

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 099042/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES [REDACTED]
2026-01-15	
DATE	SIGNATURE

In the matter between:

DAVID MATTHEW LITTEN N.O.

In his capacity as the executor of the Deceased
Estate of Ann Litten

First Applicant

DANIEL ODENDAAL PRETORIUS N.O.
TRUSTEE OF THE DELTA 2000 TRUST

Second Applicant

MICHAEL BARRY JESSEMAN N.O.

TRUSTEE OF THE DELTA 2000 TRUST

Third Applicant

DRIEHOEK BELEGGINGS (PTY) LTD

Fourth Applicant

KOSMOS VILLAGE ASSOCIATION

Fifth Applicant

and

ALL UNLAWFUL OCCUPIERS OF PORTIONS 38,
39 AND 40 OF THE FARM DE RUST 478
REGISTRATION DIVISION JQ

First Respondent

THE MADIBENG LOCAL MUNICIPALITY

Second Respondent

THE MEC OF THE DEPARTMENT OF HUMAN
SETTLEMENTS OF CO-OPERATIVE GOVERNANCE,
HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS

Third Respondent

THE MINISTER OF HUMAN SETTLEMENTS, WATER
AND SANITATION OF SOUTH AFRICA

Fourth Respondent

THE HEAD OF THE DEPARTMENT RURAL DEVELOPMENT
AND LAND REFORM OF THE PROVINCIAL GOVERNMENT

Fifth Respondent

THE MEC FOR THE DEPARTMENT OF ECONOMIC
DEVELOPMENT, AGRICULTURE, ENVIRONMENT
AND RURAL DEFVELOPMENT

Sixth Respondent

THE MINISTER OF RURAL DEVELOPMENT AND
LAND REFORM

Seventh Respondent

THE MINISTER FOR THE DEPARTMENT OF HOME AFFAIRS Eighth Respondent

THE MINISTER OF POLICE

Ninth Respondent

JUDGMENT

POTTERILL J

Introduction

[1] In this matter the applicants, David Litten N.O., Daniel Odendaal Pretorius N.O., Michael Barry Jesseman N.O., Driehoek Beleggings (Pty) Ltd [Driehoek] and Kosmos Village Association[KVA], collectively referred to as “the applicants” seek the eviction of the first respondent, All Unlawful Occupiers [unlawful occupiers] of Portion 38, 39 and 40 of the Farm De Rust 478 Registration Division JQ [the Property]. Furthermore, the applicants seek an interdict preventing the unlawful occupiers from re-occupying the property.

[2] The unlawful occupiers filed 2 notices to oppose, one by Lawyers for Human Rights and one by Legal Aid Rustenburg. At the previous hearing before me the matter was postponed because a group within the unlawful occupiers submitted that the Legal Aid Rustenburg did not represent them, Lawyers for Human Rights did. I granted the postponement for Lawyers for Human Rights to prepare an affidavit and heads of argument. At this hearing there was no appearance for Lawyers for Human Rights, but the group within the unlawful occupiers expressed their satisfaction that Legal Aid Rustenburg proceed with the matter and aligned them with the answering affidavit and Mr. Matshaba from Legal Aid representing them. Although the notice to oppose and answering affidavit were filed late, the applicants accepted the late filing.

[3] The applicants too sought ancillary relief against the Second Respondent, the Madibeng Local Municipality [Municipality]. The Municipality filed no notice to oppose. Surprisingly it did file an answering affidavit on 8 August 2025, two days before the hearing of the matter on 11 August 2025. Despite it being common cause that the answering affidavit was filed late no condonation application was filed. Non-adherence to Court Rules were compounded when on 10 September 2025 a further affidavit was uploaded onto Caselines by the Municipality. This affidavit is then later deleted from Caselines. On 19 September 2025 a third affidavit is filed: “Report and Supplementary Affidavit.” From these affidavits it is clear that the Municipality did not oppose the application for eviction or the ancillary relief sought. However, it strenuously opposed the costs order sought against it in prayer 10 that reads as follows:

“The second respondent, jointly and severally with any other respondent who may choose to oppose this application, are ordered to pay the costs of this application, including the costs of senior counsel on Scale C, as well as any costs which the applicants may incur in executing the eviction order, on the scale as between attorney and client.”

[4] The fifth Respondent, the Heads of the Department Rural Development and Land Reform of the Provincial Department [Rural Development] and the seventh Respondent, The Minister of Rural Development and Land Reform [the Minister] also filed an answer late but are not opposing the application. The Third, Fourth, Sixth, Eight and Ninth Respondents did not partake in the proceedings.

[5] The Applicants seek that the unlawful occupiers be evicted from the property in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 19 of 1998 [the PIE Act].

The Applicants' case

[6] The deceased, the mother of the executor [First Applicant] is the registered owner of Portion 9 of the property. The deceased's husband was the registered owner of the property since 1969. Portion 9's correct cadastral description is Portion 40.

