

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

CASE NO: 2023-080650

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

...14/11/2025

In the matter between:

MUNZHELELE JOSIAS

1st APPLICANT

MUNZHELELE NTHAMBELENI ACHIEVEMENT

2nd APPLICANT

and

**ALL UNLAWFUL OCCUPANTS OF ERF 8[...] U[...]
TOWNSHIP, TEMBISA, GAUTENG
EKURHULENI MUNICIPALITY**

1st RESPONDENT

2nd RESPONDENT

JUDGMENT

NKOENYANE AJ

INTRODUCTION

- [1] This is an application for the eviction of the First Respondents from the immovable property known as Erf 8[...] U[...] Township, Tembisa, Gauteng (the property), brought in terms of section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act).
- [2] The Applicants are the registered owners of the property, having purchased it from Mr. Bongani Thabethe in November 2020. The First Respondents are cited as "all unlawful occupants" of the property.

The Applicants' Case

- [3] The Applicants' case, as set out in the Founding Affidavit of Mr. Munzhelele, is straightforward. They are the bona fide purchasers of the property for for which they paid a consideration of R756,037.50, financed by a mortgage bond from Standard Bank. The property was duly transferred into their names on 26 November 2020. They took vacant occupation and engaged contractors to commence renovations. During this period, the First Respondents, whose names they do not know, forcefully occupied the property, declaring it a "family home" and threatening the contractors. The Applicants allege they have never given the occupants consent to reside there and are suffering financial prejudice as they service the bond while being unable to occupy their property.

The First Respondents' Defence

- [4] The defence, articulated in the Answering Affidavit of Athlehang Modise and supported by numerous confirmatory affidavits from descendants of the late Evelina Malinga, is one of a historical family claim. Their case is that:
- 4.1. The property has been the Malinga family home since approximately 1967, following a forced removal under apartheid-era laws.
- 4.2. The original site permit holder was Genda Albert Malinga, the son of Evelina Malinga.

4.3. In 1999, a Housing Bureau adjudication, which they allege was fraudulent, awarded the leasehold to Bongani Thabethe, a grandson of Evelina Malinga, on the understanding that he would hold it for the family.

4.4. Despite this, the family continued to treat the property as their communal home, with various members contributing to its improvement.

4.5. Mr. Thabethe never resided at the property and subsequently sold it to the Applicants without the knowledge or consent of the wider family, despite the property's known status as a family asset.

- [5] The First Respondents contend that the sale by Thabethe was void as he lacked the capacity to sell a family asset solely for his own benefit. They argue that the Applicants' title is tainted by this underlying invalidity.

The Applicants' Reply

- [6] In their Replying Affidavit, the Applicants deny any knowledge of the family's claims. They reiterate that they are bona fide purchasers and that the First Respondents' failure to challenge Mr. Thabethe's registered ownership for over 20 years undermines their current defence. They further point out that Evelina Malinga was, in fact, the registered owner of another property, Erf 2[...] J[...], Tembisa, which they argue is the true family inheritance.

ANALYSIS

- [7] The central legal issue is whether this eviction application, brought under PIE, is the appropriate forum to resolve the deep-seated dispute of ownership and the validity of the Applicants' title.
- [8] Section 4 of the PIE Act provides the procedure for evicting unlawful occupiers. A foundational requirement for its application is that the occupation must be "unlawful," meaning without the consent of the owner or person in charge. The crisp question is whether the Applicants can establish this in the face of a bona fide challenge to their ownership.

[9] The Constitutional Court in *Occupiers of Erven 8[...] & 8[...] Berea v De Wet NO and Another*¹ clarified the scope of eviction proceedings. The court held at paragraph 37 that:

" It is so that an owner's registered title is prima facie proof of ownership. But that does not mean that an eviction court is precluded from entertaining a challenge to the validity of the title. However, if the challenge is complex and requires a detailed examination of oral evidence, then it may be more appropriate to relegate the issue to trial proceedings where it can be fully ventilated. The High Court was thus correct to hold that it was not precluded from considering the validity of the title deeds. But the critical question is whether it was correct to decide the issue on the papers in a summary manner."

