IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable/Not Reportable

Case no: 15510/2024

In the matter between:

BOLD MOVES 147 (PTY) LTD	**First Applicant**
TEBOGO CHRISTOPHER RAYMOND MAOTO N.O.	**Second Applicant**
PHAHLANI MKHOMBO N.O.	**Third Applicant**
SOUTHERN PALACE GROUP OF COMPANIES (PTY) LTD (IN BUSINESS RESCUE)	**Fourth Applicant**

and

MS LERATO REFILWE MATITOANE	**First Respondent**
MMATJANYANA GLADYS MAHLANGU	**Second Respondent**
ANY OTHER UNLAWFUL OCCUPIER OF ERF 1[...] KNYSNA, REGISTRATION DIVISION J.R, MEASURING 1153 SQUARE METRES AND IS SITUATED AT J[...] F[...] DRIVE, THESEN ISLAND, KNYSNA	**Third Respondent**
THE GARDEN ROUTE DISTRICT MUNICIPALITY	**Fourth Respondent**

Neutral citation:

Coram: **MPHEGO AJ**

Heard: 25 August 2025

Delivered: 23 February 2026

Summary: This is an application initiated by the first to fourth applicants (collectively "the applicants"), for the eviction of the first to third respondents ("the respondents") from their continued occupation of the property belonging to the first applicant. The said property is described as Erf 1[...] Knysna, situated at J[...] F[...] Drive, Thesen Island, Knysna ("the property").

ORDER

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1. This application is stayed pending the determination of disputes in the Pending Application (Gauteng Division, Johannesburg under case number 6406/2023).

2. The applicants are to pay the party-and-party costs of this application up to the date of this judgment.

JUDGMENT

Mphego AJ:

[1] This is an application in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, 19 of 1998 ("the PIE Act").

[2] The first, second, third and fourth applicants (“the applicants”) seek an order in the following terms:

a) That the first, second and third respondents (“the respondents”) and all persons occupying the property identified as Erf 1[...] Knysna, Registration Division J.R, situated at J[...] F[...] Drive, Thesen Island, Knysna ("the property"), be evicted from the property on or before a date to be determined by this court.

b) That in the event that the respondents and all persons unlawfully occupying the property do not vacate the property on the date determined by this court, the sheriff of the court with jurisdiction at the above property be authorised and directed to remove and eject the respondents and any other unlawful occupiers from the property and to take all necessary steps to give effect to the order in paragraph a) above.

c) That the first and second respondents be ordered to pay costs of this application on attorney and own client scale.

d) Further and/or alternative relief.

[3] It is common cause that the registered owner of the property, Erf 1[...] Knysna, situated at J[...] F[...] Drive, Thesen Island, Knysna ("the property") is the first applicant. The identity of the shareholding of the first applicant is in dispute.

[4] The fourth applicant is in business rescue and the second and third applicants are the business rescue practitioners ("BRPs") of the fourth applicant.

[5] Historically, the property was used as a family holiday home by the first and second respondents (and their family) while their permanent primary residence was (and is still) in Gauteng.

SUBMISSIONS ADVANCED BY THE APPLICANTS

[6] Counsel for the applicants, Adv Moloi, pointed out that there is pending litigation relating to the parties in this matter with disputes relating to directorships and shareholding but that those disputes are not to be determined in this eviction application. He highlighted that the application is an out-and-out eviction application, and not a dispute about ownership or directorship and that this court need only determine whether the requirements to grant an eviction order are met.

[7] Adv Moloi reinforced *locus standi* by pointing out that the first applicant is the registered owner of the property and that the fourth applicant is the sole shareholder of the first applicant, and further that, the second and third applicants are the business rescue practitioners of the fourth applicant.

