



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

Reportable/Not Reportable

Case no: 2025-070143

In the matter between:

ARLENE VERONICA GIPPERT

First Applicant

VINCENT GREGORY DE MUYNK

Second Applicant

and

LEILANI ROCHAT

First Respondent

(Identity number: 3[...])

and all those occupying the property through her

**ALL OTHER PERSONS UNLAWFULLY
OCCUPYING THE PREMISES AT
1[...] N[...] WAY, NOORDHOEK,
CAPE TOWN, WESTERN CAPE**

Second Respondent

**THE CITY OF CAPE TOWN
MUNICIPALITY**

Third Respondent

**Neutral citation: Arlene Veronica Gippert, Vincent Gregory De Muynk,
Leilani Rochat, All other persons unlawfully occupying the
premises at 1[...] N[...] Way, Noordhoek, Cape Town,
Western Cape and The City of Cape Town Municipality**

Coram: MANGCU-LOCKWOOD J

Heard: 17 November 2025

Delivered: 02 December 2025

ORDER

In the circumstances the following order is made:

1. The first and second respondents, and all those holding title under them at the property described as 1[...] N[...] Way, Noordhoek, Cape Town Western Cape ('the property') must vacate the property by, at the latest, Friday 30 January 2026.
2. In the event that the first and second respondents and all those holding title under them fail to comply with prayer 1 above, the Sheriff or his/her lawfully appointed deputy is hereby authorized to eject them from the property from 2 February 2026.
3. The counter-application and the application for referral of certain matters to oral evidence brought by the first respondent are dismissed.

4. The first respondent is ordered to pay the costs of litigation, including costs of counsel, on Scale A.

JUDGMENT

MANGCU-LOCKWOOD, J

A. 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 eviction of the first respondent from property co-owned by the two applicants, and which was previously owned by Mr. Marinus de Muijnck (referred to by the parties as 'Rien'). The first applicant is the daughter of Rien, whilst the second applicant - her son - is Rien's grandson. Rien is not a party to these proceedings, although he has deposed to a supporting affidavit in reply.

[2] Rien and the first respondent are both 86 years old. In 1993 the first respondent moved into the property to live with Rien, who owned the property, as part of a romantic, cohabiting relationship. It is common cause that their relationship has come to an end, although the date of the termination is not common cause. According to Rien and the applicants it was some four or five years ago, whilst the first respondent states it was only in March 2025.

[3] The nature and circumstances of the relationship are also in dispute. According to the first respondent they became engaged shortly after they met,

which is vehemently disputed by Rien, who has attached confirmation that the first respondent was in fact still married to her previous husband when she first came to live with him in 1993, and that she was only divorced on 9 September 2005, some 12 years after their relationship commenced. This, he states is the reason he did not propose to her, contrary to her allegation of his proposal of engagement.

[4] He admits however, that during the course of their relationship he has provided financially for the first respondent through various means, including the proceeds of substantial property transactions. He also gave substantial gifts to her and her children, including a gift of four gold coins valued at approximately R240 000. It was from about 2020 that the relationship turned sour according to him, apparently as a result of property transactions of that year.

[5] It is furthermore not disputed that Rien transferred the property in question to the applicants on 4 March 2022. This was about a month after he was diagnosed with stage-4 colon cancer. However, he and the first respondent have continued to reside in it, with the applicants living a few metres away in the same street.

[6] This application was precipitated by events related to Rien's ill-health. As a result of his diagnosis he requires full-time professional care. The applicants state that the first respondent has continuously and increasingly created a volatile environment for the professional carers who attend to Rien on a full-time basis at the property. The conduct complained of includes intoxication; hurling abuse at the carers which includes racial insults; intimidatory and obstructive intervention in their functions such as locking them out and insisting they remove his oxygen mask. Two carers have deposed to confirmatory affidavits to that effect. There are

also allegations of negligence by the first respondent resulting, in one instance, in Salmonella food poisoning which is confirmed by a medical report.

[7] The first respondent denies the behaviour alleged against her, although that is done in generalised terms which are lacking in detail and fail to engage with the seriousness of the allegations. Instead, the essence of her defence is that the allegations are not made objectively. By contrast, one of the instances of abusive behaviour was recorded by one of the professional carers, who subsequently deposed to an affidavit. The abuse recorded was inflicted by the first respondent's daughter, acting on behalf of, and in the presence of the first respondent.

