

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 031772/25

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED:
DATE 07-05-2026
SIGNATURE

In the matter between:

LUNGILE HAPPINESS SHONGWE

First Applicant

LUNGILE HAPPINESS SHONGWE N.O.

Second Applicant

and

NTOKOZO PRITCHARDT SHONGWE

First Respondent

**UNLAWFUL OCCUPIERS AT 1[...] R[...]
CRESCENT, BLUE VALLEY GOLF AND COUNTRY
ESTATE**

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be _____.*

JUDGMENT

Introduction

[1] This is an opposed application for the eviction of the first and second respondents from an immovable property in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ (PIE) by the first and second applicants.

[2] The property forming the subject matter of this opposed application is property situated at Erf 1[...] K[...] Extension 18 Township situated at 1[...] R[...] Crescent, Blue Valley Golf and Country Estate, R[...] Road, Centurion.

[3] The first and second respondents are opposing the application on the basis that will be mentioned below.

Background

[4] The first applicant was married to the deceased, who passed away in 2021. The first respondent is the son of the first applicant's late husband. The deceased and the first applicant had properties, and among those properties, is the property that is subject matter. The deceased permitted the first respondent and second respondent to occupy the property free of charge since 2014. During 2021, the deceased passed away and bequeathed the entire estate in Trust to his wife, the first applicant, in terms of the Will signed by both the deceased and the first applicant. The very same Will appoints the first applicant to be the executrix.

[5] The first and second respondents continued to stay in the property even after the death of the first applicant's husband. The said property accumulated bills, for instance, the property was in arrears of rates, taxes, levies, water and electricity consumption charges.

¹ Act 19 of 1998.

[6] The first applicant alleges that she called a meeting with the first respondent and his brother to inform them that she will allow the first and second respondents to occupy the property, and the first respondent should pay the rates, taxes, levies, water and electricity consumption charges. The first respondent agreed that his continued occupation of the property rent free was conditional on him paying the property related expenses for the property.

[7] The respondents did not honour the agreement and continued to stay in the property without paying rates, taxes, levies, water and electricity consumption charges.

[8] On 16 December 2023 by way of WhatsApp message to the first respondent, she requested the first respondent to pay the municipality on the same day the first respondent agreed, by responding "Okay". On the 8 September 2024, she addressed a WhatsApp message to the first respondent addressing the non-payment of the property expenses, the first respondent again said "Ok".

[9] The applicants are now applying for the eviction of the first and second respondent, in her capacity as the executor and co-owner of the property because now she will not afford the property and they are unable to sell the property because of the outstanding payment of rates and taxes, levies, water and electricity consumption charges.

Facts

The applicant's version in summary is as follows:

[10] Following the death of the first applicant's husband on the 28 July 2021, the first applicant met with the first respondent and his brother, Ayanda Mcberton Shongwe, her stepson, to discuss the financial implications following her husband's passing.

[11] Her husband had been the breadwinner in the family and following his death, she could no longer afford to pay the property related expenses for all the properties by herself.

[12] She informed the first respondent and Ayanda that going forward, they could continue staying in the properties that they resided in rent free, until such time as the estate of her late husband had been wound up, however, she made it clear that they were each required to pay for all of the rates, taxes, levies, water and electricity consumption charges (utilities) in respect of each property that they each reside in. The first respondent and Ayanda agreed to these conditions.

[13] The first respondent duly remained in occupation of the immovable property in terms of the agreement, and is still in occupation of the immovable property, however:

[14] The first respondent has failed and /or refused and /or neglected to pay all amounts charged by the third respondent (Municipality) every month, and as of 25 October 2024, an amount of R 479 888.63 remained due, owing and payable by the first respondent in respect of arrear rates, taxes, water, sanitation and waste management, which charges were incurred during the period of the first respondent's occupation of the immovable property.

[15] In addition to the above, the first respondent failed and/or refused and/or neglected to pay all amounts charged by the Blue Valley Golf and County Estate Home Owners Association (the Home Owner's Association) every month, and as on 24 October 2024 an amount of R59 527.61 remained due, owing and payable by the first respondent in respect of arrear levies, which charges were incurred during the period of the first respondent's occupation of the immovable property.

