

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case Number: 2022/044249

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

DATE

SIGNATURE

In the matter between:

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

APPLICANT

and

**JAKOB ABSALOM
LEEDUCK YORK
COLLIN JOSEPH CAHMEE
MAURICK GLAYTON GILMOUR
ABSALOM JAKOF
AURIEL SUE YIN WORRIES
DAVID YORK
IMALDA LYNETTE McCLAREN
RESPONDENT
PAILMAN BRUCE RAYMOND
ASHRAFLOGART
RASHILDA LOGART
ESSOP LOGART
JABULANI PETER ROBERT NCUBE
PHILLIP McBRIDE
HESTER PETZER
AZALIA ASHLEY KRUGER
HERMAN EKSTEEN
PATRICIA MARTINS
THELMA D'OLIVIERA
RICHARD DANIEL McNIEL
LAURINE McNIEL**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH**

**NINTH RESPONDENT
TENTH RESPONDENT
ELEVENTH RESPONDENT
TWELFTH RESPONDENT
THIRTEENTH RESPONDENT
FOURTEENTH RESPONDENT
FIFTEENTH RESPONDENT
SIXTEENTH RESPONDENT
SEVENTEENTH RESPONDENT
EIGHTEENTH RESPONDENT
NINETEENTH RESPONDENT
TWENTIETH RESPONDENT
TWENTY-FIRST RESPONDENT**

JUDGMENT

WENTZEL -THOMPSON J

Introduction

- [1] The applicant, the City of Johannesburg Metropolitan Municipality (“the City”), seeks the eviction of the respondents from Donovan McDonald Old Age Centre (“the Old Age Centre”) situated at 1[...] M[...] and D[...] P[...] Streets, Maraisburg, Roodepoort. The proceedings are brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”).
- [2] Although numerous respondents are cited in the notice of motion, only the 13th respondent, Jabulani Ncube, formally opposed the relief sought and was represented at the hearing on 4 May 2026. However, I was informed by the 13th respondent at the hearing that, although he had engaged attorneys, they were not available, and thus was in the process of obtaining new attorneys. I accordingly stood the matter down until 8 May 2026, at which point Sadlers Attorneys had come on board and were prepared to represent the 13th respondent on a *pro bono* basis. I commend these attorneys.
- [3] The other respondents who appeared before me were not represented.
- [4] The 13th respondent occupies Simplex Double Unit 1[...], that had previously been allocated to his now deceased parents. He came to occupy the unit in order to care for them.
- [5] The 14th respondent, Phillip McBride, occupies Simplex Double Unit 2[...], that was previously occupied by the 15th respondent, Hester Pester, that he refurbished after it had been destroyed by fire.

- [6] The 16th respondent, Azalia Kruger, occupies Simplex Double Unit 3[...], the unit allocated to the 17th respondent, Herman Eksteen, together with her husband, allegedly to look after Mr Eksteen.
- [7] The 21st respondent, Laurain McNiel, did not represent herself and instead, was represented by her daughter, Glynis Mordaunt, who also resides at the Old Age Centre together with her husband in their own unit.
- [8] I was informed that the City was only proceeding against the aforementioned four respondents as the other respondents had either vacated the Old Age Centre or had subsequently died.
- [9] As most of the respondents appeared in person, I entertained their representations without requiring that they depose to affidavits in support of their submissions. I also afforded them the opportunity to upload documentation in support of their cases. Only Mrs Mordaunt and Mr McBride (the 14th respondent) did so, which I have had regard to in preparing this judgment.
- [10] The Applicant approaches the Court both as owner of the property and as an organ of state constitutionally burdened with obligations relating to housing and dignity under section 26 of the Constitution. The property forms part of a municipal housing facility intended to accommodate elderly persons. The City's entitlement to regulate and preserve scarce accommodation to house the elderly must be weighed against the constitutional requirement that evictions occur only where they are just and equitable.

The stance adopted by the City

- [11] In the founding affidavit, deposed to by Patrick Phophi, the Executive Director within the City's Department of Human Settlements, it is explained that the Old Age Centre is one of the facilities administered by the City in fulfilment of its broader housing and social responsibilities towards senior citizens. However, he stressed that the facility is intended to provide affordable accommodation to elderly residents who qualify in terms of the applicable municipal allocation framework. The policy documents attached to the papers confirm that the City has adopted a structured housing allocation system directed at ensuring

fairness, transparency and proper utilisation of limited housing resources. Those policies recognise accommodation for senior citizens as a distinct category of municipal housing and contemplate that such accommodation should remain available only for persons who satisfy the relevant criteria.

