



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

CASE NUMBER: LANC: 25R-2024

- (1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER
JUDGES: Yes ☐ / No ☒
(3) REVISED: Yes ☐ / No ☒

Date: 26 January 2026

In the matter between:

MIGA BOERDERY (PTY) LIMITED
JACOBUS PRINS

First Applicant
Second Applicant

and

JAN POLKA
GERTRUIDA POLKA

First Respondent
Second Respondent

**ALL PERSONS RESIDING WITH OR UNDER
THE FIRST AND SECOND RESPONDENTS
ON THE FARM KNOWN AS HERMITAGE
FARM, WORCESTOR**

Third Respondent

VREEDE VALLEY MUNICIPALITY

Fourth Respondent

**THE DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT AND LAND REFORM**

Fifth Respondent

ORDER

The Order of the Magistrates' Court is confirmed in part in the following manner:

1. The application for eviction is granted.
2. The fourth respondent (Breede Valley Municipality) is directed to provide emergency housing suitable for human habitation in any area that is as close as possible to the farm known as Hermitage Farm, Worcester;
3. To the extent that the first and second respondents are relocated to an informal settlement with no structures, the fourth respondent is directed to provide the first and second respondents with temporary emergency housing kits by no later than 31 March 2026.
4. The first to third respondents are ordered to vacate the premises situate on Hermitage Farm, Worcester on or before 30 April 2026.
5. There is no order as to costs.

JUDGMENT

MAJOZI AJ:

[1] This is as an automatic review in terms of section 19(3) of the Extension of Security of Tenure Act, 62 of 1997 ("**ESTA**") in relation to the judgment of the District of Worcester per Acting Magistrate Dyani ("**the Magistrate**") wherein the Magistrate granted the following order:

"60.1. The application for eviction is granted.

60.2. The first to third respondents are ordered to vacate the premises situated at Hermitage Farm, Worcester on or before 31 December 2024.

60.3. Should the respondents mentioned in paragraph 50.2 fail to vacate the premises on or before 31 December 2024, the Sheriff is authorised to evict them from the premises at Hermitage Farm by 15 January 2025.

60.4. The fourth respondent is ordered to provide emergency housing suitable for human habitation with access to basic services to the respondents on or before 30 November 2024.

60.5. There is no order as to costs."

[2] The abovementioned Order was against a finding that it is just and equitable for the eviction to be granted. According to the Magistrate, the probation officer's report filed was in compliance with section 9(3) of ESTA as it indicated that an engagement between the respondents had taken place.

[3] The Magistrate then found that, taking into account all the factors placed before him, as well as the balancing of the constitutional rights of the applicants and those of the respondents, the applicants had complied with the procedural and substantive requirements of ESTA.

[4] There is just one issue that was not adequately addressed by the judgment granting eviction and that is alternative accommodation.

[5] It is common cause that the reports of both the fourth and fifth respondents, (the Municipality and the Department of Agriculture, Rural Development and Land Reform), confirmed that there is no alternative accommodation for the first and second respondents and members of their family. The Magistrate Court attempted to cure this by simply ordering the fourth respondent to provide alternative accommodation. This order was granted notwithstanding that the Municipality had indicated that it does not have the means to provide such alternative accommodation.

[6] It is trite that Courts may not grant unenforceable orders. The Municipality

indicated that it does not, at that stage, have any form of alternative accommodation available for the first and second respondents, whether it is through emergency temporary accommodation, or any other alternative accommodation:

- 6.1. It indicated that on emergency option 1, which is to accommodate the first and second respondents on non-serviced sites in informal areas with communal services, the option was not available as there were no vacant plots.
- 6.2. On emergency option 2, the Municipality indicated that the rental units were not available as they were all fully occupied and there was uncertainty at the stage of the report as to when there will be such a vacant rental unit available. The Municipality indicated that this may require a period of two years for the rental units to be available.
- 6.3. The extreme example of a temporary accommodation in community halls was available. However, it was not well suited for the circumstances of this matter as it is for cases of disasters or other life-threatening situations.
- 6.4. Under option 3, families are housed for a few days until accommodation in the informal area has been constructed or repaired.

[7] In its conclusion, the Municipality said the following:

"[28] We, the Breede Valley Municipality, currently have no available alternative accommodation, immediate or temporary emergency accommodation or vacant rental units and thus we are unable to assist the first and second respondents and their family with alternative accommodation.

