

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



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case No.: 2025-014734

In the matter between:

JURGENS JOHANNES STEENKAMP N.O.

First Applicant

CORNELIA MARIA CLOETE N.O.

Second Applicant

And

BRIAN CHARLES HIGGS

First Respondent

Coram: Francis J

Heard: 13 May 2026

Delivered: 4 June 2026

ORDER

1. The first respondent and all persons holding occupation under him as residential occupiers are evicted from Portion 28 of the Farm Devon Vale No. 9[...], B[...] Road, Stellenbosch (“the property”).
2. For the purposes of this order, “residential occupier” means a person who uses any building or structure on the property as a form of dwelling or shelter within the meaning of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.
3. The first respondent and all persons holding occupation under him as residential occupiers shall vacate the property by 12h00 on 5 August 2026.
4. In the event of non-compliance with paragraph 3, the Sheriff of this Court is authorised and directed to evict the first respondent and any person referred to in

that paragraph from the property, and to take such steps and obtain such assistance from the South African Police Service as the Sheriff considers necessary. The Sheriff shall execute against persons falling within the definition of “residential occupier” in paragraph 2 and may apply for directions from this Court in the event of any dispute on that question.

5. The applicants shall, within seven days of the date of this order, instruct the Sheriff of this Court to serve a copy of this order on each adult person presently in occupation of the property and on the second respondent. Any person on whom the order is so served, who contends that he or she is a residential occupier within paragraph 2 and that this order should not apply to him or her, may, within fourteen days of the date of service, apply to this Court on the same papers, supplemented as necessary, for an order varying paragraphs 1 and 3 in his or her favour.

6. The second respondent shall, within twenty-one days of the date of service of this order on it under paragraph 5, file a supplementary report that:
 - (a) explains the legal and factual basis for the moratorium on the 10% Emergency Housing Assistance Policy provision and indicates what steps the Municipality is taking to restore emergency housing assistance;

 - (b) identifies any further emergency-housing options that have become available since 22 April 2026 or that can be made available notwithstanding the moratorium;

- (c) indicates what steps the Municipality proposes to take in respect of any person on the property who claims to be at risk of homelessness, including whether the Wendy structure offer can be extended without requiring the occupier to identify a host; and
- (d) addresses why this case cannot be treated as an exception to the moratorium, having regard to the constitutional obligations identified in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) and *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC).

7. The costs of this application, including the costs of counsel on Scale B, are costs in the insolvent estate of the first respondent.

JUDGMENT

FRANCIS, J:

Introduction

[1] The applicants are the joint trustees of the insolvent estate of Mr Brian Charles Higgs (“Mr Higgs”). They seek an order under section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), evicting Mr Higgs, together with all persons occupying under him, from Portion 28 of the Farm Devon Vale No. 9[...], B[...] Road, Stellenbosch (“the property”). The Stellenbosch Municipality, the second respondent, has not filed answering papers but has filed a departmental report under section 4(7) of PIE.

[2] The answering affidavit raised four defences: that the Extension of Security of Tenure Act 62 of 1997 (ESTA) applied rather than PIE; that the trustees had tacitly consented to Mr Higgs's continued occupation pending sale; that eviction would not be just and equitable, particularly given the age and ill health of Mr Higgs and his wife; and that vacant possession would not enhance the price obtainable on sale. By the time of the hearing, the defence had narrowed considerably. Mr Nöthling, who appeared for Mr Higgs, accepted that the trustees had standing and that PIE governed the application. He contended that the just and equitable balance favoured allowing Mr Higgs to remain until the property was sold; alternatively, that any date for vacation must be triggered by the date of sale rather than fixed by the court.

Background

[3] The property extends to approximately 4.3 hectares and is zoned for agricultural use. The improvements comprise a main dwelling, four cottages, and several guest flats. Mr Higgs acquired the property in 2006 and remains the registered owner. Four mortgage bonds in favour of Standard Bank of South Africa Limited encumber the property.

