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

JUDGMENT

Not Reportable/**Reportable**

Case no: A50/2025

In the matter between:

NOOR-BANU ALLIE

Appellant

and

WALEED RAS

First Respondent

CITY OF CAPE TOWN

Second Respondent

Neutral citation: *Allie v Ras and Another* (Case no A50/2025) [2025] ZAWCHC

Coram: Saldanha J et Mapoma AJ

Heard: 1 August 2025, Finalised 12 August 2025

Delivered: 14 November 2025

ORDER

1. The eviction application is dismissed with costs.
 2. The costs are to include the costs of this appeal which are inclusive of the costs of counsel on scale C, where so employed.
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JUDGMENT

SALDANHA, J:

District Six

“Your Aunt Sammy will not go. I don’t know what it is all about but I am not going to shift an inch.

I belong to District Six and District Six belongs to me.

I was born here, I am perfectly happy here and I have no intention of shifting to Constantia or Sea Point or any of the lovely places where they live.

Why do they want to come here? Are they unhappy there?...”

‘Too worried to laugh. I won’t get out of District Six.’ By Aunt Sammy (Golden Post, 20 February 1966 – By renowned columnist the late Jackie Heyns)¹.

¹ DISTRICT SIX REVISITED, Photographs by George Hallet, Clarence Coulson, Jackie Heyns, Wilfred Paulse, Gavin Jantjes, Edited BY George Hallet and Pete McKenzie, Wits University Press, 1 Jan Smuts Avenue, Johannesburg, South Africa, <http://witspress.wits.ac.za>, Text 2007: Individual writers, Photographs 2007; Individual photographers

[1] This is an extract from a column that appeared in the *Golden City Post*, written by the late renowned journalist, Jackie Heyns, writing here under the pseudonym “Aunt Sammy”². Although written in 1968, the defiant words of the proverbial Aunt Sammy, today find a no less poignant resonance in the appellant in this matter, Ms. Noor-Banu Allie. Having withstood the dispossession and displacement of over 60 000 black people from District Six through the Group Areas Act 7 of 1957, Ms. Allie has, despite the demolition of the home in which she lived, by the bulldozers of apartheid's henchmen, through sheer perseverance, remained in District Six. Sadly, where the apartheid government failed in their attempts to displace Ms. Allie, the first respondent Mr. Waleed Ras, representing a development company Westminster Properties Developments 1 (Pty) (Ltd), succeeded, in a judgment by magistrate, Mr. De Pontes in the Cape Town Magistrates Court, that ordered her eviction from 7[...] F[...] Street, District Six. The irony is not lost that the entrance to the well-established District Six Museum in Buitenkant Street, Cape Town where the agony and pain of thousands of residents that were displaced and forcefully removed from District Six are vividly recorded lies directly across the very Magistrates Court that has relegated the 78-year-old Ms. Allie to homelessness. History in the context of District Six shamefully repeats itself. It is against that order of eviction that Ms. Allie appeals against. Despite the zealous prosecution of the eviction proceedings in the court a quo, the appeal was inexplicably, not opposed by the first respondent, the managing agent of the development company. In my view, not surprisingly, given the legally untenable nature of the application for the eviction.

[2] Much has over many decades, been written about the forceful dispossession of black people in South Africa, whether through the Group Areas Act, the Land Act of 1913 or the wholesale expropriation by the apartheid state and its colonial predecessors of land that belonged to indigenous and black people of Southern Africa for the benefit of their settler constituency. As counsel of the appellant, Mr. A. Nacerodien so aptly

² Post, 8 May 1966. Jackie Heyns also penned the weekly newspaper column ‘With Tears in my Eyes’ for many years in the weekly newspaper the Cape Herald where he so descriptively wrote about the lives of people and events on the Cape Flats.

remarked, District Six has a painful past and for Ms. Allie, it now continues to have a painful present. District Six was emblematic of apartheid's program of forced removals. Regrettably, like so many other failed restitution and redistribution efforts the democratic government, has dismally failed to properly and fully implement the Restitution of Land Rights Act 22 of 1994, which it so enthusiastically enacted to remedy and address the forced removals and displacement of millions of black people under apartheid South Africa.

[3] The 11th February 1966 was the fateful day that District Six was declared 'an area of occupation and ownership by members of the white group' in terms of the Group Areas Act. It covered an area in excess of 150 hectares right in the heart of Cape Town. The forced removals and dispossession of land in District Six brought about the destruction of communities and the relocation of its residents to the outskirts of the city. Inevitable was the immense social, economic, and human devastation that persists decades later. Mr. Nacerodien, pointed out that the devastating effects and consequences the forced removals in District Six and other areas all over South Africa was aptly captured by Madlanga, J in *Land Access Movement of South Africa and others v Chairperson NCOP and others* 2016 (5) SA 635 (CC) where at para 1 he stated:

'the ejection from homes; the forcible loss of properties; severing from kin, friends and neighbours; the wrenching of those affected from their beloved connection to place and community; immeasurable emotional and psychological trauma; and the searing bitterness of it all. Concomitant to this was an untold assault on the dignity of those at the receiving end of this distressing treatment.'

Much has also been written and recorded as part of the oral history of the people who were displaced from District Six. The District Six Museum stands as a testament to that and so too in thousands of reams of documents and stories in both oral and written history and literature. Many residents of District Six at the time, those who have since passed on and those alive, have recorded the painful memories of their dispossession, and of the brutal destruction of their homes and lives in District Six. They remembered

District Six, its people, their neighbours, the community, its varied cultures, its traditions and buildings which, despite immense overcrowding and social ills, was their home. So too, was and is District Six home to Ms. Allie. Her life story is yet to be recorded and shared as that of many others throughout the country as theirs are stories of sheer resilience and survival.

[4] In the answering affidavit to that of the first respondents who sought the eviction of Ms. Allie in terms of Sections 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act)³, she declared that she was a 78-year-old pensioner who resided at 7[...] F[...] Street, District Six⁴. She proudly claimed that she had been living in District Six for most of her life. She was born in Mahad, India in 1947 and had come to South Africa as a toddler with her siblings. She and her siblings lived with an aunt and her family at 1[...] Sir Lowry Road, District Six. As a teenager she worked in her aunt's shop in Sir Lowry Road and also in her cousin's butchery at 2[...] Hanover Street, District Six. At the time she lived between Sir Lowry Road and Hanover Street as both of the shops had rooms at the back to sleep in. From the 1960's onwards she was employed at Groote Schuur Hospital as a nursing aid and continued so until her retirement. While working at the hospital she stayed with her siblings at 26 Dorset Street in District Six. At that stage she continued to help in the family shops and would move between Sir Lowry Road, Hanover Street and Dorset Street. She painfully recalled the declaration of District Six as a white group area in 1968 and the beginning of the forced removal of over 60 000 people from the area by 1982. She recorded that by the late 1960's to the early 1970's the forced removals in District Six had intensified, with bulldozers demolishing homes and buildings, thus preventing any return.

³ **Eviction of unlawful occupiers: -**

(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.

⁴ Ms. Allie proudly referred to the area by its name as **District Six** despite the repeated references to the area as "Zonnebloem" by the first respondent in their affidavits. After the forceful removal of the residents of District Six by the apartheid regime it renamed it "Zonnebloem," referencing the 18th century colonial farm in the area.

[5] Thousands of residents were displaced. Families were forcibly relocated to racially segregated areas on the outskirts of Cape Town into what has often been described as the dry, dusty Cape Flats outside the city, a displacement that brought with it social upheaval characterized by the desperation, crime and violence, so typical of the apartheid social and physical infrastructure meant for black people .

[6] Ms. Allie explained that in the 1970's her cousin's butcher in Hanover Street, which had become her home, was demolished to which she was never able to return. She continued to live in Dorset Street until 2006. By 1982, the apartheid government had officially and forcibly shut down District Six becoming a vacant barrier with demolished buildings, empty streets; a bleeding scab of the apartheid state. Amidst the devastation wreaked on the community of District Six, the iconic mosque and church remained, yet played little or no conscience to the evil mind of the apartheid regime.

[7] With the dawn of democracy, the Constitution entrenched a restitution and redistributive process to address the historical injuries suffered by not only the residents of District Six but all black people throughout South Africa that suffered land dispossession. To that end the Restitution of the Land Rights Act was enacted in 1994. It provided for individuals and communities dispossessed of their properties after 19 June 1913 as a result of racially discriminatory laws and practices, to claim restitution. The closing date for submissions was 31 December 1998. In terms of the Act, restitution could be in the form of a return by the claimant to the actual land they previously possessed or alternative land or the provision of financial compensation.

[8] Ms. Allie claimed that she had lodged a claim for the property at 2[...] Hanover Street as the site of her cousin's butchery and her home for many years. Her cousin had decided not to lodge a claim and had given her permission and the authority to do so herself. She claimed though that her original claim was lost by the Land Claims Commission as a result of her having relied on a third party to lodge the claim. She did not retain a copy of it. She pointed to a published report by the South African Human

Rights Commission in December 2013, which as a result of public hearings reported on the common problem of the forms of claimants being lost.

