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

CASE NO: 62598/2018

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED:

DATE 16 MARCH 2026

SIGNATURE SM MARITZ AJ

In the matter between:

ISAAC MOGOBOSHENG SOMO

APPLICANT

and

PRUDENCE MOKHABELA

FIRST RESPONDENT

**OTHER OCCUPIERS OF ERF 2[...]
MAMELODI EXTENSION 3**

SECOND RESPONDENT

**EMPLOYEES ON ERF 2[...]
MAMELODI EXTENSION 3**

THIRD RESPONDENT

CITY OF TSHWANE METROPOLITAN

FOURTH RESPONDENT

MUNICIPALITY

JUDGMENT

MARITZ AJ**A. INTRODUCTION**

- [1] This is an opposed application for the eviction of the First, Second and Third Respondents and any person occupying through them, from the immovable property known as Erf 2[...], Mamelodi Extension 3, Pretoria (“the property”), brought under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”).
- [2] The Applicant, the registered owner since 5 July 2018, seeks an order for eviction together with a just and equitable date by which the property must be vacated and, if necessary, a date upon which the eviction may be carried out. The First Respondent opposes the application and has brought a conditional counter-application seeking, inter alia, a declarator that she is the intestate heir of the late Matuku Navel Sekati (“the deceased”) and an order declaring the sale and transfer of the property to the Applicant to be invalid.
- [3] At the hearing, counsel for the First Respondent requested that the matter be referred for the hearing of oral evidence in terms of Rule 6(5)(g) of the Uniform Rules of Court, limited to the narrow issue of whether a valid customary marriage existed between the First Respondent and the deceased. However, no case for such referral, nor any formal request for the hearing of oral evidence in terms of Rule 6(5)(g), is made in the First Respondent’s papers. The only reference to such a request appears in paragraph 5.3 of the First

Respondent's heads of argument. For the reasons that follow, that request is refused and the application for eviction succeeds.

B. COMPLIANCE WITH STATUTORY REQUIREMENTS OF PIE

[4] Before an eviction order may be granted, the Applicant must satisfy the Court that the mandatory procedural requirements of PIE have been complied with. Section 4(2) of PIE requires that the unlawful occupiers and the local municipality be given written notice of the proceedings at least 14 days before the hearing, in a form and manner prescribed by the rules. The notice must inform the occupiers of their right to appear and oppose the proceedings and to apply for legal aid, if needed.

[5] The Applicant complied fully with these requirements. The founding papers included the prescribed notice in terms of section 4(2) of PIE as annexure "B" (pages 001-11 to 001-15). On 29 November 2018 this Court granted an *ex parte* order (pages 004-1 to 004-2) expressly declaring annexure "B" to constitute the notice contemplated in section 4(2) of PIE and authorising the Sheriff to serve it simultaneously with the notice of motion and founding affidavit (Annexure "A") upon the First to Fourth Respondents in accordance with Rule 4 of the Uniform Rules of Court.

[6] The returns of service filed of record confirm that the Sheriff effected proper service:

- 6.1 Return of Service on the First Respondent and other occupiers (bundle pages 002-1 and 002-2) (30 September 2018 served personally upon the First Respondent);
- 6.2 Return of Service on the employees (page 002-3) (served on 30 September 2018);
- 6.3 Return of Service on other occupiers (served on 30 September 2018);
- 6.4 Return of Service on the City of Tshwane Metropolitan Municipality (page 002-4) (served on 29 October 2018).

[7] Separate returns of service were filed for the Court Order itself on all four respondents. All returns are dated, signed by the Sheriff and reflect service at the property and at the municipality. The Fourth Respondent (municipality) was therefore duly notified, as expressly required by section 4(2) of PIE. Procedural compliance is accordingly beyond dispute, and the statutory prerequisites for the granting of an eviction order under PIE have been satisfied.

