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IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION-EAST LONDON CIRCUIT COURT)

NOT REPORTABLE
CASE NO: 914 /25

In the matter between:

ALTAF YAKOB ADAM
FAIZULLAH ISHAK MAHAMED
EYASO SULAMO
OTHOTHEMBELA MFEAYA
MEHMOOD SHAHID

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT
FIFTH APPLICANT

AND

EASTERN CAPE DEVELOPMENT CORPORATION
CHIEF EXECUTIVE OFFICER, EASTERN CAPE
DEVELOPMENT CORPORATION
BOARD MEMBERS, EASTERN CAPE
DEVELOPMENT CORPORATION

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

JUDGEMENT

SUMMARY

Tenants of the Eastern Cape Development Corporation, in the circumstances of the case, are entitled to a hearing before the units that they are renting, are sold.

PIENAAR AJ

INTRODUCTION

1. In what follows I will attempt to rely on facts that are common cause and/or facts that are not seriously in dispute.
2. I believe that the matter can be disposed of on a relatively narrow ambit. This is whether tenants of the Eastern Cape Development Corporation (the ECDC), in the circumstances of this case, are entitled to a hearing before the units that they are renting, are sold.
3. The applicants have brought a review application to set aside an “administrative” decision¹ taken by the respondents to sell the property situated at H[...] Flats, P[...] Street, Extension 7, Butterworth (“the property” or “the H[...] property”) in its entirety (not as individual units), at a public cash-only auction. A copy of the advertisement has been attached to the papers.
4. In their notice of motion, the applicants seek the following relief:
 - 4.1 Reviewing and setting aside the respondent’s decision to sell H[...] Flats situated at P[...] Street in Butterworth, a property consisting of 32 units held under section 1 to 32 H[...] erf 5[...] Butterworth.

¹ Whether the decision is an administrative one, is in dispute

- 4.2 Directing the respondents to conduct a consultation and to offer to its present tenants a first option to buy.
 - 4.3 Directing the respondent to avail the property described in paragraph 1 to be sold on public auction as separate units and that in the event of any of the parties thereto willing to buy through a financial institution be accepted as a bidder and/or be provided with an opportunity to tender an offer in such terms.
 - 4.4 Ordering the respondent to pay the costs of this application including the costs of two counsel where so employed.
5. In an alternative notice of motion, the applicants seek the following relief:
- 5.1 Reviewing and setting aside the resolution of the board of ECDC taken on 29 August 2024 to sell H[...] Flats situated at P[...] Street in Butterworth, a property consisting of 32 units held under section 1 to 32 H[...] erf 5[...] Butterworth (“the flats”) in terms of the Property Disposal Resolution dated 9 September 2024.
 - 5.2 Declaring paragraph 7.4.1 of the Property Policy and Procedure Manual adopted in November 2021 to be irrational insofar as it does not make provision for residential apartment buildings in the classification of property into strategic and non-strategic immovable property.
 - 5.3 Directing the respondent to apply the Property Policy and Procedure Manual adopted in November 2021 to any proposed disposal of the flats.
 - 5.4 Directing the respondent to conduct a consultation and to offer to its present tenants a first option to buy.

- 5.5 Directing the respondent to avail the property described in paragraph 1 to be sold on public auction as separate units and that in the event of any of the parties thereto willing to buy through a financial institution be accepted as a bidder and/or be provided with an opportunity to tender an offer in such terms.
- 5.6 Ordering the respondent to pay the costs of this application including the costs of two counsel where so employed.
6. Mr Tsipa appeared for the applicants and advocate Nepgen SC appeared for the respondents.

THE PARTIES

7. In his founding affidavit, which was deposed to on 20 May 2025, the first applicant, Mr Altof Adam (Mr Adam)² states that the applicants are residents at the property of varying nationalities, ages, occupations and family structures. There are approximately 150 H[...] residents in total.
8. Mr Adam states that he is an Indian national having obtained citizenship in South Africa. He is married, residing with his wife and three minor children. H[...] is the only home that they have ever known. He has lived on the property since 2006, and he has a valid lease agreement with the ECDC.
9. The second applicant is Faizullah Mahamed (Mr Mahamed), an adult male resident at number 8 H[...]. He is a Pakistan national having a temporal residence in South Africa. His residence was obtained as a result of his marriage

² In practice directive 2/2024 dated 17 December 2024 the President of the Supreme Court of Appeal, directed that, in order to avoid confusion in the identification of parties, counsel should, when drawing their heads of argument, introduce the appellant (s) and respondent (s) as the parties to the appeal and reference them by using their proper names, and thereafter make use of these proper names (or appropriate abbreviations) in the heads of argument and for the purposes of oral argument before the court. For example, "The appellant is Amos Sithole (Mr Sithole) and the respondent is the Minister of Justice (the Minister)."

to a South African woman, and they have two children born out of the marriage. He has been staying on the property for the past 18 years. He resides there with his younger brother, two children and his wife.

