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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Not Reportable
Case No: 5562/2024**

In the matter between:

GORDON ROBERT CORNISH

First Applicant

LORNA JANET CORNISH

Second Applicant

and

JOHNY RAMETSI

First Respondent

**THE CITY OF MATLOSANA
LOCAL MUNICIPALITY**

Second Respondent

Coram: Petersen ADJP

Date enrolled: 30 January 2026

Judgment reserved: 30 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for the hand-down of the judgment is deemed to be 12h00 on 09 February 2026.

Summary: Land – Eviction – Application in terms of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) – point *in limine* of *res judicata* – whether previous dismissal in Magistrate's Court due to insufficient proof of ownership bars High Court application – court finding that dismissal for insufficiency of evidence is not final and continued unlawful occupation constitutes new cause of action – defence of *de facto* ownership based on “sweat equity” and verbal agreement – *Alienation of Land Act 68 of 1981* – requirement for written deed of alienation – registered owners' vindicatory rights upheld – eviction granted.

ORDER

1. The point *in limine* based on *res judicata* is dismissed.
2. The application for the eviction of the First Respondent and all persons occupying the property through or under him, situated at 3[...] P[...] Street, La Hoff, Klerksdorp, North West Province, is granted.
3. The First Respondent and all those occupying through him are ordered to vacate the property on or before 30 April 2026.
4. Should the First Respondent fail to vacate the property by the date mentioned in paragraph 3 above, the Sheriff of the High Court (or his/her

deputy) is authorized and directed to evict the First Respondent and all persons occupying the property through him from 04 May 2026.

5. The First Respondent is ordered to pay the costs of this application on the applicable Magistrates' Court Scale.

JUDGMENT

Petersen ADJP

Introduction

[1] This is an application for the eviction of the first respondent and all those occupying through him from the residential property situated at 3[...] P[...] Street, La Hoff, Klerksdorp ("the property"). The application is brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act").

[2] The applicants, Mr. Gordon and Mrs. Lorna Cornish, allege that they are the registered owners of the property and that the first respondent, Mr. Johnny Rametsi, is an unlawful occupier whose right of occupation has been validly terminated. The second respondent is the local municipality with jurisdiction over the area where the property is situated.

[3] The first respondent opposes the application. An Answering Affidavit was filed in opposition to the application. He appeared in person at the hearing of the application. His attorney of record has no right of appearance in the High Court. That notwithstanding, Heads of Argument were prepared, albeit delivered

late. The Heads of Argument of the first respondent were admitted, following no opposition from the applicants. The first respondent at the outset of the hearing intimated that whilst he had counsel who was not available, he was desirous of proceeding with the matter in person since his heads of argument were admitted by this Court. Later in his oral submissions, the first respondent intimated that he would seek a postponement of the application. After engaging him on his earlier intimation, and that a postponement would occasion costs, he maintained his earlier decision to proceed with the matter as an unrepresented litigant.

[4] The first respondent essentially opposes the application on two grounds. Firstly, on a point *in limine* based on the principle of *res judicata*, contending that this matter has already been adjudicated in the Klerksdorp Magistrate's Court. Secondly, on a defence on the merits, claiming that he is the *de facto* owner of the property by virtue of a business agreement and "sweat equity" invested in a close corporation, Prothane Industries CC.

Point in limine: Res Judicata

[5] On the point *in limine* based on the principle of *res judicata*, the first respondent contends that the Magistrate's Court previously adjudicated the relief sought in the present application for the District of Matlosana under case number 1602/23, where the eviction application was dismissed on 05 February 2024. The first respondent argues that this dismissal constitutes a final judgment on the merits, barring the applicants from approaching the High Court. He submits that the current application is an attempt to "get a second bite at the cherry" on the same cause of action.

[6] In *Transalloys v Mineral-Loy*¹ the Supreme Court of Appeal (“SCA”) reaffirmed the trite requirements applicable to a plea of *res judicata*, with reference to previous authorities. The SCA reaffirmed that for *res judicata* to operate it must be shown that the earlier judgment relied upon was a final judgment, and that there must be identity of parties and of the subject-matter in the former and in the present litigation. Reference was made to the earlier decision of the SCA in *Prinsloo NO & others v Goldex 15 (Pty) Ltd & another*² [2012] ZASCA 28; 2014 (5) SA 297 (SCA) where the principles of *res judicata* and the issue estoppel were described as follows:

[10] The expression “res iudicata” literally means that the matter has already been decided. The gist of the plea is that the matter or question raised by the other side had been finally adjudicated upon in proceedings between the parties and that it therefore cannot be raised again. According to Voet 42.1.1, the exceptio was available at common law if it were shown that the judgment in the earlier case was given in a dispute between the same parties, for the same relief on the same ground or on the same cause (idem actor, idem res et eadem causa petendi)...”