'If forms have been lost, the CRLR does a condonation exercise, and goes back to recollect the documents. The loss of documents and files submitted to the Commission has exacerbated the challenges of resolving complex claims and opened the door to actual or perceived manipulation by officials. It also appears that not all claims received have been gazette and this will create significant confusion about which claims were lodged at which time – especially if the process of lodging claims is to be reopened.'

[9] Ms. Allie claimed that as a result of the lost claim she had no choice but to wait for a period of almost 16 years whereupon the process was to reopen. In terms of the Land Restitution of Land Rights Amendment Act 15 of 2014, she was able to resubmit a claim. She used that second chance and reapplied on 5 August 2015 and confirmation of her claim was acknowledged by the Western Cape Land Commission.

[10] Unfortunately, for Ms. Allie and other claimants who submitted in terms of the Amendment, the Constitutional Court in the matter of *Land Access Movement of South Africa & Others v Chairperson, National Council of Provinces and Others* found the statute to be constitutionally invalid for lack of a reasonable public involvement process. As a result, the claims submitted prior to the judgment were left intact but the Commission was interdicted from processing any of these claims until the initial claims were finalized. Ms. Allie lamented that as a result of the decision of the Constitutional Court 'her claim may never be processed within her lifetime.' On the other hand, thousands of claimants who had already submitted their claims in accordance with the Act and understandably so, were relieved by the decision of the Constitutional Court.

[11] The celebrated author Lebogang Seale, who so eloquently writes of his family's desperate quest to reclaim their dispossessed land in the book entitled "*One Hundred Years of Dispossession – My Family's Quest to Reclaim our Land*"⁵, forcefully tells of the inordinate and painful delay in the restitution claim to their family's ancestral land in

⁵ Jacana Media (Pty) Ltd in 2024 at 150.

that picturesque part of the country of Ga-Modjadji near the foothills of the Letaba Valley on the foothills of the mighty Magoebaskloof Mountain in the Limpopo Province. Their family's land claim had been delayed, literally for decades and he remarks 'Unsurprisingly, and much to our relief, the Constitutional Court invalidated the Amendment in 2016. It went on to issue an order that all old order claims needed to be finalized before new claims could be entertained'. He added that by July 2014, there were more than 160 000 claims that would have been added to the number of outstanding restitution cases, further pushing back the land reform process. Nonetheless, the interdict sadly frustrated Ms. Allie, as it marked the second time in the post-apartheid era that the land claim restitution process had failed her. She added that the fact that she was also the subject of the eviction proceedings, and that she could not afford alternative accommodation and was faced once again with displacement was a further insult to the many injuries she already suffered. Despite these setbacks, Ms. Allie pointed out that she had not simply rested on her laurels in the face of her failed attempts at restitution and in desperation, also applied to the City of Cape Town (the third respondent, referred to interchangeably) for public housing. She first applied in January 1983. Ten years later she checked on the application and found that she was not placed on the waiting list. On 15 August 2003 she again applied and had now been on the waiting list for more than 20 years. The third respondent confirmed in writing her application for public housing.

[12] Ms. Allie also set out with some detail, her history of living at the property which is the subject of the eviction application. She had been living at 7[...] F[...] Street, a semi-detached house, since April 2006. On 1 March 2006 she had entered into a lease agreement with the then owner of the property, Mr. Fakir Ebrahim Rooknodien. She attached a copy of the lease agreement. She also recorded that at the time the owner's Managing Agent was Steer & Company and she paid a monthly rental of R750.00 and her deposit was no more than R750.00. She recalled that she paid her monthly rental to a shopkeeper across from where she stayed, a Mr. Afzal Jaffer. She continued to renew her lease annually with Steer & Company and attached to her affidavit proof of the successive amendments and renewals. If anything, it demonstrated the sheer

meticulousness of her paperwork in respect of her occupation of the subject property and her consistent payment of the rental. On 23 October 2008 she entered into a lease agreement with the new managing agents of the property, Jaybee Estates and continued to lease through them until the end of 2017. Once again, she attached numerous copies of the renewal of the lease and the rental increases over the years.

[13] On 18 January 2018 the property was taken over by Waleed Ras Property Management CC. She attached a letter of introduction that she received from them dated 18 December 2017.

[14] Ms. Allie claimed that while the property was managed by Waleed Ras Property Management that was when she first began to experience problems relating to an exorbitant rental increase and their failure to do maintenance on the property. On 2 August 2018, she lodged a complaint for the exorbitant rental increase with the Rental Housing Tribunal. The complaint was resolved by 28 September 2018 following an investigation. The Rental Housing Tribunal informed her that the owner had agreed to keep the rental at the then current amount of R1 750 until the lease expired and was up for renewal.

[15] However, in 2023 she again lodged a complaint with the Rental Housing Tribunal, this time for the failure by the property owner to do maintenance and in particular the failure to fix her water meter.

[16] She pointed out that, in response, on 17 March 2023, she received a notice from Waleed Ras Property Management that her lease would terminate on 31 May 2023. In the notice, the following was stated:

‘The reason for the termination of the tenancy is that the landlord wishes to renovate the property.’

[17] On 27 July 2023 the property was sold to the present owner, Westminster Property Development Pty Ltd. Waleed Ras of Potere Investment Properties continued

to manage it. It appeared that the present owner had purchased the property from the Rooknodien Estate. On 17 October 2023, Ms. Allie once again received a notice to vacate by no later than 31 December 2023. In the notice, the following is stated: 'the tenancy of the dwelling at 7[...] F[...] Street Zonnebloem has been terminated and you still occupy the premises...'. She was also threatened with formal eviction proceedings and an adverse cost order in the event of her failure to vacate the property.

THE APPLICATION FOR THE EVICTION OF MS ALLIE IN TERMS OF PIE.

[18] In its notice in terms of Section 4(1) of PIE, the respondent stated that the ground upon which it sought the eviction of Ms. Allie was:

'2.1 The First and Second Respondents have been in unlawful occupation of the premises situated at Erf 8[...] Cape Town, commonly known as No. 7[...] F[...] Street, Zonnebloem, Cape Town, since 1 June 2023 without any written lease agreement, verbal agreement or any lawful title, and despite demand, have refused and/or failed and/or neglected to vacate the said premises.'

[19] In the founding affidavit deposed to by Mr. Waleed Ras on behalf of the owner of the property he claimed that Ms. Allie had been in occupation of the premises prior to his appointment as managing agent and had been occupying the premises in terms of an informal lease agreement on a month to month basis subject to a one month cancellation as prescribed by law. He claimed that in terms of the informal lease agreement her rental was R1 750 per month. He claimed to have had full knowledge of the history of the tenancy of the property by Ms. Allie since 2017. Mr. Ras claimed that since 2019, he had tried to negotiate with Ms. Allie to vacate the premises as 'same is unsafe and the then owners wished to renovate the property.' He claimed that Ms. Allie refused to vacate the premises and continued to occupy it which led to 'the inability of the then owners to carry out extensive renovations they intended to do'. In this regard, Mr. Ras referred to the letter of 17 March 2023 (above) delivered to Ms. Allie in which he stated that she had been 'once again requested to vacate the premises by no later than 31 May 2023.' He claimed that she had failed to vacate the premises despite the notice

period afforded to them (in reference to the second respondent who was cited as 'the other unlawful occupants'). He thereafter referred to the letter of October 2023 in which he claimed that 'despite the further notice the respondents occupied the premises without the registered owners consent and without any right in law to occupy such premises.' He contended that Ms. Allie and the second respondents were in unlawful occupation of the property.

[20] He claimed that the prejudice suffered by the owners of the property was by the fact that they were 'not able to renovate the property in order to ensure their investment is protected and able to yield a proper income'. He added that as a result of the refusal by Ms. Allie and the second respondents to vacate the premises, the 'condition of the property is such that their occupation poses a liability risk to the owner which risk is growing'. He claimed that the only available remedy to the respondents was for an application for the eviction of Ms. Allie and any other occupants of the property. He acknowledged that she was an elderly person and claimed that the Department of Social Development and/or the City of Cape Town 'may very well be able to accommodate her' alternatively that she could seek accommodation with her relatives in the nearby areas. They attached to the application a questionnaire that is required by the third respondent to assist it in providing a housing report at the hearing of the application. In respect of the relief sought they claimed that they were entitled to an order of eviction in as much as Ms. Allie and all other persons living in the property were in unlawful occupation thereof since 1 June 2023. He further claimed that the property was situated in a place called 'Zonnebloem' where he verily believed that there were numerous properties capable of being rented by Ms. Allie in the area or nearby areas and/or that she had family in the nearby area who could accommodate her. He claimed that neither Ms. Allie nor any of the persons holding occupation under her had protection in terms of the provisions of the PIE Act. He submitted that it was just and equitable for the court to grant an order of eviction of Ms. Allie and any of the persons holding under her. He also sought a punitive cost order against Ms. Allie and others on an attorney and client scale.

THE DEFENCES RAISED BY MS. ALLIE AGAINST HER EVICTION.

[21] Ms. Allie raised that in terms of the notice to vacate (the letter dated 17 March 2023 referred to by Mr. Ras) the owner of the property sought her eviction from the property to effect renovations. She denied that she was an unlawful occupier of the property in as much as the first respondent had failed to furnish a valid reason for terminating her lease and had moreover failed to prove that the property was in an uninhabitable condition as it is required to show. She attached several photographs of both the inside and outside of the property depicting its condition, which she claimed and was visibly demonstrative that the property was not in an uninhabitable condition. She claimed that it was in bad faith for the respondents to claim that the property was unsafe where she had to continuously resort to having to approach the Rental Housing Tribunal for orders compelling the first respondent to effect maintenance. She claimed that the failure to effect maintenance and continue to lease out the property was in breach of the landowner's obligations and the purported attempt to require her to permanently vacate the property for mere and unsubstantiated repairs constituted an unfair practice in terms of Regulations to the Rental Housing Act⁶. She claimed that inasmuch as it was an unfair practice the first respondent was not entitled to terminate

⁶ Reconstruction, refurbishment, conversion or demolition

5. (1) A landlord may only –

- (a) request a tenant to vacate the dwelling if any repairs, conversions or refurbishments are urgently necessary and cannot be properly made while the tenant remains in occupation or
 - (b) cancel the lease and repossess the dwelling, without being liable for damages in terms of the lease, the Act, these regulations or any other law, in circumstances where the dwelling is in a derelict condition or cannot safely be inhabited and must as a result thereof be rebuilt, reconstructed or demolished.
- (2) In the circumstances contemplated by subregulation (1)(a) the landlord must –
- (a) allow the tenant remission of rental for the period during which the tenant is not in occupation;
 - (b) effect the repairs, conversion or refurbishment within a reasonable time so as to cause the tenant as little inconvenience as possible; and
 - (c) ensure as the tenant is able to return to the dwelling as soon as possible after the completion of the repairs, conversion or refurbishment.
- (3) Where the repairs, conversion or refurbishment are necessary only to a part of the dwelling and the tenant continues to occupy the remaining part, the tenant must receive a remission in rental, the amount of which must be proportionate to the extent of the tenant's deprivation.
- (4) When requested by the landlord to vacate the dwelling for the purposes of urgent and necessary repairs, conversions or refurbishments, the tenant may not cancel the lease unless –
- (a) the temporary unfitness of the dwelling would be ruinous to the tenant; or
 - (b) the repairs, conversions or refurbishment could reasonably have been foreseen by the landlord at the time when the lease was entered into.

the lease on such grounds. She further claimed that to the extent that the first respondent was genuine in its intention to effect renovations and required that she vacate the property to do so, it should have allowed for a remission of the rental for a period during which renovations were in progress, effect the repairs, and attend to the refurbishments within a reasonable time so as to cause as little inconvenience to her as possible and to ensure that she was able to return to the property as soon as the renovations were complete. She pointed out that the respondents were not entitled to resort to eviction proceedings as a means to remove her from the premises where less disruptive avenues were available and could have achieved the same goal.

THE JUST AND EQUITABLE RELIEF.

[22] Ms. Allie pointed out that on 25 April 2024 she completed and submitted the emergency housing questionnaire to the third respondent. She annexed a copy thereof to her answering affidavit.

[23] In summary, she pointed out that her personal circumstances were;

- i. That she was a 78-year-old pensioner;
- ii. She was the recipient of benefits from the Government Employees Pension Fund and the SASSA Older Persons Grant. She receives a total of R6 721 per month. She disclosed her monthly expenditure of approximately R4 900 related to the following, her rental of R2 200, transport costs of approximately R100 per month which included bus fares and a monthly cost of water, electricity and her telephone accounts. Provision for food was no more than R2 000 per month.

[24] Ms. Allie also disclosed that she used chronic medication for high blood pressure and had a gastroesophageal reflux disease.

[25] Ms. Allie expressed that her desire to remain in District Six, or the surrounding areas were as a result of her having lived in the area for most of her life. She had a strong attachment to the community and the place where she lived. She claimed that

moving out of the area would uproot her sense of belonging and the deep ties that she has to District Six. As an older person, moving out of the only area that she knew at this stage of her life would cause significant hardship to her. She pointed out that at her age it would be difficult to establish entirely new social networks of support and navigating an entirely new area. If she had to move out of the area it would cause emotional stress and isolation. She also pointed out that she only spent around R100 per month on transport as living in District Six allowed her to get to places and that by moving out of the area she would incur significant costs which she could not afford. Her health care provider was the District Six CDC where she receives care for her chronic conditions and that she would have to find a new health care provider or travel to District Six to receive care. She also pointed out that as an older person the Department of Social Development may offer alternative accommodation but there had been no indication at that stage as to what was on offer.

THE STATES OBLIGATION TO PROVIDE LAND RESTITUTION.

[26] Ms. Allie contended that the South African government's land restitution obligations were firmly rooted in the country's constitutional framework, and in particular within the property clause. She pointed out that the framework sought to strike a delicate balance between protecting existing property rights and ensuring the constitutional guarantees of those displaced by the apartheid regime and dispossessed of their land and homes. The property clause in particular Sections 25(1)-(4)⁷ of the

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⁸ Property. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application-

(a) For a public purpose or in the public interest; and

(b) Subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-

(a) the current use of the property;

(b) the history of the acquisition and the use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

Constitution delineated the dual objectives of safeguarding property rights while facilitating land reform initiatives. Under Section 25(5)-(9)⁸ the state was mandated to undertake reasonable legislative and other measures. In this regard it applied to communities whose land tenure was legally insecure due to the past discriminatory law to secure tenure or comparable redress. The property clause, she contended, was guided by the overarching objectives of addressing apartheid-era injustices, fostering national reconciliation, a land redistribution program and to provide the poor with land for both residential and productive purposes to enhance their livelihood. She pointed out that the program encompassed both urban as well as rural settings and emphasized the importance of secure access to well-located land for shelter provision in urban areas. The concept of equitable access to land implied a concerted effort to reduce inequality along racial, gender and other pertinent dimensions. While this matter is not about the restitution of the land in District Six, the failed restitution process in the case of Ms. Allie provides the important and essential context to the consideration of one of the many relevant factors in the determination of just and equitable relief under the PIE Act.

THE PROVISION OF EMERGENCY ACCOMMODATION

(4) For the purposes of this section-

- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
- (b) property is not limited to land.

⁸ (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legal secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

[27] Ms. Allie pointed out the constitutional obligations by the third respondent to provide emergency housing to address the needs of households who find themselves homeless. She pointed out that all the emergency camps established by the City were all located at least 25km away from the center of the City. She was also informed that the third respondent offers building materials (the so-called housing kit) to persons in need to establish their own structure on private land should they obtain the permission from the owner on affidavit. She pointed out that by offering emergency accommodation on the outskirts of the City to evictees, the third respondent was no more than perpetuating a distressing cycle of racial discrimination which echoed the historical injustice of the apartheid-era forced removals where marginalized communities were systematically pushed to the periphery. She submitted that the recurrence of such practices in contemporary emergency housing highlights a concerning pattern of spatial discrimination, which disregards the 3rd respondent's commitment to redress past wrongs. That situation she claimed raised questions about the City's dedication to inclusive urban development and the protection of vulnerable communities' constitutional rights. She reserved her right to respond to any offer of alternative accommodation offered by the third respondent.

MS. ALLIE'S REQUEST FOR EXPROPRIATION.

[28] Ms. Allie contended that redistribution is a multifaceted endeavour, expropriation being a vehicle of viable means of land acquisition. She pointed out that the constitutional mandate for land reform coupled with the imperative of addressing socio-economic disparities, underscored the government's obligation by facilitating equitable access to the land redistribution program. That embodied, the pivotal aspect of South Africa's broader commitment to transformative change and social justice. Ms. Allie lamented that the prospect of having to relive displacement by eviction from District Six would be a grave injustice, especially considering that she was an elderly woman with not many years to live. She decried the post-apartheid restitution process that failed to secure any form of redress for her and her family's forceful removal from her home at 2[...] Hanover Street, in District Six.

[29] It was for that reason that on 22 April 2024 her attorneys wrote to the Minister of Agriculture, Land Reform and Rural Development to request that she expropriate the property at 7[...] F[...] Street District Six and transfer it to her name so that she may have some dignity before it is too late. In response, the Minister stated that as a result of the decision in the matter of *Land Access Movement of South Africa and Others* by the Constitutional Court, the state was unable to deal with her claim by way of expropriation without first resolving what was referred to as the old order claims. So too, as with the failed restitution process in the circumstances of Ms. Allie, the unsuccessful request for expropriation is equally a relevant factor in the consideration of just and equitable relief.

