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

Case Number: 2024/053805

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
19 March 2026	_____
DATE	SIGNATURE

In the matter between:

DESIRÉ LEONIE RILEY N.O.

First applicant

(in her capacity as the duly appointed executrix of
CLASSINA MARIA SUSANNA HIGGS)

DESIRÉ LEONIE RILEY N.O.

Second applicant

(in her capacity as the duly appointed executrix of
CHARLES GORDON HIGGS)

and

ANDRIES VAN DER MERWE

First respondent

ALICE VAN DER MERWE

Second respondent

**THE UNLAWFUL OCCUPIERS OF
23 – 2ND AVENUE, NORTHMEAD, BENONI**

Third respondent

**THE CITY OF EKURHULENI METROPOLITAN
MUNICIPALITY**

Fourth respondent

JUDGMENT

WANLESS J

Introduction

- [1] This is an opposed application for the eviction of the First and Second Respondents (*“the Respondents”*) from the property situated at 2[...], 2[...] Avenue, N[...], Benoni (*“the property”*). The Applicant, in her capacity as executrix of the estates of the late Mr and Mrs Higgs, seeks an order evicting the Respondents on the basis that their occupation is unlawful following the cancellation of the lease agreement (*“the agreement”*).
- [2] The Respondents oppose the application primarily on two grounds. First, they contend that they are entitled to retain possession of the property by virtue of a lien arising from alleged payments made on behalf of the late owners and improvements effected to the property. Second, they deny receipt of the second cancellation notice and argue that the lease was not validly cancelled. At the hearing of the matter, Counsel for the Respondents conceded (*correctly*) that the agreement had been lawfully cancelled by the Applicant. In the premises, the Respondents no longer persisted with this defence.
- [3] The Applicant contends that the defence raised is without merit. The agreement relied upon by the Respondents is unenforceable. Any claim for enrichment has either prescribed or is unsubstantiated. Also, security has been tendered for any amounts that may be due. The Applicant accordingly seeks an eviction order, together with costs.

Background

- [4] The Applicant, Desiré Leonie Riley, is the duly appointed executrix of the estates of her late parents, Classina Maria Susanna Higgs (*who passed away on 9 May 2022*) and Charles Gordon Higgs (*who passed away on 11 August 2021*). Mr and Mrs Higgs were the joint registered owners of the property.
- [5] The First and Second Respondents (*Mr and Mrs Van der Merwe*) have occupied the property since 2014 pursuant to an oral lease agreement concluded with the late Mr and Mrs Higgs. The Applicant, who was not a party to the original agreement, is unaware of its precise terms.

- [6] During August 2023, the Applicant attempted to formalise the lease agreement, but the parties were unable to reach consensus. In November 2023, the Applicant sent a notice to the Respondents cancelling the lease and calling upon them to vacate the property. The Respondents did not vacate. Instead, they lodged a claim against the estate of Mrs Higgs in the amount of R 342 990.15, which claim was rejected on 20 February 2024.
- [7] On 12 April 2024, following her appointment as executrix of her father's estate, the Applicant sent a second notice of cancellation to the Respondents, affording them one month's notice to vacate.
- [8] The Respondents allege that in terms of the agreement concluded in 2014:
- 8.1 The lease would endure for an indefinite period;
 - 8.2 Monthly rental of R3 000 (increased to R4 000 in 2020) was payable;
 - 8.3 The Respondents would pay all water, lights and sewage charges;
 - 8.4 The Respondents would pay rates and taxes, which payments would be deducted from the eventual purchase price;
 - 8.5 The Respondents could attend to repairs and improvements, which would also be deducted from the purchase price.
- [9] Based on this alleged agreement, the Respondents claim to have made payments totalling R 144 337.42 (*for the period before September 2015*) and R 94 893.89 (*for the period June 2014 to June 2024*) towards rates and taxes. They further claim to have effected improvements to the value of R 108 171.30 from 2015 to date. On this basis, they assert a lien over the property.