[16] As a result of the breach of the agreement by the first respondent, on the 22 November 2024, the applicants' attorney addressed a letter to the first respondent and cancelled the arrangement/agreement. In the letter, the applicants' attorney

afforded the first respondent a reasonable period until 31 December 2024 to vacate the immovable property.

[17] The applicants' attorney also demanded payment of the arrear utilities totalling. R 539 416.24 within five business days thereof (which amount was made up as R 479 888.63 owing to the municipality, and R 59 527.61 owing to the Home Owners Association at the time).

[18] The respondents failed to vacate the immovable property and have been in unlawful occupation of the immovable property since 1 January 2025. Moreover, the first respondent has failed to pay any portion of the arrear utilities to her or to the creditors concerned (the third respondent and the Home Owners Association).

[19] The applicants submitted that the first respondent is a single, 37-year-old businessman, and the owner of the three successful businesses (Bearded Security Systems, Silver Solutions and Gung Ho Business Communications). He is more than capable of paying for the utilities yet shamelessly refuses to do so.

[20] For as long as the first respondent remains in the immovable property, the first applicant is unable to rent out the immovable property to a prospective tenant to derive a rental income to settle some of the debt that has been incurred pursuant to the first respondent's breach of the agreement.

[21] Moreover, she is unable to sell the immovable property to any prospective purchaser who would undoubtedly require vacant occupation of the immovable property on registration of transfer.

[22] Even if she managed to sell the property to a prospective purchaser, she would be required to pay the arrears incurred by the first respondent to the third respondent and the Home Owners Association to obtain the necessary clearance certificate to effect transfer.

[23] She alleges that she has been wholly deprived of the use and enjoyment of the immovable property, which she owns, due to the first respondent's continued

unlawful occupation thereof. As a result, she is suffering great prejudice and it is therefore just and equitable that an order for the eviction of the first and second respondents be granted.

[24] The first respondent has adequate means available to him to source alternative accommodation. As a successful business owner of three separate businesses, he is well able to afford rental for another property. At the time when the agreement to pay the utilities was entered into, they averaged approximately R 5 000 per month for the third respondent (municipality) and approximately R 2 000 per month for the Home Owner's Association, a total of R 7 000 per month.

[25] The applicant is suffering great prejudice and that it is just and equitable to grant an order for the eviction of the first and second respondent.

[26] There are several properties in the area (Centurion) which are available for the first respondent to reside in, by the way of example the first applicant submitted the following adverts for available properties, a 2-bedroom apartment situated at 6[...] F[...] Street, Heuwelsig Estate for R6000.00 per month.

[27] A 2-bedroom apartment situated at Olive Garden, 1[...] R[...] V[...], Olievenhoutbosch, Centurion for R4800.00 per month. A 2-bedroom apartment situated at 6[...] L[...] Street Olievenhoutbosch Centurion for R4700.00 per month.

[28] To the best of the first Applicant knowledge, the first respondent is single and reside alone in the immovable property. As such, to the best of her knowledge there are no elderly person, children, disable persons and neither is the household headed by a normal woman whose rights and needs would be unjustifiably infringed or prejudiced should the first and second respondent be evicted from the immovable property.

[29] Regardless of any agreement which the first respondent may allege to have existed between her late husband and himself, any such agreement would have lapsed upon the death of her late husband as the property was bequeathed to her in trust. Had her late husband intended on benefitting the first respondent, he would have expressly stipulated in his last Will and Testament. He did not do so.

The respondents' version in summary:

[30] The respondent shares the residence with minor children and the mother is staying with his brother in another property.

[31] The property was purchased by his late father specifically for his benefit as he was the first person to occupy same upon completion as it was purchased by his late father as an incomplete structure.

[32] The first applicant's late husband who is the first respondent's father knew that he would occupy the said property with his children and his partner at all material times.

[33] The first respondent denies the existence of the said oral agreement and records that he has been residing on the property from 2014, with his late father's consent.

[34] Accordingly, he contends that he has never been an illegal occupier and that the first applicant cannot terminate an agreement that does not exist.

[35] Further, he contends that he has never needed to conclude any agreement with the first applicant on the basis that he occupied the property since 2014 with the late father's consent.

[36] A factual and genuine dispute accordingly exists on whether or not there was such an oral agreement and whether or not first respondent is an illegal occupier.

