



**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN  
JUDGMENT**

Case Number: 14498/23

In the matter between:

**BERNIDINE NICOLINE SEPTEMBER**  
(In her capacity as Executrix of the estate of the late  
Marthinus Nicolaas Cloete, Estate Number 0[...])

Applicant

and

**ALLETA CLOETE**

First Respondent

**MARIAANE CLOETE**

Second Respondent

**MARIUS CLOETE**

Third Respondent

**ALL OTHER OCCUPANTS HOLDING TITLE  
THROUGH/UNDER THE FIRST, SECOND AND THIRD  
RESPONDENTS AT 1[...] P[...] STREET, ROBINVALE  
ATLANTIS, CAPE TOWN**

Fourth Respondent

**THE CITY OF CAPE TOWN MUNICIPALITY**

Fifth Respondent

**Coram:** MAGARDIE AJ

**Heard:** 24 May 2024

**Further reports:** 26 September 2025

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## **JUDGMENT**

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**Magardie AJ;**

### **Introduction**

1. The late Mr. Floors Cloete and his wife, the late Mrs. Maria Cloete (“Mr. and Mrs. Cloete”), were in their lifetime, the recipients of a residential dwelling allocated to them by the former Cape Divisional Council.
2. On 16 May 1986, Mr. and Mrs. Cloete, then residing at Grootboom Plaas, Durbanville, concluded a deed of sale with the Cape Divisional Council. The property sold in terms of the sale agreement was a residential dwelling situated at 1[...] P[...] Circle, Atlantis, Cape Town. The sale agreement provided that the property was to be occupied by Mr. Floors Cloete, Mrs. Maria Cloete and their children. The property formed part of the new Atlantis Housing Scheme, a housing scheme established by the Cape Divisional Council in terms of the Housing Act 32 of 1966. The selling price of the property was R23 272.
3. Little could Mr. and Mrs. Cloete have imagined, when they signed the deed of sale for their new home, that the same home would years later

be the subject of litigation pitting family member against family member in a bitter dispute over the family home. So, unfortunately, it has come to pass.

4. In the present application, the applicant, a granddaughter of the late Mr. and Mrs. Cloete, seeks the eviction of her paternal aunts and uncles, and all persons occupying through them, from the property at 1[...] P[...] Circle, Atlantis. The eviction application is brought by the applicant in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE Act”).

### ***The parties***

5. The applicant for the eviction order is Ms. Bernidine Nicoline September. She is the daughter of the late Mr. Marthinus Nicolaas Cloete, the eldest son of Mr. and Mrs. Cloete. Mr. Marthinus Cloete passed away at the age of 58 on 1 December 2014.
6. The applicant sues in her capacity as executrix of the deceased estate of her late father Mr. Marthinus Cloete.
7. The first respondent is Ms. Aletta Cloete. She is the eldest daughter of Mr. and Mrs. Cloete and the sister of the late Mr. Marthinus Cloete.
8. The second respondent is Ms. Marianne Cloete. She is the daughter of Mr. and Mrs. Cloete and younger sister of the late Mr. Marthinus Cloete.

9. The third respondent is Mr. Marius Cloete, son of Mr. and Mrs. Cloete and brother of the late Mr. Marthinus Cloete.
10. The fourth respondents are cited as all other occupants holding title on the property through or under the first to third respondents. The occupants of the property include other adult siblings of the late Mr. Marthinus Cloete, as well as their children.
11. According to personal circumstances questionnaires completed by the first to fourth respondents, the property is occupied by nine adults (seven women and two men) and three minor children aged 11 and 10 years old. Six of these individuals are the adult children of the late Mr. Floors Cloete and Mrs. Maria Cloete. The ages of the adult respondents range from 19 to 64 years of age, with the eldest respondent, aged 64, being the first respondent. Four of the respondents are recorded in the questionnaires as suffering from chronic medical conditions. All the respondents who completed the questionnaires indicated that they had been living on the property for periods ranging from 27 to 37 years and stated that they would be rendered homeless if evicted from the property.
12. The fifth respondent is the City of Cape Town, a metropolitan municipality in the local sphere of government (“the City”). The applicant states in her founding affidavit that she does not seek

substantive relief against the City, which has been cited inter alia in terms of section 4(2) of the PIE Act.

***Factual and litigation background***

13. The historical background relating to the allocation and sale of the property to Mr. and Mrs. Cloete were explained in a report by the City's Mr. Thandikhaya Tsagane dated 27 September 2025. Mr. Tsagane is a Senior Professional Officer employed by the City.
14. According to Mr. Tsagane's affidavit, the property was sold to Mr. and Mrs. Cloete by way of a deed of sale concluded with the former Cape Divisional Council on 16 May 1986. Clause 9 of the sale agreement provided that transfer of title would be given by the Council's conveyancers as soon as the purchaser had paid a sum sufficient to reduce the capital balance of the purchase price by not less than 10% of the amount thereof. The purchase price of the property was in effect a loan by the Cape Divisional Council to Mr. and Mrs. Cloete. The deed of sale provided for a purchase price of R23 572, to be payable by a deposit of R300 and the balance of R23 272, plus interest thereon at the rate of 9% per annum, would be payable in monthly instalments over a period of 360 months.
15. It appears from the papers that Mrs. Maria Cloete died on 25 May 1996 followed by her husband, Mr. Floors Cloete on 31 May 2005. On 15 February 2007, almost two years after the death of Mr. Floors Cloete,

the Master of the High Court issued Mr. Marthinus Cloete with Letters of Authority in terms of Section 18(3) of the Administration of Estates Act 66 of 1965. The Letters of Authority recorded that Mr. Marthinus Cloete was authorized to take control of the assets in the estate of the late Mr. Floors Cloete, to pay the debts and to transfer the residue of the estate to the heirs entitled thereto by law.

16. The Letters of Authority issued to Mr. Marthinus Cloete recorded that the assets in the deceased estate of Mr. Floors Cloete were the property at erf 4[...] Atlantis. The total value of this asset was recorded in the Letters of Authority as being the amount of R83 000. This is a matter of some importance, which will be returned to later.
17. On 25 May 2007, the City substituted Mr. Marthinus Cloete as the purchaser of the property in terms of a substitution agreement. The City thereafter instructed attorneys Lindsay and Waters, to transfer the property in the name of Mr. Marthinus Cloete, in accordance with the substitution agreement. The substitution agreement provided that the first purchaser of the property, Mr. Floors Cloete, had passed away and that his son, Mr. Marthinus Cloete, had been authorized in terms of section 18(3) of the Administration of Estates Act, ‘...to take over the assets of the deceased estate’.
18. Clause 1 of the substitution agreement provided that the deed of sale entered into between Mr. Floors Cloete and the City (the successor in title to the Cape Divisional Council), was cancelled. Clause 2 recorded

that the property was resold by the City to Mr. Marthinus Cloete with effect from 1 May 2007. The clause recorded that the balance of months for payment of the purchase price (in terms of the 1986 original deed of sale) to date of final payment, was 10.72 years and that the balance outstanding on the loan as of 12 April 2007, was an amount of R9 433.50.

