

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

Case Number: 2024-115982

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

21 October 2025

In the matter between:

**HENDRIE ANDRIES MARAIS N.O.** **Applicant**

*In re:*

**HENDRIE ANDRIES MARAIS N.O.** **Applicant**

and

**ANNAMRIE LORETO** **First Respondent**

**JOSE LORETO** **Second Respondent**

**MOGALE CITY** **Third Respondent**

**Date of Hearing:** 20 October 2025

**Date of Judgment:** 21 October 2025

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**JUDGMENT**

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ESTERHUIZEN, AJ

**NATURE OF APPLICATION**

- [1] This is an application for the authorization of a notice in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("the PIE Act").
- [2] In addition to the former, the first and second respondents brought an application for the joinder of a Valerie De Mendonca ("De Mendonca").
- [3] For ease of reference the parties are referred to herein as cited in this application.

I deal first with the joinder application.

### **JOINDER**

- [4] The first and second respondents ("respondents") brought a joinder application in terms of which they asked for, amongst others that:

*"The Fourth Respondent to be joined in the main action is VALARIE DE MENDOCA,...*

*The purpose of this application is to join the Respondent as Fourth Respondent, in terms of rule 28(2) of the rules of this court and the common law, in the application instituted by the Applicant against the First and Second Respondents, under case number 2024-115982, in the jurisdiction of the above Honourable Court."*

- [5] De Mendonca filed an answering affidavit opposing her joinder and respondents did not deliver a replying affidavit to it.

[6] At the hearing of this matter counsel for the respondents indicated that they do not persist with the joinder application. The reason for not persisting with the application, counsel submitted, was due to it having been sought in terms of the incorrect rule. Notwithstanding this the applicant persisted with their argument that a punitive cost order should be granted against the respondents as well as an order *de bonis propriis*. I return to the question of costs in dealing with the costs in the main application.

### ***EVICTION - MAIN PPLICATION***

The following common cause and background facts, that resulted in this application, are relevant:

[7] It is common cause that Dinah Johanna Stols ("Stols"), the spouse of the deceased, and the deceased are the registered owners of 4[...] P[...] J[...] Street, M[...], Krugersdorp ("the property").

[8] The first and second respondents have been in occupation of the property since 2008. They shared occupation with the deceased and Stols until 2015 when the deceased and Stols moved out.

[9] The applicants aver that the first and second respondents had agreed with Stols and the deceased that the respondents may occupy the property on

condition that they pay an amount equivalent to the bond instalment being paid on the property to Standard Bank.

[10] The bond instalment is paid from the banking account of Rudi Scrap Metals CC ("Rudi Scrap Metals"). The first and second respondents made payment of the agreed amount into the banking account of Rudi Scrap Metals until December 2022.

[11] Since December 2022 no further payment had been made by the respondents to the banking account of Rudi Scrap Metals. Instead, the respondents elected from that day onwards to pay the agreed amount into the trust account of their attorney.

[12] Failing to make payment to the Rudi Scrap Metals account the first and second respondents have breached the agreement, as alleged by the applicant, which resulted in the respondents being in unlawful occupation of the property.

[13] This breach caused the applicant to, on 5 August 2024, address a letter to the respondents' attorney informing the respondents that the lease agreement in respect of the property had been cancelled with immediate effect and that the respondents were required to vacate the property by the end of September 2024.

[14] The first and second respondents deny that they are unlawful occupants of the property. The respondents in turn argued that a verbal agreement had been concluded in terms of which the first respondent would become the owner of the property. In terms of that agreement the first respondent would pay the bond instalments during the lifetime of the deceased and in the event of the death of the deceased, the proceeds from an insurance policy would be utilised to settle the outstanding amount owing to Standard Bank, whereafter the first respondent would take transfer of the property.

[15] The central question is thus whether the first and second respondents enjoy a right to remain in occupation of the property.

