**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**

**Case No: A303/2024**

In the matter between:

**BERGRIVIER BOERDERY (PTY) LTD** Appellant

and

**LYNOL JULIUS PIETERSON** First Respondent

**LE-ANZE CATHERINE PIETERSON** Second Respondent

(Together with all those holding title through respondents and/or any other persons who occupy the premises vis-à-vis the respondents)

**SWARTLAND MUNICIPALITY** Third Respondent

**Coram:** **DOLAMO, KUSEVITSKY JJ et MAPOMA AJ**

**Heard:** 21 July 2025

**Delivered:** 19 May 2026 (delivered electronically)

**Summary:** **Application for eviction of the respondents from the property which they formerly owned but had sold to the appellant under dubious circumstances - whether it would be just and equitable to evict them - what is just and equitable in the context of evictions.**

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## ORDER

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1. An order is hereby granted for the eviction of the first and second respondents as well as any other persons who may be occupying the property through them from erf 1[…] Korinberg situated at 1[…] P[…] Street Koringberg;

2. The operation of the eviction order referred to in paragraph 1, supra, is hereby suspended for a period of One Hundred and Eighty (180) days. The suspension of the order is on the following conditions:

   2.1 that the parties engage in bona fide negotiations for the resolution of their disputes.

   2.2 Failing to reach any agreement following such negotiations within thirty (30) days from the date of this order, the respondents shall institute any legal proceedings for any relief to which they may be entitled, within thirty (30) days of the expiry of the first thirty (30) day period from the date of this order;

3. The suspension of the eviction order referred to in paragraph 1 supra shall fall away and the sheriff of this court shall evict the respondents from the property in the event of the parties failing to reach any settlement as envisaged in paragraph 2.1, supra and the respondents failing to institute legal proceedings for any relief within 60 days of this order, in which event the respondents shall be liable for costs on a party and party scale C.

4. At any stage prior to the expiry of the thirty (30) day period referred to in paragraph 2.1 supra, any of the parties shall be entitled, on 10 (ten) days written notice to the other, to approach a Judge in chambers for directives for the further conduct of the negotiations or any other matter relating to the negotiations for a settlement.

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**JUDGMENT**

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**DOLAMO, J (KUSEVITSKY J et MAPOMA AJ concurring)**

**Introduction**

[1] This is an appeal against the judgment of Lekhuleni J dismissing an application brought in terms of s 4(1) of the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act[1] (PIE) for the eviction of the respondents from a property registered in the name of the appellant. The appeal is with the leave of the court a quo.

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[1] Act 19 of 1998.

[2] The appellant is the registered owner of erf 1[…] Korinberg, also known as 1[…] P[…] Street, Koringberg (the property). The appellant purchased the property from the respondents on 7 December 2017 for R655 000.00, The property was thereafter registered in the appellant's name on 26 February 2018. On 28 February 2018 the appellant, represented by its director Johannes Bernard Zulch Conradie (Bernard)[2], entered into a written lease agreement with the respondents. In terms of this agreement the respondents leased their former home from the appellant for a period of two years. On 28 February 2020 the written lease agreement was terminated by effluxion of time whereafter it continued on a month-to-month basis. On 28 July 2020 the appellant sold the property and sought to evict the respondents therefrom so as to give *vacuo possessio* to the purchaser. This was resisted by the respondents, which led to the appellant bringing an application for their eviction.

[3] The matter was referred for the hearing of oral evidence in terms of rule 6(5)(g). The circumstances under which the respondents purchased the property, sold it to the appellant and, thereafter, leased it from the appellant to remain in occupation of what was their former home are, inter alia, the sources of the disputes of fact. The circumstances under which the Lynol Pieterson Family Trust (LPFT), which featured prominently in the proceedings, was formed and the purpose of its formation; what led to its name change; and why the first respondent ('Lynol'), who was a founder and trustee, was removed as a trustee; what delayed LPFT's acquisition of a 30% shareholding in the appellant, as

[2] Reference to the deponent to the applicant's affidavit by his first name is not to be construed as any sign of disrespect but to draw a distinction between him and his father, Johan Conradie. The same applies to the first and second respondents: mentioning them by their first names is for purposes of distinction.

envisaged when an application for a water use licence was made by the LPFT to the Department of Water Affairs; and the dismissal of Lynol from his employment by the appellant, are the other sources of disputes of fact.

