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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

Case No. 053569/2022

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED.

DATE: 30 January 2023

In the matter between:

PZL PROPERTIES (PTY) LIMITED

Applicant

and

THE UNLAWFUL OCCUPIERS OF ERF [....]

JUDITH'S PAARL TOWNSHIP

First Respondents

CITY OF JOHANNESBURG

Second Respondent

JUDGMENT

WILSON J:

1 The applicant, PZL, owns property in Judith's Paarl from which it seeks to evict unlawful occupiers. The number of people presently living on the property cannot be established at this stage. PZL concedes that there are at least 85. However, Mr. Stephan Kades, who occupies the property and rents rooms in it out to the other occupiers, and who purported to represent the residents of the property before me, says that there are at least 200 men, women and children living on the property.

2 The eviction application was placed on my urgent roll for hearing on 10 January 2023. This happened in unusual circumstances. PZL has already obtained an ejectment order against Mr. Kades, and his partner, Erica De Kok. That order was granted in the Magistrates' Court on 10 October 2022. It was obtained after PZL cancelled an agreement to sell the property to Mr. Kades and Ms. De Kok.

3 The Magistrates' Court eviction order applied not only to Mr. Kades and Ms. De Kok, but also to "all those occupying through and under" them. PZL accepts that the other residents of the property, though they are apparently renting rooms from Mr. Kades, do not occupy it "through or under" him. PZL now seeks an order against all of the other residents, cited as a class of unlawful occupiers.

4 The application is brought on an urgent basis because PZL has now entered into a sale agreement with another person interested in buying the property. In terms of that agreement, PZL must give that other purchaser (a close corporation identified on the papers as "Alpha-Gonder Wholesalers") vacant possession of the property by 15 January 2023. PZL understands that Alpha- Gonder wishes to take vacant possession of the property by 30 January 2023.

5 That notwithstanding, when the matter was called, PZL no longer sought the eviction relief. It instead asked for an order joining Mr. Kades to the proceedings, directing Mr. Kades to file an answering affidavit on his own behalf and on behalf of the first respondents by 17 January 2023, and reserving costs. Mr. Peter, who appeared for PZL, submitted that, despite PZL having accepted that the residents do

not occupy the property “through or under” Mr. Kades, Mr. Kades was nonetheless authorised to oppose the application on their behalf. I found that puzzling, especially in circumstances where, as will become clear, the residents of the property have not had any notice of the eviction application.

6 I raised two further issues with Mr. Peter. The first issue was whether the application ought not to have been brought under section 5 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act, 19 of 1998 (“the PIE Act”), which, on its face, applies to allegedly urgent eviction proceedings of this nature. The second issue was whether the notice requirements set out in section 4 (2) of the PIE Act, which PZL accepts apply to this application, had been complied with.

7 After hearing oral argument from Mr. Peter, I reserved judgment. At my request, Mr. Peter filed further written submissions on the issues I had raised, and on the relief to be granted at this stage of the proceedings. Those submissions were filed on 12 January 2023. I am grateful to Mr. Peter for his assistance.

8 I will now turn to deal with the issues of urgency and notice, before setting out an order for the further conduct of the application.

Urgency

9 There are two provisions of the PIE Act that regulate the steps owners or persons in charge of unlawfully occupied property must take to secure an eviction order. Section 4 of the PIE regulates applications for final eviction orders. Section 5 of the PIE Act regulates urgent applications for interim eviction orders, which may be granted pending the finalisation of proceedings under section 4.

10 Section 5 of the PIE Act states that applications for urgent interim eviction orders may be brought if (a) there is a real and imminent danger of substantial injury to persons or property unless an unlawful occupier is immediately evicted; and if (b) the hardship caused to the applicant if the eviction order is not granted exceeds the

likely hardship to the unlawful occupier if it is; and if (c) the applicant has no other effective remedy.

11 Mr. Peter submits that section 5 is not the only route to an urgent eviction order. He emphasises that section 5 of the PIE Act applies only to interim eviction orders, and that PZL seeks a final eviction order. Final eviction orders are dealt with under section 4 of the PIE Act. Mr. Peter says that PZL was entitled to bring an application for a final order under section 4 if it could satisfy the ordinary test for urgency. That test is simply that an applicant needs urgent relief because they will not, on the facts of a particular case, be able to obtain substantial redress in the ordinary course (Uniform Rule 6 (12)).