The facts

- [10] The following facts are either common cause or cannot be seriously disputed by the parties:
- 10.1 The Applicant is the duly appointed executrix of the estates of both Mr Charles Gordon Higgs and Mrs Classina Maria Susanna Higgs.

10.2 The late Mr and Mrs Higgs were the joint registered owners of the property.

10.3 The Respondents have occupied the property since 2014.

10.4 The lease agreement between the parties was oral and indefinite, constituting a monthly periodic lease.

10.5 The agreement has been lawfully cancelled by the Applicant.

10.6 The Respondents lodged a claim against the estate, which claim was rejected on 20 February 2024.

10.7 The Applicant has tendered security in the amount of R 33 202.80, being the total of payments allegedly made by the Respondents for the period July 2021 to June 2024 (*the unprescribed portion of their claim*).

10.8 The property is in a severely dilapidated state, requiring an estimated R 471 000.00 to be expended to render it sellable.

The issues

[11] The following issues fall to be determined by this Court:

- (a) Whether the Respondents have established a valid lien (*whether debtor-creditor or enrichment*) entitling them to retain possession of the property;
- (b) If so, whether the Applicant's tender of security defeats such lien;
- (c) Whether the Respondents' continued occupation is unlawful;
- (d) Whether it is just and equitable to grant an eviction order; and
- (e) An appropriate order as to costs.

The law

- [12] A lien or right of retention is the right enjoyed by a possessor to retain physical control of another's property as security for payment of a claim for money or labour expended on that property.¹ The underlying purpose is to secure repayment for money or labour that the lienholder has expended on the owner's property. A lien functions as a defence to the owner's *rei vindicatio* and entitles the lien holder to retain possession until compensated.²
- [13] If a respondent seeks to rely on an alleged legal justification for possession, the onus to prove this rests on the respondent.³ Liens are classified into two distinct categories, namely enrichment liens and debtor-creditor liens.⁴
- [14] Enrichment liens (*salvage and improvement liens*) are based on the principle of unjustified enrichment. They are real security rights enforceable against the owner and his successors in title, arising by operation of law from the fact that the retentor has expended money or labour on another's property.⁵ The essential requirements are (a) expenditure of money or labour on another's property; (b) possession of the property; and (c) that the expenses were necessary for salvage or useful for improvement.⁶ In *Brooklyn House Furnishers (Pty) Ltd v Knoetze and Sons*,⁷ the court held that where there is no enrichment of the owner, no lien can be established.⁸
- [15] In *Pheiffer v Van Wyk*,⁹ the Supreme Court of Appeal (*"the SCA"*) confirmed that a real lien (*enrichment lien*) is afforded to a person who has expended money or labour on another's property without any prior contractual relationship. The lienholder is entitled to retain possession until the enrichment claim is satisfied. The owner may defeat the lien by furnishing adequate security.¹⁰

¹ Konrad M Kritzing, *Principles of the Law of Mortgage, Pledge and Lien* (1999) at 62.

² Mostert et al, *The Principles of the Law of Property in South Africa* (4th ed, 2012) at 331.

³ *Singh v Santam Insurance Company Ltd* 1997 (1) SA 291 (SCA).

⁴ TJ Scott, *Liens*, LAWSA vol 15, part 2 at 38-39.

⁵ *Brooklyn House Furnishers (Pty) Ltd v Knoetze and Sons* 1970 (3) SA 264 (A) at 270.

⁶ Scott, *Liens* at 31, para 50.

⁷ 1970 (3) SA 264 (A).

⁸ At 270G-H.

⁹ 2015 (5) SA 464 (SCA).

¹⁰ At para [12].

