



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

JUDGMENT

**Not Reportable
Case No: 14732/2024**

In the matter between:

THE CITY OF CAPE TOWN

Applicant

and

**THOSE PERSONS IDENTIFIED IN ANNEXURE “A” TO
Respondent**

First

**THE NOTICE OF MOTION WHO ARE UNLAWFULLY
OCCUPYING ERF 9[...] (TUIN PLEIN PARK), HOPE
STREET, WANDEL STREET, VREDE STREET AND
TUIN PLAIN STREET AND THE STREETS THEY
INTERSECT, ROODEHEK STREET FROM WHERE IT
MEETS HOPE STREET UNTIL MCKENZIE STREET,
THE WHOLE OF WESLEY STREET FROM WHERE IT**

MEETS HOPE STREET TO WHERE IT MEETS
MCKENZIE STREET, THE WHOLE OF GLYNN
STREET FROM WHERE IT MEETS HOPE STREET
ACROSS THE INTERSECTION OF SOLAN ROAD UP
UNTIL MCKENZIE STREET, THE WHOLE OF
BUITENKANT STREET FROM WHERE IT MEETS
ROELAND STREET TO WHERE IT MEETS
ROODEHEK STREET

THOSE PERSONS (WHOSE FULL AND FURTHER
PARTICULARS) ARE UNKNOWN TO THE APPLICANT
WHO ARE UNLAWFULLY OCCUPYING ERF 9[...]
(TUIN PLEIN PARK), HOPE STREEET, WANDEL STREET,
VREDE STREET AND TUIN PLAIN STREET AND
THE STREETS THEY INTERSECT, ROODEHEK STREET
FROM WHERE IT MEETS HOPE STREET UNTIL
MCKENZIE STREET, THE WHOLE OF WESLEY STREET
FROM WHERE IT MEETS HOPE STREET TO WHERE IT
MEETS MCKENZIE STREET, THE WHOLE OF GLYNN
STREET FROM WHERE IT MEETS HOPE STREET ACROSS
THE INTERSECTION OF SOLAN ROAD UP UNTIL
MCKENZIE STREET, THE WHOLE OF BUITENKANT
STREET FROM WHERE IT MEETS ROELAND STREET TO
WHERE IT MEETS ROODEHEK STREET AS ARE MORE
FULLY DESCRIBED IN ANNEXURE “B” TO THE NOTICE OF
MOTION

Second Respondent

Coram:	DA SILVA SALIE, J
Heard on:	14 October 2025
Delivered on:	24 October 2025

Summary:

Eviction — Unlawful occupation of public land — Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) — City of Cape Town seeking eviction and interdict restraining re-occupation of Tuin Plein Park and adjoining streets — Settlement reached with represented respondents — Remaining unrepresented occupiers considered — Court, acting mero motu, conducts inspection in loco of the occupied area and the City's Safe Space accommodation — Eviction held just and equitable where no homelessness will result — Interdict granted as preventive and proportionate — No order as to costs.

ORDER

1. Wherefore I grant the order of eviction and interdictory relief attached hereto as "X".

JUDGMENT

DA SILVA SALIE, J:

Introduction

[1] This application is brought by the City of Cape Town ("the City") in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). The City seeks an order evicting the respondents from public land in the central-city precinct, comprising Tuin Plein Park together with the adjoining

streets of Hope Street, Wandel Street, Vrede Street, Roodehek Street, Wesley Street, Glynn Street and Buitenkant Street, and for ancillary relief restraining their return to the property following eviction.

[2] The case raises the delicate balance our Courts must strike between compassion for the plight of persons living without shelter and the obligations of municipalities to manage and safeguard public spaces.

Procedural History

[3] The application was launched in 2024. The respondents comprise seventy-two named individuals and several unidentified persons who occupy makeshift shelters and structures in and around Tuin Plein Park and the adjoining roads.

[4] On 5 September 2024 this Court, by agreement, directed that the matter be referred to mediation under judicial supervision. The mediation commenced on 30 September 2024.

