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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 3947/2023

(1) REPORTABLE: /NO
(2) OF INTEREST TO THE JUDGES: /NO
(3) REVISED.

DATE 05/08/2026

SIGNATURE.....

In the matter between:

BLUE POINTER TRADING 322 (PTY) LIMITED

FIRST APPLICANT

REGISTRATION NUMBER 2003/014637/07

VILLA MODE (PTY) LIMITED

SECOND APPLICANT

REGISTRATION NUMBER 2018/030542/07

And

PAUL HERMAN SWANEPOEL

FIRST RESPONDENT

ID NUMBER: 5[...]

CHAMAINE BRENDA SWANEPOEL

SECOND RESPONDENT

ID NUMBER: 6[...]

THE BELA BELA LOCAL MUNICIPALITY

THIRD RESPONDENT

Delivered : 05 August 2026

This matter has been heard in an open Court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically and circulated to the parties' representatives by email and published on the SAFFLI on the Limpopo High Court website. The date for handing down of the judgment is deemed to be **05 August 2026**

Date heard : 11 May 2026

Coram : TSHITEREKE AJ

JUDGMENT

TSHITEREKE AJ:

INTRODUCTION

1. On 03 May 2023, the first and second Applicants, launched motion proceedings against the parties cited herein as the Respondents, and sought in the *main* the following relief:
 - 1.1. *That the first and second Respondent are ordered to vacate Chalet 1[...], Block [...]. situated at the Hideaway Holiday Resort, Bela Bela, Limpopo Province on the property of the second applicant, within thirty (30) days from the date of this order, which holiday resort is situated on the property of the second applicant.*
 - 1.2. *That should the first and second Respondents and any person who occupy Chalet 1[...], Block [...]. situated at the Hideaway Holiday Resort, fail to vacate the said chalet that the Sheriff of the above Honourable Court is hereby authorised and directed to evict the first and second Respondent from Chalet 1[...], Block [...], Hideaway Holiday Resort and any person who occupies the said chalet through the first and second Respondents.¹*

¹Paginated Papers, Applicant's Notice of Motion dated 11 September 2023

2. I should immediately point out that as required by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998 (hereinafter referred to as the PIE Act), the Bela Bela Local Municipality, in whose area of jurisdiction the immovable property is situated was duly served with the founding papers and elected not to participate in the eviction proceedings.² Something falls to be said on the fact that sufficient evidence and information ought to be provided to the Court in order to determine whether the relief sought would be just and equitable in the circumstances.³ I deal with this germane issue in detail *infra*.
3. The papers trace the history of the relationship between the parties on an immovable property, being a Chalet 1[...], Block [...] situated at the Hideaway Holiday Resort, Bela Bela, Limpopo Province. In sum, the Applicants and Respondents entered into a contractual relationship that pertains to an immovable property being Chalet 1[...], Block [...] situated at the Hideaway Holiday Resort, Bela Bela, Limpopo Province. I must immediately point out that Mr Philip Van Den Heever represented the Applicants in the conclusion of the two contracts referenced to *infra*.

²Blue Moon Light Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue 2009 (1) SA 470 (W) Paras 53 and 68 wherein the following was stated: the failure by municipalities to discharge the role implicitly envisaged to them by statute, that is, to report to the court in respect of any factors affecting land and accommodation availability and the basic health and amenities consequences of an eviction, especially on the most vulnerable such as children, the disable and the elderly, not only renders the service of the notice superfluous and unnecessary costly exercise of the applicants, but more importantly, it frustrates an important objective of the legislation. It will often hamper the court's ability to make decisions which are truly just and equitable.

³Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC), Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v City of Johannesburg 2008 (3) SA 208 (CC), Residence of Joe Slovo Community, Western Cape v Tubelisha Homes 2010 (3) SA 454 (CC)

4. The competing rights adumbrated *herein* pertains to the immovable property and begets the current impasse, with the Applicants, *firstly* seeking an eviction of the Respondents from the immovable property, and, *secondly*, the first and second Respondents exerting their right to ownership of the immovable property. The gravamen of the Respondents' opposition of the eviction application in Court are two fold, firstly that they acquired ownership of the immovable property in the period 15 August 2017, and, *secondly* that the improvements in the form of garages constructed in the immovable property (right of retention).⁴ I shall consider these germane and material issues in turn.

