IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable

Case no: 1914/2025

In the matter between

MALUTI-A-PHOFUNG LOCAL MUNICIPALITY	**APPLICANT**
and	
LETSITSA SIKA LUCAS MOLOI	**FIRST RESPONDENT**
DAVID MPHATSISI MOLOI N.O.	**SECOND RESPONDENT**
PATRICK MOLOI N.O.	**THIRD RESPONDENT**
LETSITSA SIKA LUCAS MOLOI N.O.	**FOURTH RESPONDENT**
ESIAH THABO TSHABALALA N.O.	**FIFTH RESPONDENT**
LEWA JOSEPH MORAJANE N.O.	**SIXTH RESPONDENT**
NAZARETH BAPTIST CHURCH	**SEVENTH RESPONDENT**
FERDIE VAN ZYL	**EIGHTH RESPONDENT**
HENNIE AND BESSIE FOURIE	**NINTH RESPONDENT**

THE ILLEGAL PERSONS (OCCUPIERS)
OCCUPYING THE IMMOVABLE PROPERTY
AT FARM 131 DORPS GRONDEN

HARRISMITH, FREE STATE PROVINCE,
ALSO KNOWN AS PLATBERG NATURE RESERVE **TENTH RESPONDENT**

Neutral citation: *Maluti-a-Phofung Municipality v Moloi and Others* (1914/2025) [2026] ZAFSHC 264 (29 April 2026)

Coram: MUVANGUA AJ

Heard: 29 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 29 April 2026.

Summary: Eviction – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – section 4(2) – section 7(2) – section 6(3).

ORDER

1 The first to the sixth respondents are in unlawful occupation of the Nature Reserve.

2 In order for the court to consider whether an eviction order would be just and equitable, the applicant is directed to: (a) consider whether mediation under section 7(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) would be an appropriate avenue to pursue; and (b) place all relevant information before the court, as required by the PIE Act.

3 For purposes of order 2 above, the applicant is granted leave to supplement its papers as it sees meet.

4 The application is dismissed as against the tenth respondent, for want of compliance with s 4(2) of the PIE Act.

5 The applicant is ordered to pay the costs of the first to sixth respondents, as well as the seventh respondent's costs.

6 The costs reserved by Van Rhyn J on 31 July 2025 are similarly to be paid by the applicant.

7 There is no order as to costs in relation to the eighth and ninth respondents.

JUDGMENT

Muvangua AJ

Introduction

[1] Before me served an application for the eviction of the first to the sixth and the tenth respondents from a property located at Farm 131 (remaining extent of portion 0, portion 88 and portion 105) Dorps Gronden Van Harrismith, Free State Province, also known as the Platberg Nature Reserve (Nature Reserve). The Nature Reserve is approximately 4 000 hectares in extent.

[2] The application was instituted in terms of s 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), alternatively, in terms of s 4 of the PIE Act. The applicant filed a supplementary affidavit, where it sought to rely on the common law as a further alternative basis to seek the respondents' eviction, to the extent that the PIE Act finds no application.

[3] The applicant, the Maluti-a-Phofung Local Municipality, is the registered owner of the Nature Reserve. The first respondent is the King Letsitsa Sika Lucas Moloi of the Bakholokoe Kingdom. The second to the sixth respondents are the trustees of the Bakholokoe Royal Trust Matawana) (trust). The seventh respondent is the Nazareth Baptist Church Ebuhleni (NPC) with principal place of business in Ebuhleni, Inanda, KwaZulu-Natal.

[4] The applicant's case is that all the respondents are in unlawful and illegal occupation of the Nature Reserve, and that their occupation has had the effect of entirely depriving the applicant of control over the property. Costs were sought only in the event of opposition to the eviction application.

[5] The eighth to the tenth respondent resides at the Nature Reserve. The eighth respondent, Ferdie Van Zyl, is a businessman; the ninth respondent trades as Nat Snoetjies; and the tenth respondent is described as the remaining unlawful occupiers occupying the Nature Reserve.

[6] The application was opposed by the first to the sixth respondents, and settled with the seventh, eighth and ninth respondents. The tenth respondent did not enter an appearance, one way or the other.

