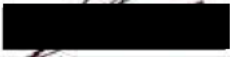


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 085565/2024

DATE: 2025-11-19

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED 

In the matter between

10

D SODHA

and

C JERAM

J U D G M E N T

YACOOB, J: The applicants in this matter approach this Court in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE"), for the
20 eviction of the first respondent, who is the first applicant's stepmother, having been married to the first applicant's now deceased father.

There are a number of issues with the application, the first of which is that the founding affidavit, which was notarised in the Netherlands, does not fulfil the

requirements of an affidavit in the sense that the person who notarised it did not enquire from the person giving the statement whether he understood the contents, whether the contents were true and whether he was signing of his own free will.

The notarisation only confirms the authenticity of the signature. This is the same situation with the replying affidavit. On the 11th of November, six days before the hearing of this matter, a supplementary affidavit was sought
10 to be filed by the attorney of the applicants annexing confirmatory affidavits by the two applicants, purportedly to deal with a "technical" issue.

In the affidavit, the attorney states that the two confirmatory affidavits confirm that the prior affidavits by the applicants were deposed to by them under oath. Of course, the issue is not whether it is them who deposed to those affidavits, as their identity was confirmed. It is the question of whether it was under oath or affirmation and whether the truth can be vouched for.

20 The affidavit of the first applicant which is annexed to the supplementary affidavit does not say that the contents of the founding and replying affidavits, of which he is the deponent, are true. It simply confirms that it is his signature. As I have said before, that was not the issue.

Since the confirmatory affidavits do not deal with the problem with the founding and replying affidavits, I do not consider that it is in the interest of justice to admit the supplementary affidavit. I was then asked whether it would be appropriate for the first applicant who is present to confirm the contents of the affidavits. However, that is a highly exceptional procedure. It is used in the urgent court for obvious reasons. This is not the urgent court.

10 It was then submitted that it would be appropriate to refer the matter to oral evidence and for me to hear that oral evidence now. I can see no reason why that would be in the interests of justice. Again, this is the ordinary opposed motion court. The parties have had a very long time to make sure that everything is in order and I can see no factor here which enjoins me to employ extraordinary procedures to ensure that the applicants get their relief.

20 These decisions were not made in a vacuum because I also considered the contents of the affidavits and statements that are before the court. In determining what courses of action are available to the Court and what would be in the interests of justice, I interrogated with the applicant's representative whether, if I did permit some unusual method of verifying the contents of the affidavits, the applicants would then have a case that was made out and which would allow me to grant them any relief.

The problem is that the founding and replying statements contain very little in the way of information. The Court, in making a decision in terms of PIE, has to consider all relevant circumstances. It is not sufficient for an applicant under PIE simply to allege that they are the owner and that their use and enjoyment of the property is being stymied by the respondent.

PIE requires the Court to make a decision that it is just and equitable, and, in a situation such as this one where
10 there is a family relationship, more information is required. The applicants place nothing before the Court about themselves, about their financial position or in fact about any actual prejudice they suffer from the respondent's continued occupation of the land of the property.

There is a bald allegation that the applicants are paying the mortgage, however there is no proof of that or of how much it is. There is no evidence of the relative financial strength of the two parties. There is no evidence that the applicants are in fact paying the rates on the property.
20 There are a host of other things the applicants could have put before the Court but do not because they rely strictly on a *rei vindicatio* for an eviction in terms of PIE.

There may be some circumstances where that would be sufficient but in this particular application it is not. There is a reason why "all relevant circumstances" is not identified

or particularised in PIE. That is, that what is relevant is different in every application.

It is true that the respondent herself also places very little before the court. She does not disclose her financial situation. She simply says her family cannot help her. She does not give any more detail. That is also not sufficient, but it is not the respondent who bears the onus. So in my view there is nothing to be gained from allowing the exceptional processes suggested on the applicants' behalf
10 because the applicants, even if all their papers were in order, simply have not put before the Court sufficient to make out a case that the Court should exercise its discretion in their favour.

There will be no real prejudice to the applicants if the application is dismissed because of course the cause of action is not extinguished by that. The dismissal of motion proceedings amounts in essence to absolution of the instance and they can always bring a fresh application with all the relevant information and with proper affidavits.

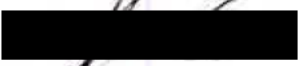
20 It was submitted that because the respondent was represented on a *pro bono* basis that no costs order should be made. However there is no reason why the attorney should not be entitled to the disbursements and any other costs even if counsel does not obtain fees out of the costs order. It was submitted by the respondent that the

application should be dismissed with costs on scale A but of course scale A only deals with counsel's appearance and it is not clear to me that counsel is going to be getting any fees for appearance. In any event scale A is the default scales so would not be necessary for me to specify.

In those circumstances I make the following order:

The application is dismissed and the applicants are to pay the first respondent's costs jointly and severally.

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 05/12/2025

TRANSCRIBER'S CERTIFICATE

D SODHA// C JERAM

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between the parties stated above:

CASE NUMBER	: 085565/2024
RECORDED AT	: JOHANNESBURG
DATE HELD	: 2025-11-19
NUMBER OF PAGES	: 6

TRANSCRIBER'S NOTES / PROBLEMS EXPERIENCED

TRANSCRIBER:

MRS F VAN SCHALKWYK

DATE COMPLETED:

2025-11-26

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