For assistance in the Transhex Project, the respondents must qualify for a housing subsidy (Project-linked subsidy). In order to be eligible to apply for a housing subsidy, the following requirements have to be met (i) the Applicant must be registered on the municipal housing list for more than three years; (ii) the Applicant must be over the age of 35 years; (iii) the Applicant must be married or cohabitating or single with financial dependents; (iv) the Applicant must be a South African citizen; (v) the monthly household income, before deductions, must be less than R3 500; (v) he/she must never have received a subsidy from Government; (vi) he/she must never have owned property.

We, the Breede Valley Municipality wish to focus the Honourable Court's attention to the fact that the application process for housing subsidy for

Transhex is currently shut by the Department of Human Settlements and no subsidy applications is considered, until further notice (sic)."

[8] Similarly, the probation officer's report dated 16 August 2023 from the fifth respondent, recommends that an eviction order should not be granted as there still has to be meaningful engagements to try and find suitable alternative accommodation for the respondents' family.

[9] On meaningful engagement, the matter was before the Magistrates' Court on 22 August 2021 and it was postponed for purposes of meaningful engagement. The Municipal report was only delivered on 24 October 2023, more than two years after the initial postponement. The probation officer's report filed by the fifth respondent appears to have been delivered in ignorance of the report delivered by the Municipality. The probation officer's report did not engage with the report of the Municipality. It, however, just laments the lack of meaningful engagement.

[10] On the other hand, the Municipality's report paints a different picture and refers to meaningful engagement at paragraph 23 thereof. Significantly, the Municipality's report further indicates that there may be rental units available to accommodate the first and second respondents within the next two years (i.e. two years from 23 October 2023). There is also a secondary medium to long-term solution proposed by the Municipality in the Rholihlahla informal settlement in Worcester Avian Park which has available land.

[11] It seems to me that that the issue of alternative accommodation was not adequately addressed or there was insufficient engagement between the applicants, the first and second respondents and the Municipality. There is a need for certainty as to where the first and second respondents will be evicted and relocated to.

IS THE EVICTION OF THE FIRST AND SECOND RESPONDENTS JUST AND EQUITABLE?

[12] It is now settled law that an eviction that will lead to homelessness as somewhat

intimated by both the reports of the Municipality and the fifth respondent is not just and equitable. In *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another*,¹ the Constitutional Court in the context of unlawful occupiers in terms of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 ("**PIE**") established the following principles –

12.1. That an eviction order that will give rise to homelessness could not be said to be just and equitable "unless provision had been made to provide for alternative or temporary accommodation". Where it is unjust or inequitable to evict, the unlawful occupiers have a defence, and no eviction can be ordered.

12.2. In paragraph 48, the Constitutional Court then went on to state as follows:

"The court will grant an eviction order only where: (a) it has all the information about the occupiers to enable it to decide whether the eviction is just and equitable; and (b) the court is satisfied that the eviction is just and equitable having regard to the information in (a). The two requirements are inextricable, interlinked and essential. An eviction order granted in the absence of either one of these two requirements will be arbitrary. I reiterate that the enquiry has nothing to do with the unlawfulness of occupation. It assumes and is only due when the occupation is unlawful."

[13] Dealing with the availability of alternative accommodation, the Supreme Court of Appeal in the matter of *Cape Town City v Commando and Others*,² Mabindla-Boqwana JA (as she then was), in a PIE setting, said the following:

"[60] As to emergency housing, the City demonstrated unequivocally that its policy provides for an emergency housing programme by way of IDAs, TRAs and developments in existing informal settlements. These are considered mechanisms created to meet emergency housing needs when they arise. The fact that no provision is made for such emergency housing needs in the inner city, does not render the choices made by the City irrational or unreasonable."

¹ 2017 (5) SA 346 (CC) at para [57].

² 2023 (4) SA 465 (SCA), at para [60] ("**Cape Town City**").