19. Ownership of the property was transferred from the City to Mr. Marthinus Cloete on 16 July 2014 by way of deed of transfer no. T[...]. A few months later and on 1 December 2014, Mr. Marthinus Cloete passed away from natural causes. He died intestate.
20. On 8 March 2023, just short of 9 years after the death of Mr. Marthinus Cloete, the Master approved the issuing of Letters of Executorship to the applicant, appointing her as executrix of his deceased estate.
21. Two days later and, on 10 March 2023, the applicant in her capacity as executrix of the deceased estate of Mr. Marthinus Cloete, and a certain Mr. and Mrs. Fredericks, concluded an offer to purchase in respect of the property. The purchase price in terms of the offer to purchase was an amount of R320 000. The offer to purchase is subject to various conditions.
22. These conditions included the buyers obtaining a bond, vacant possession of the property and consent being obtained from the Master of the High Court in terms of section 42(3) of the Administration of

Estates Act.<sup>1</sup> The offer to purchase stated that it would expire at midnight on 10 March 2023.

23. The Letters of Executorship issued to the applicant were date-stamped by the Master's office on 29 May 2023. By letters dated that same day, attorneys acting on behalf of the applicant directed notices to vacate to the first to third respondents. The notices to vacate stated that the first to third respondents were unlawfully occupying the property without a valid lease agreement and were neither paying rental nor contributing to the utilities. The notices recorded that the first to third respondents were required to vacate the property by 30 June 2023, failing which legal action would follow.

### ***Litigation history***

24. The applicant's eviction application in terms of section 4(1) of the PIE Act was issued on 24 August 2023.
25. In her founding affidavit, the applicant set out the background to the application. She stated that her late father, Mr. Marthinus Cloete, was the registered owner of the property and that while he was alive, he had given consent for the first respondent to temporarily stay with him on the property. According to the applicant, she had stayed with her father and the first respondent for approximately a year around 2008/2009. During this time, she had overheard a conversation between Mr. Marthinus Cloete and the first respondent, in which he had informed

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<sup>1</sup> Section 42 of the Administration of Estates Act provides that '...An executor who desires to effect transfer of any immovable property in pursuance of a sale shall lodge with the registration officer, in addition to any such other deed or document, a certificate by the Master that no objection to such transfer exists.'

the first respondent that she must vacate the property as she was not paying rent or contributing to any of the expenses. According to the applicant, the first respondent nonetheless remained in occupation of the property.

26. The applicant went on to allege that after his death, her late father's siblings, the second and third respondents, had moved into the property without her knowledge or consent. She stated that they were not contributing anything towards the household expenses. According to the applicant, any and all rights pertaining to the respondent's occupation of the property were terminated upon the death of Mr. Marthinus Cloete and that the respondents were consequently unlawful occupiers.
27. The applicant alleged that the continued unlawful occupation by the respondents was causing the deceased estate great financial loss, as the respondents were unlawful occupiers who were not paying rent nor contributing to the expenses of the premises. Their unlawful occupation was preventing the finalization of the winding up of the estate. According to the applicant, the unlawful occupation was also preventing the transfer of the property to prospective buyers and the entire transaction was being held up due to the respondent's unlawful occupation of the property. The applicant referred in this regard, to the offer to purchase concluded on 10 March 2023 with Mr. and Mrs. Fredericks. The applicant stated that the eviction of the respondents was just and equitable in the circumstances.

28. On 19 September 2023, Samela J, granted an order authorizing service of the notice contemplated in section 4(2) of the PIE Act, in terms of which the respondents were inter alia informed that an eviction order would be sought against them on 27 October 2023.
29. The City filed a housing report dated 24 October 2023. The report stated that the City had not been provided with sufficient information to determine whether the respondents would be able to secure alternative accommodation in the event of an eviction order being granted. The report enclosed a personal circumstances questionnaire to be completed by the respondents. It recorded that upon receipt thereof, the City would be in a position to file a comprehensive housing report including details of whether the respondents qualify for emergency shelter, the nature of the emergency shelter and when such shelter may be available for occupation.
30. The application came before Fortuin J, on 27 October 2023. The matter was postponed to 30 November 2023 to allow the first and second respondents to obtain legal representation. A further postponement was granted by Nziweni J, on 30 November 2023, in terms of which the matter was postponed for hearing on 28 May 2024, together with timelines for the filing of answering and replying affidavits.
31. The first respondent filed an answering affidavit dated 28 March 2024. In her affidavit, which does not appear to have been prepared with the

benefit of legal assistance, she set out the background to her late father's purchase of the property. She stated that her family, which comprised of her parents and 10 children, were the first people to move to the Robinvale area.

32. She stated that she was working at the time and that she had taken it upon herself to ask her employers, Dr Steyn and Mrs. Steyn, for a loan in order to purchase the house and pay the deposit of R300. She stated that her father, Mr. Floors Cloete, later worked for Dr. Steyn and Mrs. Steyn in order to pay off the loan.
33. According to the first respondent, all her parents' grandchildren grew up in the household together, including her daughter Chantel, who was born in 1988. The first respondent stated that her parents later learnt of another grandchild, being the applicant and daughter of Marthinus Cloete. Marthinus requested her parents to allow the applicant to live with them for a while, which she did for a few years. She then moved back to her mother after about 5 years. The first respondent stated that they did not hear much about her after that except that she later married and had 3 children.
34. The first respondent stated that after her father's death, the City Council required one of her siblings to take responsibility for the accounts for the house. Her affidavit in relevant parts stated the following:

‘we as brothers and sisters agreed for Marthinus to be the person in charge. However, he took advantage of the situation by braiding us and putting the house on his name, which we only found out later.

We didn't know about this scheming and the fact that he stole the house and the fact that he stole the house from us and putting his daughter as an executor. We only now know gave permission as the person who will temporary be in charge not as someone who must take ownership of the house.