Background

The Nature Reserve

[7] The Nature Reserve is a public heritage site. Two areas of the Nature Reserve (graves and remnants of a botanical garden) can be described as heritage resources, and are therefore protected in terms of the National Heritage Resources Act 25 of 1999. The remainder of the Nature Reserve falls within the ambit of the National Environmental Management Act 107 of 1998 (NEMA), with particular reference to its definitions of 'ecosystem' and 'environment'. NEMA is directed at the protection and sustainable management of the environment, including the regulation and limitation of any unlawful or inappropriate use of land falling within its scope. In this context, the remaining portion

of the Nature Reserve constitutes a functioning ecosystem, inhabited by wildlife such as zebra, impala, blesbok and oribi, and accordingly attracts the full protective reach of the statutory framework.

[8] In addition, two communication towers are situated on the Nature Reserve. Their primary function is to facilitate monitoring of the petrol and diesel pipeline running from KwaZulu-Natal to Gauteng. The towers are fitted with repeaters, which serve as a critical communications link between farmers and local security clusters in emergency situations.

The first respondent and the trustees

[9] According to the applicant's founding papers, the first respondent and the trustees market the first respondent as the owner of the Nature Reserve, in that there is signage on display depicting the first respondent's dominion or reign over the Nature Reserve. Together with the first respondent, the trustees control access to the Nature Reserve and charge entrance fees. At the time of instituting the eviction proceedings, the first respondent and the trustees were in the process of constructing a new steel entrance gate with an occupied guard post. This structure would replace a brick-and-mortar entrance that was destroyed by fire.

[10] In addition, the trust enters into purported 'lease agreements' with third parties, including agreements permitting the dumping of waste such as blood, contaminated meat and hair on the Nature Reserve. On 19 June 2023, the first respondent issued a notice requiring all persons and entities occupying the land to vacate it; the first respondent and the trustees' co-occupation and co-control of the Nature Reserve is without the applicant's consent.

[11] The first respondent deposed to an answering affidavit, on his own behalf, as well as on behalf of the trustees. He raised the following defences:

(a) The applicant had not complied with the mandatory procedural requirements of s 4(2) of the PIE Act, which requires the court to serve written notice of intended eviction proceedings on the respondents and the relevant municipality at least 14 days before the hearing.

(b) The applicant failed to comply with s 7 of the PIE Act, which requires mediation or the appointment of a dispute resolution facilitator to attempt to settle the dispute. They also allege the applicant failed to: (i) cancel or withdraw any right or consent previously given to the respondents in writing, or give the respondents reasonable time to vacate before commencing eviction proceedings; (ii) commence proceedings in the Magistrate's Court within whose area of jurisdiction the respondents reside (rather than self-selecting the hearing date in the High Court); (iii) consider all relevant circumstances including the rights of the elderly, children, disabled persons and female-headed households; (iv) consider whether it would be just and equitable to grant an eviction order without causing homelessness; and (v) give the respondents timeous notice of the hearing (14 business days' notice before the court date).

(c) The applicant failed to: (i) conduct the eviction process in a humane manner; (ii) provide temporary alternative accommodation where the evictees are unable to secure their own accommodation; (iii) engage meaningfully with the evictees individually and collectively before commencing the eviction process; and (iv) ensure the eviction process does not discriminate against any individual or group.

(d) The applicant's reliance on its title deeds is subject to question, because in terms of the Deeds Registries Act 47 of 1937, a title deed contains information about the history of the property (including previous owners and rules and restrictions), and that any legal question arising from the title deed requires the original title deed. In this regard, the first respondent's answering affidavit asserts that the Bakholokoe Kingdom are the custodians of the land given the history of the property. This seems to imply a customary or historical claim to the land, although this contention was not developed in any detail in the affidavit. I will return to the first to the sixth respondents' defences later.

The seventh respondent

[12] The seventh respondent is a church. Like the first to the sixth respondents, the seventh respondent mounted several defences against the application for its eviction.

[13] Its primary defence is that it is not an unlawful occupier within the meaning of the PIE Act, because its occupation occurred with the express, alternatively tacit, consent of the applicant. It relies on a sustained course of conduct spanning more than a decade, during which the applicant was aware of, supported, and actively facilitated the seventh respondent's use of the land for large-scale religious pilgrimages. This includes granting annual approvals, providing logistical support, engaging in tariff negotiations, and accepting payment for use of the land.

[14] The seventh respondent further emphasises its good-faith engagement with both traditional and municipal authorities, its substantial financial investment in the site, and

the ongoing lease negotiations. On this basis, it contends that the applicant's conduct constitutes consent to occupation, thereby excluding unlawfulness.

