

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2025-124189

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

24 AUGUST 2026

JUDGE F. DIPPENAAR

In the matter between:

**GERMISTON PHASE 2 HOUSING COMPANY (PTY) LIMITED
(REGISTRATION NUMBER: 2000/007937/07)
t/a EKURHULENI HOUSING COMPANY**

APPLICANT

and

**LEDWABA, I.L & THOSE IDENTIFIED IN
ANNEXURE "A" OF THE NOTICE OF MOTION**

1ST TO 120TH RESPONDENTS

**ANY FURTHER UNLAWFUL OCCUPIERS OF THE
UNITS IDENTIFIED IN ANNEXURE "A" TO**

THE NOTICE OF MOTION	121 ST RESPONDENTS
MASHABA, C & THOSE IDENTIFIED IN	
ANNEXURE “B” TO THE NOTICE OF MOTION	122ND TO 434TH RESPONDENTS
ANY FURTHER UNLAWFUL OCCUPIERS OF THE	
UNITS IDENTIFIED IN ANNEXURE “B” TO THE	
NOTICE OF MOTION	435TH RESPONDENT
THE UNLAWFUL OCCUPIERS OF THE OF THE	
UNITS IDENTIFIED IN ANNEXURE “C” TO THE	
NOTICE OF MOTION	436TH RESPONDENTS
EKURHULENI METROPOLITAN MUNICIPALITY	437TH RESPONDENT
QULUBA, YANDISA	438TH RESPONDENT
MOLOI, MATHUSO	439TH RESPONDENT
RACHUENE, THEMBI	440TH RESPONDENT
ZUNGU, LINDIWE	441ST RESPONDENT
A PERSON KNOWN AS GOVAN	442ND RESPONDENT
MAKWELA, DERRICK	443RD RESPONDENT
MANYAMA, ORPHAN	444TH RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties’ legal representatives by e-mail and uploading it onto the electronic platform. The date and time for hand-down is deemed to be 10h00 on the 24th of AUGUST 2026.

DIPPENAAR J:

[1] This application concerns s 5(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE) and interim eviction of the respondents. The applicant, Germiston Phase 2 Housing Company (Pty) Ltd t/a Ekurhuleni Housing

Company (EHCO) is a social housing institution established in terms of the Social Housing Act 16 of 2008, duly accredited by the Social Housing Regulatory Authority (SHRA). It is the owner and/or person in charge of four social housing developments in the Germiston Area, known as Pharoe Park, Airport Park, Chris Hani Village and the Delville Facility (Delville). The intention behind social housing is to provide safe, decent low-cost housing to low-income individuals who are capable of affording rent, but are not the poorest of the poor for whom RDP housing was conceived. It forms part of the State's constitutional obligations under s 26(1) and 26 (2) of the Constitution to take reasonable legislative and other measures to achieve progressive realisation of the right of access to adequate housing. The present application thus has a broader public interest context. The present application concerns the Delville Projects, styled Old Delville and New Delville, which comprises of some 360 units. The applicant is the registered owner of the property and manages the Delville facility. Where convenient EHCO will be referred to by name or as the applicant.

[2] The respondents are occupiers of Old Delville and New Delville. The respondent occupiers of the property are categorised into three categories, listed on annexures A, B and C respectively. They comprise the New Delville occupiers, the Old Delville occupiers and any further occupiers listed on Annexure B and unknown persons installed by the occupiers of the units listed in annexure C.

[3] The application is opposed by certain of the respondents, legally represented by their attorney, Mr Silamulela. A list of those 128 respondents is attached to the answering papers as AA128, although only 119 of those respondents provided any form of confirmatory affidavit.

[4] At the hearing it transpired that the s 5(2) notice was not served on all the respondents as required by s 5(2). Although those respondents have to date not opposed the proceedings, the application must be postponed against them for lack of compliance with the procedural requirements. A list of those respondents is attached to the applicant's proposed draft order as annexure D. Service in accordance with the procedural

requirements was properly affected on the remaining respondents with both the application and s 5(2) notice duly served.