[12] The City further emphasised that the housing provided is required only to be occupied by the elderly persons themselves and does not permit occupation by dependants or extended family members. The rationale underlying these restrictions is self-evident; municipal housing resources are finite and accommodation specifically reserved for elderly persons necessarily serves a specialised social function. If indefinite occupation by younger family members or unrelated persons were tolerated irrespective of policy requirements, the integrity of the allocation system would inevitably be compromised and qualifying elderly persons awaiting accommodation would be unfairly prejudiced.

[13] The City contends that the remaining respondents occupy units unlawfully as they have not concluded lease agreements with the City, nor have they been allocated the units that they occupy. In relation to the 13th respondent, the City alleges that he occupies the relevant unit without a lease agreement and without authorisation from the municipality. It was also claimed that the 21st and 22nd respondents have minor children residing with them.

The case of the 13th respondent

[14] In his answering affidavit, Mr Ncube does not contend that he enjoys a presently enforceable contractual right to remain indefinitely in occupation. His case is instead founded upon the history of his occupation, the City's alleged knowledge and acquiescence, his personal circumstances, and the constitutional implications of his eviction. He explains that his parents were residents at the Old Age Centre and that he moved into the unit during approximately 2018/2019 in order to care for them during period of ill health. According to him, social workers from the Department of Social Welfare hereafter approached him and requested that he permanently reside with his parents as his mother was in a wheelchair and his father had broken his leg.

[15] This was suggested to him, so Mr Ncube says, to avoid their having to go to frail care. Following this recommendation, Mr Ncube admits that he and his two minor then school-going children moved in to stay with his elderly parents so that he could look after them. According to Mr Ncube, members of the City hereafter later came to visit his parents and were aware of his presence and that of the children in his parent's unit. However, Mr Ncube explains that subsequently, both of the minor children moved in with their mother and no longer live in the unit.

[16] Although Mr Ncube's subsequently parents passed away, he nevertheless remained in occupation because, so he says, he had nowhere else to live and lacked sufficient financial resources to secure alternative accommodation. He claims that he informed municipal officials of his position after his parents' deaths and sought assistance regarding his circumstances, but the matter was never properly resolved. He alleges that eviction would render him homeless.

[17] Mr Ncube's parlous financial circumstances are established on the papers before me. They reveal that Mr Ncube's income is irregular and derived largely from occasional piece work. He thus contends that eviction, absent meaningful engagement and proper consideration of his vulnerability, would not be just and equitable. He concedes, however, that he should only be entitled to occupy a single unit and is prepared to move out of the double unit that his parents had occupied.

[18] In its replying affidavit, the City does not materially dispute the factual basis upon which Mr Ncube originally came to reside at the property; nor does it seriously dispute that his occupation may have been known to municipal officials for a substantial period. Instead, the City reiterates that Mr Ncube does not qualify under the applicable housing policy governing accommodation for senior citizens and that he has not established entitlement to emergency or alternative accommodation. More importantly, the City contends that his elder daughter is an attorney who he could live with.

[19] Mr Ncube disputes this and says that both of his minor children live with their mother and his major daughter is certainly not an attorney, but is in fact

unemployed and is presently living with her grandmother in a backroom in Soweto.

[20] Apart from stating that Mr Ncube could stay with his daughter, the applicant has also not provided the Court with any proper assessment of the respondent's circumstances and does appear to have carried out any meaningful investigation into whether homelessness would follow his eviction. There is similarly no evidence of sustained engagement aimed at identifying practical alternatives or transitional arrangements.

[21] Mr Ncube informed me that he is now 62 years old and as such, now himself qualifies for City housing for the aged. The City argues that it would be unfair to allow Mr Ncube to "jump the queue", as it were, where there may be more deserving applicants. This is particularly so as Mr Ncube was yet to make an application for housing for the aged with the City.

[22] The applicant's counsel pointed out that Mr Ncube had, had 4 years to regularise his affairs and that he had not established that, should he be evicted, he would be rendered homeless.