[4] The order referring the matter to oral evidence stipulated that evidence be heard on the following issues:

4.1 Whether the LPFT and/or the respondents are entitled to 30% shareholding in the appellant company and/or any dividends in return for the LPFT making available to the appellant its water use rights in terms of the water use license issued to the LPFT by the Department of Water Affairs;

4.2 Whether the LPFT and the appellant entered into a cooperation agreement which was annexed to the replying affidavit and whether such agreement currently governs the relationship between the LPFT and the appellant;

4.3 Whether Bernard, on behalf of the appellant, represented to the first respondent that he will be entitled to repurchase the property once the appellant had paid the LPFT dividends, to which the LPFT allegedly was entitled to by virtue of being a 30% shareholder in the appellant;

4.4 Whether or not Bernard coerced first respondent and/or the second respondent into selling their property to the appellant;

4.5 Whether the appellant utilised the LPFT's water use allocation in terms of the water use license since the license was granted in 2014;

4.6 Whether the appellant paid the LPFT any money for any use of the water allocated under the water use license since 2014; and

4.7 Which party bears the obligation to pay all water use charges, costs, fees, tariffs, penalties, interests and other amounts which are or become payable in respect of the water use license and the water extracted in terms thereof.

[5] The court *a quo* heard the oral evidence of Le-Anze Catherine Pieterson (Le-Anze); Lynol Julius Pieterson (Lynol) for the respondents and Bernard testified on behalf of the appellant. I deal first with the common cause facts that emerged from the evidence and, where necessary, with the version of each side on those issues which remain in dispute, to set out the background to this appeal. Thereafter I deal with the issues in the appeal.

**Background**

[6] Lynol started working for Johann Conradie (Johann), Bernard's father, in Porterville in 1984. Bernard was only a year old and Lynol was 24 years old at the time. He started as a farm labourer and was later promoted to farm manager. He went only as far as Grade 8 in his formal education. Bernard purchased the farm Zanddrift Nr 149 in 2010 which is situated in Koringberg, and which was registered in the name of the appellant, a company formed in that same year. Lynol continued to work for the Conradies but under the appellant company. Lynol and his wife purchased their first house in Porterville in 2005 and resided therein, with Lynol commuting daily for a distance of approximately 64 kilometres between his home and work in Koringberg.

[7] During 2010 Johan created the LPFT which was registered with the Master of the High Court in that same year. No trust deed of the LPFT was annexed to the papers. It is, however, alleged that the purpose of creating the trust was to cater for the welfare of one or more of the beneficiaries referred to in the trust deed. According to the appellant these beneficiaries were to include those persons who may from time to time be selected by the trustees in their absolute discretion to be beneficiaries in respect of the trust's income, capital or both. They were to come

from amongst members of the classes consisting of (i) Lynol, (ii) Le-Aze (ii) Lee-Roy Carlo Pieterson, (iv) Moravia Boerdery (Pty) Ltd, (v) the descendants of these parties, (vii) any trust established for the benefit of any of the above- mentioned people, and (vi) the heirs of Lynol, in certain circumstances.

[8] The original trustees of the LPFT were Lynol, Johann, and one Willem Jacobus Cronje. During or about September 2019 the LPFT's name was changed to the Bergrevier Boerdery Werkers Trust and during or about the same time Lynol was removed as a trustee of this trust. The circumstances under which Lynol was removed as a trustee of LPFT/ Bergrevier Boerdery Werkers Trust was one of the issues on which a dispute of fact existed and was dealt with by the court a quo.

[9] The circumstances that led to the dispute between the Conradies and the appellant, on the one hand, and the Pieterson and the LPFT, on the other, can be traced back to a water use license that was granted to the LPFT. Taking advantage of the Broad Based Black Economic Empowerment (BBBEE) policies of the National Government which in the agricultural sector are aimed at fast-tracking previously disadvantaged individuals' access to commercial farming, Johan and/or Bernard used the LPFT to apply for a water use license in favour of the appellant. On or about 15 December 2015 in terms of the provisions of s 21(a) the National Water Act,[3] the LPFT was granted a water use licence. This enabled the LPFT to draw water from the Bergrivier Government Water Scheme for the benefit of the appellant. The licence is valid for a period of twenty years.

[10] It needs to be emphasised that the application for the water use licence submitted to the Department of Water Affairs was in the name of the LPFT. The

[3] Act 36 of 1998.

LPFT was described in the application as a registered Black Economic Enterprise that was established to hold an equity stake in the appellant which is a commercial farming enterprise. The Zanddrift farm had 107 hectares of summer water use rights and required additional water rights to expand its business operations. The proposal was to acquire additional water use rights on behalf of the future BBBEE shareholder, being the LPFT. Once granted the rights, the LPFT would use these rights to acquire 30% shareholding in the appellant.

