



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2025-071181

DATE: 28 July 2026

In the matter between:

ABR INVESTMENTS (PTY) LIMITED

Applicant

and

ZELDA SYLVIA MITCHELSON

First Respondent

**THE UNLAWFUL OCCUPIERS OF
UNIT 215 CASINO ROYALE, 10 HATHAWAY STREET,
GRESSWOLD, JOHANNESBURG**

Second Respondent

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Third Respondent

Neutral Citation: *ABR Investments v Mitchelson and Others (2025-071181)*

[2026] ZAGPJHC --- (28 July 2026)

Coram: Adams J

Heard: 7 May 2026

Delivered: 28 July 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 28 July 2026.

Summary: Civil procedure – eviction application – section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act) – unlawful occupation – eviction – statutory eviction – meaning of ‘valid defence’

in PIE Act, s 4(8) – when unjust or inequitable to evict, unlawful occupiers not having valid defence – lease agreement lawfully cancelled as a result of breach – unlawful occupation established – onus on unlawful occupier to demonstrate circumstances meriting limitation of owner's rights – no valid defence raised – just and equitable to grant eviction – application for eviction granted. – Eviction application granted.

ORDER

- (1). The first respondent and all those occupying by, through and under her ('the respondents') shall vacate the leased premises, being Unit 215 Casino Royale, 10 Hathaway Street, Gresswold, Johannesburg ('the property') within three months from date of this order.
- (2). In the event of the respondents and/or all those persons occupying through or under them failing to vacate the property within three months from date of this order, the Sheriff of this Court or her/his duly appointed Deputy, is authorised and directed to forthwith enter the property and to evict from the property the respondents.
- (3). The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this opposed PIE Act Eviction application, which costs shall include Counsel's charges on scale 'B' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This is an application by the applicant in terms of s 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ (PIE Act). The applicant applies for orders evicting the first and the second respondents ('respondents') from the residential property, being Unit 215 Casino Royale, 10 Hathaway Street, Gresswold, Johannesburg. The property is owned by the applicant and the respondents are presently in unlawful occupation of same in

¹ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

that they are not paying rental for which they are liable in terms of the lease agreement in relation to the property, nor do they lawfully occupy the property in terms of any other rights entitling them to occupy the property to the exclusion of the lawful owner, being the applicant. The applicant's ownership of the property is not in dispute.

[2]. From 1 May 2010, the first respondent occupied the property pursuant to a written lease agreement. It is the case of the applicant that the lease agreement was lawfully cancelled on 16 March 2023 because the first respondent was in breach of a material term in that she failed to pay the monthly rental due. The first respondent denies that the lease was lawfully cancelled and raises a defence based on the applicant's alleged failure to comply with its obligations in terms of the Rental Housing Act, in particular regarding the interest on her deposit. The first respondent alleges that she has been 'entrapped' in the property.

[3]. The other defence raised by the respondents is that it would not be just and equitable for this court to order their eviction as they would be rendered homeless by an eviction order. They have therefore placed before court certain personal circumstances, which, according to them, demonstrate the inequity and injustice that would result from their eviction.

[4]. The main questions to be considered by me is therefore whether the respondents are in unlawful occupation of the property and whether it would be just and equitable to evict the respondents from the property. Closely related to this issue is the question whether any person is likely to be rendered homeless as a result of being evicted from the property.

[5]. These issues are to be decided against the factual backdrop and the circumstances in the matter as set out in the paragraphs which follow.

[6]. The applicant's case is that the lease agreement between the parties was lawfully cancelled, and the first respondent, who has not paid any rental

since February 2023 whilst remaining in occupation of the property since then, was given notice to vacate the property by 30 April 2023. Her continued occupation is without the consent of the applicant.

[7]. Despite such demand and notice of cancellation having been given by the applicant to her, the first respondent failed to pay the arrear rental and failed to vacate the property. As the applicant was entitled to do in terms of the lease agreement, it cancelled the lease due to the first respondent's failure to pay rental. The breach has, in my view, been established – the first respondent has not paid rent since February 2023. The cancellation is therefore valid. What is more is that the applicant obtained a monetary judgment against the first respondent for arrear rentals in the Alexandra Magistrate's Court, which judgment to date remains outstanding. The first respondent's persistent failure to pay rent, even after judgment, is ample evidence in support of her breach of the lease agreement and its valid cancellation.

[8]. The defence raised by the first respondent based on the supposed invalidity of the cancellation is therefore without merit and should be rejected. The lease agreement was validly cancelled, and the first respondent's right of occupation has ceased.

[9]. The next question is whether the first respondent is entitled to remain in the property on any other basis. She alleges that the applicant failed to comply with its obligations in terms of the Rental Housing Act, specifically the failure to pay interest on her deposit, and that this amounts to an unfair practice. She also claims that her son is unemployed and she is a pensioner. None of these allegations, even if true, entitle her to remain in occupation of the property indefinitely without paying rent.

[10]. The simple point is this: The deposit and any interest that may have accrued have been allocated to the unpaid rentals, which are significant. In any event, the first respondent was not entitled, in terms of the lease, to appropriate the deposit towards rental or to withhold rental. Her contention that she was

entitled to a refund of her deposit before vacating is without merit, as the deposit is intended to cover unpaid amounts owed by the tenant. The applicant even tendered to pay the first respondent the amount of R35 223.41 to facilitate her vacating the property, but this tender was not accepted. This indicates *bona fides* on the part of the applicant and that the first respondent's purported grounds of opposition to the eviction application are without merit.