12 Mr. Peter relied on the decision of this court in *Lewray Investments v Mthunzi* [2018] ZAGPJHC 432 (23 May 2018). In that matter, it was decided that final orders for eviction may be granted on an urgent basis under section 4 of the PIE Act if the ordinary test for urgency is satisfied. The necessary implication of that conclusion is that the test set out in section 5 need only be satisfied if an interim eviction order is sought.

13 I have some doubts about the correctness of the *Lewray* decision. It seems to me that, read purposively, as a whole, and in light of the constitutional rights and interests they are meant to balance, sections 4 and 5 of the PIE Act mean that (a) final eviction orders may not be granted on an urgent basis; and that (b) an interim eviction order may only be granted urgently pending the outcome of proceedings for a final order under section 4 if the test set out in section 5 is met; and that (c) proceedings for a final eviction order must always follow the notice procedure and adhere to the substantive requirements set out in section 4 of the Act. If this were not so, there would be little point in section 5 of the PIE Act. No reasonable applicant for an eviction order would bother to satisfy the stringent section 5 test for an urgent interim eviction order if an urgent final eviction order could be obtained under section 4 by satisfying a far less exacting standard.

14 It also seems to me that court in *Lewray* was animated by the fact that there was, on anybody's version, no risk that the unlawful occupiers in that case would be

rendered homeless by an eviction, and so there was a reduced need for the kinds of safeguards that the PIE Act is normally meant to provide. *Lewray* was accordingly a poor test case for exploring the meaning of section 5 of the PIE Act, and its relationship with section 4.

15 However, I need not make any definitive finding on the correctness of the *Lewray* decision. This is because, even on the ordinary test for urgency, PZL has not made out a case.

16 The urgency PZL claims is self-created. On PZL's own version, the property has been occupied since at least October 2022. But the likelihood is that the residents have lived at the property for far longer. PZL allowed Mr. Kades to take occupation of the property in December 2015. It sold the property to Mr. Kades in 2021 before later cancelling the sale. Mr. Kades made clear before me that he bought the property for the sole purpose of letting it out. It is accordingly a fair, if provisional, inference that at least some of the residents may have been in occupation of the property for up to six years. Although PZL says that Mr. Kades sublet the property without its consent, it must have known, or ought reasonably to have known, about Mr. Kades' activities throughout.

17 Ordinarily, there is no urgency to an eviction application where the unlawful occupiers sought to be evicted have lived undisturbed at the property for several years. PZL sought to create that urgency by warranting vacant possession to Alpha-Gonder by 15 January 2023. In its papers PZL complained that the ordinary procedures applicable to eviction proceedings under PIE could not be complied with in the time available to meet that contractual undertaking. But that means only that PZL ought not to have warranted vacant possession to Alpha-Gonder by 15 January 2023. It does not, in itself, supply the urgency that PZL claims. Plainly, a matter is not rendered urgent simply because a party inserts an unrealistic term into a contract.

18 PZL does not suggest that it is at risk of any crippling financial loss, or other irreparable damage to its legal interests, if the matter is not heard as one of urgency. Indeed, other than the self-created deadline of 15 January 2023, which it must have

known it could not meet once it declined to seek a final order before me, there is no suggestion that PZL will not be able to achieve substantial redress if the eviction application is heard in the ordinary course.

19 For these reasons, the application is not urgent, and should not have been placed on the urgent roll.

Notice

20 This conclusion renders it strictly unnecessary for me to deal with the question of whether the notice requirements in section 4 (2) of the PIE Act have been satisfied. Ordinarily, I would do no more than strike the application from the urgent roll. However, since the effect of my decision is that the application must proceed on a non-urgent basis, it is important to record that section 4 (2) of the PIE Act has not yet been complied with. It is also important to deal with PZL's request to join Mr. Kades to the proceedings, and to give directions as to the further conduct of the matter that will ensure compliance with the provisions of the PIE Act, while providing appropriate recognition to the parties' competing rights and interests.

21 Section 4 (2) of the PIE Act requires unlawful occupiers facing eviction to be given at least two weeks' "written and effective notice" of the date on which proceedings for their eviction will be heard. An unlawful occupier is entitled to this notice separately from, and in addition to, the ordinary service of the application papers or combined summons that institute the eviction proceedings (*Cape Killarney Property Investments v Mahamba* [2001] 4 All SA 479 (A), paragraphs 13 and 14). The form and manner of service of the notice must be approved by a court (see *Cape Killarney*, paragraphs 11 and 16).

22 In this case, that did not happen. The application papers were served together with the section 4 (2) notice. The content and service of the section 4 (2) notice were not approved by a court. Indeed, PZL brought the application urgently precisely because it did not want to comply with the ordinary requirements that the two documents be served separately and that the court approve the contents and manner of service of the section 4 (2) notice.

