



**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**CASE NO: 1553/2025**

In the matter between:

**SITHEMBILE BENEDICTOR NGUBANE**

**APPLICANT**

and

**JABULILE SHANDU**

**FIRST RESPONDENT**

**ETHEKWINI MUNICIPALITY**

**SECOND RESPONDENT**

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**ORDER**

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**Having read the papers and after hearing counsel, the following order is made:**

1. The application is dismissed.
2. The applicant is ordered to pay the costs.

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**JUDGMENT**

Date Delivered: 30 September 2025

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**MASIPA J**

**Introduction**

[1] The applicant seeks a final interdict against the first respondent, directing her to vacate immovable property situated at Erf 3[...] C[...] M[...], house number 1[...] F[...] F[...] Avenue, Sherwood, Durban, KwaZulu-Natal. The application is opposed.

[2] The applicant's case is that she is the registered owner of the property and entitled to vacant possession. She contends that the first respondent no longer resides there and merely uses the premises for storage, such that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") does not apply.

[3] The first respondent maintains that she and her daughter reside at the property, that it has been their home since 2007, and that any eviction must be sought under PIE.

### **Factual background**

[4] The first respondent entered the property in 2007 when she was in a relationship with Mr Mbongiseni Mlambo ("Mbongiseni"), son of the erstwhile owner, Ms Joyce Mlambo ("Joyce"). The respondent contends that she and Mbongiseni were married by customary union, that they had a daughter born in 2008, and that she contributed to the 'rent-to-buy' payments made by Joyce to Habitat for Humanity. According to her, Joyce agreed that once payments were complete, ownership would pass to her and Mbongiseni.

[5] The applicant disputes this, pointing out that the rent-to-buy agreement was between Joyce and Habitat for Humanity, that the respondent was never a party to it, and that Habitat itself listed her as an 'illegal tenant'. Relations between the respondent and Mbongiseni later soured. He moved out of the property while the respondent remained in occupation with the child. In February 2017, the property was transferred into Joyce's name.

[6] In December 2017, Joyce and her late husband instituted eviction proceedings against the respondent in the Magistrates' Court. Those proceedings did not run their course. In June 2023, Joyce launched a further PIE application,

where the respondent raised a *lis pendens* defence. Again, the matter was not finalised.

[7] On 24 January 2025, the property was transferred to the applicant. The applicant alleges that when she viewed the property before transfer, it was locked and unoccupied, containing only some of the respondent's belongings. She asserts that the respondent was living elsewhere, specifically in Pietermaritzburg, and was merely using the property for storage.

[8] The respondent denies this, insisting that she and her daughter have remained in occupation since 2007, that the property is their home, and that they never vacated it. The applicant accordingly brought the present proceedings for a final interdict, seeking to avoid PIE by contending that the property is not the respondent's home.

### **Requirements for a final interdict**

[9] The requirements for a final interdict are well-established:<sup>1</sup>

- (a) a clear right;
- (b) an injury actually committed or reasonably apprehended; and
- (c) the absence of any other satisfactory remedy.

[10] In applications for final relief, the onus rests on the applicant to establish the requisites of a final interdict on the papers. Because the relief sought is final, the applicant must discharge this onus on the evidence properly placed before the court. In motion proceedings, the *Plascon-Evans* rule governs how factual disputes are to be resolved: where such disputes arise, the version of the respondent together with such of the applicant's allegations as are admitted must be accepted, unless the respondent's denials are so far-fetched or untenable that they can be rejected on the papers.<sup>2</sup>

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<sup>1</sup> See *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* [2005] ZASCA 87; 2006 (1) SA 252 (SCA); *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd* [2014] ZASCA 169; 2015 (3) SA 532 (SCA) para 26; *Red Dunes of Africa v Masingita Property Investment Holdings* [2015] ZASCA 99 para 19; *Pilane and Another v Pilane and Another* [2013] ZACC 3; 2013 (4) BCLR 431 (CC) para 39; *Hotz and Others v University of Cape Town* [2016] ZASCA 159; 2017 (2) SA 485 (SCA) para 29.

<sup>2</sup> *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635C.

[11] In eviction matters, PIE provides the statutory framework giving effect to s 26(3) of the Constitution. The Constitutional Court in *Port Elizabeth Municipality v Various Occupiers*<sup>3</sup> emphasised that courts must infuse justice and equity into eviction proceedings. In *Ndlovu v Ngcobo; Bekker and Another v Jika*,<sup>4</sup> the Supreme Court of Appeal (“the SCA”) held that PIE applies even where occupation was initially lawful. In *City of Johannesburg v Changing Tides 74 (Pty) Ltd*,<sup>5</sup> the SCA confirmed that applicants bear the onus of establishing compliance with PIE, and in *Msibi v The Occupiers of Unit C*,<sup>6</sup> the High Court held that non-compliance is fatal.

### **Improper service on a minor child**

[12] A troubling feature of the case is the manner of service. The sheriff served the application papers not on the respondent personally, nor at a domicile, but on her minor child at her school in North Beach, Durban. In response, counsel for the applicant stated that the sheriff attended at the school on the strength of information that the respondent would be found there. This conduct is unacceptable. The child is not a party to the proceedings. The school was never nominated as an address for service. Serving process on a child in a school setting is bound to cause embarrassment and distress and unnecessarily involves a minor in litigation to which she is not a party.