[11]. The first respondent's reliance on the Rental Housing Tribunal ruling is equally misplaced. The Tribunal found that the first respondent was in breach of the lease agreement. It is also notable that the first respondent did not dispute the cancellation of the lease before the Tribunal. The proceedings before the Tribunal were for different arrear rental amounts and do not affect the validity of the cancellation or the applicant's right to seek eviction.

[12]. The point is simply that the 'legal' defences raised by the first respondent to the eviction application is without merit. Her allegations of an unfair practice do not constitute a defence to the eviction, as the remedies for such practices are to be pursued through the Rental Housing Tribunal, not by withholding rent or refusing to vacate the property. To allow a tenant to remain in occupation based on a dispute about interest on a deposit would be an abuse of process, especially where the tenant has not paid rent for about three years.

[13]. I am therefore of the view that the first respondent does not have a valid defence to the eviction application.

[14]. The last issue which I need to address relates to whether or not it would be just and equitable to evict the first respondent and all those occupying through or under her from the applicant's property. In that regard, the first respondent has pointed out that she is a 67-year-old pensioner, who is financially depended on a monthly state pension. She lives with her unemployed adult son, whose business, so the first respondent avers, collapsed during Covid and he has since then been unemployed.

[15]. Section 4(7), (8) and (9) of the PIE Act reads as follows:

- ‘(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.
- (8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine –
 - (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
 - (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).
- (9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.’

[16]. In deciding whether eviction would be just and equitable, the court is required to consider 'all the relevant circumstances', to include the factors specified in these sections. The weight to be afforded to those circumstances, the determination of such further circumstances as might be relevant and the weight to be afforded to them, as also the balance ultimately struck, are matters left entirely to the judgment and discretion of the court.

[17]. The onus of demonstrating the existence of circumstances meriting the limitation of the owner's right to possession is on the unlawful occupier. In *Ndlovu v Ngcobo; Bekker and Another v Jika*², the Supreme Court of Appeal held at para 19 as follows: -

² *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA).

‘Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.’

[18]. On the basis of these general principles, I conclude that the first respondent has not provided sufficient evidence to show that it would be unjust and inequitable to grant the eviction order. While she is a pensioner, her adult son is an able-bodied adult who was previously employed and can seek alternative accommodation. The first respondent’s financial hardship, while a relevant consideration, must be balanced against the significant prejudice suffered by the applicant, who has been denied rental income for about three years.

[19]. Moreover, the first respondent conveniently does not deal with the fact that she is clearly in a position to afford alternative accommodation, She was, after all, until 2023 able to pay rental in respect of the property and only stopped payment when she, in her mind, conceived of a dispute which, according to her, entitled her to stop payment of the monthly rental. This means that she would probably be able to pay rental at alternative accommodation, which she should arrange for her and her son. By all accounts, it does not appear that she or her son would be rendered homeless if an eviction order is granted against them.

[20]. Speaking of alternative accommodation, the first respondent has submitted an application for accommodation with the City of Johannesburg. The City of Johannesburg, as the third respondent, has not been called upon to provide a report on the availability of alternative land for the relocation of the unlawful occupiers. In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*³, the Constitutional Court emphasized the interplay between the PIE Act and the duties of the

³ *Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC).

municipality. In this matter, the first respondent did make application to the City for temporary emergency accommodation, but she herself did not follow through on such application. Moreover, as I have already found, the first respondent and her son are not facing homelessness as a result of the eviction.

[21]. In all of these circumstances, I am of the view that the eviction of the first respondent and all those occupying through or under her will be just and equitable. I am also of the view that affording the respondents a period of three months to vacate the property would be eminently just and equitable. The first respondent has been in occupation of the applicant's property for a long time, and she and her son may need some time to find alternative accommodation. And it is mainly for this reason that I intend granting them an additional period of three months within which to vacate the property. Should they fail to vacate within the prescribed period, the Sheriff will be authorised to evict them.

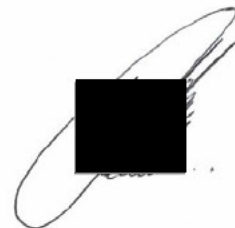
[22]. Accordingly, the relief sought by the applicant should be granted. As for the costs of this opposed Eviction Application, same should follow the suit.

Order

[23]. Accordingly, I make the following order:

- (1). The first respondent and all those occupying by, through and under her ('the respondents') shall vacate the leased premises, being Unit 215 Casino Royale, 10 Hathaway Street, Gresswold, Johannesburg ('the property') within three months from date of this order.
- (2). In the event of the respondents and/or all those persons occupying through or under them failing to vacate the property within three months from date of this order, the Sheriff of this Court or her/his duly appointed Deputy, is authorised and directed to forthwith enter the property and to evict from the property the respondents.
- (3). The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this opposed PIE

Act Eviction application, which costs shall include Counsel's charges on scale 'B' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	7 May 2026
JUDGMENT DATE:	28 July 2026 – Judgment handed down electronically
FOR THE APPLICANT:	(Ms) S Kabelo
INSTRUCTED BY:	KWA Attorneys, Victoria, Johannesburg
FOR THE FIRST and THE SECOND RESPONDENTS:	T L Mabilo
INSTRUCTED BY:	T L Mabilo Incorporated Attorneys, Johannesburg
FOR THE THIRD RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance