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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 12160/2024P

In the matter between:

THULISWA DLAMINI

Applicant

and

DAPHNEY NOMPHINI BUDAZA

First Respondent

NTOMBELA MBANJWA

Second Respondent

THE GREATER KOKSTAD MUNICIPALITY

Third Respondent

ORDER

The following order is made:

1. The late filing of the first and second respondents' answering affidavit is condoned.
2. The late filing of the first and second respondents' heads of argument is condoned.
3. The first and second respondents, and all those who occupy the premises known as House No 4[...], L[...] Location, F[...] ('the property'), by virtue of the first respondent's occupancy thereof, be and are hereby evicted from the property within 90 days of the service of this order.

4. In the event that the first and second respondents and all those who occupy the property under or by virtue of the first and second respondents' occupancy thereof, refuse to vacate the property within the period stated above, the sheriff of this court and/or his deputy be and is hereby authorised to forthwith enter upon the property and to evict the first and second respondents and all those who occupy the property under and by virtue of their occupancy thereof.

5. The first and second respondents are ordered to pay the costs of the eviction application.

JUDGMENT

D Pillay AJ:

Introduction

[1] The applicant has instituted eviction proceedings in terms of s 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) against the first and second respondents.

[2] The applicant alleges that she is the lawful owner of the immovable property described as Erf 4[...] F[...], Registration Division ES, Province of KwaZulu-Natal in the extent of 302 square metres, held under Deed of Transfer 37111/2015 and situated at House No 4[...], L[...] Location, F[...], hereinafter referred to as 'the property'.

[3] The crux of the applicant's case is that the first and second respondents and those occupying the property are unlawful occupiers, and that it is just and equitable to evict the first and second respondents together with those occupying the property.

[4] The first and second respondents have opposed the application and also sought condonation for the late filing of their answering affidavit. There was no opposition from the applicant regarding the condonation sought for the late filing of

the affidavit. I have taken into account the reasons provided for the late filing, the extent of the delay, the issue of prejudice and the prospects of success in opposition. I am of the view that the reasons for the lateness of the affidavit have been sufficiently explained and that there is no prejudice to the applicant in having recourse to the answering affidavit. The first and second respondents' counsel also sought condonation from the bar for the late filing of the respondents' heads of argument. The late filing was on account of counsel for the respondents having been briefed late and taking on the matter at the stage when he was ill. I accepted the explanation and condoned the late filing. There was no opposition to the late filing of the first and second respondents' heads of argument. It is furthermore in the interests of justice that the late filing of the answering affidavit and late filing of the first and second respondents' heads of argument be condoned.

[5] The second respondent alleges that the occupation of the first and second respondents and those occupying through them was as a consequence of an oral sale agreement and that the purchase consideration was to be paid in instalments.

[6] The applicant served the relevant notice in terms of s 4(2) of the PIE Act on both the first and second respondents. The first and second respondents have not raised any procedural challenge regarding the service of the notice in terms of s 4(2) of the PIE Act. I will therefore proceed to decide this application by first setting out the relevant background facts.

Relevant background facts

[7] The applicant has provided the title deed evidencing her ownership of the property. The applicant has established that she is the owner of the property, and that ownership of the property passed to her through the third respondent and was effected by way of a deed of transfer dated 20 November 2015.

[8] In 2016, the applicant entered into a verbal lease agreement with the first respondent in terms of which the applicant was to receive R700 per month. The commencement of the oral lease agreement and the duration thereof remain in dispute, however, such disputes are not material to the main issue which pertains to the ownership of the property.

[9] The applicant alleges that when she sought to claim possession of her property, she discovered that the property was occupied by the first and second respondents and other unlawful occupiers. According to the applicant, despite several verbal and written notices to the first and second respondents and other occupiers to vacate the property, such demands were ignored and the first and second respondents and other occupiers refused to vacate the property.

[10] It is significant to point out that despite a notice to oppose having been filed by both the first and second respondents, the application was only challenged through the answering affidavit of the second respondent, which was confirmed by the confirmatory affidavit of the first respondent.

[11] The version tendered by the second respondent on behalf of the first respondent is that sometime in April 2016, the first respondent made an offer to the applicant for the sale of the property, which offer was accepted in the presence of two witnesses. The material terms and conditions were that the purchase consideration was to be in the amount of R70 000, which was to be paid in instalments. The applicant has disputed that there was ever such an oral sale agreement concluded, and that any such agreement would be null and void, as the sale of immovable property must be reduced to writing.

[12] Whilst the first and second respondents' version raises a dispute of fact, the application falls to be considered on the first and second respondents' version and the probabilities of their version in light of the facts accepted by the applicant. In this regard, it emerged through both the application papers and through submissions in argument, that the property remains under the ownership of the applicant, and that to date, there has been no transfer effected in favour of the first respondent.

[13] Whilst the applicant makes reference to verbal requests to vacate, the first written notice to vacate is that of 3 November 2021, in which the applicant referred to the verbal lease agreement for a period of three years and the rental of R700 per month. Accordingly, in determining the date upon which the first and second respondents and those occupying through them have been in unlawful occupation,

the 3 November 2021 notice would constitute the date when such occupation can be deemed to be unlawful, as such occupation was without the express consent of the applicant.

[14] In opposing the application, the second respondent does not challenge the first respondent's receipt of the notice to vacate dated 3 November 2021. Most importantly, it is significant to point out that the first and second respondents do not dispute the commencement of the verbal lease agreement in 2016 for a period of three years, as pointed out in the letter of 3 November 2021.

[15] Whilst the applicant did not explain why the lease continued after the expiry of the three-year period, there was no dispute that the occupation of the first and second respondents was subject to a lease agreement at some stage.

[16] Accordingly, the crisp question that arises for consideration is whether the first and second respondents have raised a valid defence and whether all the requirements of s 4 of the PIE Act were complied with.

Evaluation

[17] Section 4(7) of the PIE Act provides that:

'If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.'

[18] In their answering affidavit, the first and second respondents sought to raise a point of non-joinder, alleging that nine other occupants, being the relatives and children of both the first and second respondents, ought to have been joined as a fourth respondent in the proceedings. At the hearing of the application, counsel for

the first and second respondents abandoned this point and conceded that they were indeed occupiers through both the first and second respondents.

[19] The first and second respondents' opposition to their eviction is premised squarely on the basis that they are not unlawful occupiers. Their reliance is predicated on an alleged oral sale agreement of the property. The alleged oral sale agreement has been emphatically disputed by the applicant. The dispute accordingly falls to be determined on the first and second respondents' defence, the probabilities of their version, and whether such defence constitutes a valid defence in law. The sale of immovable property is governed by the Alienation of Land Act 68 of 1981 (the Alienation Act).

[20] Section 2(1) of the Alienation Act reads as follows:

'No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.'

[21] It is trite that where a statute requires a contract to be in writing and signed, an oral contract is void *ab initio* and incapable of being rendered valid by the subsequent conduct of the parties.¹ The effect of non-compliance with the requirements of s 2(1) of the Alienation Act is that the contract shall not 'be of any force or effect', as it is expressly stated so in the section.² Accordingly, the oral agreement upon which the first and second respondents place reliance remains void as a consequence of the statutory formalities not being met.

[22] The peremptory requirement by the legislature that a contract for sale of land be reduced to writing is to achieve certainty in transactions of considerable value and importance. The requirement is peremptory, having regard to the fact that the terms and conditions agreed upon are often intricate and complex. The requirement thus prevents the risk of perjury, fraud and unnecessary litigation.³

¹ *Cooper and another NNO v Curro Heights Properties (Pty) Ltd* [2023] ZASCA 66; 2023 (5) SA 402 (SCA); *Van Leeuwen Pipe and Tube (Pty) Ltd v Mulroy and Another* 1985 (3) SA 396 (D) (*Van Leeuwen*) at 400F-H.

