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

JUDGMENT

**Not Reportable
Case No: 8232/2023**

In the matter between:

SIMBONGILE RASMENI

Applicant

(Executor in the estate of the late Mongameli Mbuku)

And

PHUMZA MBUKU

First Respondent

(and all occupants residing under her at 4[...] L[...] Crescent, Delft, Cape Town, Western Cape)

THE MUNICIPALITY OF CAPE TOWN

Second

Respondent

Coram:

DA SILVA SALIE, J

Heard on: 3 December 2025
Delivered on: 3 December 2025

Summary:

Eviction — Executor's locus standi confirmed — purported Master's office letter of revocation, councillor letters and community signatures irrelevant to ownership — No credible proof of sale — Respondent an unlawful occupier — Eviction just and equitable with time afforded to vacate.

ORDER

(1) The First Respondent, Ms Mbuku, and all persons occupying under her, are declared unlawful occupiers of Erf 1[...], known as 4[...] L[...] Crescent, Delft, Cape Town.

(2) The First Respondent and all persons occupying under her must vacate the property on or before **Tuesday, 31 March 2026**.

(3) Should the First Respondent fail to vacate the property by the Tuesday, 31 March 2026, the Sheriff of this Court is authorised and directed to evict the First Respondent and all persons occupying under her and to deliver vacant possession to the respondent.

(4) The Chief Registrar of this Court is directed to provide a copy of this Order to the Second Respondent (City of Cape Town c/o Head of Informal Settlements) within three (3) days of date of this order.

(5) Should the first respondent wish to obtain emergency housing from the second respondent, she is directed to give written notification to the second respondent (Human Settlements Directorate) of her election (and delivered to them) by **10 December 2025**. In that event, the Second Respondent is directed to provide the First Respondent with an emergency housing kit and accommodate her at an emergency accommodation site by 16 March 2026.

(6) Each party is ordered to pay their own costs.

JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This is an application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") for the eviction of Ms Mbuku from the immovable property situated at Erf 1[...], known as 4[...] L[...] Crescent, Delft, Cape Town ("the property").

Applicant's claim for eviction:

[2] The applicant, Mr Rasmeni, approaches the Court in his capacity as the executor of the deceased estate of the late Mr Mongameli Mbuku (“the deceased”) who has passed away on 15 February 2011. The applicant has been appointed as the Master’s representative of the deceased estate by the Master of the High Court in 2015 in terms of Section 18(3) of the Administration of Estates Act, 66 of 1965 as amended (“the Act”). The property is the primary asset of the deceased estate and remains registered in the deceased’s name. Applicant is the listed Master’s representative on the Master’s online portal, with estate reference number: 0[...].

Respondent’s defences to eviction:

[3] Ms Mbuku opposes the application on three grounds: (a) she disputes Mr Rasmeni’s *locus standi* as the executor or representative of the Master; (b) she alleges a prior sale or arrangement with the deceased shortly before his death in 2011 which entitles her to remain on the property; and (c) she contends that eviction would not be just and equitable within the meaning of PIE.

Issues for determination:

[4] The crux of the respondent’s opposition lies in the challenge to the applicant’s *locus standi*, in other words his legal standing to bring the application to evict her from the property. Only once the Court is satisfied that Mr Rasmeni is the duly authorised Master’s representative to take control of the assets of the deceased estate, may the enquiry proceed to the just and equity considerations required under PIE.

Background:

[5] The deceased passed away in on 15 February 2011. On 19 May 2015 the Master of the High Court issued Letters of Authority appointing Mr Rasmeni as executor of the estate. The property, Erf 1[...], is the estate’s sole immovable asset.

[6] Ms Mbuku resides on the property with her adult daughter and her 17 year old minor child. She states that she has lived there since 2001 and that the deceased permitted her occupation during his lifetime and that prior to his death she purchased the property from the deceased.

[7] There is, however, no written lease, no deed of sale, and no documentation supporting the alleged arrangement or purported sale. The respondent provides no explanation for the absence of a written agreement where ownership is alleged to have changed hands nor does she provide the details of the attorney referred to as "housing" and whom seemingly had been agreed upon or instructed to attend to the registration of transfer. She provides no other details relating to the said sale agreement, which details would exclusively be known to her. No affidavit is provided to support this alleged sale by the person who was acting as the "housing" official or transferring attorney.

[8] The municipal account for the property is substantially in arrears, exceeding R250 000. The respondent has not meaningfully contributed to municipal charges, leaving the estate burdened with the escalating liability, albeit she continued residing at the property after the deceased's passing in 2011, over 14 years ago.

[9] The property has also been used at times to generate rental income without the applicant's consent and without benefit or receipt by the deceased estate.

[10] Administration of the estate has been delayed for several years due to the respondent's continued occupation and refusal to vacate.

Locus standi

[11] The respondent disputes that Mr Rasmeni has the authority to bring this application, relying primarily on two documents: (a) two letters from City of Cape Town Ward Councillor Tause and (b) an unsigned document purporting to emanate from an unnamed Assistant Master dated 6 September 2023.

[12] The relevant part of the councillor's letter, on the City of Cape Town letter head of Ms. Phumla Tause, dated 17 August 2023 reads as follows:

"...As the Ward Councillor, I have reached a decision; I have taken the input of Mbuku family and the community in consideration. I hereby hand over the property at 4[...] L[...] Street, Delft South, 7100 to Phumza Mbuku. She is now the rightful owner of the above-mentioned address.

I please also request that the letter of authority handed to Simbongile Rhasimeni should be withdrawn; since it was illegally obtained a new letter of authority should then be handed over to Phumba Mbuku by the Masters."

[13] Quite clearly the ward councillor has no statutory power to allocate the deceased estate property, remove an executor, direct the Master's Office, or interfere in the administration of a deceased estate. The action is not only *ultra vires*, exceeding the powers of the ward councillor, but so too attempts to arbitrarily deprive the deceased estate from the immovable property registered in the name of the deceased. The letter does not have any force or effect which could question or detract from the rights of ownership of the deceased estate and the appointment of the executor.

[14] The letter purporting to be from the Assistant Master, dated 6 September 2023, which follows upon the above letter is equally problematic. It does not identify its author,

offers no grounds for the alleged removal, and was not delivered to the applicant in a manner compliant with the Administration of Estates Act 66 of 1965. Furthermore, *ex facie* the letter, the address appearing on the right-hand corner of the letter, states an incorrect physical address. These aspects raise concerns regarding the authenticity of the letter, together with the fact that it purports to adopt a most unusual manner in which the Master's office adopts revocation of issued authorizations on behalf of deceased estates. No confirmatory affidavit accompanies the letter. The applicant on the other hand denies receiving it or any communication from the Master's office in relation to his revocation of the issued letter of authority dated 19 May 2015.

[15] Section 54 of the Administration of Estates Act prescribes the exclusive procedure for removing an executor. It requires: (a) written notice to the executor; (b) an opportunity to respond; and (c) a formally recorded decision by the Master. These procedures apply likewise in the case of letters of authority issued in a Section 18(3) estate. The underlying purport of these procedures are in line with natural justice, *audi alterem partem* and due process as considered by this Court in ***Sybrand Smit N.O. v FNB & ors, Case number 23395/16***. It permits an open process, which may be reviewable by an aggrieved party.

[16] The respondent's version does not illustrate that there has been any compliance with these statutory safeguards. Neither document relied upon satisfies the procedural or substantive requirements for a lawful removal.

[17] The Master's Online Portal, which constitutes the authoritative administrative record, continues to reflect Mr Rasmeni as the duly appointed representative of the Master in this estate. The property remains registered in the deceased's name. Counsel for the respondent urged me to consider that the position and rights of a person appointed in terms of Section 18(3) by letters of authority must be seen in a more restrictive manner and circumspection as that of one acting in terms of letters of

executorship. I am not persuaded by this submission as the authorization by way of Section 18(3) does not carry less weight for the appointed representative to take control of the assets of the deceased person than that of the executor. The argument on behalf of the respondent that Mr. Rasmeni's standing in law to seek an eviction order must be distinguished from an executor is misguided and does not bear merit.

[18] The evidentiary burden rests on the respondent to substantiate her challenge to the legal standing of the applicant. The documents on which she relies are irregular, unverified, and inadmissible for the purpose for which they are tendered. The alleged sale between her and the deceased is not supported by any written agreement, documentation, or other objective evidence. The respondent's narrative is inconsistent and uncorroborated. Verbal assurances as alleged by the respondent, without more, cannot override registered ownership.

[19] It is furthermore telling that the respondent only approached someone from the Master's Office and the Ward Councillor shortly after this application for eviction was brought by the executor in June 2023, though he had been appointed (a fact which respondent is aware of) in 2015. In my view, this was an orchestrated effort on the part of the respondent to frustrate the eviction application. Though the alleged sale of property transpired in early in 2011, the respondent has done nothing to follow up on the progress of the registration of transfer given her version that she has had a sale agreement concluded with Mr. Mbuku, some 14 years ago, in early 2011.

[20] I pause to mention, that the two letters by Ward Councillor Tause (upon being approached by the respondent) contradicts the version stated by the respondent. On 13 June 2023, it is noted that the letter states that the house is owned by the deceased but that the respondent had been given permission by the Mbuku family to stay at the house after the deceased passed away. In the letter dated 17 August 2023, the deceased is again noted as the owner however now the property had purportedly been

“handed over” to the first respondent by the ward councillor after consultation with the respondent and the Mbuku family and community.

[21] On these facts, it is highly unlikely that the respondent concluded a deed of sale with the deceased. This allegation stands to be disregarded as far-fetched and clearly untenable. No real, genuine and bona fide dispute of fact arises in these circumstances.

[22] I am satisfied that (a) Mr Rasmeni remains the lawfully appointed Master’s representative; (b) he retains both the authority and the duty as the authorized person to administer and protect the estate’s assets; and (c) the respondent’s *locus standi* challenge must fail.

PIE:

[23] I therefore turn to whether the eviction sought is just and equitable within the framework of PIE.

[24] PIE defines an unlawful occupier as a person who occupies land without the express or tacit consent of the owner or person in charge.

[25] The property remains registered in the name of the deceased. No transfer has been effected to Ms Mbuku. Her continued occupation therefore depends on the consent of the applicant as the person in control of the deceased estate.

[26] Any consent granted by the deceased during his lifetime did not survive his death and did not bind the executor or person in control of his estate as in this case. Only the applicant *nomino officio* may lawfully confer or withhold consent to the respondent in respect of her occupation of the property. The applicant has unequivocally withdrawn

consent. In these circumstances, the respondent is an unlawful occupier for the purposes of PIE.

[27] The respondent resides with an adult daughter and a 17-year-old minor. No evidence of disability, chronic illness, or heightened vulnerability of the occupants have been raised on these papers. It has been over two (2) years since the respondent has received the notice demanding that she vacates the property and find alternative accommodation. The respondent has also been receiving the rental income from the property, save for an amount of approximately R12 000, when Mr. Rasmeni (as the person in control of the deceased estate assets) received the rental income. In the municipal housing report (the second respondent), though its official authorized to file the report on behalf of the City of Cape Town, states that from a consultation with the respondent, she receives monthly income and the benefit of social grants.

[28] The municipal account is substantially in arrears, and these arrears continue to prejudice the estate and delay its administration. The heirs bear the consequences of the respondent's continued occupation.

[29] Although the respondent has lived on the property for many years, long-term occupation does not create a right of permanent residence nor displace the executor's statutory duties. The support of several community members by way of their signatures in an endeavour to confirm her alleged right to stay there does not denounce the rights of ownership of the deceased estate as the registered owner nor the powers invested in the applicant as the appointed Master's representative of the deceased estate. Rights of ownership is not distilled from pledged signatures within the community. Ownership is not determined through a popularity contest, but through lawful title and due processes. The Court is required to consider the competing constitutional rights of the parties, that being, the respondent's right to housing in terms of Section 26 as against the rights of ownership of the deceased estate in terms of Section 25.

[30] The estate, as a private owner, bears no obligation to provide alternative accommodation. Importantly, I am satisfied that homelessness does not arise. The respondent is gainfully employed, and no information has been placed before me by the respondent that she is unable to obtain alternative accommodation for her and her son, now aged 17. The respondent's alleged inability to obtain alternative accommodation must be considered against the fact that in the municipal housing report of October 2023, the respondent is advised that she is able to obtain a housing kit from the municipality in 30 days from date of the order of eviction and importantly, she is able to be accommodated at an emergency housing site within 18 months from date of signature of application of the emergency shelter form. The emergency shelter form was served upon the respondent (over 2 years ago) in October 2023 by the Sheriff of the Court, which the respondent refused to sign. Alternative housing was thus refused by the respondent. Her contention that she is unable to find alternate housing is thus without any merit. On the papers the respondent's refusal stems from her desire to instead remain resident in the property, and thus she refused alternate housing. It is trite that the respondent's personal preference to remain in the property is not a relevant or legitimate factor in the determination of what would be just and equitable. The Constitution gives the occupier a right of access to alternate housing, but not a right to choose exactly where he or she wants to live. It can thus not be held that the respondent will be homeless nor that she was unable to find alternative accommodation.

[31] I am satisfied that a reasonable period of approximately four (4) months would be just and equitable to afford the respondent time to vacate and find alternative accommodation. To the extent that she may elect to access emergency housing from the municipality, provision is made therefore in the order below.

Order

[32] For these reasons, I order as follows:

(1) The First Respondent, Ms Mbuku, and all persons occupying under her, are declared unlawful occupiers of Erf 1[...], known as 4[...] L[...] Crescent, Delft, Cape Town.

(2) The First Respondent and all persons occupying under her must vacate the property on or before **Tuesday, 31 March 2026**.

(3) Should the First Respondent fail to vacate the property by the Tuesday, 31 March 2026, the Sheriff of this Court is authorised and directed to evict the First Respondent and all persons occupying under her and to deliver vacant possession to the respondent.

(4) The Chief Registrar of this Court is directed to provide a copy of this Order to the Second Respondent (City of Cape Town c/o Head of Informal Settlements) within three (3) days of date of this order.

(5) Should the first respondent wish to obtain emergency housing from the second respondent, she is directed to give written notification to the second respondent (Human Settlements Directorate) of her election (and delivered to them) by **10 December 2025**. In that event, the Second Respondent is directed to provide the First Respondent with an emergency housing kit and accommodate her at an emergency accommodation site by 16 March 2026.

(6) Each party is ordered to pay their own costs.

G. DA SILVA SALIE

JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicant: Adv. G. Slingers
Instructed by: Werksmans Attorneys

For First Respondent: Ms T Prinsloo
Instructed by: Legal Aid South Africa – Cape Town