## **DISCUSSION**

[16] Section 4(1) of the PIE Act provides as follows:

*"4(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier."* (Own emphases)

[17] In section 1 of the PIE Act "*Unlawful occupier*" is defined as meaning:

*"... a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land ..."* (Own emphases)

[18] In *Davidan v. Polovin N.O. and Others* (167-2020) [2021] ZASCA 109 (5 August 2021) the jurisdictional requirement to trigger an eviction under the PIE Act was succinctly summarised as follows:

“[11] *The jurisdictional requirement to trigger an eviction under PIE is that the person sought to be evicted must be an unlawful occupier within the meaning of PIE at the time when the eviction proceedings were launched...*

[12] *The starting point is to establish whether the appellant is an unlawful occupier under PIE. The key question is whether the appellant enjoyed a right of occupation? PIE applies not only to occupants who occupied land without the initial consent of the owner or person in charge, it also applies to occupants who had consent to occupy but such consent was subsequently terminated. In both instances the occupants would be unlawful occupiers within the meaning of PIE. Consent in eviction applications is a valid defence.*” (emphases added)

[19] It is common cause that the first and second respondents did have consent to occupy the property for a period of time but the right to remain in occupation of the property ceased on cancellation of the agreement in 2024, which cancellation is not disputed, the right to have cancelled the agreement is disputed and dealt with hereinafter. From the date of cancellation and onwards the respondents have been in occupation of the property without the consent of the owners. Thus, they are unlawful occupiers as per the definition contained in the PIE Act. The jurisdictional requirement as referred to in *Davidan supra* is thus present and an eviction in terms of s 4(2) of the PIE Act is triggered.

[20] As stated, the respondents claim that a verbal agreement had been concluded in terms of which the first respondent would become the owner of

the property which agreement is denied by the Stols. This averment in any event does not assist the respondents for the following reasons:

[20.1] it is common cause that the deceased bequeathed the property, amongst other assets, to his spouse Stols which is to be sold by the executor on instructions of Stols.

[20.2] any claim to an agreement regarding the property would be subject to section 2(1) of the Alienation of the Land Act, 68 of 1981 ("the Act") which provides as follows:

*"2(1) No alienation of land after the commencement of this act shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority." (Own emphases)*

"Alienate" is defined in Section 1 of the Act as follows:

*"'Alienate', in relation to land, means sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolution condition, and 'Alienation' has a corresponding meaning;" (Own emphases)*

Thus, in the absence of the alleged agreement being contained in a deed of alienation signed by all the parties, the agreement relied upon by the first respondent is of no force and effect. In *Hohl N.O. and Others v Dalcos and Others* (38224/2020) [2022] ZAGPJHC 34 (11 February 2022) the court in very similar circumstances held:

- [8] *The first respondent also makes the claim that, during 2008, he concluded an oral agreement with the deceased in terms of which the property would be subdivided and he would acquire a portion of the property. Pending his acquisition of the property, he and his family would be allowed to occupy rent-free a new house, which the deceased and presumably the first applicant had agreed to erect on the property for him and his family. This claim is denied by the first applicant. I need not dwell on this factual dispute too long, for the simple reason that the claim is not only bad in law but is also so far-fetched, if regard is had to the other undisputed facts in the matter, that it can be rejected out of hand.*
- [9] *The claim is bad in law because of section 2(1) of the Alienation of Land Act, Act 68 of 1981, which provides as follows:...* ‘
- [10] *The oral agreement, as alleged by the first respondent, is therefore of no force and effect...*” (Own emphases)<sup>1</sup>

Counsel for the respondents argued that because of a defense of *quasi-mutual assent* the provisions of section 2(1) of the Act and by implication the *Hohl* judgment (which reaffirmed what the SCA had already concluded in 1980) need not be adhered to. No such defense is contained on the papers and is for the first time raised during argument. This argument can be disposed of for two reasons.

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<sup>1</sup> This judgment reaffirmed what was stated in the matter of *Johnston vs Leal* (245/78) [1980] ZASCA 58 (30 May 1980) where the Supreme Court of Appeal in considering the provisions of section 1 of the Alienation of Lands Act concluded that:

*“The result of non-compliance with section 1(1) is, as I have indicated, that the agreement concerned is of no force or effect. This means that his void up initio and cannot confer a right of action...*

*The reason why the legislature selected, inter alia, contracts of the sale of land for such a special treatment as far as formalities of contract are concerned was, no doubt, that it recognized that such contracts are generally transactions of considerable value and importance and that the terms and conditions attached thereto are often intricate.”* (Own emphases)

The wording of section 1 was essentially similar to the wording of section 2.1 of the Act.