[4] Mr Higgs defaulted on his loan agreements in 2008. On 29 September 2017, Standard Bank obtained an opposed money judgment against him in the amount of R7 359 064.44, together with an order declaring the property specially executable at a reserve price of R13 million. Davis AJ later reduced the reserve to R10 million. Five unsuccessful attempts to sell the property in execution followed. The first attracted no bidders. Two were postponed by agreement. One was overtaken by the COVID-19 pandemic, and the fifth produced bids below the reserve. Standard Bank then applied

for the sequestration of Mr Higgs's estate. Grobbelaar AJ granted a provisional order on 3 March 2023. Parker AJ confirmed the final order on 10 January 2024.

[5] The Master appointed the applicants as joint trustees of the estate on 17 April 2023, following the provisional order. A creditors' resolution dated 22 January 2024 authorised them to realise the immovable property. Standard Bank, as the principal secured creditor and bondholder, has directed that the property be sold with vacant possession. From February 2024, the trustees engaged Mr Higgs on the basis that he and those in occupation under him would be required to vacate the property before it was marketed.

[6] Mr Higgs did not vacate. He informed the trustees on more than one occasion that he would do so only after the property had been sold. An auction scheduled for 27 March 2024 was cancelled because the trustees were unable to deliver vacant possession. On 16 April 2024, Mr Higgs's attorney recorded an intention to apply for leave to appeal against the final sequestration order. The application was brought well out of time. Parker AJ dismissed it, remarking that the only inference to be drawn was that the application had been brought "solely due to the impending and imminent eviction process". The Supreme Court of Appeal refused leave on 14 February 2025.

[7] On 15 March 2024, the trustees' attorneys served a formal notice to vacate by 18 April 2024. Mr Higgs did not comply. The present application was issued on 2 May 2025. The applicants applied *ex parte* for service directions under section 4(2) of PIE. The court granted that relief on 20 February 2026. Service was thereafter effected by affixing copies of the application and order to the property on 31 March 2026 and by electronic transmission to Mr Higgs's attorney. The Municipality was joined, and the papers were served on it as well. The Municipality made several unsuccessful attempts to inspect the property between October 2025 and March 2026. Only telephonic engagement was possible, and one meeting was held via Microsoft Teams on 5 March

2026. The Municipality's departmental report, dated 8 March 2026, was filed on 22 April 2026.

The issues

[8] Three questions arise for determination: whether ESTA or PIE applies; whether eviction would be just and equitable for the purposes of section 4(7) of PIE; and the date on which any eviction order should take effect, together with the conditions to be attached to it.

Whether ESTA or PIE applies

[9] Mr Nöthling conceded this point in argument. I deal with it briefly because it raises a jurisdictional question that the court must satisfy itself upon, regardless of the concession.

[10] Section 1 of ESTA defines an "occupier" as a person residing on land which belongs to another and excludes a person using the land mainly for commercial purposes. The definition of "unlawful occupier" in section 1 of PIE excludes an occupier protected by ESTA. The two statutes are mutually exclusive.

[11] Mr Higgs is the registered owner of the property. His estate vested in the Master under section 20(1)(a) of the Insolvency Act 24 of 1936 upon the provisional order of 3 March 2023, and in the trustees upon their appointment on 17 April 2023. The question is whether that vesting brings the land within the phrase "belongs to another" for purposes of ESTA.

[12] The vesting provisions of the Insolvency Act operate to transfer control of the estate first to the Masr and, upon their appointment, to the trustees, so that the estate may be realised for the benefit of creditors. In *De Villiers v Delta Cables (Pty) Ltd* 1992 (1) SA 9 (A), the Appellate Division held that the trustee becomes the owner of the insolvent's property, an approach accepted by the Constitutional Court in *Harksen v Lane NO* 1998 (1) SA 300 (CC). In *Fourie v Edkins* 2013 (6) SA 576 (SCA) at paragraph 15, the Supreme Court of Appeal treated section 20(1) as vesting control rather than ownership, though that observation was not central to the decision and the question has since attracted differing views. It is unnecessary to resolve it here. Even on the view most favourable to the trustees, the insolvent retains a reversionary interest, and the property has not passed to a third party. ESTA is directed at protecting occupiers against the owners of the land they occupy. An insolvent who continues to reside on property still registered in his own name does not, in my view, occupy land that "belongs to another" within the meaning of that Act. Whatever incidents of ownership Mr Higgs may have lost, the registered title remains in his name.