My brother had really took advantage of us and putting us in the situation that we currently in. We went as far as going to the Masters Office and they refuse to help us with this regard. My parents never had a will to say that the house needs to go on a certain child's name. I still don't understand how my brother can purchase a house, which he never bought in the first place. He was too sick to work and was on medication most of his life. So therefore he was not in a position to buy a house. We can provide proof that my father bought the house and evidence of how our children grew up in the house.’

35. The first respondent attached to her affidavit a letter from the then Cape Divisional Council recording the allocation of the property to Mr. Floors Cloete and setting out the details of the purchase price, deposit and monthly instalment.
36. The applicant in her replying affidavit stated that she had no prior knowledge or insight into the financial position of the respondents' parents nor any loans that they might have concluded in relation to the property. She stated that while the late Mr. Floors Cloete might have

been the first purchaser of the property, her father Mr. Marthinus Cloete, had purchased the property from the City and was its registered owner. The applicant denied the allegations that her father stole the property or became the owner by some or other untoward, dishonest or fraudulent manner.

37. She stated that the property was never owned by Mr. Floors Cloete and did not form part of his estate when he passed away, therefore the respondents have no claim to the property as heirs of their father's estate. She denied that the respondents had raised any legal defence to the eviction application.

### ***The City's Housing Reports***

38. The City filed a housing report dated 27 May 2024 ("the first housing report") on the day before the hearing of the eviction application on 28 May 2024. The report was made by Ms. Riana Pretorius, the City's Director: Informal Settlements. Her report summarized the personal circumstances of the respondents as disclosed in the personal circumstances questionnaires which they had completed at that stage.
39. The first housing report also set out the City's position with regard to the provision of emergency accommodation. The report stated that the City was facing tremendous challenges with respect to the shortage of land to create or establish more emergency accommodation sites. These included the loss of land through land invasions. The establishment of

temporary relocation areas was said to be a process which would take 18 months.

40. The report recorded that the respondents' personal circumstances had been noted and that the City had determined that the respondents and their dependents could be provided with an emergency housing kit if they were not able to obtain accommodation through their own means. The City would, in this regard, be able to provide two emergency housing kits, which allow for a structure of 6m x 3m (18m<sup>2</sup>) to be constructed.
41. The provision of these emergency housing kits by the City was however subject to a condition. The report stated that the emergency housing kits could only be made available to the respondents after they had secured a site for its construction and the landowner had consented thereto in writing by means of a sworn affidavit, in a form attached to the report. The report stated that the landowner would also have to provide proof of ownership and a copy of their identification document. The respondents were required to accept or reject the City's offer of an emergency housing kit within 30 days of the date of the first housing report. The report concluded by stating that the City, would only furnish the respondents with the emergency housing kits and that it was the duty of the respondents to assemble the material themselves.
42. The application proceeded on 28 May 2024. The first and second respondents were permitted to address the court on the matters raised in

their answering affidavit and their opposition to the eviction application. The matter thereafter stood down for settlement discussions between the parties, which a few months later reached an impasse and were ultimately unsuccessful.

43. Following the failure of the settlement discussions, I handed down a reporting order on 3 March 2025 requiring the City to inter alia, file a report, within 10 days of service of the order, dealing with the circumstances which resulted in the transfer of the property to the late Mr. Marthinus Cloete. The reporting order also required the City to report on the current availability of any other alternative or emergency housing which may be provided to the first to third respondents, other than the emergency housing kits referred to in the City's first housing report. The applicant and the respondents were afforded an opportunity to respond to any such reports filed by the City.
44. The reporting order was served on the City on 24 April 2025. The report required by the order ("the second housing report") was filed on or about 26 September 2025. The delay was attributed by the City to unspecified 'unforeseen circumstances'. The City's second housing report set out in some detail the information at its disposal regarding the transfer of the property, including the deed of sale and substitution agreement referred to earlier.

45. With regard to emergency housing, the City referred to provisions of the Emergency Housing Programme (“EHP”), noting that the EHP stated that it was the responsibility of a municipality to consider whether specific circumstances in its area of jurisdiction merit the submission of an application for assistance under the said Programme and if so, to initiate, plan and formulate applications to the provincial sphere of government for projects relating to emergency housing situations. The report stated that although the emphasis in the Emergency Programme is on temporary relief, the City aimed to develop temporary emergency areas established in terms of the Programme into Incremental Development Areas (“IDAs”) where possible. IDAs are areas which are capable of being upgraded incrementally to provide for permanent housing. The report stated that the City had established a number of TRAs and IDAs, all of which are fully subscribed and unable to accommodate any further households.
46. According to the City’s second housing report, there was currently no emergency accommodation available at any of the City's emergency housing sites. Where vacancies do become available, they would quickly be filled due to huge demand. The report stated that the process of obtaining the necessary approvals for the establishment of an emergency housing area, TRA or IDA generally takes at least two years, but it could take as long as four or five years from the date of the application to final approval. All the City’s TRAs were at capacity, the report stated, and the City was not in a position to accommodate any of the respondents through any of its existing TRAs. The report sets out

other forms of housing assistance which the respondents could access through the state-subsidized housing programme and the social housing programme. In respect of the latter, the report noted that the process for social housing applications was however, entirely independent of the City and its outcome depended on the social housing institutions concerned.

47. The second housing report reiterated the position expressed in the City's first housing report regarding the provision of emergency housing kits. It repeated the condition that such kits could only be made available to the respondents by the City after they have secured a site for its construction and the landowner had consented thereto in writing by means of a sworn affidavit. The City's second housing report does not state that although emergency accommodation is not immediately available for the respondents, it would be available at a particular point in future. No timelines are provided as to when such emergency accommodation *might* become available. Had this been the case, the possible future availability of emergency accommodation may well have been a factor relevant to the just and equitable enquiry, and in particular, the date of implementation of an eviction order.
48. The City's second housing report concluded by stating that the respondents' defence that the property had been unlawfully transferred had not been properly raised and '...did not necessarily prohibit an eviction order being made.' The report concluded by stating that the issue of homelessness and the need for emergency shelter, 'does not

arise in this matter’ and that the relevant information placed before court ‘...does not lead to a finding of homelessness’.

### ***Relevant circumstances in eviction proceedings***

49. The applicant’s eviction application relies on the provisions of section 4(6) of the PIE Act. Section 4(6) of PIE applies where an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated.<sup>2</sup> Section 4(7) applies where an unlawful occupier has occupied the land in question for more than six months at the time the proceedings are initiated.<sup>3</sup>
50. Counsel for the applicant submitted that the respondents had been in unlawful occupation of the property for less than six months and that accordingly, section 4(6) applied. Given that the respondents were called upon to vacate by 30 June 2023 and the application was issued on 24 August 2023, the court, so counsel’s argument went, was not required to consider the circumstances in section 4(7) of PIE.

