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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: A174/2025

Court *a quo* case number 318/2024

In the matter between:

SEA PRIDE PROCESSORS (PTY) LTD

First Appellant

PIONEER FISHING (PTY) LTD

Second Appellant

and

LAUREN EBONY MASIMLA

First Respondent

SALDANHA BAY MUNICIPALITY

Second Respondent

DEPARTMENT OF PUBLIC WORKS

AND INFRASTRUCTURE

(CAPE TOWN REGIONAL OFFICE)

Third

Respondent

Coram: SALDANHA J and BARENDSE AJ

Heard: 10 October 2025

Delivered: 21 October 2025

ORDER

- 1 Condonation for the late filing of the Notice of Appeal is granted, the appeal is dismissed, no order as to costs.

JUDGMENT

Barendse AJ (Saldanha J concurring):

[1] This is an appeal against a decision by the Magistrates Court for the District of Vredenburg to stay eviction proceedings pending the outcome of proceedings pending in the Labour Court. The Appellants also applied for condonation for the late filing of the Notice of Appeal.

[2] The Second and Third Respondents were not parties to the appeal and were cited in these proceedings because they were so cited in the eviction proceedings.

[3] The First Respondent is the party whom the Appellants are seeking to evict and in whose favour the stay of the eviction proceedings was granted. The First Respondent did not oppose the appeal and formally filed a Notice to Abide this court's judgment.

[4] It is common cause that the First Respondent was employed by the Second Appellant and its erstwhile joint venture partner on 16 May 2015 and thereafter remained in the employment of the Second Appellant as a Human Resources Manager. In the Founding Affidavit ("FA") in the eviction proceedings, the COO of the Second Appellant, Mr Pieter Greeff stated that the First Respondent was provided with staff accommodation as a benefit by virtue of her employment with Second Appellant.¹ A written lease agreement was concluded between Second Appellant and First Respondent and it was a term thereof that the lease would terminate when the First Respondent's employment terminated.²

[5] The First Appellant erected the dwellings in which staff is being accommodated on Erf 1[...], St Helena Bay. Erf 1[...] is being let to First Appellant by the Third Respondent. The First Respondent initially occupied premises at 1[...] B[...] Street, St Helena Bay and since May 2022, she has been in occupation of no. [...] B[...] Street.

¹ Record p12 para 22.

² Record p44.

[6] On 14 June 2023, the First Respondent was dismissed from employment by the Second Appellant. During October 2023, notice was given to her to vacate the dwelling occupied by her and motion proceedings were eventually commenced in the Vredenburg Magistrates Court on 1 March 2024 in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE Act"). The First Respondent is opposing these proceedings and filed an Answering Affidavit ("AA").

[7] It is apposite to mention that in her AA, the First Respondent declared that her dismissal was unfair and that she was challenging this in proceedings pending in the Labour Court. It also appears from her AA that she was previously in a romantic relationship with Mr Greeff who deposed to the Appellants' affidavits in the eviction proceedings, that since termination of this relationship, the relations between her and Mr Greeff soured which ultimately culminated into her dismissal. This court makes no presumptions around the reasons, lawfulness and fairness of First Respondent's dismissal; the Labour Court being seized with those issues.

[8] On 25 October 2024, the First Respondent launched an interlocutory application in the eviction proceedings.³ The application was headed "Notice of Motion: First Respondent's Special Plea" and it introduced a special defence of *Lis Alibi Pendens*. This opened a proverbial rabbit's hole in which the parties and more so, the Appellants evidently lost direction. This was what ultimately brought the parties before this court.

³ Record p157-168.

[9] On 6 February 2025, the Magistrate gave judgment on the abovementioned application the effect of which was to stay the eviction proceedings pending the outcome of the Labour Court proceedings. The Appellants appealed against this ruling by the Magistrate.

[10] In his reasons in terms of Rule 51(8), the Magistrate indicated that when arriving at the decision to stay, he considered and relied upon the judgment of the Labour Court in *R Naicker and Another v Dr MM Muswaba and three Others*, case no. C194/2024.⁴ The Magistrate quoted from the above judgment as follows: '*...the Respondents are prejudiced by having to delay any eviction process till later, if they should ultimately be successful. On the other hand, if the applicants are compelled to vacate the premises before the outcome of the pending council proceedings, if they are ultimately successful, they will have suffered the cost and considerable inconvenience of having to move and find alternative temporary accommodation for them and their families, and will have to extricate themselves from those accommodation arrangements before they would be able to re-occupy their present accommodation. In the light hereof, the balance of convenience favours the applicant.*'

[11] The grounds of appeal listed in the Appellants' Notice of Appeal were as follows:

- (a) The Court erred in finding that the requirements of *lis alibi pendens* had been met;
- (b) The Court erred in finding that the Labour Court proceedings instituted by First Respondent related to the same cause of action;
- (c) The Court erred in applying the Labour Court judgment of *R Naicker and one other v DR MM Muswaba and three others* in coming to its decision;

⁴ Record p 194.

