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

Case Number: **A2025-028573**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES

12 MAY 2026

DATE

SIGNATURE

In the matter between:

JIM HLONGWANE

Appellant/Applicant

and

RAHAB MESO N. O

First Respondent

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Second Respondent

JUDGMENT

Coram: Mia, J, Mahomed, J

THE COURT

Introduction

[1] This matter comes before this court as a composite application for condonation, reinstatement of a lapsed appeal, a stay of execution, and the determination of the appeal on the merits. which was granted by Magistrate JMP Josephs, of the District of Ekurhuleni North, held at Thembisa, Magistrates Court, on 27 November 2024. The appeal lies against the

judgment of Additional Magistrate Josephs, sitting in the Ekurhuleni North Magistrates' Court, Tembisa, delivered on 20 November 2024, in terms of which the appellant and his family were ordered to vacate the immovable property situated at 1[...] Q[...] Street, M[...] S[...], Tembisa ("the property"). The appeal is directed against the whole of that judgment.

Background

- [2] The appellant is a 43-year-old man who has resided on the property since birth. He resides there with his partner and their three minor children. The first respondent is the executrix of the estates of the deceased registered owners of the property. Eviction proceedings were instituted in May 2024 in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). On 20 November 2024 the court a quo granted an eviction order.
- [3] The appellant noted an appeal on 3 January 2025 but failed to comply with the applicable procedural requirements, resulting in the appeal lapsing.
- [4] The present application seeks to revive that appeal and to determine its merits. The matter is opposed, the respondent is of the view the reinstatement ought to be refused, it was submitted that there was a long delay of over 9 months and the appellant is opportunistic given that he was warned by the applicant's attorney, a quo, of the lapsing of the appeal in terms of the Rules.¹ It was further submitted that the court a quo judgment is correct, and judgment is well-reasoned, that the Magistrate fully considered all the evidence before him, the respondent (applicant a quo) discharged its onus for the order.
- [5] The following issues arise:
- a. whether condonation for non-compliance with the rules should be granted;
 - b. whether the appeal should be reinstated;

¹ Uniform Rules of Court: Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa GNR 48, G. 999 of 12 January 1965.

- c. whether execution of the eviction order should be stayed; and
- d. whether the court a quo erred in granting the eviction order.

Condonation and reinstatement

- [6] The principles governing condonation are trite. In *Melane v Santam Insurance Co Ltd*,² the Appellate Division held that the court exercises a discretion upon consideration of, inter alia, the degree of lateness, the explanation therefor, the prospects of success, and the importance of the case.
- [7] The appellant's non-compliance includes failure to furnish security timeously, failure to prosecute the appeal within the prescribed period, and failure to properly perfect the record. The explanation advanced is essentially one of financial incapacity and subsequent steps taken to regularise the position once funds were secured.
- [8] The explanation tendered was that he could not pursue the appeal timeously because he could not raise the security of R1 000. 00, within the times permitted in the Rules, as he is indigent. It was contended that he managed to obtain a loan only two months after the appeal notice was filed. The prosecution of the appeal was delayed further, when his instructing attorney encountered several problems with the filing of the papers on the court online platform. To support this contention, he referred this court to various correspondences between his attorney and the registrar's office related to the technical problem. Counsel submitted that by his calculation the delay was a period of only two months and was negligible given that the order impinges on the constitutional rights of the appellant and his family. Counsel proffered that to deny the appellant a reinstatement, would effectively close the door on his appeal against the judgment, which has grave consequences for this appellant. He submitted his client has good prospects of success on appeal, the matter involved his and his family's constitutional rights to housing, he has three minor children, one of whom suffers with epilepsy. He argued the prejudice his client suffers outweighs that to the respondent.

² 1962 (4) SA 531 (A).

[9] While the delay is not insignificant, it is not of such magnitude as to be incapable of condonation, particularly where there is no indication of wilful disregard of the rules. In the context of the appellant's lack of financial resources, the challenges with the Caselines platform it is appropriate to condone the lack of compliance with the Rules when regard is had to the issues to be determined, namely the prejudice to the appellant if the eviction order is upheld.

