



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

Case no: **D12592/2022**

In the matter between:

**SAROJANIE GOVINDAN N.O.
SAROJANIE GOVINDAN**

**FIRST APPLICANT
SECOND APPLICANT**

and

**THAMANATHRAN GOVINDAN
ROMILA GOVINDAN**

**FIRST RESPONDENT
SECOND RESPONDENT**

Coram: MOSSOP J
Heard: 19 January 2026
Delivered: 19 January 2026

ORDER

The following order is granted:

1. The first and second respondents, and all other persons claiming a right of occupation through the respondents, shall, by 31 July 2026, vacate the immovable property described as the ground floor unit at 1[...] S[...] P[...] Drive, S[...] P[...], Phoenix.

2. During the potential period of occupation terminating on 31 July 2026, the respondents shall continue to pay the costs of all utilities consumed by them arising out of their occupation of the immovable property during that period of occupation.
3. The second applicant shall pay the costs of relocating the respondents from the immovable property mentioned in paragraph 1 to their new place of accommodation, provided that the new place of accommodation is situated within the greater Durban area.
4. In the event of the first and second respondents failing or refusing to comply with paragraph 1 of this order, the sheriff of this court be and is hereby authorised and empowered to forthwith eject them, and any other persons claiming a right of occupation of the immovable property, from the said immovable property.
5. Each party is directed to pay their own costs.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex tempore judgment.

[2] The applicants seek the ejectment of the two respondents from certain immovable property that they presently occupy located at 1[...] S[...] P[...] Drive, Ground Floor unit, S[...] P[...], Phoenix, a suburb of Durban, KwaZulu-Natal (the immovable property). The immovable property is registered in the names of the deceased and the second applicant.

The parties

[3] The parties to this application are related to each other by marriage. The second applicant was married to the late Mr Thamanthran Govindan (the deceased), who passed away on 5 August 2021. The first applicant is the second applicant cited in her representative capacity as the executrix of her late husband's estate. The first and second respondents are the parents of the deceased and are no longer in the

youth of their respective lives: the deceased's father, the first respondent, is aged 79 and his mother, the second respondent, is aged 72.

The applicants' version

[4] The second applicant admits that in April 2021, she and the deceased agreed that the respondents could occupy the immovable property provided that they paid the costs of the utilities consumed by them as a consequence of that occupation. The invitation to occupy the immovable property was taken up by the respondents. Thus, it is submitted that the respondents are monthly tenants and are obliged to vacate the immovable property on the giving of one month's notice. The respondents, even on the applicants' own version, have diligently made all payments for the utilities consumed by them throughout their period of occupation of the immovable property.

[5] However, since the death of the deceased, the second applicant has allegedly found herself in financial straits due to the loss of the deceased's salary since his death. To ease the financial pressure that she is allegedly currently experiencing, the second applicant has resolved that it is necessary for the immovable property to be sold. She accordingly gave notice to the respondents to vacate the immovable property twice: first on 21 January 2022 and then on 9 October 2022. Neither of the notices were effective and the respondents remain in occupation of the immovable property against the applicants' wishes.

[6] Notwithstanding the unwillingness of the respondents to vacate the immovable property, the second respondent has marketed the immovable property as being for sale and claims that she previously succeeded in attracting a purchaser for it but, because the respondents obdurately refused to vacate the immovable property, the sale fell through.

[7] The second applicant states that the respondents have sufficient resources available to them to obtain alternative accommodation and, if that is not the case, that they have two adult daughters who will be able to assist them with alternative housing. The second respondent explains that she attempted to have the

respondents relocated to a retirement centre, but that her efforts in this regard were in vain because the respondents simply refused to co-operate with her and declined to complete the prescribed admission form.

The Municipal report

[8] Contained within the court file is a report from the eThekweni Municipality (the Municipality) prepared in terms of s 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). It reveals that the respondents have a combined monthly income of R5 200 and, significantly, it states that the respondents informed the author of the report, a senior manager in the Municipality's Human Settlement Department, that:

‘... their daughter is willing to house them, should the court grant the Eviction Order.’

[9] The author of the report goes on to state that whilst the Municipality has a housing backlog of over 500 000 people waiting for accommodation, the Municipality has offered to assist the respondents to construct an informal dwelling by giving them a site upon which to construct the dwelling and the building material with which to do so. The actual erection of the informal dwelling would, however, have to be performed by the respondents themselves and the site allocated to them might not be near where they presently reside. The site and building material would be made available within six weeks of them accepting the Municipality's offer.

The marital regime of the deceased and the second applicant

[10] To the extent that it may be relevant, it is necessary to briefly clarify the marital regime of the second applicant and the deceased. Attached to the founding affidavit is a copy of the title deed relating to the immovable property. It records that the deceased and the second applicant were married to each other in community of property.

[11] That recordal of their marital regime is clearly incorrect. Two further documents establish unquestionably that the deceased and the second applicant were married out of community of property. The first document is entirely dispositive of the issue, because it is a copy of their registered antenuptial contract, dated 7

November 2002. The second document, which has less persuasive power but nonetheless carries some weight, is the last will and testament of the deceased, which also describes the marriage between the deceased and the second applicant as being out of community of property. The entry on the title deed is, therefore, incorrect.

