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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO LOCAL DIVISION, THOHOYANDOU**

CASE NO. 483/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 30 March 2026

SIGNATURE:

In the matter between:

A[...] A[...] R[...]

APPLICANT

and

N[...] P[...] R[...]

FIRST RESPONDENT

N[...] C[...] R[...]

SECOND RESPONDENT

JUDGMENT

Heard on: 06 November 2025

Delivered: this judgment was handed down electronically by circulation to the parties' legal representatives by email and release on SAFLII. The date and time for hand-down is deemed to be at **10:00** on **30 March 2026**.

SEMENYA DJP

[1] This is an application for the eviction of the two respondents from the immovable property known as Erf 3[...] Thohoyandou Block J (the property) within ten days of the granting of the order. The property is currently registered with the Deeds Office in the names of the applicant. The application is opposed by the first respondent only.

The background facts:

[2] The applicant is the biological mother of the second respondent. The first and second respondents were married to each other in community of property. The marriage was dissolved by an order of this Court dated 29 January 2019. The decree of divorce incorporated a settlement agreement entered into by the respondents. The respondents had agreed in the settlement agreement that they do not own immovable property.

[3] The respondents and their children occupied the property with the applicant's consent during the subsistence of their marriage. The second respondents vacated the property in 2016, before their divorce, leaving the first respondent and their children behind. The first respondent and the children are still in occupation of the property.

[4] There is a dispute with regard to the condition of the property when the respondents took occupation. The applicant contends that two rooms, a garage and a bathroom were already built on the property. The first respondent, on the other hand, contends that it was a vacant stand with no fixed structures on it.

[5] It is common cause that the respondents effected improvements on the property by erecting an eleven-room house. According to Mbofho Valuation Services the improvements on the property comprises of the front and rear covered verandas supported by piers, attached double garage fitted 2x remote-controlled wooden doors, sitting room, dinning room, passage, semi-fitted kitchen, common bathroom, laundry room, as well as three unfitted bedrooms, whereas the main bedroom has ensuite bathroom plus a private external side door. The sitting room and the eastern

side bedroom have ceiling fitted fans. The value of the property was R686 000 as of 3 June 2023.

Points of law:

[6] The first respondent raised three points of law. The first point of law raised is the non-joinder of the municipality and the mis-joinder of the second respondent. The first respondent contends that the municipality is a necessary party in these proceedings and that failure to cite and join the municipality is fatal to the applicant's case.

[7] Concerning the second respondent, the first respondent contends that the applicant joined the second respondent for '*nefarious intentions aimed at creating a stage for the son to support his mother's application.*' The first respondent states that the application is an abuse of power.

[8] The second point of law is of abuse of court processes by the applicant. The first respondent contends that the applicant withdrew two other previous applications where she sought their eviction in the magistrate Court. The first respondent contends that the applicant came up with different versions in each of the applications.

[9] The third point of law is that the order sought by the applicant is not competent in that she has an enrichment lien over the property, in view of improvements she and the second respondent made on the property. The first respondent contends that she has the right to retain the property until payment of the value of the improvements is made by the applicant.

[10] The first respondent contends that the applicant is enjoined to cite and serve the notice of the proceedings to both the municipality and the unlawful occupier. The applicant opposes this point of law on the basis that the municipality has no direct and substantial interest in the outcome of this litigation. Service of the application on the municipality is imperative in this case, not because the municipality has a direct and substantial interest in outcome of the case. It is because the respondents have

been in occupation of the property for a period of longer than six months. In such a case, the Court must determine whether the municipality will be able to avail land for the relocation of the unlawful occupier, as contemplated in section 4(7).

[11] Section 4(2) of the PIE Act enjoins the Court to serve the notice of the intended eviction applications on the unlawful occupier and the municipality having jurisdiction 14 days before the hearing of the application. The first respondent contends that the application is irregular in that the applicant put the horse before the cart by first serving the applicant with the eviction application and by applying for a section 4(2) order thereafter.

[12] The applicant complied with the requirements of section 4(2) in that the Court order contemplated in the section was served on the municipality 14 days before the hearing of the application. I am of the view that the purpose of the section has been met. Nothing prevents the Court from requiring a report from the municipality even in cases where it has not been cited as a party, before an eviction order is granted. The point of law of non-joinder of the Thulamela Municipality is dismissed.

[13] The first respondent contends that the second respondent cannot be evicted from the property that he vacated in 2019. The applicant argues that the property was made available to both respondents and that second respondent is no longer staying in it because of the protection order granted in terms of the Domestic Violence Act¹. The second respondent is a necessary party to the proceedings and should be joined, in any case, the case concerns the eviction of his minor children as well.

[14] The second point of law of abuse of Court process is misplaced. The first respondent states that the previous applications were withdrawn. That being the case, there are no longer pending applications, on the same facts and between the same parties. The applicant has the right to institute these proceedings. This point of law is dismissed on this basis.

¹ 116 of 1998

[15] The third point of law is basically a substantive defence available to the occupier against eviction suit. The applicant argues that the first respondent's reliance on enrichment *lien* is misplaced on the basis that there is no existing contract between her, as the owner of the property, and the first respondent. The applicant contends that the agreement between her and the respondents was for them to occupy the property whilst they were still in the process of acquiring their own erf. She contends that the improvements on the property were made without her consent.

