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

JUDGMENT

Reportable / Not Reportable

Case no: 22976/2024

In the matter between:

NIZAAM STOFFELS N.O

In his capacity as Executor of the Estate of the late

Andrew Mogamat Stoffels Master's No. 10813/2016

First Applicant

ELTON ANDREW ADAMS N.O

In his capacity as Executor of the Estate of the late

Ellen Stoffels Master's No. 015149/2021

Second Applicant

and

SHANAAZ JOHNSON

First Respondent

SHAUN JOHNSON

Second Respondent

MARIAM DANIELS

Third Respondent

MARNIAN DANIELS

Fourth Respondent

And all those holding title under above respondents

THE CITY OF CAPE TOWN

Fifth Respondent

Coram: Honourable Justice HM Slingers

Heard: 07 May 2026

Delivered: 04 June 2026

Neutral citation: Nizaam Stoffels N.O & another and Shanaaz Johnson & 4 others 22976/2024 [2026] ZAWCHC ... (04 June 2026)

ORDER

- (i) the respondents are ordered to vacate the property on / before 30 November 2026 failing which the Sheriff of the above Honorable Court, or his deputy, is authorised and directed to evict them therefrom on 01 December 2026, or any day thereafter as close as possible to the aforementioned date.
- (ii) the respondents shall not obstruct the marketing and/or selling of the property and shall not prevent the view thereof by potential purchasers;
- (iii) Ms Van Tonder and/ or a representative of the fifth respondent shall continue to assist the respondents with their applications for accommodation at institutions which fall under the Western Cape Social Development's Department and is requested to report to the court and to the parties when the priority housing allocation report has been completed;
- (iv) the respondents shall be liable for half of the applicants' costs on scale B.

JUDGMENT

Introduction

- [1] This is an eviction application brought in accordance with section 4(1) of the Prevention of Illegal and Unlawful Occupation of Land Act, Act 19 of 1998 ('the **PIE act**') in terms whereof the applicants seek the eviction of the respondents from 3[...] B[...] Avenue, Bonteheuwel ('the **property**'). The application was instituted in October 2024, with the section 4(2) order being granted on 15 November 2024.
- [2] The application first served before me on 11 June 2025 when it was postponed for the filing of the fifth respondent's report and to allow the parties an opportunity to explore court-based mediation.
- [3] The parties' attempt at mediation failed and the respondents were directed to complete the fifth respondent's occupants' personal circumstances questionnaire ('the **questionnaire**'). During December 2025, the fifth respondent was directed to engage with the Department of Social Development and to file a supplementary report.
- [4] The application was argued on 7 May 2026.

The parties

- [5] Andrew Moegamat Stoffels ('**Mr Stoffels**') and Ellen Stoffels ('**Mrs Stoffels**') were married in community of property and were the joint registered owners of the property.
- [6] Mr Stoffels died intestate on 5 October 2015. His estate was duly reported to the Master and Mrs Stoffels was appointed as the executrix of his intestate estate. Mrs Stoffels died testate on 21 June 2021. Subsequent to Mrs Stoffels death, the first applicant was appointed as the executor of Mr Stoffels' intestate estate under Letters of Executorship issued to him on 12 December

2023. The second applicant was appointed as the executor of Mrs Stoffels estate under Letters of Executorship issued to him on 6 August 2021.

[7] The applicants bring this application in their official capacities as the executors of the deceased estates of Mr and Mrs Stoffels.

[8] The first and third respondents are the daughters of the late Stoffels couple and the sister of the first applicant. The second and fourth respondents are the husbands of the first and third respondents respectively. At the time of hearing the application the third and fourth respondents had voluntarily vacated the property as they were allocated state housing¹. The adult sons of the respondents, Joshua and Gabriel reside with them on the property.

Unlawful occupiers

[9] Section 4 of the PIE act regulates eviction proceedings and applies to any proceedings by an owner or a person in charge of land for the eviction of an unlawful occupier.

[10] The respondents opposed the eviction application primarily on the ground that they were not unlawful occupiers.² The respondents submitted that as the daughters of Mr Stoffels they were intestate beneficiaries who stood to benefit from the residue of his estate and that until such time that his estate was wound up they were not obliged to vacate the property.

[11] The PIE act defines unlawful occupiers 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.’

¹ Any reference to the respondents is a reference to only the first and second respondents.