[8] In any event, it is common cause that there has been escalating tension and hostility between, on the one hand, the applicants and Rien's carers, and on the other the first respondent and some of her children. Even in her answering affidavit the first respondent alleges that the introduction of carers was a means 'to marginalize and displace' her. This, despite the undisputed evidence from Dr Danielle Klemp of Chariot Health that Rien requires 24-hour palliative care from a team of medical personnel.

[9] It is also not in dispute that the living circumstances between the first respondent and Rien have become untenable such that, in the correspondence leading up to this litigation the first respondent has recorded her willingness to engage in mediation regarding 'the terms and manner of [her] departure', though she does not admit the allegations of unlawful occupation.

[10] Whilst the main issue raised by the first respondent in her correspondence was a maintenance claim against Rien, in these proceedings she relies on a lifelong

right of occupation which she claims was granted by Rien, and was fortified by the terms of an alleged partnership agreement signed by Rien in October 2024. In addition, she claims that it will not be just and equitable to evict her from the property, citing her personal circumstances which are discussed later.

[11] The first respondent has also brought two applications. First is a conditional counter-application in which she seeks an order permitting her to continue residing in the property pending institution of action or application proceedings to resolve the rights of the parties or the lawfulness of her occupation, and an interdict preventing her eviction from the property.

[12] The second application is for referral of certain issues in the eviction application for oral evidence, Rien's joinder to the eviction application, and that the transaction in terms of the property was transferred from Rien to the applicants be set aside as a sham or fraud. She also seeks postponement of the eviction application so that the issues raised in the referral application can be ventilated. I shall refer to this second application as the 'referral application'.

[13] In the referral application, the first respondent claims that, until receipt of the eviction application she had no knowledge of the transfer of the property, notwithstanding that she has been in continuous occupation of the property and in a life partnership with Rien since 1993. She seeks production of the underlying documents supporting the property transfer, including proof of payment of the purchase price.

B. RELEVANT APPLICABLE LAW

[14] Section 25(1) of the Constitution of the Republic of South Africa Act 108 of 1996 ('the Constitution') provides as follows:

"No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."

[15] Section 26(3) of the Constitution provides:

"(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."

[16] The need to balance the interests of landowners and occupiers of land is reiterated in the Preamble of PIE which provides that:

"AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances."

[17] Section 4 of PIE provides for the eviction of unlawful occupiers. Since the first respondent has been in occupation of the property for more than six months at the time of the eviction application, s 4(7) applies. It reads as follows:

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

[18] In s 1 'unlawful occupier' is defined as follows:

“‘unlawful occupier’ means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act would be protected by the provisions of the Interim Protection of the Informal Land Rights Act, 1996 (Act 31 of 1996).’

[19] *‘Person in charge’* is defined in that section as ‘a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question’.

[20] Sub-sections 4(8) and (9) of PIE provide that:

“(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine—

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

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

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

[21] It is trite by now that the question of the lawfulness or unlawfulness of the occupation is not determined in isolation from the justice and equity provisions of the PIE Act:

“[t]he court will grant an eviction order only where: (a) it has all the information about the occupiers to enable it to decide whether the eviction is just and equitable; and (b) the court is satisfied that the eviction is just and equitable, having regard to the information in (a). The two requirements are inextricable, interlinked and essential. An eviction order granted in the absence of either one of the two requirements will be arbitrary. I reiterate that the enquiry has nothing to do with the unlawfulness of occupation. It assumes and is only due when the occupation is unlawful.”¹

¹ *Occupiers, Berea v De Wet N.O. and Another* 2017 (5) SA 346 (CC), at para 47. *Stroebe v Witzenburg Municipality* (A176/17) [2017] ZAWCHC 126 (2 November 2017).

[22] In *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and others*² the Court stated that the purpose of PIE was as follows:

"...what [PIE] does not do is to abolish the common-law right of an owner to the exclusive enjoyment of his property and the owner's inherent right to the legal protection of his property. The Act sets out to control in orderly fashion those situations where it had become necessary to evict persons who had occupied land belonging to another unlawfully. The procedures prescribed by the Act which have to precede removals have made inroads into the rights of property owners to protect their property against unlawful occupation."

