IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NO: **977/2023**
Reportable: YES / NO
Circulate to Judges: YES / NO
Circulate to Magistrates: YES / NO
Circulate to Regional Magistrates: YES / NO

In the matter between:

CARENA RICHARDENE VELECIA BAATJIES N.O. (In her capacity as executor in the estate of the late **AVRIL SARAHLIZA JUMINA BAATJIES)**	First Applicant
CARENA RICHARDENE VELECIA BAATJIES N.O.	Second Applicant
and	
CECELIA ANDRIETTE RAPULING	First Respondent
EMTHANJENI MUNICIPALITY	Second Respondent

Heard on:	10 October 2025
Delivered on:	08 May 2026
Coram:	Olivier AJ
Summary:	*Eviction – Section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 – Deed of Sale between Applicant and First Respondent validly cancelled – First Respondent in unlawful occupation of property – First Respondent failing to put forward facts that would warrant a decision in her favour – Eviction of First Respondent just and equitable.*

ORDER

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1. The First Respondent and all persons occupying the property known as Erf 3[...], D[...] A[...], Northern Cape Province, also known as 1[...] M[...] Street, O[...] S[...], De Aar, Northern Cape Province held by Deed of Transfer T2912/1961, under or through the First Respondent, is hereby ordered to vacate said property, together with all of their belongings, within 90 (ninety) days from date of service of this order on the First Respondent as set out below, failing which the Sheriff for the district of De Aar be authorised to evict the First Respondent and all persons occupying the said property through or under her, from the property.

2. The aforesaid Sheriff for the district of De Aar is hereby authorised to request and obtain the assistance of any person, including members of the South African Police Services to assist in the above eviction process.

3. This order is to be served on the First Respondent by the Sheriff for the district of De Aar by serving same on the First Respondent personally, alternatively by serving same on a person apparently in charge of the premises at 1[...] M[...] Street, O[...] S[...], De Aar, Northern Cape Province, at the time of delivery, being a person apparently not less that sixteen years of age.

4. The First Respondent is to pay the costs of this application on a scale as between party and party and on Scale B as referred to in Rule 69(7), read with Rule 67A(3) of the Uniform Rules of Court.

JUDGMENT

OLIVIER AJ

1. This is an application for the eviction of the First Respondent and all persons occupying through her from a property known as Erf 3[...], D[...] A[...], Northern Cape Province, also known as 1[...] M[...] Street, O[...] S[...], De Aar, Northern Cape Province ("*the property*").

2. The application is brought in terms of the provisions of the **PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT** 1998,[1] (herein after referred to as **"*PIE*"**) and is opposed by the First Respondent.

3. The application was lodged by Carene Richardene Velecia Baatjies in her capacity as executor in the deceased estates of both Avril Sarahliza Jumina Baatjies and Carel Adriaan Baatjies having been duly appointed as such by the Master of the Northern Cape High Court.

   I will henceforth refer to the First and Second Applicants as "*the Applicant*" and to Avril Sarahliza Jumina Baatjies and Carel Adriaan Baatjies jointly as "*the deceased*".

4. It is not in dispute that the property is still registered to the deceased and that the First Respondent is occupying the property.

5. It is also not in dispute that the formal requirements of PIE have been met and that I am to decide this application in terms of the provisions of Section 4(7) of PIE in light of the fact that the First Respondent has been in occupation of the property for more than 6 (six) months.

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[1] Act 19 of 1998

6. It is trite that, if all procedural requirements have been met, an owner of property may approach a Court for the eviction of another based on the former's ownership of such property and on the latter's unlawful occupation and unless the latter discloses circumstances relevant to the eviction order, the former will, in principle be entitled to an order for eviction.[2]

7. The above is underlined in Section 4(8) of PIE which states as follows:

"*If the Court is satisfied that all the requirements of this Section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier…*" (my underlining)

8. The above provision of Section 4(8) makes it clear that the Court, in fact, has very little discretion in the matter and that an order of eviction must in fact be granted if all of the provisions of Section 4 of PIE have been met and if proper consideration was given to the factors set out in Section 4(6) alternatively Section 4(7).