[13] Courts have a constitutional duty to protect children. Section 28(2) of the Constitution states that the best interests of the child are paramount in every matter concerning the child. That principle extends to procedural matters: courts will not condone conduct that humiliates or burdens children. Legal practitioners carry a duty to ensure proper compliance with the Uniform Rules of Court regulating service. Rule 4 prescribes permissible methods of service, while substituted service may only be ordered by the court. None was sought.

[14] There were lawful and practical alternatives:

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<sup>3</sup> *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC) paras 32 and 36.

<sup>4</sup> *Ndlovu v Ngcobo; Bekker and Another v Jika* [2002] ZASCA 87; 2003 (1) SA 113 (SCA) para 11.

<sup>5</sup> *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* [2012] ZASCA 116; 2012 (6) SA 294 (SCA) para 34.

<sup>6</sup> *Msibi v The Occupiers of Unit C* [2022] ZAGPPHC 880 paras 36-40.

- (a) affixing the process to the principal door or gate of the C[...] M[...] property;
- (b) depositing it in a post box or by hand with a responsible adult at the residence; or
- (c) tracing the respondent's whereabouts and effecting personal service at the traced address.

[15] None of these avenues was pursued. Instead, the applicant through her attorneys opted for a course of action that exposed a child to unnecessary embarrassment. This court records its strong disapproval of such conduct. While I have, for the sake of finality, proceeded to determine the merits, I stress that this manner of service is irregular, inappropriate, and inconsistent with the protective role of courts.

### **Disputes of fact**

[16] The case is riddled with the following genuine disputes of fact:

- (a) whether the respondent resides at the property with her daughter; and
- (b) whether Joyce promised that ownership would pass to the respondent and Mbongiseni once the rent-to-buy was concluded.

These disputes are not peripheral. They go to the very heart of whether PIE applies and whether the applicant has any cause of action by way of interdict.

[17] The respondent's version is not inherently far-fetched. It is supported by her longstanding occupation, the presence of her belongings, the history of prior eviction attempts, and the fact that she raised a *lis pendens* defence in 2023. By contrast, the applicant's denial of residence rests largely on observations that the property was sometimes locked and unattended.

[18] The principle in *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*<sup>7</sup> is apposite: where foreseeable disputes of fact arise, applicants should not proceed by way of motion. The KwaZulu-Natal Practice Directive reinforces this obligation, requiring applicants to inform the court and respondents where disputes of fact exist, so the matter may be referred for oral evidence or trial. The applicant ignored these principles and pressed for final relief on motion, thereby inviting dismissal.

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<sup>7</sup> *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163.

### **Evaluation of the interdict requirements**

[19] Against the three requirements, the applicant's case falters:

- (a) Clear right: Ownership is established, but ownership alone does not entitle the applicant to circumvent PIE. Where the property constitutes a home, the applicant's right is qualified by s 26(3) of the Constitution. A clear right has therefore not been established.
- (b) Injury committed or apprehended: The applicant's alleged injury is the respondent's continued occupation. But if the respondent resides there, her occupation is lawful until due process under PIE is followed. The injury is not wrongful in the legal sense.
- (c) No adequate alternative remedy: The applicant has an obvious statutory remedy eviction under PIE. That remedy has been used before and remains available. The existence of this remedy precludes a final interdict.

In short, the applicant has not satisfied the requirements for a final interdict.

### **Conclusion**

[20] This application is fundamentally flawed. The applicant sought a final interdict, a drastic and definitive remedy in circumstances where she failed to establish the very requirements for such relief. Ownership alone does not suffice. Where, as here, the property has been the home of the respondent and her child since 2007, the applicant's rights of ownership are circumscribed by the Constitution and PIE. The applicant elected to sidestep PIE and to proceed by way of motion, despite clear and foreseeable disputes of fact that go to the heart of the matter. That approach was misguided.

[21] The defects are not merely technical. They implicate fundamental principles of fairness and constitutional protection. On the respondent's version, which must be accepted for purposes of motion proceedings, she and her minor child have treated the property as their home since 2007. That version cannot be rejected on motion. The applicant was duty-bound to comply with PIE, and her failure to do so leaves the application without a lawful foundation.

[22] In addition, the conduct of serving court papers on the respondent's child at school is a matter of grave concern. It not only contravenes the Uniform Rules of Court but undermines the dignity and best interests of the child, values that this Court is enjoined by s 28(2) of the Constitution to protect. Courts will not lend their approval to practices that expose children to humiliation or draw them unnecessarily into litigation. Practitioners are reminded that proper service is not an optional formality but an indispensable safeguard of fairness and dignity.

[23] Taken cumulatively: the irregular service, the unresolved disputes of fact, the disregard for the Practice Directive, and the absence of compliance with PIE means that the applicant has failed to meet the high threshold required for a final interdict. To grant the relief sought would be to sanction procedural shortcuts at the expense of constitutional protections. This Court cannot do so. The appropriate course is to dismiss the application with costs.

### **Order**

[24] The following order is granted:

1. The application is dismissed.
2. The applicant is ordered to pay the costs.

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**Masipa J**

Details of the Hearing

Heard: 16 September 2025

Delivered: 30 September 2025

Appearances:

For the applicants: Ms T M Khowa

Instructed by: Shoba Sandile Attorneys

For the 1<sup>st</sup> respondents: Mr J A Renou

Instructed by: Dhanlal & Dhanlal Attorneys