[8] The applicant's case is that (1) there is no valid lease (tacit or express) in place in respect of the property (2) the respondents pay no rental or contribution and acknowledge use of the property as a holiday home (3) the respondents have no lawful right to occupy the property. The applicants pointed out that the respondents have alternative accommodation in Gauteng and regard the property as a holiday

home and that the respondents do not fall within any vulnerable categories under the PIE Act.

[9] According to the applicants, (1) the respondents have no lease, no consent, and no other right in law to occupy the property therefore they are "unlawful occupiers" under the PIE Act (2) the respondents have alternative accommodation in Gauteng, so eviction would not render them homeless, which supports the just-and-equitable enquiry under section 4(7) of the PIE Act. On that basis, the applicants submitted that, with no valid defence raised, section 4(8) of the PIE Act requires the court to grant an eviction order and fix a just-and-equitable date to vacate.

[10] The applicants further submitted that:

a) The first applicant is the lawful registered owner of the property and this application was launched in terms of section 4(7)[1] of the PIE Act.
b) The BRPs of the fourth applicant acting through the fourth applicant as sole shareholder of the first applicant, caused the appointment of the second and third applicants (BRPs of the fourth applicant) as directors of the first applicant and procured the removal of the first respondent in terms of the Companies Act 71 of 2008 ("the Companies Act"). The applicants' case is that the fourth applicant (in business rescue) is the sole shareholder of the first applicant, since as reflected in the share certificate and share register. In relation to the BRPs of the fourth applicant, the applicants submitted that the BRPs of the fourth applicant (100% shareholder of the first applicant) exercised their authority to ensure proper corporate governance in the first applicant, relying on section 140(1)(a) of the Companies Act and the

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

principle in *Land And Agricultural Development Bank of South Africa v Lazercore Eight Pty Ltd And Others SA* 2024 (6) SA 267 (WCC)[2].

c) The respondents are in unlawful occupation of the property and no lease agreement has been concluded. The respondents occupy the property without the express and/or tacit consent (of the first applicants or its directors) and they have no other right in law to occupy the property and are not entitled to remain in occupation of the property.

d) It is just and equitable for an order granting the eviction of the first to third respondents.

e) The property does not constitute the primary residence as the first and second respondents have admitted in the answering affidavit that they do not ordinarily reside at the property. The primary residence of the first and second respondents is in Gauteng.

f) The first respondent unlawfully appointed herself as a director of the first applicant following the alleged resignation of the previous director Mr Lucas Tseki on 17 May 2021.

g) There is no verifiable record of Mr Tseki's resignation. The fourth applicant, through its business rescue practitioners exercised shareholder powers to lawfully appoint new directors of the first applicant to rectify governance irregularities. The Companies and Intellectual Property Commission ("CIPC") has recognised the current directorship.

h) The applicants discovered that the first and second respondents attempted to unlawfully transfer ownership of the property to the second respondent, however the transaction was successfully interdicted by an order of the Pretoria High Court under case number 34687/2022 on 12 July 2022.

i) The fourth applicant is under business rescue, and its successful restructuring relies on the realisation of its assets which includes the sale of the property. The continued unlawful occupation of the property by the first to third respondents obstructs the validly adopted business rescue plan and prejudicing creditors. The first to third respondents were provided sufficient

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[2] See para 23.

time to vacate the property but have refused and/or neglected and failed to do so, which made it necessary for the applicants to bring this application.

[11] In relation to just and equitable considerations, the applicants submitted that:

a) The first to third respondents cannot be said to be lawful occupiers by any stretch when considering the definition of "unlawful occupier' in the PIE Act and that it has been demonstrated that the first to third respondents do not have the requisite express or tacit consent of the owner or the person in charge to occupy the property.
b) The first to third respondents have not demonstrated that they ought to be allowed continued occupation of the property due to any other right in law nor do they fall within the exclusions provided for by the PIE Act.
c) The applicants highlighted that (1) the respondents are not vulnerable persons (2) they have alternative residence (3) they are financially stable individuals who afford alternative housing and are not at risk of homelessness (4) the first applicant is owned by the fourth applicant which is under business rescue and the realisation of its assets including the property is crucial to its financial recovery and the interests of its creditors, in line with its adopted business rescue plan (5) the respondents continued occupation of the property is an attempt to unjustifiably retain control over an asset they have no legal right to, and (6) the respondents' allegation that they spend at least six months a year living in the property is not a valid reason to not grant the relief sought given the provisions of section 4(7)[3] of the PIE Act.