9. I say the above subject thereto that before such an order is granted, a Court has to ask itself the following questions and also answer same in the affirmative:

9.1 Have all of the procedural requirements set out in in Section 4(2) to Section 4(5) of PIE been complied with;

9.2 Is the Applicant in fact the owner of the property in question, alternatively the person in charge of the property in question;

[2] ***Ndlovu v Ngcobo; Bekker and Another v Jika*** [2002] 4 All SA 384 (SCA), par 19

9.3 Is the occupier of the property in fact an unlawful occupier for purposes of PIE; and

9.4 Has a valid defence been raised by such occupier?

10. The aspects set out in paragraphs 9.1 and 9.2 above is not in dispute and the first question that needs to be answered therefore is whether the First Respondent is in fact an unlawful occupier for purposes of PIE.

11. Section 1 of PIE defines "*unlawful occupier*" as follows:

"*... a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).*"

12. It was not argued on behalf of the First Respondent that she is not an unlawful occupier for purposes of PIE by virtue of the fact that she is an occupier in terms of the abovementioned **EXTENSION OF SECURITY OF TENURE ACT**, or that she is protected by the provisions of the above **INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT**, and the question is therefore only whether she occupies the property without the express or tacit consent of the owner or person in charge, or without any other right in law to do so.

13. In support of the contention that the First Respondent is an unlawful occupier, the following is stated on behalf of the Applicant in the founding affidavit:

"*The grounds for the proposed eviction are essentially that the Applicant is the lawful owner of the property First Respondent (or any person occupying through him) does not have any legal right or lawful permission to occupy the property. Occupation of the property by the First Respondent (or any person occupying through him) is at present without the consent of the Applicants and the consent of the Applicants is required for the occupation of any plot, house and/or dwellings on the property. No such consent has been obtained and it is therefore just and equitable and in the public interest to grant an order as sought in terms of these proceedings.*"

and further:

"*... the Applicant's (sic) cancelled said deed of sale ...*" (my omissions)

and further:

"*The First Respondent failed to vacate the premises after cancellation of the deed of sale.*"

and further:

"*Based on the above it is clear that the First Respondent does not have the consent of the Applicant to occupy the property…*" (my omissions)

14. It appears from the papers that were filed of record as well as from argument presented on behalf of the parties, that the deed of sale referred to by the Applicant in the founding affidavit, refers to a deed of sale in respect of the property that was concluded between the Applicant in her representative capacity and the First Respondent as well as the First Respondent's ex-husband.

The conclusion of the deed of sale is not in dispute and the Applicant relies on the cancellation of the deed of sale as the basis for the argument that the First Respondent is in unlawful occupation of the property and that she no longer has authorisation to occupy the property.

15. It further appears from the contents of the deed of sale that the First Respondent took occupation of the property in terms of the deed of sale and in her papers and during argument of the matter, the First Respondent relies on this fact in support of her contention that she is not in unlawful possession of the property.

16. In as far as the cancellation of the deed of sale is concerned, specific provision is made in the deed of sale that the deed of sale may *inter alia* be cancelled if a party fails to make payment of any amount set out in the deed of sale or in the event of any other breach of the terms of the deed of sale and if such guilty party remains in default for a period of 7 (seven) days after having been given written notice by registered mail to remedy such breach.

17. It is also noteworthy that in terms of the deed of sale, the First Respondent chose an address in Prieska, Northern Cape Province as her *domicilium citandi et executandi*.

18. The Applicant alleges that the abovementioned deed of sale was cancelled by reason of the fact that the First Respondent refused to sign the necessary documentation to effect transfer of the property as well as the failure by the First Respondent and her ex-husband to pay the municipal rates and taxes as well as the transfer fees necessary for the transfer of the property.

19. It should be mentioned for the sake of clarity that clause 9 of the deed of sale places an obligation on the purchasers of the property, in other

words the First Respondent and her ex-husband to *inter alia* pay the transfer costs in order to effect transfer of the property on demand and it appears from the papers that the non-payment of the transfer costs by the First Respondent and her ex-husband is not in issue.

I certainly did not understand Mr. Matlejoane, who appeared for the First Respondent, to argue anything to the contrary.

20. In her initial answering affidavit, the First Respondent avers that she only became aware of the cancellation of the deed of sale upon receipt of an eviction notice during November 2022, although she states later in the same affidavit that she only became aware of the said cancellation when she received the eviction application during June 2023.

21. The First Respondent further denies breaching the terms of the deed of sale, although this denial actually flies in the face of the fact that the First Respondent never denied not paying the transfer costs on demand and in actual fact admitted to a failure to pay the said transfer fees.

22. During argument, Mr. Matlejoane submitted on behalf of the First Respondent that the breach of the deed of sale was not material and that the eviction of the First Respondent from the property would be unreasonable.