[13] The property is used principally for short-term rentals and Airbnb accommodation. That much appears from Mr Higgs's own statements at the enquiry held in terms of section 65 of the Insolvency Act 24 of 1936, from his Facebook advertisements, and from the Airbnb listings. It follows that the second leg of the ESTA exclusion is satisfied, and that PIE governs this application.

Standing

[14] The trustees of an insolvent estate are the persons in whom the estate is vested and who are charged with its administration. Where the registered owner is the insolvent and remains in occupation, the trustees may apply for his eviction under PIE.

This Division has so held in the full-court decision in *Mayekiso v Patel NO 2019 (2) SA 522 (WCC)* at paragraphs 20 to 22. Nothing on the present record distinguishes this case on that question. Standing is established.

Whether eviction is just and equitable

[15] Section 4(7) of PIE requires the court to have regard to all the relevant circumstances, including the availability of suitable alternative accommodation and the rights and needs of the elderly, the disabled, women-headed households and children. The enquiry proceeds in two stages. The court must first decide whether eviction is just and equitable. If so, it must then set a vacation date and determine what conditions should attach to the order. As the Supreme Court of Appeal observed in *City of Johannesburg v Changing Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA)*, the enquiry cannot be concluded until the court is satisfied that it has all the information necessary to make both findings on grounds of justice and equity.

[16] It follows from *Changing Tides* that each side bears the burden of placing before the court the information that lies within its peculiar knowledge. The applicant bears the onus on the application as a whole. Matters within the occupier's exclusive knowledge are for the occupier to put up. The Constitutional Court adopted that approach in *Occupiers of 51 Olivia Road v City of Johannesburg 2008 (3) SA 208 (CC)* and again in *Occupiers, Berea v De Wet NO 2017 (5) SA 346 (CC)*. In *Mayekiso*, the full court approved the trial judge's observation that the insolvents in that matter had not brought their personal circumstances to the court's attention. An occupier who declines to lead the evidence that section 4(7) is designed to consider cannot then expect the court to weigh factors that have not been placed before it. Where the occupier's averments are answered only by his own omissions, the court must decide the matter on what is before it, applying the approach in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*

1984 (3) SA 623 (A), but giving such averments no greater weight than their evidentiary foundation will bear.

[17] The factual picture relevant to section 4(7) has shifted markedly between the answering affidavit and the hearing. On the papers initially filed, the case was that Mr Higgs and his wife, who was said to be elderly and in ill health, would be rendered homeless. It emerged at the hearing that Mrs Higgs is in Singapore, where she resides with a relative. She is not in occupation of the property. The departmental report records that seven households occupy the property in addition to Mr Higgs himself, five of which are described as female-headed and include at least one minor. It became apparent during argument that these households comprise both Airbnb guests and cottage tenants. Mr Higgs's adult son, Christopher, is also on the property. He is 32 years old, a businessman, and, according to his father's own version, paid R100 525.01 towards his father's Eskom debt between January and June 2025.

[18] PIE protects those who use a building or structure as a form of dwelling or shelter. It does not extend to commercial occupants. The Constitutional Court so held in *MC Denneboom Service Station CC v Phayane* 2015 (1) SA 54 (CC) at paragraphs 16 to 18, and the Supreme Court of Appeal confirmed it in *Stay at South Point Properties (Pty) Ltd v Mqulwana* 2024 (2) SA 640 (SCA). The Airbnb guests stay on a nightly basis. The cottage occupants are tenants who pay R8 950 per month on four-month terms, as advertised on Mr Higgs's Facebook page. Their occupation is for a defined purpose and a limited period. The cottages are not their home in any settled sense. They fall outside the protective scope of PIE. Should the position of a particular tenant, on its own facts, be different, I make provision in the order for that tenant to approach this court. I return to this below.