[5] The 437th respondent, the Ekurhuleni Metropolitan Municipality, was represented by counsel at the hearing to address any queries from the court. It did not file any papers in the present application.

[6] In sum and for context, EHCO's case is that it has been the victim of widespread rental boycotts, accompanied by occasional violence to the extent that it has lost control of the Pharo Park, Airport Park and Delville developments during March 2025, as well as a substantial section of Chris Hani Village. Across the developments EHCO is collectively owed some R 232 million, as a result of which it faces collapse and the wholesale loss of control of the social housing projects.

[7] EHCO embarked on a campaign to recover control of the developments. Eviction orders have already been granted in this Division in respect of Pharo Park and Airport Park. According to EHCO the litigation is interrelated and aimed at addressing the rent boycotts, building highjacks and coordinated resistance to lawful management, which were not isolated phenomena confined to a single complex, but rather formed part of a broader organised campaign involving escalating interference and intimidation directed at undermining EHCO's control of its properties and its ability to fulfil its statutory mandate.

[8] The represented respondents chose not to address this case in detail in the applicant's supplementary founding affidavit, instead contending that it was irrelevant. Those facts thus stand uncontroverted before this court. Although each case is to be determined on its own merits, it cannot be concluded that that the contents of the applicant's supplementary affidavit are irrelevant to the current proceedings, as contended. The affidavit paints a picture of a concerted effort by the so-called PAD¹ committee to make the property ungovernable, to enforce a rental boycott and to take

¹ Committee of Pharo Park, Delville and Airport Park Complexes.

over the occupation of the properties. A tenant's committee (PAD) was established at the Delville, Pharoe Park and Airport Park facilities comprising residents at the various developments. The residents of the social housing facilities, under the leadership of PAD began interfering with the rights and obligations of the applicant, ultimately resulting in an urgent interdict being granted by Wepener J on 11 October 2022. That order remains extant and prohibited the very conduct complained of by the applicant in the present proceedings. Despite the represented respondents contending that the PAD committee was disbanded evidence was produced confirming that PAD was still functioning long after its alleged disbandment. It was not meaningfully disputed that since March 2025, the Delville facilities are fully under the control of PAD and the occupiers.

[9] The applicant's papers particularise various instances of violence and intimidation, which remained undeterred by an additional security presence put on the premises during March 2025. The applicant's case is that it lost control of the Delville Projects during March 2025. Security personnel and contractors have been denied access to the property and various incidences of obstruction and resistance from the occupiers, culminating in attempts during June 2025 to steal or damage biometrical scanners and illegally reconnecting electricity.

[10] The applicant delivered termination notices to all the occupiers dated 20 June 2025, in which they were inter alia invited to engage with the applicant. The occupiers did not do so. By August 2025, and as a result of an extended rental boycott, the arrears at Dellville amounted to R 55 329 067. By February 2026, that amount had increased to R91 495 955.99. The applicant is currently deprived of access and illegal 'tenants' who do not qualify for social housing have been installed on the property without the applicant's consent.

[11] The application had been launched on 28 July 2025 and enrolled for hearing on 9 September 2025. On that date the application was removed from the roll as it became opposed by the represented respondents. It was allocated for hearing as a special motion during August 2026.

[12] Against this backdrop I turn to the present application which concerns interim eviction proceedings under s 5 of the PIE Act. In relevant part, it provides:

'5 Urgent proceedings for eviction

(1) Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that-

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;

(b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and

(c) there is no other effective remedy available.

[13] It was undisputed that the applicant is the owner of the relevant property and that all lease agreements concluded with the occupiers were terminated during June 2025. From the consolidated age analysis and a computation of the occupiers' arrears, it is clear that the arrears are substantial in certain instances amounting to amounts in excess of three hundred thousand rands. From the undisputed facts, the inference that the occupiers failed to pay the rentals due and the applicant was entitled to cancel the lease agreements, is irresistible. It further lends credence to the applicant's version of a rental boycott. It has thus been established that the occupiers are unlawful occupiers for the purposes of PIE.