I disagree with the contention that the failure to make payment of the costs necessary to effect transfer of the property is not material.

23. It goes without saying that when the parties concluded the deed of sale, the transfer of the property was the ultimate goal and since the payment of *inter alia* the transfer costs is a legal prerequisite for the transfer of the property, the obligation to pay such costs is material and the failure to

make such payment constitutes a material breach since it effectively prevents the seller from passing transfer of the property.

24. I hold the view that in light of the aforesaid, coupled with the fact that, by virtue of specific provisions of the deed of sale, the First Respondent and her ex-husband were obliged to pay the transfer and related costs and further that a failure to make such payment on demand constitutes a breach of the agreement, the failure by the First Respondent (and her ex-husband) to make the said payments, is in fact a material breach of the deed of sale.

25. In this instance, the deed of sale specifically required from an innocent party to afford the guilty party 7 (seven) days within which to remedy a breach, after which the deed of sale may be cancelled and it is further noteworthy that such a notice has to be given in writing and sent by registered mail and it is trite that if a contract contains a provision such as this, strict compliance with same is required.[3]

26. It appears from the record that the Applicant did in fact cause a letter to be addressed to the First Respondent and her ex-husband on or about 18 May 2022 wherein the First Respondent was alerted to the fact that she and her ex-husband are in breach of the terms of clause 9 of the deed of sale and wherein further they were afforded 7 (seven) days to remedy the default.

This letter is addressed to the First Respondent's chosen *domicilium* address in Prieska and, as it appears from the record, was sent to said address as well as to the property by registered mail.

[3] ***Hano Trading CC v JR 209 Investments (Pty) Ltd and Another*** [2013] 1 All SA 142 (SCA), par 31

27. I can find no fault with the way in which the above letter was sent to the First Respondent.

28. The interesting fact is that the aforesaid letter as well as the proof that it was sent to the above address by registered mail, was attached to the First Respondent's answering affidavit and I find that there is nothing in the papers to support the First Respondent's contention that she only gained knowledge of the cancellation of the deed of sale during June 2013 when the eviction application was served on her.

29. I am consequently of the view that the deed of sale was validly and effectively cancelled and that the First Respondent is in unlawful possession of the property since she no longer has the consent of the Applicant to continue to occupy the property and since she has no right in law any longer to reside in the property.

The First Respondent is therefore, in my view, an unlawful occupier for purposes of PIE.

30. This brings me to the question whether the First Respondent has set out circumstances that would warrant a decision in her favour and whether, upon a consideration of the provisions of Section 4(7) of PIE, it would be just and equitable to grant an order for the eviction of the First Respondent from the property.

31. Section 4(7) of PIE states as follows:

"*If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a Court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made* *available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.*"

32. The relevant circumstances referred to in Section 4(7) are facts that are usually within the exclusive knowledge of the occupier[4] and it is therefore incumbent on the occupier to place relevant information before the Court that would place the Court in a position to comply with the provisions of Section 4(7) of PIE and to properly determine the matter.

33. The unfortunate issue facing the First Respondent is that, neither in her initial answering affidavit, nor in a supplementary answering affidavit filed on her behalf, does she deal with the factors set out in Section 4(7) of PIE in any amount of detail.

34. Upon a proper reading of the above affidavits of the First Respondent and whilst keeping an eye on the provisions of Section 4(7) of PIE, the case for the First Respondent may be summarised as follows:

34.1 That she and her ex-husband effected certain renovations to the property and that, seeing that the Applicant is refusing to reimburse her for these renovations, she would suffer prejudice if evicted in the sense that the Applicant would be enriched at her expense;

34.2 That the Applicant stands to further gain from her misfortune in the sense that the Applicant will now be able to sell the property at a higher price and by virtue of the fact that the Applicant has not offered to repay the purchase price to her;

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[4] ***Ndlovu v Ngcobo***, *supra*.

34.3 That she is residing in the property with two minor children and her elderly aunt;

34.4 That she is a single woman and parent and that she has no one else who assists her financially;

34.5 That she and her family are attached to the property and regard it as their home; and

34.6 That she suspects her ex-husband of colluding with the Applicant to deprive her of the property.

35. Unfortunately, and apart from the above, the First Respondent does not offer much else that would assist me in making a finding in her favour as she, for example, does not state how an eviction would prejudice her rights and the rights of the persons occupying the property.