[15] It's second defence is that the application is fatally defective due to non-compliance with s 4(2) of the PIE Act, which requires that occupiers be given at least 14 days' written notice of eviction proceedings, authorised and directed by the court. It asserts that no such notice was issued or served on the seventh respondent. Given the peremptory nature of this procedural safeguard, the seventh respondent submits that the failure to comply renders the application invalid and liable to dismissal on this ground alone.

[16] The seventh respondent also contended that insofar as the applicant proceeded under s 6 of the PIE Act, as an organ of state, eviction would neither be in the public interest nor just and equitable. It emphasised the unique religious significance of the land, the length and good faith of its occupation, and the absence of any viable alternative site. These considerations, it argued, militate strongly against eviction, particularly given the constitutional imperative to respect religious practices and the expectations generated by the applicant's longstanding acquiescence.

[17] Finally, the seventh respondent alleged that the applicant had acted in bad faith by failing to disclose material facts to the court. These include its longstanding knowledge of the seventh respondent's occupation, its active involvement in facilitating the pilgrimages, the financial arrangements concluded between the parties, and the ongoing negotiations regarding a formal lease. According to the seventh respondent, this non-disclosure was deliberate and invited the court to draw adverse inferences, submitting that the application was accordingly tainted and should be approached with caution.

[18] Before me, the applicant confirmed that it sought no relief against the seventh respondent at this stage. It appeared from the submissions of counsel for the seventh respondent that this might have been the first occasion on which that position had been stated in clear and unequivocal terms.

The eighth and ninth respondents

[19] The eighth and ninth respondents filed no answering papers. However, it was confirmed that the eighth respondent was no longer in occupation of the Nature Reserve, and that the ninth respondent was in the process of vacating voluntarily.

The tenth respondent

[20] The tenth respondent is a catch-all citation of all other unidentified persons occupying or conducting business on the Nature Reserve. According to the applicant's founding papers, various dwellings have been erected throughout the Nature Reserve; and the respondents impermissibly keep cattle and domesticated animals on the Nature Reserve, conduct hunting activities, harvest timber for sale on the open market, and manufacture and sell charcoal from harvested trees. They also prevent the applicant's officials from entering the Nature Reserve.

History of this matter in this court

[21] The eviction application was initially launched as one of urgency, on 14 April 2025. It was set down on the urgent court roll on 8 May 2025, and on 10 June 2025, my sister Van Zyl J ordered that it be removed from the urgent roll and be heard in the ordinary course. The applicant was ordered to pay costs.

[22] At the hearing on 31 July 2025, the first to sixth respondents asked for a postponement of the hearing, in order for them to file their answering affidavit. The parties ultimately reached an agreement on the further filing of papers and the re-enrolment of the matter on the opposed court roll. This agreement was made an order of court by my sister, Van Rhyn J. She reserved costs.

Issues for determination

[23] The issues for determination are as follows:

(a) whether the applicant complied with s 4(2) of the PIE Act;

(b) whether there was compliance with s 7 of PIE Act;

(c) what other PIE Procedural defences were raised?

(d) whether the first to the sixth respondents' occupation is unlawful. Appended to that is whether the assertion that the Bakholokoe Kingdom are '*custodians of the land given the history of the property*' constitutes a legally cognisable defence to the eviction, and whether it was pleaded with sufficient particularity to be entertained by this court;

(e) whether it is just and equitable to grant the eviction, and on what terms; and

(f) costs.

These will be assessed in turn below, after an exposition of the relevant legal framework, to which I now turn.

Legal framework

Unlawful occupation

[24] The PIE Act defines an unlawful occupier as:

'a person who occupies land <u>without the express or tacit consent</u> 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 31 of 1996).' [Underlining added].

[25] Stated otherwise, an unlawful occupier is a person who occupies land without the consent of the owner and who does not have any other right to do so. However, this definition excludes a person whose occupation is protected under: (a) the Extension of Security of Tenure Act 62 of 1997; or (b) the Interim Protection of Informal Land Rights Act 31 of 1996. In terms of the PIE Act, a person in charge 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.'

<u>Section 4(2) of the PIE Act</u>

[26] Section 4(2) of the PIE Act reads as follows:

'At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.'

Section 4(2) of PIE is, therefore, a mandatory procedural safeguard requiring court-directed, written and effective notice to both unlawful occupiers and the municipality at least 14 days before the hearing.