[7] The Delta Trust [Delta] (represented by Second and Third Respondents) is the registered owner of Portion 38 of the property. Driehoek Beleggings (Pty) Ltd [the Fourth Applicant] is the registered owner of portions 38 and 160 of the property. The property rights of the occupiers of KVA [the Fifth Applicant] affected by the occupation of the property Kosmos Village is close to Hartbeespoort dam within the developed area known as Kosmos Village.

[8] A landscape architect and archaeologist, Mr. Siegwalt Küsel, compiled a report attached to the application, setting out the origin, development, location and future of this informal settlement. From this expert report it is clear that the property is a subdivision of the original farm Grootplaats 194, later De Rust no 194 (now 478 JQ). Portion 9 of Farm De Rust was created as a subdivision of the remainder of Portion 2. The deceased's husband became the owner of a portion of Portion 9 during 1969. He conducted citrus farming on this portion therefore known as “Orange Farms”. He

farmed until 1990 but was by then in his seventies and stopped farming. He intended to sell the property to developers.

[9] During 1990 persons started to illegally occupy portions of this land as well as adjoining portions 38 and 39 of De Rust. A developer, Cosdev (Pty) Ltd offered to buy the deceased's late husband's portion but on condition that the purchaser was able to successfully remove the unlawful occupiers. Cosdev, the deceased's late husband and Delta obtained a court order on 21 September 1999 for the eviction of the unlawful occupiers. A final order was granted on the return date, but the occupiers re-occupied the land.

[10] In September 2000, the deceased's husband passed away, and the First Applicant and his brother assisted the deceased after the property was registered in her name in January 2006.

[11] The trespassing of the unlawful occupiers was reported to the local police regularly, but the police would visit the informal settlement but report that they cannot forcibly remove the occupiers.

[12] The Kosmos Ratepayers and Residents Association [KRRRA] issued an application against the Municipality, Delta, Driehoek Beleggings and the three owners of Portions 38, 39 and 40.

[13] The deceased did not launch the application as it is costly and accordingly did not oppose the application or the order sought. The order was granted directing the Municipality to institute and prosecute interdict proceedings against the owners and/or occupiers to comply with the Town Planning Scheme and Act and issue notices in terms of contravention of the Town Planning Scheme or Act pursuant to conducting an inspection of Portions 39 and 160 within two weeks after the date of the order. The Municipality failed to comply with the order.

[14] On 2 October 2014 the KRRRA launched a further application due to the threat of renewed invasions of the properties. Rabie J, by agreement, granted an order wherein the Municipality had identified Portions 2, 35, 37 and 141 of the farm Bokfontein 448 IQ [Bokfontein], for the relocation of the unlawful occupiers of the informal settlement on the property. The unlawful occupiers were to be relocated

within 24 months after date of the order to Bokfontein. The Municipality had to take all steps to prevent the erection of any further shacks. The Municipality further had to produce a list of all the residents of the informal settlement and who of those qualified to be allocated stands on Bokfontein. The Municipality failed to comply with the order.

[15] A further application was issued with Delta and the deceased joining the KRRRA as applicants. On 1 November 2016 the Court granted some and postponed other prayers. The orders granted included that the Municipality keep available the plots at Bokfontein and to prevent the erection of any further shacks of the informal settlement. The order further provided that the informal settlement must be fenced off and the Municipality had to conduct daily patrols of Bokfontein to prevent any unlawful occupation of those plots. The Municipality failed to comply with the orders.

[16] In December 2016 the Court *inter alia* found the Municipality and a number of its employees in contempt of court of the order of 1 November 2016. The Municipality appealed the order but the appeal lapsed and was not prosecuted further.

[17] The applicants in this matter seek some of the same orders granted on 1 November 2016. This includes that the Municipality must at its cost provide trucks and transport to the illegal occupiers to the relocation site or temporary emergency accommodation to be made available to the unlawful occupiers upon their eviction.

[18] The KRRRA became operationally dysfunctional. Delta and the deceased could not generate income due to the invasions and with the costs of High Court litigation no further application could be instituted. Despite a demand sent to the Municipality in July 2020 the expansion of the informal settlement proceeded and the orders were not heeded.

[19] On 17 March 2021 KVA, the KRRRA and the Orange Farm Action Group brought an urgent application for contempt of court. Once again the Municipality and two officials were held to be in contempt. An interdict was also granted to prevent formalisation of the informal settlement by the delivery of building materials. The Municipality was also ordered to bring eviction proceedings in terms of the PIE Act. The Municipality did not comply with the orders.

[20] The KVA approached the court for punitive action to be taken against the Municipality and its officers. By agreement between the parties the matter was referred to mediation by Tolmay J. The mediation failed.

[21] On 15 November 2023 the applicants' attorneys demanded that in view of the failed mediation the Municipality must comply with the previous court orders and commence with evictions proceedings against the unlawful occupiers. The Municipality reacted that it did not have the jurisdiction to launch eviction proceedings. In a letter dated 12 January 2024 the applicants' attorney warned that if the Municipality did not proceed with eviction proceedings as ordered, leaving the applicants to again approach the court, punitive costs against the Municipality would be sought.