[23] In *Ndlovu v Ngcobo; Bekker and another v Jika*³ the Supreme Court of Appeal emphasised that:

"The effect of PIE is not to expropriate the landowner and PIE cannot be used to expropriate someone indirectly and the landowner retains the protection of s 25 of the Bill of Rights. What PIE does is to delay or suspend the exercise of the landowner's full proprietary rights until a determination has been made whether it is just and equitable to evict the unlawful occupier and under what conditions. Simply put, that is what the procedural safeguards provided for in s 4 envisage."

[24] In *Occupiers of Erven 87 and 88 Berea v De Wet NO and Another (Poor Flat Dwellers Association as Amicus Curiae)*⁴ the Constitutional Court held that:

"The effect of PIE is not and should not be to effectively expropriate the rights of the landowner in favour of unlawful occupiers. The landowner retains the protection against arbitrary deprivation of property. Properly applied, PIE should serve merely to delay or suspend the exercise of the landowner's full property rights until a determination has been made whether it is just and equitable to evict the unlawful

² *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others* 2001 (4) SA 759 (E).

³ *Ndlovu v Ngcobo, Bekker and Another v Jika* (1) (240/2001, 136/2002) [2002] ZASCA 87; [2002] 4 All SA 384 (SCA); 2003 (1) SA 113 (SCA) (30 August 2002).

⁴ *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* (CCT108/16) [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC) (8 June 2017).

occupiers and under what conditions.”

[25] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*⁵ the Supreme Court of Appeal held that when determining whether it is just and equitable to evict the unlawful occupier, the Court must determine whether it is just and equitable to order eviction having considered all relevant circumstances; and consider what date would be just and equitable upon which the eviction order should take effect.

C. DISCUSSION

[26] As previously mentioned, the first respondent's opposition to the application is based mainly on alleged assurances made by Rien that she would have a lifelong right to remain at the property. She states that he repeated these assurances during a family meeting in 2020 and confirmed them in October 2024 when he signed a partnership agreement. All of this is denied by the applicants, as well as Rien who has deposed to an affidavit in reply, including the family meeting of 2020 and the signature of the partnership agreement by Rien.

[27] What is clear from the first respondent's version is that the alleged assurances of a lifelong right of occupation were made verbally and were not reduced to writing during the existence of the cohabiting relationship, until 2024 which was after the transfer of the property to the applicants. The lifelong right was also not registered against the title deed of the property. The first respondent did not

⁵ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* (SCA) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206 (SCA); [2013] 1 All SA 8 (SCA) (14 September 2012).

pay or exchange anything for the purported right of occupation, and it must accordingly be assumed to have taken place by way of a donation.

[28] A right to habitation (or *habitatio*) is a lifelong right to live in a house owned by another.⁶ It is a limited real right which confers on the holder the right to dwell in the house of another, without detriment to the substance of the property.⁷

[29] If registered against the title deed of the property, the right of *habitatio* would be capable of being enforced against the world at large and would in turn amount to a limited real right in that property.⁸

[30] In order for a right of *habitatio* acquired by way of donation, to be valid, it is must comply with the provisions of the Alienation of Land Act 68 of 1981 (*the Alienation Act*), the General Law Amendment Act 50 of 1956, and the Deeds Registries Act 47 of 1937.

[31] The Alienation Act defines “*land*” as including, “...any interest in land” and “*alienation*” of land as including any sale, exchange or donation thereof. Section 2(1) provides that:

“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”

⁶ *Grobler v Phillips and Others* (CCT 243/21) [2022] ZACC 32; 2023 (1) SA 321 (CC); 2024 (1) BCLR 115 (CC) (20 September 2022) para 5, ft 2. See *Hendricks v Hendricks* [2015] ZASCA 165; 2016 (1) SA 511 (SCA) para 6.

⁷ *Hendricks v Hendricks* [2015] ZASCA 165; 2016 (1) SA 511 (SCA) para 6.

⁸ *Grobler v Phillips and Others* (446/2020) [2021] ZASCA 100 (14 July 2021) para 42. *Willoughby's Consolidated Co Ltd v Copthall Stores Ltd* 1918 AD 1 at 16; *Janse van Rensburg and Another v Koekemoer and Others* 2011 (1) SA 118 (GSJ) para 19.