[12] In relation to the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the applicants submitted that:

a) Section 25(5) of the Constitution provides that the state must take reasonable measures to ensure equitable access to land, however, that does not mean that private property owners, including companies in business rescue, must

[3] "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 ... "

indefinitely provide free housing to persons who have alternative accommodation and financial means.

b) Limiting the respondents' continued occupation in terms of section 36 of the Constitution is necessary and justifiable to uphold the rights of the lawful property owner and protect the business rescue process. The applicants further relied on *Dwele v Phalatse* [2017] ZAGPJHC 146[4] to support the granting of an eviction order.

[13] The applicants contended that they have demonstrated that the respondents are unlawful occupiers as contemplated in the PIE Act. They argued that the respondents have no legal or contractual right to remain in occupation of the property and that the respondents' continued unlawful occupation obstructs the business rescue process with prejudice to creditors. According to the applicants, it would be just and equitable for an eviction order to be granted.

[14] The applicants furnished *inter alia* the following documentation in support of the application:

a) A resolution passed by the board of the directors of the first applicant authorising the initiation of legal proceedings.
b) A property valuation document confirming the first applicant's ownership of the property.
c) A CIPC document confirming directorship in respect of the first applicant.
d) A notice of appointment as business rescue practitioners.
e) A share certificate reflecting the fourth applicant as the sole shareholder of the first applicant.
f) A company search document dated 16 May 2022 reflecting company information in respect of the first applicant.
g) A court order dated 2 August 2022 placing the fourth applicant under business rescue.

[4] See paras 19 to 20.

h) A court order dated 12 July 2022 interdicting the attempted transfer of the property.

[15] The applicants furnished further documents in their replying affidavit, namely:

a) A share register of the first applicant.
b) A written resolution of the sole shareholder of the first applicant.
c) Two notices of acceptance of election as a director, in respect of the first applicant.
d) A notice from CIPC recognising directorship changes in respect of the first applicant.
e) A complaint lodged with CIPC dated 27 October 2022 regarding a directorship appointment.
f) A notice to attend a shareholders meeting.
g) A notice of shareholders meeting for the removal of a director.
h) A resolution of the sole shareholder of the first applicant.
i) A letter to the board of directors of the first applicant dated 21 October 2022.

[16] In relation to the issue of costs, the applicants seek a punitive costs order on the attorney-and-client scale, as prayed for in their notice of motion and founding papers. They submitted that this is justified because the matter ought not to have come before court, the respondents' answering affidavit is replete with factual inconsistencies disproved in reply, and the respondents attempted to manufacture disputes of fact, a conduct which the applicants submitted, warranted a punitive-costs order.

SUBMISSIONS ADVANCED BY THE RESPONDENTS

[17] The respondents opposed this eviction application on grounds that:

a) There is a *bona fide* dispute regarding the ownership and shareholding of the first applicant.
b) There is a *bona fide* dispute regarding the directorship of the first applicant.

c) The first applicant has not authorised the institution of this application and the business rescue practitioners (the second and third applicants) have *no locus standi* to bring this application.

d) The respondents are not in unlawful occupation of the property.

[18] The respondents highlighted that the applicants do not deal with disputes raised prior to the institution of this application, and that the disputes are raised in:

a) an application in the Gauteng Division, Johannesburg under case number 6406/2023 ("the Pending Application"); and

b) the respondents' answering affidavit in an eviction application in the Western Cape Division under case number 2773/2023 ("the First Eviction Application").

