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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: A2024/127237

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

In the matter between

CAPRICORN FARMS CC

Appellant

And

DAVID HENRY LEVINSON

First Respondent

BIG CREEK TRADING 29 CC

Second Respondent

TONDOZEST (PTY) LIMITED

Third Respondent

MARK ACLAND TANTUM

Fourth Respondent

EMFULENI LOCAL MUNICIPALITY

Fifth Respondent

Coram: L DE SOUZA-SPAGNOLETTI, AJ

J DLAMINI, J AND M KRUGER, AJ CONCURRING

Heard on: 10 SEPTEMBER 2025

Delivered: 27 OCTOBER 2025

JUDGMENT- FULL BENCH APPEAL

BACKGROUND AND HISTORY

1. This appeal centres around an application brought by the appellant for the eviction of the first respondent from a property known as Portion 97 (a portion of Portion 62) of the farm K[...] 577, Registration Division IQ, Transvaal situated at 9[...] K[...], Vanderbijlpark (the Property).
2. The appellant is owner of the property while the first respondent is a business man residing on and conducting business from the property. During proceedings in the Court *a quo*, there was a fourth respondent who was also occupying the property but he subsequently left and as such warrants no further mention. Similarly the fifth respondent, does not figure significantly save for the fact that it is the municipality in whose area of jurisdiction the property is situated.
3. It is to be noted that the property is privately owned. It is not, nor could it have been anticipated in this case that there shall be any impact on the fifth respondent, irrespective of whether the first respondent was or is evicted.
4. Judgment in the Court *a quo* was handed down by Honourable Cajee, AJ on 6 March 2024 with an order in the following terms:
 - 4.1 The application for eviction is dismissed;
 - 4.2 The applicant (appellant) shall pay the first respondent's costs.

5. In essence, the reason for dismissal of the application was a failure of the appellant to comply with the requirements of the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1998 (PIE)¹. This refers to a compliance failure in relation to section 4(2) of PIE.
6. This application hinges around whether the lack of section 4(2) compliance is fatal to the appellant's case.
7. Crucial to this judgment and the reasons therefor are the following facts which are not in dispute:
 - 7.1 The identities of the parties;
 - 7.2 The description of the property in question;
 - 7.3 That the appellant is the owner of the property;
 - 7.4 That the first respondent is in occupation of the property;
 - 7.5 That there is no lease agreement entitling the first respondent to occupation;
 - 7.6 That the first respondent does not make payment of rental or any payment of any nature to the appellant in respect of occupation of the property.
 - 7.7 That no notice in terms of section 4(2) of PIE was served on the first respondent or the relevant municipality;

¹ Paragraph 43 of judgment of Court a quo. CL 002-390

- 7.8 That the first respondent was represented by a private attorney throughout the proceedings from inception, which proceedings he opposed;
- 7.9 The court *a quo* made a finding that the applicant is the owner of the property and that the first respondent is in unlawful occupation thereof.
8. The right of occupation as claimed by the first respondent, derived from an alleged oral agreement between himself and one Dorian Dart, the sole member of the appellant. First respondent claims an oral partnership agreement between himself and the appellant, this dating back to 2009 and which he alleges, remains in existence ². No solid evidence was placed before the Court *a quo* to support the existence of the alleged partnership and much has changed since 2009. Whether or not this partnership ever existed becomes moot as the appellant, duly represented by the curatrix bonis and subsequent to that the executrix of Dart's estate, has made it clear that the appellant has and continues to seek first respondent's vacation and now eviction from the property.
9. Dorian Dart was involved in a motor vehicle collision in August 2009 which rendered him incapable of managing his affairs and which incapacity necessitated the appointment of a curatrix *bonis* which curatrix deposed to the founding affidavit in the application in the Court *a quo*.
10. Subsequent to the aforementioned curatorship appointments, various sale negotiations apparently took place between the appellant and the first

² Answering affidavit in eviction application, CL 002-138

respondent and also the appellant and fourth respondent. None of these negotiations bore any fruit and no valid sale agreement was ever concluded.

11. Dorian Dart passed away in 2021 and the status currently is that the first respondent continues to occupy the property free of charge, this contrary to the wishes and direction of the appellant who remains the owner of the property. The deponent to the founding affidavit in the eviction application is also the late wife of Dorian Dart, Jaqueline Patricia Dart, who was subsequent to Dart's death in 2021, appointed as co-executrix of his estate along with the deceased's son, Riley Fullard who supports these proceedings. The appellant appeals the dismissal of its application for eviction of the first respondent from the property.
12. It is obvious that the estate of Dart should now fall either to his heirs under his will or to his dependents/family intestate.
13. On 17 March 2025, the first respondent filed a notice to abide ³, noting the decision in the Court *a quo* and the date of judgment on 6 March 2024 and further confirming his intention to abide by the decision of this Appeal Court.