[22] Mr. Küsel reported that had the matter been resolved in the early 2000's when the eviction order was obtained it would have been significantly more manageable. The matter had become politicised, and the Municipality now uses as excuse that it would cost too much. This is so because the informal settlement was not contained and it is now spreading further.

[23] This renders it necessary to again seek an eviction order since the Municipality made it clear that it is not going to heed the order and institute eviction proceedings; the applicants had no alternative but to bring this application.

[24] There is an abundance of available accommodation and for those that cannot afford private accommodation the Municipality must in terms of s9 of the Housing Act 107 of 1997 [the Housing Act] supply housing or at the very least temporary emergency accommodation. The conditions in the informal settlement are not conducive to the health and safety of the inhabitants in respect of water, sanitation, electricity and stormwater drainage. The Municipality had already declared that it had set aside property at Bokfontein 448 for the relocation of the occupiers. Furthermore, the 2013 valuation roll the Municipality owns properties in Bokfontein, Boschfontein, Hartebeesfontein and Zandfontein. There are also low-cost housing developments in place in Bapong and Majokaneng.

[25] Mr Küsel opines that the informal settlement must be relocated to a suitable site in line with "The Neighbourhood Planning and Design Guidelines for Sustainable

Human Settlements". He further explained that the informal settlement is constrained by the presence of the Magalies Protected Natural Environment to the North. The density of the settlement, the fire risk and lack of suitable, portable water and sanitation also pose a risk to the owners of the properties in the surrounding area.

[26] The applicants are prejudiced as they could not use their properties productively for almost three decades. If the developers can build communal living complexes the Municipality will generate substantial income in additional rates on an annual basis. The development potential of the properties is illustrated by the fact that the Municipality had already in 2007 approved a township development on Portions 38 and 160. This approval has lapsed. The development could not take place as there was no prospects of successfully marketing and renting and/or selling the plots with the unlawful occupiers settled on Portions 39 and 40. The illegal occupiers have been unlawfully connecting the transformers supplying electricity to residential estates surrounding them. These illegal connections have resulted in significant explosions when the transformers short circuit. Development is at risk with the same illegal connections occurring.

[27] Driehoek confirmed when the unlawful occupiers are relocated, whereby risks are mitigated it has the finances to immediately develop Portions 38 and 160. Driehoek is a development and leasing business and this business would successfully generate strong rental income. A further development of 14 residential properties as "residential 2" allows for 180 individually rentable units to be developed on these 14 portions. The combined rates, taxes and levies for the Municipality is close to R4 million annually. Driehoek may also consider a claim for constitutional damages due to the Municipality's failure to comply with the previous court orders resulting in the infringement of the applicants' property rights and resultant financial losses.

The Respondents' case

[28] Solomon Matthews Masuku [Masuku] made an affidavit on his behalf and the members of the community that occupy the property in terms of a resolution. Confirmatory affidavits by Dorica Maria Kepkar [Kepkar] and Motape Gift Motokwe [Motokwe] confirm the contents of the affidavit of Masuku as far as it relates to them.

[29] Masuku avers that the “land” is farming land. He was born on the farm in 1965 and his parents worked for Mr John Litten. Mr Litten left the farm during 1970 when Masuku was 8 years old. The Masukus and Kepkar families lived on the farm.

[30] His mother, Linki Majola, and his grandmother Senkase Betty Majola, were both buried on the land that is now called Caribbean Beach, the name given to the subdivision of the farm.

[31] Kepkar was also born on the land in 1968. Her parents also worked on the farm, but were not buried there. Kepkar lives on the farm with her 21-year-old son and two of her nephew’s children. Other persons who resided on the farmland were buried there and in September 2024 twelve graves were demolished.

[32] There are 900 structures on the property culminating in 5 000 community members. Most are employed in the nearby estates. The children attend Laerskool Skeerpoort and Schaumberg Combined School. He is unemployed.

[33] The Court must take cognisance of the children households headed by women, elderly and disabled persons. Furthermore, the duration of the occupation of the land should be considered.

[34] Their main contention was that the Kepkar and Masuku families are occupiers of land in terms of ESTA and their right to occupation is in terms of ESTA and not PIE.

The Municipality’s affidavits

[35] The Municipality filed its two affidavits late. The first affidavit was filed on the Friday afternoon preceding the hearing on the Monday. No condonation was sought. The affidavit in bold and underlined, presumably for emphasis, that only the costs sought in paragraph 10 of the notice of motion is opposed. The aspect of costs will be addressed later in the judgment. It also reiterated that the Municipality does not refuse to assist with identifying alternative state land and even possible emergency assistance to those evicted, but have extremely limited resources.

[36] The second affidavit before me entitled “Report and Supplementary Affidavit” was similarly filed extremely late. The applicants filed a Rule 30, Notice of an Irregular

Step, due to the Municipality not advancing any reasons why it should be entitled to file further affidavits.