[19] The respondents highlighted that the applicants do not deal with the disputes raised in the aforementioned proceedings, in their founding affidavit but instead, the applicants attempt to make out a case in reply by making allegations and adducing evidence that purportedly disproves the respondents' grounds of opposition. The respondents submit that this is not permitted in reply and in circumstances where the grounds of opposition were known to the applicants at all material times.

[20] The respondents furnished *inter alia* the following documents in their answering affidavit:

a) The notice of motion and founding affidavit in respect of the First Eviction Application.

b) The Pending Application papers.

c) A statement of account for rates and levies in respect of the property.

d) A WinDeed company report reflecting that the first applicant was a close corporation incorporated in 2010.

e) Extracts from the Answering Affidavit in the First Eviction Application.

The Plascon-Evans approach

[21] The respondents framed an opposition in line with the *Plascon-Evans* approach stating that this court must accept their factual version together with any parts of the applicants' case that cannot be seriously disputed, and that this application stands to be dismissed when approached in line with the *Plascon-Evans* rule.

[22] The respondents submitted that the below are common cause facts or alternatively, facts that must be accepted by this court on the basis of the *Plascon-Evans* approach:

a) The first applicant is the registered owner of the property, purchased in 2007 from Citycat Trading 65 (Pty) Ltd.
b) In 2010 or 2012, Mr Sello Mahlangu acquired the membership interest in the first applicant from its then holder at that time.
c) The first applicant was a close corporation with registration number 2010/102373/23.
d) The first applicant was thereafter converted by Mr Sello Mahlangu into a private company with registration number 2012/079112/07.
e) Mr Sello Mahlangu (prior to his passing in 2021), the first respondent, the second respondent and their families occupied and used the property as a holiday home over the years.
f) The first respondent was appointed as a director of the first applicant in June 2021.
g) On 21 April 2022, the fourth applicant was improperly placed into business rescue.
h) On 2 August 2022, a court order set the resolution placing the fourth applicant into business rescue aside and new business rescue proceedings commenced in respect of the fourth applicant with the second and third applicants appointed as BRPs for the fourth applicant.

i) On 21 December 2022, the second and third applicant acting under the fourth applicant, as shareholders of the first applicant, appointed themselves as directors of the first applicant (the legality is disputed).

j) On 2 January 2023 there was a purported sale of the property.

k) On 27 January 2023 the "Pending Application" was issued in the Johannesburg High Court seeking, among other things, to interdict the second and third applicants from exercising shareholder or director powers in the first applicant and to set aside the director changes at CIPC.

l) On 16 February 2023, the Applicants issued the First Eviction Application notwithstanding that the Pending Application had been issued at this stage, the First Eviction Application failed to deal with any of the material and salient facts of the matter and represented to the court that it was a vanilla eviction application.

m) On 25 November 2024 long after this application was issued the applicants withdrew the First Eviction Application with a tender of costs.

[23] The respondents submitted that it is in the context of the above factual framework that this eviction application, and the grounds of opposition must be viewed.

[24] The respondents emphasised that the disputes of fact on shareholding, directorship, authority, and lawfulness of occupation cannot be resolved on the affidavit and must be accepted for purposes of final relief. They submitted that applying the *Plascon-Evans* approach (as reiterated in *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243 (SCA) and *Wightman tla JW Construction v Headfour (Pty) Ltd and another* (66/2007) [2008] ZASCA 6), an applicant seeking final relief on motion must accept the respondent's version unless it is far-fetched or untenable. According to the respondents, on the accepted version, the first applicant did not properly authorise these eviction proceedings because the purported directors lacked lawful appointment, so the applicant is not properly before court and cannot establish entitlement to the relief. Furthermore, on the respondents' version,

they occupy the property with the authority of the only lawful director and therefore cannot be unlawful occupiers. They submitted that, given these disputes and the *Plascon-Evans* approach, the application should not be decided on affidavit and should be dismissed rather than referred to oral evidence, which the applicants have not sought.