[32] A conferral of a right of occupation by an owner of land to another, whether by virtue of a sale, exchange or donation, accordingly, falls within the ambit of the Alienation Act and is required to be in writing and signed by the parties (or their agents) for that right to be of any force and effect. None of this was done in this case.

[33] As for the General Law Amendment Act, section 5 provides as follows:

“No donation concluded after the commencement of this Act shall be invalid merely by reason of the fact that it is not registered or notarially executed: Provided that no executory contract of donation entered into after the commencement of this Act shall be valid unless the terms thereof are embodied in a written document signed by the donor.”

[34] Section 65 of the Deeds Registries Act provides as follows:

“65. Registration of notarial deed creating personal servitude:

- (1) *Save as provided in any other law, a personal servitude may be created by means of a deed executed by the owner of the land encumbered thereby and the person in whose favour it is created, and attested by a notary public: Provided that in the case of a servitude in favour of the public or of all or some of the owners or occupiers of erven or lots in a township or settlement, the registrar may, if in his opinion it is impracticable to require such deed to be executed by the persons in whose favour the servitude is created, register such deed notwithstanding the fact that it has not been executed by such persons: Provided further that where it is desired to register a road or thoroughfare in favour of the public at the same time as the registration of a subdivision which it serves, it shall in like manner and without the registration of a notarial deed be permissible to register it in the deed relating to the subdivision and also to endorse the deed of the remainder accordingly: Provided further that conditions which restrict the exercise of any right of ownership in immovable property may be included in any deed of transfer of such immovable property tendered for registration if such conditions are capable of being enforced by some person who is mentioned in, or, if not mentioned therein, is ascertainable from the said deed of transfer or from other evidence and such person, if determinable, has signified acceptance of such right.”*

[35] In *Scholtz*⁹ this Court considered the application of section 5 of the General Law Amendment Act to a donation of property encumbered by a mortgage bond, made during marriage, and whether the property may validly be donated to another party, even though no reference is made to the mortgage bond in the deed of donation. The Court referred to *Stalwo*¹⁰ where the following was stated:

"Section 2(1), whose objective is to achieve certainty in transactions involving the sale of fixed property regarding the terms agreed upon and limit disputes, requires an agreement for the sale of land to be in writing and signed by the parties. That means that the essential terms of the agreement, namely the parties, the price and subject matter, must be in writing and defined with sufficient precision to enable them to be identified. And so must the other material terms of the agreement."; and

"This dictum is instructive. In my view, the same objective must underpin the provisions of Section 5 of the General Law Amendment Act, namely, to achieve certainty in transactions.

[36] In *Janse Van Rensburg*, the Court was called upon, by way of an exception, to consider whether an oral agreement granting a servitude over immovable property contravened the provisions of the Alienation Act. In upholding the exception, the Court placed reliance on *Felix*¹¹ and stated as follows:

"Once it is concluded that a servitude such as habitatio or usus or usufructus constitutes a subtraction of the dominium in land it follows that any agreement granting such right has to be in writing and signed by the parties upon pain of being declared invalid in terms of the aforesaid sections. For the same reasons, mineral rights are also to be in writing to be valid. Units in a sectional titles scheme are also defined as "land" in section 1 of the Alienation of Land Act. All formalities pertaining to the sale and purchase of units have to comply with section 2(1) of the Act. In the light of these analogous situations, it seems incongruous that a servitude of habitatio, usus or usufructus orally concluded can be valid and enforceable. In each instance there is a measure of deprivation of the owner's title to the immovable property. As such they

⁹ *Scholtz v Scholtz* (4958/2008) [2011] ZAWCHC 125; 2012 (1) SA 382 (WCC) (2 February 2011).