10. The third applicant is Eyasu Salumo (Mr Salumo), an adult male resident at number 31 H[...]. He is an Ethiopian national having arrived 20 years ago. He has been in occupation of the property for 20 years. He has four children and he resides with them and his wife.

11. The fourth applicant is Owothembelela Mfeya (Ms Mfeya), an adult female resident at number 10 H[...]. She is a South African resident and resides with her two minor children.

12. The fifth applicant is Mehmood Shahid (Mr Shahid), an adult male resident at number 26 H[...]. He is also a Pakistan national having arrived in South Africa about 20 years ago. He has been occupying the property for 20 years. He has four children and resides with them and his wife.

13. Some of the above details are denied or not admitted by Ms Bija who deposed to the answering affidavit (Ms Bija), on 11 September 2025. In my view this does not affect the principle involved.

14. Ms Bija does say that the respondents' records reflect that the first, second and third applicants are, or were in the past, lessees of the ECDC at the property. Mr Adam's lease expired on 31 July 2025; Mr Mahamed's lease is still valid until July 2026 and Mr Salumo's lease expired in October 2018. Subsequent to the expiry of their written leases, they are considered to be on a month-to-month lease. Only Mr Mahamed is up to date with his rental payment. Much of this is denied by the applicants in reply.

15. The first respondent is the ECDC, an entity established in accordance with the provisions of the Eastern Cape Development Corporation Act 2 of 1997 (the

ECDC Act). The ECDC is a provincial public entity and an organ of state. The ECDC receives grant funding from the state, including from the provincial treasury and other state sources. The sole shareholder of the ECDC is the provincial government of the Eastern Cape.

16. The ECDC has an obligation of good governance in its operations. The decisions of the ECDC qualify as administrative acts as defined in section 1 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The ECDC denies, however, that the decision to sell the H[...] Flats (the flats) constitutes administrative action.

17. The second respondent is Ayanda Wakaba, the chief executive officer of the ECDC (the CEO), who has the responsibility of overseeing the ECDC's operations and strategy.

18. The third respondent is the board of the ECDC (the board) which, according to Mr Adam, has the responsibility to provide guidance and oversight in ensuring that the ECDC complies with its constitutional obligation. The ECDC denies that the board constitutes an entity or has independent standing to be cited as a respondent, or that it is competent for the court to grant any relief against the board. I point out that in substance the relief sought is against the ECDC.

THE PARTIES' RESPECTIVE CASES

19. Mr Adam states in the founding affidavit that Mr Mahamed (the second applicant) on 12 May 2025 heard of an impending auction to be held on 22 May 2025 at 13h00, at which the respondents intended to auction certain properties, including the H[...] property. The property consists of 32 units in different sizes with a combined extent of approximately 10 519 square meters.

20. Prior to learning about the auction, none of the residents had ever been informed that the ECDC intended and/or was selling the property at a public auction,

neither were they given the option to purchase the property, or their individual units. In the answering affidavit, the respondents deny that the applicants were entitled to any option to purchase the individual units or the property.

21. More importantly, they say that it is correct that the ECDC did not notify the applicants that they intended to sell the flats, and they deny that they had any obligation to do so. As the owner of the property the ECDC avers that it is entitled to dispose of its property subject only to limitations to its real right of ownership, none of which limitations exist in relation to the flats. Herein, in my view, lies the crux of the matter.

22. Mr Adam further avers that the ECDC is a provincial, public entity, and an organ of state for purposes of South African law. As such the ECDC exercises public power and/or performs a public function, which it is required to do in line with its constitutional obligations and in a manner that is aligned with the spirit of the Constitution.

23. The ECDC was therefore under a legal duty to inform the applicants of the decision which decision necessarily had an adverse effect on them. Any such notice to them would also have included a first option to purchase the individual units prior to the property being offered for sale to the broader public. No such notice was received.

24. The ECDC's failure to notify the applicants, who were already resident on the property, and their obvious exclusion from the sale of the property, amounted to a perpetuation of historical and economic inequalities and unduly limits the opportunities for historically disadvantaged individuals within the community to gain access to property.