² Initially the respondents challenged the applicants’ *locus standi* as well as the validity of Mrs Stoffels’ will. However, at the hearing of the application, the court was informed that the respondents were not persisting with these challenges and that the applicants’ *locus standi* were no longer in issue.

- [12] Whilst attempting to wind up Mr Stoffels' estate an inventory recorded that his half share in the property was the only asset in his estate. A municipal rates account dated 2021 recorded the municipal value of the property as being R410 000.00. Therefore, the monetary value of Mr Stoffels' half share in the property would have amounted to R205 000.
- [13] Section 1 of the Intestate Succession Act provides that a surviving spouse shall inherit a child's share of the intestate estate or so much of the intestate estate that does not exceed in value the amount fixed from time to time by the Minister of Justice, whichever is the greater and that any descendant will inherit the residue, if any of the intestate estate. At the time of Mr Stoffels passing, the Minister of Justice fixed a child's share at the amount of R250 000.00.
- [14] Mr Stoffels half share in the property valued at R205 000.00 in accordance with the municipal valuation of 2021 is less than a child's share valued at R250 000.00. Therefore, Mr Stoffels entire intestate estate would have devolved upon Mrs Stoffels with no residue to be distributed to any of the respondents.
- [15] The respondents take issue with the municipal property valuation being used to determine the property's value and argue that the actual value is far higher. They argue that the use of the municipal valuation fails to consider the period between 2021 and 2025 that would have resulted in an increase of the property's value and which could have resulted in a residue being available to distribute. Furthermore, the respondents argue that the municipal valuation is significantly less than the market value and is not an accurate reflection of the property's worth. Although the respondents dispute the valuation of the property at R410 000.00 they have not furnished the court with an alternative monetary valuation.
- [16] Even if the respondents stood to benefit from a residue of Mr Stoffels intestate estate, such residue would not constitute permission or consent for them to reside on the property indefinitely. On the contrary, the intestate benefit would be quantified into a monetary amount and would have to be divided among all the intestate beneficiaries.

- [17] Furthermore, the respondents resist vacating the property on the basis that Mr Stoffels' estate has not been finally wound up. However, the estate is incapable of being wound up without the property being sold. The respondents are opposed to and obstructed the sale of the property and have prevented its showing to potential purchasers, thus preventing the sale of the property and the consequent winding up of Mr. Stoffels' intestate estate.
- [18] The respondents have also disputed the inventory drawn up in respect of Mr Stoffels estate. Although the inventory purportedly records that the first respondent signed the inventory, she denies that she had any engagement with the applicants in respect thereof. The respondents aver that the alleged inventory fraud is a deliberate attempt to exclude them from the winding up process. The respondents have reported the alleged fraud to the South African Police Services but have only done so after the applicants arranged for the property to be viewed in respect of the potential sale thereof. To date, no arrests have been made and neither has the inventory been legally challenged.
- [19] The respondents ignored the applicants' notice to vacate the property and continue to reside thereon without the applicants' permission and/or consent.
- [20] In the circumstances, I am satisfied that the respondents are unlawful occupiers as defined in section 1 of the PIE act.

Mrs Stoffels' will

- [21] In her testamentary will, Mrs Stoffels directed that the property be sold and that the proceeds thereof be shared equally between her eight nominated grandchildren, who include the respondents' adult sons who currently reside with them on the property. Furthermore, she provided that a first option to purchase be offered to a named granddaughter and a second option to purchase to a subsequent named granddaughter. Both granddaughters declined the options to purchase.
- [22] As both nominated granddaughters declined to purchase the property, the second applicant endeavoured to sell the property. However, the respondents, which included the fourth respondent, refused the duly

appointed estate agent access to the property which resulted in prospective purchasers not being able to view the property. Eventually the property had to be taken off the market. Consequently, the respective estates of the late Stoffels couple could not be finally wound up.

The law

- [23] The PIE act is not solely directed at preventing illegal evictions but obliges courts to maintain the balance between illegal evictions and unlawful occupations. In maintaining this balance, courts seek to ensure justice and equity to all parties concerned.³
- [24] In determining whether to evict the respondents, the court must engage in a two part inquiry. Firstly, it must determine whether it would be just and equitable to grant an eviction order. Secondly, should it find that an eviction order would be just and equitable, the court must then determine a just and equitable date for implementing the eviction order.⁴
- [25] In determining whether it would be just and equitable to grant an eviction order, the court must consider all the relevant circumstances which would include whether a municipality, such as the fifth respondent, has made land available for the relocation of the occupiers as well as the rights and needs of disabled persons and households headed by women. However, the weight to be attached to the relevant circumstances must be assessed in the light of property owners' rights under section 25 of the Constitution. The factual matrix of this matter also requires the court to consider Mrs Stoffels' right to testamentary freedom.
- [26] Section 4(8) of the PIE act obliges a court to grant an eviction order if the necessary requirements have been complied with and there is no valid defence that would entitle the occupiers to remain in occupation as against

³ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at para [13]

⁴ *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC) at para [44] –[45]

the owners or persons in charge of the property.⁵ If an eviction would not be just and equitable, then the occupiers would have a valid defence.