[37] In essence this affidavit set out that the Municipality does not have the financial ability or resources to assist. It denies that the Municipality is tasked with a constitutional and legislative obligation to provide adequate housing to all persons residing within its jurisdiction. It pointed out that the Municipality faces serious financial restraints. It refers to the costs of other relocations, and that the present matter would cost, excluding land acquisition, R97 684 000.00. Bokfontein has been invaded. But in any event, the informal settlement on the properties refused to voluntarily relocate as they said it was too far from Kosmos.

[38] On behalf of Rural Development and the Minister it was submitted that although a notice of opposition was filed on their behalf “however, in truth and in fact, they are not opposing the relief sought by the Applicants”.

[39] The explanatory affidavit, was filed 10 months late, sets out that the Rural Development is not the custodian of PIE and cannot fund the eviction and relocation of the illegal occupiers. The Municipality and the MEC for the Department of Economic Development, Agriculture, Environment and Rural Development [sixth respondent] are the custodians. However, although it cannot fund the eviction and relocation, it can subject to available resources and approvals assist the Municipality with land to which the unlawful occupiers can be relocated. The Municipality must approach Rural Development and the Minister with detail of the number of people to be relocated.

[40] Counsel for the Applicants placed on record that the applicants do not seek the costs of eviction and relocation from these respondents.

Point in limine

Is ESTA applicable?

[41] If the ESTA Act is applicable then this Court would not have jurisdiction to entertain the matter. The ESTA Act has application when:

“2(1) Subject to the provisions of section 4, this Act shall apply to land other than land in a township established, approved, proclaimed or otherwise

recognised as such in all terms of any law. or encircled by such a township or townships. but including -

- (a) any land within such a township which has been designated for agricultural purposes in terms of any law; and
 - (b) any land within such a township which has been established, approved, proclaimed or otherwise recognised after 4 February 1997, in respect only of a person who was an occupier immediately prior to such establishment. approval. proclamation or recognition.
- (2) Land in issue in any civil proceedings in terms of this Act shall be presumed to fall within the scope of the Act unless the contrary is proved.
- (3) The Minister may. from moneys appropriated by Parliament for that purpose and subject to such conditions as he or she may determine. make funds available to another person, body or institution which he or she has recognised for that purpose, to promote the implementation of the rights conferred by this Act.
- 3(1) Consent to an occupier to reside on or use land shall only be terminated in accordance with the provisions of section 8. (2) If a person who resided on or used land on 4 February 1997 previously did so with consent, and such consent was lawfully withdrawn prior to that date -
- (a) that person shall be deemed to be an occupier, provided that he or she has resided continuously on that land since consent was withdrawn; and
 - (b) the withdrawal of consent shall be deemed to be a valid termination of the right of residence in terms of section 8. provided that it was just and equitable. having regard to the provisions of section 8.
- (3) For the purposes of this Act, consent to a person to reside on land shall be effective regardless of whether the occupier, owner or person in charge has to obtain some other official authority required by law for such residence.

- (4) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved.
- (5) For the purposes of civil proceedings in terms of this Act, a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge.”

[42] To qualify as an occupier within the meaning of ESTA the person must in terms of the definition be residing on land of another person. This land must qualify as land defined by ESTA. It had to be with consent of the owner as of 4 February 1997 or obtained thereafter, or by virtue of another right in law. The occupier must not have an income more than the prescribed amount as set out in the Government Gazette.

[43] In a nutshell the unlawful occupiers must prove that as of 4 February 1997, or thereafter, they had consent to occupy the property; the property in issue is agricultural land and not a township or land encircled by a township; and all have an income below the prescribed amount. The unlawful occupiers have the onus to prove this to succeed in their point *in limine*.¹

[44] There is not a single allegation in the answering affidavits that any of the occupiers had consent to occupy the property from 4 February 1997 or thereafter. This already would render the point in limine to be dismissed. The undeniable legal proceedings and further orders made by this Court over the years pertaining to the unlawful occupiers excludes the application of the presumptions in section 3 of ESTA. The occupiers knew at all material times that they do not have the consent of the owners or persons in charge of the property to reside on it and that they are unlawfully occupying the land.

[45] Nor is there an allegation that the unlawful occupiers' income is below the prescribed amount, currently at R13 625.² The averment in the answering affidavit is that most of the unlawful occupiers work in the surrounding estates, further

¹ *Frannero Property Investments 202 (Pty) Ltd v Selapa and Others* 2022 (5) SA 361 (SCA) at par [24]

² Notice 72 of 2018 published in the Government Gazette No 41447 of 16 February 2018

necessitating an averment as to what their income is. The unlawful occupiers have simply not brought themselves within the ambit of the Act by proving that they comply with all the components of the definition of an occupier in the Act.³

[46] But, importantly the character of the land, qualifies whether a person is an occupier and attracts ESTA. Land in a township or encircled by a township is generally not subject to ESTA. As found in the matter of *Droomer*⁴: “If the land in question was not subject to ESTA, the respondents could not qualify as ‘occupiers’ under the Act even if their occupation of it has been with consent and their income was below the prescribed amount.”