Issues in dispute to be determined

[37] Whether it is just and equitable to evict the respondent from the property.

The Law and Analysis of Evidence

[38] This is an opposed application in terms of PIE.

[39] It is important to state what the law says in terms of PIE in respect of the eviction application.

[40] In the matter of *City of Johannesburg v Changing Tides 74 Pty Ltd and Others*,² in summary, it was held that there are two separate enquiries that must be undertaken by a court:

“First, it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner’s protected rights under section 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order.

In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly, it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.”

[41] The Constitutional Court recently affirmed, in *Occupiers, Berea v De Wet NO and Another*,³ that the obligation to provide the information relevant to the justice and

² 2012 (6) SA 294 (SCA) at para 25.

³ 2017 (5) SA 346 (CC) at para 47.

equity enquiry envisaged in section 4 of PIE rests first and foremost on the parties to the proceedings.

[42] The court, in *Madulammoho Housing Association NPC v Nephawe*,⁴ in considering the onus and the developing jurisprudence, remarked that:

‘...it is no longer sufficient to approach a court for an eviction order merely on the basis of the applicant’s ownership or control of the property, and the respondent’s unlawful occupation. Before an eviction order can be granted, the facts must demonstrate that it would be just and equitable to make one.

There is accordingly no presumption in favour of granting an eviction order simply because the applicant has alleged and proven ownership and unlawful occupation. Satisfying these requirements does no more than trigger a further enquiry into whether it would be just and equitable to evict an unlawful occupier. The fact that an owner is, at common law, entitled to exclusive use and occupation of their property where there are no other counter-vailing common-law rights held over it is a factor that counts in favour of granting an eviction order. But it is by no means dispositive of the issue.”

[43] To make the determination on whether it is just and equitable to evict the respondents, the court is also enjoined to consider the entrenched provisions of Section 25 and 26 of the Constitution, which deal with the rights to housing and property.

[44] The applicants in the pleadings allege that the first respondent has three successful businesses and therefore can afford to lease out or to purchase a property. The first applicant further compiled a list of available accommodation for the first respondent to reside in. These allegations were not disputed by the first respondent.

[45] The respondent does not dispute that the applicant is a 50% shareholder of the property, however, indicated that they are challenging the will.

⁴ [2023] ZAGPJHC 7 at para 10 – 11.

[46] In respect of the agreement, the respondent dispute that there was oral agreement between him and the applicant, but they fail to explain the WhatsApp messages where they replied OK when reminded about payment for municipal services.

[47] During the hearing of the matter, the first respondent continuously asserted that it is the owner of the property responsibility, to pay for the rates and taxes, water and electricity consumption. In other words, it is the responsibility of the first applicant to ensure that the rates and taxes of the property are paid.

[48] The first applicant gave ample time for the first respondent to mend its breach of the staying in the property without paying for the utilities. The only reason the first respondent is submitting, is that he occupies the property with the consent of his father. Unfortunately, the father who consented to the occupation has passed on and bequeathed the entire estate in Trust to the first applicant and further nominated her to be the executrix of the entire estate.

[49] The first respondent is vague in terms of the existence of a dispute of fact as a result I am unable to make a determination to that effect.

Conclusion

[50] It is trite law, the test the court is required to exercise is, whether it is just and equitable for the respondent to vacate the property. Weighing both versions of the applicant and respondent and all the applicable laws mentioned above. The court is satisfied that it would be just and equitable for the respondent to vacate the property.

[51] Therefore, the court make the following:

Order

1. The first respondent and all occupiers of the property known as Erf 1[...] K[...] Extension 18 Township, situated at 1[...] R[...] Crescent, Blue Valley Golf and

Country Estate, R[...] Road, Centurion (the immovable property) are evicted from the immovable property.

2. The first respondent and all occupiers of the immovable property are ordered to vacate the immovable property by 30 July 2026.
3. The sheriff and his/her duly authorised deputies are authorised, directed and mandated to take all steps necessary to enforce the order in paragraph 1 and 2 above.

Costs

4. The first respondent is ordered to pay the costs of the application on party and party B scale.

N MZUZU
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

Heard on: 23 February 2026

Judgment delivered on: 07 May 2026

For the Applicants: Adv RJ Bouwer

For the Respondents: Mr Lesomo (Lesomo & associate)