[5] Subsequent engagement between the parties led to a Settlement Agreement concluded between the City and certain respondents represented by the non-profit organisation Ndifuna Ukwazi (N U). The agreement was made an order of court and recorded inter alia that —

(a) a number of respondents would relocate to accommodation at Safe Space 2 or equivalent shelters provided by the City;

(b) a limited number of individuals with companion animals would remain under discussion; and

(c) N U withdrew as attorneys of record for forty-six respondents who declined to accept representation.

[6] Following the settlement, the counter-application filed by N U on 2 December 2024 was withdrawn.

[7] The City served notice of the present hearing upon all remaining occupiers by hand delivery and by affixing letters to structures at the occupied site on 1 October 2025. At the hearing the respondents were unrepresented, however, a member of the Tuin Plein Park community, Mr. Hennie Botha, attended and addressed the Court on a few aspects relating to the general position and views of the residents. Shortly after the commencement of the hearing, I directed that the proceedings stand down for an inspection in *loco* of Tuin Plein Park and the adjoining streets as well as the Safe Space 2 shelter (Foreshore) which was identified by the City as one of the suitable shelters for alternative housing. I deal more fully with the inspection in *loco* below.

Relief Sought

[8] The City seeks:

(a) an order for the eviction of all remaining unlawful occupiers from Erf 9[...] (Tuin Plein Park and the listed adjoining streets).

(b) an interdict prohibiting the respondents from re-occupying the property after eviction; and

(c) such ancillary directions as the Court considers just and equitable.

The Applicant's Case

[9] The City avers that the occupation of the property is unlawful within the meaning of section 1 of PIE, that the land is public open space and roadway reserve, and that the structures erected there are unsafe and unsanitary.

[10] The City's evidence depicts a precinct increasingly characterised by open fires, refuse accumulation, and human waste, adjacent to schools, a crèche, an old-age home, and a place of worship. Residents and community associations have lodged persistent complaints concerning safety, odour, and obstruction of pedestrian routes.

[11] The City emphasises that it has not approached the Court precipitously. It has meaningfully engaged with occupiers, facilitated mediation, and offered alternative accommodation at its Safe Space facilities.

[12] The Safe Spaces programme, it submits further, provides dignified temporary shelter, ablution facilities, two meals per day, secure storage, social-worker support, access to substance-abuse treatment, skills training, and pathways to employment through the Expanded Public Works Programme.

[13] According to the City, every respondent has been offered access to this programme. No person will be rendered homeless.

[14] The City contends that it has thus met both its statutory obligations under PIE and its constitutional duty under section 26(2) to take reasonable measures within available resources to provide access to adequate housing.

[15] It submits further that the interdictory relief is necessary to prevent a recurrence of occupation by transient groups. Experience shows that once an eviction site is vacated, it is often re-occupied within days unless restrained by court order.

[16] Finally, the City seeks admission of a further affidavit filed under Rule 6(5)(e), updating the Court on the outcome of mediation, settlement, and notice compliance. Leave was granted at the hearing of the matter.

The Respondents' Position

[17] The respondents who participated in mediation and accepted accommodation are not before the Court.

[18] The remaining respondents are unrepresented at the time of the hearing. They have not filed opposing affidavits beyond the earlier papers lodged by N U. Those affidavits record concerns regarding curfews, rules, and the temporary nature of Safe Spaces. They do not, however, allege that the accommodation is unsafe, unavailable, or violates dignity. Mr. Botha indicated that the occupiers enjoy the freedom of their present dwellings and the interaction of their community. Until recently he enjoyed a structure which consisted of three living areas and a garden, but it had unfortunately been destroyed in a fire. He submitted that, in contrast, living at the shelters violates their freedom and the regulations are stifling. Occupiers who addressed me at the inspection in *loco* raised concerns regarding the Safe Space shelters because, according to their experience of understanding, it does not provide access to medical care including chronic medication, the meals are inadequate in

that it only consists of two slices of bread, there is a lack of privacy and reports of disorganisation of the shelter management. I shall deal with these concerns under the inspection in *loco* subheading below.

