



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 2025-056036

In the matter between:

COMMUNICARE NPC

Applicant

and

E[...] A[...] K[...]

First Respondent

**ALL OCCUPANTS OF THE PROPERTY
SITUATED AT 2[...] G[...] FLATS,
8[...] - 9[...] J[...] STREET, BROOKLYN,
WESTERN CAPE PROVINCE**

Second Respondent

CITY OF CAPE TOWN MUNICIPALITY

Third Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 18 May 2026

Delivered: Electronically on 19 May 2026

Summary: Eviction – lease agreement validly cancelled – willingness to settle arrears does not justify continued occupation – possibility of homelessness considered – City of Cape Town did not meet obligation imposed by court order – eviction nevertheless just and equitable

ORDER

1. The first and second Respondents shall vacate the property situated at 2[...] G[...] Flats, 8[...] -9[...] J[...] Street, Brooklyn, Western Cape Province (*"the property"*) on or before 24h00 on **30 November 2026**.
2. The applicant shall, as soon as possible, but in any event not later than sixty [60] days before the date referred to in paragraph 1 above, cause a copy of this order to be served as follows by the sheriff:
 - 2.1 by serving a copy thereof on the first and second respondents; or
 - 2.2 by leaving a copy thereof with the person apparently in charge of the property at the time, being a person not less than sixteen (16) years of age; or
 - 2.3 if service in the manners described above is not reasonably possible, by affixing a copy of the order to the front door of the property; and
 - 2.4 by serving a copy thereof on the Third Respondent at its offices; and
 - 2.5 by serving a copy thereof on Nolwandle Gqiba and Carl Joshua Pophaim in a manner provided for in Uniform Rule 4.

3. Should either of the first and/or second respondents fail to vacate the property on the date referred to in paragraph 1 above, the sheriff or their deputy is directed and authorised to:
 - 3.1 evict all those persons on the property;
 - 3.2 remove from the property the personal effects and possessions of all persons so evicted and/or, if necessary, to store the said personal effects and belongings;
 - 3.3 enlist the assistance of members of the South African Police Services in the execution of the steps described in paragraphs 3.1 and 3.2 above, insofar as it may be necessary;
 - 3.4 place a written notice on the principal door of the property specifying that the said personal effects and belongings are being stored by them and that same may be reclaimed if so stored; and
 - 3.5 release the personal effects and belongings of all persons, if so stored by them, upon and against payment of the costs of such storage.
4. It is declared that, should the first and second respondents fail to secure alternative accommodation, the third respondent is obliged to provide the first and second respondents with temporary emergency accommodation by no later than two weeks prior to the date referred to in paragraph 1 above.
5. The third respondent is directed, by no later than **30 September 2026**, to deliver a report to this Court, confirmed on affidavit by an appropriate

official employed by the third respondent, detailing:

- 5.1 the accommodation it will make available to the first and second respondents and when such accommodation will be made available; alternatively
 - 5.2 the reasons why it cannot make such accommodation available, in which case it will inform the Court of the steps it will take to render assistance to the first and second respondents in order to prevent them from becoming homeless.
6. Should the third respondent fail to comply with the provisions of paragraphs 4 and 5 above, the first and second respondents are granted leave to approach this Court on the same papers, supplemented as necessary, for an order in the following terms:
- 6.1 That the Executive Director of Human Settlements, Ms. Nolwandle Gqiba, be joined to these proceedings in her personal capacity as the Fourth Respondent.
 - 6.2 That the Mayoral Committee Member for Human Settlement, Mr. Carl Joshua Pophaim, be joined to these proceedings in his personal capacity as the Fifth Respondent.
 - 6.3 That the fourth and fifth respondents be declared to be in contempt of this Order, and consequent upon such declaration:
 - 6.3.1 that a fine, such as is deemed appropriate by the Court, be imposed on the fourth and fifth respondents; and/or
 - 6.3.2 that a period of imprisonment, such as is deemed

appropriate by the Court, be imposed on the fourth and fifth respondents, suspended on conditions deemed appropriate by the Court; and

6.3.3 that the fourth and fifth respondents shall pay the costs of the application in their personal capacities on the scale as between attorney and client; alternatively that the third, fourth and fifth Respondents shall pay the costs of the application on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved.

7. The first and second respondents shall pay the costs of this application, jointly and severally, the one paying the other to be absolved (Scale A shall apply).

