



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

Case Number: 3636/2024

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

04.08.2026



In the matter between:

SHOFEEDS (PTY) LTD

APPLICANT

And

JOHANN MOLLER

1st RESPONDENT

SONEL JOUBERT

2nd RESPONDENT

UNLAWFUL OCCUPIERS WHO ARE OCCUPYING
FARM LOWHILLS 394 REGISTRATION JU MPUMALANGA

3RD RESPONDENT

NKOMAZI LOCAL MUNICIPALITY

4TH RESPONDENT

CONFERENCE AND MANAGEMENT SOLUTIONS

5TH RESPONDENT

JUDGMENT

KEKANA AJ

INTRODUCTION

[1] This is an application for the eviction of the first, second and fifth respondent from the property described as Portion 6 (A Portion of Portion 2) of the Farm Lowhills 394 (Portion 6), Registration Division JU, Mpumalanga Province and Portion 8 of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province (portion 8) (jointly referred to as “the properties”) in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act).

[2] Prior to hearing the present application, I heard an application for the rescission of a winding-up order brought by the first respondent in his representative capacity. That winding-up order had resulted in the liquidation of the company which allegedly owned the properties and the subsequent sale of the properties which are the subject of the present proceedings.

[3] At the commencement of the present matter, Mr Van Rensburg, who appeared for the respondents, submitted that I ought not to hear the application as, in his view, I was conflicted by reason of having presided over the rescission application. The first respondent in the present application had acted in a representative capacity and sought to set aside the winding-up order which had ultimately led to the sale of the property to the present applicant. Although not expressly framed as such, the submission amounted to an application that I recuse myself from hearing this matter.

[4] The objection came as a surprise. Before the commencement of the day's proceedings, I had met with counsel in chambers to discuss the order in which the matters would be heard. At no stage during that discussion did Mr Van Rensburg indicate any concern regarding my hearing both matters. It was only after the rescission application had been fully argued and concluded that the objection was raised.

[5] Mr Kruger, who appeared for the applicant, opposed the request for recusal. He drew the Court's attention to correspondence exchanged between the parties in the rescission application

which, according to him, demonstrated that it was in fact the applicants' own legal representatives who had requested that both matters be allocated to and heard by the same judge. He submitted that, in those circumstances, the applicants could not, after the completion of argument in the rescission application, seek my recusal merely because they were dissatisfied with the fact that I had heard that matter.

[6] Having considered the submissions, I was satisfied that no reasonable apprehension of bias had been established. The mere fact that a judge has previously heard another matter involving some of the same parties, or a related factual background, does not, without more, constitute a basis for recusal. Judges are frequently required to hear successive matters involving the same litigants or overlapping facts. The question is whether a reasonable, objective and informed person would apprehend that the judge would not bring an impartial mind to bear on the adjudication of the matter. No such facts were advanced in the present matter. My knowledge of the earlier proceedings arose solely from the proper discharge of my judicial functions, and there was no suggestion that I possessed extraneous knowledge or had prejudged any issue arising in the present application.

[7] In those circumstances, I declined to recuse myself and proceeded to hear the application.

BACKGROUND

[8] Pieriesfontein Boerdery (Pty) Ltd (Pieriesfontein) was allegedly the registered owner of the immovable properties described as Portion 6 (A Portion of Portion 2) of the Farm Lowhills 394 (Portion 6), Registration Division JU, Mpumalanga Province and Portion 8 of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province (portion 8) (jointly referred to as the property)

[9] Pieriesfontein was placed under final winding-up by the court on the 20th February 2020. The assets in the Pieriesfontein's insolvent estate vested in the appointed liquidators, Cloete Murray N.O and Mirrelle Vallie N.O (the Liquidators). The liquidators arranged for the property to be auctioned. The applicant was the highest bidder at an online auction and concluded a sale agreement with the liquidators on the 7th March 2023. The property was transferred to the applicant on the 19th October 2023.

[10] The first respondent in his representative capacity as a trustee and beneficiary of the Moller family trust and the Lowhills family trust is disputing the sale of the property to the applicant on the basis that the property was owned by the two trusts and not Pieriesfontein.