[10] In the present matter, the First Respondents' defence is not a mere denial. It is a positive case based on historical facts, allegations of fraud in a 1999 adjudication process, and the principle of family property. Resolving this requires a thorough ventilation of evidence, including cross-examination, to determine the credibility of the allegations of a family home and the bona fides of the Applicants' purchase. This is precisely the type of dispute that is ill-suited for resolution on the papers in a motion court. As stated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty)*², where disputes of fact arise on the papers that cannot be resolved without oral evidence, the application must be dismissed, unless the matter can be referred for the hearing of oral evidence.

[11] The Applicants rely on their clean title and their status as bona fide purchasers. However, the defence raised places this directly in issue. The court in *Legogi v Ramgobin*³ reaffirmed that where an occupier raises a bona fide dispute of right or title, the owner's claim for just and equitable eviction under PIE is not unassailable. The dispute must be genuine and not merely frivolous. The historical documents attached to the Answering Affidavit,

¹ 2017 (5) SA 346 (CC)

² Ltd [1984] ZASCA 51; 1984 (3) SA 623 (A)

³ [2023] ZAGPJHC 789

including the 1999 adjudication record which explicitly refers to the property as a "family house," lend sufficient credence to the First Respondents' defence to render it bona fide.

[12] The leading authority is Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC), where the Constitutional Court stressed that PIE requires a "contextual and fact-sensitive enquiry." The court must consider, inter alia:

- a) The duration of the occupation.
- b) The bona fides of the parties.
- c) The availability of alternative accommodation for the occupiers.
- d) The circumstances of the occupiers, particularly the presence of vulnerable groups.

[13] On the Applicants' side, their rights as registered owners are clear. They have been unable to access their property for nearly four years and are suffering financial prejudice from municipal charges and a home loan on a property they cannot use. This is a significant factor weighing in their favour.

[14] The Respondents, on the other hand, assert a long-standing historical connection to the property and have established their homes there. While this does not confer a legal right to occupy against the titled owner, it is a relevant circumstance in the PIE enquiry. The Applicants have engaged with the municipality to explore possible solutions or mediation, a step which is often critical in achieving a just outcome, as envisioned in Port Elizabeth Municipality.

[15] Consequently, I find that the Applicants have succeeded in establishing, for the purposes of this application, that the occupation is unequivocally "unlawful" as required by PIE. The core dispute regarding the validity of their ownership and the rights of the occupiers can be determined in an action proceeding.

CONCLUSION AND ORDER

[16] The Applicants have met the threshold for granting an eviction order at this stage.

ORDER

1. The First Respondent and all those persons holding title or claiming occupation of Erf 8[...] erf Township, Tembisa, Gauteng Province are hereby declared unlawful occupiers as defined in Section 1 of The Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998.
2. The First Respondent and all those persons holding title or claiminh occupation of Erf 8[...] U[...] Township, Tembisa, Gauteng Province, are hereby ordered to vacate the Property on or before the 25th January 2026.
3. In the event of the First Respondent and all those persons holding title or claiming occupation failing to vacate the Property on the date determined in paragraph 2 above, the Sheriff of the Court and Members of the Ekurhuleni Metropolitan Police Department are hereby ordered to evict the First Respondent and all those persons holding title or claiming occupation after the 26th January 2026.
4. The First Respondents are ordered to pay the Applicant's costs on scale B.

NKOENYANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION,
JOHANNESBURG

Date of Hearing: 8 September 2025

Date of Judgment: 14 November 2025

Appearances:

For the Applicant: Mr Shave V Kubheka

Instructed by: Tuso Attorneys Inc

For the First Respondent: Adv P.A Wilkins

Instructed by: Sarlie and Associates Inc