THE FACTS

5. *In casu*, both parties placed reliance on two sets of documents in relation to the conclusion of the written agreements in the period, August 2017. For the sake of completeness I refer to these two instruments or documents *infra*:

5.1. A written sale agreement concluded and signed between the first Applicant and the Respondents on 15 August 2017.⁵

5.2. A written contract for occupancy of the immovable property between the first Applicant and Respondent signed on 17 August 2017.⁶

⁴Indexed Bundle Paginated Papers, first and second Respondents' Answering Affidavit, Page 65

⁵Indexed Bundle Paginated Papers, first and second Respondents' Answering Affidavit, Annexure PS1, Page 73 - 76

⁶Indexed Bundle Paginated Papers, Applicant's Founding Affidavit, Annexure C, Page 21 - 26

6. The inquiry is what to do with these written contracts signed by both parties before the Court.
7. I must add that in terms of these two written contracts, the parties agreed on payment of an amount in the sum of Three Hundred and Fifty Thousand Rands (R350 000-00), to enable the Respondents to participate in the share block scheme at 6[...] E[...] Road, Bela Bela, Limpopo Province. It is necessary in the circumstances to understand that an arrangement to participate in the share block scheme meant that the Respondents acquired, *inter alia*, rights and obligations tied to the aforesaid arrangement to participate in the holiday resort.
8. It was contended, that, the inter-relationship between the parties involving the Respondents' participation, included the primary obligation on the first and second Respondents, to make payment of the sum of One Thousand and Fifty Rand (R1 050,00), towards levies every month to the Applicants.

THE DISPUTE BETWEEN THE PARTIES

9. The dispute in the *main* primarily rests on the failure of the first and second Respondents to make monthly payment(s) of the sum of One Thousand and Fifty Rands (R1 050, 00), in relation to the exercise of their rights and obligations in the holiday resort.
10. The Applicants' case is that the first and second Respondent failed to make payments of monthly levies in the sum of R1 050,00, and proceeds on the

premise that the aforesaid amounts have been due and payable dating back to the period, November 2022.

11. Moreover, that a notice of cancellation was provided to the first and second Respondents for such a default in the payment of the outstanding amounts.⁷ At the hearing Mr Bruwer further argued that the Respondents there and then elected not to service the debt at the time amounting to the sum of R6 740,40.⁸
12. It was contended that in view of the non-compliance referred to *supra* that the Applicants elected to cancel the agreement by issuing formal correspondence to that effect to the Respondents.
13. A clause on Default in the written agreement signed on 15 April 2017, use the unequivocal expressions which reads:

In the event of either party failing to pay any of the amounts referred to in this agreement on due date or breaching any of the terms and conditions hereof and persisting in such failure or breach for a period of 7 days (seven) days after dispatch of written notice from the aggrieved party calling upon the defaulting party to make such payment or remedy such breach, the aggrieved party shall be entitled at the sole discretion and without prejudice to any of his rights in terms of this agreement or in law, either to:-

⁷Indexed Bundle Paginated Papers, Applicant's Founding Affidavit, Annexure F, Page 43

⁸Indexed Bundle Paginated Papers, Applicant's Founding Affidavit, Annexure C, Page 21 - 26

(a) Claim specific performance of the terms of this agreement; or

(b) Cancel this agreement forthwith and without further notice claim and recover damages from the defaulting party;

(c) Cancel this agreement and retain all amounts paid by the defaulting party as rowwkoop or as liquidated damages or as payment in respect of the prejudice agreed upon which has been suffered by the aggrieved party cancelling the agreement as a result of the defaulting party's breach of the agreement.

14. The words in both written contracts are clear, and I do not see how one would be justified in not making a payment as required in terms of the written agreement(s).

15. In the light of the issues canvassed above one has to peek through the Respondents Answering Affidavit on the issue relating to the non-payment of levies at the holiday resort. The non-payment is not addressed at all in the Respondents Answering Affidavit. Accordingly, I intimated and invited counsel for the Respondents, to address me on the issue, firstly pertaining to the two written contracts and secondly the non-payment of monthly levies by the first and second Respondents. Mr Maabane, accordingly, elected to deal with the later issue, and only submitted that the Respondents have been paying monthly levies to a bank account provided to them.

16. With the submission *above* it was apparent and obvious that there have not been any payments by the Respondents to the Applicants towards the monthly levies as agreed. With regard to the aforesaid contention if payments were effected by the Respondents one would have expected a party placing reliance on such a manner of payment to attach proof of payments in the answering papers. None was provided as I alluded *supra*.
17. I proceed to consider the contents of Paragraph 5.3 in the Respondents Answering Affidavit which reads: *The first Respondent is blatantly misleading the above Honourable Court in stating that they were sold the right of occupancy, we were led to believe that we were buying the dwelling, as were allowed to build garages on the property and have a freedom of testation. The offer of Purchase is attached hereto marked as Annexure "PS1".*⁹
18. As reflected in Paragraph 6.2 *supra*, the second agreement concluded between the parties recorded that the first and second Applicant sold to the Respondents a right of occupancy of Chalet 1[...], Block [...], Hideaway Holiday Resort, Bela Bela, Limpopo Province.
19. The general contractual principles on agreements will apply as clearly an agreement to occupy existed between the Applicants' and Respondents. An agreement was concluded between the parties. The first and second Respondent

⁹Indexed Bundle Paginated Papers, first and second Respondents' Answering Affidavit, Annexure PS1, Page 65 - 67

have been in occupation of Chalet 1[...], Block [...], Hideaway Holiday Resort, Bela Bela, since the period August 2017.