[23] Subsequent to the hearing, Mr Ncube called me personally, despite being represented, to say that he had made an application for residence at the Old Age Facility. I impressed upon him to upload his application. No such application has yet been uploaded, but I am prepared to accept that he has indeed made the requisite application.

The case for the 14th respondent

[24] The 14th respondent, Phillip McBride, occupies unit 2[...]. He says that he applied for occupation at the Old Age Centre during in 2018 as he and his wife were destitute and were living in his car, but got no response. During COVID, he says he found a burnt out unit that had previously been occupied by the 16th respondent, Hester Petzer, that he said had been vacant for a year. He informed me that he refurbished the unit himself whereafter, he and his wife, then aged 73 years and 69 years respectively, moved into the unit.

- [25] In February 2018, Mr McBride was told that his application had been approved. However, during April 2018, Mr McBride was called and told that he had been allocated a unit on the 6th floor that was a single unit. The unit he had been occupying for approximately nine years, and had refurbished, he stressed, had been a double unit for a married couple.
- [26] Mr McBride uploaded an undated letter to Ms. Mlangeni from BMK Attorneys, the attorneys of record of the applicant. In this letter he explained that although he had made his application in the name of his ex-wife on 3 March 2022, he had married his then girlfriend, who had moved in with him to the unit that had been refurbished by him.
- [27] In this letter, Mr McBride also refers to a letter sent to Ms Petzer dated 24 February 2022 that he, himself had received, accusing Ms Petzer of subletting to Mr McBride, which he said was not true as he had admittedly illegally occupied the burnt out unit that had previously been leased to Ms Petzer. He says that he sent emails to the persons referenced in the letter to Ms Petzer on 1 March 2022, to which he received no response. He says that he also sent an email to the applicant's attorneys on 28 April 2026, but similarly got no response.
- [28] Mr McBride also points out that his handyman skills are valued by Ms Sereme, who is the caretaker of the Old Age Centre who on three occasions has asked him to assist in welding empty units closed and then to re-open them when occupants had been identified.

The case for the 16th respondent

- [29] The 16th respondent is Azalia Kruger, who says that he and his wife look after the 17th respondent, Herman Eksteen ("Eksteen"), who is 88 years of age and stays in unit 2[...], where he has been resident for the past 28 years. Mr Kruger says that Mr Eksteen has no children to look after him and Mr Kruger and his wife have been looking after him for the last 5 years. Mr Kruger contends that should they not be able to care for Mr Eksteen, he will inevitably end up in frail care, which they say is abominable in government departments, that will

inevitably lead to his untimely death; he insists that this has been the case with all residents moved to frail care in Soweto, where that facility is located.

The case of the 21st respondent

[30] The 21st respondent, Mrs McNiel, was represented by her daughter, who lives at unit no 8[...] legally. Her mother, is 82 years old and occupies unit number 2[...]. In the notice of breach sent by the applicant to Mr and Mrs McNiel on 25 February 2022, it was alleged that they had minor children living with them and were required to ensure that they vacated the unit within 7 days, failing which she and the unlawful occupiers would be evicted.

[31] This was vehemently denied by Mrs Mordaunt who responded to the eviction notice by insisting that her parents were then 88 years old and that her parents had had three children, all over 60 years old who were all happily married. She stressed that all of her parents grandchildren live with their parents (her siblings) and did not need to stay with their grandparents. She insisted that none of her parents' grandchildren had ever lived with them. Accordingly, Mrs Mordaunt, demanded that the City explain upon what basis they contended that her parents had grandchildren living with them and demanded to know who had told the City this. She stated that three to four weeks prior to receipt of the eviction notice, someone from the Department had visited her parents with Ms Sereme to ask if anyone was staying with them, besides them. The answer, she said, was an emphatic "no"; nor did they find anyone living there. This notwithstanding, an eviction letter was sent to her parents.

[32] Mrs Mordaunt stressed that her parents had been traumatised on receiving the eviction notice, quite understandably as they were then 88 years old. Although not entirely clear from the argument presented by Mrs Mordaunt, I got the impression that Richard McNiel had since died and it was only Lauran McNiel who remained at the unit. At the time of the hearing before me, she was 92 years old. This caused counsel for the applicant to suggest that she should probably now be moved to frail care as she is incapable of looking after herself without the assistance of Mrs and Mr Mordaunt. Mrs Mordaunt, however,

insisted that her mother is self-sufficient, and that she merely assists her with some of her meals and her shopping as she is unable to drive anymore.

