

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

CASE NO.: 2025-021345

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 9 April 2026

E van der Schyff

In the matter between:

OCTANE DEW 123 CC

(Registration No. 2007/130495/23)

APPLICANT

and

C J BOTHA

FIRST RESPONDENT

VS BOTHA

SECOND RESPONDENT

CITY OF TSWANE METROPOLITAN

MUNICIPALITY

THIRD RESPONDENT

JUDGMENT:

Van der Schyff J

Relief sought

[1] The applicant seeks an order evicting the respondents from the immovable property situated at 1[...], M[...], Waverly, Pretoria, following the lawful cancellation of the lease agreement.

Applicable legal principles

- [2] At the outset, it is necessary to restate the legal principles applicable to the eviction of natural persons from residential property. It is trite that the eviction of unlawful occupiers from residential property is governed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). PIE mandates a two-fold enquiry.¹ First, the court must determine whether the person who stands to be evicted is an unlawful occupier. Second, if the occupier is found to be unlawful, the court must determine whether it is just and equitable to grant an eviction order. In making this determination, the court must consider all relevant circumstances.
- [3] Where the period of the unlawful occupation exceeds six months, section 4(7) of the PIE Act requires the court, in addition, to consider whether alternative accommodation has been made available or can reasonably be made available by a municipality or other organ of state. This statutorily entrenched enquiry is aimed at balancing the proprietary rights of the property owner with the constitutional protections afforded to occupiers,² ensuring that eviction proceedings are conducted in a manner that is fair, equitable, and constitutionally compliant.

Facts

- [4] The applicant is the registered owner of the immovable property situated at 1423A Moultonlaan, Waverly, Pretoria. The applicant avers that the parties entered into a written lease agreement on 22 April 2021, under which the said property was leased to the respondents. The lease period commenced on 1 May 2021 and terminated on 30 April 2022. The monthly rental was R10 000.

¹ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at paras [31] and [32].

² See *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) at paras [39] – [40].

- [5] Upon expiry of the initial lease period, the respondents remained in occupation and continued to make rental payments. The parties accordingly tacitly agreed to extend the lease on a month-to-month basis under the same terms and conditions, save for the duration thereof.

- [6] On 27 July 2022, the respondents made their last rental payment and have since persistently failed to make any further payments, despite multiple demands. By 17 February 2025, the respondents' arrears amounted to R279 635.52.

- [7] On 3 September 2024, the applicant served a formal notice of demand on the respondents, requiring payment of the outstanding arrears. This letter was served by the Sheriff on the respondents. The respondents failed to remedy the breach.

- [8] On 16 October 2024, the applicant served a cancellation letter on the respondents, granting them 20 business days to vacate the property. On 27 November 2024, a further letter was served, granting the respondents an additional one month to vacate the property by 1 January 2025. The respondents, however, remained in occupation.

- [9] The applicant submits that it has complied with the procedural requirements prescribed in the PIE Act. It further contends that the respondents had ample opportunity to make alternative living arrangements or secure alternative accommodation since the cancellation of the lease. The applicant further avers that no minor children, elderly, or disabled persons reside on the property.

- [10] The respondents oppose the eviction application on several grounds, primarily of a dilatory nature. One such defence is that the applicant failed to comply with section 4(2) of the PIE Act. This defence is, however, belied by the record which contains the return of service of the court order and notice in terms of section 4(2) of the PIE Act, and the section 4(2) order granted by Botsi-Thulare AJ on 7 January 2026.

- [11] Substantively, the respondents rely on their personal circumstances, contending that eviction would negatively affect the second respondent's health and render the household homeless. The second respondent, Mrs. Botha, is the sole breadwinner,

as her husband is alleged to be unemployed and unable to contribute to the household expenses.