[27] In *Cape Killarney*[1] the Supreme Court of Appeal observed that the Legislature intended for the s 4(2) notice to be authorised by a court. The provision is silent on how the 'court's directions regarding the regarding the s 4(2) notice are to be obtained. A common-sense approach to the section appears to dictate, however, that the applicant can approach the court for such directions by way of an *ex parte* application.'[2]

[28] An eviction application under PIE requires both the usual service under the rules and a further notice, authorised and directed by the court,[3] informing occupiers and the

[1] *Cape Killarney Property Inv (Pty) Ltd v Mahamba* 2001 (4) SA 1222 (SCA).
[2] Ibid para 15.
[3] Ibid paras 19 and 20. See also *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) (*Unlawful Occupiers*).

municipality of the hearing date, the grounds for eviction, and the occupiers' right to appear, oppose and seek legal aid. This provision must be read together with s 4(5) of the PIE Act. Section 4(5) prescribes what the notice must contain. It reads as follows:

'(5) The notice of proceedings contemplated in subsection (2) must–

(a) state that proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.' (Underlining added.)

[29] The s 4(2) notice is not a technical formality and must be read purposively and in the light of PIE's broader just-and-equitable framework. The requirement for a notice under s 4(2) exists to ensure meaningful participation, and to place relevant personal circumstances before the court. Once the notice has been given and the matter is heard, the court is required to decide whether it is just and equitable to evict the unlawful occupier.[4]

[30] In *Unlawful Occupiers, School Site v City of Johannesburg*[5] (*Unlwaful Occupiers*), the Supreme Court of Appeal introduced qualification to the general peremptory nature of s 4(2). It clarified that a court will not lightly strike down an eviction application for a procedural deficiency in the s 4(2) notice, where the respondents demonstrably knew what case they were required to meet and were not prejudiced by the defect. In this regard, the Court noted that the applicable underlying principle is that substantial compliance suffices.[6]

[31] Courts have repeatedly set aside eviction orders where the section 4(2) notice was not properly authorised, did not contain the required information, was served incorrectly, or did not reach occupiers effectively. In *McNeil,*[7] the Western Cape Division held that non-compliance with the peremptory requirements of section 4 rendered the eviction order legally incompetent, void from the outset, and rescindable, specifically because the notice did not state the hearing date and time and did not properly set out

[4] *Residents of Joe Slovo Community, WC v Thubelisha Homes (Centre on Housing Rights & Evictions, Amici Curiae)* [2009] ZACC 16; 2010 (3) SA 454 (CC). See also *First Rand Bank Ltd v Ndamase and Another* [2024] ZAGPPHC 1133 (12 November 2024) para 16.
[5] *Unlawful Occupiers* fn 3.
[6] Ibid para 24.
[7] *McNeil and Another v Aspeling and Others* [2018] ZAWCHC 185 (28 June 2018).

the grounds for eviction. In *Gcaba,*[8] the Eastern Cape Division held that an eviction order granted without proper invocation of the PIE Act was incompetent and had to be set aside, while reaffirming that section 4 requires effective, court-directed notice containing the prescribed information.

Section 7 of the PIE Act

[32] The municipality asserts ownership to the property in question. That renders section 7(2) most applicable. That provision reads as follows:

'7 Mediation

(1) . . .

(2) If the municipality in whose area of jurisdiction the land in question is situated is the owner of the land in question, the member of the Executive Council designated by the Premier of the province concerned, or his or her nominee, may, on the conditions that he or she may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the said member of the Executive Council may determine. . .'

[33] Section 7(2) of the PIE Act is best understood as discretionary rather than peremptory: the statute confers a power to appoint mediators but does not make mediation or appointment compulsory in every case. I must caution that this is not a free-floating or optional-afterthought power. In the context of s 7(1) of the PIE Act,[9] the court in *Sailing Queen Investments v The Occupational LA Colleen Court*[10] observed that the municipality is required to apply its mind to whether mediation is appropriate in the circumstances.[11] I see no reason why the same principle should not apply when s 7(2) is implicated. Section 7(2) is directed at precisely the same underlying statutory objective as s 7(1), namely the resolution of disputes arising under the PIE Act through facilitated engagement before recourse is had to eviction proceedings. The identity of the