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<sup>2</sup> Section 4(6): ‘If an unlawful occupier has occupied the land in question for less 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 the rights and needs of the elderly, children, disabled persons and households headed by women.’

<sup>3</sup> Section 4(7): ‘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 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.’

51. Reliance in this regard was placed on the judgment of the Supreme Court of Appeal in *Ndlovu v Ngcobo; Bekker and Another v Jika*<sup>4</sup>. Harms JA held in *Ndlovu* that the period of the occupation [for the purposes of section 4(6) and section 4(7) of PIE] is calculated from the date the occupation becomes unlawful.<sup>5</sup>
52. The applicant's submissions regarding the limited circumstances which are relevant in section 4(6) eviction proceedings, are inconsistent with developments in our eviction jurisprudence in the two decades which have passed since the judgment of the SCA in *Ndlovu*.
53. In *Occupiers Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele*<sup>6</sup>, the SCA rejected an interpretation of PIE that courts do not have to consider the availability of alternative accommodation or land in cases where occupiers had occupied property for less than six months. Theron AJA put it thus:
- ‘In terms of s 4(7) a court is obliged, in addition to the circumstances listed in s 4(6), namely, the rights and needs of the elderly, children, disabled persons and households headed by women, to give due weight to the availability of alternative land. There is nothing to suggest that in an enquiry in terms of s 4(6), a court is restricted to the circumstances listed in that section. The court must have regard to *all* relevant circumstances. The circumstances identified are peremptory but not exhaustive. The court may, in appropriate cases, have regard to the availability of alternative

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<sup>4</sup> *Ndlovu v Ngcobo; Bekker & Another v Jika* 2003 (1) SA 113 (SCA) at [17] (“*Ndlovu*”).

<sup>5</sup> *Ndlovu* at para 17.

<sup>6</sup> *The Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* (102/09) [2010] ZASCA 28; 2010 (9) BCLR 911 (SCA); [2010] 4 All SA 54 (SCA) (25 March 2010) (“*Shulana Court*”).

land. However, where the availability of alternative land is relevant, then it is obligatory for the court to have regard to it.’<sup>7</sup>

54. The Constitutional Court has emphasized the importance of courts considering the possibility of evictions resulting in homelessness and the availability of emergency accommodation. This applies even in section 4(6) eviction applications, where the occupiers had been occupying properties for relatively short periods.<sup>8</sup>

55. In *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others*<sup>9</sup>, Moseneke DCJ, referring to the distinction between section 4(6) and section 4(7) of the PIE Act, said the following:

‘While this distinction is important, I do not think it is decisive to the justice and equity enquiry. This is because, if a court has before it a case in which the land occupation falls short of six months, it is obliged to consider all the relevant circumstances. In an enquiry of this kind, a court should determine what the relevant circumstances are.

Close to 200 families would have been evicted and in all probability rendered homeless consequent upon the order of the High Court. In the face of this consequence the question whether the City was reasonably capable of providing alternative land or housing was of crucial importance.’<sup>10</sup>

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<sup>7</sup> *Shulana Court* at para 13.

<sup>8</sup> *Occupiers of Skurweplaas 353 JR v PPC Aggregate Quarries (Pty) Ltd and Others* (CCT 26/11) [2011] ZACC 36; 2012 (4) BCLR 382 (CC) (7 December 2011) at para 13.

<sup>9</sup> *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others* (CCT 25/11) [2011] ZACC 35; 2012 (2) SA 337 (CC); 2012 (4) BCLR 372 (CC) (7 December 2011) (“Mooiplaats”).

<sup>10</sup> *Mooiplaats* at para 16.

56. The length of time that an occupier has occupied property unlawfully is a relevant factor to be considered when determining whether an eviction would be just and equitable. It is not decisive. The proper starting point when a court exercises its duties in eviction proceedings is section 26(3) of the Constitution.
57. Section 26(3) of the Constitution states that ‘no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances’.
58. The constitutional obligation on courts is to consider ‘*all* relevant circumstances’ in an eviction proceeding, means just that. ‘*All*’ does not mean ‘*only some*’. Section 26(3) of the Constitution embodies an obligation expressed in language as wide as constitutional language could achieve. This is by deliberate design, not omission.<sup>11</sup>
59. The applicant’s argument that this court need not have regard to the circumstances in section 4(7) of the PIE Act in cases of unlawful occupation for less than six months, is for these reasons, unsustainable and without merit.

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<sup>11</sup> *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004) (“*PE Municipality*”) at para 22.

60. I consider there to be three key and inter-linked circumstances which are relevant to the question of whether the granting of an eviction order against the respondents would be just and equitable. The first is the possibility of homelessness. The second is the availability of emergency accommodation. The third is the allegedly unlawful acquisition of the property by the late Mr. Marthinus Cleote.
61. These factors must be balanced against the considerations identified by the applicant as justifying the granting of an eviction order.

***The possibility of eviction resulting in homelessness***

62. Evictions which result in people being left homeless with no roof over their heads are an affront to constitutional values and a serious violation of the right to human dignity. Enforced homelessness implicates a number of constitutional rights including the right to life and the right not to be subjected to cruel and inhuman treatment. The basic human need for shelter from the elements cannot be separated from the need for security of tenure for such shelter. All human beings require shelter, and all human beings require a place where they can live in such shelter.
63. It is for these reasons that it is by now an uncontroversial and generally accepted legal principle that an eviction which results in homelessness, will generally not be just and equitable. The Constitutional Court has thus held that an eviction order that will give rise to homelessness

cannot be said to be just and equitable, unless provision has been made to provide for alternative or temporary accommodation.<sup>12</sup>

64. In the present case, each of the respondents have indicated in their personal circumstances questionnaires that they will be rendered homeless if evicted from the property. I am unable to find any basis in the evidence to gainsay what they have stated in this regard. The applicant has not provided any factual basis to suggest that alternative accommodation is available to the respondents other than the family home in which they have lived for decades.

65. The possibility of the respondents, their dependents and their minor children being rendered homeless by an eviction order, triggers the constitutional obligations of the City to provide alternative temporary emergency accommodation. It is to that obligation that I now turn.