36. The First Respondent certainly does not allege that she is destitute and/or that she is not able to afford alternative accommodation and she also does not provide any insight into possible steps that she took, after receiving the notice of eviction in December 2022, alternatively the eviction application in June 2023, to secure alternative accommodation.

The First Respondent seems to have put all of her eggs in one basket in the sense that she hoped that she would be successful in her opposition of this application and that, as a result, she did not consider alternatives which, in my view, is irresponsible.

37. The First Respondent's allegation that her ex-husband is colluding with the Applicant to deprive her of the property is based on speculation and is not based on anything substantial and the fact that the Applicant is now

able to sell the property for a higher purchase price, does not assist the First Respondent at all since the Applicant is free to do with the property as she pleases.

38. The Applicant further offers to reimburse the First Respondent her share of the purchase price and any possible undue enrichment of the Applicant at the expense of the First Respondent, may be sorted out by way of litigation, if necessary.

39. I am consequently satisfied that a proper case has been made out for the relief sought by the Applicant and that the First Respondent has not raised a valid defence against the Applicant's application.

I am of the view that the eviction of the First Respondent would be just and equitable in the circumstances.

40. The Applicant asks for an order to the effect that the First Respondent vacate the property within 30 (thirty) days from date hereof, but taking into consideration the factors mentioned in paragraph 34 above and specifically the fact that the First Respondent has been residing in the property since March 2020, I am of the view that a period of 90 (ninety) calendar days for the First Respondent to find alternative accommodation and for her and her family to vacate the property, is more reasonable.

I am further of the view that the aforesaid period of 90 (ninety) days should run from the date of service of this order.

ORDER:

41. On the above premises, I make the following order:

1. **THE FIRST RESPONDENT AND ALL PERSONS OCCUPYING THE PROPERTY KNOWN AS ERF 3[...], D[...] A[...], NORTHERN CAPE PROVINCE, ALSO KNOWN AS 1[...] M[...] STREET, O[...] S[...], DE AAR, NORTHERN CAPE PROVINCE HELD BY DEED OF TRANSFER T2912/1961, UNDER OR THROUGH THE FIRST RESPONDENT, IS HEREBY ORDERED TO VACATE SAID PROPERTY, TOGETHER WITH ALL OF THEIR BELONGINGS, WITHIN 90 (NINETY) DAYS FROM DATE OF SERVICE OF THIS ORDER ON THE FIRST RESPONDENT AS SET OUT BELOW, FAILING WHICH THE SHERIFF FOR THE DISTRICT OF DE AAR BE AUTHORISED TO EVICT THE FIRST RESPONDENT AND ALL PERSONS OCCUPYING THE SAID PROPERTY THROUGH OR UNDER HER, FROM THE PROPERTY.**

2. **THE AFORESAID SHERIFF FOR THE DISTRICT OF DE AAR IS HEREBY AUTHORISED TO REQUEST AND OBTAIN THE ASSISTANCE OF ANY PERSON, INCLUDING MEMBERS OF THE SOUTH AFRICAN POLICE SERVICES TO ASSIST IN THE ABOVE EVICTION PROCESS.**

3. **THIS ORDER IS TO BE SERVED ON THE FIRST RESPONDENT BY THE SHERIFF FOR THE DISTRICT OF DE AAR BY SERVING SAME ON THE FIRST RESPONDENT PERSONALLY, ALTERNATIVELY BY SERVING SAME ON A PERSON APPARENTLY IN CHARGE OF THE PREMISES AT 1[...] M[...] STREET, O[...] S[...], DE AAR, NORTHERN CAPE PROVINCE, AT THE TIME OF DELIVERY, BEING A PERSON APPARENTLY NOT LESS THAT SIXTEEN YEARS OF AGE.**

4. **THE FIRST RESPONDENT IS TO PAY THE COSTS OF THIS APPLICATION ON A SCALE AS BETWEEN PARTY AND**

PARTY AND ON SCALE B AS REFERRED TO IN RULE 69(7), READ WITH RULE 67A(3) OF THE UNIFORM RULES OF COURT.

A.D. OLIVIER
ACTING JUDGE
NORTHERN CAPE DIVISION

Appearances:

For Applicants:	**ADV J HARMSE**
Instructed by:	**Engelsman Magabane Inc.** Kimberley
For First Respondents:	**MR L MATLEJOANE**
Instructed by:	**Matlejoane Attorneys** Kimberley