23 Mr. Peter relies on the decision in *Moela v Shoniwe* 2005 (4) SA 357 (SCA) to contend that PZL's admitted non-compliance with section 4 (2) of the PIE Act does not matter so long as the purpose of the section – effective notice to the unlawful occupiers of the date on which the eviction application will be heard – is achieved.

24 *Moela* is not authority for the proposition that a section 4 (2) notice can be held valid even if it is not approved by a court. In any event, in this case, the sheriff's returns make clear that no-one at the property (other than Mr. Kades and Ms. De Kok) was actually served with the application or the section 4 (2) notice. At best, two copies of the papers were left at the front door of the property. That was plainly not effective service on a group of people numbering between 85 and 200. On these facts, the purpose of section 4 (2) was obviously not achieved (see, in this respect, *Mntambo v Changing Tides 74 (Pty) Ltd* [2009] ZAGPJHC 17 (4 May 2009), paragraph 4).

25 For all these reasons PZL must now comply fully with section 4 (2) of the PIE Act, read in light of the *Cape Killarney* decision.

Further Conduct of the Matter

26 It remains to address the role of Mr. Kades in the matter. PZL asks for an order joining him to the proceedings and restraining him from preventing the sheriff from accessing the property for the purposes of serving notices in terms of section 4 (2) of the PIE Act.

27 It is not clear to me whether Mr. Kades lives at the property, or simply occupies it for the purposes of renting it out to others. If he lives at the property, then he is obviously already one of the class of people cited as the first respondent. If he does not live at the property, he is nevertheless clearly interested in the relief sought and ought to be joined. In the circumstances, I see no difficulty with joining him in his own right out of an abundance of caution. Mr. Kades has no objection to being joined to the proceedings in this manner.

28 I also think that an order requiring Mr. Kades to ensure that the sheriff can access the property for the purposes of serving future process on the other residents is warranted. Mr. Kades resisted that order before me, on the basis that the service of an eviction application at the property might trigger a rent boycott. In the circumstances of this case, that is not a submission to which I can attach any weight, but it seems clear that Mr. Kades will do what he can to prevent effective service of the section 4 (2) notice and the application papers, and that an appropriate order ought to be made to make clear that he is not permitted to act in that way.

29 It is finally necessary to deal with Mr. Kades' assertion that the residents to whom he is letting rooms on the property would face homelessness on eviction. Mr. Kades says that there are families on the property paying R800 per room per month in rent. Some pay less. Some do not pay at all. In those circumstances, Mr. Kades submits that there is at least a likelihood that some or all of the residents would be rendered homeless on eviction.

30 I think that these indications that the property may potentially be home to a large number of poor and vulnerable people are enough to trigger my duty to call for further information (see *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* [2010] 4 All SA 54 (SCA), paragraphs 12 to 16). I will direct the second respondent, the City of Johannesburg, to file a report dealing with the residents' circumstances and ability to afford alternative accommodation (see *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA), paragraphs 40 and 41).

Order

31 For all these reasons –

31.1 The application is postponed *sine die*.

31.2 Stephan Kades is joined as the third respondent in these proceedings.

31.3 Stephan Kades is interdicted and restrained from preventing the sheriff of this court from accessing the property at ERF [...] Judith's Paarl ("the property") for the purposes of providing effective notice of these proceedings to the first respondents.

31.4 The second respondent is directed to engage with first respondents, ("the occupiers"), and to identify in a report to be submitted to this court by no later than 31 March 2023 –

31.4.1 The extent to which the occupiers would be rendered homeless on eviction;

31.4.2 the steps the second respondent will take to provide alternative accommodation to those occupiers who would be rendered homeless by eviction;

31.4.3 when those steps will be taken; and

31.4.4 all other relevant facts of the nature identified at paragraph 40 of the decision of the Supreme Court of Appeal in *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA).

31.5 The applicant is directed to serve –

31.5.1 one copy of this judgment on the second respondent;

31.5.2 one copy of this judgment on Mr. Kades; and

31.5.3 one copy of its founding papers and one copy of this judgment on each identifiable room or dwelling on the property, where possible on the occupiers of each dwelling in person, by no later than 10 February 2023.

31.6 The question of costs is reserved.

S D J WILSON

Judge of the High Court

This judgment was prepared and authored by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 30 January 2023.

HEARD ON: 10 January 2023

FUTHER SUBMISSIONS ON: 12 January 2023

DECIDED ON: 30 January 2023

For the Applicant: L Peter

Instructed by Vermaak Marshall Wellbeloved Inc