[47] It is common cause that the properties are within the developed area of Kosmos Village. It was also admitted that the location of the informal settlement is on those portions of the properties south of Simon Bekker Avenue, the main road through Kosmos Ridge and Kosmos, bounded on the south by the Hartbeespoort Boat Club and surrounded by existing residential developments to the east and west along Simon Bekker Avenue. The properties are in a township and or encircled by a township and the ESTA Act does not apply.

[48] As for Masuku, Kepkar and Motokwe, they also do not set out the necessary averments to qualify as occupiers in terms of ESTA. Masuku and Kepkar aver they were born on the property. This is unfortunately not a criterion to qualify as an occupier in terms of ESTA; they must have permission to be on the property. Musuka was cited as respondent in the eviction proceedings already in 1999 and then already was found to be an unlawful occupier. He was evicted but returned to the property. He does not have permission to stay on the property.

[49] Masuku, Kepkar and Motokwe do aver they are unemployed, perhaps a basis for a conclusion that they do not earn above the prescribed amount. It must be noted that pertaining to condonation for the late filing of the unlawful occupiers answering affidavit it is under oath stated that Ms Kepkar struggled to take off work to attend to the affidavit, a direct contradiction to her statement that she is unemployed. Under

³ *Skhosana and Others v Roos t/a Roos se Oord and Others* 2000 (4) SA 561 (LCC) at 572H-574; *Ntuli and Others v Smit and Another* 1999 (2) SA 540 (LCC) par [21]; *CJW Beleggings (Pty) Ltd v Arendse and Others* [2022] JOL 56494 (WCC) at paras [18]-[24]

⁴ *Droomer N.O. and Another v Snyders and Others* (A336/201) [2020] ZAWCHC (4 August 2020)

those circumstances the jurisdictional averment that they do not earn above the prescribed amount would be necessary.

[50] But, as with the other unlawful occupiers, the property the applicants seek eviction from does not attract the ESTA Act. In reply the applicants set out that the reference by Masuku and Kepkar to the “Caribbean Estate” and “Caribbean beach” show that they lived on former subdivisions of the property that was developed and not the property from which the eviction is sought. Caribbean Beech is one of the urban development’s surrounding the applicants’ property but is not the applicants’ property and not the subject of this application. There are no graves on the applicants’ property. The subdivision of De Rust which created the portions on which townships such as Carribean Beach were developed, already took place in 1954/1955, before Masuku was born. In terms of the *Plascon Evans*⁵ rule the Court must accept this version.

[51] The averment that the property was a commercial farm with orange trees is denied by the first applicant. It is admitted that there were orange trees planted but no income was derived from the trees and no commercial farming was done as no workforce was employed. Testament to this is the fact that on the property there were no structures built to house any workers. No John Litten purchased Portion 40 of de Rust, his father, Ronald Frederick Litten purchased this portion as vacant land. He did not take over a workforce or farming activities. Masuku’s claim that he was born on this farm while his parents worked for John Litten thus cannot be correct. There were no workers on the portion when he bought the land. The only conclusion to be drawn is that it relates to another property. This is supported by the fact that Musuka says his parents were buried at “Caribbean” which is not the property of the applicants or under their control. This version is further fortified by the fact that the property is not designated for agricultural land but earmarked for residential and commercial purposes.

[52] This point in limine is dismissed.

Res Judicata

⁵ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA)

[53] In the applicants' founding affidavit it is set out that a previous eviction order was sought and granted in 1999. On behalf of the unlawful occupiers the argument was made that *res judicata* is applicable and this application cannot succeed. This defence was not raised in the papers.

[54] This argument does not take into consideration that the unlawful occupiers did not deny the averment made in the applicants' affidavit that despite the order being executed the occupiers reclaimed and reoccupied the land with the assistance of the ANC Government at the time. The averment is thus that after the execution of the order the invasion took place again. It could never be argued considering the common cause chronology and history of this matter that the applicants are barred from approaching a court again when people repeatedly invade property. As such, constitutional considerations of justice and fairness are valid exceptions to a defence of *res judicata* in South African law.⁶

[55] This point raised is dismissed.

Must the PIE Application be granted?

[56] PIE was adopted with its main objective to prevent past abuses like the displacement and relocation of people. It addresses the fact that nobody may be deprived arbitrarily of property referring to sections 25(1) and 26(3) of the Constitution. PIE calls upon a court to balance the competing interests; herein those of private owners and developers against occupiers unlawfully on property, but if evicted could be homeless. This is never an easy task and must be fulfilled with compassion within the formal structures of the PIE Act and the Constitution.

[57] In essence the facts are common cause and admitted. The only facts denied is done baldly and the applicants are "put to the proof" thereof. The unlawful occupiers baldly deny that there was subdivision of the properties. Similarly, that the litigation is expensive and the police visited the properties on several occasions. They without any evidence to the contrary deny that the Municipality identified Bokfontein as alternative accommodation and deny that there is alternative accommodation. They baldly deny that they do not have permission to be on the properties but do not set out who gave

⁶ *Molaudzi v S* (CCT42/15) [2015] ZACC 20; 2015 (2) SACR 341 (CC)

them permission. They deny that a letter of demand was sent by the applicants' attorney to the Municipality.