[33] Mrs Mordaunt also uploaded documents indicating that during May 2023, the residents of the Old Age Centre received notice of an audit to be conducted in order to determine who occupied the units. This was scheduled to take place on 23 May 2023 and 25 May 2023. Notwithstanding this audit, during which the Department must have established that Mrs Mordaunt did not have any one living with her, the applicant had persisted with the application against her.

[34] What is clear from the arguments presented is that the issue concerning the alleged unlawful occupation of the relevant units by the remaining respondents is that their eviction has been long in the making. It is unclear why it has taken so long for the applicant to proceed with the application.

The applicable legal principles and legislation

[35] PIE fundamentally altered the common-law approach to eviction proceedings. Prior to the Constitution and the enactment of PIE, ownership ordinarily entitled a landowner to vindictory relief against unlawful occupiers. PIE introduced a different constitutional regime in terms of which eviction may be granted only where it is just and equitable to do so. Section 4(7) specifically requires the Court, where occupation has endured for more than six months, to consider all relevant circumstances including whether land has been or can reasonably be made available by a municipality or organ of state for relocation.

[36] The Constitutional Court has repeatedly emphasised that the enquiry mandated by PIE is not mechanical. In *Port Elizabeth Municipality v Various Occupiers*,¹ Sachs J explained that courts are required to consider eviction proceedings with grace, fairness and constitutional compassion rather than approaching them through the rigid lens of purely private-law ownership principles. The Court stressed that unlawful occupation does not automatically justify eviction and that the judicial task is instead to reconcile competing constitutional values in a manner consistent with human dignity and social justice.

¹ 2005 (1) SA 217 (CC)

- [37] Equally important is the Constitutional Court's decision in *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg*,² where meaningful engagement between municipalities and occupiers facing eviction was recognised as a substantive constitutional mechanism rather than a mere procedural formality. Meaningful engagement requires a genuine effort to understand the occupiers' circumstances, explore practical alternatives and seek solutions that minimise hardship wherever reasonably possible. The obligation assumes particular importance where eviction may result in homelessness or affect vulnerable persons.
- [38] In this respect, I can do no more than quote the relevant paragraphs from Justice Sachs judgment in the Constitutional Court:

"[22] A third aspect of section 26(3) is the emphasis it places on the need to seek concrete and case-specific solutions to the difficult problems that arise. Absent the historical background outlined above, the statement in the Constitution that the courts must do what courts are normally expected to do, namely, take all relevant factors into account, would appear otiose (superfluous), even odd. Its use in section 26(3), however, serves a clear constitutional purpose. It is there precisely to underline how non-prescriptive the provision is intended to be. The way in which the courts are to manage the process has accordingly been left as wide open as constitutional language could achieve, by design and not by accident, by deliberate purpose and not by omission.

[23] In sum, the Constitution imposes new obligations on the courts concerning rights relating to property not previously recognised by the common law. It counterposes to the normal ownership rights of possession, use and occupation, a new and equally relevant right not arbitrarily to be deprived of a home. The expectations that ordinarily go with title could clash head-on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right not to be dispossessed of a home, or vice versa. Rather it is to balance out and reconcile the opposed claims in as just a manner as possible taking account of all the interests involved and the specific factors relevant in each particular case.

² 2008 (3) SA 208 (CC)

[39] The jurisprudence concerning municipal obligations in eviction matters was further developed by the Constitutional Court in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd*,³ where it was held that municipalities cannot remain passive where evictions foreseeably result in homelessness. Municipalities are constitutionally required to plan and budget for emergency housing situations and cannot avoid responsibility merely because the occupier lacks a formal legal entitlement to remain on particular premises. The Supreme Court of Appeal adopted a similar approach in *City of Johannesburg Metropolitan Municipality v Changing Tides 74 (Pty)*,⁴ emphasising that municipalities bear active constitutional responsibilities in eviction proceedings involving vulnerable occupiers.

[40] All the above cases emphasise that eviction may only be ordered if it is just and equitable having regard to all relevant factors.