THE CLAIM TO RENOVATE THE PROPERTY BY FIRST RESPONDENT.

[30] In response to the claims made by the first respondent with regard to the renovation of the property as the basis for her eviction, Ms. Allie emphatically denied that the property was unsafe to live in. She stated though that there may be a need for some maintenance, especially the water meter, it was certainly livable and had been her home for in excess of twenty years. She stated that she was amenable to move to the property next door to her's which remained vacant for some time as a temporary measure to afford the first respondent the opportunity to embark on any renovations to the property. That suggestion she stated has continuously been rejected out of hand by the first respondent. She also claimed that she had been willing to relocate temporarily to allow for renovations and to return when those have been done but the first respondent also refused that suggestion by her. She claimed that such refusal reflected the mala fides on the part of the first respondent which was indicative of their true intention not to renovate the property but rather to permanently remove her. She therefore claimed that her eviction was a wholly and unnecessary action considering the alternatives suggested by her and available to the first respondent.

THE REPORT BY THE THIRD RESPONDENT.

[30] The third respondent through an employee, Ms. Riana Pretorius, deposed to an affidavit in which she sought, amongst other things, to advise the court as to whether the third respondent had any emergency accommodation available to Ms. Allie in the event that she is rendered homeless if evicted from the premises.

[31] She stated that in order for the third respondent to make the determination as to whether a person qualified for emergency accommodation the third respondent requires to be informed of the personal circumstances of the individual. To this end the occupier had to complete the questionnaire in which the personal circumstances are provided. She confirmed that Ms. Allie had in fact delivered such a report to the third respondent and attached a copy of it to her affidavit. She claimed Ms. Allie, was an elderly South African female, who resided at the premises with two dependents. This, of course, was contrary to the very report filled in by Ms. Allie in which she disclosed that she was single and had no dependents living with her at the premises. Ms. Pretorius further stated that Ms. Allie had disclosed that she was a pensioner but claimed that Ms. Allie had not disclosed her monthly income. That, despite Ms. Allie disclosing in the questionnaire that she received R4 521 through a Government Employees Pension (GEPP) and that she also received the amount of R2 200 from SASSA (together with documentary proof as annexures). Once again, the assertion that Ms. Allie had not disclosed her monthly income was simply not correct.

[32] Ms. Pretorius then explained that the third respondent was currently faced with what she referred to as tremendous challenges with respect to a shortage of land to create or establish more emergency accommodation sites. She claimed that the City had lost critical portions of land that were earmarked for the provision of formal housing as well as informal developments during the Covid period when the City experienced unabated invasion of City land. She claimed that the City was engaging with organs of state at a provincial level to negotiate land acquisition for the establishment of temporary relocation areas. The City was therefore seeking a period of 18 months to realize the establishment of new temporary relocation areas. Ms. Pretorius claimed that upon analysis of the personal circumstances of Ms. Allie, the third respondent had come

to the determination that she 'will not be assisted with an emergency housing kit' however the third respondent recommended that Ms. Allie be referred to the state's social housing program. She directed that Ms. Allie apply for accommodation through the program. She explained that the social housing program was aimed at developing affordable rental in areas where bulk infrastructure (sanitation, water and transport) may be underutilized, therefore improving urban efficiency. She claimed it was a high-density subsidized housing that was implemented, managed and owned by independent accredited social housing institutions. In certain designated restructured zones it was for rental purposes. The income levels were between R1 501 and R15 000 (depending on the particular development required) in order to qualify an applicant must not have previously benefited from a government housing subsidy or assistance. Ms. Pretorius listed eight institutions that provide social housing to which Ms. Allie was required to apply to for an assessment as to whether she qualified for a unit in their complexes.

[33] In a supplementary affidavit deposed to by Ms. Allie in response to the report of the third respondent, she set out in great detail the attempts she made in responding to each of the social housing institutional options provided by the third respondent.

MADULAMMOHO

[34] Ms. Allie stated that this was the only institution provided for in the report in which she appeared to qualify for. She explained that in Cape Town there were three Madulammoho options namely, Belhar Gardens, Maitland Mews and Scottsdale. She attached copies of the websites of each of the sites, which indicated that there was no available housing options at any of the sites. Despite the unavailability of units, she applied to be placed on the Madulammoho's notify me list to be updated on when there are available housing options. She annexed to her affidavit screenshots of her selections and notification request.

COMMUNICARE

[35] Ms. Allie attached to her affidavit, the qualification criteria sourced from the website of Communicare. She underlined in red the age limits for the Communicare applications and pointed out that she fell outside the age range to apply for such

housing given that she was 76 years old and the cutoff age was 65. She claimed, that despite not meeting the qualification criteria for Communicare she made every effort to enquire with Communicare whether she may be accommodated. On 27 May 2024 her attorneys addressed correspondence to Communicare and had not received any response. Her attorneys had once again enquired via its “contact us “function on its website. She received no updates to her enquiry.

DCI CHS

[36] Ms. Allie pointed out the qualification criteria from the website of the institution. Once again, she highlighted in red the age limit for the DCI CHS application. Ms. Allie fell out of the range. Once again, despite not meeting the criteria she submitted an application for housing to the institution. On 10 June 2024 her application was declined due to her age, and she attached a copy of the rejection to her affidavit.

URBAN STATUS (DEVMARK)

[37] Ms. Allie attached a copy of the qualifying criteria from the website of the institution. The website indicated that Urban Status had exceeded its capacity for SASSA pensioners and would not be accepting anymore applications from SASSA pensioners. Clearly, as a SASSA pensioner, Ms. Allie did not qualify for accommodation with Urban Status (Devmark). Despite not meeting the qualification criteria, she made an effort to enquire with Urban Status (Devmark) if she may be accommodated. On 3 June 2024 her attorneys likewise addressed correspondence enquiring whether she could be accommodated. She had not received any response.

OWN HAVEN (CONRADIE PARK)

[38] The Own Haven Housing Association is a housing development in Cape Town known as Conradie Park. From the web search for Conradie Park it appeared that the development would not be accepting any new applications from SASSA pensioners for its present phase. Needless to say, as a SASSA pensioner Ms. Allie did not qualify for accommodation. Despite not meeting the qualification criteria she made every effort to enquire from Conradie Park if she may be accommodated. On 3 June 2024 her attorney likewise addressed a letter to Own Haven enquiring as to whether she could be

accommodated. On 4 June 2024 her attorneys received a response from Own Haven Housing Association that they would no longer be catering for pensioners.

INSTRATIN

[39] Ms. Allie attached a copy of the residential offerings from Instratin, which indicated that there were none available in Cape Town. Again, despite there being none, her attorneys attempted to find the contact details for Instratin to enquire whether any residential offerings might open up in Cape Town. No contact details for Instratin could be found.

POVICOM

[40] Ms. Allie attached a copy of the qualification criteria sourced from the Povicom website. It was evident that pensioners are not eligible to apply for Povicom housing and therefore Ms. Allie did not qualify for their housing. Again, despite not meeting the qualification criteria she made every effort to enquire with Povicom whether she could be accommodated. Her attorneys enquired from Povicom via its contact function as to whether there were options available for pensioners. They had not received any response to their enquiry.

SOCIAL HOUSING COMPANY (SOHCO)

[41] Ms. Allie attached a copy of the qualification criteria sourced from the Sohco's website. It was evident therefrom that Sohco did not accept single applicants with no dependents. Ms. Allie therefor did not qualify for Sohco housing. Again, despite not meeting the criteria she attempted to apply for housing with Sohco.

[42] Ms. Allie contended that she had explored with the able assistance of her attorneys each of the options provided in the City's housing report. The third respondents, however, did not appear to have properly taken account of her age, her status as a pensioner, her location in Cape Town and her status as a single applicant with no dependents. Ms. Allie stated that despite the unsuitability of the options provided

to her in the third respondents report she had in fact made every effort to pursue those options in an attempt to seek alternative accommodation. Needless to say, it was quite evident that the report of the City was most unhelpful and literally led Ms. Allie and her legal representatives on a wild goose chase in desperate search of accommodation for her.

THE PRIVATE RENTAL MARKET

[43] In a supplementary affidavit, Ms. Allie also set out her attempts together with her legal representatives to seek out what options were available to her in the private market in the light of the absence of alternative emergency accommodation offers from the third respondent. She explained that as an elderly woman without access to a computer her attorneys assisted her to look for private rental accommodation on Property24. She pointed out that considering her expenses and the pension she received, she would not be able to afford any rental in excess of R4 000 per month. She was paying rental of R2200 towards rent each month and if she was not paying that rental, she would only have R4000 left of her pension less her expenses. She provided details of all the search results of rental properties in her price range for the following areas; District Six, Cape Town City Centre, Vredehoek, Woodstock, Salt River, Gardens, the Bo-Kaap. She attached a list of the results and pointed out that there was only one property in her price range, however it required an upfront deposit of R10 455.00 which she was unable to afford.

