

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-116243

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED: NO  
DATE 09/03/2026  
SIGNATURE

In the matter between:

|                                                                    |                   |
|--------------------------------------------------------------------|-------------------|
| <b>DA COSTA N.O., AUGOSTINHO NUNES</b>                             | First Applicant   |
| <b>DA COSTA N.O., ANTONIO NUNES</b>                                | Second Applicant  |
| <b>DA COSTA N.O., JOAO PEDRO NUNES</b>                             | Third Applicant   |
| <b>DA COSTA N.O., MARY-ANNE</b>                                    | Fourth Applicant  |
| <b>DA COSTA N.O., MARIA FIOMENA</b>                                | Fifth Applicant   |
| <b>FERRAZ N.O., VERONICA</b>                                       | Sixth Applicant   |
| <b>THE BEST TRUST COMPANY JHB (PTY) LTD N.O.</b>                   | Seventh Applicant |
| and                                                                |                   |
| <b>C[...] A[...] D[...] TRADING AS<br/>FIRST CHOICE HAIR SALON</b> | First Respondent  |
| <b>J[...] A[...] O[...] TRADING AS<br/>FIRST CHOICE HAIR SALON</b> | Second Respondent |

---

## JUDGMENT

---

DJ Smit, AJ

### *Introduction*

- [1] This is an application for eviction brought by the Antonio Da Costa (Sr) Trust (*Trust*) against Mr C[...] A[...] D[...] and Ms J[...] A[...] O[...] (*tenants*).
- [2] Mr D[...] and Ms O[...] occupy, with their minor children, Shop [...] at Erf 1[...] Boksburg situated at L[...] Street, Boksburg.
- [3] A notice in terms of Section 4(2) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 (*PIE Act*) was authorised on 23 January 2025 and served on the tenants several times, most recently on 30 January 2026. The tenants represented themselves at the hearing of the matter.
- [4] Mr D[...] is a security guard who currently earns R4,000 per month (as he stated in court) while Ms O[...] is a hairdresser who uses the premises as a hair salon, in addition to residential occupation.<sup>1</sup>
- [5] The only issues that arise in this application are whether Mr D[...] and Ms O[...] occupy the premises unlawfully and whether granting an eviction order would be just and equitable in the circumstances of this matter.

### *Unlawful occupation of the premises?*

- [6] It is common cause that the tenants concluded a series of lease agreements with the Trust, starting in 2016. The most recent lease agreement was concluded on 24 June 2022, for a two-year period expiring on 30 June 2024.

---

<sup>1</sup> The Trust says the residential occupation is illegal as the lease agreement limited the use of the premises to commercial use, but the issue is immaterial to this application as the Trust accepts that the PIE Act applies.

- [7] It is also common cause that the tenants fell in arrears. By the time the 2022 lease agreement was entered into, they were in arrears by R14,000. Together with the new lease, they signed an acknowledgement of debt in an amount of R14,000. They promised to pay off the arrears in an amount of R500 per month, in addition to the lease amount of R3,300 per month. The tenants soon fell in further arrears including on the previous arrears (where they only managed to pay R250 per month).
- [8] At the expiry of the lease, the tenants were in arrears by approximately R70,335. Accordingly, and after demand, the Trust cancelled the lease by way of a letter dated 30 August 2024 (which the tenants say they did not receive despite an affidavit by the Trust's driver confirming hand delivery).
- [9] Notwithstanding the cancellation, the tenants continued to occupy the premises. They also continued to make payments to the Trust, which kept the payments. These payments did not extinguish the arrears.
- [10] Against this backdrop, the tenants argued that the lease was not validly cancelled, given that they had not received the notice of termination, and that the lease continued given the Trust's acceptance of their payments.
- [11] This defence has to be assessed against the backdrop of the affidavit of the driver who alleges that he served the cancellation notice on them; as well as the fact that after 30 June 2024 (when the lease expired in its terms) the lease could – at best for the tenants – have carried on as a month-to-month lease.
- [12] The eviction application itself stated that the lease was cancelled and that the tenants were notified to vacate the property. Thus, at the latest by the date that the application was served on the respondents, the lease was validly cancelled.<sup>2</sup>
- [13] The Trust's acceptance from the tenants of further payments does not evidence an intention on the part of the Trust to continue the lease. A lessor is entitled to

---

<sup>2</sup> *Win Twice Properties (Pty) Ltd v Binos* 2004 (4) SA 436 (W) para 4.4 (at 443E).

be compensated for holding over and acceptance of “*rental*” therefore does not unequivocally demonstrate an intention to revive the lease agreement.<sup>3</sup>

[14] The tenants also alleges that they have a damages claim of R400,000 against the Trust in relation to damages they allegedly suffered when the hair salon could not be carried on because the Trust disconnected their water and electricity supply. This claim is apparently pending in the magistrate’s court.