[19] That leaves Mr Higgs and Christopher. Christopher is not a vulnerable person within the contemplation of section 4(7). As for Mr Higgs, he is 63 years old and within

the working-age range. He is not, on his own evidence at the section 65 enquiry, the recipient of any pension or grant. With his wife and the commercial occupants set aside, his vulnerability case reduces to an assertion that he has no income, no bank account, and no means of securing alternative accommodation. The evidentiary burden of placing his personal circumstances and those of any person occupying under him before the court rested on him. He has not discharged it.

[20] Mr Higgs's assertion that he is without means sits uneasily with the evidence that he conducts an Airbnb business, advertises rental units bearing his own telephone number at R8 950 per month, and makes use of the "Western Cape Pickers" page. His affidavit does not engage with any of this. Nor is his position assisted by his refusal of the site inspection on 20 February 2026, which would have enabled the Municipality to assess his circumstances and those of the other occupants. That refusal detracts from the weight to be given to his claims of vulnerability, the more so where he asks the court to accept those claims on behalf of persons who have not been identified. On the evidence before me, I am unable to find that eviction would render him homeless.

[21] Section 4(7) concerns the availability of alternative accommodation. It does not guarantee it. The Constitutional Court said in *Grobler v Phillips* 2023 (1) SA 321 (CC) at paragraphs 36 to 38 that a private landowner bears no obligation to provide alternative accommodation, and that section 26 of the Constitution does not entitle an occupier to choose where he wishes to live. What stands in the way of an eviction order is not that Mr Higgs would prefer to remain at Devon Vale, but the prospect that an order would render him homeless. That prospect has not been established on the present record.

[22] The departmental report states that the Municipality cannot assist due to a moratorium on the 10% Emergency Housing Assistance Policy provision, no current housing projects, filled allocations for Jamestown and Klapmuts, and the Klapmuts community's refusal to accept further relocations. The only positive undertaking is that, if

an occupier identifies a host in the WC024 area, the Municipality will provide a Wendy structure. A municipal policy moratorium does not, however, extinguish constitutional obligations. The Constitutional Court held in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) that the state must devise a comprehensive and workable plan to meet its obligations regarding access to adequate housing, and that those in desperate need cannot be left without relief. In *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC), the Court clarified that a municipality cannot rely on budgetary constraints or policy limitations to avoid its obligations to those who would be rendered homeless by eviction. The report does not explain the legal basis for the moratorium, nor does it indicate what steps the Municipality is taking to restore emergency assistance or why this case cannot be treated as an exception. The Klapmuts community's refusal to accept relocations is a social reality the Municipality must address, but it does not absolve the Municipality of its duties.

[23] Nonetheless, the section 4(7) enquiry concerns whether eviction is just and equitable in all relevant circumstances. The availability of alternative accommodation is a factor, not a precondition to eviction, as the Supreme Court of Appeal noted in *Changing Tides* at paragraph 20. Where an occupier has not shown that eviction would render him homeless, the absence of alternative accommodation does not preclude an eviction order. The Municipality's response is insufficient, but on the present record, where Mr Higgs has not established homelessness, this deficiency does not require a different outcome. The question arises whether the position of other occupants, who may yet establish that they are residential occupiers under PIE, requires a different approach. The order below addresses that possibility. Insisting on a further site inspection, which Mr Higgs has obstructed, would reward that conduct and is not required in these circumstances.