20. A dispute of fact emerges from the Respondents' Answering Affidavit on this particular point, and not addressed at all in the Applicants Founding papers. Counsel for the Respondents submits that not only was the dispute foreseeable, but was actually foreseen by the Applicants attorneys in relation to the conclusion of the two agreements in the period August 2017.
21. Notwithstanding these disputes, the Applicants contend that no genuine or material dispute of fact arises on the papers. They further contend that, even if such a dispute exists, its resolution is not material to, nor determinative of, the relief sought in the Notice of Motion. It is well established that while the Court has a discretion in deciding whether to allow a referral to oral evidence, the Court will dismiss an application if the Applicant should have realised when launching the application that a serious dispute of fact, incapable of resolution on the papers, was bound to develop. In any event nothing turns on this issue in view of the position I have taken in relation to compliance with the peremptory requirements in terms of the PIE Act. I deal with these aspects hereunder.

ANALYSIS OF THE MATTER

22. On 18 April 2024, her Ladyship Justice Deane AJ, authorised and directed service of a section 4 (2) Notice on the first Respondent, Mr Paul Herman Swanepoel and there has been compliance with the directions. There is no dispute between the parties that the PIE Act finds application in these proceedings.

23. In my opinion the facts in this case makes it clear that the parties have been aware about the possibility of an eviction as early as April 2024.
24. Section 26 (3) of the Constitution of the Republic of South Africa Act, 108 of 1996 provides: "No one may be evicted from their home, or have their home demolished, without any order of court made after consideration of all the relevant circumstances and that no legislation may permit arbitrary evictions".
25. The decision on whether an eviction in this matter will be just and equitable ought to be observed on, *inter alia*, the information provided in the Answering Affidavit and the non-availability of a report from the third Respondent, the Bela Bela Local Municipality.¹⁰
26. In *Residence of Joe Slovo Community, Western Cape v Tubelisha Homes*,¹¹ the Court observed as follows: the Constitution deals expressly with the duties of councils towards the disadvantaged sections of our society and stated that the objects of local government include ensuring "the provision of services to communities in a sustainable manner" and "promoting social and economic development", and that a municipality must "structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community".

¹⁰Occupiers of Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Mark Lewis Steele 2010 (9) BCLR 911 (SCA)

¹¹2010 (3) SA 454 (CC) and Blue Moon Light Properties 39 (Pty) Ltd v Occupiers of Saratoga Avenue 2009 (1) SA 470 (W)

I am inclined to a view that section 26 (3) of the Constitution imposes on courts onerous obligations to consider all of the relevant circumstances when the granting of an eviction order is sought and considered. Essentially, an eviction order may be granted only if it is just and equitable in the circumstances.¹²

27. In this regard the duties and responsibilities of municipalities in all evictions must not be underestimated.¹³ Not only the provisions in the eviction legislation, but other constitutional directives, especially those specifically applicable to local government must all be applied in a holistic manner.

28. Turning to one substantial fact, the Respondents failed to adequately canvass their personal circumstances as appear in Para 27 of their Answering Affidavit. No supporting affidavits and / or documentations are provided to deal with the income of the second Respondent nor the first Respondent's indigency addressed. However, that is not an end of the inquiry in relation to the matter at hand.

29. In Paragraph 27 of the Respondents Answering Affidavit, the following is stated in relation to the issue addressed in Paragraph 25 *supra*:

The contents hereof are vehemently denied. The first Respondent is misleading the Court in this regard. It is apparent from my identity number that we are

¹²City of Johannesburg v Blue Moonlight Properties at Para 23 - 39

¹³City of Johannesburg v Blue Moonlight Properties at Para 23 - 39

*elderly. I am a pensioner card holder. I am 66 years of age and the second Respondent is currently 62 years of age. The Second Respondent is the only person in our household who currently enjoys the benefits of a monthly income.*¹⁴

Sic Underlined

30. In my view the correctness of the averments referenced above are not addressed and challenged by the Applicants. The Respondents are elderly members of the community, and aged Sixty Nine (69) and Sixty Five (65).
31. Section 4 (7) of the PIE Act makes it clear that the provisions of the sub-section that follow are peremptory. It also defines the "proceedings" to which the section applies, namely proceedings for the eviction of an unlawful occupier of land for a period of more than Six (06) months.
32. In my observations I have to seriously consider the fact that the first and second Respondents had occupied the immovable property for a period in excess of Six (06) Months.
33. In fact, their occupation of the immovable property is for an approximate period of Nine (09) Years.

