

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: 2026/040453

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO

24 March 2026

DATE

SIGNATURE

ANISH ANIL SHIVDASANI

Applicant

And

THOMAS MATTHEW MENSAH

First Respondent

REBRANDING AFRICA (PTY) LTD

Second Respondent

ALL OTHER UNLAWFUL OCCUPIERS

Third Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Fourth Respondent

JUDGMENT

NOKO J

[1] I granted an order for the eviction of the first, second and third respondents on 18 March 2026, from a luxury apartment situated at 8[...] The E[...], [...] W[...] Road

S[...], M[...], Sandton (“*the Premises*”) without stating any reasons. The reasons are outlined below.

[2] The applicant filed an urgent application for the eviction of the first and second respondents from the premises. The proceedings are initiated under section 4 of the Prevention of Unlawful Occupation and Illegal Eviction Act (“*PIE Act*”).¹ The application is opposed by the first and second respondents. Neither the third nor the fourth respondents are participating in the *lis*, and the reference to the respondents pertains to the first and second respondents.

[3] The applicant and the respondents (“*parties*”) entered into a written lease agreement (“*agreement*”) on 1 October 2022 for a period of 36 months ending on 30 September 2025. The monthly rent was R 25 000.00, increasing by 10% each year. The lease agreement provided that the respondents will be responsible for additional charges, including electricity, water, sewerage, refuse removal, and other utility costs. The applicant alleges that the agreement was terminated in September 2025 and that the respondent was in arrears by R 169 491.96 from 1 September 2025. Despite the demand, the respondents refused to vacate the premises, and the applicant regarded their continued stay without permission as unlawful. The applicant has initiated civil proceedings against the respondents for the arrears of rent.

[4] The applicant avers that the respondents, through their attorneys, made an unequivocal undertaking on 8 October 2025 to vacate the premises in December 2025. This averment, applicant’s counsel contended, is not disputed by the respondents. Consistent with this, the respondents cooperated and ensured that prospective tenants could view the premises on 8 January and 15 January 2026. The applicant ultimately secured a new tenant who agreed to take occupation on 28 January 2026. The respondents took a *volte face* stance and refused to vacate the premises.

[5] The applicant initially launched the eviction proceedings in February 2026 in terms of section 5 of the PIE Act, which proceedings were set down for 18 February

¹ 19 of 1998.

2026. The said application was dismissed as the applicant failed to satisfy the requirements of section 5(1)(a) of the PIE Act in terms of which a litigant is enjoined to satisfy the court that:

- (a) There is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land
- (b) The likely hardship of the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and
- (c) There is no other effective remedy available.

[6] The applicant subsequently initiated these proceedings under section 4 of the PIE Act, read with Rule 6(12) of the Uniform Rules of Court. The applicant argues that the application is urgent since the new tenant was prepared to take occupation of the premises on 28 January 2026 (as mentioned above), and the date was extended to 21 March 2026. The applicant struggled to secure a tenant for six months, and if this new tenant is lost, there is no immediate prospect of finding another, contended the applicant. These eviction proceedings were commenced shortly after the dismissal of the first application, and although the agreement ended in September 2025, the respondents' cooperation and undertaking to vacate the premises influenced the decision to evict.

[7] [7] Additionally, the applicant argued that he would not receive substantial redress if he followed the normal process. The respondents owe more than R 300 000.00 in arrears. Furthermore, the first respondent appears to be unemployed, is a foreign national, and may be unable to satisfy a judgment for damages.

[8] [8] The respondents first argued that this application is based on facts that supported an application under section 5 of PIE, which was dismissed; therefore, the point in limine of res judicata has merit. In response, the applicant argued that the application, which was dismissed, was under section 5 of the PIE Act, and that although the facts may be similar, they are now invoked to establish a cause of action under section 4 of the PIE Act. The counsel for the applicant referred to Golden Harvest Medical Centre, where a distinction was made between proceedings based on section 4 and those

under section 5 of the PIE Act. The court held that the latter is an alternative to the former.

[9] The respondents, as their second defence, argued that the applicant failed to properly substantiate the urgency of the application, or alternatively, that any alleged urgency was self-created by signing a new lease agreement while the respondents were still in occupation. They furthermore claimed the urgency was based on commercial reasons, which was the argument used when the application under section 5 of the PIE Act was dismissed. It is also well established, the respondents argued, that commercial reasons cannot be used to justify urgency.

[10] In response, the applicant accurately argued that the law has changed, and commercial reasons can now justify urgency. The applicant referred to the judgment of this division, in which the court held that the loss of rent can establish a case of urgency. In reply, the respondent's legal representative, when questioned in court about whether he could challenge that judgment, stated that he had not read it and was therefore unable to oppose it. I am inclined to follow the judgment unless a proper basis is presented to demonstrate that it was incorrect.