Authority, shareholding, directorship and unlawful occupation

[25] Turning to the disputes, the respondents highlighted that what is in disputes is the ownership of the shares in the first applicant, as well as the directorship in respect of the first applicant.

[26] In relation to the ownership of shares in the first applicant, the respondents submitted that:

a) The fourth applicant (under business rescue) is not the 100% shareholder of the first applicant and that the estate of the late Mr Sello Mahlangu (who was a director and owner of the fourth applicant) is the 100% shareholder of shares in the first applicant.
b) The applicants attached a share certificate to the founding affidavit and a share register to the replying affidavit, however, the documents are inconsistent and legally untenable, in that, the share certificate is dated 15 December 2010, when the first applicant was still a close corporation and not a company (it was only converted on 3 May 2012). The share certificate further records a juristic person (the fourth applicant) as 'holder' during the close corporation era, which would contravene section 39 of the Close Corporations Act 69 of 1984 (only natural persons may be members of a close corporation). The respondents contend that because the applicants

insist that the share certificate is legitimate therefore the applicants concede that the fourth applicant cannot be a shareholder of the first applicant, because the fourth applicant could not have been a member of the first applicant when the interest was transferred in 2010.

c) In respect of the alleged share register, the respondents argued that the ‘share register’ was impermissibly produced for the first time in reply, with no explanation of its origin, who compiled it, when it was compiled, or where it was kept. The respondents argued that this fatally undermines the reliability and admissibility of the share register. In addition, the respondents raised that the share register indicates that the membership interest in the first applicant was transferred from Reinhardt Trust to the fourth applicant at a time when the first applicant was a close corporation and could not have taken transfer of the membership interest in 2010 by virtue of section 39 of the Close Corporations Act which provides that only natural persons may be members of a close corporation. The respondents invited this court to place no reliance on the share register.

d) The fourth applicant cannot be the shareholder, and, on any version, this court cannot conclude that fourth applicant holds the shares and if the fourth applicant is not the shareholder, everything that followed, namely the appointment of the second and third applicants as directors of the first applicant, the removal of the first respondent as director of the first applicant and the launching of this application - are all fatally defective. The respondents argued that the second to fourth applicants had no right to bring these proceedings through the first applicant because the first applicant did not authorise the institution of these proceedings, and for this reason this application stands to be dismissed with costs.

e) In relation to the shareholding of the first applicant, even if the fourth applicant is a shareholder of the first applicant (which the respondent argue is impossible), the appointment of the second and third applicants, and the removal of the first respondent, as a director was unlawful on the common cause facts.

f) The second and third applicants (BRPs of the fourth applicant) unilaterally appointed themselves as directors of the first applicant through their position as BRPs of the fourth applicant, and convened a shareholders' meeting in terms of section 71[5] of the Companies Act, to remove the first respondent as a director of the first applicant without a board (then only the first respondent) convening a shareholders' meeting, and without approaching court under section 61(12)[6] of the Companies Act when a board did not convene a meeting.

g) Section 61(1)[7] of the Companies Act provides that the board (or a person specified in the MOI or rules) may call a shareholders' meeting[8]. If the board fails to convene, the shareholder's remedy is to apply to court under section 61(12) of the Companies Act for an order compelling the meeting[9].

h) In *Heatherview Estates Ext 24 Home Owners Association (NPC) v Mahlatse Trading Enterprise CC* (22616/2019) [2019] ZAGPPHC 180 (20 May 2019) the court approved academic authority, that *'If a company fails to convene a meeting for any reason other than those contemplated in Section 61(11) ... the Act gives a shareholder the power to apply to the court for an order requiring the company to convene a meeting'*. The respondents added that this division endorsed the *Heatherview* decision in Trustees for the *Time Being of the Kromrivier Trust v Trustees for the Time Being of the Hartwig Family Trust and others* (16154/2023) [2025] ZAWCHC 19 (29 January 2025) at para 39.

