

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

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 17 March 2026

Case No. A2022-048458

In the matter between:

ZAIBONEZA AHMAD

First Appellant

OCCUPIERS OF ERF 5[...], RHODESFIELD

Second Appellants

and

AMAR MAZARI

First Respondent

EKURHULENI MUNICIPALITY

Second Respondent

CORAM: MIA J, WILSON J and SMIT AJ

JUDGMENT

WILSON J (with whom MIA J and SMIT AJ agree):

1 The appellants reside at 7[...] M[...] Street, R[...] (“the property”). They appeal to us, with the leave of the Supreme Court of Appeal, against an order for their eviction granted by the court below on 4 September 2024.

2 On 14 July 2015, the first appellant, Ms. Ahmad, agreed to purchase the property from the first respondent, Mr. Mazari. The purchase price, some R950 000, was payable in 51 instalments, the final instalment being due on or about 7 September 2019. It is not clear on the papers exactly when and

how these instalments were paid, but, in a conveyancer's letter dated 22 May 2019, it is recorded that just R60 833 of the purchase price remained outstanding.

- 3 Mr. Mazari purports to have cancelled the sale agreement on the basis that Ms. Ahmad had, in November 2018, ceased payment of the occupational rent due under the agreement. Mr. Mazari's notice of cancellation is dated 19 March 2019, which is when he says it was served. Ms. Ahmad says that the notice was not in fact delivered until 2021, after Ms. Ahmad had launched an application to compel the transfer of the property into her name. That application failed on the narrow basis that it could not be established, on the undisputed facts, that Ms. Ahmad had in fact paid the full purchase price under the agreement (see *Ahmad v Mazari* [2022] ZAGPJHC 812 (14 October 2022)).
- 4 It is on the basis of his cancellation of the sale agreement that Mr. Mazari sought the appellants' eviction in the court below. Ms. Ahmad now accepts that she withheld both occupational rental and the balance of the purchase price, but says that she did so only after Mr. Mazari refused to adhere to her demand to transfer the property into her name. In paragraph 3.6 of her answering affidavit filed in the court below, Ms. Ahmad tendered to pay the balance of the purchase price to Mr. Mazari against transfer of the property. She adduced evidence that the amount she says is due to Mr. Mazari has been paid into her attorney's trust account for onward transmission to Mr. Mazari in return for transfer of the property to her.

- 5 In granting Mr. Mazari his eviction order, the court below reasoned that Mr. Mazari had validly cancelled the sale agreement, because the full purchase price had not been paid, and because the agreement did not allow Ms. Ahmad to withhold occupational rent in the manner that she had. The agreement in fact required such rent to be paid directly into Mr. Mazari's bank account. Having satisfied itself that the sale agreement had been validly cancelled, the court below issued an eviction order without further ado.
- 6 In taking that step, the court below was mistaken. The application for the appellants' eviction was instituted, as it had to be, under section 4 of the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998 ("PIE"). Under that statute, the eviction of unlawful occupiers, which is what the court below must have accepted the appellants were, is only permissible if it is "just and equitable". It follows that, once it had concluded that the sale agreement had been validly cancelled, the court was under a further duty to satisfy itself that an order for the appellants' eviction was just and equitable in all the circumstances. In other words, the unlawfulness of the appellants' occupation of the property was the beginning, rather than the end, of the statutory inquiry (*Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* [2010] 4 All SA 54 (SCA), paragraph 15, read with *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC), paragraph 25 and *Madulammoho Housing Association NPC v Nephawe* [2023] ZAGPJHC 7 (10 January 2023), paragraph 11).

- 7 Although the case law developed under PIE has tended to focus on the injustice of homelessness, there are potentially a wide variety of reasons why an eviction may not be just and equitable. In *Sarrahwitz v Martiz N.O.* 2015 (4) SA 491 (CC) at paragraphs 95 and 96, a minority of the Constitutional Court held that it could never be just and equitable to evict a purchaser of a property in circumstances where the full purchase price had been paid, notwithstanding the apparent cancellation of the sale agreement. The majority of the Constitutional Court did not address that conclusion, but given the facts of that case, it is impossible to read the majority decision as inconsistent with it.
- 8 This case is, of course, different, but it is not that different. Although, on the papers, Ms. Ahmad had not paid the full purchase price at the time the sale agreement was cancelled, Ms. Ahmad tenders the tiny fraction of the purchase price that is outstanding, provided that the property is transferred into her name. Moreover, under section 27 of the Alienation of Land Act 68 of 1981, Ms. Ahmad was perfectly entitled, once she had paid at least half the purchase price, to demand transfer of the property against the registration of a mortgage over the property for the outstanding balance due under the agreement. On the evidence, even if we were to accept that the agreement was cancelled on the date inscribed on the notice of cancellation, substantially more than half of the purchase price must have been paid at the time Mr. Mazari said he cancelled the agreement.
- 9 In the court below, the onus was on Mr. Mazari to establish that the appellants' eviction was just and equitable (*City of Johannesburg v Changing*

Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA), paragraph 34). Mr. Mazari's papers fall substantially short of discharging that onus. Moreover, even on the facts Mr. Mazari accepts, we cannot conclude that Ms. Ahmad's eviction would be just and equitable. If the order of the court below is left to stand, Ms. Ahmad will be left with neither the home she purchased nor the money she purchased it with. That would be unjust and inequitable.

10 It follows that the order of the court below cannot stand. Although it is not clear to us what exactly remains due to Mr. Mazari under the sale agreement, that question can be addressed in separate proceedings in which Mr. Mazari's right to payment against transfer can be explored. We were informed during argument that those proceedings are already underway. The only question before us is whether the court below should have evicted Ms. Ahmad. Plainly, it should not have done so.

11 Accordingly –

11.1 The appeal is upheld, with costs, including the costs of counsel, which may be taxed on scale "B".

11.2 The order of the court below is set aside, and is replaced with an order dismissing the application with costs, including the costs of counsel, which may be taxed on scale "B".

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson, with whom Judges Mia and Smit agree. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on

Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 17 March 2026.

HEARD ON: 16 March 2026

DECIDED ON: 17 March 2026

For the Appellants: D de Kock
Instructed by Joubert Scholtz Inc

For the Respondent: S Silamulela
Instructed by Shumani Silamulela Attorneys