¹⁴Indexed Bundle Paginated Papers, first and second Respondent Answering Affidavit, Page 71

34. This is a weighty consideration in deciding on what would be fair, just, equitable and humane in the circumstances.¹⁵
35. In short, and taking into account the contents of Paragraph 27 of the Answering Affidavit, it is patently clear that the first and second Respondents are vulnerable members of our society and the determination of the application I need to seriously consider the personal circumstances of the Respondents.
36. In a matter such as this where a municipality is tasked with providing emergency temporary housing for a small family, as it is in this case, it may be feasible for the Bela Bela Local Municipality to meet the need effectively.¹⁶ I would assume that in the event that an eviction order is granted, that the Respondents will require fewer amenities, utilities and land, and thereby making it easier for the Bela Bela Local Municipality to identify suitable accommodation for the Respondents.
37. In order to minimise the degree of hardship to the Respondents, who are elderly and in a weaker position, the Bela Bela Local Municipality, ought to have had a meaningful engagement and discussion with the parties and the legal representatives spanning back to the period April 2023, when the application for an eviction was launched. This was essential and necessary to alleviate any hardship in the event an eviction order is granted by Court.

¹⁵Constitution of the Republic of South Africa Act, No 108 of 1996

¹⁶Sandile Percival Msibi v the Occupiers of Unit 06 & Another[2025] ZAGPPHC100 (31 January 2025) at Para 32

38. The Applicants are *dominis litis* in these legal proceedings, and ought to have adequately engaged the Bela Bela Local Municipality on a proper cause to be undertaken in relation to the ejectment and eviction sought in the current application.¹⁷
39. The discussions envisaged ought to have centred around the provision of alternative accommodation in the event an eviction order is granted.
40. In the matter of Emfuleni Local Municipality v Builders Advancement Services and Others,¹⁸ his **Lordship Justice Willis J**, concluded in his judgment by stating that he is bewildered and confused as to how a court is expected to deal appropriately with evictions, and that clarity is required. In Para 28 of the judgment, his Lordship stated that the legal remedy for the *unlawful occupation of property is an eviction order and that the making of which must be exercised with compassion, grace and an awareness of the right of every human being to be treated with dignity*.
41. On a proper reading of the Notice of Motion, it is clear that the order sought by the first and second Applicant will impact the lives of the Respondents and members of their households. The Bela Bela Local Municipality in its capacity as a municipality and responsible government functionary has not meaningfully participated in these legal proceedings, no report has been furnished and / or

¹⁷City of Johannesburg v Blue Moonlight Properties at Paras 71 -104

¹⁸2010 (4) SA 133 (GSJ)

pledged to render the necessary assistance to the Respondents and members of their household in the event that prayer one in the Applicants' Notice of Motion is granted by the Court.

42. Insofar as prayer number one is concerned the Applicants ought to satisfy the Court that an order to evict the Respondents would be just and equitable, after consideration of all the relevant circumstances in the matter.¹⁹
43. My prima facie view is that the application should be granted. However, granting the application at this stage seems to be a harsh step to take against the Respondents in view of all the competing constitutional rights highlighted in the matter.²⁰ It is therefore not reasonable and fair to grant an order at this stage in view of some of the issues highlighted *supra*.
44. Bela Bela Local Municipality ought to be before the Court, and meaningfully engage and participate in these legal proceedings in order for a proper determination to be made *in casu*.
45. I am not going to shut that door to the parties at this stage. Striking the application from the Court roll to allow the Applicants and the Bela Bela Local

¹⁹Indexed Bundle Paginated Papers Applicant's Notice of Motion, Page 01 - 04, Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC), Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg 2008 (3) SA 208 (CC), Residence of Joe Slovo Community Western Cape v Tubelisha Homes 2010 (3) SA 454 (CC)

²⁰Indexed Bundle Paginated Papers, Applicant's Founding Affidavit, Annexure C, Page 21 - 26

Municipality to comply with all the procedural requirements envisaged in section 4 (7) of the PIE Act seem more reasonable and appropriate in the circumstances.²¹

ORDER

46. In the result, I make the following order:-

42.1. That the application is struck from the Court Roll.

42.2. There shall be no order to costs.

TSHITEREKE AJ

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

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²¹Sandile Percival Msibi v The Occupiers of Unit 06 & Another [2025] ZAGPPHC100 (31 January 2025, Para 34)

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