[16] The applicant's argument loses sight of the difference between a debtor/creditor *lien* and an enrichment *lien*. In **Pheiffer v Van Wyk and Others**² the court said:

"[17] It is apposite at this stage to consider the cases relevant to this issue. In *Bombay Properties (Pty) Ltd v Ferrox Construction* 1996 (2) SA 853 (W) Coetzee J had distinguished between a debtor/creditor *lien*, in which the person relying on a *jus retentionis* had an enforceable claim in contract against the owner of the property, and an enrichment / improvement *lien*, where there was no such contractual claim available to the possessor, and where the court accordingly did not have a discretion to deprive the *lien* holder of its possession and to substitute for that a meaningless form of security..."

[17] The applicant states that she did not consent to the improvement effected by the respondents to the property. She, however, did not have issue with it, the reason being that the second respondent was her son who had the capacity to inherit it from her. She further states that she is no longer obligated to provide the first respondent with accommodation since the divorce.

[18] The court in *Phiffer* stated that a real *lien* is afforded to a person who has expended money or labour on another's property without any prior contractual relationship between them. Further that the *lien* holder is entitled to retain possession until his enrichment claim has been met. To defeat the *lien*, the applicant

² 2015 (5) SA 464 (SCA) at [17].

in this matter, as the owner of the property, may furnish security for the payment of the value of the improvement.

[19] The first respondent has a real right over the property by virtue of improvements. She has the right of retention of the property. She is entitled to protection from eviction by the applicant until her claim is met, subject to that claim been lodged. The value of the improvement is not in dispute. Same has been quantified in the valuation report attached to the answering affidavit. The application for eviction of the first respondent is to be dismissed on this basis alone.

[20] The applicant did not specifically rely of the PIE Act in his notice of motion and founding affidavit. However, as stated in **Machele and Others v Mailula and Others**³, the application of this Act is not discretionary, and Courts must consider it in eviction application. The Constitutional Court stated in that case that Parliament enacted PIE to ensure fairness in and legitimacy of eviction proceedings and to set out factors to be taken into account when considering the grant of eviction orders, which entail conflicting interests.

[21] Section 26 of the Constitution of the Republic of South Africa, 1996, guarantees everyone the right to adequate housing. Subsection (3) of that section prohibits the eviction of anyone from their home without an order of Court made after considering all relevant circumstances. The interests of the applicant, as the owner of the property, must be weighed against those of the respondents, as the occupier.

[22] It is my view that this application stands to be dismissed under the PIE Act as well. In terms of section 4(7) of PIE Act, if an unlawful occupier has occupied the land in question for a period longer than six months, at the time when the eviction 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. Factors which the court may consider are the rights and needs of the elderly, children, disabled persons, and households headed by women.

³ (CCT 99/08) [2009] ZACC 7

[23] The applicant acknowledges in her own founding affidavits that she allowed the respondents to stay in the property because they did not have their own place. That they stayed on the property from 2005 until the date of the issue of the proceedings. That the second respondent left their marital home before the divorce. Primary care and residence of the respondents' children is with the first respondent as it appears from the settlement agreement attached to the applicant's papers. In the replying affidavit, she states that the second respondent, who has a primary responsibility to maintain his children, lost his job and caused the maintenance order issued against him by the magistrate court to be discharged.

[24] Counsel for the applicant contends that it is not the responsibility of the applicant to provide shelter for the first respondent. He argues that the responsibility lies with the municipality. Counsel lose sight of the fact that, first, the first respondent has the responsibility to take care of the children. Applicant failed to state what should happen to the children after the eviction. Secondly, the applicant is not a stranger to the children. She is their grandmother. She has a legal responsibility to maintain her grandchildren, since their father, on her own admission, is incapable of doing so. That will include providing shelter. The municipality's responsibility is, in my view, secondary to hers.

[25] In view of the above factors, it is my view that it will not be just and equitable to evict the first respondent and the applicant's grandchildren from a place they called home and that they have shared with her son for a period of twenty years. Counsel for the applicant's argument that it is the responsibility of the municipality to provide shelter to the first respondent and her children is legally correct. However, in the facts of this case, I consider it to be secondary to the responsibility of the first and second respondents, and, if for one reason or another, the two cannot provide for the children, that of the applicant, who has a moral duty to do so, in a case where her son is unable to do so. This so in that equity plays a role in an application of this nature.

[26] The applicant fails to state why she intends to evict the respondents. She merely states that she intends to do so because she is the owner of the property. It appears from the papers that she is not using the property as her place of residence.

It appears that there is no pressing reason why the first respondent should be evicted. The first respondent and her children's need to have accommodation outweighs the applicant's right to ownership, at least until the first respondent is paid what is due to her in terms of the lien. The first respondent and the children must be allowed to occupy the property until the first respondent is compensated for the money she expended to improve the property, more so in that the improvements were not meant to enhance the property but to provide a home.

[27] In conclusion, I find that the applicant's claim should fail for two reasons. First, due to the first respondent's real right over the property in the form of a *lien*. Secondly, it would not be just and equitable to evict the first respondent and her children from the property as contemplated in section 4(7).

[28] On the issue of costs, the applicant first respondent has succeeded in resisting eviction from the property by the applicant. The applicant is therefore liable to pay the first respondent's costs on a party and party scale B.

[29] In the result the following order is made:

- i. The application for eviction on the respondents is dismissed.
- ii. The applicant is ordered to pay the first respondent's costs on party and party scale B.

MV SEMENYA
DEPUTY JUDGE PRESIDENT
LIMPOPO DIVISION

APPEARANCES:

For the Applicant: VR Mathivha

Instructed by	Mathivha Attorneys
For the Respondents:	Adv NJ Themeli
Instructed by:	Tshitangano Attorneys