25. In addition, the ECDC's disposal plan does not promote transparency, fairness and equity and fails to consider the interests of the current residents, some of whom have been in occupation of the property for more than 20 years. The

applicants' children more over were born on the property, knowing no other place as home and as such the applicants were entitled to be informed of any decision that affected their stay on the property.

26. The decision to sell the property has a negative impact on the applicants who can expect to have their tenancies terminated, since the auction rules do not appear to make provision for the continuation of the leases. As such the ECDC ought to have notified the applicants of the decision, which decision adversely affected the applicants' rights, and the reasons therefore, and the applicants ought to have been given the opportunity to make representations.

27. It is accordingly submitted by the applicants that it would be in the interests of justice that they be given not only a hearing but an adjudication of their representations before a decision is taken. Their expectation arises out of their occupation and continued renewal of their leases; they may not have had a pre-existing right but they submit that in the adherence of the rules of natural justice the respondents were under a legal duty to inform the applicants of their intent to sell and call upon them to make representations, if any.

28. The applicants conclude that the decision to sell amounts to unfair administrative action that was procedurally not fair, that the decision and/or the manner in which the public auction was set to take place was arbitrary, not rationally connected to the purpose for which the ECDC existed, and not in line with the spirit, purport and objective of the Constitution. As such, the manner in which the auction was to take place was irrational, arbitrary and unconstitutional.

29. In the answering affidavit, the respondents deny that the applicants have made out a case for judicial review under PAJA, on five grounds which can be summarised as follows:

29.1 The respondents deny that the decision to sell the flats constitutes administrative action, specifically in that such does not meet the requirements for administrative action as defined in section 1 of PAJA by reason of having no **adverse** external legal effect on the rights of the applicants.

29.2 The respondents deny that the decision to sell is inconsistent or in breach of any statutory or constitutional obligation of the ECDC.

29.3 The respondents deny that the tenants and/or applicants had any right to notice or to be heard or to be granted first option before a decision to sell the flats was made and deny thus that the applicants had any legitimate expectation in this regard.

29.4 The respondents deny that the decision to sell or the terms of the sale are arbitrary, irrational or unreasonable.

29.5 The respondents contend that to limit the ECDC's right of ownership which includes the right of alienation and/or disposal, and its policy decision to sell the flats as a whole on the terms it elected, would breach the separation of powers principle, its decisions plainly being polycentric in nature.

30. In the answering affidavit Ms Bija set out in some detail the investigation that went into the selling of the flats, the history thereof, the implementation of a pilot phase comprising the disposal of the flats, the problems which the ECDC experienced in relation to its property portfolio and the economic advantages of the sale. She further states that it is evident that the proposed sale was considered comprehensively on its economic merit and falls within the powers of the ECDC.

31. Ms Bija further attached the resolution taken by the board on 29 August 2024 approving the pilot phase and the selling of the flats (the resolution) and further attached a property policy and procedure manual which the ECDC adopted in November 2021 concerning the sale of residential properties (the manual).
32. Through the resolution, management is tasked with creating a comprehensive risk management plan, which plan should address legal considerations, including **tenant evictions**,³ and include contingency plans for potential legal or operational issues. Eviction of the applicants is thus clearly contemplated.
33. Of further importance is clause 7.4.2 (clause 7.4 .2) of the manual which reads as follows:

“7.4.2 Disposal of Residential Property

7.4.2.1 The current legal tenant, at the time of the sale of immovable property by the Corporation, has first option to purchase the property at the valuation price.

7.4.2.2 When the tenant wishes to purchase the property, they shall make the request in writing to head office. If the tenant should make a request to purchase the property at the regional office, the request shall be forwarded to head office for the attention of the designated senior manager: properties.

7.4.2.3 The Asset Management unit shall request to obtain the evaluation of the property to be sold. Should the valuation be older than twelve months, a new valuation will be secured.

³ Own emphasis

7.4.2.4 The Asset Management team shall also request the tenants account to determine if their rent is in arrears. Tenants whose accounts are in arrears will be managed in terms of the options presented in Annexure B.

7.4.2.5 The Administration Assistant shall check that the property for which an offer is received is registered in the name of the Corporation. Should the property not be registered in the name of the Corporation, the administration assistant shall refer the matter to the General Manager: Asset Management.

7.4.2.6 The General Manager shall address a letter to the tenant informing them of the purchase price (valuation amount) and the amount of arrears, if any. The Executive Manager shall sign this letter.