[44] Ms. Allie also provided the search results in respect of properties in Observatory, Rondebosch, Park Estate, Rosebank, Mowbray, Rondebosch, Pinelands, Claremont, Newlands, Claremont Upper, Kenilworth Upper. In those areas, there were only two properties in her price range, however, one was exclusively for student accommodation, and the other was exclusively for people between the ages of 50 and 65.

[45] She also attached the search results in respect of properties. In Rondebosch East, Crawford, Athlone, Belgravia. There were no properties in her price range.

[46] Ms. Allie explained that as a result of the lack of availability of properties that fell within her affordability her attorneys looked at the rental housing market on a macro level to understand whether she would be able to find housing in the private rental sector in light of current market trends. She pointed out, in general, the rental housing market in the Western Cape was inaccessible to her due to her financial position. In the fourth quarter of 2023, the average rent in the Western Cape was R10 118, an increase of R382 from the previous year. She attached a rental index for the fourth quarter for 2023 of Payprop which was illustrative of the average rental price.

[47] She pointed out that at a more local level, she was excluded from the private rental market in areas across Cape Town. To assess whether entering the private rental market would be affordable for her, her attorneys obtained TPN Investor Reports⁹ for four groups of areas around Cape Town to examine a sample of rental price trends across the City.

Salt River, Cape Town CBD, Observatory, Woodstock, District Six.

[48] Ms. Allie attached to her papers the TPN Investor Report which was indicative of the following:

- (i) In the areas listed sectional title rentals had seen a steady increase. The rental price range in the first quarter of 2024 for sectional title properties was between R7 000 and R17 000 with an average price of R11 000.
- (ii) In the areas listed freehold rental property prices had also increased. The rental price ranged in the first quarter of 2024 for freehold properties was between R5 000 and R11 000 with an average rental price of around R11 000.
- (iii) In the areas listed, the rental prices for properties with less than two bedrooms had increased dramatically since 2022. In 2022, the average rental for a property with less than two bedrooms was R8 514. In 2023 this grew by R884. In 2024 there was an increase to R9 496. In 2024 the market low for rental

⁹ TPN from MRI Software, Investor Report, claims to be the most comprehensive rental analysis report available for the South African market. Copyright, 2024 TPN Credit Bureau – Rivonia, Gauteng-/Report generated 2024-06-03.

property with less than two bedrooms was R6 500 while the market high was R13 500.

[49] Ms. Allie pointed out that it was clear from the TPN Investor Report for the areas listed that her affordability precluded her from entering the rental market in those areas.

Claremont, Kenilworth, Mowbray, Newlands, Rondebosch, Rosebank and Wynberg.

[50] Ms. Allie's attorneys obtained a TPN Investor Report for the above areas in which the following were indicated;

- (i) In these areas, the sectional title prices have also seen a steady increase. The rental price ranged in the first quarter of 2024 for sectional title properties to between R6 200 and R17 000 with an average rental price of R11 000.
- (ii) In these areas, the freehold rental property prices remained steady. The rental price ranged in the first quarter of 2024 for freehold properties as between R6 000 and R21 000 with an average rental price of around R11 000.
- (iii) In these areas rental prices for properties with less than two bedrooms had increased since 2022. In 2022 the average rental for a property with less than two bedrooms was R8 210. In 2023, that grew to R8 785. In 2024, there was an increase to R8 997. In 2024, the market low for rental property with less than two bedrooms was R5 300 while the market high was R13 230.

[51] Ms. Allie pointed out that her affordability precluded her from entering the rental market in those areas.

Athlone, Crawford, Lansdowne, Romp Vallei and Rondebosch East.

[52] Ms. Allie pointed out that her attorneys obtained a TNP Investor Report for the above areas in which the following were indicated:

- (i) In these areas, the average sectional title rental prices had also seen an increase. The rental price ranged in the first quarter of 2024 for sectional title

properties was between R7 000 and R11 000, with an average rental price of around R8 800.

- (ii) In these areas, the average freehold rental property prices had increased. The rental price range in the first quarter of 2024 for freehold properties was between R7 000 and R16 000 with an average rental price of around R11 000.
- (iii) In these areas, the rental prices for properties with less than two bedrooms had increased dramatically since 2022. In 2022, the average rental for a property with less than two bedrooms was R6 949. In 2023, this grew to R7 429. In 2024, there was an increase to R8 489. In 2024, the market low for rental property with less than two bedrooms was R6 950. While the market high was R12 500.

[53] Ms. Allie pointed out that it was clear that her affordability precluded her from entering the rental property market in those areas.

Parklands, Goodwood Estate, Bothasig, Brooklyn and Montague Gardens.

[54] Finally, Ms. Allie pointed out that her attorneys had obtained the TNP Investor Report for the above areas in which the following were indicated:

- (i) In these areas, the average sectional title rental prices likewise had increased. The rental price range for the first quarter of 2024 for sectional title properties was between R5 900 and R12 000 with an average rental of around R9 000.
- (ii) In these areas, the average freehold rental property prices had remained steady. The rental price range in the first quarter of 2024 for freehold properties was between R6 000 and R18 000 with an average rental price of R11 000.
- (iii) In these areas, the rental prices for properties with less than two bedrooms increased since 2022. In 2022, the average rental for a property with less than two bedrooms was R6 901. In 2023, this grew to R7 016. In 2024, there was an increase to R7 104. In 2025, the market low for rental property with less than two bedrooms was R4 980 while the market high was R10 300.

[55] Ms. Allie once again, pointed out that her limited affordability precluded her from entering the rental property market in those areas. She further pointed out that having analysed the rental price trends across the different areas in Cape Town, the rental housing market was clearly inaccessible to her as a pensioner. Even with the market lows for properties with less than two bedrooms remained beyond her reach across Cape Town. She claimed that she was therefore unable to protect herself from displacement and homelessness by turning to the private rental market.

[56] Ms. Allie further pointed out that the third respondent was aware of her particular circumstances as disclosed by her in the questionnaire. Despite having provided such information the third respondent in providing options that by and large excluded pensioners from the applications, had simply failed to give proper consideration to her actual position as an elderly pensioner. Ms. Allie claimed that the City failed to have demonstrated any care and concern for her situation and consequently had failed to discharge its duty in relation to a housing report that appropriately responded to the exigencies of the situation before it.

[57] She further stated that she had made every attempt to exhaust the options available by the third respondent in its report, however those options were simply not suitable for her and did not take into account her particular circumstances. She added that in all of her attempts to exhaust the social housing options provided by the City, she was not able to find a social housing program due to her not meeting the qualification criteria and because of the unavailability of housing units.

[58] In respect of the rental housing market, she contended that as was evidenced from the research conducted by her legal representatives it was clearly unaffordable for her.

THE REPORT BY THE DEPARTMENT OF SOCIAL DEVELOPMENT, WESTERN CAPE GOVERNMENT.

[59] Two social workers, Ms. Cyrilene Setoile and her supervisor. Ms. Nomfundo Ntoyanto, employed by the Department of Social Development, to their credit, provided

a detailed report to the court a quo in terms of the Older Persons Act 13 of 2006 in assessing the needs of Ms. Allie for alternative accommodation and the interventions executed by the Department. They pointed out that Ms. Allie fell within the definition of an older person in terms of the Act as she was above the age of 60 years and a female. The objective of the Act is to maintain and promote the status, well-being, safety and security of older persons as well as to maintain and protect the rights of older persons. Ms. Setoile had conducted a detailed conversation with Ms. Allie at their offices, where she was accompanied by her legal representatives. Ms. Allie was informed of the option that was available to her if she chose to consider alternative accommodation such as a frail care facility. The process of exploring family preservation as a starting point before considering alternative means of accommodation was also explained to her..

[60] Ms. Setoile pointed out that her engagement with Ms. Allie was fairly easy, communication was clear, she understood the process and had a clear exchange of thought throughout the engagement. She claimed that Ms. Allie was transparent about her situation and willing to provide all the needed information with authentication in relation to what she identified as important. Ms. Allie provided a background to her coming to Cape Town, at a very young age and that she had lived at the subject premises in excess of 15 years. She had a sister, who is based in Johannesburg, who also identified as a senior citizen.

[61] Ms. Allie disclosed her income from both the GEPIF and SASSA. She also disclosed her medical condition of hypertension and that she was compliant with her medication. She disclosed in detail her financial status and her monthly expenses. Ms. Setoile had pointed out that the Department had a strong focus on elderly people being placed in family preservation services but that her sister was based in Johannesburg and it was therefore not an option. Ms. Setoile pointed out that Ms. Allie had made it clear that she did not want to apply to be accommodated at a frail care facility as she was not frail. She had also disclosed to them her attempts at restitution in terms of the legal processes and the impasse that she was presently at. She also disclosed the applications for state assisted housing with the third respondent and that she was

presently on their waiting list. In their concluding remarks the social workers recorded that Ms. Allie had declined the frail care facility. She, however, remained motivated about reappropriating her current residence and to remain living there. They also pointed out that Ms. Allie had been proactive about her living situation in seeking permanent alternative accommodation.