[11] The water use licence reflects the LPFT as the registered owner of the farm Zanddrift, which is clearly an error with regards to the identity of the owner of Zanddrift. This error can be rectified by applying for an amendment of the licence to reflect the appellant as the owner of Zanddrift. However, there is no error as far as the identity of the applicant and to whom the water use licence was granted. It is therefore not clear why Bernard would allege that the water use license was erroneously issued to the LPFT when, from the start, the licence was applied for and was issued in the name of the LPFT. But for the error of naming the LPFT as the registered owner of the property the licence was issued to the right applicant.

[12] After the LPFT was granted the water use licence the appellant sought to have access to the water resources which were correctly in the hands of the LPFT. Bernard admits in reply that the LPFT possesses these resources by virtue of being granted a water use licence. In recognition of the LPFT's ownership of the water rights the parties concluded an agreement in terms of which they were to swap assets. In their undated written agreement, the appellant and the LPFT agreed to exchange the water use rights for shares in accordance with the stipulations of s 42

of the Income Tax Act[4] (the asset swap agreement).

[13] The preamble to this agreement states that the LPFT is the licensee of certain water use rights allocated to the immovable property; that the appellant intends to increase the number of the authorised shares from 1000 to at least 1250 shares of the same class in accordance with s 36(3) of the Companies Act[5]; and that the parties are desirous that the trust transfers the water use rights to the company. The effect of this transaction would have been that the Bernard Conradie Trust (BCT) would own 80% and the LPFT 20% of the appellant's shares. The 20% shareholding by the LPFT would have been 10% less than what was envisaged in the water use licence application submitted to the Department of Water Affairs on behalf of the LPFT. This agreement, however, has since lapsed.

[14] Bernard used the mistake in naming the LPFT as the owner of the property in the licence to explain to Lynol the alleged delay in implementing the agreement to transfer 30% shares in the appellant to the LPFT. The parties thereafter entered into a further agreement on 31 August 2018, ostensibly to give effect to the parties' intention. The gist of this agreement, called a Notarial Certificate ( or co-operation agreement), is that the LPFT shall make its resources available for utilisation by the appellant and, in exchange, the appellant would remunerate/pay the LPFT in accordance with an agreed formula. I need to point out that in his evidence Lynol denied the existence of this agreement.

[15] Whilst this agreement is still valid, and the appellant was making use of the water drawn pursuant the water use licence, there has been no reciprocal

[4] Act 58 of 1961.
[5] Act 71 of 2008.

performance by the appellant: the appellant did not pay the LPFT for the use of this water. In the meantime, the LPFT continued to accumulate a debt that is owed to the Department of Water Affairs in respect of the utilisation of the water drawn through the use of the licence. This debt at one stage stood at R1,3million. I need to point out that there were two payments made by the appellant to the LPFT, but a great deal of debate surrounds the circumstances of these payments. In my view, it is not necessary to go into the debate for purposes of determining this appeal.

[16] The LPFT applied several times to the Department of Water Affairs in terms of s 50(1) read with s 52 of the Act to amend the water use licence to reflect the appellant as the holder thereof. This rectification/amendment, according to Bernard, would reflect the true intention of the parties. The net effect of such an amendment, if it were to be successful before the LPFT has been allocated the 30% shares in the appellant, would be that the LPFT will be stripped of any rights to the licence without acquiring any shares in the appellant.

[17] Bernard states that the reason for the attempts to transfer the water use licence into the name of the appellant is to enable the appellant to use it as collateral security when approaching financial institutions for loans to fund its business operations. But if that is the case the appellant should have, from the start, applied for the licence in its own name and not involve the LPFT. It is apparent from this explanation that the appellant intended to use the LPFT to meet the requirements of the Department of Water Affairs' policy to grant water use licences to previously disadvantaged people, and, once these rights have been granted, to change/transfer the licence into the name of the appellant. The question is whether in so doing the appellant intended to reciprocate by allocating 30% of its shares to

the LPFT.

[18] A further development is that during or about 10 November 2022 the Department of Water Affairs suspended the LPFT's water use licence for non-compliance with the conditions of the licence. An appeal by the LPFT against this suspension is pending before the Water Tribunal.

[19] I revert to the timeline and circumstances that led to the application for the eviction of the respondents. The respondents' version is that they sold their house in Porterville and moved to Koringberg in 2015 at the instance of Bernard. Their house in Porterville was sold for R230 000.00, and the proceeds of the sale were paid into the appellant's account, ostensibly as Lynol's investment therein. The respondents bought the property for R660 000.00. They paid a deposit of R142 000.00 using a loan from Bernard. The balance of the purchase price was financed with a loan from Standard bank which registered a mortgage bond over the property as security.