7.4.2.7 The administration assistant shall capture all details regarding the purchase offer and keep all necessary documentation in a file and record it on an electronic spreadsheet.

7.4.2.8 The administrative assistant shall telephonically follow up with the tenant two weeks after the letter referred to in par 7.4 to confirm if the tenant is still interested in purchasing the property.”

34. The manual does not make provision for an option to purchase by the applicant/the tenants.

35. In the applicants’ replying and supplementary affidavit Mr Adam states that the resolution and the manual were not known to the applicants prior to the receipt of the record and annexures to the answering affidavit. To the extent necessary, the applicants request that the affidavit be permitted to supplement the founding affidavit. I understand that such request is not opposed.

36. Mr Adam states that the manual does not make provision for flat blocks under the provisions for the disposal of residential property, and he submits that the

exclusion of flat blocks from the provisions of clause 7.4.2 of the manual is arbitrary and irrational.

37. Mr Adam further expounds on the five grounds of opposition and states that the respondents oppose the application on essentially the following grounds:

38. Firstly, the legitimacy of the auction. The respondents contend that the decision to dispose of the flats was taken lawfully within the ECDC's commercial mandate as an economic development entity. It argues that the sale was to be conducted on a sound and commercial basis, with safeguards such as the cash-only and ID requirements, purportedly for FICA compliance. The respondents also rely on Treasury regulations to justify the disposal process, presenting it as aligned with standard commercial practice.

39. Secondly, the protections afforded to the existing tenants against eviction in terms of PIE and the doctrine of *huur gaat voor koop*. The respondents deny that the applicants are to face automatic eviction on the strength of the validity of their lease agreements against the purchaser. The respondents claim that PIE and the doctrine of *huur gaat voor koop* are sufficient in safeguarding the applicants.

40. Thirdly, the respondents contend that the ECDC's policy does not create binding rights upon which the applicants can claim that they had a legitimate expectation to be consulted prior to the disposal of the flats.

41. Fourthly, the respondents contend that the ECDC does not have a positive obligation in terms of section 25 of the Constitution. The respondents contend that the ECDC does not have a constitutional mandate to advance socio-economic rights insofar as it frames itself as a commercial entity focusing on economic development and not the delivery of housing. The respondents argue that section 25 of the Constitution creates no right to own property but merely regulates deprivation thereof.

42. Fifthly, the respondents argue that the applicants have not demonstrated a capacity or the means to purchase a property, rendering the applicants' complaint academic.

DISCUSSION

CASE LAW

43. In *Offit Enterprises (Pty) Ltd v Coega Development Corporation (Pty) Ltd*⁴ the Constitutional Court had to decide what type of entity the Coega Development Corporation (the CDC) was.⁵ The Court stated⁶ that the CDC is a private company incorporated in terms of the Companies Act. However, the CDC is in reality a public entity acting in the public interest; government has ownership in the company; and it complies with the definition of "organ of state" in section 239 of the Constitution. The CDC is, in principle, no different from other entities in which the government has a major shareholding. Accordingly, section 25 of the Constitution applies to the CDC.

44. In *Plaatjies v Eastern Cape Development Corporation*⁷ Plasket J⁸ stated⁹ that the ECDC is an organ of state, having been created and empowered by the ECDC Act. It performs public functions with public funds. It is bound by the Bill of Rights. It is under an obligation to respect, protect, promote and fulfil the rights in the Bill of Rights. It can legitimately be expected of organs of state that they behave in an exemplary manner, particularly when the fundamental rights of citizens are in issue. The eviction of the first respondent by the ECDC was set aside.

⁴ 2011 (1) SA 239 (CC) (18 November 2010)

⁵ The CDC is an entity like the ECDC

⁶ Paragraph 6

⁷ (1088/2007) [2008] ZAECHC 24 (29 February 2008)

⁸ As he then was

⁹ Paragraph 8

45. In *Ndzamela v Eastern Cape Development Corporation*¹⁰ it was held that a decision of the ECDC was an administrative decision¹¹ and that the provisions of PAJA applied to it.¹²

46. In *Bullock NO v Provincial Government, North West Province*¹³ the question to be decided by the Supreme Court of Appeal (the SCA) was whether the disposal by an organ of state of a right in property vested in it may be administrative action.¹⁴ The right in property concerned a servitude which the Premier had granted in favour of a property owned by an individual, the second respondent. Such servitude impacted on the property leased by a yacht club. The yacht club had been leasing the property for some 30 years and negotiations for a new lease had been far advanced. Such properties surrounded the Hartebeestpoort Dam. The SCA held that the granting of the servitude amounted to administrative action, that the yacht club had the necessary standing to have the granting of the servitude set aside and that the yacht club had a legitimate expectation to make representations before the provincial government decides whether or not to renew its lease. *In casu* then, the selling of the ECDC's property impacting on the rights of the applicants would constitute administrative action.