² *Wilken v Kohler* 1913 AD 135 at 143.

³ *Ibid* at 149; see also *Clements v Simpson* 1971 (3) SA 1 (A) at 7A-B.

[23] The basis of the oral agreement, which is vaguely contended for by the first and second respondents, is summed up as follows:

‘The material terms and conditions of the said sale was that the agreed sale price was R70,000 which was to be paid (sic) instalment.’

[24] I am of the view that the first and second respondents’ version is clearly untenable and unconvincing in circumstances where there has been no evidence provided which aligns with the claim of an agreement of sale. There is no detail provided insofar as when and how payment was to be made. There was also no plausible explanation for why the first respondent made no claim for transfer of the property from the applicant after allegedly making payment. The belated explanation provided from the bar was to the effect that the first respondent is an unsophisticated person and, therefore, the formalities were not complied with.

[25] The alleged ‘unsophisticated’ claim belatedly raised by counsel is rejected. This is especially in light of the fact that the first respondent failed to assert or institute any claim as the owner of the property, or a counter-application in the present proceedings. The claim of being an owner could have easily been pointed out after the first respondent completed payment, or even at the stage when the second respondent was served with a notice of eviction on 30 November 2021, being the date when the applicant confirmed in the notice that the first and second respondents’ occupation stemmed from a rental agreement which commenced in 2016.

[26] The version of the first and second respondents is further untenable, given the fact that the second respondent, the daughter of the first respondent, has not claimed to be unsophisticated, and was at all material times aware of the circumstances pertaining to the rental agreement and the alleged sale of the property. As a consequence of the second respondent’s awareness of the circumstances surrounding the property, any claim for a refund of the purchase price could have been pursued upon a breach of the alleged agreement, which they seek to rely upon.

[27] The cash amounts, which have allegedly been paid, are made up of eight instalments, staggered between the period of 30 June 2016 to 20 December 2019. It is clear that the alleged purchase amount is a significant amount, and one would have expected that the minimum material terms, such as the purchase price, the manner of payment and the description of the property at least be reduced to writing. It is apparent from the respondents' version that none of the aforesaid material terms were reduced to writing, which renders any alleged sale invalid.⁴

[28] It is also relevant to point out that the first and second respondents, despite having alleged that the occupiers of the property include elderly persons and children, have not expressly averred that the rights of these persons will be adversely affected by an eviction order. It is apparent that the first and second respondents' main complaint is that the applicant will be unjustly enriched in light of the first respondent allegedly paying the applicant for the property.

[29] It becomes plainly evident from the general tenor of the first and second respondents' answering affidavit that they are indeed able to move from the property on condition that the first respondent is refunded. This becomes apparent from the following averment in the answering affidavit, which confirms as follows:⁵

'The First Respondent advised that lady to inform the Applicant she had paid her my R70 000 for the same premises and she will not move out as she bought the property. The condition (sic) gave was that its either she gets the refund first before she moves out or else she will not move out.'

[30] The first and second respondents have accordingly not placed any personal circumstances before the court and there is no complaint that they or those occupying the property through them would be adversely impacted should they be evicted.

[31] The SCA in *Jika*⁶ dealt with the issue of onus and commented as follows:

'Another material consideration is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of

⁴ *Raven Estates v Miller* 1984 (1) SA 251 (W) at 255D–E. See also *Van Leeuwen* at 400 F–H.

⁵ Answering affidavit para 12.1.33 at page 60 of the indexed papers.

⁶ *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) para 19.

ownership and the respondent's unlawful occupation. *Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction.* Relevant circumstances are nearly without fail *facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.*' (My emphasis.)