[14] As stated, some of the respondents are legally represented. Others are not. None of the unrepresented respondents delivered papers or participated in the proceedings. The represented respondents, who are listed in annexure A128 of the answering affidavit sought to raise various factual disputes. In summary, they challenged compliance with all the requirements of s 5 of the PIE Act. In their answering papers they raise issues such

as who the hijackers of the property are and whether the property was destroyed and contended that an alternative remedy was available.

[15] The test to determine whether a bona fide factual dispute exists on application papers was stated thus by the Supreme Court of Appeal in *Wightman*:²

“Recognising that the truth almost always lies beyond mere linguistic determination the courts have said that an applicant who seeks final relief on motion must in the event of conflict, accept the version set up by his opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers: Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635C. See also the analysis by Davis J in Ripoll-Dausa v Middleton NO 2005 (3) SA 141 (C) at 151A-153C with which I respectfully agree. (I do not overlook that a reference to evidence in circumstances discussed in the authorities may be appropriate.)

A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say ‘generally’ because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to

² *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) paras 11 and 12.

disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.'

[16] Those principles are apposite to the present case. Upon analysis, the issues raised in the answering affidavit amounted to no more than bald denials and technical objections to facts put up by the applicant that were not truly in dispute. The material facts put up by the applicant were not meaningfully engaged by the represented respondents. Supporting evidence in the form of amongst others, an incident report by the applicant's security contractor dated March 2025 and an occupancy audit report by Wakaba and partners Inc, confirmed by confirmatory affidavits, were put up by the applicant. Applying the relevant principles, I am not persuaded that there are any material disputes of fact on the papers as alleged by the represented respondents. As pointed out by counsel for the applicant, the following observation in *Wightman* is apposite to the present facts:

'It seems clear that the respondents adopted or were advised to adopt an attitude to ...their answering affidavit) of placing an obstacle in the path of the appellant[applicant] at every step of the way irrespective of whether there were valid reasons for doing so. Whatever the tactical value of that approach, the effect was to water the force of the general denial down to a state of insipidity into which reality, bona fides and the genuineness of the denial all disappear.'

[17] The main grounds of opposition advanced by the represented respondents were: (a) the applicant has failed to satisfy the test for urgency; (b) the applicant has failed to show that it is in danger of suffering imminent harm and thus fails to meet a peremptory requirement of s 5(1); (c) the applicant has an alternative remedy in terms of s 4 of the PIE Act.

[18] The statutory requirements for urgency are set out in s 5 (1) of the Act.³ It is stringent and even more stringent than catered for in r 6(12)(a).⁴ Considering the undisputed facts, I am satisfied that the applicant has met those stringent requirements. Given the broader factual context, the urgency was not self-created and the applicant was entitled to call for a court's urgent attention. As matters turned out, more than a year has passed since the application was launched during July 2026. All parties have had more than a reasonable opportunity to file affidavits and place their versions before court.

[19] It was not meaningfully disputed that the respondents' conduct has placed the provision of social housing by the applicant at great peril. The rent boycott and excessive arrear rentals has resulted in great financial harm, the refusal of further grants by the Municipality and has placed the very existence of the applicant at peril. Despite the represented respondents' protestations to the contrary, they provided no countervailing evidence to the applicant's contention that no further grants would be made available from the Government's coffers. According to the Municipality's 2023/2024 annual report, published on 31 January 2025, the applicant had achieved nil percent of its operational and development targets across its portfolio due to poor rental collection. The grants are performance based. It is also undisputed that the applicant is heavily reliant on rental income to comply with its obligations.