JUDGMENT

Anderssen AJ:

Introduction

[1] The applicant ("*Communicare*") seeks the eviction from premises owned by them of the first and second respondents. The first respondent ("*Mr K[...]*") deposed to an affidavit in which he explains that he resides at the premises with his wife, their child and his nephew. He admitted to being in arrears due to an inability to pay his rent as a result of events in the film industry, in which he is employed, during 2023. He recorded that he does

not want to move and wants to pay the arrears. Communicare is a non-profit company and the owner of the building in which is situated the apartment that Mr K[...] and his family are currently occupying. The application for eviction is brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (“*PIE*”).¹

The facts

- [2] Mr K[...] entered into a written lease agreement with Communicare on 27 September 2022. The monthly rental was R3,500 and he would, in addition, be liable for water, electricity and other utility charges. Any failure to pay the amounts due timeously or at all, would constitute a material breach of the terms of the lease and would entitle Communicare to cancel the lease. In the event of a breach and subsequent legal action, Mr K[...] will be liable for the costs on an attorney and own client basis. The lease was for an initial period of 24 months commencing on 30 September 2022 and terminating on 29 September 2024. Mr K[...] paid the deposit due and took occupation of the property on 30 September 2022.
- [3] Mr K[...] did not pay the rental and utilities timeously, or even monthly, for the period of the lease. The tenant/debtor transaction record shows intermittent payments with arrears steadily accumulating so that by end February 2025 the arrears amounted to R31,558.73. Communicare did not renew the lease after its expiry on 29 September 2024. On 16 January 2025 Communicare informed Mr K[...] that the lease has been cancelled due to his non-compliance with the terms of the lease. As he continued to fail to pay the arrears in full and failed to vacate the premises, the

¹ Act 19 of 1998.

application for eviction was launched. Communicare complied with the provisions of PIE in respect of notification.

- [4] The third respondent, being the City of Cape Town (*“the City”*), investigated Mr K[...]’s personal circumstances and filed an affidavit. Mr K[...] completed the Personal Circumstances Questionnaire. According to the city official’s affidavit Mr K[...] does not qualify for emergency accommodation as he receives a monthly income of approximately R14,000.00. He indicated that his monthly household expenses amount to R9,750.00 and he thus has R4,250.00 available each month to pay rental. He does, however, qualify for the Social Housing Programme. There are two minors living at the apartment.

The legal principles

- [5] In terms of section 4(7) of PIE an eviction order may only be granted if it is just and equitable to do so, after the court has had regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If the requirements of section 4 are satisfied and no valid defence to an eviction order has been raised the court ‘must’, in terms of section 4(8), grant an eviction order. When granting such an order the court must, in terms of section 4(8)(a) of PIE, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The court is empowered in terms of

section 4(12) to attach reasonable conditions to an eviction order.²

- [6] The ***Changing Tides***-case³ emphasises that the outcome of an eviction application must be just and equitable to all parties, which includes the rights of the occupier(s) of the property in question as well as the rights of property owners:

[12] ... The first enquiry is that under s 4(7), the court must determine whether it is just and equitable to order eviction having considered all relevant circumstances. Among those circumstances the availability of alternative land and the rights and needs of people falling in specific vulnerable groups are singled out for consideration. Under s 4(8) it is obliged to order an eviction 'if the ... requirements of the section have been complied with' and no valid defence is advanced to an eviction order. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the owner of the property, such as the existence of a valid lease. Compliance with the requirements of s 4 refers to both the service formalities and the conclusion under s 4(7) that an eviction order would be just and equitable.

[13] Two factors that have loomed large in our case law on evictions, both under PIE and otherwise, are the risk of homelessness and the availability of alternative land or accommodation.

*[16] The issue of the availability of alternative accommodation is more difficult in the context of an eviction at the instance of an owner of property that is not an organ of state. There another constitutionally protected right, the right to property, comes into play. As pointed out in this court in *Ndlovu v Ngcobo: Bekker & another v Jika* the effect of PIE is not to expropriate private property. What it does is delay or suspend the exercise of the owner's rights until a determination has been made whether an eviction would be just and equitable and under what conditions. The Constitutional Court endorsed that approach in *Blue Moonlight*.*

[18] The position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The Constitutional Court has said that private entities are not obliged to provide free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising, or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers. That approach makes it difficult to see on what basis the availability of alternative land or accommodation bears on the question whether an eviction order should be granted, as opposed to the date of eviction and the conditions attaching to such an order. One can readily appreciate that the date of eviction may be more immediate if alternative accommodation is available, either because the circumstances of the occupiers are such that they can arrange such accommodation themselves, or because the local authority has in place

² ***City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*** (SCA) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206 (SCA); [2013] 1 All SA 8 (SCA) (14 September 2012).