THE FIRST RESPONDENT'S REPLYING AFFIDAVIT

[62] Mr. Ras, on behalf of the developers and owners of the property deposed to the replying affidavit. He took issue with Ms. Allie's complaint about rental increases and claimed that her current rental of R2 022 was less than what it ought to have been with an annual increase. He also took issue with Ms. Allie's complaint about the failure on the part of the first respondent to have maintained the property. He claimed that it was misleading inasmuch as the water meter had in fact been repaired. He claimed that inasmuch as the lease agreements which were attached to Ms. Allie's answering affidavit had placed an obligation of exterior maintenance on the landowner, the interior maintenance was that of the tenant, Ms. Allie. He claimed that the photographs attached to the answering affidavit indicated that the interior had not been maintained despite her complaint of the first respondent having not done its part. As already indicated, the images of the interior of the premises appeared, albeit modest, depicted as well-kept and a clean premises. Mr. Ras's complaint was in my view hopelessly without merit and appeared to be no more than opportunistic.

[63] Mr. Ras confirmed that the first respondent had sought to evict Ms. Allie to effect renovations to the property. He, however, contended that inasmuch as Ms. Allie occupied the property on a monthly basis after the expiry of the previous written lease agreements Section 5(5) of the Rental Housing Act 50 of 1999 provided:

'If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.'

[64] He contended that Section 5(5) indicated that no reason was required for such cancellation to be given or to be effective nor was there any onus on the first respondent or him to prove that the property was uninhabitable or to give such notice. I will revert to the merits of the first respondent's claims in this regard save at this stage already, to point out, as submitted by counsel on behalf of Ms. Allie that this was no more than an opportunistic and disingenuous attempt at changing the basis for seeking the eviction of Ms. Allie from that given as for renovations to now relying on the provisions of Sections 5(5) of the Rental Housing Act.

[65] Mr. Ras further contended that the lease had been lawfully cancelled and that Ms. Allie had consistently refused to vacate the property since June 2023.

[66] In respect of Ms. Allie's claim to remain within District Six he claimed that there was no basis for that to supersede the rights of the owner to elect to cancel her tenancy. He claimed that there were many other areas with clinics in the immediate vicinity, that would be able to provide for her medical needs. He also repeated the first respondent's refusal to allow Ms. Allie to relocate to the next-door premises while renovations were undertaken and disputed that it was mala fide on their part. He claimed that the owner was not obliged to accept such a proposal should it wish to renovate both units at the same time. He reiterated the relief sought under Section 4(1) of PIE.

THE LEGISLATIVE SCHEME AND THE APPLICABLE LAW

[67] Counsel for Ms. Allie contended that the owner of the property had disingenuously attempted to distort its failure to maintain the property as a ruse for the cancellation of Ms. Allie's lease. He contended that because Ms. Allie disputed the cancellation the first respondent issued out the eviction proceedings against Ms. Allie. He contended further that in granting the eviction order against Ms. Allie the court a quo erred on a number of respects. At its most basic level there was, (i) simply, no legal basis to cancel the lease and (ii) even if there was any basis to cancel the lease the

court a quo had failed to adequately consider Ms. Allie's personal circumstances in exercising its jurisdiction under the PIE Act to determine a just and equitable remedy.

[68] I am mindful that an appeal does not lie against the reasoning of a court a quo save for the order made (see in this regard *Cape Empowerment Trust Ltd v Fisher Hoffman Sithole* 2013 (5) SA 183 (SCA) para. 39). It would appear though that the magistrate was wholly persuaded by what was clearly a ruse raised by the owner in cancelling the lease. The magistrate had moreover failed to properly exercise the court's jurisdiction under the preemptory provisions of the PIE legislation and to apply the legion of authority in properly engaging all relevant circumstances, in particular the personal circumstances by Ms. Allie and the overall context of her occupation in District Six in determining whether it would be just and equitable to evict her from the premises.

THE UNLAWFUL CANCELLATION OF THE LEASE.

[69] Section 5 of the Unfair Practice Regulations Schedule enacted in terms of Sections 15(1)(f)¹⁰ of the Rental Housing Act of 1999 provides as follows:

'Reconstruction, refurbishment, conversion or demolition.

5 (1) A landlord may only –

- (a) request a tenant to vacate the dwelling if any repairs, conversions or refurbishments are urgently necessary and cannot be properly made while the tenant remains in occupation, or
- (b) cancel the lease and repossess the dwelling, without being liable for damages in terms of the lease, the Act, these regulations or any other law, in circumstances where the dwelling is in a derelict condition or cannot safely be inhabited and must as a result thereof be rebuilt, reconstructed or demolished.

(2) In the circumstances contemplated by sub-regulation (1)(a), the landlord must –

- (a) allow the tenant remission of rental for the period during which the tenant is not in occupation;

¹⁰ 15. Regulations – (1) The Minister must, after consultation with the standing or portfolio on housing and every MEC, by notice in the Gazette, make regulations relating to- unfair practices, which, amongst other things may relate to- ...

- (b) effect the repairs, conversion or refurbishment within a reasonable time as to cause the tenant as little inconvenience as possible;
 - (c) ensure that the tenant is able to return to the dwelling as soon as possible after the completion of the repairs, conversion or refurbishment.
- (3) Where the repairs, conversion or refurbishment are necessary only to a part of the dwelling and the tenant continues to occupy the remaining part, the tenant must receive a remission in rental, the amount of which must be proportionate to the extent of the tenant's deprivation.
- (4) When requested by the landlord to vacate the dwelling for the purposes of urgent and necessary repairs, conversions or refurbishments, the tenant may not cancel the lease unless –
- (a) the temporary unfitness of the dwelling would be ruinous to the tenant: or
 - (b) the repairs, conversion or refurbishment could reasonably have been foreseen by the landlord at the time when the lease was entered into.'

[70] The Constitutional Court in *Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd* 2012 (3) SA 531 (CC), stated per Cameron J as follows:

'[47]...Whether it was an unfair practice, and what a just and fair ruling would be if it was an unfair practice, lies within the Tribunal's power to decide. If the determination is capable of constituting an unfair practice, I must consider what order this Court should make.

[48] In my view, neither the landlord nor the tenant fully appreciated the force of the Act's provisions in litigating their dispute. But it would be wrong for this Court to take a narrow view of the matter that ignores the importance and impact of the statute. That would imply that this Court could allow litigants to ignore legislation that applies to an agreement between them. Rule of law considerations militate against this.

[49] The Act abolished rent control legislation, but in its stead it enacted a more complex, nuanced and potentially powerful system for managing disputes between landlords and tenants. That system expressly takes account of market forces as well as the need to protect both tenants and landlords. Even-handedly, it imposes obligations on both. It is in particular sensitive to the need to afford investors in rental housing a realistic return on their capital. The statutory scheme is therefore acutely sensitive to the need to balance the social cost of managing and expanding rental housing stock without imposing it solely on landlords. Far from

ignoring the interests of investors like Lowliebenhof's landlord, the Act seeks to create a framework for resolving disputes with tenants that accommodates landlords' requirements.

[50] At the same time, the Act does not ignore the need to protect tenants. Its most potent provisions are those at the centre of the dispute in this case, namely termination of a lease and rental determinations that are just and equitable. The Act expressly provides that a landlord's rights against the tenant include the right to "terminate the lease . . . on grounds that do not constitute an unfair practice and are specified in the lease". "And" is not disjunctive. It is conjunctive. It means the Act recognises the landlord's power to terminate a lease, provided the ground of termination is specified in it, but, in addition, does not constitute an unfair practice. Differently put, the Act demands that a ground of termination must always be specified in the lease, but even where it is specified, the Act requires that the ground of termination must not constitute an unfair practice.

[51] In this way, the Act superimposes its unfair practice regime on the contractual arrangement the individual parties negotiate. That the statute considers its unfair practice regime to be super-ordinate emerges not only from the requirement that a lease-based termination must not constitute an unfair practice, but also from what the Act enjoins the Tribunal to take into consideration when issuing its rulings: these include "the provisions of any lease", but only "to the extent that it does not constitute an unfair practice". The effect of these provisions is that contractually negotiated lease provisions are subordinate to the Tribunal's power to deal with them as unfair practices.

[52] It follows that where a tenant lodges a complaint about a termination based on a provision in a lease, the Tribunal has the power to rule that the landlord's action constitutes an unfair practice, even though the termination may be permitted by the lease and the common law. Whether a termination in these circumstances could be characterised as "lawful" need not be decided now. "Unfair practice" is an act or omission in contravention of the Act, or a practice the MEC prescribes as "unreasonably prejudicing the rights or interests of a tenant or a landlord". This formulation is significant. It poses "interests" in contradistinction to "rights". This embraces more than legal rights. So used, "interests" includes all factors bearing upon the well-being of tenants and landlords. It encompasses the benefits, advantages and security accruing to them.