### ***The availability of emergency accommodation for the respondents***

66. A short response to the issue of the availability of emergency accommodation for the respondents, is that there is none, according to the City's housing reports. Except that is, the provision of emergency housing kits, which are to be erected by the respondents themselves, on

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<sup>12</sup> *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* (CCT108/16) [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC) (8 June 2017) at para 57 (“*Occupiers of Erven 87 and 88 Berea*”).

land which they must find themselves and subject furthermore, to the written consent of the owner of such land provided on oath in an affidavit.

67. The immediate and obvious question which arises is this: what is to happen to those respondents who are evicted and unable to obtain consent from a landowner for the erection of emergency housing kits provided by the City? The answer appears to be that those people would not be provided with emergency housing kits by the City because the landowners' written consent is an express condition for the kits to be provided in the first place. Evicted from their home, left homeless and searching up and down for land on which they could erect emergency shelters, the desperate situation that these respondents may find themselves in, if evicted without the provision of alternative accommodation, brings to mind Sachs J's vivid description of the dehumanizing effects of enforced homelessness:

'It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when state action intensifies rather than mitigates their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments rather than reduces denial of the claims of the desperately poor to the basic elements of a decent existence.'<sup>13</sup>

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<sup>13</sup> *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004) at para 18 ("PE Municipality").

68. The City's approach to the provision of emergency housing for the respondents, i.e. providing emergency housing kits but no land on which to erect them, does not appear to be consistent with national and international standards for the provision of adequate housing in general and emergency housing in particular.
69. The Emergency Housing Programme ("EHP") published in terms of the National Housing Code and referred to in the City's second housing report, clearly contemplates the provision of land as a component of emergency housing. The EHP states that assistance in terms of the programme takes the form of grants to municipalities to enable them to respond rapidly to emergencies by means of the provision of land, municipal engineering services and shelter.<sup>14</sup> It envisages inter alia the development of land access processes appropriate to the situation with due regard to municipal integrated development planning.<sup>15</sup> Municipalities may be assisted with funding for land acquisition<sup>16</sup> and where land suitable for housing development in emergency housing situations is required, it must first be sought from land identified in Spatial Development Frameworks that supplement Integrated Development Plans, with preference to be given to the acquisition of State-owned land.<sup>17</sup>

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<sup>14</sup> Emergency Housing Programme: p 9.

<sup>15</sup> Emergency Housing Programme: p 14.

<sup>16</sup> Emergency Housing Programme: p 18.

<sup>17</sup> Emergency Housing Programme: p 44.

70. With respect to international standards for the adequacy of housing, South Africa is a party to and has ratified the International Convention on Economic, Social and Cultural Rights (“ICESCR”). In terms of section 39 of the Constitution, a court must consider international law when interpreting the Bill of Rights.
71. Article 11 of the ICESCR protects the right to housing as a component of the fundamental right of everyone to an adequate standard of living for themselves and their family.<sup>18</sup> State parties are obliged under Article 2(1) of the ICESCR to take steps to the maximum of their available resources, to progressively realise the rights recognized by the ICESCR, by all appropriate means including the adoption of legislative measures.<sup>19</sup>
72. The statements and general comments of the Committee on Economic, Social and Cultural Rights (“CESCR”) are sources of non-binding but persuasive international law, which have been regularly referred to in South Africa’s leading cases on socio-economic rights.<sup>20</sup>

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<sup>18</sup> ICESCR Article 11: ‘The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.’

<sup>19</sup> Article 2(1) of the ICESCR: ‘Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.’

<sup>20</sup> For example in, *Government of the Republic of South Africa v Grootboom* [2000] ZACC 19; 2001 (1) SA 46 (CC) at para 29.

73. General Comment 4 of the CESCR on the right to adequate housing confirms that adequate housing is more than just shelter. Rather, it is a right to live somewhere and to do so in accordance with human dignity:

‘In the Committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised.

This “inherent dignity of the human person” from which the rights in the Covenant are said to derive, requires that the term “housing” be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost.”<sup>21</sup>

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<sup>21</sup> CESCR General Comment 4: para 7.

74. CESCR General Comment 4 states that a number of factors must be taken into account in determining whether particular forms of shelter can be considered to constitute ‘adequate housing’ for the purposes of the ICESCR. These factors include legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>22</sup>

75. General Comment 7 of the CESCR deals with evictions in the context of the right to adequate housing. It confirms the obligation of states to provide adequate housing to persons who would be rendered homeless by evictions:

‘Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.’<sup>23</sup>

76. For the purposes of this application, it is not necessary for this court to make an order declaring whether or not the City has complied with its constitutional obligations to provide emergency housing to persons being evicted and facing homelessness. It is sufficient to conclude that the evidence establishes that there is no emergency housing or land available to the respondents, other than the provision by the City of emergency housing kits which are conditional on the respondents

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<sup>22</sup> CESCR General Comment 4: para 8.

<sup>23</sup> CESCR General Comment 7: para 16.

securing land on which to erect these rudimentary shelters.

77. There is no evidence that the respondents have access to land on which they could erect emergency housing kits with the consent of the owner of such land. This is an important and relevant consideration in deciding whether the eviction of the respondents would be just and equitable.

***The allegedly unlawful transfer of the property to the late Mr. Marthinus Cloete***

78. The main thrust of the first respondent's answering affidavit is that the property concerned is a family home which was transferred to the late Mr. Marthinus Cloete without the knowledge and consent of his siblings. The concept of a family home and the legal protections attaching to it in the context of customary law, has been described as follows by Du Plessis AJ in *Shomang v Motsose N.O. and Others*:<sup>24</sup>

‘The concept of "family homes" and the property rights that they confer on the people living in them is thus a common occurrence and yet is invisible to the "formal laws" of South Africa. Formally, the registered owner is conferred rights that bestow on them the normal entitlements of ownership in terms of the common law, including alienating the property

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<sup>24</sup> *Shomang v Motsose N.O. and Others* (6990/2022) [2022] ZAGPPHC 441; 2022 (5) SA 602 (GP) (24 May 2022) at para 46 to 48.

at will. This sometimes leads to great conflicts as this goes against the norms that underlie the idea of a "family home", as is visible in this case.

Family homes govern a family's relation to immovable property. It is based on the principle that the person in control of the property ("custodian" or "caretaker") has a collective kin-based obligation to preserve the property. By implication, then, kin members ability to alienate the property is limited by their obligations. Moreover, it is not always possible for people on the outside to determine who the custodian of the property is. It is undoubtedly more complicated than fixating on the individual titleholder whose name is written on the title deed.

The custodian's duty rests on the relationship of the family to the property, not just the present-day family but also the ancestors. This, however, usually happens outside the realm of the law, leading to a disjoint between registration, tenure and succession rights. The family house is held and "informally" transmitted through the family (as opposed to individuals).'