- [16] Debtor-creditor liens are derived from contract and are available only to the parties to the contract. They confer a personal right against the contracting party and extend to all expenditure incurred on the property under a contract.¹¹ Such a lien does not exist apart from the contract and can be raised as a defence to a vindicatory action.¹²
- [17] In *Sandton Square Finance (Pty) Ltd v Vigliotti*,¹³ the court held that a court has a discretion to allow substitution of security in both enrichment and debtor-creditor liens.¹⁴
- [18] Regarding the validity of contracts for the sale of land, section 2 of the *Alienation of Land Act 68 of 1981* (“the *Alienation of Land Act*”) prescribes certain formalities. In terms thereof, no alienation of land shall be of any force or effect unless contained in a deed of alienation signed by the parties.
- [19] With respect to prescription, section 11(d) of the *Prescription Act 68 of 1969* (“the *Prescription Act*”) provides that a debt prescribes after three years. In terms of section 12(3), a debt is not deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises.
- [20] Regarding the valuation of improvements, it is not the expense itself that gives rise to a lien, but the value of the improvement. In *Sithole v Lempe*,¹⁵ the court held that an improvement lien affords security for useful expenses and the value is determined by reference to the market value of the asset, not the actual expense incurred.¹⁶ In the premises, the Respondents in the present matter must allege and prove the pre and post improvement market value of the property.¹⁷
- [21] In relation to eviction proceedings under the *Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998* (“*PIE*”), section 4(7) provides

¹¹ Pheiffer v Van Wyk supra at para [11].

¹² Ibid.

¹³ 1997 (1) SA 826 (W).

¹⁴ At 831D-F.

¹⁵ Unreported, Johannesburg Local Division, Appeal Case No: 3004/2021 (28 March 2022).

¹⁶ At para [55]-[57].

¹⁷ Ibid.

that if an unlawful occupier has occupied the land for more than six months, a court may grant an eviction order if it is just and equitable to do so after considering all relevant circumstances, including whether land can reasonably be made available by a municipality or other organ of state for relocation, together with the rights and needs of the elderly, children, disabled persons and female-headed households.

- [22] Section 4(8) provides that if the court is satisfied that all requirements of the section have been complied with and no valid defence has been raised, it must grant an eviction order when it is just and equitable to do so.
- [23] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd*,¹⁸ the SCA held that a court hearing an eviction application at the instance of a private owner is faced with two enquiries. First, whether it is just and equitable to grant an eviction order and second, what justice and equity demand in relation to the date of implementation. The issue of possible homelessness arises in the second enquiry concerning the implementation date.¹⁹
- [24] In *Msibi v The Occupiers of Unit 6[...] C[...] T[...] Road*,²⁰ the Full Court held that the availability of a municipal report is *not* a legal requirement for obtaining an eviction order. A private owner only has a legal obligation to establish ownership and unlawful occupation. The court retains a discretion to request a report, if necessary, but there is no justification to dismiss an application on the basis that a municipal report is unavailable.²¹
- [25] In *Bekker v Jika*,²² the SCA confirmed that, provided procedural requirements are met, the owner is entitled to approach the court on the basis of ownership and unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner is entitled to an eviction order.²³

¹⁸ 2012 (6) SA 294 (SCA).

¹⁹ At para [25].

²⁰ Case No: A181/2024, Gauteng Division, Pretoria (31 January 2025).

²¹ At para [31]-[32].

²² 2003 (1) SA 113 (SCA).

²³ At para [19].

[26] In *Setchell v Segal N.O.*,²⁴ the court held that a person claiming a lien bears the onus to prove both the enrichment and their own impoverishment.²⁵

The Applicant's case

[27] The Applicant contends that the Respondents' alleged lien cannot be sustained for several reasons.

[28] First, the alleged agreement upon which the Respondents rely is unenforceable. The purchase price was never determined, rendering the agreement unenforceable. At best, it is an agreement “*to agree*”. The terms of the alleged agreement are vague and void, as they concern immovable property and do not comply with the formalities prescribed by section 2 of the Alienation of Land Act. Consequently, no debtor-creditor lien can exist as the obligations do not flow from a valid contract.