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[5] "Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2) …"

[6] "(12) If a company fails to convene a meeting for any reason other than as contemplated in subsection (11) -

(a) at a time required in accordance with its Memorandum of Incorporation;

(b) when required by shareholders in terms of subsection (3); or

(c) within the time required by subsection (7), a shareholder may apply to a court for an order requiring the company to convene a meeting on a date, and subject to any terms, that the court considers appropriate in the circumstances."

[7] "The board of a company, or any other person specified in the company's Memorandum of Incorporation or rules, may call a shareholders meeting at any time."

[8] PA Delport *Henochsberg on the Companies Act 2008* Vol 1 at 231 and 232: 'General meetings are ordinarily convened by the directors, and a majority shareholder cannot usurp this power'.

[9] Ibid at 233.

i) The applicants admitted that the board (the first respondent) did not convene a meeting, and equally did not seek a court order under section 61(12) of the Companies Act. They simply held their own meetings and passed their own resolutions.

j) The applicants attempt to re-characterise what they did as a "written shareholder resolution" under section 68(1)[10] of the Companies Act but section 68 regulates the election (not bare appointment) of directors by those entitled to vote, in accordance with section 66(4) of the Companies Act and the MOI, and presupposes a properly convened process[11]. It is common cause that no such election took place.

[27] The respondents submitted that (1) the purported 'appointments' and 'removal' are improper, irregular and unlawful, (2) the second and third applicants are not legitimate directors, and (3) the first respondent remains the only lawful director. In relation to authority to launch these proceedings the respondents submitted that without a lawful board authorisation, the first applicant has not authorised these proceedings and therefore this application should be dismissed with costs.

[28] In relation to costs, the respondents argued for a punitive costs order in that the application be dismissed with costs on the attorney-and-client scale, and that the second and third applicants (the business rescue practitioners) be ordered to pay costs *de bonis propriis*. The respondents contend this is warranted because the applicants had knowledge of profound disputes on shareholding and directorship before launching the application, yet failed to address them in the founding papers, attempted impermissibly to cure defects in reply, the practitioners unlawfully installed themselves as directors and removed the first respondent, placed themselves in a

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[10] "Subject to subsection (3), each director of a profit company, other than the first director or a director contemplated in section 66 (4) (a) (i) or (ii), must be elected by the persons entitled to exercise voting rights in such an election, to serve for an indefinite term, or for a term as set out in the Memorandum of Incorporation."

[11] The respondents referred to Henochsberg which underscores that directors are elected, not appointed, and that even elected directors can be removed only via the Companies Act's mechanisms and no such valid election occurred.

conflict, contravening section 138(1)(e) of the Companies Act, and sought to mislead the court by omitting salient facts. On that basis, the respondents submitted that the application should be dismissed with punitive costs and *de bonis propriis* against the practitioners.

[29] In relation to the court's discretion on what is just and equitable, the respondents submitted that it would not be just and equitable to grant an eviction order as sought by the applicants because there are unresolved, live disputes about who lawfully controls and represents the first applicant, which are pending in the Pending Application, and this court should not grant relief while those issues remain undetermined.

[30] The respondents emphasised that an eviction order at this stage would cause irreparable prejudice because if they are evicted and the property is sold to implement the business rescue plan, and the court in the Pending Application later upholds their case on shareholding and directorship, 'the horse would have bolted', leaving them to chase a remedy against an entity in business rescue—an outcome they said is neither fair nor just and equitable.

[31] The respondents submitted that these factors weigh against the granting of an eviction order on just and equitable grounds.