[32] It is relevant to point out that the applicant's notice in terms of s 4(2) of the PIE Act also afforded the first and second respondents an opportunity to place before the court all relevant circumstances, such as the rights and needs of children or elderly persons and reasons why their eviction from the property should not be granted. The first and second respondents have not established that there is any adverse impact on the needs of those occupying the property, or particular relevant circumstances to be considered, albeit that there is an assertion that the property is occupied by children and the first respondent.

[33] I have, however, taken into account the fact that the second respondent resides in the Kokstad area and there is also no suggestion that she is unable to accommodate her family, being the first respondent and those occupying through her, or that there is no available alternative suitable accommodation for first respondent and those occupying through her, or for that matter is there any suggestion that the first respondent and those occupying through her would be rendered homeless.

[34] Section 4(8) of the PIE Act obliges a court to grant an order for the eviction of an unlawful occupier, where it is (a) satisfied that all the requirements of the section have been complied with; and (b) satisfied that no valid defence has been raised by the unlawful occupier.

[35] The SCA in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*⁷ acknowledged the relationship between subsections (7) and (8) and concluded thus: 'A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve the gradual realisation of the right of access to

⁷ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* [2012] ZASCA 116; 2012 (6) SA 294 (SCA) para 25.

housing in terms of s 26(1) of the Constitution, *is faced with two separate enquiries*. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those *factors include the availability of alternative land or accommodation*. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, *it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order*. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.' (My emphasis.)

[36] Having regard to the fact that the first and second respondents have not provided a valid defence to their continued occupation of the property and the fact that there exist no circumstances which are relevant or which preclude the eviction of the first and second respondents, I am of the view that it would be just and equitable to grant an eviction order.

Conclusion

[37] The first and second respondents' claim to ownership is hamstrung by the peremptory provisions of the Alienation Act. Accordingly, they have not raised a valid defence in law to justify their continued unlawful occupation. Except for the baseless claim to ownership, they have failed to disclose any relevant circumstances which preclude their eviction.

[38] The first and second respondents, and those occupying the property, have already had the use, benefit and enjoyment of the property for a period of approximately four years from the date when they received notice of the eviction in

November 2021. The first and second respondents have been aware for approximately three years of the applicant's intention to evict them and, accordingly, they have had a considerable period to prepare to vacate the property. The first respondent's meritless claim to being the owner of the property cannot be allowed to continue indefinitely, whilst depriving the applicant of the use and enjoyment of her property.

[39] In light of the aforesaid circumstances, it is therefore just and equitable to order the eviction of the first and second respondents and all those occupying through them. The court considers it just and equitable for the first and second respondents and all those occupying through them to vacate the property within a period of 90 days from the date of its order, which will enable the unlawful occupiers to vacate with dignity and have sufficient time to obtain alternative accommodation.

Costs

[40] I am satisfied that there is no reason to deviate from the principle that costs should follow the result in the circumstances of this matter.

Order

[41] In the result, I make the following order:

1. The late filing of the first and second respondents' answering affidavit is condoned.
2. The late filing of the first and second respondents' heads of argument is condoned.
3. The first and second respondents, and all those who occupy the premises known as House No 4[...], L[...] Location, F[...] ('the property'), by virtue of the first respondent's occupancy thereof, be and are hereby evicted from the property within 90 days of the service of this order.
4. In the event that the first and second respondents and all those who occupy the property under or by virtue of the first and second respondents' occupancy thereof, refuse to vacate the property within the period stated above, the sheriff of this court and/or his deputy be and is hereby authorised to forthwith enter upon the

property and to evict the first and second respondents and all those who occupy the property under and by virtue of their occupancy thereof.

5. The first and second respondents are ordered to pay the costs of the eviction application.

D PILLAY AJ

Heard on:	16 October 2025
Delivered on:	18 November 2025

Appearances

For the applicant:	Mr Tenza from Tenza Attorneys
For the first and second respondent:	Mr Zimema
Instructed by:	S Bavu Attorneys