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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, PRETORIA

CASE NO: 2024/107191

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: YES/ NO
<u>25 March 2026</u> DATE SIGNATURE	

In the matter between :

HEYTER HENDRIK BRANDT

Applicant.

and

RAMON BRANDT

First Respondent

THE ILLEGAL OCCUPIERS OF THE PROPERTY

ERF 3[...] W[...] PRETORIA (also known as

1[...] B[...] AVENUE W[...] PRETORIA Second Respondent

GAUTENG PROVINCE

THE CITY OF TSHWANE METROPOLITAN

MUNICIPALITY

Third Respondent

JUDGMENT

MODISA AJ

1.

[1] This is an opposed eviction application which is predicated upon the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("*PIE*") which was issued on 20 September 2024.

[2] On 16 January 2025, the Honourable Madam Justice Pienaar AJ granted an order in terms of Part A of the notice of motion which reads as follows:

“1 *That the form and contents of the Notice in terms of Section 4(2) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998, as attached hereto as **ANNEXURE “I”** be authorised.*

2 *That the Applicant is directed to serve Notice, together with a copy of this order on the Respondents in accordance with the provisions of Rule 4(1) of the Uniform Rules of Court.*

3 *That the costs of this application be costs in the cause.”*

[3] On 12 February 2025, the Notice of Motion, the Founding affidavit of Hendrik Heyter Brandt, the Court order dated 16 January 2025 and Annexures in terms of Notice in terms of Section 4(2) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (“PIE”) and the notice of the initial Court date – 26 February 2025 was served on the First Respondent and Second Respondent by leaving copies at the main gate. No one could be found at the address who is older than sixteen years of age.

[4] On 5 February 2025, service of all documents as stipulated in paragraph 1.4 *supra* was effected on the Third Respondent (Ms Tsoai- Legal Clerk, the responsible employee of the Third Respondent) at T[...] H[...] , 3[...] M[...] Street, Pretoria which is the offices of the Tshwane Metropolitan Municipality

[5] The relief claimed by the Applicant which is to be determined by this Court is founded on **PART B** of the Applicant's Notice of Motion in terms of Section 4(2) of Act 19 of 1998. The relief claimed by the Applicant is as follows:

*"1. That the First and Second Respondents, occupying the immovable property of the Applicant, be evicted from the immovable property known **ERF 3[...] W[...] , PRETORIA CITY also known as 1[...] B[...] AVENUE, W[...] , PRETORIA, GAUTENG PROVINCE.***

*2. That the First and Second Respondents be ordered to vacate the Applicants immovable property within **30 (thirty) days** from the granting of this order, alternatively within such a reasonable period the Honourable Court deems just and equitable, from date of granting this order, failing which the relevant Sheriff (Pretoria East) be authorised, mandated, and directed to evict the First and Second Respondents from the immovable property;*

3. *That the Sheriff be authorised to request any person, including members of the South African Police Services, to assist in the eviction of any occupants from the property.*
4. *That the First Respondent be ordered to pay the costs of this application on an attorney client scale, Scale B.*
5. *Further and/or alternative relief.”*

[6] The Applicant, as the lawful owner of the immovable property **ERF 3[...]** **W[...], PRETORIA CITY** also known as **1[...]** **B[...]** **AVENUE, W[...], PRETORIA, GAUTENG PROVINCE** persist with the relief sought in the notice of motion – Part B thereof.

[7] The Applicant argues that the personal circumstances shows that the First Respondent and his wife are gainfully employed. It is trite that a private property landowner is not obliged to provide or fulfil the municipalities duty to make available ¹, if appropriate, alternative accommodation to the Respondents or that personal circumstances are not legally relevant circumstances. In any event, under these circumstances the Third Respondent is not obliged to do so considering the financial circumstances of the First and Second Respondents². They

¹ City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd 2012 (2) SA 104 (CC) at par 31 “.. A private owner has no obligation to provide free housing.”

² The National Housing Code was enacted under section 4 of the Housing Act 107 of 1997. It contains the national housing policy and sets out the principles, guidelines, and standards to apply to the various programmes effected by the state in relation to housing.

elected not to place considerable detail regarding the First Respondent's business and his wife's Dental practice before this Court.

[8] There is no dispute between the Applicant and any of the Respondents that the Applicant is the registered owner of the immovable property **ERF 3[...] W[...], PRETORIA CITY also known as 1[...] B[...] AVENUE, W[...], PRETORIA, GAUTENG PROVINCE³.**

[9] The First and/or Second Respondents are in possession of the Applicant's immovable property since June/July 2012.

[10] During or about June/ July 2012 and at Pretoria, the First Respondent acting personally and Applicant, acting personally, entered into a verbal lease agreement in respect of the immovable property **ERF 3[...] W[...], PRETORIA also known as 1[...] B[...] AVENUE, W[...], PRETORIA, GAUTENG PROVINCE P:O W[...] PRETORIA** (the Applicant's immovable property)

[11] The material express, alternatively implied, further alternatively tacit terms of the verbal agreement were as follows:

11.1 The First Respondent leased the Applicant's immovable property for an amount of R 12 000-00 per month.

³ Founding affidavit, paragraph 6.1.1 and 6.1.2 on Caselines 006-13 and Answering Affidavit, paragraph 4.5.1 and 4.5.2 on Caselines 013-15.

11.2 The rental amount referred to in paragraph 2.4.1 above shall be renegotiated between Applicant and the First Respondent, from time to time, but not within the first 24 (twenty-four) months from date of commencement of the verbal lease agreement referred to in paragraph 2.3 *supra* as the Applicant deemed fit at his sole discretion.

11.3 The First Respondent shall be liable for all property rates and taxes, services, and electricity consumption of the Applicant's immovable property.

11.4 The First Respondent shall attend to the general upkeep of the immovable property and do all things necessary to maintain and retain the immovable property in a pristine habitable condition.

11.5 The First Respondent shall not make any alterations, modifications, variations or additions to the immovable property without the Applicant's prior written consent.

11.6 The Applicant provided the First Respondent with unhindered and undisturbed possession of the immovable property.

11.7 Either the First Respondent or the Applicant, for whatsoever reason, was entitled to cancel the verbal lease agreement by providing the other party with reasonable notice of the parties'

intention to cancel the verbal lease agreement following the initial 24 (twenty-four) months from date of commencement of the lease agreement during June/July 2012.

[12] It was submitted by the Applicant that he complied with all his obligations in terms of the verbal lease agreement with the First Respondent.

[13] The Applicant declared that but for a single payment of R 12 000-00 in the twelve-year lease period, the First Respondent failed *alternatively*, neglected, further *alternatively* refused to comply with his obligations in terms of the verbal lease agreement by paying an amount of R 12 000-00 per month (consecutively, and monthly for a period of 12 years) to the Applicant.

[14] It is stated on Applicant's behalf, although the First Respondent breached the verbal lease agreement concluded in June/July 2012, and failed to remedy it, whereafter the agreement was validly cancelled, the Applicant is entitled by virtue of the terms of the verbal lease agreement to cancel it by giving the First Respondent reasonable notice, which was in any event done.

[15] The First Respondent together with all occupiers residing in and on the Applicant's immovable property, on 28 June 2024 was afforded until 31 July 2024 to vacate the Applicant's immovable property⁴.

⁴ Founding affidavit, paragraph 7.15 on Caselines 006-18 and Annexure "FA4" on 006-36 to 006-39.

- [16] Any contractual right or any right at all by the First and/or Second Respondent to occupy the Applicant's immovable property lapsed and/or terminated on 31 July 2024. The First and Second Respondents are in unlawful occupation of the Applicant's immovable property.
- [17] Counsel for the First Respondent conceded that the partnership agreement has nothing to do with the lease agreement.
- [18] It seems to me that the parties are also *ad idem* that there is no 2020 lease agreement.
- [19] Furthermore, Counsel for the First Respondent submitted that if the Respondents' version is far-fetched then the relief sought ought to be granted. I agree that the Respondents' version is far-fetched.
- [20] Counsel for the Applicant referred to two (2) letters⁵ wherein nothing was said about the 2020 lease agreement. I agree with this proposition.
- [21] The First Respondent suggests that it was necessary to request this Court- or claim for declaratory relief. It is submitted on behalf of the Applicant that this suggestion is ill-considered and patently wrong where the Applicant's claim is premised on a possessory claim and to evict the First and Second Respondents from his premises. The Court has subject-matter jurisdiction based thereon that both the common law and section 21(1)(c) of the Superior Court's Act authorise the High Court in its discretion, and at the instance of any interested person, to inquire into

⁵ See caselines 006-29 and 006-32

and determine any existing, future, or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon such determination. It is not necessary within the conspectus of eviction proceedings, and specifically the subject matter at hand to request for declaratory relief.

[22] The Applicant, as owner of the immovable property, has a direct, material, and substantial interest in the outcome of these proceedings, he has an existing, future and continent right therein, relies on a valid termination of the verbal lease agreement that was concluded in 2012 (supported by the facts presented in the affidavits and more specifically on the First Respondent's own version) and the First and Second Respondent's unlawful occupation of his immovable property as from 31 July 2024.

[23] The First Respondent furthermore attempts to suggest that a factual dispute exists, which is holistically misplaced and incorrect. Firstly, the alleged and disputed partnership agreement, involving the farm of the Applicant's company, has no relevance to these proceedings. Secondly, and if careful consideration is given to the First Respondent's complaint, is that a 9-year verbal lease agreement exists, which has been proven to be incorrect purely on his own version. Further, the basis upon which the alleged verbal lease agreement was concluded (on his version- with reference to the disputed partnership agreement) was repudiated and accepted by him. On his own version, the First or Second Respondent

have no right or entitlement to remain in occupation of the Applicant's immovable property.

[24] Counsel for the First Respondent seems to suggest that there is a genuine dispute of fact and the matter has to be referred to trial. I am of the view that there is no genuine dispute of fact.

[25] In consequence and considering that no serious response to the 2012 (the only) verbal lease agreement and the valid termination thereof was provided by the First Respondent, reliance on a "*material factual dispute*" is misplaced and holistically incorrect. The test that finds application in these circumstances with specific reference to the *Motion proceedings* is as follows:

25.1 In motion proceedings disputes of fact must be dealt with in accordance with the principles laid down in ***Plascon - Evans Paints v Van Riebeeck Paints (Pty) Ltd***⁶ (the ***Plascon Evans*** - rule). This rule is to the effect that, where there is a dispute as to the facts, a final interdict should only be granted in notice of motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavit justify such an order. Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted. In certain instances, the denial by the respondent of a fact alleged by the applicant may

⁶ 1984 (3) SA 623 (A)

not be such as to raise a real, genuine or *bona fide* dispute of fact.⁷

Vague and unsubstantiated allegations are insufficient to raise real and genuine disputes of fact.⁸ A bare denial of the applicant's allegations will generally be insufficient to generate a genuine or real dispute of fact.⁹

25.2 As a general rule decisions of fact cannot properly be founded on a consideration of the probabilities, unless the Court is satisfied that there is no real dispute on the facts in question, or that the one party's allegations are so far - fetched or so clearly untenable or so palpably implausible as to warrant their rejection merely on the papers, or that *viva voce* evidence would not disturb the balance of probabilities appearing from the affidavits.¹⁰

25.3 The following was stated in ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another***¹¹ :

“A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing

⁷ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1163

⁸ *King William's Town Transitional Local Council v Border Alliance Taxi Association (BATA)* 2002 (4) SA 152 (E) at 156I - J

⁹ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at 290F

¹⁰ *Administrator, Transvaal v Theletsane* 1991 (2) SA 192 (A) at 197A - B; *Malan v Law Society, Northern Provinces* 2009 (1) SA 216 (SCA) at 222B

¹¹ 2008 (3) 371 (SCA) at para [13]

more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.”