[53] This greatly enlarges the compass of unfairness under the Act. It means that unfair practices are not determined by taking into account only the common law legal rights of a tenant or landlord, but by considering also their statutory interests. This makes it even clearer that the statutory scheme does not stop at contractually agreed provisions, and conduct in reliance on them. It goes beyond them. It subjects lease contracts and the exercise of contractual rights to scrutiny for unfairness in the light of both parties' rights and interests.'

[71] Notwithstanding the provisions of the regulations the court a quo simply failed to apply it to the facts of this matter. The court a quo held that –

‘19. The cancellation for renovations is not contrary to any term, express, implied or imputed to the month-to-month lease between the parties.

20. The applicant's cancellation is valid and the notice period given accords with section 5(5) of the Rental Housing Act and the common law.’

[72] In this regard the court a quo simply relied on the provisions of Sections 5(5) of the Rental Housing Act. Likewise, notwithstanding the provisions of Section 4(9)(c) which provides:

‘The landlord's rights against the tenant include his or her right to-

(a)

(b)

(c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease.’

[73] It is apparent from the pleadings that the only reason provided for the termination of the lease agreement in the notice of termination dated 17 March 2023 where the owner stated, ‘to renovate the property’. In the termination notice no further explanation was given as to the nature and the extent of the renovations and why vacant occupation was necessary. That simply remained unexplained.

[74] In the notice under Section 4(1) of the PIE Act in paragraph 2(1) of the grounds to be relied upon for the eviction in the founding affidavit, the first respondent relied upon

the absence of a written or oral agreement or any lawful title as the basis for the eviction (see paragraph 15 above with reference to the Section 4(1) notice).

[75] However, in the founding affidavit the first respondent provided the reason for which it sought the eviction and which was also unexplained where Mr. Ras alleged that (i) Ms. Allie was required to vacate the premises because it is unsafe and that the owners wished to renovate the property'. The first respondent further alleged 'extensive renovation' were required to be done and not merely 'renovations' as it previously claimed. Counsel for Ms. Allie correctly pointed out that the nature and extent of the renovations was simply not explained and why vacant occupation was necessary. Ms. Allie in her answering affidavit firmly rejected these allegations in respect of the renovations and moreover refuted it.

[76] Strangely, in reply and clearly in the light of Ms. Allie's answering affidavit the first respondent shifted ground. Mr. Ras then rather opportunistically, sought to rely on Sections 5(5) of the Rental Housing Act 50 of 1999 and claimed that there was no reason required for the termination of a month-to-month lease. The first respondent moreover denied there was any onus 'on the landlord or myself to prove the property to be inhabitable to give such notice.' This somersault by the first respondent in my view beggared belief.

[77] Counsel for Ms. Allie correctly pointed out that the court a quo erred in simply accepting this contention by the first respondent which it raised for the first time in its replying affidavit. In doing so, it allowed the respondent to impermissibly raise for the first time in reply a new ground for the termination of the lease. Moreover, the basis for the termination was simply at odds with the true state of affairs. As the notice of termination had made clear the reason given for the termination was solely because of 'renovations'. There was clearly no reliance on a month-to-month lease agreement. Therefore, counsel for Ms. Allie correctly pointed out that the argument that no reason was necessary for the termination was simply not available to the first respondent. The first respondent had specifically elected to give a reason in the notice, relied on that reason in its founding affidavit and was therefore obliged to substantiate and to defend

that position. Ms. Allie joined issue with the first respondent on such basis for the termination as pleaded and the principles as set out in the oft cited decision of *Plascon-Evans*¹¹ operated in her favour. Her version had to be accepted in the absence of the first respondent's blatant failure to have provided any substantive reason as the basis of termination simply on the grounds of renovation contrary to the provisions of the unfair practice regulation regime. Needless to say, the court a quo simply failed to deal with the proper application of the *Plascon-Evans* principles. Inasmuch as the purported termination fell outside the provisions of the unfair practice regulations 5 (set out above) the owner did not have a legal basis to cancel pursuant to Section 4(5)(c) of the Rental Housing Act which provides:

'General provisions...

The landlord's rights against the tenant include his or her right to-

(c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease...'.
'

[78] The first respondent had failed to establish the lawful basis for the termination of the lease between itself and Ms. Allie. It failed to meet the first jurisdictional fact for the application of the provisions under the PIE legislation to lawfully evict Ms. Allie.

[79] However, in the event that I am wrong with regard to the above, it is therefore incumbent on this court to consider whether the court a quo erred in exercising its jurisdiction under the just and equitable considerations for the eviction of Ms. Allie.

WAS THE EVICTION ORDER JUST AND EQUITABLE?

[80] The magistrate made the following order:

'1. The first respondent and any occupiers holding title under her, are to vacate the property known as 7[...] S[...] F[...] Street, Zonnebloem, Cape Town (the property) on or before 17 January 2025.

¹¹ *Plascon-Evans Paints (TVL) Ltd v Van Riebeeck Paints Ltd* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

2. The sheriff of the court is authorized to eject the appellant and all those holding title under him in terms of a warrant of ejectment with effect from 20 January 2025.
3. The third respondent shall-
 - 3.1 Make available to the first respondent a list of residential facilities providing for pensioners immediately.
 - 3.2 Provide her with an emergency housing kit and/or emergency shelter should her eviction result in homelessness.
4. First respondent must accept the Department of Social Development's offer to assist her with placement in a residential care facility within one month of the granting of this order;
5. Cost of this application is to be borne by the first respondent on a party and party scale.'

[81] It appears that at the hearing of the application a representative of the City addressed the court but such representative did not testify under oath. It also appeared that he submitted and contrary to the written report by the City that a housing kit could be made available to Ms. Allie should she be able to find vacant land and with the owner's permission to construct a dwelling for herself. Despite the magistrate himself expressing the unsuitability of the housing kit relief for Ms. Allie he nonetheless and inexplicably included such relief in his order. The official from the City who addressed the court a quo also undertook to provide Ms. Allie with a list of old age homes available for pensioners which she could consider. That list should have been timeously provided to Ms. Allie in the report of the City so that she could have had the opportunity to properly consider it and to have included her responses in the supplementary affidavit. Further, the court a quo in paragraph 4 of the order, ordered that Ms. Allie 'must accept' the offer for assistance, probably by a placement in a frail care facility and despite her not being frail, within one month of the order (my emphasis). That provision of the order was clearly in conflict with paragraphs 1 and 3 of the court a quo's own order. Needless to state, parts of the order on its own were ill conceived and contradictory.

[82] Ms. Allie's background and personal circumstances have been set out extensively in this judgment. It needs no repetition at this stage. The efforts to which she and legal representatives went, to assess the private rental market has likewise been set out in some detail and so too the investigation of the availability of accommodation

in any of the social housing units. Likewise, her engagement with the social workers of the Department of Social Development with regard to the availability of accommodation for her as an older person and the position with regard to a frail care facility was thoroughly explored with her.

[83] A part of the record of the proceedings in the court a quo was also placed before this court. The extensive debate between the magistrate and the legal representative for Ms. Allie, Mr. Jonty Cogger acting on behalf of Ndifuna Ukwazi Law Centre was particularly telling when dealing with the question as to whether it was just and equitable for Ms. Allie to be evicted. The magistrate appeared to have some difficulty in accepting the market research done by Ms. Allie's legal team. In the exchange with Mr. Cogger, the record reflects a rather telling remark by the magistrate;

'Court :No, Mr Cogger why would the respondent(a reference to Ms. Allie) at the end of the day present this Court with anything that gave her alternative accommodation because there is a lot of what is not .Why would I think for one minute that if she found something that she would disclose it to the Court? It is a fair question.'

[84] The basis for the magistrate's skepticism of Ms. Allie's disclosures to the court of her personal circumstances and her inability to be able to access the private rental market was simply not explained by the magistrate in his judgment nor was there any basis for rejecting the evidence that she placed before the court in respect of the market research conducted by her legal team. The risk of homelessness by Ms. Allie if evicted, was in my view, not properly appreciated by the court a quo.

[85] Moreover, despite the magistrate stating that Ms. Allie had placed 'much probative material before the court' in her supplementary affidavit in response to the housing report by the City which included her personal history and circumstances and the efforts she had made to apply to the social housing schemes as recommended in the housing report and the market research material to show that there was no affordable rental accommodation, the magistrate remarked in the judgment that he could not 'infer from the probative material' that Ms. Allie would be rendered homeless.