[27] However, a consideration of justice and equity necessarily entails a consideration of justice of equity to all parties.⁶

[28] While it may be more likely that in circumstances where no alternative accommodation is provided, that an eviction will not be just and equitable, it does not automatically follow that the absence of alternative accommodation and potential homelessness will render an eviction unjust and inequitable. As held in *Changing Tides*, neither PIE nor section 26 of the Constitution provides an absolute entitlement to be provided with accommodation.⁷

The factual circumstances

[29] It is common cause that the respondents are not paying any rental in respect of the property, nor are they paying the municipal water account. The allegation that the respondents are not maintaining the property and have gone so far as to knock off tiles and sell furniture belonging to the deceased estate for their sole benefit have not been denied and must therefore be accepted as true and correct.⁸

[30] During the hearing of the application, the applicants handed up an affidavit by the second applicant which *inter alia* stated that:

- (i) save for the respondents' sons, Joshua and Gabriel, all the beneficiaries of Mrs Stoffels' testamentary agree that the property be sold;
- (ii) the proceeds generated by the sale of the property will assist all of them to live a better life;

⁵ Ibid at para [63]

⁶ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) at para [12]

⁷ At para [15]

⁸ *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 2000 (1) SA 1 (CC) at para [61]

- (iii) the proceeds of the sale will go a long way to assist Tyler Stoffels who was stabbed eight (8) times in a brutal attack in 2025;
- (iv) the proceeds of the sale would assist Taylor Stoffels who is expecting her fourth child;
- (v) the estimated market related property value is R800 000.00 and will be sold quickly as it is situated in a sought after area;
- (vi) it is estimated that each beneficiary would receive an amount of R75 000.00; and
- (vii) the transfer of the property would take approximately three (3) months.

[31] While courts are called upon to be proactive in matters of this nature, the parties are obliged to place all relevant information at their disposal before the court to facilitate the proper interrogation of justice and equity by a court considering an eviction application. This follows from the fact that the parties may certain information may only be within the peculiar knowledge of the parties.

[32] In the present matter the respondents have not honestly discharged this obligation. They have elected to omit key information and have, on occasion, provided inconsistent information.

[33] As at 1 April 2026, the fifth respondent's emergency accommodation was at capacity and there was no availability at any of its emergency housing sites for the respondents. Furthermore, all the fifth respondent's temporary relocation areas (**'TRAs'**) are at also at capacity and it is not in a position to accommodate any of the respondents through any of its existing TRAs.

[34] The fifth respondent furthermore reported that the Department of Social Development's (**'DSD'**) social worker had assisted the respondents to apply for placement at a suitable facility and that the outcome in respect of placement at Eric Miles Cheshire Home had been positive. Following the hearing, Mr Nduli for the respondents furnished the court with correspondence from Eric Miles Cheshire Home which reported that they were unable to assist the respondents as the costs of the monthly board and lodging fees was

R16 785.56. The fifth respondent was directed to follow up with Eric Miles Cheshire home and to revert with a status update.

[35] The fifth respondent reported that it was awaiting a completed priority housing allocation form based on the first respondent's disability and that the Western Cape Chief Director in the Social Development indicated that it will assist the respondents with applications to institutes. However, they cannot compel such institutes to accept the respondents.

[36] The personal details disclosed by the respondents in their personal questionnaire to the fifth respondent and to the Department of Social Development ('**DSD**') differed as follows:

(i) the first respondent disclosed in her questionnaire that she has been residing at the property for 13 years and that she would be homeless if evicted. The respondents had previously owned their own house which they lost due to their inability to pay the mortgage bond payments. This house was sold on auction in 2016. However, the first respondent told the DSD that she had been residing in the property her entire life;

(ii) in the questionnaire, the respondents note that they spent a monthly total of R1113 on insurance. This differs from the DSD report which only records a monthly amount of R 500 on a funeral policy; and

(iii) in the questionnaire, the respondents record that they are paying a total of R800 towards electricity. However, it is common cause and recorded in the DSD report that the respondents are not paying for water services and that they spend a total of R2400 on electricity- R1600 more than the R800 noted in the questionnaire.