¹⁰ *Stalwo (Pty) Ltd v Warv Holdings (PM Ltd and Another* 2008 (1) SA 654 (SCA) at para [7]

¹¹ *Felix and Another v Nortier NO and Others* (2) 1994 (4). SA 502 (SE) at 506D-H.

have to be in writing and signed by the parties to have any force whatsoever."¹²

[37] At paragraphs 20 and 21 the Court continued as follows:

"[20] There is an additional reason for holding the proposed amendment excipiable. It is evident from the contents of paragraphs 15 to 24 thereof that the plaintiffs do not seek to allege that the oral servitude was obtained because of some quid pro quo, be it the payment of a purchase price or the exchange of other rights. The proposed amendment relies expressly on the contents of paragraph 11 of the particulars of claim. In paragraph 11.5 it is expressly alleged that the plaintiffs were afforded the right of residence "gratis" and without the need to pay rentals or any other remuneration. In effect, the proposed amendment can only be interpreted as relying on the personal servitude of habitatio having been donated to them by the first respondent. In terms of section 5 of Act 50 of 1956, donations of future entitlements have to be in writing to have any force or effect. The proposed pleading conflicts with this provision. In addition the word "alienation" of land in Act 68 of 1981 is defined to include a donation. Any donation of an interest in land must as of necessity also be in writing and signed by the parties. The proposed amendment therefore conflicts with the Alienation of Land Act even if the amendment is to be interpreted as a donation.

[21] In my view I am bound by the findings of Louw AJ in this case as far as he found that the oral agreement relied upon by the applicants in paragraph 11 of the particulars of claim, is rendered of no force or effect by the provisions of section 2(1) of the Alienation of Land Act. In the present instance the proposed amendment is still reliant upon the source of the applicants' rights being an oral agreement amounting to a servitude. It is specific performance of that oral agreement which is sought alternatively the proposed amendment relies on that oral agreement to establish a clear right entitling the applicants to an interdict. That being the case I am of the view that the exception on this ground against the proposed amendment is well taken."

[38] In *Grobler* an occupier of property sought to rely upon an oral right of occupation of the property for life, which she contended was granted by a previous owner of the property but was not reduced to writing. It was common cause that the owner of the property was made aware of this purported right when purchasing the property but he denied that it was enforceable against successive owners since it was not reduced to writing or registered against the title deed of the property.

¹² At paragraph 18.

Although the reliance on the lifelong right of occupation was ultimately abandoned on appeal, the Supreme Court of Appeal (SCA), made reference to the matters of *Willoughby's Consolidated Co Ltd v Copthall Stores Ltd, Janse van Rensburg and Another v Koekemoer and Others*, and stated as follows:

“It was accepted that the right, conferred by Mr Rack and in respect of which there was objective evidence to be found in a subsequent deed of sale of the property, had not been reduced to writing and had not been registered against the title deed. To qualify as a right of habitatio enforceable against successors in title this was required.”

[39] It is accordingly settled law that, absent the purported lifelong right of occupation having been reduced to writing and signed by both parties, and registered against the title deed of the property, a lifelong right of occupation (or *habitatio*) is invalid and unenforceable against, not only the transferor but also any subsequent owner of the property (in this case the applicants).

[40] To supplement her case, the first respondent invokes the law relating to cohabitation. She refers to the High Court judgment of *LM v RK*¹³ in this Division where the Court recognized the existence of a universal partnership. However, that judgment does not assist her. What is immediately apparent from the first paragraph thereof is that the eviction proceedings were held separately from those proceedings in which the plaintiff sought recognition of a universal partnership. Secondly, as that judgment acknowledged, there are often insuperable difficulties encountered in proving the nature and consequences of permanent life partnerships, which are also present here. Thirdly, similar to *Bwanya*¹⁴ which was referred to in that judgment, the issues for determination in *LM v RK* related to the

¹³ *LM v RK* 2022 JDR 1399 (WCC).

¹⁴ *Bwanya v Master of the High Court, Cape Town and Others* (CCT 241/20) [2021] ZACC 51; 2022 (4) BCLR 410 (CC); 2022 (3) SA 250 (CC) (31 December 2021).

maintenance and intestate consequences of the relationships, and that was the context of the judgment.

[41] It may well be that the first respondent is entitled to maintenance or other claim by virtue of her relationship with Rien. However, that is not the same as a right to remain in occupation of the property which is at issue in this case. As it is, Rien not only terminated their relationship but asked her to vacate the property as a consequence of the termination. And it is common cause that the relationship has indeed been terminated. That being the case, her right to remain in occupation cannot possibly flow from the cohabitation relationship but must be based on something else. As the earlier discussion has established, there is no merit on a claim based on *habitatio*. Before I consider the first respondent's reliance on the partnership agreement which is the next string to her bow, it is worth mentioning that her version regarding the nature of her right to live and remain on the property is not entirely consistent.