³ *Supra* at [12], [13], [16] and [18].

appropriate emergency or alternative accommodation. Conversely, justice and equity may require the date of implementation of an eviction order to be delayed if alternative accommodation is not immediately available...

- [7] In **Ndlovu v Ngcobo**,⁴ Harms JA made the point that ownership and the lack of any lawful reason to be in occupation are principal factors in the exercise of the court's discretion:

[19] Another material consideration is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and the respondent's unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties. Whether the ultimate onus will be on the owner or the occupier we need not now decide.

- [8] The Supreme Court of Appeal⁵ has pointed out that, where a private landowner seeks the eviction, the availability of alternative land or accommodation assumes greater importance in the second enquiry, namely, determining what is a just and equitable date for eviction. It is here that the constitutional obligations of the appropriate arm of government – in our cities this is inevitably the municipality – come into focus and assume their greatest importance. The reason is that, even if it is just and equitable to grant an eviction order, this is not the end of the enquiry, because any eviction order must operate from a date fixed by the court and that date must be one that is just and equitable.

- [9] In **Grootboom**,⁶ the Constitutional Court ruled that the state has a constitutional obligation to provide access to adequate housing:

⁴ **Ndlovu v Ngcobo, Bekker & another v Jika** (1) (240/2001, 136/2002) [2002] ZASCA 87; [2002] 4 All SA 384 (SCA); 2003 (1) SA 113 (SCA) (30 August 2002) at para [17] and further as quoted above.

⁵ **Changing Tides** *supra* at para [20].

⁶ **Government of the Republic of South Africa and Others v Grootboom** 2001 (1) SA 46 (CC).

All levels of government must ensure that the housing program is reasonably and appropriately implemented in the light of all the provisions in the Constitution. All implementation mechanisms and all State action in relation to housing falls to be assessed against the requirements of s 26 of the Constitution. Every step at every level of government must be consistent with the constitutional obligation to take reasonable measures to provide adequate housing.

Section 26, read in the context of the Bill of Rights as a whole, must mean that the occupiers of land has a right to reasonable action by the State in all circumstances and with particular regard to human dignity. This is the backdrop against which the conduct of the State must be seen.⁷

- [10] Although the Constitutional Court in the ***Olivia Road***-case⁸ dealt with illegal occupation of land owned by the State, the following *dictum* is nevertheless relevant (particularly in light of that court's recognition that every step taken by the State in relation to a potentially homeless person must also be reasonable if it is to comply with section 26(2)⁹):

[14] Engagement is a two-way process in which the City and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives. There is no closed list of the objectives of engagement. Some of the objectives of engagement in the context of a city wishing to evict people who might be rendered homeless consequent upon the eviction would be to determine—

- (a) what the consequences of the eviction might be;*
- (b) whether the city could help in alleviating those dire consequences;*
- (c) whether it was possible to render the buildings concerned relatively safe and conducive to health for an interim period;*
- (d) whether the city had any obligations to the occupiers in the prevailing circumstances; and*
- (e) when and how the city could or would fulfil these obligations.*

[15] Engagement has the potential to contribute towards the resolution of disputes and to increased understanding and sympathetic care if both sides are

⁷ At paras 82-83.

⁸ ***Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others*** (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC); 2008 (5) BCLR 475 (CC) (19 February 2008).

⁹ At para [17].

willing to participate in the process. People about to be evicted may be so vulnerable that they may not be able to understand the importance of engagement and may refuse to take part in the process. If this happens, a municipality cannot walk away without more. It must make reasonable efforts to engage and it is only if these reasonable efforts fail that a municipality may proceed without appropriate engagement. It is precisely to ensure that a city is able to engage meaningfully with poor, vulnerable or illiterate people that the engagement process should preferably be managed by careful and sensitive people on its side.

- [11] The importance of engagement between the City and Mr K[...] is underscored in the **Olivia Road** matter. The Constitutional Court set the eviction order aside in **Olivia Road**, on the grounds of the lack of engagement between the municipality and the occupiers, not its appropriateness.

