

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2023-124043

(1) REPORTABLE: NO
(2) OF INTEREST TO THE JUDGES: YES
(3) REVISED:NO

DATE: 29 APRIL 2026

In the matter between:

MATSIMELA DOUGLAS MPHAHLELE

First Applicant

MARIA MPHAHLELE

Second Applicant

and

SINAH MAPULE DIKGALE

First Respondent

CITY OF JOHANNESBURG MUNICIPALITY

Second Respondent

JUDGMENT

MAUNATLALA AJ:

[1] This is an application for the eviction of the First Respondent, Ms Sinah Mapule Dikgale, and all persons claiming any right to occupation under her, from the property situated at No: 8[...]/Erf 8[...], P[...] G[...] Extension 11, Soweto (“the property”). The Applicants are the registered owners of the property. The Second Respondent is the City of Johannesburg Metropolitan Municipality (“the Municipality”), which has filed a report on the availability of temporary emergency accommodation.

[2] The First Respondent opposes the eviction. The matter turns on the proper interpretation and application of section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"), read with section 26(3) of the Constitution of the Republic of South Africa, 1996. The central question is whether it is just and equitable to evict the First Respondent, considering all relevant circumstances.

Background facts

[3] The facts are largely common cause or are clearly established on the papers.

[4] The First Respondent and her late husband purchased the property in 1998 by way of a mortgage bond from NBS Boland Bank. She defaulted on repayments, and on 18 January 1999 the Bank obtained default judgment against her.

[5] The property was subsequently purchased by Ms Letty Maleti Mashaba in 2012. On 6 September 2016, this Court granted a warrant of eviction against the First Respondent. Her application to rescind the default judgment was dismissed on 8 December 2017, and the Court ordered her eviction.

[6] On 12 February 2018, the Sheriff evicted the First Respondent. However, with the assistance of community members, she unlawfully re-occupied the property.

[7] On 18 May 2018, the property was transferred into the names of the Applicants, as reflected in the Deed of Transfer. The Applicants have since been liable for municipal rates, taxes, water, and sewerage charges – which the First Respondent has not paid.

[8] The Applicants commenced these eviction proceedings in November 2023, having been advised by the prosecutor in a related criminal case to obtain an eviction order in their own name as the new owners.

Is the First Respondent an “unlawful occupier”?

[9] The First Respondent contends that she is not an “unlawful occupier” under PIE because her occupation derived from a lawful purchase and she never voluntarily relinquished her rights.

[10] That argument cannot succeed. Section 1 of PIE defines an “unlawful occupier” as a person who occupies land without the express or tacit consent of the owner or without any other right in law. The First Respondent lost her right to occupy when default judgment was granted against her in 1999, which was never rescinded. The bank lawfully sold the property. The subsequent owners – first Ms Mashaba, now the Applicants – never consented to her occupation. To the contrary, they have consistently sought her eviction.

[11] As the Supreme Court of Appeal held in *Davidan v Polovin N O and Others*, at paragraph 12, PIE applies not only to those who occupied without initial consent but also to those whose consent was subsequently terminated. The First Respondent is therefore an unlawful occupier within the meaning of PIE. The fact that she once owned the property does not entitle her to remain indefinitely after ownership has lawfully passed to others.

The just and equitable enquiry

[12] Section 4(7) of PIE provides that where an unlawful occupier has occupied the land for more than six months, a court may grant an eviction order only if it is just and equitable to do so, after considering all relevant circumstances, including: –

[12.1] whether land can reasonably be made available by a municipality or other organ of state for the relocation of the unlawful occupier; and

[12.2] the rights and needs of the elderly, children, disabled persons, and female-headed households.

[13] This requires a careful balancing of the competing rights: the First Respondent's right of access to adequate housing and the Applicants' right to property under section 25(1) of the Constitution, as well as their right to control and use their own property. As held in *Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC)*, courts must adopt a context-sensitive approach that reconciles these rights in a manner that is just and equitable.

[14] The Municipality has conducted an assessment and filed a Temporary Emergency Accommodation ("TEA") report dated 2 November 2024. The report finds:

[14.1] The First Respondent earns approximately R11,000 per month. Her household includes an employed adult daughter (Mpho) whose income was not disclosed.

[14.2] Her income exceeds the Municipality's threshold of R3,500 for qualification for emergency accommodation.