[32] The respondents further argued that the applicants sought to present the matter as a 'vanilla' eviction while failing to disclose the entrenched disputes in the founding papers, which is conduct that, the respondents submitted, undermines the equitable exercise of the court's discretion and supports the refusal of an eviction order or at least postponing relief pending outcome from the Pending Application.

EVALUATION

[33] A court seized with an eviction application under the PIE Act must satisfy itself that the statutory requirements have been met, that ownership and unlawful occupation have been established, and that no valid defence has been raised. [12]

[34] It is well established that the court must first determine ownership and unlawful occupation before a further enquiry is triggered, namely an enquiry into whether it would be just and equitable to grant an eviction order.[13]

[35] Ownership of the property is not in dispute as the first applicant is the registered owner of the property. As stated above, the disputes concern the identity of the lawful shareholder(s) and/or director(s) of the first applicant.

[36] Notwithstanding the CIPC documents filed in support of this eviction application, those issues are squarely before another court in the Pending Application, which must determine, (1) the lawful shareholder(s) of the first applicant; (2) the lawful director(s) of the first applicant and (3) the authority of the BRPs to act on behalf of the first applicant.

[37] The court in the Pending Application will also have to determine whether the removal of the first respondent as director was lawful. At this stage, this court does not have the benefit of a determination of those disputes.

[38] Adv Moloi (for the applicants) maintained that the matter before this court is fundamentally an eviction application and that this court should decide on the eviction application without determining corporate disputes that are not squarely before it. This court is not persuaded that it is appropriate to determine this eviction application as though the pending disputes do not exist.

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[12] *Madulammoho Housing Association NPC v Nephawe and another* 2023 JDR 0049 (GJ).
[13] *Madulammoho Housing Association NPC v Nephawe and another* 2023 JDR 0049 (GJ).

[39] This court is inclined to agree with the argument of Adv Hoffman (for the respondents) that it would be inappropriate to grant an eviction order while the disputes in the Pending Application remain unresolved.

[40] If this court grants an eviction order at this stage an untenable situation would arise if the court in the Pending Application was to subsequently find that the impugned appointments, shareholding claims, or the removal of the first respondent were unlawful.

[41] Accordingly, this court's 'hands are tied' until the disputes relating to who lawfully represents the owner of the property and who has authority to bring this application are resolved by the court in the Pending Application.

[42] The disputes in the Pending Application also bear directly on the enquiry into unlawful occupation because that court will clarify who is legally authorised to act on behalf of the first applicant (to grant or withhold consent to the respondents' occupation).

[43] This court is not able to complete the first step of the enquiry into who is validly authorised to act on behalf of the owner and whether the property is being occupied unlawfully. The second leg of the enquiry (the just and equitable enquiry) is not triggered. On the basis of the record before this court, it would not be appropriate to weigh up the arguments advanced in relation to what is 'just and equitable' without a determination of the disputes in the Pending Application. What is clear for now is that an eviction order would not be appropriate.

[44] On the *Plascon-Evans* approach raised by the respondents, the respondents invited this court to apply the *Plascon-Evans* rule so that their factual version is accepted (together with any applicant's facts that cannot be seriously disputed), and

on that basis to dismiss this eviction application. This court is not persuaded that this eviction application should be outright dismissed.

[45] On the issue of costs, which remains in the unfettered discretion of this court, having regard to the circumstances of the matter, the applicants elected to institute this eviction application notwithstanding the existence of material disputes. It is therefore appropriate that the applicants bear the party-and-party costs of this application up to the date of this judgment.

ORDER

[46] This application is stayed pending the determination of disputes in the Pending Application (Gauteng Division, Johannesburg under case number 6406/2023).

[47] The applicants are to pay the party-and-party costs of this application up to the date of this judgment.

TR MPHEGO

ACTING JUDGE OF THE HIGH COURT

Appearances

For excipients: Adv T Moloi

Instructed by: Diale Mogashoa Attorneys

For respondent:	Adv J.M Hoffman
Instructed by:	Norman Wink & Stephens