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[8] *Nontombi Gcaba & others v Ntabankulu Local Municipality & others* [2021] ZAECMHC 17 (30 May 2021).
[9] Section 7(1) reads as follows: 'If the municipality in whose area of jurisdiction the land in question is situated is not the owner of the land the municipality may, on the conditions that it may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the municipality may determine'.
[10] *Sailing Queen Investments v The Occupational LA Colleen Court* [2008] ZAGPHC 15; 2008 (6) BCLR 666 (W).
[11] Ibid para 14.

landowner, whether a private party or the municipality itself, does not alter that objective. If anything, the obligation to consider mediation is heightened where the applicant is an organ of state, given the constitutional and statutory duties that rest on organs of state to act reasonably, to engage meaningfully with affected parties, and to treat eviction as a measure of last resort. It would be incongruous if a municipality were required to consider mediation when it is merely the local authority with jurisdiction over land owned by another, but were relieved of that obligation entirely when it is itself the owner seeking eviction. The discretion conferred by s 7(2) must therefore be exercised genuinely and with reference to the circumstances of the case. Failure to apply its mind to the question at all would constitute an irregularity capable of affecting the validity of subsequent eviction proceedings.

Analysis

Compliance with the PIE Act

The section 4(2) issue

[34] It was common cause at the hearing of this application that the applicant had not complied with s 4(2) of the PIE Act. However, counsel for the municipality sought to persuade me that there was compliance with section 5(2) of the PIE Act when the matter was initially brought as an urgent application. I am not persuaded by this, for a number of reasons.

[35] The first reason concerns timing. Section 4(5)*(b)* requires the s 4(2) notice to 'indicate on what date and at what time the court will hear the proceedings'. The s 5(2) notice, upon which the applicant sought to place reliance, was dated 2 May 2025, and the hearing date indicated was 8 May 2025. Both of those dates had come and gone by the time I heard this matter on the ordinary motion court roll; it was heard some nine months later, on 29 January 2026. The s 5(2) notice was therefore spent by the time the matter came before me. It could not serve as a valid s 4(2) notice for proceedings heard on 29 January 2026, because it did not (and could not) indicate the correct hearing date as required by s 4(5)*(b)*. The very information that the notice was designed to convey to the occupiers, namely when and where the court would hear the application, was not applicable by the time the matter was actually determined. A notice that directs occupiers to a hearing date that has long passed gives them no meaningful opportunity to prepare for and attend the actual hearing. It therefore fails the most basic test of what an effective

notice is designed to achieve, irrespective of whether it was technically valid when it was issued.

[36] The second reason is this: this court's order authorising the s 5(2) notice (granted by my sister Van Rhyn on 2 May 2025) read as follows, in relevant part:

'Leave and permission is to granted to the Applicants to serve the Eviction Application on the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Respondents . . . by Sheriff of this Court or electronically, as provided for and envisaged in the Notice of Motion: Urgent Application, dated 14 April 2025'.

[37] Prayer 5 of the said notice of motion dealt with service, and it did not contemplate electronic service. It is unavoidable that I must reproduce that prayer here:

'5. That this order be served on the Respondents and published in the following manner:

5.1 The Sherriff of this Court and his/her Deputy must serve a copy of this Order on the Respondents forthwith;

5.2 The Applicant is directed to construct or to erect one prominent notice board at the main entrance of the Platberg Nature Reserve on which notice board this order must be printed;

5.3 The Applicant is directed to publish this order once in the Harrismith Chronicle Newspaper and the Eastern Free State Issue Newspaper;

5.4 The Applicant is directed to transmit this Order on at least 5 timeslots on the Qwa-Qwa Radio Station; and

5.5 The Applicant is directed to place a copy of this Order on all its notice boards at its offices situated within its jurisdiction.'

[38] Counsel for the municipality was not able to explain to the court (with reference to the papers) why the method of service envisaged in prayer 5 of the notice of motion was not utilised. That aside for a moment, he submitted before me that service on the tenth respondent was effected by serving on several individuals who were found on the property. He was, however, not able to explain why it was appropriate or sufficient to effect service on the tenth respondents by serving the eviction application on these individuals.