Analysis of the facts and the legal position

[41] Against that legal background, the first question is whether the respondents are properly characterised as an unlawful occupier for purposes of PIE. In my view, save for the 15th and 21st respondents, all are as none have a lease with the applicant. The papers do not establish that the other respondents enjoy any presently enforceable contractual right to remain at the Old Age Centre indefinitely. All, however, have been in occupation of the units in which they reside for more than 4 years, and at least more than the statutorily required 6 months.

The evaluation of the case of the 13th respondent

[42] In the case of the 13th respondent, the City's retirement accommodation policy does not contemplate permanent succession by younger relatives following the deaths of qualifying elderly residents. The 13th respondent's occupation therefore falls outside the intended framework of the housing scheme and the City is entitled to insist that the facility be utilised consistently with its lawful

³ 2012 (2) SA 104 (CC) at paras 16-29

⁴ 2012 (6) SA 294 (SCA) esp. para [15]. See also *Government of the Republic of South Africa & others v Grootboom* 2001 (1) SA 46 (CC).

allocation policies. That being said, he now qualifies for accommodation in the Old Age Centre in his own right, and has informed me that he has now made an application for residence. He has not, as yet, as far as I am aware, concluded a lease with the applicant and granted residence.

[43] This conclusion, however, is not determinative of the current application. PIE was enacted precisely because unlawful occupation does not automatically entitle an owner to eviction. The real enquiry is whether eviction would presently be just and equitable having regard to all relevant circumstances.

[44] In evaluating that question, the nature of the applicant assumes considerable significance. The City is a municipality exercising public power and discharging constitutional obligations in relation to housing. That, however, does not mean that the City is precluded from evicting unlawful occupiers from specialised accommodation. On the contrary, the City is under a duty to administer scarce public housing resources rationally and fairly. Accommodation intended for elderly qualifying beneficiaries cannot be indefinitely appropriated outside the policy framework because to permit that would prejudice others awaiting lawful access to such accommodation.

[45] At the same time, the implementation of municipal housing policy cannot occur in abstraction from constitutional obligations. Policy must be applied in a manner consistent with section 26 of the Constitution and the justice and equity standard mandated by PIE. The 13th respondent is not alleged to have invaded the premises forcibly or clandestinely. His occupation arose, on his version, in the context of caring for elderly parents who were lawful occupants of the facility. That account is not meaningfully rebutted in the replying papers. Indeed, the overall tenor of the evidence suggests prolonged municipal acquiescence in his occupation. Such acquiescence does not confer legality where none exists, but it is plainly relevant to the fairness enquiry.

[46] The 13th respondent also alleges that eviction will render him homeless. The City does not persuasively demonstrate otherwise or suggest reasonable alternatives, save for stating that he has a daughter who he could live with, that has been refuted.

[47] The replying affidavit focuses largely upon eligibility criteria and procedural requirements rather than the practical realities of the respondent's circumstances. No meaningful homelessness assessment is placed before the Court and no alternative accommodation is identified.; nor is any detailed engagement process put forward to the Court. The Court is therefore left without sufficient evidential basis upon which to conclude that eviction can presently occur without precipitating homelessness or undue hardship.

[48] The constitutional jurisprudence makes clear that municipalities are expected to do more than merely assert the unlawfulness of occupation; they are required to engage substantively and responsibly where eviction may implicate homelessness and dignity.

The evaluation of the case of the 14th respondent

[49] The 14th respondent has now been granted accommodation; his only gripe is that it is single accommodation and he has hitherto been living in Ms Petzer's accommodation with his wife, and it had been vacated by her following a fire. He had occupied the unit for 9 years.

[50] In my view, he is entitled to remain in the double accommodation that he presently occupies and until alternative double accommodation is made available to him.

The evaluation of the case of the 16th respondent

[51] The case of the 16th respondent is the weakest, although Mr and Mrs Kruger have occupied the unit allocated to the 17 respondent, Mr Eksteen, purportedly to look after him and avoid his having to go to frail care. They do not state that should they be evicted, they would be rendered homeless; nor do they state that they are of an age qualifying them to occupy a unit of their own. Mr and Mrs state that they are friends with Mr Eksteen, but have not explained under what circumstances they took it upon themselves to look after him, apart from stating that he has none of his own children.

