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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
HELD AT JOHANNESBURG**

CASE NO:048748/2022

(1) REPORTABLE: YES / NO (2) OF INTEREST TO OTHER JUDGES: YES/NO (3) REVISED. SIGNATURE	----- DATE
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In the matter between:

CECILIA VUYISWA NDLOVU

APPLICANT

And

GOMETSEGAN DEPHNIE JOEL

FIRST RESPONDENT

THE CITY OF JOHANNESBURG

SECOND RESPONDENT

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on Caselines. The date for hand down is deemed to be on **13 May 2026**

JUDGMENT

Mali J

Introduction

- [1] This is an application for eviction in terms of section 4 (2) of the Prevention of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). The applicant seeks an order evicting the first respondent from Erf 8[...] Dobsonville Extension 2 Gauteng (the property).
- [2] The applicant is an adult female who claims title to the Property. The first respondent is an adult female person who is in occupation of the property. The second respondent is cited as the municipality responsible for providing alternative accommodation where the property is situated.

Brief Background

- [3] The applicant filed an application for eviction in terms of PIE. Despite filing a notice of intention to oppose, the first respondent did not file an answering affidavit in the matter, which fell due on 15 December 2022.
- [4] On 30 January 2023, the first respondent filed a notice in terms of Rule 6(5)(d)(iii) which she alleges that the eviction application lacks averments to sustain a cause of action, namely that the applicant has not alleged that the first respondent is in unlawful occupation of the Property.
- [5] The applicant applied for and, on 26 July 2023, was duly granted an *ex parte* order authorising the form and content of a notice in terms of section 4(2) of the PIE Act ("the section 4(2) notice") and directing the applicant to serve the notice on the first and second respondents in accordance with the provisions of section 4(2).
- [6] On 5 September 2023, the first respondent filed a notice in terms of Rule 30(2) in which she contends that the matter has been set down prematurely as the Rule 6(5)(d)(iii) notice has not yet been adjudicated. Nonetheless the first respondent did not pursue Rule 30(2) application.
- [7] On 15 September 2023 the first respondent filed an amended application in terms of Rule 6(5)(d)(iii) of the Uniform Rules. On 4 October 2024 the applicant filed condonation for the filing of supplementary affidavit and that condonation be heard with main application. The applicant's

supplementary affidavit addressed all the averments alleged by the first respondent to have been lacking in the founding affidavit. The first respondent, however, opposes the applicant's application for condonation for the filing of the supplementary affidavit. I first deal with the application in terms of Rule 6 (5) (d) (iii) of the Uniform Rules (Rule 6 (5) (d) (iii)).

Application in terms of Rule 6(5) (d)(iii) of the Uniform Rules and Opposition of the late filing of Supplementary affidavit

[8] The issue raised through Rule 6 (5) (d) (iii) is that the eviction application lacks averments to sustain a cause of action because the applicant purportedly failed to allege and prove that (i) the respondent's occupation of the Property is unlawful; (ii) it would be just and equitable to grant the eviction order; and (iii) the applicant has complied with the provisions of the PIE.

[9] Rule 6(5)(d)(iii) of the Uniform Rules of Court states:

“(d) Any person opposing the grant of an order sought in the notice of motion must-

(iii) If such person intends to raise any question of law only, such person must deliver a notice of intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question.

[10] The application is brought and argued as point *in limine*. Nevertheless, the first respondent submits that the Rule 6(5)(d)(iii) notice has not yet been adjudicated upon and that, accordingly, the eviction application is premature. The application is not a stand-alone application; it was filed solely for the purpose of raising a point *in limine*.

[11] There is no provision under Rule 6 (5) (d) (iii) and/ or procedurally for the contention that the applicant was required to set the matter down separately in the Interlocutory Court, as submitted by the first respondent. Instead, the applicant addressed the issues raised by filing a

supplementary affidavit together with an accompanying application for condonation which is opposed by the first respondent.

[12] The first respondent opposes the applicant's application for condonation for the filing of a supplementary affidavit. Although the application is opposed, the first respondent has made no submissions regarding any prejudice that may be suffered because of the filing of the supplementary affidavit. Prejudice against the opposing party is one of the primary considerations when a Court is called upon to grant an indulgence. In the supplementary affidavit, the applicant addresses the allegations previously lacking and sets out the necessary averments to sustain a case for eviction.

[13] It is trite that a respondent cannot rely solely on preliminary points where all the relevant allegations have been placed before the Court, unless exceptional circumstances are shown. In the present matter, the first respondent has failed to establish any exceptional circumstances warranting opposition to the applicant's application for condonation for the filing of the supplementary affidavit. The purpose of the supplementary affidavit is to place all the necessary allegations before both the Court and the first respondent. By opposing its admission, the first respondent undermines that very purpose.

[14] For the foregoing reasons, I find that it is in the interests of justice to grant condonation for the filing of the supplementary affidavit. Consequently, the first respondent's point *in limine*, raised in terms of Rule 6(5)(d)(iii), namely that the applicant failed to make the necessary averments, is dismissed.

Application for eviction

[15] The only submissions before Court in relation to the application for eviction are those of the applicant. The applicant's ownership of the property has been proven through the title deed. What is left is to determine whether the first respondent is in unlawful occupation and whether if evicted she will be homeless.

