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

**Not Reportable
Case No: 2025-015979**

In the matter between:

MARTHINUS VAN DER MERWE

Applicant

and

ANDREW RODNEY

First Respondent

**ALL THOSE HOLDING TITLE UNDER AND/OR
RESIDING WITH/UNDER THE FIRST RESPONDENT
AT THE PROPERTY KNOWN AS 2[...] V[.....]
TERRACE, SCOTTSDENE, BERNADINO HEIGHTS,
CAPE TOWN**

Second Respondent

THE CITY OF CAPE TOWN

Third Respondent

Coram:

RALARALA, J

Heard on: 24 November 2025
Delivered on: 17 June 2026

Summary: Eviction - section 4 of PIE - challenge on ownership of property - claim of unlawful fraudulent dispossession of property - pending matter on allegation of fraud for determination of ownership.

ORDER

The Applicant's application is dismissed with costs in a party and party scale to include costs of counsel on Scale B.

JUDGMENT

RALARALA, J **INTRODUCTION**

[1] This is an application for the eviction of the First and Second Respondent ('the Respondents') as unlawful occupiers of the property described as erf 2[...] Scottsdene, more commonly known as 2[...] V[...] Terrace, Scottsdene, Bernadino Heights, Cape Town Western Cape ('the property').

[2] The Applicant issued an application for the eviction of the Respondent in terms of section 4(1) of the Prevention of Illegal Eviction from unlawful occupation of Land, Act 18 of 1998 ('the PIE Act'). The said application was served upon the Respondents on 11 and 17 February 2025 respectively. The First Respondent opposed the application and filed his answering affidavit. On 24 April 2025, the Applicant brought an application in terms of section 4(2) of the PIE Act. On the said date, Lekhuleni J granted an order in terms of section 4(2) and directed how the service of the application is to be effected.

FACTUAL BACKGROUND

[3] In order to fully comprehend the issues that must be determined it is necessary to outline a brief background of the facts. The Applicant bought the immovable property at a sale in execution on 25 July 2013. Pursuant thereto, the property was registered with the Deeds registry on 4 November 2013 and accordingly transferred into the names of the Applicant.

[4] The Applicant was however unable to take immediate occupation of the property as it was still occupied by Gert and Katrina Andrew ('the Andrews') at the time. Initially the Andrews were the registered owners of the property having bought it in 1995. In 2008 the Andrews experienced financial difficulties and applied for a consolidation loan from Altmarr Properties. The property was without their knowledge transferred to a third party and ultimately sold to the Applicant. Applicant instituted eviction proceedings in Kuilsriver Magistrate's Court against the Andrews which were subsequently withdrawn. The Andrews thereafter launched an action in this Court against Altmarr Properties and the Applicant.

[5] Subsequent to the death of Katrina Andrews, in 2022, the First Respondent occupied the property to take care of Gert Andrews his father. The First Respondent remained in the property even after the death of his father.

[6] On 31 October 2024, the First Respondent was given written notice, via registered post, to vacate the property by 30 November 2024. Thereafter, these proceedings were instituted in February 2025. The court is enjoined to determine whether the Respondents are unlawful occupiers as envisaged in section 1 of the PIE Act.

[7] The application is premised on the contention that the Respondents are unlawful occupiers of the property. Hence, the order sought for their eviction. The Applicant contends that he purchased the property on 25 July 2013 at a sale in execution by the sheriff of this court under case no 2538/2012 for R271 000.00. On

4 November 2013, the property was registered in the name of the Applicant. On 15 November 2013, a notice to vacate the property was served by the sheriff of this court on the Andrews but they failed to vacate the property. The Applicant further avers that they effected payment of the outstanding municipal rates on the property in the amount of R18 351, 62. Applicant states that the Andrews and the First Respondent had no basis in law to remain in the property. On 31 October 2024 the Applicant caused a notice to vacate the property to be sent to the Respondents. Notwithstanding, the Respondents failed to vacate the property.