[10] Crucially, the enquiry does not end there. Prospects of success remain the decisive factor. For reasons that follow, the appellant has demonstrated reasonable prospects of success on appeal. In the circumstances, condonation ought to be granted, and the appeal reinstated.

Stay of execution

[11] The requirements for a stay of execution are well established: a demonstration of real and substantial justice, irreparable harm, and a balance of convenience favouring the grant of the order.

[12] The appellant faces imminent eviction together with his minor children. If execution were to proceed, the appeal would be rendered academic. The harm is manifestly irreparable. The balance of convenience favours the preservation of the status quo pending the determination of the appeal. A stay of execution must accordingly be granted.

The legal framework: PIE

[13] Section 26(3) of the Constitution provides that no person may be evicted from their home without an order of court made after considering all the relevant circumstances. PIE gives effect to this constitutional protection. It is now well established that an eviction may be granted only if it is just and equitable to do so, after consideration of all relevant circumstances. In *Port Elizabeth*

Municipality v Various Occupiers,³ the Constitutional Court emphasised that eviction proceedings require a “grace and compassion” infused approach balancing competing rights.

[14] The Supreme Court of Appeal in *City of Johannesburg v Changing Tides 74 (Pty) Ltd*⁴ made it clear that the onus rests on the applicant to place before the court facts from which it can conclude that eviction is just and equitable.

[15] More recently, in *Madulammoho Housing Association NPC v Nephawe and Another*⁵, the High Court reaffirmed that the applicant bears the duty to place sufficient information before the court to enable the formulation of a just and equitable order.

Error in the court a quo: onus

[16] The court a quo held, in effect, that the appellant bore the evidential burden to demonstrate why eviction would not be just and equitable. In doing so, the court relied on earlier authority such as *ABSA Bank Ltd v Murray* ⁶. That approach is inconsistent with the binding authority of *Changing Tides*, which clarified that the primary onus remains with the applicant throughout. The court a quo therefore misdirected itself on a material point of law. Such a misdirection vitiates the exercise of the court’s discretion and justifies appellate interference.

Dispute of fact and ownership

[17] The appellant contended that his late mother purchased the property in terms of a written agreement concluded in 2009, supported by a confirmatory affidavit. The court a quo declined to engage with this contention on the basis that it lacked jurisdiction to determine ownership. While it is correct that a magistrates’ court may not finally determine complex questions of ownership,

³ 2004 (12) BCLR 1268 (CC); 2005 (1) SA 217 (CC) para 23.

⁴ 2012 (6) SA 294 (SCA) para 34.

⁵ [2023] ZAGPJHC 7.

⁶ 2004 (2) SA 15 (C).

it is nonetheless required to consider whether a bona fide dispute of fact arises which impacts the lawfulness of occupation. The proper approach to disputes of fact in motion proceedings is articulated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*⁷. The court a quo failed to apply this principle. The existence of a written sale agreement, together with supporting evidence, cannot be dismissed as far-fetched or untenable on the papers. The failure to properly engage with this dispute constitutes a further misdirection.

The alleged verbal lease

- [18] The court a quo found that the appellant occupied the property in terms of a verbal lease agreement concluded with the deceased owners. However, the first respondent failed to plead the primary facts necessary to establish such an agreement, including when and where it was concluded. Moreover, on the respondent's own version, the alleged agreement was concluded at a time when the appellant was a minor. It is trite that a minor lacks contractual capacity unless duly assisted. No such assistance was alleged. The inference of a valid lease agreement was therefore not supported by the pleaded facts. The court a quo's conclusion in this regard cannot be sustained.

Homelessness and just and equitable enquiry

- [19] The appellant averred that eviction would render him and his family homeless. The respondent's response was limited to a bald assertion that alternative accommodation was available.