The deceased's will

[12] This document is an attachment to the founding affidavit, and it records that what was referred to by the applicant in the founding affidavit as 'the deceased's will' is, in fact, the joint will of herself and the deceased. It provides that upon either of the deceased or the second applicant dying, the survivor, provided he or she outlived the first dying by a period of 10 days, would become the sole heir or heiress, as the case may be, of the estate of the first dying.

[13] The condition attached to the joint will has clearly been met and the second applicant is thus her late husband's sole heir. Upon the winding up of the deceased's estate she will therefore become the sole owner of the immovable property. While she formally holds the position of executrix, the first applicant has full authority to deal with assets that form part of his estate.¹

The respondents' version

[14] The respondents take the point in limine that the deceased's last will and testament ought not to have been accepted by the Master of the High Court (the Master) because each page of the copy of the document before the court does not appear to bear the initials of the two witnesses to the execution of the will. Thus, because of this alleged irregularity in executing the deceased's will, so the argument goes, the appointment of the first applicant is both irregular and invalid.

[15] I need not dwell on this point at any great length. Firstly, what is before the court is a copy and I cannot be sure that it is a true copy. The version presented to this court may, therefore, be incomplete. Secondly, it is not in dispute that the Master has accepted the joint will as the deceased's valid last instruction as to what is to

¹ *MCM (obo P, R and N.M) v Pedzisai NO and Others* ZAFSHC 355 para 7.

become of his worldly assets and has formally appointed the second respondent as the executor of the deceased's estate.² Until either, or both, of these decisions of the Master are set aside, the second respondent retains her position and authority as the duly appointed executor of the deceased's estate. No formal application has been brought, whether as a counter application to this application or as an independent application, to disturb either of those decisions and I must therefore proceed on the basis that both decisions remain valid.³

[16] The respondents go on to explain that before moving to the immovable property they resided at their niece's premises but were persuaded by their son, the deceased, to move to the immovable property. They state that at the time that the invitation to move to the immovable property was extended to them, they were content with their living arrangements. However, their son insisted that they uproot themselves and take up residence at the immovable property. They eventually relented and agreed to the request. The deceased was, according to the respondents, a successful architect. It would seem that the respondents reluctantly moved their home to the immovable property approximately two years ago but, unfortunately, approximately four months after doing so, the deceased passed away.

[17] No real defence of any substance is otherwise disclosed by the respondents save for a point taken by them relating to the bona fides of the second respondent, which I shall deal with later.

Ownership of property

[18] The ownership of immovable property brings with it certain rights and is definitively established with reference to the title deed pertaining to the immovable property in question.⁴ The title deed in this instance, which is also before the court, reveals that the immovable property is, indeed, registered in the name of the deceased and the second applicant. As executrix of the deceased's estate, the first

² A copy of the letters of executorship is also attached to the founding affidavit.

³ *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA); *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 (3) SA 481 (CC).

⁴ *Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd* 1993 (1) SA 77 (A) page 82; see also *Bowley Steels (Pty) Ltd v 10 Sterling Road (Pty) Ltd and Another* [2017] ZAGPJHC 196.

applicant has the ability and power to deal with the deceased's half share of the immovable property.

[19] In *Chetty v Naidoo*,⁵ the court, in dealing with the topic of ownership of things held that:

‘... one of its incidents is the right of exclusive possession of the *res*, with the necessary corollary that the owner may claim his property wherever found, from whomsoever holding it. It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right).’

[20] Thus, the owner of an immovable property may, subject to the terms of any agreement regulating its occupation, seek an order that occupants who no longer occupy with the owner's consent be ejected from the immovable property. Given that the second respondent is already a half owner of the immovable property and that she is the executrix of the deceased's estate and the sole heir of the estate of the deceased, I must conclude that she has legal standing to seek the eviction of the respondents.

[21] In determining whether ejectment should be ordered, there are two inquiries that must be conducted by the court.

The two inquiries

[22] The two inquiries have their origin in the previously mentioned s 4(7) of the PIE Act. That subsection 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 . . . 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.’

⁵ *Chetty v Naidoo* 1974 (3) SA 13 (A).

[23] Keeping the provisions of s 4(7) of the PIE Act in mind, the correct approach to determining applications brought in terms of this section of that Act was set out by Wallis JA in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others*,⁶ where the learned judge held that:

‘A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve a gradual realisation of the right of access to 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 immovable 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 the 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 had 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.’

[24] In *Ndlovu v Ngcobo; Bekker and another v Jika*,⁷ the Supreme Court of Appeal, made the following observation:

‘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.’

⁶ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) para 25.

⁷ *Ndlovu v Ngcobo; Bekker and another v Jika* 2003 (1) SA 113 (SCA) para 19.

The first inquiry

[25] This relates to whether an eviction order should issue.