25.4 The First Respondent’s version, wherever it is in conflict with the Applicant’s version, is so clearly untenable or palpably implausible that it can and should be rejected merely on paper.

25.5 consequently, the *point in limine* raised by the First Respondent ought to be dismissed with costs.

[26] The point of departure in eviction proceedings is encapsulated in Section 26(3) of the Constitution of the Republic of South Africa, Act 108 of 1996 which clearly provides that ‘*no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances*’. In giving effect to its provision, the section further declares that ‘*no legislation may permit arbitrary evictions*’. In compliance with the Constitution and not to permit arbitrary

evictions, the legislature enacted the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE Act").

[27] The PIE Act dictates and regulates the procedures to be followed in initiating eviction proceedings, and our Courts should direct how to serve the unlawful occupiers with the owner's intended application for evicting them and to afford them the opportunity to answer.

[28] Sections 4 and 5 of the PIE Act are tools available to owner(s) or person(s) in charge of land to initiate eviction proceedings against unlawful occupiers.

[29] Section 4(7) of the PIE Act provides as follows :

'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 a 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.'

[30] Section 4(7) of the PIE Act ensures that no person may be evicted from their home, or have their home demolished, without an order made after considering all relevant circumstances.

[31] The Court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors.

[32] In **Occupiers, Berea v De Wet 2017 (5) SA 346 (CC)** the Constitutional Court held the following in paragraph [47]:

'It deserves to be emphasised that the duty rests on the court under section 26(3) of the Constitution and Section 4 of PIE goes beyond consideration of the lawfulness of the occupation. It is a consideration of justice and equity in which the Court is required and expected to take an active role. In order to perform its duty properly the court needs to have all the necessary information. The obligation to provide the relevant information is primarily on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.' In paragraph 43 it was stated: *'The role played by the court in such matters was elucidated further in other cases. As a starting point, this Court in **Machele** held that "the application of PIE is not discretionary. Courts must consider PIE in eviction cases. Furthermore, this court in **Pitje** held that courts are not allowed to passively apply PIE and must "probe and investigate the surrounding circumstances".'*

[33] In **Port Elizabeth Municipality v Various Occupiers 2005(1) SA 217**

(CC) it was emphasised by the Constitutional Court that the Constitution, read with the just and equitable enquiry required to be undertaken in the PIE proceedings, grants our courts a wide discretion in ensuring justice and equity prevails in relation to all the parties concerned.

[34] In paragraph 28 of the **Port Elizabeth** matter, it was stated: ‘Section 6(3)

states that the availability of a suitable alternative place to go to is something to which regard must be had, not an inflexible requirement.

There is therefore no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless

alternative accommodation or land is made available. In general terms, however a court should be reluctant to grant an eviction against

relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending

ultimate access to housing in the formal housing programme.’ In paragraph 32 it was stated: ‘The obligation on the court is to have regard

to the circumstances, that is, to give them due weight in making its judgment as to what is just and equitable.... It follows that it is incumbent

on the interested parties to make all relevant information available...