Application of the "just and equitable" standard

- [20] The central question on appeal is whether the eviction order granted by the court a quo satisfies the constitutional and statutory requirement that eviction be "just and equitable" within the meaning of section 26(3) of the Constitution and sections 4(6) and 4(7) of PIE. It is trite that the "just and equitable" enquiry is not a mechanical or checklist exercise, but a value-laden, context-

⁷ [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 at 634E–635C.

sensitive determination requiring the court to balance competing rights and interests in light of all relevant circumstances. In *Port Elizabeth Municipality v Various Occupiers*,⁸ the Constitutional Court emphasised that courts are required to make “difficult decisions, mindful of the values underlying the Constitution”. This approach has consistently been affirmed in subsequent jurisprudence, including *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd*.⁹

Procedural and Evidential Adequacy

- [21] A foundational requirement of the enquiry is that the court be placed in possession of sufficient, reliable and relevant information to enable it to determine whether eviction would be just and equitable. Courts are not passive arbiters in this context. As Sachs J made clear in *Port Elizabeth Municipality*,¹⁰ courts must engage in active judicial management to ensure that eviction proceedings are conducted in accordance with constitutional imperatives.
- [22] In the present matter, the municipality was cited but failed to place a substantive report before the court. There is no evidence addressing the availability of alternative accommodation; when such accommodation might be provided; or the consequences of eviction in the absence thereof. This omission is material. In *Occupiers of Erf 101, 102, 104 and 112, Shorts Retreat v Daisy Dear Investments (Pty) Ltd*,¹¹ the Supreme Court of Appeal held that municipalities bear a constitutional obligation to assist the court by providing detailed information relevant to the just and equitable enquiry. A perfunctory or absent report undermines the court’s ability to discharge its constitutional function.
- [23] The court a quo nevertheless proceeded to grant an eviction order on an incomplete evidential record. In doing so, it failed to heed the principle that

⁸ *Port Elizabeth* op cit note 3 para 33.

⁹ 2012 (2) SA 104 (CC); 2012 (2) BCLR 150 (CC); [2011] ZACC 33.

¹⁰ *Port Elizabeth* op cit note 3 para 36.

¹¹ 2009 (4) All SA 410 (SCA); 2010 (4) BCLR 354 (SCA) paras 14–16.

where critical information is lacking, the appropriate course is to postpone the matter and call for further evidence, rather than to determine the matter on inadequate foundations.

Nature and Duration of Occupation

[24] The appellant has resided on the property since birth, together with his partner and three minor children. The occupation is thus long-standing and settled. The duration and stability of occupation are highly relevant considerations. Section 4(9) of PIE requires courts to have regard to the period of occupation, and in *Port Elizabeth Municipality*,¹² the Constitutional Court cautioned that courts should be slow to grant eviction against relatively settled occupiers in the absence of a reasonable alternative. Long-term occupation indicates a deep level of social, familial and economic integration, and eviction in such circumstances is inherently disruptive. This factor weighs strongly against eviction.

Risk of Homelessness and Alternative Accommodation

[25] A central enquiry in determining whether eviction is just and equitable is whether it would result in homelessness. In *Blue Moonlight*,¹³ the Constitutional Court held that where eviction would render occupiers homeless, this is a highly relevant, and often decisive, consideration.

[26] The appellant asserts that he lacks the financial means to secure alternative accommodation. This assertion is not meaningfully rebutted. The respondent relies on generalised statements that rental accommodation is available but provides no evidence as to affordability; accessibility; or suitability for the appellant and his family.

[27] There is, moreover, no evidence from the municipality addressing emergency housing or relocation options. In *Pillay v Ramzan* (unreported, GLD),¹⁴ it was

¹² *Blue Moonlight* op cit note 9 para 28.

¹³ *Id* paras 39–40.

¹⁴ *Pillay and Another v Ramzan and Others* (unreported, Gauteng Local Division, Johannesburg).

emphasised that it is incumbent upon the eviction applicant to place sufficient information before the court to demonstrate that eviction would be just and equitable, including the position regarding alternative accommodation. The record does not reflect that this onus was satisfactorily met and the court a quo misplaced its deliberation on this aspect.

- [28] On the evidence before this court, there is a real and unrefuted risk that eviction will result in homelessness. The absence of evidence regarding alternative accommodation is, in these circumstances, fatal to the grant of an eviction order.