[39] For these reasons, I conclude that there was non-compliance with s 4(2) of the PIE Act. But that is not the end of the matter for all the respondents. In *Unlawful Occupiers*, the Supreme Court of Appeal held that:

'[24] The question whether in a particular case a deficient s 4(2) notice achieved its purpose, cannot be considered in the abstract. The answer must depend on what the respondents already knew. The appellant's contention to the contrary cannot be sustained. It would lead to results which are untenable. Take the example of a s 4(2) notice which failed to comply with s 4(5)(d) in that it did not inform the respondents that they were entitled to defend a case or of their right to legal aid. What would be the position if all this were clearly spelt out in the application papers? Or if on the day of the hearing the respondents appeared with their legal aid attorney? Could it be suggested that in these circumstances the s 4(2) should still be regarded as fatally defective? I think not. In this case, both the municipality's cause of action and the facts upon which it relied appeared from the founding papers. The appellants accepted that this is so. If not, it would constitute a separate defence. When the respondents received the s 4(2) notice they therefore already knew what case they had to meet. In these circumstances it must, in my view, be held that, despite its stated defects, the s 4(2) notice served upon the respondents had substantially complied with the requirements of s 4(5).' (Underlining added.)

[40] The enquiry is therefore a contextual one, focused not on technical compliance in isolation but on whether the respondents were, in all the circumstances, prejudiced by the deficiency in the notice. Central to that enquiry is what the respondents already knew when the proceedings were brought. It is to that question that I now turn.

[41] The first to the sixth respondents participated in these proceedings. The founding affidavit indicated that all these respondents were represented by the same lawyers (whose particulars were provided). This was never disputed. The applicant's replying affidavit (to the answering affidavit deposed to by the first respondent), alleged that the first respondent deposed to an answering affidavit on his own behalf and on behalf of the 'Bakholokoe Royal Trust Motawana'. This was also not placed in dispute. It is therefore reasonable to accept that the first to the sixth respondents took part in these proceedings.

[42] On the day of the hearing, Ms Nyezi appeared on instruction from the first respondent, to seek a postponement of the matter. The postponement was sought from the Bar.[12] On the eve of the hearing (28 January 2026 at 20:25), the registrar of this court received an email from one King Letsitsa's email address, stating that: (a) the first respondent would not be able to attend the hearing on 29 January 2026, on account of ill-health; and (b) 'Of great duress is the changing of lawyers in relation to this matter; the new lawyers not yet being prepared, and this is contributing to increased ill health'.

[43] On the authority of *Unlawful Occupiers* recited above, I conclude that although there was no compliance with s 4(2) of the PIE Act, the first to the sixth respondents were aware of the proceedings and took part in them from their onset. Although no relief is

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[12] The application was not entertained at all, as it was not properly made.

sought against them, the seventh to the ninth respondents were also aware of the proceedings. There was nothing before me to suggest otherwise. The eighth respondent had vacated the Nature Reserve by the hearing date, and the ninth respondent was in the process of vacating voluntarily. But the position is different in relation to the tenth respondent. For all the reasons I set out above, I am in no position to conclude that the tenth respondent was given adequate and effective notice of these proceedings, as contemplated by ss 4(2) and 4(5) of the PIE Act.

The section 7(2) issue

[44] There was nothing placed before me to indicate that the municipality applied its mind to provisions of s 7(2) of the PIE Act. This point was also not dealt with during oral argument.

The first to the sixth respondents' occupation

[45] The first to the sixth respondents alleged in papers before me that the Bakholokoe Kingdom is the custodian of the Nature Reserve, on account of the history of the property. They relied on documents which were alleged to have been issued by the ECO-6 and Global Commonwealth of New Africa Interregional Court of Justice (ECO-6 Court) as support for this contention.

[46] It was not explained on the papers what the ECO-6 Court is, and I was unable to find anything to suggest that it is a constitutionally recognised body, or a court of law, within the framework of South Africa's legal order. The first to the sixth respondents did not have regard to any applicable law in South Africa as authority.

[47] I am alive to the Constitutional Court's decision in *Salem Party Club and Others v Salem Community and Others.*[13] The first to sixth respondents did not plead any facts that would bring them within the ambit of *Salem Party Club*. They also did not place any evidence before the court to suggest that they fall within any of the exclusions contained in the definition of an 'unlawful occupier'.

[48] The municipality demonstrated its ownership through title deeds that it attached to the founding papers. The legitimacy of these documents was not disputed by any of the respondents (excluding the tenth respondent).

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[13] *Salem Party Club and Others v Salem Community and Others* (CCT26/17) [2017] ZACC 46; 2018 (3) BCLR 342 (CC); 2018 (3) SA 1 (CC).