[14.3] She is able to afford alternative rental accommodation within her means.

[14.4] Eviction will not render the household homeless, provided it is not abrupt and immediate.

[14.5] She does not qualify for TEA.

[14.6] The Municipality recommends that the eviction be granted, but with sufficient time to source alternative accommodation.

[15] The First Respondent attacks the TEA report as flawed. She says her income of R11,000 must support six people, including a disabled sibling, a university student, a minor grandchild, and two unemployed adult children. She argues that the Municipality applied its policy rigidly and failed to account for actual rental prices in P[...] G[...].

[16] I have considered these criticisms carefully. However, the First Respondent bears an evidentiary burden to place sufficient information before the court to show that she and her household would genuinely be rendered homeless and that it would be unjust and inequitable to evict them. (See *Ndlovu v Ngcobo*; *Bekker v Jika* 2003 (1) SA 113 (SCA) at para 19.)

[17] The First Respondent has failed to discharge that burden. She did not provide a breakdown of her monthly expenses, did not disclose the income of her employed daughter, and did not provide any proof of the alleged disability of her sister or the costs associated therewith. Without such information, the court cannot properly assess her claim that she cannot afford alternative accommodation.

[18] Moreover, the First Respondent has been in contempt of a previous eviction order granted on 8 December 2017. She was lawfully evicted by the Sheriff in February 2018 and then unlawfully re-occupied the property. Her conduct demonstrates a disregard for court orders and the rights of successive owners.

[19] The Applicants have been the registered owners since May 2018 – nearly seven years at the time of this judgment. They have been unable to use or enjoy their property. They have paid municipal charges for a property occupied by another person without any contribution from that person. The right to property, while not absolute, cannot be hollowed out by indefinite delay. Further, the court in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33 at *paragraph 40* provided that “...Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient and accept that the right to occupation may be temporarily restricted, as Blue Moonlight’s situation in this case has already illustrated.

I submit that this is not one of those circumstances warranting the continued protection of the unlawful occupiers. The Applicants have been deprived of the use and enjoyment of their property for a period approaching seven (7) years. This is so despite the fact that the unlawful occupiers have been assessed and found to be capable of securing alternative accommodation.

[20] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at para 11, the Supreme Court of Appeal confirmed that if the requirements of section 4 are satisfied and no valid defence is raised to the eviction, the court must grant an eviction order, albeit with a just and equitable date for vacating.

[21] I am satisfied that it is just and equitable to grant the eviction. The First Respondent has the means to secure alternative accommodation. The Municipality has confirmed that eviction will not render her homeless if a reasonable period is allowed. Her personal circumstances – her age, the female-headed household, and the presence of a minor child – have been taken into account. They do not, on the facts presented, outweigh the Applicants' rights or justify denying the eviction altogether.

Costs

[22] The Applicants seek costs of both Part A and Part B. There is no reason to depart from the ordinary principle that costs follow the result. The First Respondent has opposed the application without success.

Order

[23] In the premises, I make the following order:

1. The first respondent and all other unlawful occupants vacate within 90 days of

service of this order from the property known as **no: 8[...]/Erf 8[...], P[...]** **G[...]**
extension 11, Township, Soweto.

2. In the event the first respondent and all other unlawful occupants fails to vacate the property mentioned herein, the Sheriff is directed and authorized to evict the first respondent and all other unlawful occupants from the aforesaid property and place the applicants in vacant and undisturbed occupation of the property and in so doing to elicit the services of the South African Police Services or any other law enforcement security company in order to give effect to the order.
3. The first respondent and all other unlawful occupants be interdicted and restrained from entering the property at any time after they have been evicted there from by the Sheriff.
4. The order granted herein be executed on the date mentioned herein despite any notice in terms of Rule 49(11) by any party who might have an interest in the matter and without furnishing any tender of security in terms of Rule 49(12).
5. The first respondent to pay the costs to the extent of payment of **Part A** (1st Notice of Motion and the Ex-Parte Application) and **Part B** (Section 4(2) of the Prevention of Illegal Evictions from and Unlawful Occupation of land Act 19 of 1998) on a party and party scale.

**MI MAUNATLALA
ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG, GAUTENG DIVISION**

DATE OF HEARING: 5 February 2026

DATE OF ORDER: 5 February 2026

DATE OF REASONS FOR JUDGMENT: 29 April 2026