[14] At paragraph [61] the Court went on to state as follows:

"[62] The distinction between permanent and emergency housing has been recognised. This Court in *City of Johannesburg v Dladla and Others*, referred with approval to the judgment of *City of Cape Town v Hoosain N O*, in which the following was observed:

'Once it is recognised that emergency accommodation by its very nature will invariably fall short of the standards reasonably expected of permanent housing accommodation, it follows that those who need to occupy such accommodation must accept less than what would ordinarily be acceptable. The apparent harshness of an acceptance of this recognition has to be seen against the realities imposed by the vast scale of the housing backlogs with which the state, in general, and the City, in particular, are having to engage.' " [Emphasis added]

[15] The Supreme Court of Appeal in *Cape Town City* also recognised that the Municipality had the responsibility to provide temporary emergency accommodation and that such accommodation had to be as near as possible to the area where the property that the unlawful occupiers occupied is situated. It also indicated that the unlawful occupiers had to be treated with dignity and care when choosing an appropriate location. This would include taking into account the occupiers places of employment and children in schooling, hospitals, transportation and other important amenities that the eviction and relocation may require. Essentially the vulnerabilities of the occupiers had to be considered.³

[16] This judgment of the SCA was on appeal overturned by the Constitutional Court⁴. The Constitutional Court held that the City of Cape Town's implementation of the National Housing Programme is unconstitutional. The Constitutional Court still held as follows at paragraph 107:

"It seems clear that the state (in this case the City) would be acting unreasonably if it fails to have regard to the location of the residents and places of employment when deciding the locality of the housing, regardless of whether such choice is located within the prescripts of section 26 of the Constitution. These are all the transformative imperatives of section 26 of the Constitution which are directed at addressing spatial

³ *Ibid*, paras [73] and [73].

⁴ *Charnell Commando and Others v City of Cape Town and Another* 2025 (3) SA 1 (CC)

injustice and spatial exclusion. Sadly, the Supreme Court of Appeal failed to consider them properly. *Rand Properties* stated that:

“More particularly, the Constitution does not give a person a right to housing at state expense at a locality of that person’s choice (in this case the inner city). Obviously, the State would be failing in its duty if it were to ignore or fail to give due regard to the relationship between location of residence and the place where persons earn or try to earn their living but a right of the nature envisaged by the court and the respondents is not to be found in the Constitution.” ”

[17] Insofar as the eviction being just and equitable, it appears as if the Magistrates’ Court did not take into account measures that ought to have been taken by the Municipality to ensure that the second respondent’s relocation does not denude them of their dignity. It was also oblivious to the fact that their children need schooling and that for the sustainability of their livelihoods, they should be as close as possible to their places of employment. The Order simply directs the Municipality to provide alternative accommodation without any safeguards to ensure that the alternative accommodation is suitable and that the relocation of the first and second respondents to their alternative accommodation is as undistruptive to their way of life as possible. This failure justifies the intervention of this Court as provided for in the Order I make.

[18] The Municipality ought to have been afforded a reasonable time to find temporary accommodation which would minimise the adverse effect of the eviction on the first and second respondents as well as their children. It is hard to fathom how the inevitable disruptive personal innards of an eviction would be minimised when the first and second respondent do not even know where they will be relocated to, whether they will be able to get to their places of employment and whether the first and second respondent will have to look for a new school for their children.

[19] In the secondary medium to long-term alternative accommodation referred to above, the Municipality indicates that it provides rudimentary services to all evictees with a resettlement package consisting of emergency housing kits and it is this option that was immediately available and can be exercised. The foregoing seems to be contrary to the claim that it does not have any alternative accommodation for the first

and second respondent. The effect thereof is that this was not contained in the Order of the Magistrate as an alternative accommodation, the Municipality was simply ordered to provide alternative accommodation. I find the order of the Magistrate Court a tad opaque and inadequate in the circumstances of this case.

[20] In the circumstances, the Order of the Magistrates' Court is confirmed in part in the following manner:

1. The application for eviction is granted.
2. The fourth respondent (Breede Valley Municipality) is directed to provide emergency housing suitable for human habitation in any area that is as close as possible to the farm known as Hermitage Farm, Worcester;
3. To the extent that the first and second respondents are relocated to an informal settlement with no structures, the fourth respondent is directed to provide the first and second respondents with temporary emergency housing kits by no later than 31 March 2026.
4. The first to third respondents are ordered to vacate the premises situate on Hermitage Farm, Worcester on or before 30 April 2026.
5. There is no order as to costs.

M MAJOZI

Acting Judge of the Land
Court of South Africa ,Randburg
26 January 2026