[37] In respect of Joshua, the court was informed that he is 29 years old, is employed on a temporary basis and earns a monthly income of R4 800. The court was not furnished with documentary proof such as a salary slip or a bank account in support of this information. In the questionnaire, it is recorded that he receives monthly maintenance in respect of his 6 year old son in the amount of R350. In the report compiled by the DSD it is recorded

that Joshua pays monthly maintenance in the amount of R700. In the questionnaire, it is recorded that he spends R500 per month on travelling, whereas in the DSD report it is recorded that he spends R1 200 per month on travelling.

[38] The DSD report records that the respondents spend a monthly amount of R4000 on groceries

[39] In respect of Gabriel, the court is informed that he is 25 years old, is permanently employed and that he earns a monthly income of R5 500. However, as with Joshua, the court is not furnished with any documentary proof such as a salary advice slip or a bank statement. The DSD report does not record that he is currently residing on the property with the respondents.

[40] The respondents have not provided any information about their adult daughter who does not reside with them. It is unknown whether she would be able to accommodate the respondents, her parents.

[41] The first respondent is 53 years old and is wheelchair bound. She is a diabetic and had the toes on her left foot amputated and the right leg above the knee amputated. The first respondent suffers from heart failure and had a kidney transplant. She has dialysis once a week. She receives R2 400 per month as a disability grant.

[42] The second respondent is 55 years old and receives a temporary disability grant of R2400 and looks after the first respondent. The second respondent had a hip operation in 2004.

[43] After considering all the facts and circumstances, I am satisfied that the respondents are unlawful occupiers and that they do not have a valid defence to the eviction application. Consequently, it would be just and equitable to grant an eviction order.

[44] In respect of a just and equitable date for the implementation of the eviction application, I note that the first respondent had knowledge of the eviction application as far back as 24 October 2024 when the section 4(1) eviction notice was personally served and explained to her. The respondents,

including their adult employed sons, took no steps to find alternative accommodation since they received notice to vacate and the eviction application.

[45] I note the first respondent is disabled and that she will require special adapted accommodation.

[46] Should the property be sold within the anticipated period of 3 months, the respondents' sons would receive a total of R150 000.00. This expected inheritance of R150 000.00 amount together with their joint household income of R16 100 could possibly enable the respondents to find alternative accommodation.

[47] In the circumstances, the applicants' proposal that the eviction application be implemented within 6 months of date hereof is reasonable.

Costs

[48] In the absence of a costs order, any costs incurred by the applicants in instituting this application will be paid from Mrs Stoffels estate. This will result in a reduction of the beneficiaries inheritance.

[49] The respondents, together with Joshua and Gabriel, had the sole benefit of the property to the prejudice of the rest of Mrs Stofells' nominated beneficiaries for an extended period.

[50] In my view the opposition to this eviction application was not warranted. Furthermore, the respondents were not completely forthcoming nor transparent with their income and/or expenses.

[51] For these reasons, I am of the view that a costs order against the respondents would be appropriate.

[52] In the circumstances, I make the following order:

- (i) the respondents are ordered to vacate the property on / before 30 November 2026 the respondents are ordered to vacate the property on / before 30 November 2026 failing which the Sheriff of the above

Honorable Court, or his deputy, is authorised and directed to evict them therefrom on 01 December 2026, or any day thereafter as close as possible to the aforementioned date.

- (ii) the respondents shall not obstruct the marketing and/or selling of the property and shall not prevent the viewing thereof by potential purchasers;
- (iii) Ms Van Tonder and/ or a representative of the fifth respondent shall continue to assist the respondents with their applications for accommodation at institutions which fall under the Western Cape Social Development's Department and is requested to report to the court and to the parties when the priority housing allocation report has been completed;
- (iv) the respondents shall be liable for half of the applicants' costs on scale B.

H M Slingers
Judge of the High Court
04 June 2026

Appearances

Counsel for the Applicant/s: Ms. S van der Merwe
As instructed by: Yazeed Isaacs Attorneys

Counsel for the Respondent\': Mr. B Nduli
As instructed by: Legal Aid South Africa