47. In *JDJ Properties CC v Umngeni Local Municipality*¹⁵ the issue was whether a municipality's approval of a developer's building plan involving a relaxing of side space and parking requirements for purposes of building a supermarket, was administrative action. The owners of the properties (the appellants) across the road had objected to such approval. It was submitted that the approval of the building plan had not been an administrative action as the appellants had failed to show that the approval had adversely affected their rights or had a direct

¹⁰ [2005] JOL 15153 (TK) (3 October 2002)

¹¹ Paragraph 19

¹² Paragraph 20

¹³ 2004 (5) SA 262 (SCA) {30 March 2004}

¹⁴ Paragraph 11

¹⁵ 2013 (2) SA 395 (SCA) (29 November 2012)

external legal effect within the meaning of section 1 of PAJA. The majority of the SCA disagreed on two grounds: It held that the supermarket's clientele would need transport to the supermarket and that inevitably the clientele would use the free parking provided by the appellants to their customers. Secondly, the municipality's approval adversely affected the appellants' right to enforce compliance with the town planning scheme.

48. At paragraphs 15 and 17 the majority borrows from paragraph 23 and 24 of the important *Grey's Marine* case¹⁶ which read as follows:

"[22] At the core of the definition of administrative action is the idea of action (a decision) 'of an administrative nature' taken by a public body or functionary. Some pointers to what that encompasses are to be had from the various qualifications that surround the definition but it also falls to be construed consistently, wherever possible, with the meaning that has been attributed to administrative action as the term is used in s 33 of the Constitution (from which PAJA originates) so as to avoid constitutional invalidity.

[23] While PAJA's definition purports to restrict administrative action to decisions that, as a fact, 'adversely affect the rights of any person', I do not think that literal meaning could have been intended. For administrative action to be characterised by its effect in particular cases (either beneficial or adverse) seems to me to be paradoxical and also finds no support from the construction that has until now been placed on s 33 of the Constitution. Moreover, that literal construction would be inconsonant with s 3(1), which envisages that administrative action might or might not affect rights adversely. The qualification, particularly when seen in conjunction with the requirement that it must have a 'direct and external legal effect', was probably intended rather to convey that administrative action is action that has the capacity to affect legal

¹⁶ *Grey's Marine Hout Bay (Pty) Ltd v Minister of Public Works* 2005 (6) SA 313 (SCA) (13 May 2005)

rights, the two qualifications in tandem serving to emphasise that administrative action impacts directly and immediately on individuals. “

49. Mr Nepgen has placed much reliance on *Grey's Marine*, but I believe it to be distinguishable. In *Grey's Marine* the Minister of Public Works, on behalf of the state, had leased a portion of the quayside of Hout Bay harbour to the third respondent. The three appellants were concerned that the development of the portion of the quayside leased to the third respondent would cause traffic congestion on the quayside, deprive other tenants and visitors of necessary parking and manoeuvring space and impede access to their premises and to the waterside. It was held that,¹⁷ unlike the present case I believe, it had not been shown that any rights-or even prospective right-of any of the appellants had been adversely affected by the Minister's decision. None of the appellant had any rights to use the property that has been let, or to restrict its use by others,...

50. I finally refer to a judgement of McLaren J, in *Ramburan v Minister of Housing (House of Delegates)*.¹⁸ In such matter, the applicant, in terms of agreements of lease rented a shop and a flat from the Community Development Board. The lease in respect of the shop was terminable on 6 months' notice and the lease in respect of the flat was terminable on 1 months' notice. The applicant was informed that every possibility existed that the shop and flat would be sold to him. Unbeknown to the applicant, government officials had prepared reports that the applicant was involved in fraudulent activities and on 28 January 1992 the complex, including the shop and flat, was sold to the third respondent. The applicant accordingly brought an application for the review and setting aside of the decisions of the Housing Development Board who had sold the complex to the third respondent.