C. FACTUAL BACKGROUND

[8] The deceased died intestate on 22 December 1999. His brother, Ernest Mthata Sekati, was appointed executor of the estate on 10 January 2000 (Annexure “PM2” to the First Respondent’s answering affidavit). On 5 July 2018 the property was transferred to the Applicant pursuant to a sale concluded by the executor. The Certificate of Confirmation of Transfer issued by the conveyancer Margaretha Maria Markram, confirms the registration of transfer and the purchase price of R60 000 (Annexure “IMS1” to the Applicant’s founding affidavit). The Applicant paid the outstanding municipal arrears in order to obtain a clearance certificate (Annexures “IMS2.1” to “IMS2.4”).

[9] The First Respondent has occupied the property since before the deceased’s death. She alleges a customary marriage was concluded between herself and the deceased on 9 August 1997. In support of this contention she attaches a handwritten lobola delegation note recording the agreement between the respective families and the payment of R8 000 (Annexure “PM1”), together with two confirmatory affidavits (Annexures “PM4” and “PM5”). In the alternative she alleges the existence of a permanent heterosexual life partnership characterised by reciprocal duties of support. She presently resides on the property with her adult daughter (29), the daughter’s fiancé (31), her son (31), a granddaughter (6) and a grandson (15).

[10] The decisive evidence appears from the Applicant’s replying affidavit and answering affidavit to the First Respondent’s counter-claim. Two lease agreements concluded after the death of the deceased, during approximately 2007, between the First Respondent and members of the deceased’s family

(Annexures “RA1” and “RA2”), form part of the record. In terms of the agreement marked “RA1”, the First Respondent and the members of the deceased’s family concluded a lease agreement on or about 19 July 2007, which agreement was reduced to writing at the offices of the South African National Civic Organisation (“SANCO”). In terms of this agreement it was recorded that the First Respondent leased the property and undertook to pay monthly rental in the amount of R1 500.00 for a period of six months. Annexure “RA2”, attached to the Applicant’s replying affidavit and answering affidavit to the First Respondent’s counterclaim, evidences a further lease agreement concluded between the First Respondent and members of the deceased’s family, in terms of which the First Respondent was permitted to reside on the property until the end of December 2009. These agreements further record that the First Respondent herself requested permission to rent the property after the family had required her to vacate. She acknowledged the terms thereof, appended her signature to both agreements, and paid rental in accordance therewith. The conclusion and signature of these two agreements (“RA1” and “RA2”) between the First Respondent and members of the deceased’s family are further confirmed by two confirmatory affidavits deposed to by members or officials of SANCO who assisted in the drafting of the agreements. This post-death rental conduct is emphasised in the Applicant’s heads of argument (paragraph 9).

D. PROOF OF CUSTOMARY MARRIAGE

[11] The First Respondent’s version that she was married to the deceased by customary marriage is directly contradicted by the objective and contemporaneous lease agreements concluded by her with members of the deceased’s family in 2007 (“RA1” and “RA2”). A person who genuinely believed herself to be the surviving spouse or heir entitled to the property would not request permission to remain and thereafter negotiate and conclude rental agreements. This conduct demonstrates that she occupied the property thereafter as a tenant at the instance of the deceased’s family, and not as owner or heir.

[12] The lobola delegation note (“PM1”) and confirmatory affidavits (“PM4” and “PM5”), while tendered in support, do not outweigh the evidential significance of the signed lease agreements. A party alleging the existence of a customary marriage bears the onus of proving compliance with the requirements of living customary law at the relevant time, as contemplated in section 1 of the Recognition of Customary Marriages Act 120 of 1998. The lease agreements render the First Respondent’s version untenable on the papers. The dispute is therefore not a bona fide dispute of fact in the sense contemplated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C. Recent authority likewise confirms that post-death rental conduct in disputes concerning alleged customary marriage may negate the need for oral evidence: *Moloi v Nkosi* [2025] ZAFSHC 153 (15 May 2025) and *E M K v E M B* [2025] ZAGPPHC 293 (18 March 2025).