Importantly, none of the material put up by Ms. Allie and the market research reports was in any manner or form challenged by the owner or Mr. Ras who would have had some experience with the housing market in Cape Town given his agency. The magistrate on the other hand, simply dismissed the market research reports as not having been presented as expert opinion and therefore did not have much weight as he stated the 'biases inevitably therein were unknowable.' What the magistrate failed to appreciate was that the reports were open public documents, in the public domain and sought no more than to reflect the analysis of the market trends in specific areas in the greater Cape Town area. If it contained any bias, Mr Ras and his legal representatives would have pointed it out. In simply dismissing the reports it was clear that the magistrate failed to properly engage with its weight in determining the just and equitable relief, he was in law required to do.

[86] The third respondent set out as it invariably does in eviction proceedings in the City of Cape Town that it was constrained by budget and resources to provide emergency accommodation to countless people facing homelessness in the City. Counsel for Ms. Allie pointed to the reasonableness of the third respondent's measure of providing emergency housing kits was the subject of litigation in a different matter before the courts. In this matter however, for the City to expect of Ms. Allie to find vacant land somewhere in Cape Town and with the consent of the owner to erect a shack on it, was demonstrative of how unreasonable such a measure was in the context of a 78-year-old single woman. Moreover, in its report it simply referred Ms. Allie to explore the availability of accommodation from a number of social housing entities that it listed. As was evident, most of the entities were unsuitable for Ms. Allie. The deponent to the third respondent's report had failed to properly consider the availability of accommodation in the social housing programme.

[87] Ms. Allie and her legal representatives had made extensive enquiries at all of the surrounding areas including District Six, as to the availability of rental accommodation within her means. The court on appeal can literally take judicial notice that the housing rental market in all of the surrounding areas of Cape Town is priced beyond that of the

affordability and reach of somebody in the position of Ms. Allie. The court a quo failed to appreciate such a notorious fact (even with the helpful research provided), which was no more than indicative of the inexplicable cynicism that the magistrate had with regard to Ms. Allie's genuine endeavours at seeking alternative accommodation.

[88] The court a quo also failed to fully appreciate the circumstances of Ms. Allie as a longstanding resident of District Six and her desperate attempts through the restitution process of seeking to remain within the area that she regarded as home in the last years of her life. The magistrate sought to rely extensively on the decision of *Grobler v Phillips and Others* 2023 (1) SA 321 (CC) where the constitutional court held:

‘...Furthermore, the Supreme Court of Appeal placed too much emphasis on Mrs Phillips’ peculiar circumstances. A just and equitable order should not be translated to mean that only the rights of the unlawful occupier are given consideration and that those of the property owner should be ignored. And it does not mean that the wishes or personal preferences of an unlawful occupier are of any relevance in this enquiry.’

[89] Ms. Allie was not simply seeking to exercise a personal preference or a wish to choose where she may live. The history and desperation of all people who were unlawfully and maliciously dispossessed of their homes under apartheid from District Six speaks for itself. To ignore her voice in the context of the circumstances of this particular matter was nothing more than to disregard the longstanding fight for justice in its true sense for the people of District Six. Moreover, it is what so many thousands, if not millions of South Africans suffered at the hands of those who exercised the “Power of Land” as counsel for Ms. Allie appropriately quoted from the extract by Michael Albertus – Land Power, Who Has It, Who Doesn’t, & How That Determines the Fate of Societies¹².

¹² ‘Land is power. Our identity, our family pasts, our wealth and well-being, and our relationships are all rooted in the soil beneath our feet. For millennia, the earliest humans respected and lived on the land but did not have to think much about who owned it. The human population was small, territories were vast, and frontiers were plenty. No more. As the population grew over the course of the past several thousand years of human history, land became a valuable resource. ... Who owns the land came to define who holds the power.’

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[90] The court a quo should amongst others have had regard to the enlightened remarks and reference made by Kollapen, J in – *District Six Committee and Others v Minister of Rural Development and Land Reform and Others* 2019 (5) SA 164 (LCC):

[2] District Six was a thriving community where people lived, dreamed, and made a life for themselves, even in the face of what appeared to be insurmountable obstacles. In an affidavit filed in these proceedings, Prof Shamiel Jeppie, associate professor in the Department of Historical Studies, describes it as follows:

“District Six at the turn of the century may have been poor, but it was undoubtedly a vibrant place. It was, arguably, one of the most cosmopolitan areas in the Cape, if not the whole of sub-Saharan Africa. Yet there were no examples of wide-scale racial or ethnic antagonisms. Bickford-Smith states that even if it cannot be said that working-class or community solidarity was ever achieved, the General Strike Workers Union (GWU) and the District Six Rate Payers Association (which eventually elected a Jew, Morris Alexander, and a Muslim, Abdulla Abdurahman, to the Town Council) are just two examples of non-racial organization that united residents across the potential divide of colours.”

[3] Sadly, such a vibrant and cosmopolitan community was torn apart in more ways than one by the inhumane policy of forced removals implemented with such great efficiency and insensitivity by the apartheid state.

[4] Professor Jeppie describes this process and its aftermath in the following terms:

“District Six afforded its occupants a deep sense of place and belonging. As the pace of removals was accelerated, it was accomplished by [an] outburst of embittered literary and vocal response. Although the edifices of District Six have literally been crushed, an inimitable image and identity remain intact – in the words of an ex-resident, you can take the people out of District Six, ou pellie, but you’ll never take District Six out of the heart of the people (Cape Town, March 8, 1966).

Whereas some of the economic and social costs of the razing of District Six may be ascertained, its toll upon individual lives and emotions is immeasurable. The inconvenience caused by the physical wrenching of people from long-time homes pales in the face of more prolonged and damaging psychological distress. Oral evidence, literary accounts and decades of newspaper reporting unite in their testimony to the fear, humiliation, bitterness and anger that accompanied the displacement. Not least among

the consequences was fragmentation of the identity and heritage of a community, which had profound implications for its social, political and cultural expression.”

[5] Our courts have also recognized the devastating effects of forced removals and in *Land Access Movement of South Africa v Chairperson National Council of Provinces and Others* 2016 (5) SA 635 (CC) (2016 (10) BCLR 1277; [2016] ZACC 22) where the Constitutional Court described its distressing” effects by Madlanga, J quoted in paragraph 3 above of this judgment.

[91] In my view the earlier dispossession of Ms. Allie of her cousin`s premises in Hanover Street in District Six by the racist apartheid regime and her vain attempts at restitution, which she so realistically stated, “in my lifetime”, were in my view relevant circumstances which at the very least the court a quo should have considered as a relevant factor, amongst others, in the circumstances of Ms. Allie.

[92] Moreover, despite Ms. Allie having extensively set out her financial circumstances with regard to her income and expenses, the magistrate simply dismissed it in stating ‘from the information supplied it is not possible to infer impecuniosity of the first respondents (sic)’. Ms. Allie in full disclosure of her financial circumstances sought to demonstrate as best as she could that she would not be able to afford rental accommodation in excess of R4 000 per month in any area within the vicinity of the City of Cape Town. Regrettably, the magistrate failed to appreciate that. Our courts have repeatedly stated that it is incumbent when exercising its jurisdiction under the just and equitable considerations to properly consider all relevant circumstances in its determination as to whether an eviction should be ordered. It does not help to do so with a measure of unfounded cynism and a lack of appreciation of the circumstances of dispossessed people in District Six who still find themselves thirty years into a constitutional democracy desperately awaiting a restitution process. Moreover, nothing prevented and prevents the first respondent and the owner from properly complying with the law in renovating the premises with due regard to the protections afforded to Ms. Allie under the Rental Housing Act and its Regulations. District Six is moreover not only about the people who lived in it but also its buildings that gave it a particular character and importantly the very few houses that remained, all

of which are part of its rich history. Every house was a home to many and successive families over decades¹³.

[93] In conclusion, I have no hesitation in setting aside the order of the court a quo and as already stated, it was unsurprising that the owner did not oppose the appeal despite it having sought an incredulous punitive order of costs against Ms. Allie in the court a quo. Astutely, the magistrate did not fall for it. Mr. Nacerodien disclosed that he had acted pro bono for Ms. Allie in the appeal. The court is indebted to him and the legal team of Ndifuna Ukwazi Law Centre for doing so. They are clearly entitled to the cost orders. The court noted that Ms. Allie attended the appeal hearing. She sat attentively and with quiet dignity throughout the proceedings.

[94] In the result, the judgment and order of the court a quo is set aside and replaced with:

1. The eviction application is dismissed with costs.
2. The costs are to include the costs of this appeal which are inclusive of the costs of counsel on scale C, where so employed.

SALDANHA, J

Judge of the High Court, Cape Town

I agree.

MAPOMA, AJ

Acting Judge of the High Court, Cape Town

¹³ The semi-detached structure at No. 7[...] F[...] Street, now owned by the development company, is in my respectful view, probably worthy of preservation as it forms part of the rich heritage of a dispossessed community and the legacy of the Rooknodien family.

APPEARANCES

Counsel for the Appellant:

Adv Adiel Nacerodien

nacerodien@capebar.co.za

Instructed by:

Ndifuna Ukwazi Law Centre

Dr Jonty Cogger, Attorney

Counsel for the Respondent:

No appearance