[26] I have already concluded that the applicants are entitled to determine who occupies the immovable property. The oral invitation in terms of which the respondents were permitted to take up residence at the immovable property is not alleged by them to have been an agreement in perpetuity nor were its terms defined and agreed upon. It therefore seems to me that the respondents' entitlement to occupy the immovable property was dependent entirely upon the largesse of the second applicant and the deceased, and, therefore, could be terminated by them at the moment of their choosing.

[27] Largesse, defined as being the virtue of generosity or liberality or munificence,⁸ is a human attribute that cannot be compelled to exist. It either exists naturally in the character of a human being, or it does not. While the second applicant may have demonstrated a generosity of spirit that permitted the respondents to occupy the immovable property while her husband was still alive, now that he has passed on, it appears that her liberality of spirit has also left her.

[28] The second respondent therefore cannot be compelled to be kind and generous towards the respondents. Her change of heart towards the respondents' occupation of the immovable property is, however, a change that brings no credit to her. Indeed, it tends to suggest that she is capable of being construed as being mean spirited, for the respondents, in losing their son and benefactor, have suffered a loss as big as, if not greater, than the loss that she has suffered. It is a sad reality that elderly members of society who have limited means available to them are often shifted around by those related to them as if they were insignificant pawns in a game of chess. It is even more unfortunate that such elderly members of a family are often sacrificed by their clansmen, as pawns in a game of chess may be. Elderly members of society are not inanimate objects that can simply be discarded and moved away out of sight when desired: they are living, breathing persons with feelings and

⁸ Oxford Online Dictionary: https://www.oed.com/dictionary/largesse_n?tl=true.

expectations who must be treated compassionately and who must be afforded the dignity to which they are entitled.

[29] I mentioned earlier a point taken by the respondents relating to the second applicant's bona fides in advancing her reasons why she requires the respondents to vacate the immovable property. It appears to me that the respondents have correctly pointed out that the second applicant has not been entirely candid about the extent of her income and her financial standing, for she neglected to inform the court that she, in fact, owns two other units in the same building in which the immovable property is located. She also derives an undisclosed income from the occupants of these two units. While she has indicated that she has met hard times following the loss of the deceased, she has made no attempt to disclose the extent of her income in her founding affidavit and makes no attempt to address the respondents' allegations regarding her income in her replying affidavit.

[30] That having been said, the applicants are in law entitled to terminate the respondents' occupation of the immovable property. The respondents have established no legal entitlement to remain in occupation against the applicants' wishes and I must therefore conclude, not without a great degree of sympathy for them in their plight, that the respondents must vacate the immovable property as demanded.

The second inquiry

[31] This relates to whether any conditions should be attached to the order to vacate the immovable property that must issue. In my view, such conditions should be imposed.

[32] Given their respective ages, previously mentioned, it is likely that the respondents may not have the ability to find alternative accommodation as swiftly as they might have done had they been of younger years. As one gets older, one may still be capable of doing the same things that were done when younger, but it may take a little longer to do so. I accordingly intend giving them a generous amount of time to find another place to stay.

[33] In doing so, I do not lose sight of the Municipality's report that indicates that their daughter will take them in. I am, consequently, satisfied that they will not be rendered homeless. In the event that their daughter has a change of heart, I am also hopeful that the accommodation that they previously enjoyed at their niece's home may yet be available to them again. The time that I intend giving them will allow them to consider all their available options in an unhurried and, hopefully, stress reduced manner. They may, however, choose to move earlier if that suits them. I must, however, for the avoidance of any doubt, order that while the respondents reflect on the best option available to them, they continue to pay the costs of the utilities consumed by them arising from their occupation of the immovable property.

[34] In addition, the respondents moved to the immovable property at the request of their late son and the second respondent. They are being made to vacate by a decision of the applicants. I have a strong suspicion that their son would not have approved of the eviction, and I further suspect that he would not have intended them to pay their own costs of relocating to the new accommodation that they will be required to take up. I accordingly intend ordering that the second applicant pay those relocation costs, not confined to the amount of R10 000 offered by Mr *Morgan*, who appears for the applicants, provided that the new accommodation found by the respondents is within the greater Durban area.

Costs

[35] I have a discretion when it comes to the issue of costs. Given the particular facts of this matter, and the concession by Mr Morgan that he does not seek costs against the respondents, it would be in the interests of justice if I ordered that each party paid their own costs.

The order

[36] I accordingly grant the following order:

1. The first and second respondents, and all other persons claiming a right of occupation through the respondents, shall, by 31 July 2026, vacate the immovable property described as the ground floor unit at 1[...] S[...] P[...] Drive, S[...] P[...], Phoenix.

2. During the potential period of occupation terminating on 31 July 2026, the respondents shall continue to pay the costs of all utilities consumed by them arising out of their occupation of the immovable property during that period of occupation.
3. The second applicant shall pay the costs of relocating the respondents from the immovable property mentioned in paragraph 1 to their new place of accommodation, provided that the new place of accommodation is situated within the greater Durban area.
4. In the event of the first and second respondents failing or refusing to comply with paragraph 1 of this order, the sheriff of this court be and is hereby authorised and empowered to forthwith eject them, and any other persons claiming a right of occupation of the immovable property, from the said immovable property.
5. Each party is directed to pay their own costs.

MOSSOP J

APPEARANCES

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