79. *Peterson v Van Wieling and Others*<sup>25</sup> is a case which has some similarities to the present. The appellant in that matter appealed against the dismissal of her eviction application in the Magistrates Court. She was the registered owner of the property from which she sought the eviction of the respondents, three of whom were her siblings. The appellant's late father had concluded a deed of sale for the property in 1988 with the former Plettenberg Bay Municipality. The purchase price was payable by way of a deposit and instalments over a period of 30 years. Following the death of the appellant's father in 1992, two years

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<sup>25</sup> *Peterson v Van Wieling and Others* (A94/2019) 2019 ZAWHC 70 ("Peterson").

after the conclusion of the deed of sale, two of the appellant's siblings continued residing in the property.

80. The appellant obtained registered title to the erf in 2004. During 2016 she gave the respondents notice to vacate the property and subsequently sought their eviction in terms of PIE. The respondents opposed their eviction, contending that the appellant had acquired the property in a fraudulent manner, when it should have devolved upon their late father's estate, thus entitling each of his intestate heirs to a proportionate undivided share thereof.
81. Binns-Ward J and Cloete JJ upheld the appeal in part and remitted the matter to the Magistrates Court. The remittal order required further information to be obtained regarding, inter alia the liquidation and distribution of the appellant's late father's estate and what became of the executory rights flowing from the 1988 deed of sale of the property. Binns-Ward J held that the question of what had become of the executory rights and obligations under the prior deed of sale and questions regarding how it came about that the property was eventually transferred to the appellant, were plainly circumstances which were relevant in the application for the eviction of the respondents in terms of the PIE Act.<sup>26</sup>
82. In the present case, the evidence is unclear as to whether the Mr. Floors Cloete died testate or intestate on 31 May 2005, how his estate

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<sup>26</sup> *Peterson* at para 20.

devolved and whether his deceased estate was finalized by his executor, the late Mr. Marthinus Cloete. In my view, what is clear is that at the time of Mr. Floors Cloete's demise, the deed of sale which he had concluded with the Cape Divisional Council was a contract which was executory in nature, as was the deed of sale which had been concluded in *Peterson's* case. This is because it was an existing contract subject to future unfulfilled or uncompleted obligations. Those obligations were the continued payment of instalments in terms of the deed of sale before the purchaser was entitled to transfer.<sup>27</sup>

83. In these circumstances, and had he died intestate, which the probabilities in my view indicate was the case, the late Mr. Floors Cloete's heirs may well have been vested upon his death with personal rights (*jus in personam ad rem acquirendam*) against the executor for their proportionate share of assets in his deceased estate. This would include the subject property.
84. Notably, the property was an asset specifically listed and valued in the Letters of Authority issued to Mr. Marthinus Cloete on 15 February 2007.
85. It is not possible on the current evidence to make a definitive finding of illegality of the transfer of the property, absent further investigation and appropriate relief being sought by the respondents in a competent

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<sup>27</sup> The City's second housing report confirms that it in fact received payments on the loan account after the death of Mr. Floors Cloete on 31 May 2005. According to the City, payments on the loan account in the amount of R 2 850.00 were received between 6 May 2011 and 4 November 2013.

forum. That such a finding cannot be made on the present facts, is however not a basis to conclude that the respondents have raised no cognizable legal defence to the eviction application. Sufficient grounds have in my view been established on the undisputed facts, to raise serious questions regarding the legality of the transfer of the Cloete family home to the exclusive ownership of the late Mr. Marthinus Cloete. The property was transferred to him without the knowledge of and to the complete exclusion of his other siblings who have occupied the property for decades as their family home.

86. The undisputed evidence of the first respondent is that she contributed financially towards the payment of the deposit and purchase price of the property and that she and her siblings had agreed that her eldest brother Mr. Marthinus Cloete would be the person in charge of the property, only for the purposes of payment of the municipal accounts, not to take ownership of the property. It was also undisputed in the applicant's replying affidavit, that the late Mr. Floors Cloete and Mrs. Maria Cloete did not leave a will leaving the house to a specific child.

There are disquieting features of the process which resulted in the transfer of the property to the late Mr. Marthinus Cloete by the City. There is no evidence of enquiries regarding the existence of other interested heirs and their consent in the process of the conclusion of the substitution agreement on 25 May 2007. The documents relating to the transfer of the property in 2014 are bereft of any indication that the

consent of the surviving children of Mr. Floors Cloete to transfer of the property was investigated or enquired into by the City.

87. The applicant contends the first respondent's answering affidavit raises no defence to an eviction order. It was submitted that the respondents were clearly unlawful occupiers. The first respondent's allegations regarding the transfer of ownership of the property to Mr. Marthinus Cloete, so, it was argued, did not raise a real dispute that would constitute a valid defence to the eviction proceedings.
88. The question of a 'valid defence' for the purposes of section 4(8) of the PIE Act, is however an expansive enquiry. It is not merely a question of whether the occupation is lawful or not. Where it would be unjust and inequitable to grant an eviction order, having regard to all the relevant circumstances, the unlawful occupiers have a valid defence and no eviction can be ordered.<sup>28</sup>
89. The protection of inheritance rights is fundamental to security of tenure, which is an important component of the right of access to adequate housing. The facts of this illustrate how existing security of tenure and access to housing can be undermined in circumstances where one family member is able, through the letters of authority mechanism of the Administration of Estates Act, to ultimately obtain rights of exclusive ownership of a family home to the exclusion of other family

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<sup>28</sup> *Occupiers of Erven 87 and 88 Berea* at para 65.

members who contributed to its purchase, did not consent to its transfer and live in it as their family home.

90. The vast majority of the respondents in this case against whom an eviction order is sought, are women and young girls. These include three of the five surviving adult children of the late Mr. and Mrs. Cloete and sisters of Mr. Mathinus Cloete. The United Nations Special Rapporteur on Housing has observed in her 2013 report to the 25<sup>th</sup> Session of the Human Rights Council, that women and children are particularly vulnerable to tenure insecurity and homelessness. States are required prioritize safe emergency shelter to women and children until durable housing solutions are established. The report further recommended that:

‘States should take measures to protect the tenure security and promote inheritance rights of women and girls in the case of the death of a spouse, father, brother, son or other male household member so that they are able to continue residing in the family home.’<sup>29</sup>

91. Inheritance rights to family property are also subject to protection under international law. South Africa is in this regard a party to the Protocol to the African Charter on Human and People’s Rights in the Rights of Women in Africa (“the Maputo Protocol”), having ratified it on 17 December 2004. Article 21 of the Maputo Protocol protects the

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<sup>29</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 30 December 2013, UNGA, A/HRC/25/54

right to inheritance. It states that “...Women and men shall have the right to inherit, in equitable shares, their parents’ properties.”