[7] The SCA in *Prinsloo NO & others v Goldex 15 (Pty) Ltd & another* further noted that in time the requirements were, however, relaxed in situations which gave rise to what became known as issue estoppel. With reference to *Smith v Porritt and Others*³, it was explained, following the decision in *Boshoff v Union Government*⁴ 1932 TPD 345, that the ambit of the *exceptio res iudicata* has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (*eadem res and eadem petendi causa*). The SCA emphasized that where the

¹ *Transalloys v Mineral-Loy* (781/2016) [2017] ZASCA 95 (15 June 2017) at para [22].

² *Prinsloo NO & others v Goldex 15 (Pty) Ltd & another* [2012] ZASCA 28; 2014 (5) SA 297 (SCA).

³ *Smith v Porritt and Others* 2008 (6) SA 303 (SCA) para 10.

⁴ *Boshoff v Union Government* 1932 TPD 345.

circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem quaestio*) must arise.

[8] The SCA stated that the latter involves an inquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. Where the plea of *res iudicata* is raised in the absence of a commonality of cause of action and relief claimed it has become commonplace to adopt the terminology of English law and to speak of issue estoppel. It pointed out however that, as was stressed by Botha JA in *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk*⁵, that this is not to be construed as implying an abandonment of the principles of the common-law in favour of those of English law. The defence remains one of *res iudicata*.

[9] Where the defence of *res iudicata* is raised, courts are required to carefully scrutinize whether it in fact is applicable. This, by implication means that each case must be considered on its own particular facts and any extension of the defence will be on a case-by-case basis as stated in *Kommissaris van Binnelandse Inkomste v Absa*⁶. Very importantly relevant considerations will include questions of equity and fairness, not only to the parties themselves but also to others.⁷

[10] The three requirements for a plea of *res iudicata* are well-established: Firstly, there must be a previous judgment by a competent court between the same parties. Secondly, it must be based on the same cause of action and the

⁵ *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 669D, 667J – 671B.

⁶ At 670E – F.

⁷ *Caesarstone Sdot-Yam Ltd v World of Marble and Granite* 2000 CC & others [2013] ZASCA 129; 2013 (6) SA 499 (SCA) paras 21 and 22.

same subject matter. Thirdly, a crucial requirement is that the previous judgment must be final and definitive of the merits.

[11] I have had regard to the judgment of the Magistrate's Court of 18 September 2025 under case number 1602/23, attached to the papers, and included with the Heads of Argument of the first respondent. In that judgment, the learned Magistrate found that there was a "dispute of ownership" which could not be resolved on the papers and that the applicant had failed to attach necessary agreements. The dismissal was, in effect, one based on a dispute of fact due to insufficiency of evidence on the ownership of the property, rather than a positive finding that the first respondent had a permanent right to occupy.

[12] In particular, the Magistrate dismissed the application specifically because the applicants failed to discharge the onus of proving ownership at that time, having failed to attach the Title Deed. It is trite that a dismissal due to insufficient evidence does not constitute a final judgment that extinguishes a cause of action; it merely signifies the case was not proven on the papers filed at that time.

[13] The applicants rely on a new notice of termination of 14 August 2024. This new notice of cancellation, based on an alleged continued breach or a new period of holding over, constitutes a new cause of action. It is a trite principle of our law that where the cause of action has evolved or where the dismissal was not final on the merits, *res judicata* cannot succeed.

[14] The circumstances of the present application, having its genesis in the Magistrates' Court, where the applicants were unsuccessful with an eviction application against the first respondent, are analogous, if not on all fours with

those in *Zulu N.O. v Mbazo and Another*⁸ where Hlatswayo AJ provides the following factual background:

‘[6] This matter has a long history of litigation, particularly in the magistrates’ Court. The applicant commenced eviction litigation against the first respondent in the Ntuzuma magistrates’ court under case number 1665/2013. It appears this case was eventually finalised in 2014. According to the applicant this application was dismissed when the magistrates Court upheld some of the points in limine that were raised by the first respondent.

...

[8] On 2 December 2021 the applicant instituted new eviction proceedings in the high court. On 4 April 2022 an order directing service of Section 4(2) notice in terms of the PIE Act was issued by this court. The first respondent opposes the application for his eviction and has raised a number of points in limine.

[9] It is worth mentioning that the first respondent has been in occupation of the property for over 10 years. It appears from the applicant's affidavit that she has been in occupation since 2013 when his sister, Khumbuzile Gule, vacated the premises. The composition of the first respondent's family is however unclear and both parties did not place that information before me.’