[58] In application proceedings a respondent must engage with the facts set put by the applicant and provide sufficient evidence to raise a real and genuine dispute of fact. A bald denial has the result that the applicants' version is to be accepted because no dispute of fact is raised.

[59] On the facts thus set up by the applicants the Court must decide whether the eviction must be granted. A notice in terms of section 4(2) of the Act was issued; the notice complies with section 4(5) and was properly served. Section 4(7) of the Act is applicable as the occupiers are on the property for longer than 6 months.

[60] *In Ndlovu v Ngcobo, Bekker and Another v Jika* 4 All SA 384 (SCA) the SCA held:

"Another material consideration is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and the respondent's unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction."

The Supreme Court of Appeal in the same matter also found that the availability of alternative accommodation is more difficult in the context of an eviction at the instance of a private property owner. This so because another constitutionally protected right, the right to property, comes into play and the result of a PIE application is not to expropriate private property but a delay or suspension of the exercise of the owner's rights until a determination has been made whether an eviction would be just and equitable. This principle was endorsed in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* [2011] ZACC 33; 2012 (2) SA 104 (CC).

[61] In terms of s4(7) of PIE an eviction order may only be granted if it is just and equitable to do so. The court must have regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If

the requirements of s 4 are satisfied and no valid defence to an eviction order has been raised the court “must”, in terms of s4(8), grant an eviction order. When granting such an order the court must, in terms of s4(8)(a) determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The court is empowered in terms of s4(12) to attach reasonable conditions to an eviction.

[62] The first enquiry this Court must undertake in terms of s4(7) is whether in all the relevant circumstances the eviction would be just and equitable. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the owner of the property, such as the existence of a valid lease. There is no such defence.

[63] This is an application for eviction at the instance of private persons and bodies, owing no obligations to provide housing or achieve the gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution. The first enquiry includes whether there is alternative accommodation or land. The Constitutional Court in the Blue Moon matter found the weight to be attached to that factor must be assessed in the light of the 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 that order.

[64] The unlawful occupiers denied that it would be fair and equitable to grant the eviction order sought but have not set out any facts on which they rely to corroborate this denial. It is the duty of the unlawful occupiers to show to the satisfaction of the Court that their personal circumstances and that of the households is such that warrants that the eviction order is not granted. No such facts are set out. The fact that the children, number of children unknown, attend schools in the vicinity is not sufficient to warrant the eviction not being granted.⁷

[65] Even though no facts are set out the Court can accept that the occupiers living without services would be poor and an eviction would likely render them homeless. I can also accept that some occupiers will fall within the vulnerable groups identified in

⁷ *Shezi v L.V.L and Another* (4209/2022) [2023] ZAGPJHC 373

s4(7). It serves no purpose to postpone the matter further for information lists of the people and their circumstances, as the previous court order was simply not complied with. Furthermore, it is not denied that many occupiers are illegally in the country. Some of the occupiers have been in occupation of the property for a long period. I also have the fact that "most of the community members of the First Respondent are employed." This again must be balanced with the fact that they work in the surrounding areas. Some of the occupiers are illegally in the country. There is no defence to the unlawful occupation. Mediation has failed. The order must be just and equitable to all the parties. The owners of the properties have been denied their right to enjoyment and development of their properties for an extensive period. Under these circumstances patience can be required of property owners, but the extended period and the failed court orders have rendered them sufficiently patient.

[66] Balancing all these factors I am satisfied that it is just and equitable to grant the eviction order. The fact that the occupiers have not set up facts and have no defence to the occupation renders the eviction fair and just. They were aware that lists were ordered and knew information lists would assist them. The court order directing lists was ignored, although not directed at them, and it would be unfair to after the extended period that has run to now postpone the matter again. The occupiers are legally represented, and more information could have been presented. But, in any event, even if the information revealed vulnerabilities, the property owners' rights was suspended for a significant period.

[67] The second enquiry is what conditions should attach to the eviction order and what date would be just and equitable upon which the eviction order should take effect. Once again, the date that I must determine must be one that is just and equitable to all parties. The impact of the eviction order on the occupiers must be considered. If they may be rendered homeless, they may need emergency assistance to relocate elsewhere.

[68] The Municipality astonishingly denies that it has a duty to provide housing to all. *In City of Johannesburg v Changing Tides 74 (Pty) Ltd and 97 others (The Socio-Economic Rights Institute of South Africa intervening as amicus curiae)* (735/2011) [2012] ZASCA 116 (14 September 2012) the Court found:

“What is clear and relevant for present purposes is that the State, at all levels of government, owes constitutional obligations to those in need of housing and in particular to those whose needs are of an emergency character, such as those faced with homelessness in consequence of an eviction. Those obligations arise under s26 of the Constitution and exist separately from any question of whether it is just and equitable for a court to grant an eviction order.” And: “Eviction, at the very least, triggers an obligation resting on the city to provide emergency and basic shelter to any affected respondent.”