***Delayed finalization of the deceased estate of Mr. Marthinus Cloete***

92. Against the factors and considerations militating against the granting of an eviction order, it is necessary to consider those circumstances relied on by the applicant as justifying the granting of an eviction order. The first of these is the contention that the respondent’s unlawful occupation has had the deleterious effect of preventing the applicant from winding up the deceased estate of the late Mr. Marthinus Cloete. The applicant alleges in her founding affidavit that the transaction with Mr. and Mrs. Fredericks for the sale of the property and its subsequent transfer, was being held up due to the respondent’s unlawful occupation of the property.
93. The issue of delay in the finalization of Mr. Marthinus Cloete’s deceased estate must be considered in context. Mr. Marthinus Cloete died on 1 December 2014. Approximately nine years passed before the applicant was appointed as executrix of his deceased estate on 8 March 2023. This lengthy hiatus is unexplained in the applicant’s founding affidavit.
94. The applicant’s founding affidavit is vague on the actual steps which she has taken to wind up the deceased estate and does not explain why, for example, the filing of a liquidation and distribution account would be entirely dependent on the eviction of the respondents. The

applicant's real complaint seems to be that the respondent's occupation is preventing her from selling the property for the amount of R320 000 stipulated in the offer to purchase. The offer to purchase signed on 10 March 2023 was however concluded by the applicant with the full knowledge that the respondents were residing in the property, which was their family home.

95. Hence the inclusion of a clause in the offer to purchase requiring vacant occupation to be given by the applicant. The applicant was already aware from 2008/2009, fifteen years before she proceeded with steps to sell the property, that the first respondent was living in the property and had not vacated despite the alleged request from Mr. Marthinus Cloete for her to do so.
96. It is difficult to see how the purchasers of the property could themselves not have been aware of the possibility of delays in transfer and that the eviction of the respondents from their family home would most likely be contested in drawn out eviction proceedings. In the circumstances of this case, the risk of vacant occupation of the property being delayed was in my view a risk which was willingly assumed by both the applicant and the prospective purchasers of the property.

***Liability for municipal services, rates and taxes***

97. The applicant in her founding affidavit maintained that the deceased estate remains liable to the local Municipality for the property's rates

and taxes and the deceased estate is essentially sponsoring the respondents' and all other occupants' occupation at the property. This was asserted to be a factor justifying the eviction of the respondents as being just and equitable.

98. The applicant's assertion that the continued occupation of the property by the respondents is causing 'great financial loss' to the deceased estate due to their non-payment of municipal services and rates, is overstated. Firstly, no details are provided of these financial losses and the quantum of municipal services consumed or the property rates applicable to the property. Secondly, the City's second housing report indicates that these costs are in any event relatively low.
99. For the remaining months in 2023, following the appointment of the applicant as executrix on 8 March 2023, the City's second housing report records that the property rates were R36.50 in April 2023, R28.15 in May, R31.28 in June, R23.79 in July, R5.14 in August, R5.48 in September, R4.97 in October, R5.14 in November and R5.48 in December 2023. These amounts did not substantially increase in 2024 and 2025.
100. In the same period of March to December 2023, the highest amount recorded on the City's municipal services account statement in respect of the monthly consumption bill is an amount of R128.60. As of August 2025, the municipal services account was not in arrears and had a

closing balance of R110.14, with the highest monthly amount recorded as a payment on the account, being R102.00.

101. It is unclear whether these monthly payments of an average of R100.00 per month, have been made by the applicant or the respondents. Nonetheless, and in the particular circumstances of this case, I consider it appropriate, just and equitable, for the respondents to bear some responsibility for the financial costs in respect of the municipal services consumed on the property, which they themselves regard as their family home.

***Whether the eviction of the respondents would be just and equitable***

102. Having regard to all the relevant circumstances and factors disclosed by the evidence, I am of the view that the eviction of the respondents, in the absence of the availability of suitable emergency accommodation or adequate alternative accommodation, will place them at grave risk of being rendered literally homeless. No adequate alternative or emergency accommodation has been offered by the City except the provision of 18m<sup>2</sup> emergency housing kits, that offer being subject to the respondents themselves finding land on which they may lawfully erect these rudimentary structures.

103. This court is in the dark as to where the respondents, who include elderly and sickly persons, households headed by women and young children, are expected to live if they are evicted from their family

home. The granting of an eviction order in such circumstances and at the present time, would in my judgment be neither just nor equitable.

### ***The appropriate order***

104. A court determining an eviction application is called upon to ‘...go beyond its normal functions, and to engage in active judicial management according to equitable principles of an ongoing, stressful and law-governed social process.’<sup>30</sup> The court is not determining conventional adversarial proceedings and the orders that it may craft must thus be appropriate to the exigencies of the particular case before it. Each situation, after all, “...has its own history, its own dynamics, its own intractable elements that have to be lived with (at least for the time being), and its own creative possibilities that have to be explored as far as reasonably possible.”<sup>31</sup>

105. I have earlier concluded that the eviction of the respondents would not be just and equitable. The eviction relief sought in the applicant’s notice of motion therefore fails and the application for that relief must be dismissed.

106. The respondents are entitled to a remedy to investigate and address breaches of their inheritance rights to their late father’s deceased estate if such breaches are established in law. In this regard, Article 25 of the Maputo Protocol obliges state parties to ensure that remedies for

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<sup>30</sup> *PE Municipality* at para 36.

<sup>31</sup> *PE Municipality* at para 31.

violations of rights recognized in the Protocol, which include the right to inheritance, are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

107. The Legal Aid South Africa Act 39 of 2014 in its pre-amble affirms that its purpose is to ensure access to justice and the realisation of the right of a person to have legal representation as envisaged in the Constitution and to render or make legal aid and legal advice available.

108. Section 13(3) of the South African Human Rights Commission Act 40 of 2013 provides that the South African Human Rights Commission is competent to investigate, on its own initiative or on receipt of a complaint, any alleged violation of human rights and may, insofar as it is able to so, assist the complainant to secure redress and may where necessary, arrange for financial assistance to enable proceedings to be taken to a competent court for the necessary relief.

109. I consider it appropriate for a copy of this judgment and order to be provided to Legal Aid South Africa and the South African Human Rights Commission in order for those bodies to consider the provision of legal assistance to the respondents in respect of the allegedly unlawful transfer of their family home to the late Mr. Marthinus Cloete.