[42] In the first respondent's papers there is also mention of a usufruct, which is not the same thing as a *habitatio*. As the SCA explained in *Spangenberg*¹⁵, whilst the holder of a *habitatio* has a lifelong right to live on the property or to let the property out without the right to enjoy its fruits, a usufruct grants a person the right to occupy a property belonging to someone else and to enjoy its fruits for a limited period of time whilst ensuring that the property itself is preserved. The latter is not the nature of a right alleged by the first respondent in these proceedings, for what she alleges is a lifelong right which persists beyond and above the rights transferred to the applicants.

¹⁵ *Spangenberg and Others v Engelbrecht NO and Another* (717/21) [2023] ZASCA 100 (14 June 2023) para 20.

[43] Yet, the first respondent's daughter, Ms Lesley Rochat (*"Ms Rochat"*) has deposed to an affidavit alleging that in 2017 Rien personally assured her that the first respondent would have a 'lifelong usufruct over the property', and that this was affirmed at a meeting in 2020. The same deponent states that she consequently drafted the terms of the partnership agreement as confirmation of Rien's assurances. Not only do these averments defy the definitions set out in *Spangenberg* above, but they also do not provide detail of the nature of the alleged 'lifelong usufruct.' Moreover, the partnership agreement, to which I now turn, does not support Ms Rochat's averments.

[44] The only provisions in the partnership agreement which make mention of housing provide as follows:

“2. Provision of Support to [first respondent] until death:

[Rien] agrees that upon his death, his estate will be responsible for continuing to provide the following support for [first respondent]:

(a) Housing: The estate will ensure that [first respondent] is provided with suitable housing, which may include the continuation of residence in their current home, or provision of an equivalent home of the same standard close to [first respondent's] family.”

[45] The document is not a model of clarity. First, paragraph 2 expressly states that it seeks to make “*provision of support to [first respondent] until death*”. It is not clear whose death this subheading refers to. It is likely a reference to the death of the first respondent. In other words that the intention is to provide for the first respondent until her death.

[46] Regardless, it is the body of the text which provides even less support for what the first respondent and Ms Rochat contend. It expressly seeks to make provision for the first respondent upon the death of Rien by providing that: “[Rien]

agrees that upon his death, his estate will be responsible for continuing to provide the following support for [first respondent]”. The same intention is clearly set out in the introductory paragraph, as follows:

“WHEREAS [Rien] is currently ill and wishes to ensure that [the first respondent] continues to receive the same level of support and care in the event of [Rien's] death before [first respondent]”

[47] In fact, Ms Rochat herself states in her affidavit that the intention was to confirm the alleged verbal undertaking Rien had made of a lifelong usufruct over the property should he pass away before the first respondent. Such an interpretation is also supported by the use of the phrase ‘his estate’ in the subsequent paragraphs, which seek to ensure that provision will be made for the first respondent from the proceeds of the estate of Rien. All of this provides the context for clause (a) in the purported agreement which provides for housing, namely that it is upon the death of Rien that housing is to be provided for the first respondent. But Rien is not dead. And the property in question was in any event transferred from him to the applicants two years ago. So, the trigger for the provision of housing in clause (a) has not occurred.

[48] Turning to the housing provision in clause (a), it states that the estate is to ensure that what is to be provided is in the first instance, “*suitable housing*”, not necessarily the property in question in these proceedings, although there is also mention that that suitable housing “*may include the continuation of residence in their current home*”. It is clear from this language that what is sought to be provided is continuation of a similar standard of living for the first respondent. That much is made clear by the remainder of the provision which makes specific reference to “*provision of an equivalent home of the same standard*”.

[49] This may explain why the first respondent made no mention of a lifelong right to remain in occupation of the property in the correspondence leading up to this litigation, but instead chose to rely on a maintenance claim. What cannot be denied is that the partnership agreement makes no reference to a lifelong right to remain in occupation of the property, or of a usufruct, and it accordingly does not support the first respondent's and Ms Rochat's allegations in this regard. In any event, as the applicants point out, Rien could not legally confer such a right in October 2024 since the property had long-been transferred to the applicants by then. Furthermore, the alleged right was not reduced to writing and registered in the Deeds Office pursuant to the alleged agreement in 2020 or in 2024.