[20] The appellant's version is that during or about 2015 Lynol approached Bernard with a proposal that he would like to move to Mooresburg to be closer to his workplace. The respondents could not afford the property which they had earmarked for purchase in Mooresburg/ Koringberg. They sought the assistance of Bernard who agreed to lend them the total sum of R201 071. 08 made up of a loan of R180 000.00 towards a deposit on the purchase price and R21 071.08 being in the amount in respect of transfer costs. These amounts were paid directly to the transferring attorneys. The respondents were able to repay R140 000.00 of the loan amount after their house in Porterville was sold for R230 000.00.

[21] It is not necessary to resolve the above two contradictory versions which, in my view, are not germane to the issues in this appeal. They are set out purely to complete the background to the real disputes of fact. The first real dispute of fact is that during or about 2018 Bernard informed Lynol that the appellant was no longer able to pay him his monthly salary of R15 000.00 and reduced it to R4 800.00 per month. Thereafter Bernard approached the respondents with an offer to purchase their property as, according to him, they were no longer affording the bond repayments on Lynol's reduced salary. He offered to purchase the property for R660 000.00 which represented, not the value of the property, but the balance of the amount owing to Standard Bank. After the sale agreement was concluded, the respondents were made to sign the lease agreement, referred to supra, in terms of which they leased the property from the appellant for a period of twenty-four months at a nominal rental of R450.00 per week. After the expiry of the twenty-four-month period the respondents were allowed to remain in the property on a month-to-month basis.

[22] The respondents' version on this point is that they signed a twenty-four months' lease agreement on the understanding that on the expiry of this lease period, in terms of a verbal agreement it would appear, they would be entitled to buy back their property from the appellant. This would have been after the LPFT had been paid dividends by the appellant. It was anticipated, so the respondents were made to believe, that it was a matter of time before the appellant would start paying dividends to the LPFT and that the respondents would, from this source of revenue, be able to buy back their house. The holdup in implementing the payment of dividends to the LPFT, they were told, was with the Department of Water

Affairs.

[23] The appellant's version is that Lynol approached Bernard for assistance as he was in arrears with his bond repayments. Bernard agreed to assist by purchasing the property for R660 000.00, being the amount that was owed to Standard Bank, with the understanding that the respondents can thereafter rent the property from the appellant. There was also the option, they were told, to buy it back from the appellant at a later stage, if they could find the money to do so.

[24] During or about June 2020 Bernard demanded that the respondents vacate the property by 31 August 2020 as he intends to sell it. The reason he advanced for selling the property was that he needed the money to fund the appellant's operational costs. He offered the respondents alternative accommodation. According to Bernard, they initially accepted and were willing to vacate the property but later reneged. This led to a breakdown of trust and, consequently, Bernard dismissed Lynol from the appellant's employment. The details of the alleged suitable alternative accommodation are not disclosed anywhere in the papers.

[25] On the evidence led the court a quo found that the LPFT was entitled to 30% equity in the appellant as a BEE partner. This was pursuant to the water use rights which allowed water to be drawn for use on the appellant's farm; that considering Lynol's naivety and ignorance of contractual matters, and the inequality in the bargaining power between him and Bernard, to suggest that he was deliberately being dishonest and intending to mislead the court when he denied the existence of the co-operation agreement is incorrect, and that the

discrepancy in his evidence does not go to the heart of the issues in the matter. It found as a fact that the LPFT and the appellant had entered into the co-operation agreement; that the co-operation agreement was still extant and governed the relationship between the parties.

[26] The court a quo further found that the appellant had used and was still using the water allocated to the LPFT and that this resulted in the latter incurring a debt of R1 387 984.00. which is due and payable to the Department of Water Affairs; that the appellant used the water in terms of the co-operation agreement to make huge profits but failed to pay 30% of the net profit to the LPFT which was due in terms of the co-operation agreement; and that the parties must use an independent forensic accountant to calculate how the amounts owed to the Department of Water Affairs ought to be apportioned.

[27] The court a quo accepted the version of the respondents with regard to the reason for the sale of their property to the appellant. It found that the respondents' version was the most probable because they were at that stage not in arrears with their bond repayments and consequently held that Bernard misrepresented facts to the respondents and through the misrepresentation bought their property for far less than what it was worth.

[28] On the question of whether it would be just and equitable to evict the respondents from the property the court a quo found, first, that the PIE Act prohibits unlawful evictions and regulates the procedure to be followed for the eviction of unlawful occupiers. The Learned Judge further found that courts are not permitted to passively apply the Act but must probe and investigate the

surrounding circumstances, particularly where the occupiers are vulnerable individuals. He further held that the appellant bought the property from the respondents under dubious circumstances where they did not receive a fair value and that they have a right to demand a fair value for their property before they can be evicted; that they require the proceeds of the sale of their property and 30% of the net profit arising from the utilisation of the water use licence to buy their own property.