[29] Second, even if the expenses could be found to constitute an enrichment lien, the majority of the claims have prescribed. The first lien of R 144 337.42, allegedly paid before September 2015, arose more than three years ago and has prescribed under section 11(d) of the Prescription Act. The second lien of R 94 893.89 includes amounts from 2014 to June 2021 which have similarly prescribed. The unprescribed portion (July 2021 to June 2024) amounts to R 33 202.80, for which the Applicant has tendered security.

[30] Third, the alleged improvement lien of R 108 171.30 cannot be sustained. The Respondents have failed to provide particulars of when improvements were made, rendering it impossible to determine which amounts may have prescribed. Critically, the Respondents have not established any increase in the market value of the property. The valuation report attached to the founding affidavit indicates that the property is in a severely dilapidated state and requires R 471 000.00 in repairs. The bald statement that improvements were effected does not establish an enrichment claim.²⁶

²⁴ Case No: A5050/2017, Gauteng Local Division, Johannesburg (10 April 2018).

²⁵ At para [10].

²⁶ *Sithole v Lempe* supra at paras [55] to [57].

[31] Fourth, in relation to the eviction being just and equitable, the Applicant submits that the Respondents are not vulnerable persons. The First Respondent is gainfully employed and the head of his household. The Respondents do not pay market-related rent or municipal charges. The property has been neglected. The Respondents do not contend they would be homeless, only that they have no other accommodation in respect which they have invested money. They have not disclosed their earning capacity or their ability to source alternative accommodation.

[32] The Applicant has tendered security for any legitimate claim the Respondents may have. The Respondents' continued occupation is unlawful, and an eviction order is just and equitable.

The Respondents' case

[33] The Respondents allege that they entered into an oral lease agreement with the late Mr and Mrs Higgs in 2014, which included an option to purchase the property.

[34] Under this alleged agreement, they would pay monthly rent, together with all consumption charges. Also, they would pay rates and taxes. All of the foregoing would be deducted from the eventual purchase price. They could also affect repairs and improvements, which would similarly be deducted from the purchase price.

[35] The Respondents claim to have made payments to the municipality totalling R 144 337.42 (*before September 2015*) and R 94 893.89 (*June 2014 to June 2024*). They claim to have effected improvements to the value of R 108 171.30 from 2015 to date.

[36] The Respondents submit that they have a lien over the property arising from these payments and improvements and are therefore entitled to retain possession until compensated.

[37] Regarding prescription, the Respondents submit that the Applicant's debt only became due on or about 20 February 2024, when their claim against the estate

was rejected. In the premises, it is submitted that it has not prescribed. They rely on section 12(3) of the Prescription Act, arguing that they only became aware of the debt being due when the Applicant rejected the underlying agreement.

- [38] On the just and equitable enquiry, the Respondents submit that they have occupied the property for 10 years, paid all municipal charges and rent, and improved the property. They argue they would suffer severe prejudice if evicted, as they would lose their lien and the estate would be unjustly enriched. The First Respondent is self-employed and the Second Respondent is not working. They will be rendered homeless. They further argue that the Applicant failed to provide a municipal report on alternative accommodation, making it impossible for the court to determine if eviction is just and equitable.

Discussion and analysis

- [39] The central question is whether the Respondents have established a valid lien entitling them to retain possession of the property. The onus rests on the Respondents to prove their entitlement to a lien.²⁷

Classification of the alleged lien

- [40] The Respondents' claim arises from an alleged oral agreement. In terms thereof, payments and improvements would be deducted from an agreed purchase price. This falls within the category of a debtor-creditor lien, which must be derived from a valid contract.²⁸

Validity of the underlying agreement

- [41] The alleged agreement suffers from fatal defects. The purchase price was never determined, rendering "*the agreement to agree*" unenforceable. The terms are vague regarding duration and the extent of permissible improvements. Critically, the agreement concerns immovable property and does not comply with the formalities prescribed by section 2 of the Alienation of Land Act. An oral agreement for the sale of land is of no force or effect.