- Firstly, it is trite that a party in motion proceedings stands and falls by its papers.<sup>2</sup>
- Secondly, the respondents' own argument do not support their averment. In support of their argument the respondents referred to two judgments, the first being that of *Pillay and another vs Shake and another* (006/08) [2008] ZASCA 159 (27 November 2008). This matter concerned the developers marketing to members of the public, interests in a sectional title property development where each unit in the development was to be owned by a close corporation. The member's interests in each of these close corporations were offered for sale. What the SCA did find in this instance was no different to what was said in *Hohl supra*. The court expressly held:

“[43] *On appeal to the full bench, as indicated earlier, the court found it unnecessary to deal with the quasi-mutual assent point because it held that the parties' intention had been that there would be no binding agreements between them unless they were signed by or on behalf of the buyers and the sellers. It is important to stress that it accepted, as counsel on both sides had accepted, that '(t)he Close Corporations Act 69 of 1984 does not require the sale of a member's interest to be in writing even if it relates to immovable property....'*

[50] *I do not agree with the court a quo's conclusion that there could be no binding contracts between the parties unless each was signed by or on behalf of the buyers and the sellers. In my opinion*

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<sup>2</sup> In *Betlane v Shelly Court* CC 2011 (1) SA 388 (CC) at para 29.

*it is clear from Goldblatt v Freemantle, supra, and the authorities cited therein that, in the absence of a statute which prescribes writing signed by the parties or their authorised representatives as an essential requisite for the creation of a contractual obligation (something that does not apply here), an agreement between parties which satisfies all the other requirements for contractual validity will be held not to have given rise to contractual obligations only if there is a preexisting contract between the parties which prescribes compliance with a formality or formalities before a binding contract can come into existence.*” (Own emphases)

Because section 2(1) of the Act prescribes that an agreement must be in writing this judgment too states that those requirements must be met and not ignored as argued by counsel for the respondents.

The second judgment which the respondents refer to was that of *Vincorp (Pty) Ltd vs Trusthungry ZRT* (061/2017) [2018] ZASCA 35 (27 March 2018). As this judgment dealt with an agreement pertaining to the sale of wine barrels it cannot assist the respondents’ argument as to the requirements contained in the Act.

[20.3] the first and second respondents paid the agreed upon amount via Rudi Scrap Metals until 2022 and thereafter continued, so they say, paying it into the trust account of their attorney. This they did notwithstanding the deceased having already passed on 16 October 2019. This raises the rhetorical question if the allegation was indeed correct that the property would transfer to the first respondent on the

death of her father why would she continue paying for her 'own' property and why would the property be bequeathed to Stols?

[21] Therefore, even if the alleged verbal agreement did exist the transaction is null and void as it failed to comply with the requirements as contained in section 2(1) of the Act. Notwithstanding this and for the reasons stated and having regard to the objective facts the first and second respondents' version with regard the property is so far-fetched as to render it untenable and can thus be rejected.

[22] In terms of Section 4(7) of the PIE Act, the Court may grant an order for eviction if it is of the opinion that it is just and equitable to do so after considering all the relevant circumstances. In determining what is just and equitable it requires a consideration as to whether eviction is just and equitable to all parties meaning both the owner and the unlawful occupiers (See *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others (Socio-Economic Rights Institute of South Africa as amicus curiae)* 2012 (11) BCLR 1206 (SCA) at para [12]). Where an occupier opposes an eviction at the very least the occupier is required to lay sufficient factual foundation upon which the Court can make a finding. In *Ndlovu supra* the Supreme Court of Appeal held:

“[19] *Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts*

*within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.”*

- [22.1] The property is occupied by the first and second respondents and their major son Brandon, who is 18 years old and who is employed by the first and second respondents in their businesses.
- [22.2] The first and second respondents, according to the applicant, are well off and conduct three scrap metal businesses and are able to obtain alternative accommodation elsewhere. These allegations are not denied.
- [22.3] There are no elderly persons or person with disabilities who reside at the property.
- [22.4] The applicants ceased making payments in 2022 contrary to the agreement to make such payment.
- [22.5] The first and second respondents have known since September 2024 that they are required to vacate the property. They had ample opportunity to find alternative accommodation but provide no evidence that they have taken any steps in seeking alternative accommodation.