SUBMISSIONS

[8] The First Respondent raised a preliminary issue and argued that the Applicant has not made out a proper case for the relief he seeks as the Applicant failed to provide the court with all the relevant and pertinent facts relating to this matter, thus failed to take the court into his confidence. The above argument is underpinned by the lack of reference in the Applicant's current application to the pending High Court proceedings, under case number 6158/2014. First Respondent conceded that an application to evict the Andrews was launched by the Applicant. However, it was opposed by the Andrews. The First Respondent further averred that in the aforementioned High Court matter, the Andrews sought to recover the property from the Applicant which was unlawfully taken from them. In the discussion that follow and for the sake of completeness, I will discuss this preliminary point concurrently with the Applicant's application on the merits as the two are inextricably intertwined.

[9] The First Respondent contends that the proceedings in the abovementioned High Court matter were never finalised and the Applicant was at all times aware thereof. The First Respondent in his answering affidavit expanded on the ownership history of the property and states that the Andrews purchased the property in 1995 for a sum of R23 000.00. They also registered a bond over the property in the sum of R90 000.00.

[10] Subsequently, the Andrews experienced financial difficulties and in 2008 they approached Altmarr Properties who offered services to consolidation their debts. They intended to obtain a loan of R150 000.00 from Altmarr Properties and provided

the immovable property as security for the said loan. According to him, the Andrews were Afrikaans speaking, could not read nor speak English. In addition, at the time his father was blind in one eye and had difficulty reading and would often ask the First Respondent to assist and read for him.

[11] It is further contended by the First Respondent that Mr. Skei of Altmarr Properties requested the Andrews to sign a number of documents that in essence allowed for the sale of the property to third parties which was never the intention of the Andrews. Ultimately, the Andrews were not provided with any copies of these signed documents. Had they been furnished with them the fraud committed by Mr Skei and Altmarr Properties would have been detected timeously.

[12] The third parties, Coraizen and Hartog to whom the property was unlawfully transferred by Altmarr Properties, could not pay the bond and the property was attached by ABSA Bank and sold in execution to the Applicant on 25 July 2013. The Andrews only became aware of the change/transfer of ownership in their property on 29 November 2013.

[13] Pursuant thereto, the Applicant launched an application for eviction in the Kuilsriver Magistrate's Court which the Andrews opposed, and the Applicant withdrew the application. The First Respondent contends further that in other matters in the High Court with similar facts against the same Respondent, Altmarr Properties, the applicants were able to restore their homes. This was as a result of the court finding the agreements entered into between Altmarr Properties and the said applicants to be unlawful in *Mottel and Others vs Altmarr Properties and Others* case no: 19749/2012. The First Respondent thus believes that the Andrews' application had substantial prospects of success.

[14] Essentially, the Andrews in the High Court application under case no. 6158/2014 pertinently seek to set aside the sale in execution of their property which was opposed by the Applicant. It is common cause that the matter is still pending. The First Respondent claims that his parents, the Andrews are the lawful owners of the property, and they were unlawfully and fraudulently dispossessed of the property. Following the death of his mother in September 2018 and his fathers in

October 2023, and both having died intestate, he is thus the beneficiary of his late father's estate.

[15] In 2017, the Andrews were successful in a bid to join ABSA Bank to the High Court proceedings. Subsequent thereto, the matter was postponed to 5 March 2018 for hearing. It is asserted that after efforts made by the Respondents' attorneys to ascertain what occurred on the date of hearing, it transpired that no appearance was made by any of the parties to the matter and some of the file contents were missing. On 29 September 2020, the City of Cape Town was advised that the action under case no: 6158/2014 was still pending.

[16] The Applicant in his replying affidavit asserts that no proof has been set out by the First Respondent that the facts in *Mottel and Others* are the same as in the current matter. Notably, the Respondent does aver that the facts in *Mottel and Others* were similar to the current matter and that the matter between the Andrews, Altmarr Properties, the Applicant and ABSA Bank is still pending.

APPLICABLE LEGAL PRINCIPLES AND DISCUSSION

[17] The PIE Act, specifically section 4 thereof, requires that the Applicant in such proceedings be the owners of the property in question or a person in control thereof. The Applicant contends that he is the registered owner of the property by virtue of having bought it in a sale in execution and thereafter caused same to be registered in his name.

[18] Ordinarily, the determination would be whether the First Respondent is an unlawful occupier however it is logical that the point of departure be the issue of ownership. Section 4(1) of the PIE Act provides that an owner or person in charge of land may institute proceedings for the eviction of an unlawful occupier. Section 1 of the PIE Act defines 'owner', 'person in charge' and 'unlawful occupier' to mean:

"owner means the registered owner of the land, including an organ of state"

" 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."

“unlawful occupier means 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...”

[19] PIE proceedings engage constitutional rights on both sides and courts must ensure that the process is fair. Procedural compliance including the Applicant establishing the jurisdictional requirements of ownership or person in charge is a prerequisite to the court's granting an eviction¹. Defects in standing cannot be cured by a later finding that the eviction is otherwise justified. Where the Applicant's title was challenged on grounds that the land was subject to a competing claim, the court was required to determine the status of the title before proceeding with eviction proceedings.

[20] Although in PIE proceedings it is required that the Applicant be an owner or person in charge it is stressed that courts must engage substantively with the requirements of section 4 of the PIE Act. Section 26(3) of the Constitution prohibits eviction from a home without a court order made after considering all relevant circumstances such as justice and equity.² This provision must be read together with the PIE Act as the legislation giving effect to that constitutional guarantee. Accordingly, any court examining *locus standi* in PIE proceedings will be alive to the constitutional imperative of ensuring that evictions are only authorised in favour of those with a legitimate proprietary interest. To perform this duty properly the parties have the obligation to provide the court with relevant information.³

[21] An owner's registered title is prima facie proof of ownership and a court is not precluded from entertaining a challenge to the validity of the title.⁴ Accordingly, where an Applicant produces a title deed reflecting registration in their name, that constitutes sufficient proof of ownership for purposes of establishing locus standi to bring eviction proceedings in terms of the PIE Act. The position becomes more complex where the Respondent adduces evidence that raises a genuine, material

¹ *Kommissaris van Binnelandse Inkomste v Van der Heever* 1999 (3) SA 1051(SCA) para 10

² *Stroebel v Witzenberg Municipality*(A176/17) [2017] ZAWCHC (2 November 2017) para13

³ *Occupiers, Berea v De Wet N.O and Another* 2017(5) SA 346 CC) at para 47.

⁴ *Berea supra* para 37.

dispute as to ownership for example, by alleging fraud or a void transaction in the chain of title like it is averred in this instance.

[22] The First Respondent challenges the ownership of the property as alleged by the Applicant. The First Respondent bases this challenge on an allegation of fraud that would have been committed against his parents prior to the Applicant purchasing the property. Although the allegation is directed to a different entity Altmarr Properties which resulted in the property being transferred to third parties, and ultimately to the Applicant there are court proceedings still pending in this regard. Importantly the Applicant is party to such proceedings. This is common cause.

[23] It is however argued on behalf of the Applicant that the First Respondent provides no proof that the agreement and misrepresentation of Altmarr Properties and Marshall Skei as the court found in *Mottel* was applicable in the current matter.

[24] In the instant case, the Applicant argues that the litigation should not infringe upon his rights as entrenched in section 25 of the Constitution. On the other hand, the First Respondent contends that fraud unravels everything as a matter of law, placing reliance on *Botha v Leboko-Radebe and Others*⁵ where it was stated:

“[11] As was held by the SCA in Namasthethu Electrical (Pty) Ltd v City of Cape Town, it is trite law that fraud is conduct which vitiates every transaction known to the law. In affirming this principle, the SCA, in Esorfranki Pipelines (Pty) Ltd and Another v Mopani District Municipality and Others referred with approval to Lord Denning’s dicta in Lazarus Estates Ltd V Beasely...