The argument advanced by the respondent

[24] Mr Nöthling referred to three cases. The first was *Absa Bank Ltd v Murray and Another* 2004 (2) SA 15 (C), where Binns-Ward AJ explained how PIE balances the rights of property owners and occupiers. I accept that summary. The argument did not, however, engage with a further passage of the judgment, at paragraph 22, in which Binns-Ward AJ observed that lenders must be able to rely on the efficacy of their security, failing which the availability of housing finance will be prejudiced. Standard Bank is such a lender, and its security has been eroded by five failed sales and eighteen months of delay in the administration of the estate. The balance struck in *Murray* does not operate in one direction only.

[25] The second authority was *Ndlovu v Ngcobo; Bekker v Jika* 2003 (1) SA 113 (SCA), cited for the proposition that PIE does not expropriate the landowner but delays or suspends the exercise of full proprietary rights. This is correct and was recently endorsed by the Constitutional Court in *Grobler* at paragraph 37. However, *Ndlovu* stands against reading PIE as a substantive shield against any eviction. It does not support a refusal when the balance of the evidence favours the owner.

[26] The third authority was *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) at paragraph 40, cited for the proposition that a commercial owner aware of long-standing occupation may, in some circumstances, need to be “somewhat patient.” In *Blue Moonlight*, eviction would have rendered the occupiers homeless, a fact that underlies the passage. That premise does not apply here, for the reasons given in paragraphs 19 to 21. Even on that premise, *Blue Moonlight* requires patience; it does not direct refusal.

[27] The reversionary-interest component of the defence does not survive the arithmetic that Mr Higgs himself has put up. Standard Bank’s judgment debt, as at 6 December 2024, stood at R14 100 157.07 and continues to accrue interest. The Knight Frank draft valuation on which Mr Higgs relies values the property at R13.5 million.

Municipal rates rank ahead of the bond under section 118(3) of the Local Government: Municipal Systems Act 32 of 2000, and the August 2025 invoice reflects arrears of R281 239.56. Eskom arrears stood at R195 399.67 as at August 2024, which were not extinguished by Christopher's subsequent payment. The costs of administration of the estate and the trustees' fees remain to be added. On these figures, the bond debt already exceeds the valuation. The R2 810 018.10 residual figure putted by Mr Higgs was an earlier estimate based on more favourable assumptions. It cannot withstand the current numbers. The submission that residual funds will fund alternative accommodation is, on this record, speculative at best.

The alternative submission: vacate on sale

[28] In the alternative, Mr Nöthling submitted that the just date for vacation is the date of sale. Mr Higgs has undertaken to the trustees that he will vacate once the property has been sold, and a date framed in that way might appear to accommodate both parties. The submission has a superficial attraction, but it cannot be accepted.

[29] A sale of the property while Mr Higgs remains in occupation is precisely what the trustees have sought to avoid over the past eighteen months, and with reason. The cancellation of the auction of 27 March 2024, the belated application for leave to appeal (which Parker AJ found had been brought only because eviction was imminent), the refusal of the site inspection on 20 February 2026, and the criminal charges laid against a trustee together demonstrate that a sale on those terms is not a realistic prospect. The five failed sales in execution before sequestration, each while Mr Higgs remained in occupation, are a measure of how the market has responded.

[30] The trustees are, in any event, bound by the directions of the major secured creditor under sections 82, 83 and 90 of the Insolvency Act. Standard Bank has directed

that the property be sold with vacant possession. Even if the marketability submission could be tested on the merits, the trustees would not be free to act on it.

[31] There is a more fundamental difficulty. Section 4(8) of PIE requires the court to determine a just and equitable date for vacation. A date made contingent on an event that the occupier has shown both the ability and the willingness to defer is, in substance, no date at all. To tie vacation to a sale that has been frustrated over a sustained period would defeat the very purpose of the provision.