[29] The court found that the respondents had raised a substantive defence to the application for their eviction and, consequently, dismissed it. It granted an order in the following terms:

*"The applicant's application for the eviction of the respondents is hereby dismissed.*

*108.2 The findings made in the subheadings above are incorporated into this order.*

*108.3 The applicant is ordered to pay the actual costs incurred by the respondents in opposing the application*

*108.4 The Registrar of this court is directed to forward a copy of this judgment to the Department of Labour to investigate the alleged salary reduction of the first respondent.*

*108.5 The Registrar is also directed to forward a copy of this judgement to the master of the High Court Cape Town so that the master can investigate how the first respondent was removed as a trustee and how their Lionel Peterson family trust was changed to Bergrivier Boerdery Workers Trust.*

*108.6 Both parties should jointly appoint an independent forensic accountant to calculate 30% Share of the trust from 2014. The accountant must also assist in* *determining the fair value of the current property when it was sold to the applicant.*

[30] The appellant was aggrieved by the findings and order of the court a quo. It sought and was granted leave to appeal to the Full Court of this Division. The appellant raised seventy-seven of what it termed grounds of appeal. It is evident from these multiple grounds of appeal that the thrust of the appellant's contentions against the findings and order of the court a quo are that it decided the various disputes of fact in favour of the respondents without taking into account issues of credibility, reliability and probabilities.

[31] Furthermore the appellant contends that the court a quo failed to make a separate determination that the respondents were unlawful occupiers, whether it would be just an equitable to grant an eviction order, or take into consideration that the appellant had tendered to provide the respondents with alternative accommodation; failed to properly consider that the property was sold by the appellant to a third party and that by breaching the agreement to vacate the property had to be transferred back to the appellant at additional costs to the appellant; and failed to accept that the first respondent could resort to the Labour Relations Act if he was aggrieved by the termination of his employment contract.

[32] Other significant contentions by the appellant are that the application for the water use rights specifically provided that the rights are be registered in favour of the appellant and that the conditions for the LPFT to become a 30% shareholder in the appellant were not met in that the water use right was not registered in the name of the appellant. The appellant further raised as a ground of appeal the fact that in refusing the eviction order the court not only decided the factual issues in

dispute but also made additional findings and gave additional directives and orders outside the scope of the eviction application.

[33] The appellant also brought an application in terms of s 19(b) of the Superior Courts Act[6] to adduce further evidence at the hearing of the appeal. The new evidence relates to subsequent events with regard to the LPFT's appeal to the Water Tribunal against the suspension of its water use licence, which appeal was still pending at the time of the hearing of this appeal. Counsel for the appellant submitted that in an eviction appeal ( like in the court of first instance) the court hearing the appeal must consider whether it would be just and equitable to evict the unlawful occupiers; and that the new evidence relating to the developments around the water use licence would be relevant and helpful to the court in the exercise of its discretion.

[34] The new evidence the appellant sought to lead relates to the issuing of the shares in the name of the LPFT which are kept in trust pending the fulfilment of the suspensive condition, which is that the water use licence be transferred into the name of appellant. This evidence in my view will not assist in the resolution of the question whether an eviction order is to be granted and whether it would be just an equitable to order the eviction of the respondents. This because they relate to issues in an appeal which is still pending before a Water Tribunal. As such their veracity is still not tested and/or determined. Consequently, they would not be helpful in the determination of the issues in this appeal. Guided by the decision of the Supreme Court of Appeal (SCA) in *De Aguiar v Real People Housing (Pty) Ltd*[7] that, although s 19 (b) of the Superior Courts Act allows for the leading of further

[6] Act 10 of 2013.
[7] *De Aguiar v Real People Housing (Pty) Ltd* 2011(1) SA 16(SCA)

evidence, in the interest of the finality of litigation this power must be exercised only in special circumstances, I find that no special circumstances were placed before this court to satisfy the requirements to accept the new evidence, In the result the application is dismissed.

[35] The questions for determination in this appeal are whether the court a quo erred in deciding the various disputes of fact in favour of the respondents and whether it did so without taking into account issues of credibility, reliability and probabilities; erred in not determining whether the respondents were unlawful occupiers and that it would be just and equitable to order their eviction; and whether it erred by dealing with and made findings on issues which allegedly were not properly before it.

