2023, ordered the City to investigate and report on the first and sixth respondents’ personal circumstances and possible temporary emergency accommodation if an order for their eviction was granted.⁵ Those City’s reports are before this court and form the evidentiary basis for determining the respondents’ vulnerability and the obligations of the City.⁶

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

[6.1] The applicants are registered owners of the Manhattan Place Property⁷;

[6.2] The lease agreements entered into with the respondents were lawfully cancelled.⁸

[6.3] The first, fourth and sixth respondents are unlawful occupiers of the property under the PIE Act;

⁴ Applicants’ founding affidavit 002- 26 to 002-41; 002-77 to 002-83

⁵ Court Bundle 011-24 to 011-26

⁶⁶ Eighth respondent’s municipality report in respect of the first and the sixth respondents at 010-1 to 010-14 and 010-15 to 010 to 010-28

⁷ Applicants’ founding affidavit 002-25

⁸ Applicant’s founding affidavit 002-77 to 002-83

[6.4] The City conducted personal and socio-economic assessments of the first and sixth respondents⁹

ISSUES:

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

[7.1] Whether the applicants are entitled to eviction under the PIE Act;

[7.2] Whether the first, fourth and sixth respondents' circumstances justify delaying eviction or conditioning it on municipal provision of housing;

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

POINT IN LIMINE:

[8] In opposing the application the first and sixth respondents initially raised two points *in limine*. The first point *in limine* averred that Eileen Verdoorn, the deponent to the founding affidavit of the applicants, lacked the necessary *locus standi* to depose thereto and/or act on behalf of the applicants. The first to sixth respondents abandoned this point *in limine* at the commencement of the hearing of the application.

[9] A second point *in limine* raised by the first and sixth respondent was that the occupiers of the first respondent's unit at unit 6[...] of the property as well as

⁹ Eighth respondent's municipality report in respect of the first and the sixth respondents at 010-1 to 010-14 and 010-15 to 010 to 010-28

occupiers of units 6[...] and 6[...] have not been cited in this application and thus there is a material non-joinder of these further occupiers.¹⁰ The first to sixth respondents further allege that these further occupiers of the property occupy the property with the consent of the second applicant and were brought into by the second applicant to assist the respondents with their rental repayments. The respondents contend that they were not opposed to this idea as it would have been to their benefit in assisting them to pay their rental amounts. This is denied by the applicants who allege that these further occupants were given permission to reside in the units by the first respondent who sub-let unit 6[...] to other tenants contrary to clauses 8.3.2 and 8.3.3 of the lease agreement entered into with the first respondent which prohibited sub-letting.

- [10] The test for non-joinder is set out by the Supreme Court of Appeal in *Absa Bank Ltd versus Naude NO and Others*,¹¹ in the following terms: ‘The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined.’ The Supreme Court of Appeal referred to the judgment of *Gordon versus Department of Health, Kwazulu-Natal*¹² where it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined. Essentially, the first and sixth respondents must show that: (a) the other

¹⁰ Answering affidavit 006-11 at par 23

¹¹ *Absa Bank Ltd v Naude NO and Others* [2015] ZASCA 97 (SCA); 2016 (6) SA 540 (SCA) para 10

¹² *Gordon versus Department of Health, Kwazulu-Natal* 2008(6)SA 522 (SCA) at par 9

unlawful occupiers have a direct and substantial interest in the subject matter of the litigation which may prejudice them as they have not been joined; and (b) such interest is not only a substantial interest but is a legal interest which justifies that they must be joined.

[11] In *Matjhabeng Local Municipality versus Eskom Holdings Limited and Others*, the Constitutional Court held the following:

*“At common law, courts have an inherent power to order joinder of parties where it is necessary to do so even when there is no substantive application for joinder. A court could, mero motu, raise a question of joinder to safeguard the interest of a necessary party and decline to hear a matter until joinder has been effected. This is consistent with the Constitution.”*¹³

[12] The Constitutional Court further stated that the law on joinder is well settled. No court can make findings adverse to any person’s interests, without that person first being a party to the proceedings before it. The purpose of this requirement is to ensure that the person in question knows of the complaint so that they can enlist counsel, gather evidence in support of their position, and prepare themselves adequately in the knowledge that there are personal consequences – including a penalty of committal – for their non-compliance. All of these entitlements are fundamental to ensuring that potential

¹³ *Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Mkhonto and Others versus Compensation Solutions (Pty) Limited* [2017] ZACC 35; 2017 (11) BCLR 1408 (CC); 2018 (1) SA 1 (CC) par 91

contemnors' rights to freedom and security of the person are, in the end, not arbitrarily deprived.'¹⁴

- [13] When dealing with disputes of fact the court in *Plascon-Evans Paints Ltd versus Van Riebeeck Paints (Pty) Ltd*¹⁵ had the following to say when dealing with matters involving a dispute of fact:

“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.”