²⁷ Singh v Santam supra; Setchell v Segal supra at para [10].

²⁸ Pheiffer v Van Wyk supra at para [11].

Accordingly, no valid contract exists from which a debtor-creditor lien can arise.²⁹

Enrichment lien as an alternative

- [42] The Respondents' only remaining hope of proving a valid lien is if such a lien is classified as an enrichment lien. However, they face insurmountable difficulties in this regard.

Prescription of claims

- [43] The Respondents' argument on prescription is misplaced. A debt arises, and prescription begins to run, when it is due and payable, *not* when a claimant decides to enforce it or when, as alleged in the present matter, an executrix rejects it. Payments for historical municipal debt (*rates and taxes*) were made from 2014 onwards. These were due to the municipality by the owner and paid by the Respondents. Their claim for reimbursement from the owner arose at the time of each payment. The first lien of R144 337.42, allegedly paid before September 2015, arose more than three years before these proceedings were instituted. This claim has prescribed in terms of section 11(d) of the Prescription Act.³⁰ The second lien of R 94 893.89 includes payments from June 2014 to June 2024. All payments prior to July 2021 (*more than three years before institution of proceedings*) have similarly prescribed. The Respondents have failed to specify when each payment was made, but, on their own version, the bulk of their claim has prescribed.

The unprescribed portion

- [44] The alleged improvement lien of R 108 171.30 cannot be sustained for many reasons. First, the particulars are hopelessly vague. The Respondents provide a schedule of items but fail to indicate when the improvements were made, whether they were necessary, useful or luxurious, and, crucially, whether they have been installed or fitted. Some items appear to be equipment that has not yet been installed.

²⁹ Alienation of Land Act 68 of 1981, s 2.

³⁰ Prescription Act 68 of 1969, s 11(d).

[45] Second, prescription applies equally to improvement claims. The Respondents state improvements were made "*from 2015 to present*" without any particularity as to timing. This Court cannot determine which portions of the claim may have prescribed.

[46] Third, and most fundamentally, it is not the expense itself that gives rise to an enrichment lien, but the value of the improvement.³¹ The Respondents were required to establish the property's market value before and after the alleged improvements.³² They have failed entirely to do so. The only evidence before the Court is the valuation report attached to the founding affidavit, which indicates that the property is in a severely dilapidated state and requires repairs valued at R 471 000.00. The Respondents have not discharged the onus of proving any increase in value resulting from their alleged improvements. Without proof of enrichment, no enrichment lien can exist.³³

[47] In *Sithole v Lempe*,³⁴ the court held that an improvement lien affords security for useful expenses and the value is determined by reference to the market value of the asset, not the actual expense incurred.³⁵ The Respondents have failed to meet this requirement.

The Respondents' occupation

[48] Having failed to establish a valid lien and the agreement having been validly cancelled, the Respondents' continued occupation of the property is unlawful. They occupy without the owner's consent and without any other lawful right.

Just and equitable enquiry:

³¹ *Sithole v Lempe* supra at para [55].

³² *Ibid.*

³³ *Brooklyn House Furnishers* supra at 270G-H.

³⁴ Unreported, Johannesburg Local Division, Appeal Case No: 3004/2021 (28 March 2022).

³⁵ At para [55] to [57].