[11] The first, second, and the third respondents (the respondents) remain on the property despite the transfer of the property. The parties have been involved in litigation since the transfer of the Property including application by the applicant interdicting the respondents from carrying on commercial activities on the property, contempt of court and spoliation applications among others.

[12] The respondents referred to the litigation history between the applicants and the first respondent either acting personally or in a representative capacity. I have not included that information herein as it is not pertinent to the present application.

LEGAL FRAMEWORK

[13] PIE Act regulates the eviction of unlawful occupiers. It affords protection to unlawful occupiers by prescribing procedures and processes that land owners must adhere to when they want to evict an unlawful occupier from their land giving effect to section 26 of the Constitution. Section 26 requires judicial oversight in every eviction application and obliges the court to balance the competing constitutional rights of both the property owner and the occupier.

[14] Section 4(7) of the PIE Act states as follows:

‘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 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.’

[15] Section 4(8) of the PIE Act provides further that 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)’.

[16] The court in *Madulammoho Housing Association NPC v Nephawe* and another (22/023954; 21/40262) [2023] ZAPJHC 7(10 January 2023) at para 8 summarised the enquiry into justice and equity as follows:

‘The principles of justice and equity are, first, that the applicant for an eviction order bears the onus to establish that it is just and equitable to grant one; second, that evictions that lead to homelessness are not generally just and equitable; third, that a court has wide powers to require applicants for eviction orders, organs of state and unlawful occupiers to produce the information necessary to enable the formulation of a just and equitable order; and fourth, that where an eviction would lead to homelessness, the duty to provide the alternative accommodation necessary to prevent an unlawful occupier from becoming homeless generally falls on the local authority with jurisdiction over the property.’

LOCUS STANDI OF THE DEPONENT

[17] The respondents firstly challenge the locus standi of Mr Tolmay, the deponent to the applicant’s affidavit. It is, however, not apparent from the answering affidavit on what basis this challenge is made. In any event, Mr Tolmay, being the sole director of the applicant, there can be no question about his authority to depose to the founding affidavit on behalf of the applicant. There is accordingly no merit in the challenge to his *locus standi*.

SUBMISSIONS

[18] The applicant submits that it purchased the property lawfully at an online auction conducted by the liquidators of Pieriesfontein, the former registered owner of the property and the transfer has since been passed to the applicant. It is contended that there is no lease agreement between the parties and that the applicant has never consented to the respondents remaining on the property. Their continued occupation is accordingly unlawful.

[19] In their answering affidavit, the respondents raise numerous issues, including the history of the litigation between the parties and the events that culminated in the liquidation of Pieriesfontein. Essentially, the respondents specifically contend that the property was intended by the first applicant’s father to be a legacy for his descendants and thus he created the Moller Family Trust. The first respondent created the Lowhills Family Trust, which according to the

first respondent together with the Moller Family Trust became the owner of the property. Further that Pieriesfontein was a special purpose vehicle and did not own the property.

ANALYSIS

[20] The respondents' case is, in essence, that Pieriesfontein owned Portion 6 of the Farm Lowhills from 1988. During 1995 and 1996, all the shares in Pieriesfontein were transferred to the Moller Family Trust and the Lowhills Family Trust. According to the respondents, following the transfer of the shares, Pieriesfontein merely functioned as a special purpose vehicle through which the farming operations were conducted, whilst the two trusts became the true owners of the property. They contend that Pieriesfontein no longer owned any land and that the trusts were the lawful owners of the immovable property.

[21] On this basis, the respondents argue that the applicant purchased nothing more than "an empty shell with nothing therein". They further contend that all the assets and proceeds of Pieriesfontein belonged beneficially to the two trusts as shareholders. Because the trusts were allegedly not joined in the liquidation proceedings, the respondents submit that the liquidation order is a nullity, with the consequence that the subsequent sale and transfer of the property to the applicant are unlawful and liable to be set aside. The respondents therefore dispute the applicant's ownership of the property and contend that they cannot be regarded as unlawful occupiers.

[22] These contentions cannot be sustained. The respondents conflate ownership of shares in a company with ownership of the company's assets. While it is common cause that the two trusts were shareholders of Pieriesfontein, that fact does not render them owners of the immovable property registered in the company's name. A company is a separate juristic person and its assets remain its own, irrespective of the identity of its shareholders.

[23] The title deed dated 17 March 1981 reflects Pieriesfontein as the registered owner of Portion 6. Likewise, the Certificate of Consolidated Title dated 27 February 2004 records Pieriesfontein as the registered owner of Portion 8. There is no evidence before this Court that ownership of either property was ever transferred from Pieriesfontein to the two trusts. The respondents' assertion that the trusts owned the property is therefore unsupported by the documentary evidence.

[24] The undisputed evidence establishes that the applicant purchased the property at an online auction conducted on the instruction of the duly appointed liquidators of Pieriesfontein and that the transfer of the property has taken place. The property is registered in the applicant's name. Although there has been extensive litigation between the parties concerning the liquidation of Pieriesfontein and the subsequent sale of its assets, including challenges to the liquidation order itself, none of those proceedings has resulted in the transfer to the applicant being set aside. Until such time as the transfer is impugned by a competent court, the applicant remains the registered owner of the property.

[25] The respondents also contend, in relation to Portion 8, that they do not reside on Portion 6 but occupy Portion 8, where the two farmhouses are situated. They further allege that Portion 8 was sold as a result of the attachment of the wrong property. These allegations do not avail the respondents. The evidence before this Court establishes that Portion 8 likewise formed part of the assets of Pieriesfontein, was sold by its liquidators, and was transferred to the applicant. Whether the respondents occupy Portion 6 or Portion 8 does not alter the fact that the applicant is the registered owner of both properties.

[26] The various attacks directed at the validity of the liquidation proceedings and the sale of the properties amount to collateral challenges to court orders and transactions that remain in existence. Those issues are not determinative of the present application. The question before this Court is whether the respondents have established any legal right entitling them to remain in occupation of property registered in the applicant's name. They have failed to do so.

[27] In the absence of a lease agreement, the consent of the owner, or any other recognised legal right to occupy the property, the respondents' continued occupation is unlawful for purposes of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

IS IT JUST AND EQUITABLE?

[28] The Constitution and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") require that, in addition to determining whether the occupation is unlawful, the Court must have regard to all the relevant circumstances of the occupiers and balance those circumstances against the rights of the owner. The enquiry is whether, bearing in mind the values of the Constitution, it is just and equitable to grant an eviction order and, if

so, the terms upon which such an order should be implemented. See *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).

[29] In *Van der Valk N.O. and Others v Johnson and Others* (20449/2021) [2023] ZAWCHC 20 (30 January 2023) at para 26 it is stated as follows:

‘Although the Courts, in determining whether to grant an eviction order, must exercise a discretion based on what is just and equitable, and although special consideration must be given to the rights and needs of vulnerable occupants, this cannot operate to deprive a private owner of its property arbitrarily or indefinitely. If it did, it would mean that occupants are recognised as having stronger title to the property, despite the unlawfulness of their conduct.

[30] The next enquiry is therefore whether, in all the circumstances, it is just and equitable to order the respondents' eviction.

[31] The respondents have occupied the property for more than six months. It is common cause that the property has been the first respondent's home for many years. According to the respondents, it formed part of the legacy left by his father for the benefit of his descendants through the Moller Family Trusts. The Court accepts that the property has considerable sentimental value to the first respondent and that the prospect of losing one's long-standing home is a matter deserving of careful consideration.

[32] The position of the applicant must be weighed against this. The applicant became the registered owner of the property on 19 October 2023 after purchasing it at a public auction conducted by the liquidators of Pieriesfontein. As the registered owner, the applicant is entitled to the use, enjoyment and possession of its property. Although PIE qualifies an owner's common-law right to immediate possession, it does not extinguish that right or permit an unlawful occupation to continue indefinitely. The Court is required to strike a balance between the applicant's constitutionally protected property rights and the respondents' constitutional protection against arbitrary eviction.

[33] No evidence has been placed before this Court that any of the respondents, or any persons residing on the property, are elderly persons, children, disabled persons or that any other vulnerable persons reside on the property whose circumstances require special constitutional protection. Equally, there is no evidence that the respondents would be rendered homeless if

an eviction order were granted, or that they would be unable to secure alternative accommodation.

[34] The respondents have had ample opportunity to place their personal circumstances before the Court. Instead, their opposition has been directed almost exclusively at challenging the validity of the liquidation proceedings and, consequently, the applicant's title to the property. Those issues have been considered elsewhere in this judgment and do not establish any legal entitlement on the part of the respondents to remain in occupation.