- [52] The Court does not have sufficient facts before it to determine whether their caring for Mr Eksteen is truly as the result of their altruistic calling to prevent him being placed in frail care, where he shortly die, or whether their relationship with Mr Eksteen is in fact symbiotic- where they look after Mr Eksteen but at the same time secure for themselves free accommodation. This may well be the case where Mr and Mrs Kruger admit that they have resided with Mr Eksteen for five years.
- [53] Mr Eksteen is currently 82 years old and thus must have moved in to look after him when he was 77 years old and may not at that stage have been so frail that he required someone look after him.
- [54] Mr Eksteen and Mr and Mrs Kruger's situations thus need to be fully investigated. A social worker needs to visit Mr Eksteen and interview him. Such social worker must also interview the 16th respondent and her husband and determine how they came to look after Mr Eksteen and whether or not they are indeed looking after him and not exploiting his vulnerability to obtain free accommodation.
- [55] At the same time, the social worker must take into account Mr Eksteen's personal circumstances and whether it would be in his best interests to be transferred to frail care or whether his interests would be best served by allowing him to remain in the care of Mr and Mrs Kruger who are capable of looking after him. This, after all, seems to have been permitted in the case of Mr. McBride who was allowed to care for his elderly parents.
- [56] Should it be found that Mr Eksteen's best interests would be best served by him being placed in frail care, Mr and Mrs Kruger's personal circumstances need to be thoroughly investigated in order to determine whether their eviction would result in homelessness and whether alternative accommodation could be made available for them.
- [57] This is all said without making any finding, save to state that placing Mr Eksteen in frail care should be considered as a last resort as it must *prima facie* be accepted that Mr Eksteen would be far happier remaining in his unit with Mr and Mrs Eksteen looking after him.

The evaluation of the case of the 21st respondent

[58] I am satisfied that the 21st respondent does not have any minor children residing with her. Despite her advanced age (92 years old), I am satisfied that whilst Mrs Mordaunt is available to look after Mrs McNiel and herself legally occupies her own unit in the same facility, there is no need for the Mrs McNiel to be transferred to frail care.

Conclusion

[59] I understand the City's frustration; it has since 2022 been trying to secure the eviction of the remaining respondents, but has been impeded from doing so due to the PIE legislation that prevents the eviction of unlawful occupiers where the interests of justice, equity and fairness cannot countenance this. I am also mindful that granting exceptions to the policy adopted by the applicant creates a dangerous precedent, as it may in the case of the 16th respondent (who could not rely on the precedent set by the 13th respondent. I am also keenly aware that the applicant is faced with a conundrum as it is equally obliged to act fairly to other, perhaps more deserving applicants.

[60] It does seem unfair that the fact that the remaining respondents have residing in the units in which they reside for several years provides them with an advantage as it brings the provisions of PIE strongly to the fore and makes it only permissible to evict them if this would not be contrary to the interests of justice, equity and fairness.

[61] I accept that the City has a legitimate and important interest in preserving the integrity of accommodation intended for elderly qualifying residents. Courts should not lightly undermine carefully structured municipal housing policies. Yet constitutional justice equally requires that vulnerable occupiers not be displaced through rigid formalism without proper investigation of their circumstances and without meaningful municipal engagement.

[62] The 13th respondent is economically vulnerable and his eviction may well lead to homelessness. This is notwithstanding that his occupation arose in circumstances where on his version, he was requested by social workers to

move into the his elderly parents' unit to look after them. His continued presence in his parent's unit appears to have been tolerated for a substantial period, and the City has not adequately demonstrated that should he be evicted he will not be left homeless.

[63] The 13th respondent, however, presently occupies the double unit previously allocated to his now deceased parents (Simplex Double Unit 1[...]), but, being single, is only entitled to occupy a single unit.

[64] The 14th respondent's occupation of the Old Age Centre has now been regularised and he has been granted a lease and allocated accommodation. However, despite hitherto occupying the double unit with his wife that he refurbished (Simplex Double Unit 2[...]), he has been granted single accommodation. It would seem practicable and fair that he be permitted to continue to reside in the double unit he has occupied for several years with his wife that he, himself, refurbished. This is the unit that has now become a home to him and his wife that ought to be respected.

[65] The 21st respondent, who occupies Simplex Unit 2[...], has established that she does not have minor children residing with her. Although frail, so long as her daughter remains resident at the Old Age Facility, there is no need for her to be removed to frail care, particularly as Mrs Mordaunt is only in her sixties, also resides at the Old Age Facility with her husband and is thus able and well placed to look after her. This is an infinitely better scenario than that proposed by the applicant's counsel that she be removed to frail care at a far removed facility where she will be cared for by strangers.