LEGAL FRAMEWORK

14. PIE has its roots, *inter alia*, in Section 26(3) of our Constitution which dictates that no one may be evicted from their home without an order of Court made after consideration of all the relevant circumstances. ⁴

³ CL 13-1

15. Crucial to this appeal is acknowledgement of the purpose of PIE and its reason for existing. The Act came into force in 1998 with its purpose being to address unlawful evictions and to address apartheid-era wrongs during which people were removed from land without due process.

Section 4 of PIE

16. For the sake of completeness, Section 4 is cited below:

“ 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.

(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.

(3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.

(4) Subject to the provisions of subsection (2), if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.

(5) The notice of proceedings contemplated in subsection (2) must—

⁴ Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others (495/99) [2001] ZASCA 87; [2001] 4 All SA 479 (A); 2001 (4) SA 1222 (SCA)

(a) state that proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.

6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a 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, including the rights and needs of the elderly, children, disabled persons and households headed by women.

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a 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, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful

occupier, it must grant an order for the eviction of the unlawful occupier, and determine—

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

(10) The court which orders the eviction of any person in terms of this section may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.

(11) A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the court: Provided that the sheriff must at all times be present during such eviction, demolition or removal.

(12) Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.”

GROUND OF APPEAL

17. RAISING SECTION (4)(2) NOTICE MERO MOTU

It must be stated that any Court has a discretion to raise issues *mero motu*. In this regard, our Constitutional Court ⁵stated the following:

“Where a point of law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, mero motu, to raise the point of law and require the parties to deal therewith. Otherwise, the result would be a decision premised on an incorrect application of the law. That would infringe the principle of legality....”

18. The aforementioned discretion is well entrenched and in the current case, this Court does not specifically find fault with the *mero motu* raising of section 4(2) by the Court *a quo*.
19. Historically and rightly so, our Courts have placed much focus on the peremptory nature of the aforementioned subsection. It is an integral and crucial component of PIE proceedings and is not something to be simply ignored. The importance of the provision is crucial to a weighing-up and balancing of interests *vis a vis* an occupier of land and the owner of such land. This is echoed in Section 4(4) of the Act which highlights the need for the Court to consider the rights of the unlawful occupier to receive adequate notice and to defend the case.
20. The purpose of notification under section 4(2) must be achieved so as to prevent injustices and also to ensure that an occupier is afforded sufficient

⁵ FN CUSA v Tao Ying Metal Industries and Others (CCT 40/07) [2008] ZACC 15; 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC) ; [2009] 1 BLLR 1 (CC) ; (2008) 29 ILJ 2461 (CC)

opportunity to be heard. An occupier, even an unlawful one cannot be unjustly prejudiced, particularly in circumstances where he has occupied land over a lengthy period of time. It is essential that such occupier be aware of proceedings or pending proceedings for his eviction so that he is in a position to place his case before Court.

21. In the case before this Appeal Court, the first respondent has suffered absolutely no prejudice from the absence of section 4(2) compliance. He has been aware of the PIE proceedings from the outset. He has had the financial means to engage the services of his legal representatives and he fought the application on a level similar to that which the appellant fought it. Importantly, the first respondent failed to raise any such prejudice in his papers. In circumstances such as this and while mention of section 4(2) compliance was appropriate by the Court *a quo*, dismissal of the application on such basis has resulted in a legal absurdity which requires address.

22. **SOLE EMPHASIS ON CAPE KILLARNEY JUDGMENT**

22.1 The Cape Killarney case ⁶ is indeed immeasurably different to the matter at hand. In that case, the property in question had become the site of an informal settlement consisting of 542 dwellings with some residents having been living on the property for up to 18 years.

22.2 The purpose of section 4(2) in the Cape Killarney case was stated as follows:

⁶ Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others (495/99) [2001] ZASCA 87; [2001] 4 All SA 479 (A); 2001 (4) SA 1222 (SCA) (10 September 2001)

“Accordingly the purpose of 4(2) is clearly to afford the respondents in eviction proceedings a better opportunity than they would have under the rules to put all the circumstances that they allege to be relevant before the court”

22.1 In the Unlawful Occupiers case⁷, the Supreme Court of Appeal held that not every deviation from the literal prescription (this in reference to section 4(2)) is fatal. The question remains whether, in spite of the defects in the section 4(2) notice, the object of the statutory provision had been achieved.