- [16] As gleaned from the supplementary affidavit, amongst other averments made are that the first respondent is 66 years old. She had an extra marital relationship with the deceased, shortly after the death of the deceased moved to the property on permanent basis.
- [17] The deceased had two additional properties, namely Erf [...] Westonaria Township and Erf 1[...] Meadowlands Township. According to the liquidation and distribution account, the first respondent is characterised as the deceased's widow. Thus, she is entitled to one half of the estate by reason of the marriage in community of property plus one seventh of the estate.
- [18] Furthermore, the liquidation and distribution account erroneously list the Property as an asset of the deceased, but it was not. Accordingly, the applicant objected to the liquidation and distribution account which she believes it was never finalised.

Applicable legal principles

- [19] PIE was promulgated to give effect to s 26(3) of the Constitution. Section 26(3) provides that '[n]o one may be evicted from *their home* . . . without an order of court made after considering all the relevant circumstances'.
- [20] PIE's Preamble, in relevant part, provides:

“WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;

AND WHEREAS no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances;

AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances.’

(My emphasis.)

[21] Section 4(1) of PIE provides that “[n]otwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier”. “Owner”, insofar as is relevant, is defined in PIE as “the registered owner of land”. “Person in charge”, in turn, means “a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question.”

[22] Section 4 (7) and (8) of PIE provides as follows:

(7) *“If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably 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.*

(8) *If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine— (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).*

[23] Section 4 (9) of PIE provides that in determining a just and equitable date contemplated in subsection (8), the Court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

[24] In **Van der Valk N.O. and Others vs Johnson and Others**¹ the Court emphasised the peremptory requirement that it be alleged that the party occupies the Property unlawfully.

¹ [2023] ZAWCHC20 (30 January 2023)

[25] In ***Cape Killarney Property Investments (Pty) Ltd v Mahamba and others***²... at 1229E ...), 'no one may be evicted from their home without an order of court made after consideration of all the relevant circumstances'. PIE therefore requires a party seeking to evict another from land to prove not only that he or she owns such land and that the other party occupies it unlawfully, but also that he or she has complied with the procedural provisions and that on a consideration of all the relevant circumstances (and, according to the *Brisley* case, to qualify as relevant the circumstances must be legally relevant), an eviction order is 'just and equitable'.

[26] Section 1(xi) of the PIE Act defines an unlawful occupier as a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the *Extension of Security of Tenure Act*, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the *Interim Protection of Informal Land Rights Act*, 1996 (Act No. 31 of 1996).

Discussion

[27] It is not in dispute that the first respondent was served with the Notice of Eviction in terms of section 4 (2) of PIE. The only submissions before Court in relation to the application for eviction are those of the applicant. The first respondent did not prove any exceptional circumstance for relying only on preliminary points. Secondly the first respondent did not file her answering affidavit opting to rely only on the point in *limine*.

[28] It is clear from the provisions and preamble of (PIE) that, even where occupiers are in unlawful occupation, they may not be evicted unless the prescribed procedures have been followed. The Court must be placed in possession of all the information contemplated in paragraphs 7 and 8 above to properly adjudicate the matter in terms of paragraph 9 and the provisions of PIE.

² (495/99) [2001] ZASCA 87; [2001] 4 All SA 479 (A) par 21

- [29] By requiring an enquiry, PIE envisages a just system in which an unlawful occupier may not be evicted without first placing their personal circumstances before the Court and the Court duly considering those circumstances. The first respondent elected not to place her circumstances before the Court. According to the applicant's submissions, the first respondent is entitled to inherit one of the deceased's Properties and therefore has alternative accommodation available to her.
- [30] In the circumstances, it cannot be unjust to evict her from the property she unlawfully occupies. Despite being afforded an opportunity to present her case, she chose instead to raise a point of law.
- [31] Furthermore, in the first respondent's heads of argument, it is submitted that, should the Court find that the founding affidavit establishes a case for the relief sought and complies with the requirements of PIE, the first respondent ought to be afforded an opportunity to deliver an answering affidavit. A party raising a legal point in terms of Rule 6 (5) (d) (iii) does not have any automatic right to later file an answering affidavit if it chooses only to raise a point of law in terms of Rule 6 (5) (d) (iii).
- [32] As indicated earlier, the founding affidavit, read together with the supplementary affidavit, establishes a proper case for the applicant. The first respondent's request cannot be entertained. It constitutes a delaying tactic, and the first respondent must bear the consequences thereof.
- [33] In conclusion the applicant has proven ownership of the Property by way of the title deed. The first respondent is in unlawful occupation of the property. It is just and equitable that the first respondent be evicted from the property. The applicant's application for eviction in terms of PIE succeeds.

Order:

1. The first respondent's point *in limine* is dismissed.

2. The applicant's application for condonation for the late filing of the supplementary affidavit is granted.
3. The first respondent and all persons occupying with and through the first respondent are hereby evicted from the immovable Property situated at Erf 8[...] Dobsonville Extension 2 Gauteng hereinafter referred to as "the property".
4. The first and any all persons occupying with and through the first respondent are ordered to vacate the Property on or before Monday 15th June 2026 and not to return thereafter.
5. It is further ordered that in the event that the first and any all persons occupying with and through the first respondent do not vacate the Property on or before 15th June 2026, the sheriff alternatively his duly appointed deputy together with such assistance as he deems appropriate is authorised and directed to evict the first and second respondents from the Property.
6. The first respondent is ordered to pay the costs of this application including the costs of the application in terms of s 4(2) of the PIE Act.

N.P MALI

REPESANTATIVES

Counsel for the applicant:	GJA Cross
Attorney for the applicant:	Gordon Holtmann Attorneys
Counsel for the Respondent:	BJ Shull (attorney with right of appearance)
Attorneys for the Respondent:	Stabin Gross & Shull
Hearing date:	13 October 2025

Delivery date: 13 May 2026