[49] I am, on the basis of these considerations, constrained to find that the first to the sixth respondents' occupation of the Nature Reserve is unlawful. The municipality prayed for an order evicting them. The question that arises, and that I must consider, is whether their eviction would be just and equitable.

Would the eviction be just and equitable?

[50] The starting point is the PIE Act. Section 6 deals with the institution of eviction proceedings at the instance of an organ of state. It reads as follows:

'6 Eviction at instance of organ of state

(1) An organ of state may institute proceedings for the eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful occupier is a mortgagor and the land in question is sold in a sale of execution pursuant to a mortgage, and the court may grant such an order if it is just and equitable to do so, after considering all the relevant circumstances, and if-

(a) the consent of that organ of state is required for the erection of a building or structure on that land or for the occupation of the land, and the unlawful occupier is occupying a building or structure on that land without such consent having been obtained; or

(b) it is in the public interest to grant such an order.

(2) For the purposes of this section, 'public interest' includes the interest of the health and safety of those occupying the land and the public in general.

(3) <u>In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to</u>-

(a) <u>the circumstances under which the unlawful occupier occupied the land and erected the building or structure</u>;

(b) <u>the period the unlawful occupier and his or her family have resided on the land in question</u>; <u>and</u>

(c) <u>the availability to the unlawful occupier of suitable alternative accommodation or land</u>.

(4) An organ of state contemplated in subsection (1) may, before instituting such proceedings, give not less than 14 days' written notice to the owner or person in charge of the land to institute proceedings for the eviction of the unlawful occupier.

(5) If an organ of state gives the owner or person in charge of land notice in terms of subsection (4) to institute proceedings for eviction, and the owner or person in charge fails to do so within the period stipulated in the notice, the court may, at the request of the organ of state, order the owner or person in charge of the land to pay the costs of the proceedings contemplated in subsection (1).

(6) The procedures set out in section 4 apply, with the necessary changes, to any proceedings in terms of subsection (1).' (Underlining added.)

[51] Section 6(3) is instructive. In order for this court to decide whether or not an eviction order is just and equitable, it must know: (a) the circumstances under which the unlawful occupier occupied the Nature Reserves and erected structures; (b) the period the unlawful occupiers and their families have resided on the Nature Reserve; and (c) the availability to the unlawful occupier of suitable alternative accommodation or land.

[52] None of these factors were placed before me. The court was not told how many people occupy the Nature Reserve, whether there were persons with disabilities, women headed household etc. In the founding affidavit, the municipality pleaded that:

'The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Respondents either reside in the Nature Reserve, or occupy the Nature Reserve and conducting business from the Nature Reserve. . . . the Nature Reserve has been hijacked by the Respondents and the Respondents regard it as their property'.

[53] That is insufficient. It must be borne in mind that the applicant is a municipality. During oral argument, counsel for the municipality argued that the municipality has an obligation to protect the Nature Reserve, and that it was under no obligation to place before this court factors about the respondents' circumstances. He argued further that the respondents ought to have appointed lawyers to place the relevant factors before the court. Those submissions were most unfortunate.

[54] The law is, by now, settled, when it comes to the municipality's obligations in eviction proceedings under the PIE Act. Where a municipality is itself the applicant in eviction proceedings, it must do far more than prove unlawful occupation: it must show that eviction is both just and equitable and in the public interest. It is also required to engage meaningfully with the occupiers; <u>investigate and disclose</u> their personal circumstances and vulnerability and risk of homelessness; place meaningful information before the court on emergency or alternative accommodation; align its conduct with the Housing Act 107 of 1997 and Housing Policy; and consider the suitability and location of any offered accommodation, especially in relation to employment and social ties.[14]

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[14] *Port Elizabeth Municipality v Various* 2004 (12) BCLR 1268 (CC); *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and Others* 2008 (3) SA 208 (CC); *Abahlali Basemjondolo Movement SA v Premier of the Province of KwaZulu-Natal* [2009] ZACC 31; 2010 (2) BCLR 99 (CC); *Mogale City Local Municipality v Black Tad Investments CC* [2018] ZASCA 74 (31 May 2018); *City of Ekurhuleni Metropolitan Municipality v Khewsa and others* [2024] ZAGPJHC 1935 (8 October 2024).