¹⁷ Paragraph 30

¹⁸ 1995 (1) SA 353 (WLD) (27 August 1993)

51. Counsel for the applicant submitted that the *audi alteram partem* principle applied and that the applicant should have been afforded some hearing before the decisions were taken. In the alternative, it was submitted that the applicant entertained a legitimate expectation that he would be afforded an opportunity to state his case before the decisions were taken, which prejudicially affected his rights. Counsel for the respondents submitted that the principle finds no application because the decisions were of a purely commercial nature and amounted to no more than the exercise of contractual rights to cancel the agreements.

52. In granting the relief requested, the learned Judge remarked¹⁹ that the respondents' argument misconceived the requirements of the *audi* rule. The rule does not require that the decision of the public body should, when viewed from the angle of the law of contract, involve actual legal infraction of the individual's existing rights. It requires simply that the decision should adversely affect such a right. No more has to be demonstrated that an existing right is, as a matter of fact, impaired or injuriously influenced.

53. The learned Judge further stated²⁰ that his conclusion regarding the applicability of the *audi* principle accorded with one's sense of justice,

“Besides, the objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded that thou shouldst not eat? And the same question was put to Eve also.”

¹⁹ 364 AB, in relying on the then Appellate Division's decision in *Administered Natal v Sibiyi* 1992 (4) SA 532 (A) at 538 GH

²⁰ 364 GH

54. The Judge held that even if he was wrong in holding that the *audi* principle applied, he was satisfied that the applicant established that, at all material times, he had a legitimate expectation that he would be afforded an opportunity to state his case before any decision was taken which would have the effect of depriving him of the right. The facts cried out for a remedy.²¹ The application was accordingly granted.

FINDING

55. Given the facts of the matter and the authorities referred to above, I am satisfied that the applicants are entitled to the relief in respect of the consultation/*audi* part.

56. I am satisfied that the decision of the ECDC amounts to administrative action and that the rights of the applicants have been adversely affected.

57. In particular and further:

57.1 The applicants and their families had been renting their units for 20 years and more. They are now facing eviction and homelessness.

57.2 The rights of their children are being affected. It is trite that in terms of section 28 (2) of the Constitution a child's best interests are of paramount importance in every matter concerning the child.

57.3 A tenant of residential property has the right to purchase the property; unlike the applicants, some of them having leased their units for 20 years. This appears to be inequitable and unjust and should be of assistance to the applicants in further proceedings, if any.

²¹ 364 I

57.4 For the applicants to rely on defences such as PIE and the *huur gaat voor koop* rule, as proposed by the respondents, are probably going to be cumbersome, time-consuming and costly and lead to further litigation and probably will not save them from an initial eviction. The applicants seem to be earmarked for eviction. See the resolution above. Ms Biza states in the answering affidavit that the ECDC is not aware of any other reasonable way to achieve the realisation of the asset comprising H[...] Flats, than the sale thereof as a whole. The tenants that presently occupy, for the large part, are unlawful occupiers whose prior leases have expired. This reinforces the belief, in my view, that such tenants are going to be evicted. And what about the “lawful” occupiers? As things currently stand, they are also going to be evicted and their units sold.

57.5 Many of the applicants’ concerns and the respondents’ arguments such as that the applicants are protected by PIE and the *huur gaat voor koop* rule could have been addressed during consultations with the applicants and possibly resolved. Also, the respondents’ argument that the applicants have not demonstrated a capacity or the means to purchase a property. Also, the illegality or not of the applicants’ tenancies and whether they are in arrears or not. Also, whether the applicants face automatic eviction. The parties possibly could have resolved their differences in consultations and may also be able to do so going forward.

ORDER²²

58. I accordingly issue the following order:

58.1 The decision of the first respondent to sell H[...] Flats situated at P[...] Street in Butterworth, a property consisting of 32 units held under

²² I discussed the order that I am granting with the parties' legal representatives at the hearing of the matter and obtained their input thereto

sections 1 to 32 H[...] erf 5[...] Butterworth, is hereby reviewed and set aside.

58.2 The first respondent is directed to conduct a consultation with its present tenants in respect of the selling and purchasing of the units.²³

58.3 The first respondent is ordered to pay the costs of the application.

BJ PIENAAR

ACTING JUDGE OF THE HIGH COURT

Date heard: 11 December 2025

Date of Judgement: 18 March 2026

For the applicants: Mr Tsipa
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²³ I believe that it is unnecessary and premature to deal with the applicants' relief requesting that the first respondent be ordered to offer its present tenants a first option to buy the units. This issue might very well be resolved upon consultation. See also *Kasper v Andre Kemp Boerdery* 2012 (3) SA 20 (WCC) (Court of Appeal) (22 November 2011) paragraph 43

For the respondents:

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