[15] In *Zulu N.O. v Mbazo and Another*⁹, the first point *in limine* raised by the first respondent was a plea of *res judicata*. In that matter, the first respondent contended that the application for his eviction was dealt with by the Ntuzuma Magistrates Court in 2013 and was dismissed, and that a similar application by the applicant was dismissed in 2020. The first respondent in that matter contended, as the first respondent does in the present application, that the application consisted of the same parties and the same cause of action that was determined by a competent court. As Mr. Rametsi argues, the first respondent in that matter also argued that the appropriate remedy for the applicant lies with

⁸ *Zulu N.O. v Mbazo and Another* (D11353//21) [2024] ZAKZDHC 32 (24 May 2024).

⁹ At paras [10] and [11].

the appeal or review procedure. Resultantly, it was argued that the application for eviction was *res judicata*.

[16] I align myself with the reasoning in *Zulu N.O. v Mbazo and Another*, where Hlatshwayo AJ held that even where a previous eviction application has been dismissed, the first respondent's *continued* occupation of the property constitutes a separate and fresh cause of action upon which an applicant may institute new proceedings. As Hlatshwayo AJ noted:

"Each continued occupation amounts to a separate cause of action... and accordingly, there is no merit to the defence of res judicata."

[17] For ease of reading, it is apposite to refer to the reasoning in *Zulu N.O. v Mbazo and Another*:

'Res judicata

[17] The plea of *res judicata* is well settled in our law. It is premised on the preclusion of suits that are relitigated on the same facts and law decided upon by an earlier court. In *Bafokeng Tribe v Impala Platinum and Others* 1999 (3) SA 517 (BH) the following was stated:

'...the essentials of the exceptio res judicata were threefold, namely that the previous judgment had been given in action or application by a competent court (1) between the same parties, (2) based on the same cause of action, (3) with respect to the same subject matter or thing. Requirements (2) and (3) are not immutable requirements of res judicata. The subject matter claimed in the two relevant actions did not necessarily and in all circumstances have to be the same. Where there was a likelihood of the litigant being denied access to the court in the second action, to prevent injustice, it is necessary that the said essentials of the threefold test be applied. Conversely in order to ensure overall fairness, 2 or 3 above might be relaxed.'

As was observed in *Smith v Porritt and others* [2007] ZASCA 19 SCA; [2007] SCA 19 RSA, 2008 (6) SA 303 SCA unless the defence of *res judicata* is carefully circumscribed it is capable of producing hardship and positive injustice to the individuals. Thus, relevant considerations will include questions of equity and fairness not only to the parties themselves but to others.

[18] It is apposite to mention that the primary purpose of the doctrine of *res judicata* is to prevent unnecessary repetition of litigation between the parties, harassment of defendant with multiple suits and to bar the same dispute being adjudicated upon by our courts with the adverse results of conflicting and contradictory decisions.

[19] In this matter the first respondent bears the onus to establish the essential requirements of *res judicata*. The first respondent relied on the Magistrates Court order dated 20 January 2021 and submitted that the applicant's eviction application was dismissed and further alleged that the 2020 application was likewise dismissed. The evidence presented to me shows that the 2020 application was not dismissed but was withdrawn and the respondent's answering affidavit admits this. The respondent's averments in this regard are without substance and are contradictory.

[20] Regardless of the reasons for the dismissal of the 2014 eviction application by the Magistrate's Court, it is common cause that to date the first respondent continued with occupation of the said property. **Each continued occupation amounts to a separate cause of action upon which the applicant may institute eviction proceedings and accordingly, there is not merit to defence of res judicata.**" (emphasis added)

[18] In the present application, the first respondent has continued to occupy the property after the previous dismissal in the Magistrates' Court. Consequently, the plea of *res judicata* is legally unsustainable on both grounds. The point *in limine* is consequently dismissed.

The Merits: Ownership and the Right to Occupy

[19] The applicants have attached proof of their registered ownership of the property to the founding papers in this application by providing a Windeed search asserting their status as registered owners. As registered owners, they possess a *prima facie* right to possession and the authority to institute eviction proceedings as the persons in charge.

[20] The first respondent opposes the application on the ground that he has a right to occupy the property. He alludes in his papers and persisted in his oral submissions with reference to a “process of transfer” or an “unsigned lease agreement” that allegedly entitled him to ownership.

[21] The defences raised by the first respondent to the ownership of the property by the applicants are legally and factually insufficient. Firstly, the Alienation of Land Act 68 of 1981 requires that the sale of immovable property be reduced to writing and signed by both parties to be valid. This defence raises a fundamental point of law regarding the alienation of land in South Africa. Section 2(1) of the Alienation of Land Act 68 of 1981 provides that:

‘No alienation of land after the commencement of this section shall... 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.’

