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**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)**

CASE NO: A23/2025

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

SIGNATURE

DATE 05/06/2025

In the matter between:

In the matter between:

PHEELLO PETRUS MOLOI

APPELLANT

And

**PULENG PENELOPE MOKOENA
DIPALESNG LOCAL MUNICIPALITY**

**FIRST RESPONDENT
SECOND RESPONDENT**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be at 10:00 on 5 June 2026.

JUDGMENT

Phahlamohlaka J (Fourie AJ CONCURRING)

[1] This is an appeal against the judgment and order of the Magistrate's Court, Balfour ("the court *a quo*), delivered on 7 March 2025. The court *a quo* dismissed the appellant's application for eviction of the respondents in an application for eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE Act").

[2] The dispute concerns state-subsidized property (an "RDP house") at Erf 3[...], Zone 02, Balfour, which was allocated to the appellant in 2004 by Dipaliseng Local Municipality, of which the appellant did not take immediate occupation.

[3] By verbal agreement, the appellant allowed the parents of the first respondent, Puleng Penelope Mokoena, to occupy the property. Upon their passing, the first respondent remained in occupation, which remains the position at the time of this judgment.

[4] The appellant claims lawful ownership, supported by a registered title deed dated 11 November 2019. In the court *a quo* the appellant sought eviction of the first respondent, alleging her occupation is unlawful. The first respondent contended that her parents bought the property from the appellant in 2007 for R40,000. The first respondent's contention was supported by confirmatory affidavits, but no written sale agreement exists.

[5] The court *a quo* dismissed the eviction application, holding that the appellant had lost ownership by failing to occupy the property, that the provincial government is the lawful owner under section 10A(3) of the Housing Act 107 of 1997, and that the Department should have been joined as a party. The court *a quo* thus found that the applicant lost ownership of the property by deserting it.

[6] The appellant raised the following grounds of appeal:

- (i) That the learned Magistrate erred by applying and finding that section 10A (3) of the Housing Act, 107 of 1997 to be applicable and binding against the appellant.
- (ii) The learned Magistrate erred in finding that Section 10A (3) of the Housing Act, 107 of 1997 rendered the applicant to be lacking the locus standi to institute the application for the relief sought in the court a quo.
- (iii) The learned Magistrate erred by finding that the appellant, although a possessor of a valid title deed over the property in dispute, lost his right of ownership as a result of noncompliance with section 10A (3) of the Housing Act, 107 of 1997.
- (iv) The learned Magistrate erred by finding that the provincial government is the lawful owner of the property in dispute.
- (v) The learned magistrate erred further by finding that the court had no basis to consider the merits of the application because the provincial department was not joined as a party and that only an owner of immovable property can institute an application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

[7] It is either common cause or not in dispute that the appellant is the holder of a title deed to the property. However, the court a quo found that the property's ownership vests in the provincial government in terms of section 10A (3) of the Housing Act which provides that:

“When a person vacates his or her property the relevant provincial housing department shall be deemed to be the owner of the property and application must then be made to the registrar of these by the provincial housing department for the title deeds of the property to be endorsed to reflect the department's ownership of that property.”

[8] The court *a quo*'s interpretation of section 10A(3) was that non-occupation by the appellant resulted in an automatic reversal of ownership to the provincial government, despite the appellant holding a registered title deed. This approach disregards the principle that ownership of immovable property vests upon

registration in the Deeds Office, and that a valid title deed is conclusive proof of ownership unless set aside by a competent court.

[9] In *Legator McKenna Inc v Shea*¹ the court held that:

“In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery-which in the case of immovable property, is affected by registration of transfer in the death of his-coupled with a so-called real agreement or ‘saaklike ooreenkoms’.

[10] It is now settled that ownership of immovable property is transferred by registration. The appellant’s registered title deed is therefore conclusive proof of ownership.

[11] Section 10A (3) restricts alienation of state-subsidized property within eight years unless first offered to the provincial housing department. However, it does not automatically divest a registered owner of title without procedural compliance (such as endorsement in the Deeds Office).

Eviction under PIE act:

[12] The PIE act requires that only an owner or person in charge may seek eviction. The appellant, as registered owner, qualifies.