[36] In *Mashongwa v Passenger Rail Agency of South Africa*[8] the Constitutional Court held that it is undesirable for an appeal court to second guess the well-reasoned findings of the trial court. Only under certain circumstances may an appellate court interfere with the factual findings of a trial court. What constitutes those circumstances are demonstrable and material misdirection and a finding that is clearly wrong. Otherwise, trial courts are best placed to make such findings. If, on the other hand, the reasons for the trial court's conclusions are not satisfactory, or its findings are plainly wrong, the appeal court is entitled to interfere. The reason for this approach was stated in in *R v Dhlumayo*[9] as follows:

"*The trial Judge has advantages-which the appellate court cannot have-in seeing and hearing the witnesses and in being steeped in the atmosphere of the trial. Not only has he had the*

[8] *Mashongwa v Passenger Rail Agency of South Africa* 2016 (2) BCLR 204(CC) at para [45].

[9] *R v Dhlumayo* 1948(2) 677 (A) at 677

*opportunity of observing their demeanour, but also appearance and whole personality. This should never be overlooked. Consequently, the appellate court is very reluctant to upset the findings of the trial Judge."*

[37] In *S v Monyane and Others*[10] the SCA held that the powers of a court of appeal to interfere with the findings of fact of a trial court are limited. It held that in the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence show them to be clearly wrong. A thorough reading of the record in this matter shows no misdirection by the court a quo in its factual findings.

[38] Counsel for the appellant contends that the court a quo failed to follow the approach advocated by SCA in *Stellenbosch farmers Winery Group Limited and Another v Martel et Cie and Others*[11]*( Stellenbosch-Martel)* for the resolution of factual disputes. Consequently, counsel submitted, it failed to take into consideration all the parties' interests, make a value judgment on the true facts which had to be judicially determined, and give a truly just and equitable remedy. Such a remedy would have struck a balance between the parties' competing interests. Counsel further submitted that the appellant has satisfied all the procedural requirements for an eviction order and that the court a quo ought to have granted an order for the eviction of the respondents. He accordingly prayed that the appeal be upheld and an order for the eviction of the respondents be granted.

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[10] *S Monyane and Others* 2008 (1) SACR 543 (SCA) at par 15.
[11] *Stellenbosch Famers Winery and Another v Martel et Cie and Others* 2003 (1) SA 11 (SCA) at par 5.

[39] Although the court a quo did not specifically refer to the *Stellenbosch-Martel* judgment, it is evident from its analysis of the evidence that it applied the approach to the resolution of disputes of fact advocated in that judgment. The Learned Judge compared the backgrounds of the two main witnesses, Bernard and Lynol, their respective educational backgrounds and sophistication, as well as their demeanour in the witness box. Based on this approach it was impressed by the frankness of Lynol and consequently accepted his version.

[40] Counsel for the appellant's submission that the court a quo ought to have found that the respondents are unlawful occupiers, however, cannot be faulted. The court a quo ought to have found that the respondents were unlawful occupiers as defined in s 1 of the PIE Act. Section 1 of the PIE Act defines an unlawful occupier as any person who occupiers land without the express or tacit consent of the owner or person in charge of such land. This makes the PIE Act applicable to all unlawful occupiers, irrespective of whether their occupation of such land was previously lawful[12]. After the sale of the property to the appellant, albeit in circumstances pointing to misrepresentation and/or fraud and/or coercion, the respondents continued to occupy the property in terms of the lease agreement, but their lawful occupation terminated when they were given notice to vacate the property. The consequence of this notice is that the respondents became unlawful occupiers as defined in the PIE Act.

[41] A finding that an occupation is unlawful in terms of the PIE Act does not necessarily lead to an order of eviction[13]. Had the court a quo found that the respondents were unlawful occupiers, it would have had to determine whether it

[12] See *Davidan v Polovin NO* [2021] 4 ALL SA 37(SCA) at par 12.
[13] *Grobler v Phillips and Others* 2023(1) SA 321 at par 29.

would be just and equitable to order their eviction from the property. In *Port Elizabeth Municipality v Various Occupiers*[14] the Constitutional Court, in outlining what the phrase 'just and equitable' entailed in the context of the PIE Act, quoted with approval from the judgment in *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others* that:

*'The use of the term just and equitable relates to both interests, that is, what is just an equitable not only to the persons who occupied the land illegally but to the landowner as well….that the term also implies that a court, when deciding on a matter of this nature, would be obliged to break away from a purely legalistic approach and have regard to extraneous factors such as morality, fairness, social values and implications and consequences which would necessitate bringing out an equitable, principled judgment'*

to hold that the phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of a technical kind that flow ordinarily from the provision of the land law. The court further held that it is called upon to go beyond its normal functions and to engage in active judicial management according to equitable principles of an ongoing stressful and low government. This has major implications for the manner in which it must deal with the issues before It, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make[15].