[23] The respondents provide no facts as to why it would not be just and equitable in granting an order for their eviction and all those who occupy the property through them.

[24] Because all the requirements of section 4 of PIE have been complied with and because the respondents have raised no valid defence, section 4(8) of PIE determines that the court must grant an order for the eviction and in doing so must consider what is a just and equitable date on which the occupier must vacate the land.

[25] The Applicant seeks an order whereby the Respondents are to be evicted within one month from the date of this order. In my view this date is not reasonable and that more time should be provided to the Respondents to seek alternative accommodation and to move out of the premises being unlawfully occupied. In my view a just and equitable order would be to provide the Respondents until 31 December 2025 to vacate the premises.

## **COSTS**

[26] The applicant argued that it would seek an order that the first and second respondents pay the costs of the main application on the attorney and client scale and *de bonis propriis*. I am of the view that a punitive order is justified in the main application.<sup>3</sup> This is so because:

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<sup>3</sup> See *Wingate-Pearse v. Commissioner, South African Revenue Service and Others* 2019 (6) SA 196 (GJ) at par [82] - [83].

[26.1] the defences which were raised were without merit and many of the issues raised simply had no bearing on the matter.

[26.2] the respondents also had a total disregard to the rules of court by not filing their heads of argument in time but only on the morning of the hearing and the raising arguments not dealt with in the papers.

This said and even though a punitive cost order on attorney and client scale is justified I am of the view that a *de bonis* order in respect of the main application is not.

[27] Returning to the argument in relation to costs in the joinder application in which the Applicant sought an order on a punitive scale and *de bonis propriis*. A court can grant a cost order *de bonis propriis* against an attorney in cases that involve gross incompetence or gross disregard for professional responsibilities, dishonesty, wilfulness or negligence of a serious degree. (See: *CB and Another v. HB* 2021(6) SA 332 (SCA) par [21] and the authorities referred to therein).

[28] The following are factors supporting the conclusion that favours an order *de bonis propriis* and on a punitive scale:

[28.1] The respondents were already made aware of the fact that the incorrect rule had been used in support of the joinder application when *Mendoza* filed her answer to the joinder application in

December 2024. The respondents elected to ignore this and did not file a replying affidavit.

[28.2] During the compilation of the joint practice note for the current application the respondents noted in the practice note that they would be persisting with the joinder application. They new or should have known that the incorrect rule had been applied. The joint notice was uploaded as recent as 29 September 2025.

[28.3] It was only on the morning of the hearing that respondents withdrew their joinder application on the basis that it was sought in terms of the incorrect rule. If the first and second respondents had the bona fide intention of joining the *Mendonza* then one would have expected them to have filed a new application in terms of the correct rule as soon as they became aware that the incorrect rule was utilised. This they did not do. The only reasonable assumption to be made is that they were well aware that the application for joinder simply had no merit and was done for no reason other than to frustrate *Mendonza* forcing her to incur legal costs which could have been avoided.

Therefore, I make the following order:

**ORDER**

1. The first and second respondents to pay the costs of the joinder application for the joinder of Valerie De Mendonca jointly and severally on an attorney and client scale.
2. The attorney to the first and second respondents, Marthinus Johannes Kapp is ordered to pay the costs of the said joinder application, jointly and severally with the first and second respondents on attorney and client scale.
3. The first and second respondents together with all other occupants who occupy the property situated at 4[...] P[...] J[...] Street, M[...] P[...], Krugersdorp ("the property") through or under them are hereby evicted from the property.
4. The first and second respondents and all other occupants shall vacate the property by no later than 31 December 2025.
5. The Sheriff or his lawful deputy is hereby authorised to take such steps as are necessary to evict the first and second respondents and all occupiers of the property should the first and second respondents and all occupiers of the property not vacate the property by 31 December 2025.
6. The first and second respondents shall pay the costs of the main application jointly and severally on an attorney and client scale.

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**ACTING JUDGE OF THE HIGH COURT  
JOHANNESBURG**

**Counsel for Applicant:**

Adv M. A. Kruger

**Instructed by:**

Scholtz Attorneys

**Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents:**

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