Legal Framework

[19] Section 4(6) and (7) of PIE provide that the Court may grant an order for eviction if it is just and equitable to do so after considering all relevant circumstances, including the rights and needs of the occupiers and the availability of alternative land.

[20] The Constitutional Court in ***Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC)*** emphasised that eviction proceedings must be infused with grace and compassion, recognising that they implicate the fundamental right to housing and dignity.

[21] In ***City of Johannesburg v Changing Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA)***, the Court held that a two-stage enquiry is required: first, whether occupation is unlawful; and second, whether eviction is just and equitable, bearing in mind proportionality and available accommodation.

[22] In ***City of Johannesburg Metropolitan Municipality v Blue Moonlight 2012 (2) SA 104 (CC)*** the Court reiterated the obligation on municipalities to act reasonably and progressively while acknowledging the legitimate interests of the broader community. In ***Occupiers of Erven 87 v 88 Berea v De Wet 2017 (5) SA 346*** the Court held that in matters such as these, the constitutional rights of both the occupiers' right to housing (section 26) and the rights of property owners (section 25) respectively enjoy protection and are on either side of the scale.

Application of Legal Principles

[23] Against this legal framework, the Court turns to apply the above principles to the facts before me herein, mindful that the enquiry under section 4(6) and (7) of PIE require a careful consideration of the circumstances of the occupiers, the nature of the property; the broader constitutional imperatives that govern the City's obligations; the competing rights of the surrounding community to safety, health and the general enjoyment of public spaces.

[23.1] *Unlawful Occupation*

There is no dispute that the respondents occupy the land without the City's consent and that their occupation is therefore unlawful.

[23.2] *Meaningful Engagement*

The evidence establishes that the City engaged the occupiers extensively through mediation, consultations, and repeated offers of accommodation. The process was transparent and participatory, consistent with the spirit enunciated in **Berea v De Wet**, which emphasised dialogue over confrontation.

[23.3] *Alternative Accommodation*

The availability and adequacy of alternative accommodation lie at the heart of this matter. The City maintains that the Safe Spaces programme provides more than mere shelter; it integrates social support, skills development, and reintegration pathways. It is trite that temporary accommodation, if adequate and appropriately managed, satisfies the constitutional requirement provided it does not result in degradation of dignity.

[23.4] *Public Interest and Proportionality*

The Court must weigh the rights of the occupiers against the City's constitutional mandate to manage public land for the benefit of all. Tuin Plein Park lies within a dense mixed-use precinct, frequented daily by schoolchildren, worshippers, and commuters.

[23.5] *Equity, Dignity and Public Interest*

The court's task is to balance the rights of the occupiers who have sought refuge on public land against the obligations of the City to manage such spaces for the benefit of the broader community. The question is not only one of legality but extends to equity, dignity and proportionality, under the framework of what would be just and equitable.

Inspection in Loco:

[24] When the matter was called, the Court directed that the proceedings stand down for an inspection in *loco* of Tuin Plein Park and the adjoining streets, as well as of the Safe Space facilities identified by the City. The inspection was also attended by representatives of the Provincial Department of Social Development as well as the City's Department of Cultural Arts and Community Development and several of the occupiers. The inspection was undertaken in the exercise of the Court's supervisory function under section 4(7) of PIE, to enable a direct appreciation of the physical environment in which the occupiers reside and of the conditions of the alternative accommodation offered.

[25] The areas occupied by the respondent were made up of makeshift structures made up of cardboard, plastic and scrap material held together on top by bricks and stones. There were no ablution or sanitation facilities, refuse and open fires were

prevalent. The areas are situated near schools, a creche, a facility for the aged, a church, the Hope Street Dental Clinic as well as residences, professional offices and retail shops.