22.2 In the Vacation Import case ⁸, similarly to this case, the question arose as to whether the applications for eviction were amenable to determination on their merits when the procedure mandated in section 4(2) of PIE had not been followed. In paragraph 7 of the judgment the following is stated:

“In the current cases it was abundantly clear on the facts that service of a notice on the respondents in terms of s 4(2) of PIE would be a wasteful and unnecessarily costly supererogation. That they were adequately informed in a manner that would satisfy the object of the requirements of s 4(5) of PIE was confirmed by their appearance in court with legal representation and the terms of the order taken from Saldanha J which

⁷ Unlawful Occupiers versus City of Johannesburg 2005(4) SA 199 at par 22 to par 24

⁸ Vacation Import (Pty) Ltd v Bumina and Others; Vacation Import (Pty) Ltd v Ngaleka and Others (3852/2022;3855/2022) [2023] ZAWCHC 44)

*established an agreed tailor-made framework for them to pursue their intended opposition to the applications. **It would be absurd in the circumstances to decline to entertain the applications when they came up for hearing after answering papers and counterapplications had been delivered and the respondents appeared represented by counsel instructed to deal with the eviction applications on their merits.*** (own emphasis).”

22.3 The aforementioned cannot but resonate strongly with the case before this Appeal Court.

22.4 In the Weenen Transitional Local Council case ⁹ the Court stated the following in relation to section 4(2) compliance:

*“ The question whether in a particular case a deficient s4(2) notice achieved its purpose , cannot be considered in the abstract. **The answer must depend on what the respondents already knew** (own emphasis).”*

22.5 It is to be noted that the focus in the Cape Killarney case was ensuring that all parties be allowed to state their case and to be heard. There can be no doubt that the first respondent in the matter at hand enjoyed ample opportunity, and indeed well utilized that opportunity to be heard

⁹ Weenen Transitional Local Council v Van Dyk (399 / 2000) [2002] ZASCA 6; [2002] 2 All SA 482 (A); 2002 (4) SA 653 (SCA) (14 March 2002)

and to place his case before Court. It would appear, if one applies a common sense approach, that this may be why section 4(2) compliance was not raised by the first respondent in his papers.

23. EMPHASIS ON LATE FILING OF REPLYING AFFIDAVIT WHICH LATE FILING WAS RAISED MERO MOTU

23.1 It is peculiar that this late filing was raised by the Court *a quo*. There was no objection to the late filing of the replying affidavit, the first respondent was well represented, and if circumstances had changed which the Court *a quo* appeared to speculate over, the parties would have had opportunity to place such changed circumstances before the Court. This was not done in their papers. The late filing of the replying affidavit in this case had no bearing or impact on the outcome of the matter nor does this Court find it to bear any relevance thereto.

24. FINDING PREJUDICE TO THE FIRST RESPONDENT'S ALLEGED PARTNER AND CHILD

24.1 There was simply no mention of this, nor any evidence thereof in the papers before the Court *a quo* and, bearing in mind the fact that the first respondent appears to be a man of means with a second residence, this notion cannot hold any water.

25. PREJUDICE TO THE APPLICANT/APPELLANT

25.1 The prejudice suffered and which the appellant continues to suffer is clear for all to see. The position of the appellant is currently that it is prevented from exercising its real rights to and over the property in question. It sits with an unlawful occupier, one who is utilizing and enjoying the fruits of such property to appellant's exclusion, rent free and while providing appellant no benefit whatsoever - this in circumstances where the property now forms part of a deceased estate and which now needs to fall to the beneficiaries of late Dorian Dart's estate.

25.2 It is untenable for the *status quo* to remain and the patent injustice which continues to exist, falls to be addressed appropriately.

26. **LACK OF PREJUDICE TO THE FIRST RESPONDENT**

26.1 This Court must draw attention back to the application of PIE which application falls to the unlawful occupation of land for residential purposes. The alleged, lawful utilization of the property free of charge by the first respondent, curious as such allegation seems, does not fall to be addressed by this Court. Similarly, the improvements he claims to have been made to the property and any alleged lien that he claims to enjoy find no application here either. There are appropriate remedies available to the first respondent in this regard and he cannot hide behind such allegations as an attempted justification for continued occupation of the property,

26.2 Of more relevance in this case is the fact that the first respondent is a business man, was well represented by private legal representation and is a man of means. He enjoys a second residence, is not destitute and will not be left homeless should an eviction be granted.

26.3 The Constitutional Court case of *Grobler v Phillips and Others*¹⁰ supports the contentions of this Court, reinforcing the notion that private land owners are not encumbered with any obligation to find alternative accommodation for unlawful occupiers. It was an important consideration in that case too that an eviction order would not render the respondent homeless.