The order made in third division

- [12] This application was postponed from the third to the fourth division on 24 July 2025. When postponing the matter, the court directed that:

8. *The third respondent is ordered to assist this Court in reaching a just and equitable decision by delivering a report, which report shall be made available to the applicant and the first to respondents on or before **13 October 2025** dealing with:*
 - 5.1 *the individual personal circumstances of the first and second respondents, including but not limited to:*
 - 5.1.1 *the demographic composition of the respondents' household;*
 - 5.1.2 *whether there are elderly or disabled persons living at the property;*
 - 5.1.3 *whether there are children at the property and their current age(s);*
 - 5.1.4 *whether any of the above persons have special needs, whether it be physical, psychological or otherwise, which the court may find relevant; and*
 - 5.1.5 *whether there are woman headed households amongst the occupiers;*
 - 5.2 *information regarding the property situated at **2[...] G[...] Flats, 8[...]–9[...] J[...] Street, Brooklyn, Western Cape Province** including whether it is considered a slum, posing health and/or safety risks;*
 - 5.3 *whether the eviction of the respondents will likely result in homelessness;*
 - 5.4 *the implications of the provision of alternative land or accommodation on the property owner;*

- 5.5 details of all engagement with the applicant, the respondents and whether there exists any scope for mediation;
- 5.6 the infrastructure in the proposed settlement area, including but not limited to, the availability and location of the public transport, medical facilities, adequate schools and further social services; and
- 5.7 the impact relocation to the proposed settlement will have on the first and second respondents' disposable income and transport costs

[13] The Third Respondent's Report deposed to by an employee of the City (*"the City's report"*) does not comply with the clear directive given by this court. It simply records that Mr K[...] does not qualify for emergency accommodation due to his income, that the City faces a challenge to provide more emergency accommodation as there is a shortage of land. It mentions in passing that two of the occupants are minors. It records Mr K[...]’s income and household expenses and his contention that an eviction will leave him homeless. The report simply references social housing options (with telephone numbers and email addresses).

[14] The City's report is silent on the ages of the children, whether Mr K[...]’s wife is earning an income, whether the family qualifies for social grants, whether they previously received a government housing subsidy or benefited from an assistance programme (which, according to the City's report would disqualify them from the social housing program). The City's report is silent on the demographic composition of the respondents' household, does not mention that Mr K[...] is a contract worker who spends months away from the household – thereby making his wife the head of the household *in absentia* – or whether anyone has special needs. The instructions at paragraphs 5.2 to 5.7 of the order were similarly ignored.

[15] The City's failure to comply with the court's directive, when the stated aim was to assist the court in *"reaching a just and equitable decision"*, is of

particular concern. Section 26 of the Constitution guarantees Mr K[...] and the other occupants under him the right to access adequate housing, and obliges the State (and all levels of government) to act progressively within available resources to achieve this goal. Furthermore, it strictly prohibits unlawful, arbitrary evictions, requiring proper judicial oversight before any home is demolished or a person is removed. The **Grootboom** judgment established that the government must have comprehensive housing programs and that evictions that lead to homelessness are generally unconstitutional. The **Olivia Road**-case established the importance of engagement between the City and Mr K[...]. The City's report clearly does not do justice to this obligation of engagement. This is of particular relevance in a matter such as this one where the current occupants are unrepresented and have limited financial means.

Discussion

- [16] Communicare is a private non-profit organisation under no obligation to provide housing to members of the public. Although Mr K[...] made intermittent payments in respect of his occupation of the property, these payments were not made timeously and were not sufficient to bring the arrears up-to-date. His non-compliance with the terms of the lease agreement justified its cancellation by Communicare. In any event, the term of the lease expired on 29 September 2024 and the lease was not renewed. It is common cause on the papers that Mr K[...] did not comply with his obligations in terms of the lease agreement. He admitted that he was unable to pay his rent and that arrears had accumulated. His defence to the eviction application is that he does not "*want to move. I want to finish*

my balance. I am willing to stay at house if we can find an arrangement of me paying the money.”

[17] The explanation for Mr K[...]’s non-compliance – being events that took place in 2023 in the film industry – does not address why the tenant/debtor transaction record showed one payment of R7,660.00 (the admin fee, deposit and first month’s rental) on 19 October 2022 and only one payment of R3,500.00 on 6 December 2022. Mr K[...] thus fell into arrears very shortly after he entered into the lease agreement. The tenant/debtor transaction record shows intermittent payments in 2023 totalling R25,500.00, with the arrears having accumulated to R21,542.15 by the end of the calendar year. Although Mr K[...] clearly made efforts at times to pay the arrears, by paying more than the monthly rental owed, his payments in 2024 remained intermittent and insufficient, which meant that the arrears increased from R21,542.15 on 31 December 2023 to R30,306.96 a year later. The tenant/debtor transaction record thus indicates a continued increase in the arrears. I was provided with an updated transaction record at the hearing that indicates that Mr K[...] was able to make more regular payments during 2025. He was unable, however, to catch up on the arrears and, as at 8 May 2026, his arrears were R34,216.51 (the increase in arrears seems to be attributable to an increase in rental from R3,500 to R3,675 per month whilst the debit order was fixed at R3,500).