[55] The municipality failed to discharge any of these obligations. It placed no information before the court about the personal circumstances of the first to sixth respondents, the composition of the households on the Nature Reserve, the presence (if any) of vulnerable persons, or the availability of alternative accommodation. It did not engage meaningfully with the occupiers prior to launching the application, nor did it address the risk of homelessness that eviction might occasion. Counsel's submission that these obligations rested on the respondents rather than the municipality betrayed a fundamental misunderstanding of the law. The municipality, as the eviction applicant and an organ of state, bore the obligation to place the relevant information before the court — it could not discharge that obligation by pointing to the respondents' failure to appoint legal representatives. The result is that this court is left without the information required by s 6(3) to consider before it can determine whether eviction is just and equitable. In those circumstances, the municipality has not made out the case required by s 6 of the PIE Act, and the application falls to be dismissed on this ground, in as far as it relates to the first to the sixth respondents.

The tenth respondents

[56] I have concluded above that there was no compliance with s 4(2) of the PIE Act, and there was no evidence placed before court to suggest that the tenth respondent, a group of people who were not individually identified, were aware of these eviction proceedings. In the circumstances, I am constrained to dismiss the application as against them, without more.

Costs

[57] The ordinary rule is that costs follow the result. The applicant applied for an order evicting the first to the sixth respondents, as well as the tenth respondents from the Nature Reserve. I am unable to grant that order, because the applicant (as the municipality) did not place before me the relevant factors that I am required to take into account before granting an eviction order. The applicant simply took the view that it was not required to do so. This is not consistent with the established legal principles.

[58] It is so that the matter became settled as against the seventh respondent, but before me, counsel for the seventh respondent indicated that it was never clear (prior to the hearing of the matter) what the applicant's position was in relation to the seventh respondent. To that extent, counsel asked that costs be ordered against the applicant.

Conclusion

[59] The municipality's application flounders on multiple grounds. First, it is common cause that the s 4(2) notice was not served on the first to sixth respondents in compliance with the PIE Act. Although the first to sixth respondents' active participation in the proceedings ameliorates the prejudice that would otherwise have resulted from that non-compliance, the municipality's attempt to rely on the spent s 5(2) notice as a substitute for a proper s 4(2) notice cannot be sustained as against the tenth respondent.

[60] Second, there is nothing before me to indicate that the municipality applied its mind to whether mediation was appropriate in the circumstances, as required by s 7(2) of the PIE Act. On the contrary, it appears that the municipality proceeded directly to litigation without any consideration of that avenue.

[61] Third, and most fundamentally, the municipality has failed to place before this court the information that s 6(3) requires it to consider before an eviction order may be granted. The personal circumstances of the occupiers, the composition of their households, the presence of vulnerable persons, and the availability of suitable alternative accommodation were not disclosed. Without that information, this court is unable to determine whether eviction would be just and equitable. The municipality's failure in this regard is not a technical shortcoming, it goes to the heart of what the PIE Act requires of an organ of state that seeks to evict people from land.

Order

[62] In the result, I make the following order

1 The first to the sixth respondents are in unlawful occupation of the Nature Reserve.

2 In order for the court to consider whether an eviction order would be just and equitable, the applicant is directed to: (a) consider whether mediation under s 7(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) would be an appropriate avenue to pursue; and (b) place all relevant information before the court, as required by the PIE Act.

3 For purposes of order 2 above, the applicant is granted leave to supplement its papers as it sees meet.

4 The application is dismissed as against the tenth respondent, for want of compliance with s 4(2) of the PIE Act.

5 The applicant is ordered to pay the costs of the first to sixth respondents, as well as the seventh respondent's costs.

6 The costs reserved by Van Rhyn J on 31 July 2025 are similarly to be paid by the applicant.

7 There is no order as to costs in relation to the eighth and ninth respondents.

P/P [redacted]

N MUVANGUA

ACTING JUDGE OF THE HIGH COURT

Appearances

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For the Seventh Respondent	Nazareth Baptist Church Ebuhleni Home c/o Mr NW Ncube mzwakhencube77@gmail.com LN Chambers (Pty) Ltd 21 Aurora Drive Umhlamga Kwazulu-Natal ln@lnchambers.com (Ref: LNBVV-Maluti1086/23
For the Eighth Respondent	Mr Ferdie Van Zyl House No 1 Botanical Gardens Platberg Nature Reserve
For the Ninth Respondent	Hennie and Bessie Fourie t/a Nat Snoetjies House No. 2 Botanical Gardens Platberg Nature Reserve