[66] The situation of the 16th respondent is regrettably distinguishable from the other respondents in that they do not, in their own right, qualify to reside at the Old Age Centre as they are not themselves over 60 years of age. They have also not established homelessness should they be evicted and prefaced their case before me on the basis that should they be evicted, the 17th respondent will have to be moved to frail care where he will be looked after by strangers as opposed to friends and inevitably be left to die, as is the case with all residents who have been moved to fail care.

[67] This, however, needs to be fully investigated, having regard to the fact that a similar situation appears to have been permitted in the case of the 13th respondent, although he was a blood relative.

[68] This is not an appropriate matter in which there should be any order as to costs.

[69] After balancing the competing equities and considering each of the remaining respondent's personal circumstances, I am satisfied that the order that I propose to make will be in the interests of justice, equity and fairness.

Order

[70] Having regard to what is just and equitable and fair in the circumstances, I make an order in the following terms:

- (1). The applications to evict the 13th, 14th and 22nd respondents from Simplex Double Unit 1[...], S[...] D[...] Unit 2[...] and S[...] Unit 2[...] respectively at the Donovan McDonald Old Age Centre ("the Old Age Centre") situated at 1[...] M[...] and D[...] P[...] Streets, M[...], Roodepoort, are refused.
- (3). The 13th respondent is ordered to make an application for a single unit at the Old Age Centre within 30 days of this Order, in the event that such an application has not already been made by him.
- (2). The applicant is directed to expedite the application of the 13th respondent at the Old Age Centre and to enter into a lease with the 13th respondent to entitle him to reside in a single unit as soon as one becomes available.
- (3). The applicant is ordered to permit the 14th respondent and his wife to continue to reside in Simplex Unit 2[...], alternatively are directed to provide them with accommodation suitable for a married couple and to enter into a lease with him and his wife in respect of such unit.
- (3). The applicant is ordered to allow the 22nd respondent to remain in Simplex Unit 2[...] for so long as she continues to be independent and/or Mr and/or

Mrs Mordaunt occupy the Old Age Centre and are able to assist and care for her.

- (4). The applicant is directed to appoint a suitably qualified social worker to investigate the circumstances of the 16th and 17th respondents. This investigation must deal with the following issues:
 - (a) The best interests of the 17th respondent;
 - (b) The necessity for the 17th respondent to be assisted and cared for by the 16th respondent and her husband in order to avoid having to be placed in frail care;
 - (c) The relationship between the 16th respondent and her husband and the 17th respondent and the circumstances under which they came to reside with the 17th respondent at the Old Age Centre;
 - (d) Whether or not at the time that the 16th respondent and her husband moved in with the 17th respondent, he was indeed in need of care;
 - (e) The circumstances under which the 13th respondent was permitted to reside with his parents in their unit with his minor children in order to look after them and avoid their going to frail care and why the same should not apply to the 16th respondent and his wife, who have been looking after the 17th respondent.
 - (f) The personal circumstances of the 16th respondent and her husband and the prospect of homelessness should they be evicted from Simplex Double Unit 3[...].
- (5). Directing that the aforementioned investigation be carried out within 90 calendar days of the granting of this Order and that the applicant report to this Court on the outcome of the aforementioned investigation, that may be set down for hearing on the same papers, on notice to the 16th

respondent and his wife, who shall be entitled to make representations on the report of the appointed social worker to the Court.

(6). Pending the findings made by the Court hearing the matter referred to in paragraph (5) above:

(a) the 16th respondent and her husband shall not be evicted from the Simplex Unit 3[...] at the Old Age Centre; and

(b) the 17th respondent shall not be evicted from Simplex Unit 3[...] or moved to frail care.

(7). No order is made as to costs.

**S.M WENTZEL-THOMPSON
JUDGE OF THE HIGH COURT
JOHANNESBURG**

HEARING:

Date of the hearing: 4 May 2026 and 8 May 2026

Date of the judgment: 29 July 2026

APPEARANCES

For the applicant: Adv. Michael Muchopa instructed by BMK Attorneys

For the 13th respondent: Adv. Emshareed Bothes instructed by Saders Attorneys, both appearing *pro bono*.