110. It is necessary to deal with the issue of costs.

111. The applicant in her notice of motion sought a costs order against any party that unreasonably delayed the finalization of this application, on the attorney and client scale, either taxed or agreed.
112. In its first housing report by Ms. Pretorius, the City recorded that all of the respondents had indicated that they would be rendered homeless if evicted from the premises. An entirely different position was taken in the City's second housing report, filed without a proper explanation some four months after the deadline provided for by this court's 3 March 2025 reporting order had elapsed. In that report, the City's Mr. Tsagane, contrary to what had been stated in the first housing report, concluded that the issue of homelessness and the need for emergency shelter, 'does not arise in this matter' and that the relevant information placed before court '...does not lead to a finding of homelessness.' It is difficult to see how this statement could rationally have been made in the light of the first housing report and the information contained in the respondents' personal circumstances questionnaires.
113. The respondents are entitled to reasonable action by organs of state in response to their emergency housing needs.<sup>32</sup> The City's response to the emergency housing needs of the respondents, facing eviction and homelessness and its offer of emergency housing kits conditional on the respondents finding land to lawfully erect the emergency kits themselves, cannot be said to be reasonable.

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<sup>32</sup> *Grootboom* at para 83.

114. In *Ruiters and Another v Arendse and Others*<sup>33</sup>, Andrews AJ said the following regarding a similar offer of emergency housing kits to vulnerable occupiers facing eviction:

‘To my mind, it is untenable to expect the First Respondent being a 72-year-old pensioner, not only to secure a site for its construction, but to find a willing landowner who is prepared to consent thereto by means of a sworn affidavit and provide proof of registration; and as if this is not enough, she is expected to assemble the structure as well. Whilst it may be argued that she has able bodied adults holding occupation under her to assist her with the construction of the emergency housing kit, regard must be had to the undisputed fact that Rekadou receives a SASSA disability grant.

The Respondents have placed on record that they do not know anyone who is willing to allow them to erect these structures on their property. Therefore, on this basis alone, the conditions proposed by the Third Respondent appears unattainable and particularly onerous, more especially if the Respondents are expected to indicate acceptance within 30 days.’

115. The judgment in *Ruiters* in which the City was the third respondent, was delivered on 10 February 2025. This was well before the City filed its second housing report in this case repeating the offer of emergency housing kits without the provision of land on which to erect them.

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<sup>33</sup> *Ruiters and Another v Arendse* (19927/2023) [2025] ZAWCHC 36 (10 February 2025) at paras 30 to 32.

116. In *Allie v Ras*<sup>34</sup>, an appeal against the dismissal of an eviction order, Saldanha J stated:

‘In this matter however, for the City to expect of Ms. Allie to find vacant land somewhere in Cape Town and with the consent of the owner to erect a shack on it, was demonstrative of how unreasonable such a measure was in the context of a 78-year-old single woman.’

117. More recently and in *Transet SOC Ltd v Unlawful Occupiers of the Portion of Erf 1[...], Belville that is under the Tienie Meyer Bypass Bridge and Another*<sup>35</sup>, Thulare J had the following to say regarding the reasonableness of the City’s offer of emergency housing kits absent the provision of land:

‘The law anticipates a reasonable City, which identifies land for emergency accommodation and engages in the complex process involving safety, land-use and operational considerations not when a court order is sought against them, but in anticipation of answering to its constitutional obligations when the need arise. The idea that indigent South Africans, if any, will simply be provided emergency housing kits which permitted construction of a structure measuring approximately 6m X 3m, and be left to go and look for land, demonstrates how the City has no feeling of concern to the issue of land.

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<sup>34</sup> *Allie v Ras and Another* (Appeal) (A50/2025) [2025] ZAWCHC 529 (14 November 2025) at para 86.

<sup>35</sup> *Transet SOC Ltd v Unlawful Occupiers of the Portion of Erf 1[...], Belville that is under the Tienie Meyer Bypass Bridge and Another* (012427/26) [2026] ZAWCHC 27 (4 February 2026) at para 17.

The *Concise Oxford Dictionary*, 10<sup>th</sup> edition, Edited by Judy Pearsall, 2002, Oxford University Press defines a home as a place where one lives permanently. Most of the things can be absent, including a structure, but there can be no 'home' without a place. Place is land. It is location. How the City can elevate and equate movable material to land, which by its very nature is immovable, escapes my logic.'

118. I agree with these observations. In my view, it is in the interests of justice for the City to pay a portion of the applicant's costs.

### **Order**

119. I make the following order:

- (a) It is declared that the granting of an eviction order against the first to fourth respondents, as at the date of this order, is not just and equitable.
- (b) The eviction application issued by the applicant on 24 August 2023 under case no. 14498/23, is dismissed.
- (c) It is declared that the first and second respondents and any other surviving children of the late Mr. Floors Cloete, who died on 31 May 2005, are entitled to the provision of legal aid by the state and appropriate legal redress, in order to investigate and determine:
  - (i) the nature and extent of their executory and inheritance rights in terms of the deed of sale concluded between the former Cape

Divisional Council and the late Mr. Floors Cloete in respect of erf 4[...] Wesfleur, in the City of Cape Town, Cape Division, Western Cape Province (“the property”); and

(ii) the nature and extent of their rights in respect of the transfer of the property to the late Mr. Marthinus Cloete, who died on 1 December 2014, following his substitution as purchaser of the property by the City of Cape Town on, 25 May 2007.

(d) The applicant is directed to procure and provide to the first and second respondent’s, within 60 days of the date of this order, a report from the Master of the High Court regarding the estate of the late Mr. Floors Cloete (Estate Number 3[...]) together with the final liquidation and distribution account, if any, in respect of that estate.

(e) The Registrar of this Court is directed to provide a copy of this order and judgment to the Provincial Executive (Western Cape) of the Legal Aid Board and the Provincial Manager (Western Cape) of the South African Human Rights Commission, for their consideration of the provision of legal aid to the first and second respondents, for the purposes of paragraph 3 of this order.

(f) The first and second respondents are directed to make payment to the City of Cape Town, on a monthly basis, of all amounts due to the City of Cape Town in respect of municipal services consumed by the first and second respondents and their dependents occupying the property.

(g) The fifth respondent is ordered to pay 50% of the costs of this application, either taxed or agreed, on the attorney and client scale.

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**S G MAGARDIE**

**Acting Judge of the High Court**

**Appearances**

For the applicants: Adv P Gabriel

First and second respondents: In person