

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

CASE NO: 2025-198995

DATE: 18.02.2026

DELETE WHICHEVER IS NOT APPLICABLE (1) REPORTABLE: NO (2) OF INTEREST TO OTHER JUDGES: YES (3) REVISED

In the matter between

SHIVDASANI, ANISH ANIL

Applicant

and

MENSAH, THOMAS MATHEW

First Respondent

REBRANDING AFRICA (PTY) LTD

Second Respondent

CITY OF JOHANNESBURG

Third Respondent

J U D G M E N T

SUMMARY: Land – Unlawful occupation – Eviction – Urgent application – Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998, s 5(1)(a) – “*Real and imminent danger of substantial injury or damage to any person or property*” must be physical – Infringement of incorporeal right insufficient, even if real and imminent, and even if consequences potentially substantial.

MOULTRIE J: The applicant applies under section 5 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 for the urgent interim eviction of the

first and second respondents from premises located in Sandton subsequent to the termination of a lease agreement.

It is common cause that the first respondent occupies the property together with his family as a home and that, in order to secure an eviction from the property, the applicant must do so in terms of this legislation.

An applicant for an urgent interim eviction order under section 5 must satisfy the Court of three requirements:

- a) First, that 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) Secondly, that the likely hardship to the owner or any other affected person if an order for eviction is not granted exceeds the likely hardship to the unlawful occupier against him if the order is sought if an order for an eviction is granted; and
- c) Thirdly, that there is no other effective remedy available.

The Constitutional Court has observed that these requirements for an urgent interim eviction order are “stringent” (cf. ***Residents of Joe Slovo Community, WC v Thubelisha Homes (Centre on Housing Rights &***

Evictions, Amici Curiae) [2009] ZACC 16; 2010 (3) SA 454; 2009 (9) BCLR 847 (CC) para 90) and, it appears to me, they are imposed over and above any other requirements that may exist at common law or the Rules of Court, either for urgency or for an eviction.

In this instance, I am of the view that the applicant has not established the requirement in section 5(1)(a), namely that 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”.

The substantial injury or damage that it is alleged will be suffered is the “damage” that will be suffered by the applicant as a result of the loss of the benefits of a lease agreement that the applicant has concluded with a third party as a potential lessee, which lease is subject to the condition that the premises are available for the third party to occupy on the 28th of this month, failing which the lease will not continue. I assume, it is also impliedly contended that there is no likelihood that the lease will be replaced by any other lease.

Now, when one considers section 5 in its proper context of the PIE Act as a whole, it is apparent that it gives rise to the possibility of what is sometimes referred to as an “interim eviction” which is, it seems to me, a somewhat strange concept, in the sense that an eviction when granted

usually has a final effect – at least in the sense in which that concept is mostly employed in our law.

And therefore it seems to me that when reading the words, “substantial injury or damage to any person or property”, one must interpret them in a way that is consistent with the purpose of section 5, which is evidently different to the purpose of section 4, which is to provide the procedures for eviction of unlawful occupiers on a permanent, and not merely “interim” basis.

The provision in the PIE Act for relief which is in effect “final” (in the sense commonly understood in the law) but which is only granted “pending the outcome of proceedings for a final order”, contemplates that any “interim” eviction order would have to be granted in circumstances where the possibility remains that the Court hearing the final proceedings might reinstate the occupier to the property, despite such occupation remaining unlawful.

Given that context, it seems to me that the only meaningful interpretation of section 5(1)(a) is that the reference to a “danger of substantial injury or damage” must be to the danger of substantial physical injury or damage to property, or to a person, and not to the danger of ‘damage’ in the form of the infringement of a legal right, even if that danger is “real and imminent” and even if the consequences of the infringement would be “substantial”. Thus, while I

accept that (i) the right of the owner to use the property, and especially to lease it, could itself be regarded as “property” in the broader sense of an incorporeal right; (ii) that the loss or inability to effectively exercise such a right might well constitute ‘injury’ or ‘damage’ in other legal contexts; and also (iii) that such ‘injury’ or ‘damage’ might potentially be considered to be “substantial” in those contexts, it seems to me that such loss or inability could not itself constitute the kind of “injury” or “damage” that is contemplated in section 5(1)(a).

This conclusion appears to me to be consonant with other judgments that have considered the question in detail (e.g. *Telkom SA (SOC) Ltd v Moeletsi and Others* [2023] ZAGPJHC 590 (GJ); *Eastern Cape Development Corporation v Occupiers of Erf 117 and Erf 118 Umtata, Windsor Hotel, 36 Sutherland Street, Mthatha and Others* [2024] ZAECKMHC 57 para 23ff; *White Wall Trading (CC) and Another v Biyela and Others* [2024] ZAGPJHC 54 paras 12 - 15 and *City of Johannesburg v Unknown Individuals and Others* [2025] ZAGPJHC 781 (GJ) paras 14 – 18).

Although ongoing or potential non-physical “damage” has evidently been considered to be of relevance in a number of cases dealing with section 5 of the PIE Act (cf. *Groengras Eiendomme (Pty) Ltd v Elandsfontein*

***Unlawful Occupants* 2002 (1) SA 125 (T); *Shanike Inv No 85 (Pty) Ltd v Ndim* 2015 (2) SA 610 (GJ); *Tshwane North Technical and Vocational Education and Training College v Madisha* 2019 JDR 0065 (GP); and *Clarendon Heights Body Corporate and Others v Dumakude and Others* [2025] ZAGPJHC 779 (GJ))**, it seems that in each of these cases the court concluded that there was also a real and imminent danger of substantial physical injury or damage. However, to the extent that any of these courts held that section 5 could apply in the absence of a proven imminent danger of physical injury or damage, I respectfully consider any such *dictum* to be clearly wrong, with the result that I am not bound to follow it.

The applicant in the current case was unable to show any real and imminent danger of substantial injury or damage in the sense that that phrase is in my view properly to be understood under section 5 of the PIE Act. The application therefore falls to be dismissed.

The question of the specific relief arises: is it only the prayer seeking urgent enrolment of the matter, or the whole application, that should be dismissed? It seems to me that I have no option but to dismiss the entire application. The reason for that is that the only substantive relief that was sought in terms of the amended notice of motion delivered last week (on the 10th of February) is the relief under

section 5, which I find to be unsustainable. Assuming it is legally possible to obtain an urgent eviction order under section 4 of the PIE Act (cf. **4Eleven Properties (Pty) Ltd v Makhosi and Others [2024] ZAGPJHC 721** para 34 but *contra*: **Telkom v Moeletsi (above)** paras 7 - 9), no such relief was sought in the amended notice of motion. In the circumstances, the application falls to be dismissed.

As to costs, I do not consider that the matter lacked complexity. However, I do not believe that a costs order on an extensive scale would be justified in view of the lack of assistance given to the Court by the respondent's representative.

In the circumstances I grant the following order.

1. The application is dismissed.
2. The applicant is ordered to pay the first and second respondent's costs including the costs of counsel on scale "A".

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MOULTRIE J
JUDGE OF THE HIGH COURT

Date of hearing:	18 February 2026
<i>Ex tempore</i> judgment:	18 February 2026
Judgment revised:	17 May 2026

For the applicant:	A Prinsloo instructed by GMI Attorneys
For the respondent:	D Besong of Besong Attorneys