[20] There is also harm to the general public interest as deserving beneficiaries of social housing are being prejudiced by the unlawful actions of the occupiers. It is not cogently disputed that many of the individual flats have been hijacked by individuals who have no contractual or other entitlement to occupy them.

[21] None of the employees, security personnel or contractors engaged by the applicant are able to attend the property without fear of physical harm. The evidence

³ *HL Hall Properties (Pty) Ltd v Alliance Church and Others* [2025] 2 All SA 451 (MM) para 5 and the authorities in note 3.

⁴ *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, Amici Curiae)* 2010 (3) SA 454 (CC) para 90.

particularises incidents of threats, harassment, intimidation and violence on various occasions. In addition there was an attempted illegal electricity connection at the property on 3 August 2025 and an attempt to access the main switchboard on 10 August 2025 to reconnect electricity illegally. By way of example, on the latter occasion, firearms were discharged, the guardroom and a table were set alight and the applicant's security personnel were forced to withdraw until the South African Police Service intervened. A security guard was struck with a brick and required hospitalization. The interdict granted by Wepener J has had no effect and its terms have been ignored. The various violent incidents described by the applicant stand uncontroverted on the papers.

[22] The bald contention by the represented respondents that the applicant has failed to meet the threshold of imminent harm does not bear scrutiny. The harm and the ongoing risk thereof were relief not granted appears manifest. The submission that there is no harm because the property has not been destroyed, lacks substance. It is the loss of control of the applicants' asset, being the Delville facility which is relevant. The fact that the property may not be at risk of destruction is irrelevant. The assumption of control of the property by PAD and the unlawful occupiers and the collection of rent by anyone other than the applicant is unlawful and in contravention of s 3(1) of PIE.

[23] The represented respondents have further not controverted the applicant's evidence of manifest financial harm and that it is on the brink of collapse. It stands uncontroverted on the papers that approximately 88% of the occupiers are participating in the rental boycott at Delville. Were a collapse to occur, it would not only cause harm to the applicant and its employees and service providers, but also to the broader public interest and eligible beneficiaries to the social housing scheme.

[24] In their confirmatory affidavits, a few of the represented respondents sought to provide proof of payments. These were woefully inadequate and did not establish that those respondents were not in arrears, in many instances, the represented respondents simply put up no proof of payments. The bald denial of the extensive arrears in the

circumstances does not pass muster. Of significance is that it is not meaningfully disputed that the majority of the respondents are employed and thus able to afford rental.

[25] The represented respondents, despite bearing the onus to prove the payments for which they contend, did not establish more than at best a few historical payments. This falls woefully short of discharging the burden resting upon them.⁵

[26] Considering the figures involved, the respondents have not made any rental payments for extensive periods of time, resulting in substantial arrears, and savings on the part of such respondents who have enjoyed the benefits without expending any funds in respect of rentals. The represented respondents' bald contentions of the applicant being an 'errant landlord' are not substantiated by cogent primary facts and do not pass muster.

[27] Ultimately, the case put up by the represented respondents falls woefully short of illustrating any material likely hardship on their part. As the occupiers have retained the rental amounts they should have paid to the applicant, whether or not they pay rent to PAD, they can afford rental based on the funds retained. They do not stand to suffer any prejudice.⁶ According to the Wakaba report, most of the occupiers are employed and thus earn an income. Where, as here, the occupiers can afford to pay rental but elect not to do so, instead perpetuating a rental boycott, it amounts to self-help.⁷ On the other hand, the applicant's case has illustrated that the likely hardship it stands to suffer exceeds the likely hardship of the respondents. To mitigate any hardship the respondents may suffer, they will be afforded until the 15th of October 2026 to procure alternative accommodation, thus affording them well in excess of a month to do so.

⁵ *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation)* 1998 (1) SA 811 SCA at 823; *Pillay v Krishna and Another* 1946 AD 946 at 958.

⁶ *HL Hall Properties (Pty) Ltd v Alliance Church and Others* [2025] 2 All SA 451 (MM) para 27.