[18] As it is common cause between the parties that Mr K[...] is in arrears and has not met his obligations in terms of the lease agreement, Communicare has established that a material term of the lease agreement has been

breached. Even if this was not so, the period of the lease agreement has expired. Mr K[...] has not disputed that he remains in arrears or that the lease agreement has been cancelled validly. A willingness to settle the arrears does not assist him:

[18.1] The terms of the lease agreement has expired and has not been renewed.

[18.2] Although the events that caused Mr K[...] not to be able to secure regular income in 2023 are now behind us, he has not or has not been able to reduce the arrears.

[18.3] The Personal Circumstances Questionnaire indicates that he only has about R4,250 available per month to pay for accommodation (rental and utilities).

[18.4] Mr K[...] informed me at the hearing that he has no fixed employment but secures contracts from time to time. These contracts often take him away from home – such as the forthcoming one, commencing in July 2026. He will be spending two months in Durban and another month in Polekwane.

[19] Under section 4(8) of PIE the court is obliged to order an eviction if the requirements of the section have been complied with and no valid defence is advanced to an eviction order. Mr K[...] has not advanced a defence that would entitle him to remain in occupation as against the owner of the property, such as the existence of a valid lease. CommuniCare is not obliged to provide free housing for Mr K[...] and his family indefinitely. PIE has already restricted their rights as property owners because they have

been expected to submit to some delay in exercising their right to possession of their property. I am thus obliged to order an eviction.

[20] The only question that remains is the date for the eviction. The date must be 'just and equitable' in all the circumstances. Ms Oosthuizen has conceded that the date of the eviction is partly dependent on whether alternative accommodation is available. The date of eviction may be more immediate if alternative accommodation is available, either because the circumstances of the occupiers are such that they can arrange such accommodation themselves, or because the local authority has in place appropriate emergency or alternative accommodation. This is why the report requested from the City in the postponement order is of such importance to a court in determining what is just and equitable in the circumstances.

[21] In the absence of a report from the City containing relevant information, I am obliged to follow a more conservative approach in respect of the eviction date. I need to be sure that the date is 'just and equitable' and that the City will be able to provide alternate housing. I have considered the following factors in this regard:

[21.1] Communicare initially sought an eviction by 31 August 2026 but I was informed that they would agree to an eviction by end September 2026.

[21.2] Mr K[...] is departing to Durban, whereafter he will go to Polekwane, in mid-July 2026 and will be away for three months in terms of a new contract, returning on 22 November 2026.

[21.3] Communicare is collecting rental from Mr K[...]’s account each month in terms of a debit order signed by him – if the debit order is dishonoured, Mr K[...] has been making bank deposits within a few days to secure the rental.

[21.4] Although the City has, in the City’s report, listed alternate accommodation available under the social housing scheme, they have not indicated whether any housing is actually available under these programs. They have also not provided any indication of where these social housing institutions are situated or what the criteria may be for assessing whether Mr K[...] will qualify for a unit within the respective complexes.

[21.5] Mr K[...] informed me at the hearing that his nephew is in high school and that his own child with his wife is at a crèche. Both the school and the crèche are situated in close proximity to their current accommodation.

[21.6] The City’s report has not given any indication of what public transportation options are available for residents at the different complexes.

[21.7] According to the City’s report Mr K[...] does not qualify for emergency accommodation.

[21.8] It is likely that Mr K[...] and his family will have to transport household goods along with their personal belongings. I have not been told how old the nephew in high school may be. Certainly it will be difficult for Mr K[...]’s wife to be solely responsible for the

actual move from one residence to another when she has a young child (still in crèche) to care for. Mr K[...]’s personal involvement will clearly be necessary.

[22] I am satisfied that, in all the circumstances, an appropriate date for the eviction would be 30 November 2026.

[23] Costs must follow the cause. Communicare has not sought a cost award on an attorney client scale despite their entitlement to do so in terms of the lease agreement.

[24] The order is recorded above.

ANDERSSEN J S
Acting Judge of the High Court

Appearances:

For the applicant: Adv A Oosthuizen
Instructed by: BBM Attorneys

For the first and second respondents: Mr K[...] (in person)