26.4 This Court is tasked to ensure that justice is both done and seen to be done and further to ensure that its finding is just and equitable.

27. OVEREMPHASIS ON PROCEDURAL REASONING (GROUND 7) AND SUBSTANTIAL COMPLIANCE AND NO NECESSITY FOR A 4(2) NOTICE (GROUND 8)

27.1 This Court is in agreement with the appellant that undue emphasis was placed on procedural requirements under PIE. To necessitate compliance with section 4(2), in this particular set of circumstances would be irrational and would, as stated afore result in a legal absurdity.

¹⁰ *Grobler v Phillips and Others* (CCT 243/21) [2022] ZACC 32; 2023 (1) SA 321 (CC); 2024 (1) BCLR 115 (CC) (20 September 2022)

27.2 There can be no doubt that compliance with section 4(2) is a backbone in the spine of PIE proceedings in the normal course. But in the matter before this Appeal Court an insistence, after the fact on compliance with section 4(2) would be simply untenable. It would necessitate gargantuan cost to the parties and this with prejudice far beyond that falling within the parameters of these proceedings. It would entail service of a section 4(2) notice on an individual who was at all times, well aware of the eviction proceedings, was at all times legally represented and who enjoyed the benefit of opposing the eviction proceedings via the services of private legal representation. He fought the proceedings in exactly the same manner he would have had the section 4(2) notice been served. To insist in such circumstances that the appellant commence proceedings afresh by way of a section 4(2) notice, then returning to place an identical case before Court for a second time, would simply not serve the interests of justice and would perpetuate a set of circumstances which are already untenable. As stated afore, the eviction of the first respondent shall have no bearing on the fifth respondent either.

27.3 In the case before this Appeal Court, the interests of justice must prevail which interests dictate a justified deviance from the otherwise peremptory requirements of section 4(2).

27.4 The first respondent is amply protected by the law in the event that he seeks to prove the alleged improvements made to the property in question and/or to claim compensation therefor. These and other

related issues did not fall to be resolved by the Court *a quo* nor by this Court, nor do they fall within the ambit or scope of PIE.

27.5 While the first respondent most certainly has a right to general application of PIE, his circumstances fall far from that which the Act sought in its purpose. The first respondent enjoyed private, legal representation throughout the proceedings in the Court *a quo*. He admitted to being in employment and also to enjoying a second residence separate to the property which forms the basis of this application. He also admits to residing in this second residence situate at 84 Oxford Street, Ferndale, Randburg on the weekends. He admits to being a businessman ¹¹ and by all accounts appears to be a man of means. He is not at risk of homelessness in the face of an eviction from the property in question. Further, the first respondent has, since the incapacity and subsequent death of Dorian Dart, and in the knowledge that there is no agreement with the appellant as currently represented to have him occupy the property, persisted in his occupation which the Court *a quo* correctly confirmed is unlawful.

27.6 On the other hand, the appellant owns an asset which falls into a deceased estate and which is controlled by an executrix alternatively co-executors who have made their intention clearly known. It is a patent absurdity in these circumstances that first respondent would allege the existence or continued existence of a partnership which in

¹¹ Paragraph 8 of first respondent's founding affidavit in the proceedings in the court a quo ; CL 002-137

effect affords him an open ended, rent free occupation of the property.

Such a notion cannot be accepted by this Court.

27.7 On a balancing of rights and interests, and in the interests of justice, this Court cannot but find that the appeal is to be upheld with costs to follow the finding.

This Court makes the following order:

1. The appeal is upheld with costs;
2. The order of the Court *a quo* is set aside and substituted with the following: -
 - 2.1 The first respondent or his successors in title are ordered to forthwith vacate, by no later than 60 days of service of this order upon the first respondent's attorneys, alternatively should they withdraw from the matter, upon the first respondent in accordance with the Rules of Court, the immovable property more fully described as: -
 - 2.1.1 Portion 97(a portion of Portion 62) of the Farm K[...] 577, Registration Division IQ, Transvaal in the extent 4287 hectares, situated at 9[...] K[...], Vanderbijlpark (The Property).
 - 2.2 Should the first respondent fail to comply with paragraph 2.1 of this order, the Sheriff of the Court is empowered and ordered if it becomes necessary, to forthwith attend to eviction of the first respondent from the property.

3. The first respondent shall pay the appellant's costs of the appeal and the costs of the application for leave to appeal on a party and party scale, such costs including the costs of counsel on both such applications.

L. DE SOUZA-SPAGNOLETTI
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Appellant: Advocate Muhammad Amojee
Instructed by HBM&S Incorporated

For the First Respondent: Advocate Baheeyah Bhabha
Instructed by Lerena Attorneys

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