[69] In the *Changing Tides* matter the Court found:

“One can readily appreciate that the date of eviction may be more immediate if alternative accommodation is available, either because the circumstances of the occupiers are such that they can arrange such accommodation themselves, or because the local authority has in place appropriate emergency or alternative accommodation. Conversely, justice and equity may require the date of implementation of an eviction order to be delayed if alternative accommodation is not immediately available.”⁸

[70] In South Africa, where housing needs are acute and resources very limited, there is no absolute right to be given accommodation. Neither PIE nor s26 of the Constitution provides an absolute entitlement to be provided with accommodation. The Municipality states it has no alternative accommodation. The explanation for this is simple; it did not fulfil its mandate, pursuant to identifying Bokfontein as land that can accommodate the unlawful occupiers, by simply doing nothing to relocate the occupiers. Now Bokfontein has been occupied by other unlawful occupiers despite an interdict ordering the Municipality to prevent this. The Municipality did not adhere to any of the Court orders. It was in contempt of one of the orders persisting foolhardy that an organ of state cannot apply for eviction in terms of PIE. The Municipality has caused the lack of accommodation. The Minister and Rural Development has offered to help if no land is available.

[71] The Municipality also submitted it had no resources. In *Commando and Others v City of Cape Town and Another* 2025 (3) SA 1 (CC); 2025 (3) BCLR 243 (CC) at

⁸ Par [18]

para [84] the Court found that a Municipality does operate within finite resources but a lack of resources is not an excuse when “those whose needs are most urgent and whose ability to enjoy all rights is most in peril,.. The right of access to adequate housing, especially in emergency situations, is a fundamental human right that demands immediate attention.”

[72] But, importantly the Municipality expressly set out it “does not oppose the application for eviction and ancillary relief but only opposes the attempt by the Applicants to obtain a court order that stipulate the Second Respondent Municipality must pay any costs which the Applicants may incur in executing such eviction order”. The fact that no alternative accommodation is available is thus on its own version no bar to granting eviction. As for the costs pertaining to the eviction there is no excuse why the Municipality must not carry those costs.

[73] It must also be remarked that the applicants have acted reasonably in seeking the orders in prayers 1-9, attempting to ensure the unlawful occupiers will in the short term be in a very similar position they are in now and in the long run in a better position. This is so because the unlawful occupiers are now in unsafe structures that do not adhere to the Municipality's by-laws. They are not provided with sewage, electricity or water or refuse removal. Their conditions are dismal and unsafe. Ordering the eviction cannot place them in a worse position, hopefully in a better position.

The orders sought

[74] The applicants seek the eviction and that it takes place within 6 months, or the period the Court will determine to be fair and equitable. In the circumstances of the matter, the lengthy period the occupiers have been on the property and affording the Municipality a reasonable period to act and ensure alternative or emergency accommodation I find nine months to be a reasonable period.

[75] I am satisfied that the orders sought to allow for the sheriff to, if necessary, be accompanied by the police or private security firm to enforce the order if there is non-compliance with the order must be granted. I am also satisfied that the orders in prayers 5,6 and 7 be granted against the eighth respondent. If there are illegal foreigners or immigrants their position must be addressed and this Court must know that that eighth respondent has fulfilled this duty. The Municipality has a duty to assist

the unlawful occupiers and I am satisfied with the order as formulated in prayer 8. The Municipality must assist any of the 1st respondent occupiers who qualify for and/or require temporary emergency accommodation with their relocation to a temporary settlement as described in Chapter 12 of the National Housing Code and to obtain land through any other organ of State, or belonging to any other organ of State for purposes of this relocation. It must also seek the assistance of the Minister and Rural development. In view of the previous re-occupations, I will also grant prayer 9.

The costs of the application

[76] On behalf of the applicants the argument went that due to the multiple previous proceedings brought to remedy the situation and the conduct of the Municipality in this matter the Municipality must pay the costs on a punitive scale.

[77] An eviction application under case number 26949/1999, as well as an application requiring the Municipality to interdict the 1st Respondent from erecting informal structures on the property in contravention of the municipal by-laws under case number 17599/2014 were sought and granted. The Municipality failed to abide by the orders made under case number 17599/2014 which culminated in a number of further orders being made against it, including being ordered to relocate the occupiers to land that had been earmarked by the Municipality for this purpose and then was declared in contempt of court. The Municipality was provided with an opportunity to purge its contempt by being ordered to bring an eviction application against the unlawful occupiers. Despite being ordered to do so, it expressly refused to bring the eviction application that it has been ordered to bring and failed to take the matter on appeal or apply for the variation of that order. Had the Municipality acted when ordered to do so the costs associated with both the legal proceedings and the execution of the order, would have been significantly reduced.

[78] It was also submitted that the Municipality's conduct during these proceedings justify a punitive costs order in that it filed its answering affidavit without filing a notice of intention to oppose less than 1 court day before the opposed hearing and without seeking condonation therefor. It further filed a supplementary affidavit without seeking leave from the Court.

[79] On behalf of the Municipality it was argued that the late filing of the affidavit did not prejudice the Applicants. It is admitted that after the applicants filed a Rule 30 application the Municipality filed an application for condonation for the late filing of the affidavit.