- [12] A report from the City of Tshwane dated 10 February 2026, confirms that officials of the City of Tshwane, Human Settlements Department, visited the respondents at the premises. According to the report, the second respondent earns a monthly income of R27 000.00. As this exceeds the threshold for government housing subsidy, the City has indicated that the respondents do not qualify for temporary emergency accommodation.

Discussion

- [13] The matter was enrolled for determination on 17 February 2026. On that date, the respondents appeared in person and sought a postponement following the withdrawal of their erstwhile attorney of record. The application was subsequently postponed to 26 March 2026 to enable the respondents to secure alternative legal representation.
- [14] When the matter was called on 26 March 2026, the respondents again appeared in person, advising the court that they were awaiting the appointment of *pro bono* counsel. Having regard to the history of the matter, and specifically that the respondents were legally represented at the time their answering papers were settled and filed, I declined a further postponement.
- [15] The respondents failed to produce any cogent evidence to substantiate the averments contained in their answering affidavit. No bank statements, salary advices or any comparable documentation were provided to enable a proper and comprehensive assessment of their financial position. Although the respondents handed up a bundle of documents at the hearing, the contents thereof were largely irrelevant to the issues arising from the papers.

- [16] The applicant has established that the respondents are in unlawful occupation of the premises. Following the cancellation of the lease agreement, the respondents remained in occupation without making rental payments since July 2022.
- [17] In terms of section 4(7) of the PIE Act, the court must consider all relevant circumstances in determining whether an eviction would be just and equitable. While the respondents claim that eviction would render them homeless, the evidence shows that the second respondent earns R27 000 per month. The respondents are not illiterate or indigent, even though they have run into financial difficulties. They were represented by an attorney when the answering papers were drafted, yet they relied on vague, unsubstantiated averments and dilatory defences. As highlighted in *FHP Management (Pty) Ltd v Theron NO*,³ the failure to disclose full financial details allows the court to draw adverse inferences, and this household's income suggests they do not qualify for emergency state housing.⁴
- [18] The respondents have remained in occupation without paying rent since July 2022, thereby significantly limiting the applicant's rights under section 25 of the Constitution. As was recognised in *Occupiers of Erven 87 and 88 Berea v De Wet N.O.*,⁵ a property owner cannot be compelled to provide indefinite free accommodation.
- [19] Although the papers filed of record were notably sparse on personal detail, it emerged during the proceedings that the deponent to the founding affidavit is the second respondent's brother, and furthermore, her employer. While this suggests that the dispute has a familial dimension, the breach of the lease agreement is established and the respondents' continued occupation remains unlawful.
- [20] Having regard to all the circumstances, including the duration of the occupation, the familial relationship and the need to afford the respondents sufficient time to

³ 2004 (3) SA 392 (C) at 393C-E.

⁴ Also see *City of Johannesburg Metropolitan Municipality v Changing Tides 74 (Pty) Ltd and Another* 2012 (6) SA 294 (SCA) at para [18].

⁵ 2017 (5) SA 346 (CC) at para [80].

secure alternative accommodation, an eviction date of 15 October 2026 is just and equitable, and strikes a proportionate balance.

[21] No reason exists to deviate from the principle that costs follow the cause.

ORDER

In the result, the following order is granted:

- 1. The first and second respondents are declared to be in unlawful occupation of the immovable property situated at 1[...], M[...], Waverly, Pretoria (the property);**
- 2. The respondents are ordered to vacate the property on or before 15 October 2026;**
- 3. In the event that the respondents fail to vacate the property on or before 15 October 2026, the Sheriff of this Court, or his/her lawful deputy, is hereby authorised and directed to evict the respondents from the property;**
- 4. The first and second respondents are ordered to pay the costs of this application on scale B, including the wasted costs occasioned by the postponement on 17 February 2026**

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicant:

Adv. W.J. van Wyk

Instructed by:

Nothling Attorneys

The respondents:

In person

Date of the hearing:

17 February 2026 & 26 March 2026

Date of judgment:

9 April 2026