- [14] The second applicant as the managing agent of the first applicant has rules and procedures to follow before allowing a tenant to reside on the property of the first applicant. This includes concluding a written agreement between any further occupier of the property and the second applicant. No such lease agreement was ever produced by the respondents and in applying the

¹⁴ Ibid par 92

¹⁵ *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

Plascon Evans rule the respondents do not deny that there were no lease agreements entered into between the second applicant and the further occupiers of unit 6[...] (the first respondents unit). Units 6[...] and 6[...] are not units which were relevant to the current eviction application. Paragraph 14.3 of the City's report indicates at 010-10 of the court bundle that the first applicant is sub-letting his unit to two tenants from whom he receives an income of R2700 and R1500 per month respectively. The report further indicated that 12 people live in the first respondent's unit under the first respondent.

- [15] Section 3(1) of the PIE Act prohibits any person from directly or indirectly receiving or soliciting payment of any money or other consideration as a fee or charge for arranging or organising or permitting a person to occupy land without the consent of the owner or person in charge of that land. Clauses 8.3.2 and 8.3.3 of the lease agreement of the first respondent¹⁶ strictly prohibits sub-letting. In my view by the first respondent sub-letting unit 6[...] to two other tenants, the first respondent contravened section 3(1) of the PIE Act. Any other occupier of unit 6[...] which resulted from the sub-letting of unit 6[...] by the first respondent is an occupier which would in the ordinary sense fall through and under the control of the first respondent and not that of the applicants. In my view this would result in the point *in limine* of the non-joinder of further occupiers of unit 6[...] failing as any order granted against the first respondent would have the effect of extending to any occupier who occupies unit 6[...] through and under the first respondent. These would

¹⁶ Applicant's founding affidavit 002-29

include the first respondents tenants who entered into a sub-letting agreements of unit 6[...] with the first respondent and not with the applicant. I am also mindful that the tenants in all probability are aware of the present eviction proceedings and non have come forward requesting to be joined to the proceedings. It is for the aforementioned reasons that the point *in limine* in respect of the non-joinder of other occupiers of the property is dismissed.

LEGAL PRINCIPLES:

- [16] In the *Constitutional Court case of Occupiers of erven 87 & 88 Berea versus Christiaan Frederick De Wet N.O*¹⁷ 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 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.

¹⁷ 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

[17] 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.”*

[18] The nature of the enquiry under section 4 of PIE was examined in the case of *City of Johannesburg versus Changing Tides*¹⁸. The court at paragraph 12 of the judgment stated the following:

“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

¹⁸ *City of Johannesburg versus Changing Tides* 2012 (6) SA 294 (SCA) at par 12

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”

- [19] 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.”*¹⁹

[20] In the Constitutional Court case of the *City of Johannesburg versus Blue Moonlight Properties 39 (Pty) Ltd*²⁰ 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 private property. The Court held that it was unreasonable to differentiate between these two groups.²¹ 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.²²

¹⁹ *City of Johannesburg versus Changing Tides* 2012 (6) SA 294 (SCA) at par 25

²⁰ *City of Johannesburg versus Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) at par 96

²¹ *Ibid* at par 95.

²² *Id* at para 96-7.

[21] 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.

[22] Where there is a risk that homelessness, the availability of alternative accommodation becomes a relevant circumstance that must be taken into account.²³ 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.²⁴ 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.

[23] In the matter of *Ndlovu versus Ngcobo; Bekker versus Jika*²⁵ it was held that a tenant who remains in occupation after cancellation of a lease is an unlawful

²³ See *Changing Tides* above at para 38.

²⁴ 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

²⁵ *Ndlovu versus Ngcobo; Bekker versus Jika* 2003 (1) SA 113 (SCA) at para 17

occupier as defined in the PIE Act and entitled to the protection of its provisions.

[24] In the matter of *Port Elizabeth Municipality v Various Occupiers*²⁶ 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”.

FIRST AND SIXTH RESPONDENT’S PERSONAL CIRCUMSTANCES:

[25] In *Transnet Ltd versus Zaaiman*²⁷ the court held the following:

²⁶ Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) at para 37:

²⁷ Transnet Ltd versus Zaaiman 2014 (1) SA 149 (SCA) at para 29:

“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.”