The date for vacation and the conditions

[32] A number of considerations inform the determination under section 4(8). Mr Higgs has known that he would be required to vacate since at least 15 March 2024 and, by the date of the hearing, had enjoyed more than 21 months' notice. Christopher is engaged in business and has shown himself capable of marshalling funds at short notice. The Municipality has done what it is presently able to do. I have had regard to Mr Higgs's age and to his state of health. There are no children, disabled persons, or pensioners on the property whose position calls for particular protection. His lengthy period of residence, while a relevant consideration, does not outweigh the factors pointing the other way. In my judgment a period of sixty days is sufficient. I have considered longer periods, of ninety or one hundred and twenty days, but they are not warranted on these facts. The interests of creditors cannot indefinitely yield to assertions of homelessness that have not been established.

[33] It remains to deal with the position of any cottage tenant whose occupation may, on its own facts, have ripened into the kind of settled occupation that PIE protects. The record does not suggest that to be the case. But because Mr Higgs has obstructed disclosure of the identities and lease terms of those tenants, the matter cannot be put

entirely beyond doubt. Provision is made in the order for any such tenant to return to court on the same papers within fourteen days of service. That will guard against the risk that an unidentified PIE-protected occupier is bound by an order made in his or her absence.

Costs

[34] The applicants seek their costs on Scale B, to be costs in the insolvent estate. The application was opposed throughout. The first respondent's conduct in administering the estate made the application necessary and materially increased its complexity. The question whether costs should be ordered against Mr Higgs personally arose. An insolvent opposing eviction by his trustees is in a peculiar position, as his livelihood and shelter are at stake. Mr Higgs's opposition is not justified, and he has engaged in conduct designed to delay and obstruct. A personal costs order would ordinarily follow. Nonetheless, the proper order is that the costs be costs in the administration of the insolvent estate, including the costs of counsel on Scale B.

Order

[35] I make the following order:

1. The first respondent and all persons holding occupation under him as residential occupiers are evicted from Portion 28 of the Farm Devon Vale No. 9[...], B[...] Road, Stellenbosch ("the property").
2. For the purposes of this order, "residential occupier" means a person who uses any building or structure on the property as a form of dwelling or shelter within

the meaning of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

3. The first respondent and all persons holding occupation under him as residential occupiers shall vacate the property by 12h00 on 5 August 2026.
4. In the event of non-compliance with paragraph 3, the Sheriff of this Court is authorised and directed to evict the first respondent and any person referred to in that paragraph from the property, and to take such steps and obtain such assistance from the South African Police Service as the Sheriff considers necessary. The Sheriff shall execute against persons falling within the definition of “residential occupier” in paragraph 2 and may apply for directions from this Court in the event of any dispute on that question.
5. The applicants shall, within seven days of the date of this order, instruct the Sheriff of this Court to serve a copy of this order on each adult person presently in occupation of the property and on the second respondent. Any person on whom the order is so served, who contends that he or she is a residential occupier within paragraph 2 and that this order should not apply to him or her, may, within fourteen days of the date of service, apply to this Court on the same papers, supplemented as necessary, for an order varying paragraphs 1 and 3 in his or her favour.
6. The second respondent shall, within twenty-one days of the date of service of this order on it under paragraph 5, file a supplementary report that:

- (a) explains the legal and factual basis for the moratorium on the 10% Emergency Housing Assistance Policy provision and indicates what steps the Municipality is taking to restore emergency housing assistance;
 - (b) identifies any further emergency-housing options that have become available since 22 April 2026 or that can be made available notwithstanding the moratorium;
 - (c) indicates what steps the Municipality proposes to take in respect of any person on the property who claims to be at risk of homelessness, including whether the Wendy structure offer can be extended without requiring the occupier to identify a host; and
 - (d) addresses why this case cannot be treated as an exception to the moratorium, having regard to the constitutional obligations identified in *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) and *City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC).
7. The costs of this application, including the costs of counsel on Scale B, are costs in the insolvent estate of the first respondent.
-

M FRANCIS

Judge of the High Court

Appearances:

For Applicant: Adv C Morgan

Instructed by: ENS Inc.

For First Respondent: Adv B Nothling

Instructed by Sune van der Merwe Attorneys