[11] The third defence raised by the respondents was that the applicant would obtain significant redress if the eviction application were processed through the normal court. Additionally, the civil claim for damages would serve as an appropriate remedy for the applicant to pursue, and the second leg of absence of substantial redress, as outlined by Notshe AJ in *East Rock Trading*²—is therefore not satisfied. The applicant argued that the respondent is unemployed and a foreign national with no assets in South Africa. Consequently, a damages judgment would be ineffective, as the respondent could easily relocate to his home country.

[12] The respondents' fourth defence is that the eviction application cannot be finalised without a report from the fourth respondent. This is premised on the contention

² *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

that the respondent resides on the premises and that he has a minor child who visits and resides with him there for two weeks each month. The applicant retorted that the case before the court does not warrant procuring the commissioning of the report by the fourth respondent. In this regard, reference was made to *Changing Tides*.³ In any event, the first respondent failed to properly elaborate on this aspect, namely, the child's particulars and the circumstances of the child's residence when the child is not visiting the respondent, applicant argued. This information is within the knowledge of the respondent and would not require the fourth respondent to provide such information to the court.

[13] The applicant correctly referred to *Changing Tides*, in which the SCA stated that the report is not required as a matter of course. Procuring the report is not always a *sine qua non* in determining whether eviction would be just and equitable. The respondents appear not to have requested the said report from the fourth respondent, and the paucity of details regarding the child and his stay with the respondent clearly demonstrates that he would not be stranded, as he is staying elsewhere, probably with the mother. There is no indication from the first respondent that he is concerned about his current residence or who is residing with him.

[14] I considered the urgency of the application and noted that the applicant initiated proceedings after the first respondent disavowed his initial commitment to vacate the premises in December 2025. That application was enrolled and dismissed on 18 February 2026. The elapsed period is not unreasonably excessive. Still aiming to approach the court urgently, the applicant filed proceedings under section 4(1) of the PIE Act and then proceeded on an urgent basis in terms of the same section. Wright J found that the application should be treated as urgent and granted an order on 3 March 2026. There is no evidence to suggest that the applicant simply rested on his laurels or delayed in bringing an urgent application. His actions, though not with military precision, provide the court with a satisfactory explanation. Generally, courts discourage litigants from rushing to court where settlement may be possible. The undertaking to vacate and continued cooperation with the applicant are factors justifying the hesitation to rush to court.

³ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* (735/2011) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206 (SCA); [2013] 1 All SA 8 (SCA) (14 September 2012).

[15] The argument that the applicant has the option to sue for damages fails to recognise that a party need not merely be able to obtain redress; rather, such redress should be substantial. In this case, the respondent is unemployed, lest he would have stated otherwise. Although he claims that he has been in the country for two decades, he has not acquired any immovable assets. Any redress as alleged would become hollow.

[16] The state's obligation to intervene must be preceded by a party demonstrating that the respondents are unable to secure their own housing, usually a vulnerable person. In this case, the respondent failed to demonstrate that he would be unable to find alternative accommodation and that he should be considered a vulnerable member of the community who prefers to stay in luxurious apartments. The applicant's high-water mark argument is that, over time, he paid the applicant more than R 500 000.00. A person with such a financial capacity should not be heard to complain that they cannot afford rental accommodation, let alone acquire one. It follows that the respondents can afford to pay rent and are simply not inclined to do so, perhaps to exploit the legislation. Alternatively, the respondent does not have the money and should have provided such information to the court and must therefore consider the premises within their reach.

[17] It is well established that the right to property emanating from the constitution includes the right to deal with one's own premises '*nec vi, nec claim, nec precario*'. It would be inappropriate for the respondents even to complain that the primary purpose behind an eviction is purely financial.

[18] The respondent does not indicate that he is of low means. He simply wishes to occupy a luxury apartment without offering any payment. He is not the sort of person intended to be protected by the PIE Act and it appears he is determined to hold the landlord to ransom.

[19] In the circumstances, I am persuaded that the application is indeed urgent and further that the order for eviction is justified. It is also just and equitable that the respondents be evicted from the premises. The defences raised by the respondent are unsustainable.

Costs

[20] The costs will follow the results

Order

[21] As a result, I made an order in accordance with the uploaded order, marked X.

M V Noko
Judge of the High Court

Appearances:

For the Applicant:

Prinsloo A, instructed by GMI
Attorneys, Pretoria.

For Respondents:

Besong B, instructed by Besong
Attorneys Inc. Sandton.