[26] The first respondent lives with his wife who is a Zimbabwean citizen and their three minor children in unit 6[...]. Their lease commenced on 1 November 2015 and expired two months later.²⁸ He had two brothers who also resided with them as well as the two sets of tenants to whom he has sub-let the unit to. He earns an amount of R2700 per month from one tenant and R1500 per month from the other tenant. The first respondent and his wife are presently unemployed. The first respondent used to pay rental in the amount of R6800/R6900 per month in respect of the unit but was retrenched from his job as a rigger at Medupi Power Station at Lephalale since 2020 during Covid-19. The first respondent submitted that he has no other extended family in Johannesburg; cannot afford rental housing.²⁹

[27] The fourth respondent is a single male who also fell into arrears with his lease agreement during COVID-19. His lease commenced 1 May 2020 and expired one month later.³⁰ The fourth respondent initially opposed this application and filed his answering affidavit but did not attend the court proceedings after

²⁸ Applicants founding affidavit 002-28

²⁹ See court bundle 010-9 to 010-12

³⁰ Applicants' founding affidavit 002-29

being served with the notice in terms of section 4(2) of the PIE Act providing him with the date of the hearing.³¹

[28] The sixth respondent resided with his wife, two children and at unit 6[...]. Thus there are four occupants at unit 6[...]. The sixth respondent is currently unemployed having lost his job at Makro during Covid-19 in 2021. The sixth respondent's lease commenced 15 January 2011 and expired two months later.³² His wife works two days a week from which she earns R250 per day totalling R500 per week. The sixth respondent contends that he has no relatives in Johannesburg and has lived on the property for over 10 years.³³

[29] The City's Temporary Emergency Accommodation (the "TEA") reports concluded as follows:

[29.1] That the first respondent's household is of less means but is not necessarily destitute owing to the fact that the first respondent has a brother who works as a security guard and earns R4500 per month from which income alternative accommodation can be obtained. The family has no immediate alternative accommodation, but given that the brother is employed, it may be possible to for the first respondent to secure some form of rental accommodation in future. The finding was made that the first respondent's household does not qualify for

³¹ Fourth respondent's answering affidavit 005-1 to 005-8

³² Applicants founding affidavit 002-29

³³ Court bundle 010-24 to 010-25

Temporary Emergency Accommodation.as they can afford alternative accommodation.³⁴

[29.2] That the sixth respondent is not financially resourceful to immediately afford their own alternative accommodation The TEA report reflects that the respondents do not qualify for immediate Temporary Emergency Accommodation since the sixth respondent and his wife are healthy and should be able to raise funds to find their own alternative accommodation The TEA report stressed that the City currently faces a backlog of approximately 15,000 individuals awaiting TEA and it was recommended that the sixth respondent remain in their current dwelling for a further 6 to 12 months. On this basis, the City declined to provide TEA.

APPLICATION OF THE LAW TO THE FACTS:

[30] The Applicants are entitled to have unlawful occupiers of their property evicted, but their rights must be balanced against the first, fourth and sixth respondents' constitutional rights to housing and dignity under section 26 of the Constitution.

The first and sixth respondents households, with children and female members, fall within the category of vulnerable occupiers contemplated. The Olivia Road case *supra* obliges the City to engage meaningfully with the respondents. In my view the City's reports, which merely classify families as

³⁴ Court bundle 010-12 to 010-13

“not destitute,” reflect a bureaucratic label rather than meaningful engagement. I am mindful that once the first respondent is evicted from the property that his only source of income which was the rental income from the two tenants renting the property from him would fall away. There is no mention in the report as to whether the first respondents brother who works as a security guard and earns R4500 per month actually contributes to the accommodation.

[31] The *Blue Moonlight* case *supra* makes it clear that the City cannot evade its duty by narrowing TEA to “destitute” households only or by citing a backlog. As set out in the *Drakenstein* case *supra*, the City’s joinder is substantive. It must assist the court in fashioning a just and equitable solution. Its failure to do so is a dereliction of duty. The court in the *Transnet versus Zaaiman*³⁵ requires consideration of the respondents length of accommodation and the availability of alternative accommodation. With over a decade of occupation by the sixth respondent and several years by the first respondent, eviction would be inequitable.

[32] I am of the view that the City’s reliance on a “destitute” threshold is inconsistent with the *Blue Moonlight* case *supra*. The duty to provide emergency accommodation applies whenever eviction would result in homelessness, not only for those the City deems destitute. The City’s own

³⁵ Transnet Ltd versus Zaaiman 2014 (1) SA 149 (SCA) at para 29

reports concede that both the first and sixth respondents' households cannot secure immediate alternatives. This in itself invokes its constitutional duty and I am further of the view that backlog statistics cannot absolve the City. As the Constitutional Court held in *Blue Moonlight*, the duty is to take reasonable steps within available resources, not to disclaim responsibility.