[13] The request for referral to oral evidence is accordingly refused. Such a referral would cause further unwarranted delay in a matter that has been pending since 2018, would increase costs, and undermine the summary nature of proceedings under PIE. Even if a marriage existed, *arguendo* (for sake of argument), any claim based on heirship or invalidation of the transfer would lie against the executor of the deceased estate, who has not been joined in these proceedings (*Nedbank Limited v Mvula* [2024] ZAWCHC 226 (27 August 2024)), and would in any event provide no defence to the eviction sought by the Applicant.

[14] The First Respondent relies on *Hugh Arnold Wormald N.O. and Others v Lungiswa Snowy Kambule* [2005] ZASCA 84 (22 September 2005) as authority for the approach the Court should adopt, contending that the case is on all fours with the present matter because no mortgage bond or loan is registered against the property. That case is distinguishable and does not assist the First Respondent. In *Wormald* the Supreme Court of Appeal in fact granted an eviction order under PIE, emphasising that the Act does not expropriate private property or confer ownership rights on unlawful occupiers (paras 10–12 and 16). The absence of a bond is irrelevant to the statutory test under PIE; the decisive inquiry remains whether occupation is unlawful and whether eviction

is just and equitable. The decision reinforces, rather than undermines, the Applicant's entitlement to relief.

[15] The First Respondent further relies on *Daniels v Campbell N.O. and Others 2004 (5) SA 331 (CC)* and *Robinson & Another v Volks N.O. & Others 2004 (6) SA 288 (C)*. *Daniels* concerned the recognition of monogamous Muslim marriages for purposes of intestate succession and maintenance and does not advance the factual claim of a customary marriage or life partnership on these papers. *Robinson* (the High Court decision) was overturned on appeal in *Volks NO v Robinson 2005 (5) BCLR 446 (CC)*, where the Constitutional Court held that the exclusion of heterosexual life partners from the definition of "spouse" does not constitute unfair discrimination. These authorities therefore do not support the First Respondent's opposition or counter-application.

E. VESTING OF AN HEIR'S RIGHTS

[16] The First Respondent contends that, as surviving spouse or life partner of the deceased, her rights as an intestate heir vested immediately upon the deceased's death on 22 December 1999. It is trite that the rights of an intestate heir vest upon the death of the deceased (*Intestate Succession Act 81 of 1987, s 1; Bhe v Magistrate, Khayelitsha 2005 (1) SA 580 (CC) paras 60–70*). Such vesting occurs by operation of law and is not dependent upon the appointment of an executor or the eventual distribution of the estate.

[17] However, vesting does not confer an immediate right of possession, ownership or control over the administration of the estate. The executor remains the fiduciary administrator and is empowered, where necessary, to sell estate assets in the course of administration (*Administration of Estates Act 66 of 1965, ss 35 and 47; Nedbank Limited v Mvula [2024] ZAWCHC 226 (27 August 2024) at paras 18–22*). An heir's vested right is therefore a personal right against the executor and does not constitute a real right in any specific immovable property until transfer or distribution has taken place. An heir cannot prevent a lawful sale by the executor unless the sale is shown to have been fraudulent or collusive, none of which is alleged in the present matter.

[18] In this matter the executor validly sold the property in 2018. The First Respondent did not challenged the sale at that stage during approximately nineteen (19) years between the death of the deceased and the transfer of the property to the Applicant. The lease agreements concluded by her in or about 2007 (“RA1” and “RA2”) further demonstrate that she accepted the status of tenant and did not assert any vested right as an heir. Even if she were the heir, which is not established on the papers, such vested right would provide no defence to the Applicant’s claim for eviction. Any remedy she may have would lie against the executor, who is not a party to these proceedings.

F. PIE SECTION 4(7) FACTORS AND THE JUST-AND-EQUITABLE ENQUIRY

[19] Because occupation exceeds six months, and indeed has persisted for more than 26 years, section 4(7) of PIE requires the Court to consider, in addition to all relevant circumstances under section 4(6), the following factors: (a) the rights and needs of the elderly, children, disabled persons and households headed by women; (b) the availability of alternative accommodation; and (c) the length of occupation.

