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

CASE NO: 2022/046914

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

DATE 5 November 2025

In the matter between:

RIEDWAN MOHAMMED

Applicant

and

OWEN THULANI NDLOVU

First Respondent

THE JOHANNESBURG METROPOLITAN MUNICIPALITY

Second Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties' legal representatives by email and by being uploaded to CaseLines. The date and time for hand down is deemed to be 5 November 2025.

MAHON AJ:

INTRODUCTION

- [1] This matter concerns an application for the eviction of the first respondent and all persons occupying the immovable property situated at 4[...] N[...] Street, W[...] H[...] Extension 2, Johannesburg (“the property”), under or through him. The applicant is the registered owner of the property, having purchased it at a sale in execution following foreclosure proceedings brought by Absa Bank against the first respondent.
- [2] The application is brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”). The City of Johannesburg Metropolitan Municipality (“the City”) was cited as the second respondent and has filed the required report addressing the availability of temporary emergency accommodation and the personal circumstances of the occupiers.
- [3] The first respondent initially opposed the application but has since vacated the property. His wife, *Ms Portia Ndlovu*, their three children, an elderly relative (Ms Susan Ledema, aged 74), and a domestic worker remain in occupation. The central questions for determination are therefore:
- [3.1] whether an eviction order may properly be granted against the first respondent notwithstanding that he no longer resides at the property;
- [3.2] whether the remaining occupiers fall within the description “persons occupying under or through the first respondent”, and if so, whether they have been properly served and afforded an opportunity to be heard; and

[3.3] what order, if any, is just and equitable in the circumstances, including the appropriate date of vacation and costs.

[4] The hearing of the matter was preceded by a procedural issue concerning a late-filed affidavit by the first respondent, asserting that he had vacated the property. The Court permitted the matter to stand down to allow the applicant to consider that affidavit, which was later withdrawn by agreement, and the matter then proceeded on the basis that the first respondent had vacated the property.

BACKGROUND

[5] The property in question, Erf 1[...], Winchester Hills Extension 2, Johannesburg, was previously owned by the first respondent. Following his default under a mortgage bond in favour of Absa Bank Limited, the property was sold in execution and transferred to the applicant, Mr Riedwan Mohammed, on 18 March 2022. The applicant is the registered owner, as reflected in the Deeds Office records annexed to the founding papers.

[6] Despite the change in ownership, the first respondent and his family continued to reside at the property. Repeated attempts by the applicant to secure vacant occupation proved unsuccessful. In May 2023, after written demands and correspondence, the applicant instituted eviction proceedings in this Court under case number 2022/046914, citing as respondents:

[6.1] the first respondent, as the former owner and principal occupier; and

[6.2] the City of Johannesburg Metropolitan Municipality (“the City”) as the second respondent, in compliance with the requirements of section 4(2) of PIE.

[7] The notice of motion sought two forms of relief:

[7.1] first, a declarator that the first respondent and all persons occupying under or through him were in unlawful occupation of the property; and

[7.2] second, an order evicting the first respondent and all such persons from the property within a period to be determined by the Court.

[8] The first respondent opposed the application and filed an answering affidavit in which he did not dispute that ownership had passed to the applicant but contended that he and his family were still lawfully entitled to remain in occupation pending the resolution of a dispute with Absa Bank. He also referred to a rescission application previously launched in the Gauteng Division, Pretoria, under case number 50666/2017, seeking to set aside the default judgment and sale in execution.

[9] The City of Johannesburg was duly served and, in accordance with its constitutional and statutory obligations, filed a report dated 3 September 2024 assessing the circumstances of the occupiers. The report confirmed that the property was being occupied by the first respondent’s wife, *Ms Portia Ndlovu*, their three children, and an elderly relative, *Ms Susan Ledema*, aged 74. The report recorded that the first respondent no longer resided at the property, that his wife was employed as a manager in a business owned by

him, earning approximately R25 000 per month, and that the family had sufficient means to obtain alternative accommodation if required. The City concluded that none of the occupiers would be rendered homeless upon eviction, and that they did not qualify for temporary emergency accommodation ("TEA") under the City's policy.

[10] Prior to the hearing, and despite the City's report having been filed some months earlier, the first respondent filed, on 11 August 2025, a further affidavit asserting that he had vacated the property in May 2024 and that the only remaining occupiers were his wife, children and aunt. The applicant objected to the late filing and sought costs occasioned by the resulting delay.

[11] During the hearing on 12 August 2025, the Court raised with counsel whether the late affidavit should be received, and whether, if it were admitted, a further replying affidavit would be required. After discussion, the parties agreed that the affidavit be treated as withdrawn and that the matter proceed on the common cause footing that the first respondent had indeed vacated the property.

[12] At that stage, therefore, the remaining factual questions concerned:

[12.1] the identity and legal status of those still residing on the property;

[12.2] whether they occupied "through or under" the first respondent within the meaning of section 4(1) of PIE; and

[12.3] whether they had been properly served with the section 4(2) notice and made aware of the proceedings.