[49] This Court must consider whether it is just and equitable to grant an eviction order.³⁶

[50] The following circumstances are relevant:

- (a) The First Respondent is gainfully employed and the head of his household.
- (b) The Respondents do not pay market-related rental for the property.
- (c) The Respondents are presently not paying electricity, water, and sewage charges, which are accumulating against the property.
- (d) The property has been severely neglected and requires extensive maintenance.
- (e) The Respondents do not contend that they would be homeless. They merely state that they have no other accommodation in which they have invested money.
- (f) The Respondents are not elderly, vulnerable, disabled or a female-headed household.
- (g) The Respondents have not taken this Court into their confidence regarding their earning capacity or ability to source alternative accommodation.
- (h) The Respondents have been in occupation for approximately 10 years without purchasing the property or securing their position, despite the alleged agreement.

[51] At the end of the day, the Respondents have raised no valid defence to the eviction application. Their alleged lien has been found to be without merit and it has been conceded that the agreement has been validly cancelled.

[52] Regarding the absence of a report from the Fourth Respondent (*the local Municipality*), the Full Court of this Division, in *Msibi*³⁷ confirmed that the availability of a municipal report is *not* a legal requirement for obtaining an

³⁶ PIE Act, s 4(7).

³⁷ *Msibi v The Occupiers* supra (Case No: A181/2024).

eviction order. A private owner has no obligation to provide housing, and the owner needs only to establish ownership and unlawful occupation.³⁸ This Court retains a discretion to request a report, if necessary, but there is no justification to dismiss an application on the basis that a municipal report is unavailable. In the present matter, this Court is satisfied that it has sufficient information to conduct the just and equitable enquiry. The Respondents have not placed any evidence before the court that they have approached the municipality for assistance or that alternative accommodation is unavailable.

[53] The Respondents have occupied the property for more than six months, bringing the matter within the scope of section 4(7) of PIE. Having considered all relevant circumstances, including that security has been tendered for any legitimate claim, this Court finds that the Respondents are not vulnerable persons and that they have not established that eviction would render them homeless. Thus, this Court is of the opinion that it is just and equitable to grant an eviction order.

[54] Regarding the implementation date, this Court must consider what justice and equity demand.³⁹ The Respondents have had notice of these proceedings since their inception. The First Respondent is employed and should be able to secure alternative accommodation within a reasonable period. An order requiring the Respondents to vacate the property within 30 days of the date of this order is appropriate. This allows the Respondents to vacate with dignity whilst not unduly delaying the Applicant's right to possession of the property.

Conclusion

[55] The Respondents have failed to establish a valid lien. Their alleged agreement is unenforceable; their claims have largely prescribed; they have failed to prove any increase in the value of the property and the Applicant has tendered security for any remaining claims. The lease was validly cancelled and the Respondents' continued occupation of the property is unlawful.

³⁸ At para [31]-[32].

³⁹ Changing Tides supra at para [25].

[56] The Applicant, as *executrix* of the estates of the late owners, is entitled to possession of the property. The Respondents have raised no valid defence thereto and it is just and equitable to grant an eviction order.

Costs

[57] The general rule is that costs follow the result. The Applicant has been successful in these proceedings. There is no reason to depart from this rule. In addition, the Respondents opposed the application throughout, raising defences that this Court has found to be without merit. They should be liable for the costs of the application.

[58] This Court sees no real basis for a punitive costs order. In the exercise of its discretion, this Court finds that the party and party scale (Scale B) is appropriate.

Order

[59] In the premises, this Court makes the following order:

1. The First and Second Respondents and all persons occupying the property through or under them, are hereby evicted from the property known as 2[...], 2[...] Avenue, N[...], Benoni.
2. The First and Second Respondents and all persons occupying through or under them are ordered to vacate the property within 30 (thirty) days of the date of this order.
3. Should the First and Second Respondents and all persons occupying through or under them fail to vacate the property within the period stipulated in paragraph 2 hereof, the Sheriff of this Court is authorised and directed to take all reasonable means to eject them from the property.
4. The First and Second Respondents are to pay, jointly and severally, the one paying the other to be absolved, the costs of this application on a party and party scale (Scale B).

**BC WANLESS
JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date of Hearing: 17 February 2026

Date of Judgment: 19 March 2026

Appearances

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