[20] Length of occupation (s 4(7)(c)): The Respondents have occupied the property since before 1999. This factor weighs in their favour and is duly acknowledged. However, length of occupation alone does not create a protected right where occupation is unlawful and the occupiers have no lawful tenure (*Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC) para 42*).

[21] Rights and needs of vulnerable groups (s 4(7)(a)): The household includes two minor grandchildren aged 6 and 15, and is headed by a woman, the First Respondent. These circumstances have been considered. There is no evidence of elderly persons or disabled occupiers residing on the property. While the presence of minors and a female-headed household is a relevant factor, it does not outweigh the Applicant’s rights as registered owner where no evidence of an alternative accommodation crisis has been presented and the

occupiers have had many years within which to make alternative arrangements.

[22] Availability of alternative accommodation (s 4(7)(b)): No evidence has been placed before the Court of any attempt to secure alternative accommodation, nor has any concrete proposal been advanced in that regard. The Respondents have had more than 26 years since the death of the deceased, and at least eight (8) years since the Applicant acquired ownership of the property, to arrange alternative housing. The absence of any evidence of alternative accommodation therefore weighs against the continuation of indefinite occupation at the Applicant's expense.

[23] When all the circumstances contemplated in sections 4(6) and 4(7) of PIE are considered together with section 26(3) of the Constitution (*City of Johannesburg v Blue Moonlight Properties 2012 (2) SA 104 (CC) paras 40–47*), eviction is just and equitable. The Applicant has been deprived of the use of his lawfully acquired property since 2018 while remaining responsible for municipal charges. The occupiers pay no services and have no legal right to remain. A period of ninety (90) calendar days for vacation provides a reasonable and fair opportunity for relocation.

G. THE COUNTER-APPLICATION

[24] The conditional counter-application cannot succeed. It is both factually untenable on the papers and procedurally defective by reason of the non-joinder of the executor of the deceased estate, whose interests would be directly affected by the relief sought. Furthermore, no case has been made out for a declarator. The counter-application accordingly falls to be dismissed.

H. CONCLUSION

[25] In the circumstances, the evidence demonstrates that the First Respondent occupied the property as a tenant and not as an owner by virtue of the alleged customary marriage to the deceased, as she contends. By entering into and

signing the lease agreements, acknowledging the authority of the deceased's family to let the property, and paying monthly rental in terms thereof, the First Respondent expressly recognised that her occupation was derived from permission and was contractual in nature. Such conduct is inconsistent with a claim of ownership or a real right to possession in the property. The Applicant, as the registered owner of the property, accordingly enjoys a stronger and legally enforceable right to possession. Upon termination or expiry of the lease agreements, the First Respondent's continued occupation became unlawful. The Applicant is therefore entitled to seek the eviction of the First Respondent in terms of PIE.

I. COSTS

[26] Once the lease agreements surfaced in the Applicant's replying affidavit and answering affidavit to the First Respondent's counter-claim, the opposition to the application lacked merit. In the circumstances, the First Respondent should bear the Applicant's costs.

J. ORDER

[27] The following order is made:

1. The First, Second and Third Respondents, and any person occupying through them, are evicted from Erf 2[...], Mamelodi Extension 3, Pretoria.
2. The Respondents must vacate the property by no later than **14 June 2026**.
3. Should the Respondents fail to vacate by the date in paragraph 2, the Sheriff of this Court (or his deputy) is authorised and directed to evict them and any person occupying through them, with the assistance of the South African Police Service, if necessary, within **14 calendar days (being 28 June 2026)** from the date referred to in paragraph 2.
4. The First Respondent's conditional counter-application is dismissed.

5. The First Respondent is ordered to pay the Applicant's costs on the party-and-party scale, including the costs of counsel.

BY ORDER

**SM MARITZ AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA, GAUTENG**

APPEARANCES

Instructing Attorneys for Applicant: Lamola Attorneys
Counsel for Applicant: Adv K Mpenyana

Instructing Attorneys for First Respondent: M P Molepo Attorneys
Counsel for the First Respondent: Adv B M Shai

Date of Hearing: 19 February 2026
Date of Judgment: 16 March 2026