[15] The claim does not avail the tenants even if it may be successful in due course. It does not alter the cancellation of the lease; and the amount claimed is an unliquidated claim which is not capable of set-off against the rental arrears.<sup>4</sup>

[16] Accordingly, the tenants’ current occupation of the premises is unlawful.

*Is an eviction order just and equitable in the circumstances?*

[17] The tenants directed their efforts at establishing that their tenure is not unlawful. They did, however, state that it would be unfair to evict them given that they have been in occupation for more than nine years and their children have grown up on the property.

[18] A court is obliged to consider whether the eviction would be just and equitable, considering all relevant circumstances – in particular whether the eviction would render the evicted persons homeless.<sup>5</sup>

[19] The third respondent (Ekurhuleni Metropolitan Municipality) investigated the personal circumstances of the tenants and furnished a report which found that the tenants would not be rendered homeless by an eviction order. Mr D[...] alone earns more than the threshold at which the Municipality considers families to be at risk of homelessness. Ms Afori is also self-employed as a hairdresser and is capable of earning an income.

[20] The Municipality’s report was borne out by evidence before this Court as well as the submissions the tenants made from the bar. It should be noted that they did not rely on a risk of homelessness to resist eviction, but purely on their

---

<sup>3</sup> *Kerr’s Law of Sale and Lease* (4th Edition) by Graham Glover at 441.

<sup>4</sup> *Blakes Maphanga Inc v Outsurance Insurance Co Ltd* 2010 (4) SA 232 (SCA) para 15.

<sup>5</sup> *Occupiers, Berea v De Wet* NO 2017 (5) SA 346 (CC) paras 44-45.

preference to remain in the place where they had resided for the last nine years. Their preference in that regard is not a factor which, in itself, outweighs the right of a property owner to evict an unlawful occupier.<sup>6</sup>

[21] There does not seem to be a basis on which to find that eviction of the tenants would be unjust and inequitable.

[22] The Trust submitted that a period of one month specified in the eviction order would be just and equitable in permitting the tenants to find alternative accommodation. When probed about this issue at the hearing, the tenants did not dispute this or make an alternative proposal. They maintained that they should not be evicted at all.

[23] The tenants have had notice for more than a year that they could be evicted. Reasonable persons in their position would have prepared for this eventuality. Accordingly, one month appears to be sufficient time for them to find alternative accommodation.

[24] Accordingly, an eviction order will issue. There is no reason why costs (including the cost of interlocutory proceedings to procure the section 4(2) notice) should not follow the event.

### *Order*

[25] I make the following order:

- a. The first and second respondents and all persons occupying the leased premises by, through or under them, shall vacate the leased premises described as: Erf 1[...] Boksburg Township, Registration Division I.R., Gauteng, situate at: Shop [...], 1[...] L[...] Street, Boksburg ("the leased premises") on or before 10 April 2026.
- b. In the event that the first and second respondents and all those occupying the leased premises by, through or under them, do not vacate the leased premises by no later than 10 April 2026, the sheriff of the Court or his/her lawfully appointed deputy is authorised and directed to evict the first and

---

<sup>6</sup> *Grobler v Phillips* 2023 (1) SA 321 (CC) para 36.

second respondents and all those occupying the leased premises by, through or under them from the leased premises.

- c. The first and second respondents are ordered to pay the costs of this application, including the costs of the application in terms of section 4(2) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 and 1998, jointly and severally, the one paying the other to be absolved, on Scale A.

---

**DJ SMIT**  
**ACTING JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

Date of hearing: 2 March 2026

Date of judgment: 9 March 2026

For the Applicants:

KM Boshomane instructed by Harris  
Incorporated

For the First and Second  
Respondents:

Self-represented