[13] One of the considerations by the court a quo in dismissing the application was that the provincial government ought to have been joined to the proceedings. It is not clear from the court a quo’s reasoning what interest the Department derive in the proceedings. Secondly, the order sought by the appellant would not affect the provincial government.

[14] The law is settled that joinder is only required where a party has a direct and substantial interest. The provincial government, not being a registered owner, has no such interest.

¹ *Legator McKenna INC and Another v Shea and Others* 2010 (1) SA 35 (SCA) at para 22

[15] In *Road Accident Fund and Others v Hlatshwayo and Others*² the Supreme Court of Appeal stated as follows:

“In dealing with the issue of personal costs against the CEO and the Board, it is perhaps convenient to start with the order against the Board. The order of the full court was assailed on the basis that there was a material non-joinder of the Board. It is trite that joinder of a party is required where such a party may have direct and substantial interest in the subject matter of the action. In *Snyders and others v De Jager and Others* [2016] ZACC 54; 2017 (5) BCLR 606 CC the constitutional court held as follows:

A person has a direct and substantial interest in an order that is sought in proceedings if the order would directly affect such person’s right or interest. In that case the person should be joined in the proceedings. If the person is not joined in circumstances in which his or her rights or interest will be prejudicially affected by the ultimate judgment that may result from the proceedings, then that will mean that a judgment affecting that person’s rights or interests has been given without affording that person an opportunity to be heard. That goes against one of the most fundamental principles of our legal system. That is that, as a general rule, no court may make an order against anyone without giving that person the opportunity to be heard.

[16] In *Mnyandu v Oliphant and Others*³ the Free State High Court stated that:

“Once a Magistrates Court is provided with a Deed of transfer or a Title Deed over property by an appellant for eviction, then ownership of the property has been established and the only alternative option in such circumstances is for the magistrate to stay the eviction proceedings upon request by the party challenging the validity of the deed pending the final determination thereof by the High Court. In court *a quo*, an opportunity was indeed granted for the respondent to approach the High Court for the setting aside of the appellant’s Title Deed but he failed do so despite being legally represented at the time. In such circumstances the magistrate should merely have proceeded to the second stage of the inquiry, namely, to decide whether the respondent was an unlawful occupier of the property in terms of the act.”

² (724/2023; 724B/2023) [2025] ZASCA 17; [2025] 2 ALL SA 333 (SCA) (5 March 2025) at para 29

³ (A202/2016) [2017] ZAFSHC 61 at para 23

[17] The appellant has established ownership and locus standi. The first respondent's occupation is not based on ownership, a valid lease, or any lawful right. Therefore, the court a quo erred by finding that neither the appellant nor the first respondent can be considered "owners" in terms of the PIE Act.

[18] The appellant has shown that eviction will not prejudice the first respondent, who has alternative accommodation and no dependents residing with her. There is no evidence of exceptional circumstances justifying refusal of eviction.

[19] On the conspectus of the facts presented before the court a quo, it is my considered view that the court a quo erred by refusing to grant the appellant an eviction order. Consequently, the appeal must succeed.

Costs:

[20] This court has considered the nature of the matter and the fact that the issues on which the appeal ultimately was decided and I do not believe it warrants a cost order in respect of the Appeal to be made. In the main application however, no reason exists why costs need not follow suit.

Order

[21] In the circumstances I make the following order:

21.1 The appeal is upheld with no order as to costs.

21.2 The order of the Magistrate's Court is set aside and substituted as follows:

21.3 The first respondent (and all persons occupying through her) is ordered to vacate Erf 3[...], Zone 02, Balfour, within 30 days of this order.

21.4 Failing compliance, the Sheriff is authorised to evict the first respondent and any other unlawful occupiers, with the assistance of the South African Police Service if necessary.

21.5 The first respondent is ordered to pay the costs on a party and party scale.

KF PHAHLAMOHLAKA
JUDGE OF THE HIGH COURT

I agree.

H FOURIE,
ACTING JUDGE OF THE HIGH COURT

Appearances

Matter dealt with on paper.

Date judgment reserved: 30 January 2026