Indeed, when the evidence submitted by the parties leaves important questions of fact obscure, contested or uncertain, the court might be

obliged to procure ways of establishing the true state of affairs, so as to enable it properly to ‘have regard’ to relevant circumstances’

[35] In paragraph [33] to [37] of the **Port Elizabeth** matter, the Constitutional Court held that:

“Just and equitable’

[33] *In Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others, a case with some similarities to the present, section 6 was helpfully analysed by Horn AJ. He pointed out that in matters brought under PIE one is dealing with two diametrically opposed fundamental interests. On the one hand there is the traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other hand there is the genuine despair of people in dire need of adequate accommodation. It was with this regard that the legislature had by virtue of its provisions of PIE set about implementing a procedure which envisaged the orderly and controlled removal of informal settlements. It is the duty of the court in applying the requirements of the Act to balance these opposing interests and bring out a decision that is just and equitable. He went on to say that the use of the term ‘just and equitable’ relates to both interests, that is what is just and equitable not only to the persons who occupied the land illegally but to the landowner as well. He held that the term also implies that a court, when deciding on a matter of this nature, would be obliged to break away from a purely legalistic approach and have regard to extraneous factors such as morality, fairness,*

social values and implications and circumstances which would necessitate bringing out an equitably principled judgment.

[34] *Finally Horn AJ went on to emphasise that each case would have to be decided on its own facts. Hopefully once the housing shortage had been overcome incidents of unlawful invasion of property by desperate communities in search of accommodation would disappear. In the interim the courts would do the best they could and apply criteria that were just and equitable and acceptable to all concerned. What remained essential, he concluded, was that removals be done in a fair and orderly manner and preferably with a specific plan of resettlement in mind.*

[35] *The approach by Horn AJ has been described both judicially and academically as sensitive and balanced. I agree with that description. The phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing. The necessary reconciliation can only be*

attempted by a close analysis of the actual specifics of each case.

[36] The court is thus 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. This has major implications for the manner in which it must deal with the issues before it, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make. The Constitution and PIE require that in addition to considering the lawfulness of the occupation the court must have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values, so as to produce a just and equitable result.

[37] Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It

combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern.”

[36] Section 8 of the PIE Act categorically states that the Court must (in pre-emptive terms) order eviction if (a) all the requirements of section 4 are met, and (b) no valid defence is raised by the unlawful occupier. The legislative principle underscoring the aforesaid legal position is found in subsection 4(8) which reads as follows:

‘(8) If a court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier and determine-

(a) A just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) The date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

[37] The Applicant complied with the requisite obligations imposed on it for an eviction order.

[38] Counsel for the Applicant submitted that the First Respondent is a wealthy businessman, and his wife a HSPCSA registered Dentist who can afford rental accommodation elsewhere and there is simply no basis upon which they will be entitled to accommodation from the Third Respondent. This was not disputed by First and Second Respondents. It must be emphasised that nowhere in provisions of The National Housing Code of 2009 is it mandatory or peremptory on local or provincial government institutions to provide housing programmes or emergency distress and relief accommodation to parties *per se*.

[39] The Applicant is the owner of the immovable property, the First Respondent and/or the Second Respondent are in unlawful occupation thereof and as a result an eviction order must be granted. The only issue left for determination is that the Court must determine a reasonable period for their eviction (or vacating of the Applicants immovable property) as envisaged in Section 4(8) of the PIE Act.

[40] In the circumstances, the following order is made:

1. That the First Respondent's *point in limine* is dismissed with costs.
2. That the First and Second Respondents, occupying the immovable property of the Applicant, be evicted from the immovable property

known as **ERF 3[...] W[...] PRETORIA (also known as 1[...] B[...] AVENUE W[...] PRETORIA, Gauteng Province.**

3. That the First and Second Respondents be ordered to vacate the Applicant's immovable property within **90 (ninety) days** from the granting of this order, failing which the relevant sheriff (Pretoria East), be authorised, mandated and directed to evict the First and Second Respondents from the immovable property.
4. That the sheriff be authorised to request any person, including members of the South African Police Services, to assist in the eviction of any occupants from the immovable property.
5. That the First Respondent be ordered to pay the costs of this application on Scale B.

MODISA AJ
JUDGE OF THE HIGH COURT
PRETORIA

For the Applicant:

Adv Adv ASL Van Wyk
Instructed by: Herman E Smalman Attorneys

For the First Respondent:

Adv D.R Du Toit
Instructed by: Hansen Inc