[26] The present conditions clearly represented hazardous, health and safety risks to the community as a whole. The inspection of adjoining streets revealed similar conditions particularly along Wesley and Buitenkant Street and confirmed that some occupiers had previously accepted alternative accommodation however they had returned to this area for reasons that they found the Safe Space shelter too rigid and regulated regarding curfews, policies, and registration procedures and that it detracted from their freedom.

[27] The inspection conducted at the Safe Space shelter demonstrated a structured facility with clean and safe prefabricated accommodation units divided for males, females, couples and LGBTQIA+ residents with separate ablution facilities, on-site social workers, two daily full meals, security, access to development, health and employment programmes. The facility functions with operational protocols, residential guidelines together with a code of communal living designed to promote stability, reintegration and where possible, reunification with their families. The programme also provides for access to substance abuse rehabilitation programmes where necessary. It also has a grievance mechanism in respect of issues raised by the residents which are addressed in a swift, reasonable and co-ordinated manner. The meals provided are wholesome with breakfast and dinner in accordance with a daily variety. Several of the present residents are ready to move onto further havens or other accommodation or reunification with their families, allowing for adequate space to accommodate the occupiers in this matter.

[28] For the reasons aforesaid, I am satisfied that the requirements of section 4(6) and (7) of PIE are met. In my view, the City has discharged the onus of demonstrating that eviction, coupled with the provision of adequate alternative

accommodation, is just and equitable. The relief granted will not amount to homelessness for any of the respondents.

Just and Equitable timeframe:

[29] In determining the appropriate timeframe within which the respondents are to vacate the property, the Court is guided by the principle that eviction must be humane and orderly. A period of thirty (30) days affords the respondents a reasonable opportunity to relocate in a dignified manner, allowing for the alternative housing implementation; considering the inhumane conditions of the respondents' present conditions; and whilst enabling the City to restore the public spaces for communal use. I am satisfied that an order which requires the respondents' vacation within thirty (30) days from date of this Order would be just and equitable in these circumstances with alternative accommodation at the City's Safe Spaces available as suitable accommodation. The Respondents are to inform the Applicant within three (3) weeks of this Order that they intend to take up the alternative accommodation at the Safe Space shelters. The Court is satisfied that the mechanism contemplated in the Order below affords the occupiers a fair and accessible means of indicating their acceptance of the alternative accommodation.

Interdictory Relief

[30] The City also seeks an order interdicting the respondents from re-occupying the property. The purpose of this relief is to preserve the efficacy of the eviction order and to prevent a recurring cycle of re-occupation and enforcement. Given the property's location in a busy public precinct and its history of repeated settlement, the risk of return cannot be regarded as speculative. It is so that certain of the occupiers who have moved to the Safe Space shelter had though abandoned it and returned to this area as an occupier.

[31] The order sought is preventive and proportionate. It does not impose a sanction but rather seeks to ensure that the implementation of the main order is sustainable and that the rule of law is upheld. It confines itself to restraining conduct that would undermine the Court's directive and orders while leaving open to any affected person the ability to seek lawful accommodation or engagement with the City through appropriate processes.

Costs

[32] In eviction matters of this nature, costs should not follow the event. There has been constructive engagement which has substantively amounted to positive results, and the dispute concerns the exercise of constitutional rights and statutory duties.

Conclusion

[33] I am satisfied that the City has acted with restraint and diligence, fulfilling its obligations under PIE and section 26 of the Constitution. The proposed accommodation provides a humane and lawful alternative and the timeframe for the eviction is in the circumstances just and equitable. I am satisfied that in these circumstances the applicant is entitled to relief sought.

[34] Wherefore I grant the order of eviction and interdictory relief attached hereto as "X".

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicant: Adv. K Pillay SC

Adv. T Sarkas

Instructed by: Fairbridges Wertheim Becker Attorneys

Ref: Mrs D Olivier

For Respondent: In person (Mr. H.Botha)