[50] That being so, to the extent that the first respondent relies on the alleged *habitation*, *usufruct*, and partnership agreement, she has failed to establish a case. No other right to remain at the property has been established by her, even on a *prima facie* basis, to enable the court to stay these proceedings. There is no genuine dispute of fact raised in this regard which needs to be resolved by way of oral evidence because her own case does not establish facts necessary for such claim.

[51] The only possible dispute concerns the issue of the transfer of the property to the applicants, of which the first respondent claims she had no knowledge until "sometime in 2025". It is in this regard that the referral application is brought, so that it can be shown that the property transaction was a "sham/fraud".

[52] Uniform Rule 6(5)(g) provides as follows:

"Where an application cannot properly be decided on affidavit the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision. In particular, but without affecting the generality of the foregoing,

it may direct that oral evidence be heard on specified issues with a view to resolving a dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.”

[53] It is trite that oral evidence that will not affect the outcome of the claim for substantive relief and it will not be allowed it will only lead to unnecessary delay and unnecessary costs being incurred.

[54] The highwater mark of the first respondent’s case in this regard is that the property is worth substantially more than the alleged purchase price of R8,100,000.00. In that regard, she seeks the source documents for the transaction, including the deed of sale setting out the terms and conditions of the sale, particularly the purchase price, an opportunity to cross-examine the applicants and Rien.

[55] One of the factors that take into account is that the first respondent does not specify when exactly she discovered the transfer of the property, and her counsel could not provide any clarity in this regard when pressed by the court. I accept however, that it was before 3 April 2025, since it was mentioned by the first respondent in her letter of that date. Despite that discovery, the first respondent did not immediately pursue a legal challenge to the transfer, which she had already discovered was effected in 2022, until the referral application which was launched as an interlocutory application to these proceedings. In those circumstances, I consider it unfair to delay these proceedings especially given that her basis for a right to occupation does not withstand scrutiny.

[56] Another reason I do not consider it appropriate to grant the referral application is that its intention is ultimately to determine the financial consequences of the cohabitation relationship between Rien and the first respondent, which is not the purpose of eviction proceedings. As I have already mentioned, the facts surrounding the relationship are fraught with disputes which may well need ventilation by way of oral evidence. Given that the property has already been transferred out of Rien's estate, the issue regarding this particular property for all practical purposes resolves itself into one of financial consequences, which the parties may determine elsewhere. Again, it is relevant here that the first respondent has failed to establish a right to continue occupying this particular property.

[57] As a result, the counter-application and the referral application must be dismissed.

D. EVICTION & JUST AND EQUITABLE CIRCUMSTANCES

[58] The first respondent turns 87 years on 17 December 2025. She has become accustomed to receiving financial support from Rien. Her health has deteriorated with age and as a result of the stressful living conditions related to this matter that she also attests to, she states that she has developed a serious heart condition, myocarditis, asthma and persistent eczema.

[59] As regards her financial means, although she states that she is a pensioner who receives a state pension of R2200 per month and who is no longer in regular employment, it is not disputed that, between October 2024 and April 2025, she held a cumulative sum of R1,132,199.54 in two of her ABSA bank accounts. Her

answer regarding these funds is that they are ‘*limited and are already earmarked for necessary living expenses, medical needs, and legal presentation in these proceedings*’. These are vague averments, made without any supporting documentation. It is also not disputed that she holds a number of other bank accounts, whose details have not been disclosed in these proceedings.

[60] By all accounts, the first respondent has become accustomed to an affluent life. The papers indicate that in April 2024 she underwent a cosmetic breast augmentation procedure for which she, not Rien, paid in an amount of over R45,000.00. Together with her daughter, she is both a beneficiary and trustee of The Whispering Hope Trust, which owns a farm property in Gauteng. This is one of the possibilities of alternative accommodation pointed to by the applicants.

[61] In addition to all this, on 1 March 2004 Rien caused one of his properties, Erf 1471, Prince Albert, to be transferred to the first respondent, to serve as a “nest egg” or investment for her. The first respondent subsequently sold the said property on 6 January 2022 for R395,000.00, the proceeds of which were all retained by her.

[62] Two further properties co-owned by Rien and the first respondent in Prince Albert were sold, on 4 October 2020 and 13 October 2020, and 50% of the proceeds were paid to the first respondent, in the amounts of R180,476.65 and R571,724.71, respectively. As I have already mentioned, Rien also gifted the first respondent with four gold coins valued at approximately R240,000.00.