[35] It further appears from the papers that the first and second respondents conduct what appears to be a business from the property. This suggests that the occupation is not exclusively residential but is, at least in part, commercial in nature. No evidence has been placed before the Court that relocation would occasion prejudice beyond the inconvenience ordinarily associated with an eviction.

[36] The Court has not been furnished with a report from the relevant municipality. While such reports are often of considerable assistance in determining whether an eviction would result in homelessness or whether emergency or alternative accommodation may be required, the absence of such a report is not, in itself, decisive. Whether a municipal report is necessary depends upon the facts of the particular case. In the present matter, the respondents have not alleged that they will be rendered homeless or that they require emergency housing assistance. Nor have they placed before the Court any facts suggesting that the municipality has a constitutional obligation to provide alternative accommodation before an eviction order may be granted.

[37] The applicant has now been deprived of the use and enjoyment of its property for more than two years since ownership was transferred into its name. During this period the parties have engaged in extensive litigation. Despite those proceedings, the applicant's registered title has never been set aside or impugned by any court order. The applicant cannot reasonably be expected to endure an indefinite deprivation of its property while the respondents remain in occupation without any recognised legal right.

[38] The Court is mindful that an eviction order will inevitably have significant consequences for the first respondent, given his lengthy occupation of the property and his emotional attachment to it. Those considerations weigh in his favour. However, sentimental attachment

to property, however genuine, cannot by itself constitute a legal basis to continue occupying land owned by another indefinitely. In the absence of evidence establishing homelessness, vulnerability or other exceptional circumstances, those considerations cannot outweigh the applicant's proprietary rights.

[39] Having considered all the relevant circumstances, including the duration of the respondents' occupation, the nature of that occupation, the absence of evidence of homelessness or vulnerability, the respondents' failure to establish any lawful right to remain on the property, and the applicant's constitutional and proprietary rights as registered owner, I am satisfied that it is just and equitable to grant an order for the respondents' eviction.

CONCLUSION

[40] The applicant has complied with the procedural requirement of section 4 and has established that the respondents are unlawful occupiers as contemplated in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). This Court has further determined, having regard to all the relevant circumstances, that it is just and equitable to grant an order for their eviction.

[41] The enquiry does not end there. Section 4 of PIE requires the Court to determine a date that is just and equitable upon which the respondents must vacate the property and, if they fail to do so, the date upon which the eviction order may be carried out. Justice and equity require that the respondents be afforded a reasonable period within which to vacate the property voluntarily before the order is enforced.

[42] Accordingly, the respondents shall be afforded a reasonable period within which to vacate the property. Should they fail to do so within the period stipulated in the order, the Sheriff of this Court shall be authorised to evict the respondents, together with all persons occupying through or under them, from the property and to take such steps as may be reasonably necessary to give effect to the eviction order. In my view costs should follow the event.

In the result I make the following order:

1. The first, second and third respondents are declared unlawful occupiers of the property known as Portion 6 (A Portion of Portion 2) of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province and Portion 8 of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province (the property).
2. The first, second and third respondents are to vacate the property known as Portion 6 (A Portion of Portion 2) of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province and Portion 8 of the Farm Lowhills 394, Registration Division JU, Mpumalanga Province (the property) by no later than Wednesday, 30th September 2026.
3. In the event of any of the respondents or any of those holding under each of them failing to vacate the property by Wednesday, 30th September 2026, then the Sheriff of this Court is directed and authorised to evict such respondents or other persons from the premises.
4. The Sheriff is authorised and directed to employ the services of the South African Police Services to assist him, if it necessary, to remove the respondents and those holding under each of them from the property.
5. The First and Second respondents are to pay the costs of the application jointly and severally, the one paying, the other to be absolved including costs of counsel on scale B.


P D KEKANA
ACTING JUDGE OF THE HIGH COURT

DATE OF HEARING: 16.04.2026

DATE OF JUDGMENT: 04.08.2026

ON BEHALF OF THE APPLICANT: ADV JE KRUGER

ON BEHALF OF THE 1st, 2nd, and 5th RESPONDENTS: ADV HCJ VAN RENSBURG SC