Vulnerable Occupiers and the Best Interests of Children

- [29] The presence of three minor children in the household engages section 28(2) of the Constitution, which provides that a child's best interests are of paramount importance in every matter concerning the child. Courts are required to conduct a specific, individualised enquiry into the circumstances of affected children. In *S v M*,¹⁵ the Constitutional Court stressed that a proper child-centred approach requires a "close and individualised examination" of each child's circumstances.

- [30] In the present matter, the court a quo made no substantive findings regarding the ages of the children; their schooling; the likely impact of eviction on their wellbeing. This constitutes a material misdirection. As held in *Occupiers of Erven 87 and 88 Berea v De Wet NO*,¹⁶ courts are obliged to undertake a PIE enquiry even where eviction appears otherwise justified, precisely because of the risk of homelessness and harm to vulnerable persons. In this instance minor children.

Meaningful Engagement

¹⁵ (Centre for Child Law as Amicus Curiae) 2007 (12) BCLR 1312 (CC); 2008 (3) SA 232 (CC); [2007] ZACC 18 para 24.

¹⁶ 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC); [2017] ZACC 18 para 48.

- [31] The jurisprudence of the Constitutional Court has established that meaningful engagement between the parties is an important component of the just and equitable enquiry. In *Occupiers of 51 Olivia Road, Berea Township v City of Johannesburg*¹⁷ at paras 18–21, the Court held that engagement is required to explore alternatives and mitigate the impact of eviction.
- [32] There is no evidence in the present matter of any meaningful engagement between the parties prior to the institution of proceedings, nor of any attempt at mediation as contemplated in PIE. The absence of engagement is a weighty consideration against eviction, particularly where vulnerable occupiers are affected.

Dispute of Fact and the Context of Occupation

- [33] The appellant raises a defence based on an alleged sale agreement, supported by confirmatory evidence. Whether ultimately valid or not, this raises a bona fide dispute of fact relevant to the context of occupation. While ownership disputes are not determinative in PIE proceedings, they form part of the broader factual matrix relevant to whether eviction is just and equitable. The court a quo's failure to properly engage with this dispute reinforces the conclusion that the enquiry was incomplete.

Balancing of Competing Rights

- [34] The court is required to balance the respondent's property rights under section 25 of the Constitution against the appellant's rights to housing (section 26), dignity (section 10), and the best interests of the children (section 28). This balancing exercise is one of proportionality. As stated in *Port Elizabeth Municipality*,¹⁸ the enquiry is not whether occupation is unlawful, but whether it is appropriate, in light of constitutional values, to order eviction.

¹⁷ 2008 (3) SA 208 (CC); CCT 24/07 [2008] ZACC 1.

¹⁸ *Port Elizabeth* op cit note 3 para 25.

[35] In the present matter, the prejudice to the appellant and his family includes the risk of homelessness, disruption of family life, and harm to minor children. The prejudice to the respondent consists primarily of delay in the vindication of property rights. In these circumstances, the balance of convenience and justice weighs decisively in favour of the appellant.

Conclusion on the Just and Equitable Enquiry

[36] The cumulative effect of the above considerations is decisive. The eviction order was granted, in the absence of a municipal report; without adequate evidence regarding alternative accommodation; without a proper enquiry into the circumstances of vulnerable occupiers; without meaningful engagement; and on an incomplete factual record. These deficiencies constitute material misdirections in the application of the “just and equitable” standard, warranting interference on appeal.

[37] On a proper application of the constitutional and statutory framework, eviction in the present circumstances cannot be said to be just and equitable.

Order

[38] In the result, the appeal succeeds.

[39] It is ordered as follows:

1. Condonation for the appellant’s non-compliance with the rules is granted.
2. The appeal is reinstated.
3. The appeal is upheld.
4. The order of the Magistrate is set aside and replaced with the following order:
 - 4.1 *The application is dismissed.*
 - 4.2 Costs to be costs in the cause.

MIA J

MAHOMED J

Appearances

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Date judgement delivered: 12 May 2026