[63] All the above may explain why the first respondent has not alleged that an order of eviction will render her homeless. Instead, she states that she will not be able to find “*alternative housing that is safe, appropriate and sustainable*” to her.

[64] Furthermore, the record indicates that she has access to alternative homes, and has 9 children. Two specific properties are mentioned in the papers as possible alternative accommodation for her, namely in Betty's Bay and Gauteng. She denies this, however, stating that she has no legal entitlement to occupy the property in Betty's Bay, and that she has not been invited to reside there. Further, she states that Betty's Bay is unsuitable because flatlet in question is incomplete, the area is remote and lacks access to essential facilities, and points to the absence of nearby infrastructure, specialist doctors and hospitals.

[65] As for the Gauteng property, she states that she has no enforceable right to occupy it, though she does not deny that it is owned or administered by a trust in which she, and/or her relatives are involved. She also states that the property in question is in a remote rural area, far from medical support, and extremely unsafe.

[66] It is understandable that the first respondent is attached to the property in question in these proceedings, which has been her home for 30 years. Whilst I agree that removal from her immediate environment at this stage of her life might bring instability, I do not agree that that means she cannot find accommodation in the vicinity of the current home. It has not been shown that she cannot do so.

[67] In this regard, the Applicants attached to their papers a list of readily available alternative accommodation for rental within the vicinity of the property in question. The first respondent's response was that the properties do not consider her *'personal needs, income level, proximity to medical care or the broader realities of finding age appropriate housing in a limited budget'*. These are vague

responses, and lack particularity. Only the first respondent, who is also legally represented, could provide full and specific details regarding her needs in this regard.¹⁶ Also relevant is the fact that the first respondent was served with the Municipality's housing questionnaire on 4 September 2025 and she has failed to complete it.

[68] Finally on this issue, as already discussed, even the alleged partnership agreement drawn up by Ms Rochat contemplates that alternative suitable housing may be appropriate for the first respondent instead of the property in question. In other words, that she may have to look for alternative housing elsewhere.

[69] When taking into account the first respondent's responses in relation to all the alternative accommodation suggested by the applicants, it appears that her attitude is that it does not suit her wishes or personal preferences, which is not a relevant consideration when considering an eviction in terms of the PIE Act.¹⁷

[70] For all these reasons, I am of the view that it is just and equitable for the first respondent to be evicted from the property, not least because of the toxic environment surrounding Rien which is not seriously disputed. He too is a vulnerable individual, given his age and the state of his health, and deserves peace in the home.

[71] When considering a reasonable date for the first respondent to vacate the property, I take into account the fact that Rien has been diagnosed with stage-4

¹⁶ *Luanga v Pethpark Properties (Pty) Ltd* 2019 (3) SA 214 (WCC) at para 47.

¹⁷ See *Grobler v Phillips* 2023 (1) SA 321 (CC) at 36 and 44.

cancer and requires constant care free from interference which has been established in these proceedings. I also take into account that the first respondent has been afforded, effectively since March 2025 to vacate the premises. There was also a time, in April 2025, when she indicated that she would be vacating and instead she reneged citing in effect, a maintenance claim. I am accordingly of the view that it is reasonable to grant the first respondent until the end of January 2026 to vacate the property, to enable her to make arrangements for alternative accommodation.

E. ORDER

[72] In the circumstances the following order is made:

1. The first and second respondents, and all those holding title under them at the property described as 1[...] N[...] Way, Noordhoek, Cape Town Western Cape ('the property') must vacate the property by, at the latest, Friday 30 January 2026.
2. In the event that the first and second respondents and all those holding title under them fail to comply with prayer 1 above, the Sheriff or his/her lawfully appointed deputy is hereby authorized to eject them from the property from 2 February 2026.
3. The counter-application and the application for referral of certain matters to oral evidence brought by the first respondent are dismissed.
4. The first respondent is ordered to pay the costs of litigation, including costs of counsel, on Scale A.

N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances:

For applicants: F. Sievers SC

R. Randall

Instructed by: S. Kimar, Marlon Shevelew & Associates Inc

For first respondent: P. Coston

Instructed by: B. Carnegie, Brett Carnegie Attorneys