[22] The first respondent has failed to produce a valid Deed of Alienation or a Title Deed registered in his name. He in fact concedes that no such written deed of alienation/transfer was finalized or signed by the second applicant (who is a co-owner). The first respondent instead contends that he “became the owner” through a business agreement involving “Prothane” and that the property was to be transferred to him as part of his “sweat equity.” He admits that the transfer

has not yet taken place, stating they were “in the process of transferring ownership.”

A verbal agreement, or a “business understanding” regarding sweat equity, is insufficient in law to transfer ownership of immovable property.

[23] Secondly, applying the standard articulated in *Zulu N.O. v Mbazo*, the first respondent’s averments regarding these alleged agreements are “bold and unexplained.” He has failed to provide specific details, including dates, amounts paid, or concrete documentary proof to substantiate his claim of a right to ownership. As was held in *Zulu*, such vague allegations do not rise to the standard of *bona fide*, genuine, and credible facts necessary to defeat the owner’s vindicatory right or prevent the relief from being granted.

[24] Without a registered title deed or a valid written deed of sale, the first respondent cannot claim ownership. His claim is, at best, a personal right against the applicants for specific performance (which has prescribed or is the subject of a separate contractual dispute), but it does not constitute a real right to the property that trumps the registered owner’s vindicatory right.

[25] The Applicants formally terminated any purported right of occupation via the letter dated 14 August 2024. Therefore, the first respondent is an unlawful occupier as defined in the PIE Act.

[26] Accordingly, I find that the first respondent has no valid right in law to occupy the property and is an “unlawful occupier” as defined in the PIE Act.

Just and Equitable Inquiry

[27] Having found the occupation to be unlawful, I must determine whether it is just and equitable to grant an eviction order, considering the factors in section 4(7) of the PIE Act.

[28] The first respondent has occupied the property for a significant period. However, private owners cannot be expected to provide free housing indefinitely to an unlawful occupier. The first respondent has proffered no reasons in the papers why either himself or those occupying the property through him should not be evicted.

[29] In determining what is just and equitable, a court must consider the specific circumstances of the occupier. In *Zulu N.O. v Mbazo*, the court emphasized the trite approach in our law, that while the judiciary must not adopt a passive approach, it is the duty of the parties, especially when legally represented, to place relevant information before the court regarding the rights and needs of the elderly, children, disabled persons, and financial means.

[30] In this matter, the first respondent is legally represented yet has chosen not to place any relevant facts before this Court, in the papers, to suggest that he or his family are destitute, or that the second respondent cannot provide emergency alternative accommodation. In the absence of such information and following the approach in *Occupiers of Erven 87 and 88 Berea v De wet NO and another*¹⁰, this Court is constrained to grant the eviction order based on the available facts.

¹⁰ *Occupiers of Erven 87 and 88 Berea v De wet NO and another* (2017) ZACC 18; 2017 (8) BCLR 1015 (CC), 2017 (5) SA 346 (CC).

[31] I am satisfied that the procedural requirements of the PIE Act have been met. It is just and equitable that the first respondent be ordered to vacate the property. A reasonable period must be afforded to him to do so.

Costs

[32] There is no reason why costs should not follow the result. The applicants in my view, although being *dominus litis* in choosing the forum to litigate, could, as they have in the past, have litigated this application in the Magistrates' Court. A cost order commensurate with that in the Magistrates' Court would be equitable in my view.

Order

[33] In the result, I make the following order:

1. The point *in limine* based on *res judicata* is dismissed.
2. The application for the eviction of the First Respondent and all persons occupying the property through or under him, situated at 3[...] P[...] Street, La Hoff, Klerksdorp, North West Province, is granted.
3. The First Respondent and all those occupying through him are ordered to vacate the property on or before 30 April 2026.
4. Should the First Respondent fail to vacate the property by the date mentioned in paragraph 3 above, the Sheriff of the High Court (or his/her deputy) is authorized and directed to evict the First Respondent and all persons occupying the property through him from 04 May 2026.

5. The First Respondent is ordered to pay the costs of this application on the applicable Magistrates' Court Scale.

A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicants:	Adv B Riley
Instructed by:	SSLR Incorporated c/o Van Rooyen, Tlhapi Wessels Inc Mahikeng
For the First Respondent:	Mr D Van Rensburg (No right of appearance in the High Court) Respondent appearing in person at the hearing of the application
Instructed by:	Danie Van Rensburg Attorneys