(d) The Court erred in not finding that the aforementioned case is distinguishable on the facts;

(e) The Court erred in staying the eviction application pending the outcome of the appeal to the Labour Court.

[12] In *Naicker*, an interim interdict was granted, preventing the employer from taking steps to evict employees from free accommodation linked to their employment in circumstances where a dispute over their terms of employment was pending in bargaining council proceedings. Notably, formal eviction proceedings had not commenced by the time that the interim interdict was granted.

[13] It is necessary to have regard to the following which appears at paragraph [28] of *Naicker*. *'The applicants have already invoked a suitable remedy to determine their contractual rights, which in turn will determine if they have a current contractual right to continue to occupy the premises rent-free. If they are proven correct in those proceedings, that will negate the basis for pursuing any eviction proceedings by the college, which are based on them not having contractual rights to such accommodation. An order of interim relief will preserve their right to obtain finality on their current rights. In essence the applicants wish to halt a further legal process initiated by the college, which presumes to pre-empt the outcome of the council proceedings. Undoubtedly, in any proceeding under the PIE Act, the applicants could raise a defence of lis pendens and argue that the PIE Act proceedings be stayed pending the outcome of their disputes at the bargaining council.'*

[14] Given that the First Respondent did not oppose the appeal, the court requested her attorney to attend the proceedings, the purpose of which was to gain better insight into the status of the Labour Court proceedings. First

Respondent's attorney established that those proceedings were argued during April 2025 and that judgment is being awaited.

[15] The First Respondent's lease can only be terminated on the account of termination of her employment if her dismissal was lawful. This should be obvious. When considering a PIE application, the first determination that the court must make is whether the occupier is an unlawful occupier. The Labour Court will make a declaration as to whether the Second Appellant acted lawfully when dismissing the First Respondent. The Appellants' stance that because of her mere dismissal, the First Respondent became an unlawful occupier is opportunistic and without merit.

[16] Mr Greeff of the Appellants himself stated that the First Respondent's entitlement to the accommodation was entirely dependent on her contract of employment. Whether her employment was lawfully terminated will be determined by the Labour Court. The court hearing the PIE application will necessarily be better placed to determine the lawfulness of First Respondent's occupation of the premises once the Labour Court judgment becomes available.

[17] Further, when exercising its discretion on just and equitable relief in the PIE proceedings, the court should have as much information as possible around the occupier's circumstances. In the FA of the PIE application the Appellants provided little around this. It was not disclosed that the First Respondent has minor children and that the household which they intended to evict was a household headed by a woman. Counsel for the appellant accepted that if the respondent is found by the Labour Court to have been

the subject of an unlawful dismissal by the appellant, such unlawful conduct on the part of the appellant may well constitute a relevant circumstance when the magistrates court exercises its just and equitable jurisdiction. That notwithstanding, the respondent does not seek reinstatement as a remedy in the Labour Court but a declaration of unfair dismissal and harassment and an award of compensation.

[18] Much of the Appellants' focus in this appeal was on the *lis pendens* issue. Nowhere in his written reasons did the Magistrate expressly refer to *lis pendens* but even if this underpinned his reasoning, a court on appeal is not seized with the reasoning but rather with the relief granted by a court *a quo*. There is no suggestion that *Naicker* was wrongly decided and although that case concerned an interim interdict and the present case concerns stay of proceedings, it is startling that the Appellants did not realise or were not advised that what was quoted from *Naicker* in paragraph 13 of this judgment was directly relevant to this matter. Moreover, the authorities are clear that where an order is correct, it will not be set aside because the reasons advanced by the court *a quo* were unsound⁵. There is in my view, simply no basis on which it can be found that the Magistrate wrongly exercised his discretion when granting an order for the stay of the eviction proceedings.

[19] The Magistrate's order was in any event not appealable. It was not final in effect, was not definitive of the rights of the parties and did not dispose of any portion of the relief claimed in the main proceedings.⁶

⁵ see, for example *Administrator, Transvaal and Others v Theletsane and Others* 1991 (2) SA 192 (A) I 197B.

⁶ See *Zweni v Minister of Law and Order of the Republic of South Africa* 1993 (1) SA 523 (A).

[20] In the result, this appeal must fail and is hereby dismissed. No order as to costs is made as the appeal was not opposed.

RD BARENDSE
ACTING JUDGE OF THE HIGH COURT

Saldanha J (concurring)

V SALDANHA
JUDGE OF THE HIGH COURT

Appearances

For applicant: Adv C Francis

Instructed by: Kaplan Blumberg Attorneys

For respondent: None