[80] It blames the applicants for not bringing a new eviction application or contempt of court applications sooner and that the applicants are the cause for the delay and escalation in costs.

[81] It submitted it could not remove the occupiers to Bokfontein as they were not willing to leave and it had no money for a forceful eviction.

[82] The applicants cannot rely on previous matters to obtain costs on a punitive scale in this matter.

[83] There is no doubt that for a private person to bring such a matter to court is costly. Only when developers step in can it be feasible to launch applications. The Municipality, as an organ of state, had the duty to 25 years ago attend to this matter, despite orders it did not. It is to blame, not the applicants. The bald averment that the mediation failed due to the applicants' fault is rejected. The lateness of the affidavit with no condonation application and the filing of a further affidavit without seeking the consent of the court are grounds to grant a cost order against the Municipality.

[84] I do not grant costs on a punitive scale purely because the money will be well spent on securing accommodation for the unlawful occupants.

[85] I make the following order:

[85.1] The first respondent and all other persons occupying the informal settlement, known as Orange Farm informal settlement on the following properties, namely: Portions 38, 39 and the Remaining Extent of Portion 9 of the Farm De Rust 478 JQ, also known as Portion 40 of the Farm De Rust 478 JQ, are evicted from the said properties.

[85.2] The first respondent and all other persons occupying the said properties are ordered to vacate the said properties and to remove all their belongings from the said properties within nine (9) months of this order being made.

[85.3] In the event that the first respondent or any of the unlawful occupiers of the said properties do not vacate the said properties within the time period stipulated in paragraph 85.2 above, the Sheriff of the Court or his Deputy, are authorised to evict such occupiers and to remove all their belongings from the said properties, to dismantle and demolish all structures on these properties and to remove such movables and remains of structures from the property forthwith, immediately after the expire of the date determined in paragraph 85.2 above, or such date as the Court may determine in terms of section 4(8)(b) of PIE.

[85.4] The Sheriff of the Court or his Deputy are authorised and directed to enjoin the assistance of the South African Police Services and/or a private security firm instructed by the applicants to enforce and give effect to the above orders by removing and evicting the first respondent and all of those occupying the said properties through or under them and their movables from the said properties.

[85.5] The eighth respondent, with the assistance of members of the South African Police Services, is ordered to verify the legitimacy of all the unlawful occupiers of the said properties to be present in the Republic of South Africa and/or to live in South Africa, within one month after date of this order.

[85.6] In the event that any of the unlawful occupiers of the said properties are found to be illegal foreigners and/or immigrants in South Africa without any lawful reason to be present in South Africa, the eighth respondent with the assistance of members of the South African Police Services are ordered and directed to cause these persons to be relocated, on or before the date determined in paragraph 85.2 above on which the eviction order may be carried out, to a Repatriation Centre, alternatively to remove them from the properties to be deported to his/her country of origin, or elsewhere in terms of the following legislation:

[85.6.1] The Immigration Act, 13 of 2002, read with the Regulations promulgated thereunder;

[85.6.2] The Criminal Procedures Act, 51 of 1977, read with the Regulations promulgated thereunder.

[85.7] The eighth respondent is directed to report to the Court on how effect was given to the order in paragraphs 85.5 and 85.6 above within six (6) weeks after date of this order being granted.

[85.8] The second respondent is ordered and directed to take all steps required and which it deems necessary:

[85.8.1] to assist any of the first respondent occupiers of the said properties who qualify for and/or require temporary emergency accommodation with their relocation to a temporary settlement area as described in Chapter 12 of the National Housing Code, within its municipal area, which temporary accommodation is to consist of a place where the said unlawful occupiers are able to erect temporary structures for accommodation in the event of the said unlawful occupiers being desperately in need of housing as a result of this eviction order; and

[85.8.2] to obtain land through any other organ of State, or belonging to any other organ of State, for purposes of the relocation of the first respondent occupiers, to the extent that they are entitled to such assistance.

[85.9] The first respondent and unlawful occupiers are interdicted from re-occupying the said properties listed in paragraph 85.1 above after they have vacated the properties and/or the Sheriff of the High Court have evicted them from these properties.

[85.10] The second respondent, jointly and severally with any other respondent who may choose to oppose this application, are ordered to pay the costs of this application, including the costs of senior counsel on Scale C, as well as any costs which the applicants may incur in executing the eviction order.




S. POTTERILL
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 099042/2024

DATE HEARD: 27 October 2025

FOR THE APPLICANTS: ADV. H. HAVENGA SC

INSTRUCTED BY: Naude Dawson Inc

FOR THE FIRST RESPONDENT: ADV. E.T.L. MATSHABA

INSTRUCTED BY: Legal Aid Rustenburg Local

FOR THE SECOND RESPONDENT: ADV. H. KLOPPER

INSTRUCTED BY: Mohulatsi Attorneys Inc

FOR THE 5TH AND 7TH RESPONDENTS: ADV. N. TSHABALALA
ADV. N.P. MASHABELA

INSTRUCTED BY: State Attorney Pretoria

DATE OF JUDGMENT: 15 January 2026