[13] The evidence before the Court showed that a section 4(2) notice authorised by this Court had been served at the property by the sheriff on 25 July 2025, on a son of the first respondent, being the same individual who had accepted service of the main application. A copy of the notice was also affixed to the front gate of the premises. This was in addition to an earlier section 4(2) notice authorised and served in the preceding year.

[14] In the course of argument, the first respondent's counsel contended, despite his confirmation that he did not act for the first respondent's wife and other family members, that they had not been joined as parties and were therefore deprived of an opportunity to be heard. The applicant's counsel, in response, relied on the established practice in eviction matters that an order may properly be sought against "the respondent and all persons occupying through or under him", particularly where it is impracticable for an owner to identify every individual occupant of the premises.

ISSUES FOR DETERMINATION

[15] Three principal issues arise for determination:-

[15.1] Whether an eviction order remains competent notwithstanding that the first respondent has vacated the property:-

[15.1.1] It is common cause that the first respondent no longer resides at the property. He vacated the premises during May 2024 but remains the person under or through whom the current occupiers originally derived their right of occupation. The first question, therefore, is whether the

applicant retains a legal interest in securing an eviction order against him in these circumstances, or whether his vacating renders the application moot insofar as he is concerned.

[15.1.2] The applicant contends that an order remains necessary to regularise the position and to prevent any future re-occupation by the first respondent, who, as former owner, retains an ongoing association with the premises and could easily return or cause others to do so. The first respondent, on the other hand, submits that once he vacated, there was nothing left to evict and that the order sought has become academic. The issue, in essence, concerns the continuing legal effect of the declaratory and eviction relief when the cited respondent has already vacated.

[15.2] Whether the remaining occupiers fall within the description “persons occupying under or through the first respondent”, and whether they were properly served and afforded an opportunity to be heard:-

[15.2.1] The second issue is procedural and constitutional in character. The applicant’s papers describe the intended scope of the order as extending to “the first respondent and all persons occupying under or through him”. The City’s report confirms that the remaining occupiers are

the first respondent's wife, three children, an elderly relative and a domestic worker.

[15.2.2] The question is whether these persons can, on the evidence, properly be regarded as occupying "under or through" the first respondent, or whether they occupy independently of him and must therefore be separately cited as respondents. If the latter, the further question arises whether the proceedings are procedurally defective for want of joinder or service, or whether the service of the section 4(2) notice at the property and the clear awareness of the occupiers suffices to meet the requirements of *audi alteram partem* and section 4(2) of the PIE Act.

[15.3] What order is just and equitable in the circumstances:-

[15.3.1] Finally, if it is found that the proceedings are procedurally sound and that the remaining occupiers have no independent right to remain, the Court must determine whether it is just and equitable to grant an eviction order, and on what terms. This requires consideration of:

[15.3.1.1] the personal circumstances of the occupiers
as reported by the City;

[15.3.1.2] the availability of alternative accommodation;
and

[15.3.1.3] a fair and reasonable period within which they must vacate the property.

ANALYSIS AND DISCUSSION

(1) Whether the eviction order remains competent notwithstanding that the first respondent has vacated

[16] It is undisputed that the first respondent vacated the property in or about May 2024. He confirmed this both in correspondence and in open court through his counsel. His belated affidavit of 11 August 2025 merely restated this fact and was, by agreement, withdrawn once it was accepted by all parties that he was no longer in residence.

[17] The applicant nevertheless seeks both a declarator and an eviction order against the first respondent. Counsel for the applicant submitted that the declarator is necessary to record that the first respondent's occupation until the date of vacating was unlawful, and that an eviction order remains appropriate to prevent the first respondent from resuming occupation or facilitating re-occupation by others under his authority.

[18] The Court accepts that the declaratory relief serves a legitimate purpose. The applicant, as the registered owner, is entitled to a formal pronouncement that the first respondent's occupation after transfer of ownership was unlawful. Such an order clarifies the legal position and preserves the applicant's ability to enforce his ownership rights against any subsequent acts of re-occupation.

- [19] As regards the eviction relief, the position is different as between the first respondent and the remaining occupiers. Insofar as the first respondent is concerned, the relief has been rendered academic. It is common cause that he has vacated the property, and there is accordingly no subsisting occupation to be terminated. The coercive remedy of eviction under PIE is directed at persons in actual occupation, and once possession has been relinquished, an eviction order serves no further purpose in relation to that person.
- [20] It remains necessary, however, to record that the first respondent's occupation of the property after transfer to the applicant was unlawful. The declaratory relief sought by the applicant is therefore warranted. That declaration regularises the legal position and makes clear that any subsequent re-occupation by the first respondent, in the absence of new facts or lawful authority permitting such occupation, would be a contemptuous act in breach of this order and may be dealt with as such.
- [21] Having made that finding, it is unnecessary, and would in any event be redundant, to grant an eviction order against the first respondent merely to pre-empt the possibility of his return. The declaratory relief provides adequate protection of the applicant's ownership rights and a clear legal foundation for the enforcement of this judgment should the first respondent, without lawful cause, attempt to re-occupy the premises. The eviction relief accordingly remains to be considered only in respect of the other occupiers still residing at the property.