CONCLUSION:

[33] The Applicants are entitled to eviction as the first and second respondents conceded at the commencement of the hearing that they are unlawful occupiers. The Supreme Court of Appeal in the matter of *Ndlovu v Ngcobo; Bekker v Jika*³⁶ held that a tenant who remains in occupation after cancellation of a lease is an unlawful occupier as defined in the PIE Act and entitled to the protection of its provisions.

[34] The authorities are clear that this eviction can only occur under terms that are just and equitable. The same principle applies for the fourth respondent who failed to attend the hearing of the application and oppose the matter. At the hearing of the matter the first and sixth applicants did not argue that it was not just and equitable to be evicted from the property but merely that they would be rendered homeless if they were to be evicted. The first and sixth respondents' households, contain minor children dependents, who cannot be left homeless. In my view the City must discharge its constitutional

³⁶ *Ndlovu v Ngcobo; Bekker v Jika* 2003 (1) SA 113 (SCA) at para 17

obligations irrespective of its borderline administrative classification of the first and sixth respondents as not fully destitute.

[35] The Constitutional Court in *Charnell Commando and Others versus City of Cape Town and Another*³⁷ held that a municipality's TEA policy and its implementation may be unconstitutional if it results in unreasonable or arbitrary locality choices and fails to treat evictees with dignity and due regard to spatial justice. The Court directed the City of Cape Town to provide temporary/transitional accommodation in appropriately located sites as close as reasonably possible to the residents' existing homes rather than relocating them to distant peripheral sites, and emphasised meaningful engagement. This decision strengthens the principle that the location and reasonableness of TEA arrangements are integral elements of the municipality's constitutional duty.

[36] The City's TEA report clearly indicates that the first respondents household faces imminent destitution. The City's report leaves no doubt that eviction would place the first respondent's family "on the street." Applying the principles of the *Olivia Road* and *Blue Moonlight* cases *supra*, eviction without securing temporary accommodation would be unjust and unconstitutional. The fourth respondent's case differs. The City confirms that while financially constrained, the fourth respondent has the means to secure private rental housing. As in the *Changing Tides* case *supra*, eviction can be ordered in respect of the fourth respondent where he will not be rendered homeless. The

³⁷ *Charnell Commando and Others v City of Cape Town and Another* (CCT 49/23) [2024] ZACC 27; 2025 (3) BCLR 243 (CC); 2025 (3) SA 1 (CC) (20 December 2024)

proportionality balance here favours the applicants. The sixth respondent's household is acutely vulnerable, with two grandchildren at risk. The City categorises the family as a "high risk of homelessness." In my view eviction without provision for temporary accommodation would be inconsistent with *Port Elizabeth Municipality* and *Blue Moonlight* matters *supra*.

COSTS:

- [37] The applicants seek the costs of the eviction application, however given the destitute position of the first and sixth respondents and the financial constraint of the fourth respondent, I am not inclined to grant any costs order against the first, fourth and sixth respondents who opposed the application.

ORDER:

- [38] In the result the following order is made:

[38.1] The first, fourth and sixth respondents, and all those occupying the property situated at units 6[...], 6[...] and unit 6[...] Manhattan Place of Erf 1[...] Berea Township, Registration Division IR Gauteng situated at Corner J[...] Road and L[...] Avenue, Berea, Johannesburg through and under them, are declared unlawful occupiers of the property.

[38.2] The fourth respondent and all those occupying the property through or under the fourth respondent are order to vacate unit 6[...] Manhattan Place of Erf 1[...] Berea Township, Registration Division IR Gauteng

situated at Corner J[...] Road and L[...] Avenue, Berea, Johannesburg, respectively on or before 31 October 2025.

[38.2] The first and sixth respondents and all those occupying the property through or under the first and sixth respondents are order to vacate units 6[...] and 6[...] Manhattan Place of Erf 1[...] Berea Township, Registration Division IR Gauteng situated at Corner J[...] Road and L[...] Avenue, Berea, Johannesburg, respectively on or before 31 December 2025.

[38.3] The eighth respondent, the City of Johannesburg Metropolitan Municipality, is directed to engage meaningfully with the first and second respondents within 30 days of service of this order; and make reasonable provision for temporary emergency accommodation for the first and sixth respondents in a location as near as possible to the area where the property is situated on or before 31 December 2025, provided that the first and sixth respondents and all those residing through and under the first and sixth respondents are still resident at the property and have not voluntarily vacated it.

[38.4] Each party shall bear its own costs.

M NAIR
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

Date of appearance: 22 May 2025

Date Judgment delivered: 17 September 2025

Appearances:

No appearances by Second, Third, Fourth, Fifth and Seventh Respondents

For the Applicant: Adv Leon Peters

Instructed by: Vermaak Marshall Wellbeloved Inc

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