[12] Fraud unravels everything – that is our law. And I have already found that the First Respondent committed fraud in that she misrepresented to the office of the Master that she was the surviving spouse of the deceased, when in fact and in truth they had divorced many years before his death. This misrepresentation resulted in the two impugned transactions, which therefore need to be unravelled as being based on fraud. For this reason alone, the transactions fall to be set aside.”

⁵ 2022 JDR 2697 (G-J)

[25] The above argument demonstrates the existence of competing interests that the court in its enquiry has to have regard to. Regarding the determination of the issue of ownership of the property in the action proceedings and in the current application, the Applicant's argument or assertion that the requirements of *lis alibi pendens* has not been met by the First Respondent places reliance on *Marks and Kantor v Van Diggelen*⁶ where the court held:

"The requirements of the same cause of action is satisfied if the other case necessarily involves a determination of some point of law which will be res judicata in an action sought to be stayed."

Counsel for the First Respondent however argued that the eviction and the action proceedings both involve the same issue of fact or law which is ownership of the property. Crucially, the First Respondent says upon legal advice, he intends to apply to be an executor to his father's estate in order to enable him to be a party to the pending High Court proceedings under case no. 6158/2014. Although the First Respondent is not party to the pending High Court Proceedings, the Applicant's argument is countered, first by ownership being the same issue for determination in the present matter and the pending proceedings. Secondly, by the First Respondent's express intention to proceed in this matter as a *nomine officio*.

[26] I am of the view that the circumstances of this case are not so straight forward to discount *lis alibi pendens*. I say this because though the *lis* is not between the Applicant and the First Respondent, the circumstances of this case are such that the First Respondent is not precluded to take the necessary steps to be cited as *nomine officio* in the absence of his deceased parents who are parties to the said *lis*. In his capacity as an executor of the deceased estate or Master's representative⁷ he can be party to the *lis* as he intends to. The question of ownership in the pending matter is central to the Applicant's ownership and thus to this application. Should the court find that the transfer of the property in the pending matter was fraudulent it would impact on the ownership of the Applicant in this matter. Clearly, the First Respondent

⁶ 1935 TPD at 37

⁷ Section 18 of the Administration of Estates Act 66 of 1965

is contesting the manner in which his parents were dispossessed of the property he occupies.

[27] It is well established that eviction proceedings are not a mechanical exercise in which proof of ownership and unlawful occupation produces the eviction order as a matter of course. The court has a duty to consider all relevant circumstances in a specific case.⁸ The Constitution and PIE require that the court not only pay consideration to the lawfulness of the occupation but must have regard to the interests and circumstances of the occupier and pay due regard to the broader considerations of fairness and other constitutional values in striving for a just and equitable result.⁹

[28] It can be extracted from *Botha v Leboko-Radebe supra* that if fraud were to be proved in the pending litigation case, then it would unravel even the Applicant's sale in execution. The pending action proceedings crucially concern the issue of whether the transfer of the property from the First Respondent's late parents' names was based on a lawful and sustainable cause. Contrary to the Applicant's counsel's argument the First Respondent categorically states that the facts in the *Mottel* case are similar to the matter pending between the Andrews and the Applicant. This, in my view is a relevant circumstance in the PIE enquiry.

[29] The fact that the Applicant is the registered owner of the property does not resolve the question whether the First Respondent is in unlawful occupation, as it is expressed in the PIE Act's definition of 'unlawful occupier' that it means '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'. Clearly lack of consent of the registered owner is not determinative of the question of unlawful occupation hence the inclusion of the rider of person in charge and any other right in law.¹⁰

[30] Ostensibly, the Andrews prior to their deaths, occupied the property despite its registration in the Applicant's name. There is no evidence that Gert Andrews, the

⁸ . *Ruiters and Another v Arendse and Others* (A180/2025 ZAWCHC 219 (12May 2026) paragraph 4

⁹ *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217(CC).