(2) Whether the remaining occupiers occupy “under or through” the first respondent and whether they were properly served and heard

[22] The evidence identifies the current occupiers as the first respondent’s wife, *Ms Portia Ndlovu*, their three children, and an aunt, *Ms Susan Ledema*. None of these persons has filed an affidavit asserting an independent right of occupation. The first respondent’s counsel suggested that the wife occupies in her own right and that the other family members reside with her rather than through him. That submission, however, is unsupported by any factual or documentary foundation.

[23] The general principle, consistently recognised in eviction jurisprudence, is that where a property was previously occupied by a single household or family, and the owner is unable to identify each individual, it is sufficient to cite the principal occupier (typically the former owner or tenant) and to frame the relief as extending to “all persons occupying through or under” that person. The presumption is that family members and dependants occupy through the principal occupier unless they establish an independent right to remain. A perfunctory consideration of the many judgments given in this court, the Supreme Court of Appeal and the Constitutional Court reveal the use of this nomenclature.

[24] The present case fits squarely within that principle. The property was purchased by the applicant at a sale in execution. The first respondent remained in occupation thereafter with his family. His wife’s continued presence, and that of their dependants, stems directly from that original

occupation. No lease, right of habitation, or other juridical basis has been asserted that would render their occupation independent of his. Accordingly, they are properly described as occupying “through or under” the first respondent within the meaning of section 4(1) of PIE.

[25] It would moreover be inimical to the purpose of PIE, and an abuse of process, if a respondent could avoid the eviction of those who continue to occupy under or through him simply by vacating the property shortly before the hearing. To permit that stratagem would enable a former owner or principal occupier to frustrate the enforcement of an owner's rights by a tactical withdrawal, leaving others in occupation under the umbrella of his prior possession. PIE was not designed to allow such manoeuvres to defeat lawful proceedings, and the Court will not lend its process to that kind of artifice.

[26] As to service and notice, the record shows that the section 4(2) notice was duly authorised by this Court and served at the property on 25 July 2025. Service was effected by the sheriff on the first respondent's son, a person apparently over the age of sixteen years, and a copy was affixed to the main entrance. This mode of service complies with Rule 4(1)(a) of the Uniform Rules and section 4(2) of PIE. The City's inspection further confirmed that the wife and other occupants were aware of the pending eviction proceedings, having discussed them with municipal officials during their site visit.

[27] The *audi alteram partem* principle requires not perfection but fairness. In context, the combination of personal service at the property, visible notice,

prior municipal engagement, and the first respondent's participation in opposition suffices to satisfy the procedural safeguards of PIE.

[28] The Court therefore finds that the occupiers were both properly served and adequately aware of the proceedings, and that no procedural unfairness arises from their not having been separately cited.

(3) Whether it is just and equitable to grant the order, and on what terms

[29] Section 4(7) of PIE obliges the Court to consider all relevant circumstances before ordering eviction, including the rights and needs of the elderly, children, disabled persons and female-headed households. The City's report provides a comprehensive assessment of the occupiers' situation. It records that:

[29.1] the first respondent and his wife are both economically active;

[29.2] their combined household income is sufficient to enable them to procure alternative accommodation;

[29.3] they employ a domestic worker and reside in a well-maintained double-storey dwelling;

[29.4] the wife acknowledged that she could obtain alternative accommodation if required; and

[29.5] the family would not be rendered homeless by an eviction.

[30] These findings were not challenged by the respondents. There is accordingly no basis for the Court to conclude that the eviction would infringe the occupiers' constitutional rights to housing or dignity. The property is privately

owned, and the applicant has been deprived of its use for more than three years since transfer.

[31] Balancing the applicant's right to enjoy his property and the occupiers' interest in a reasonable period to relocate, the Court considers it just and equitable that they be afforded thirty (30) days from the date of service of this order to vacate the premises.

[32] In the result, the following order is made:

1. It is declared that the first respondent's occupation of the property situated at 4[...] N[...] Street, W[...] H[...] Extension 2, Johannesburg, after transfer thereof to the applicant, was unlawful.
2. The persons presently in occupation of the property, being those occupying under or through the first respondent, are ordered to vacate the property within thirty (30) days of service of this order upon them.
3. In the event that the occupiers have not vacated the property upon the expiry of the period referred to in 2 above, the Sheriff of this Court, or his or her lawful deputy, is authorised and directed to evict the said occupiers and to give vacant possession of the property to the applicant.
4. The first respondent shall pay the costs of this application, including the costs consequent upon the employment of counsel, on a party-and-party scale (Scale B).

D MAHON

Acting Judge of the High Court
Johannesburg

Date of hearing: 11 August 2025

Date of judgment: 5 November 2025

APPEARANCES:

For the Applicant: Adv W Naude
Instructed by: Arilia du Plessis Attorneys

For the First Respondent: Mr T P Phalane
Instructed by: TP Phalane Attorneys

For the Second Respondent: Mr B Slatter
Instructed by: Nchupetsang Inc. Attorneys