[42] Counsel further contended that the various issues that the court a quo included in its order were neither pleaded nor fully canvassed in evidence in the sense that the appellant was not alerted about them and that the court would be expected to decide them as part of the issues. Counsel found support in three

[14] *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).
[15] *Port Elizabeth Municipality*, supra, at par 36.

judgments of the SCA, namely, *Minister of Safety and Security v Slabbert*[16], where it was held that a party has to allege in the pleadings the material facts upon which it relies; *National Director of Prosecutions v Zuma*[17], that a judgment must be confined to the issues before the court; *and Fischer and Another v Ramahlele and Others*[18] that it is in the nature of civil litigation in our adversarial system that the parties, either in the pleadings or affidavits (which serves both the function of pleadings and evidence) to set out and define the nature of the dispute, and it is for the court to adjudicate upon those issues. Counsel contends that in having regard to the issues which were not before it, the court a quo was influenced in its decision on the main and the only issue properly before it, viz, what would be a just and equitable remedy on the relevant facts of the matter.

[43] In the enquiry whether it would be just and equitable to order the respondents' eviction, the court is enjoined by s 4(7) of the PIE Act to consider all relevant circumstances. Section 4(7) of the PIE Act provides guidance on the factors and circumstances which a court must take into consideration to determine whether it is just and equitable to grant an eviction order. These factors include, except where the land is sold in a sale in execution pursuant to a mortgage, whether land has been made available or can reasonable 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.

[44] The use of the word 'include' in s 4(7) of the PIE Act is a clear indication

[16] *Minister of Safety and Security v Slabbert* [2010] 2 ALL SA 474 (SCA)
[17] *National Director of Prosecutions v Zuma* 2009 (2) SA 277 (SCA) at par15 and 19.
[18] *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA) at par 13.

that the factors mentioned therein are not the only factors that must be considered; the court must take into consideration all relevant circumstances, including the peculiar circumstances of an evictee[19]. It is in this respect that the court a quo engaged with all the peculiar but relevant circumstances of this case. The peculiar circumstance of the evictees in this matter highlights the importance of investigating all the relevant circumstances to determine whether it would be just and equitable to order the eviction of the respondents.

[45] It is permitted by the approach to matters of this nature, where the court must investigate all relevant circumstances to determine whether it is just and equitable to order an eviction, for the court to go beyond its normal functions and to engage in active judicial management according to equitable principles. The court a quo was therefore allowed to enquire and pronounce on the issues that were germane to the determination of what is just and equitable in the circumstances.

[46] In contrast the appellant presented a carefully curated version of events and avoided engaging with the peculiar circumstances of this case. The appellant wields its s 25 of the Constitution rights to property and demand, solely on the basis of such ownership, irrespective of the 'unlawful' and/or dubious manner of its acquisition of the property, that the court sanctions the eviction of the respondents without enquiring whether it would be just and equitable to do so. Whilst the right to ownership of property is protected by the Constitution which prohibits the arbitrary expropriation of property, it simultaneously through the PIE Act, a statute adopted to give effect to the protection of proprietary rights and dignity provisions of the Constitution, prevents illegal evictions from and unlawful

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[19] *Grobler v Phillips* supra at par 38.

occupation of land. To prevent illegal evictions, where the evictees are unlawful occupiers, courts are enjoined to enquire and determine whether in the circumstances of a particular case an eviction would be just and equitable.

[47] Counsel for the appellant submitted that although there was no obligation on the appellant to provide the respondents with alternative accommodation, such obligation being on a municipality where the latter seeks the eviction of unlawful occupiers, the appellant in this matter offered the respondents alternative accommodation. Counsel referred us to the judgment of the Constitutional Court in *Grobler v Phillips*[20] where the court, in granting an eviction order of an 84 year old woman and her disabled son, held that a private landowner was under no obligation to provide free housing and that the offer of alternative accommodation is not a precondition for a grant of an eviction order but is one factor in the just and equitable calculus. Counsel contended that the offer of alternative accommodation in this matter is a factor that should persuade this court that it would be just and equitable to order the respondents' eviction.

[48] The facts of the *Grobler* matter are distinguishable from the facts of this case. The landowner in that matter purchased the property in question in a lawful manner and offered to move the unlawful occupier to a suitable alternative accommodation in the same neighbourhood. I have already alluded to the fact that the particulars of the alleged alternative accommodation offered to the respondents were not disclosed to determine whether it is suitable. But most pertinently the appellant's acquisition of the property points to underhand and unlawfulness and this court cannot countenance that by ordering the eviction of the respondents. To do so would not be just and equitable.