¹⁰ *Ruiters para 62*

First Respondent's father, was not a person in charge nor is there evidence that the First Respondent has no other right in law to occupy the property. In fact, the assertion that features prominently in the answering papers and First Respondent's heads of argument is that the First Respondent has a right of inheritance to the estate of his parents, which the property might form of. Importantly it is not disputed.

[31] Essentially, the First Respondent's contention of fraud disputes the Applicant's ownership of the property which is the prerequisite of *locus standi* in PIE's section 4 applications. It is clear that the Andrews in the matter in case no. 6158/2014 were challenging the ownership of the property. The Applicants in reply say that the First Respondent does not have *locus standi* in his parents' case and the proceedings in the above matter (case no: 6158/2014) has been dormant since 2019. I do not agree with this proposition. In fact, I am in agreement with the First Respondent's counsel that the outcome of the action proceedings on the issue of ownership of the property will clearly impact the eviction application against the First Respondent, as demonstrated in *Botha v Leboko-Radebe supra*.

[32] In addition, the First Respondent contends that he is a beneficiary to his late father's estate and he intends to urgently apply to be an executor to his father's late estate and to replace him as the executor to his late mother's estate in order to have *locus standi* in the above-mentioned High Court proceedings. The First Respondent upon the death of his father acquired a personal right to claim the property under the Administration of Estate Act.¹¹ On the basis of the above contention he has an enforceable right to claim from the property.¹² This in my view, establishes a right in law to occupy the property.

[33] A court cannot close its eyes to substantive disputes about the validity of the registration where those disputes are raised with a view to establishing the lawfulness of the occupation. Where on the papers, properly considered, the lawfulness of the occupation is alleged to have been defeated by an alienation that is itself open to substantive attack, the court's enquiry cannot proceed solely on the

¹¹ *Greenberg v Estate Greenberg* 1955 (3) SA 361 (A) ('*Greenberg*') at 365H-366A

¹² *De Leef Family Trust and Others v Commissioner for Inland Revenue* 1993 (3) SA 345 (A) at 358D-E

premise that it is only the consent of the registered owner that determines the lawfulness of the occupation. That would be an affront to the true intention of the legislature and the rule of law which is the founding value of our Constitution.¹³

[34] It is settled that in motion proceedings where there is a genuine dispute of facts, a court has a discretion to dismiss the application. Motion proceedings are meant to resolve legal issues based on common cause facts. There is clearly a genuine and *bona fide* dispute of facts that exists in this matter. A court may dismiss the application outright if the disputes were reasonably foreseeable and the applicant nonetheless opted for motion proceedings.¹⁴ In this instance the Applicant was indeed mindful of the existence of such dispute of fact, hence the pending litigation proceedings were not set out in the founding papers. In this matter, the First Respondent did not merely deny the allegations in the Applicant's founding papers in his answering affidavit. He distinctly argued the points averred by the Applicant and provided a detailed outlook on the Applicant's version. Even better, in this instance he revealed that there are pending proceedings that seek to properly ventilate and bring finality to the issue of ownership in respect of the property.

CONCLUSION

[35] I am satisfied that the case that is pending between the parties is central to this application. The First Respondent has direct and substantial interest in that matter. Fraud is alleged in the dispossession of the First Respondent's parents of the disputed property. As discussed above, fraud vitiates and unravels everything. The alleged fraud, if proven, would result in the sale transactions that led to the transfer of the property from its rightful owners being set aside. In my view, the First Respondent raised a *bona fide* defence particularly regarding the requirement of ownership of the Applicant and unlawful occupation of the Respondents as envisaged by section 4(1) of the PIE Act. Consequently, I am not satisfied that unlawful occupation has been established in this matter.

¹³ *Ruiters para 63*

¹⁴ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions(Pty)Ltd 1949 (3) SA 1155(T).*

ORDER

[36] In the result, I make the following order:

[36.1] The Applicant's application is dismissed with costs on a party and party scale to include costs of counsel on Scale B.

N.E. Ralarala
Judge of the High Court

APPEARANCES

For the Plaintiff:

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