[20] *Grobler v Phillips* 2023 (1) SA 321 (CC).

[49] The evidence on the issues the court aquo considered exposed the machinations and underhand dealings leading to the LPFT, in which the respondents were beneficiaries, applying for and being granted the water use licence, the attempts by the appellant to have the licence transferred into its name without *quid pro quo* performance; the removal of Lynol as a trustee of the LPFT for flimsy reason which do not bare scrutiny and renaming it the Bergrivier Boerdery Werkers Trust; Bernard's economic strangulation of Lynol by unilaterally amending his conditions of employment by reducing his wages, making it eventually difficult for him to meet his financial obligations and thereafter capitalising on his vulnerability to purchase his property for less than its market value, and eventually dismissing him from the appellant's employment without due processes; the attempts to transfer the water use licence into the name of the appellant before the corresponding allocation of 30% of the appellant's shares to the LPFT and/or the refusal to pay the LPFT for the use of its water rights attached to the water use licence, are all factors that the court a quo, correctly in my view, took into account to determine whether it would be just an equitable to order the eviction of the respondents.

[50] The appellant cannot expect to secure the eviction of the respondents against the background set out supra. The web of deceit described above is at the core of the respondents losing their home and facing the prospects of eviction. It would not be just and equitable in these circumstances to order their eviction while this situation continue to obtain. But the respondents also cannot expect to continue in occupation of the property in perpetuity. The PIE Act was enacted to prevent the

arbitrary deprivation of property and is not designed to allow for the expropriation of land from a private landowner from whose property the eviction is sought[21].

[51] It is therefore imperative that a balance be struck between the competing interests of the appellant and the respondents. A just and equitable solution has to be found to unravel the intractable situation created by all the manipulations and misrepresentations which led to the respondents losing their home. Without prescribing how to go about this, one avenue open to the parties is to negotiate for a fair settlement of all the issues, including but not limited to payments of a just and fair price for the respondents' property or reversing the sale, without resorting to litigation. The only other option to a failure to negotiate a settlement is to litigate. To do this the respondents, and the appellant if it has any claim against the respondents, ought be afforded an opportunity to initiate such a process, if they so wish. It is therefore imperative that a structured order, with time frames, be made part of the eviction order.

[52] It would not be just and equitable, in my view, to order the eviction of the respondent before attempts to resolve the problems are made. The attempts at finding a solution, however, have to be within a reasonable time frame to avoid the respondents' continued occupation of the property indefinitely which may amount to an arbitrary expropriation of the appellant's property and at the same time allow the respondents enough time to vindicate their rights. In the circumstances I make the following order:

52.1 An order is hereby granted for the eviction of the first and second respondents as well as any other persons who may be occupying the

[21] *Grobler v Phillip*, supra, at par 37.

property through them from erf 1[…] Korinberg situated at 1[…] […] Street Koringberg;

52.2 The operation of the eviction order referred to in paragraph 52.1, supra, is hereby suspended for a period of One Hundred and Eighty (180) days. The suspension of the order is on the following conditions:

52.2.1 that the parties engage in bona fide negotiations for the resolution of their disputes.

52.2.2 Failing to reach any agreement following such negotiations within thirty (30) days from the date of this order, the respondents shall institute any legal proceedings for any relief to which they may be entitled, within thirty (30) days of the expiry of the first thirty (30) day period from the date of this order;

52.3 The suspension of the eviction order referred to in paragraph 52.1 supra shall fall away and the sheriff of this court shall evict the respondents from the property in the event of the parties failing to reach any settlement as envisaged in paragraph 52.2.1, supra and the respondents failing to institute legal proceedings for any relief within 60 days of this order, in which event the respondents shall be liable for costs on a party and party scale C.

52.4. At any stage prior to the expiry of the thirty (30) day period referred to in paragraph 52.2.1 supra, any of the parties shall be entitled, on 10 (ten) days written notice to the other, to approach a Judge in chambers for directives for the further conduct of the negotiations or any other matter relating to the negotiations for a settlement.

**M J DOLAMO**

**JUDGE OF THE HIGH COURT**

I agree

**D KUSEVITSKY**

**JUDGE OF THE HIGH COURT**

I agree

**ZL MAPOMA**

**ACTING JUDGE OF THE HIGH COURT**

**Appearances**

| | | |
|---|---|---|
| for Appellant | : | Mr. RGL Stelzner (SC) |
| Instructed by | : | TSP Inc |
| | | |
| for First and Second Respondents | : | Mr. C Kilowan |
| Instructed by | : | P Mbanane Attorneys<br>c/o Bagwadin Attorneys |