⁷ *Teaca Properties (Pty) Ltd and Others v John Banza and Others* (2017/36741) [2018] ZAGPJHC 72 (February 2018) paras 25, 33 and 38-39.

[28] I am fortified in these conclusions by the findings made by Vally J in *Sentsho and Others v Germiston Phase 2 Housing Company (Pty) Ltd t/a Ekurhuleni Housing Company and Another*⁸, concerning reconsideration proceedings in relation to an interim eviction order granted in favour of the applicant pertaining to the Airport Park Development. The applicant's evidence was undisputed that the same conditions pertained in those proceedings. I am in respectful agreement with Vally J's findings and conclusions drawn in relation to the compliance with the s 5 requirements. Although each case is to be determined on its own merits, the undisputed facts in the present proceedings are the same or at least materially similar and justify the same conclusions.

[29] On a conspectus of the facts, I am satisfied that the applicant has established that there is a real and imminent danger of substantial injury or damage to persons and the Delville property if the unlawful occupiers are not forthwith evicted as required by s 5(1)(a) of PIE. I am further satisfied that the applicant has established that it's likely hardship and that of any other affected person if an order is not granted exceeds the likely hardship to the unlawful occupiers if an order is granted as envisaged by s 5(1)(b) of PIE.

[30] The represented respondents' contention that the applicant has an alternative remedy in terms of s 4 of the PIE Act, lacks merit. That contention has already been debunked in the judgment of Vally J in *Sentsho*.⁹

'Finally the represented respondents suggest that the applicant has an alternative remedy in terms of s 4 of the PIE Act. That remedy is catered for in Part C of the application. The applicant still intends to pursue that remedy. Section 5 of the Pie Act is a special remedy that is separate from the one catered for in s 4. The latter cannot be an alternative to the former. It would mean that the remedy allowed for in terms of s 5 can never avail a party as that party is granted a remedy in terms of s 4. This simply cannot be a logical interpretation of the two sections read together. the legislature granted a party suffering harm as a result of unlawful occupation of its property two separate and distinct remedies to stop the harm. Each remedy

⁸ *Sentsho and Others v Germiston Phase 2 Housing Company (Pty) Ltd t/a Ekurhuleni Housing Company and Another* (2025/137575) [2026] ZAGPJHC 166 (19 February 2026).

⁹ *Ibid*, para 16.

has its own requirements and whichever one the party elects to pursue it does so on the basis that it is burdened with the duty to meet the requirements set out in the relevant section in order to succeed’.

[31] I am satisfied that the applicant has no other alternative remedy. The interdictory relief granted by Wepener J in 2020 has not had any deterrent effect on the unlawful conduct of the respondents. That interdict stands and it would serve no purpose to obtain further interdictory relief. Given the conduct of the respondents, it is also in my view most unlikely that any contempt proceedings would have the desired effect, irrespective of the procedural burdens which would face the applicant to seek to enforce them.

[32] It follows that the applicant is entitled to the interim relief sought. I conclude that the applicant is entitled to the relief sought against the respondents in respect of whom the service requirements of s 5 (2) have been complied with. As properly pointed out by applicant’s counsel at the commencement of the hearing, service of the s 5(2) notice reflecting the hearing date of this application was not effected on certain of the unrepresented respondents. It matters not that they have not thus far opposed the proceedings. Service is a procedural requirement and must be complied with. It follows that the application, insofar as it pertains to that category of respondents, must be postponed sine die so that proper service can be affected. A list of such respondents is attached to the order for ease of identification.

[33] In relation to the issue of costs, although it was argued that costs follow the result, the interests of justice in my view dictate that the costs should at this juncture be reserved. The issue is to be dealt with together with Part C of the application, in which a final eviction order is sought.

[34] In the result, I grant an order in terms of the draft order attached hereto marked X, initialed and dated for identification purposes, together with its annexures, marked A, B, C, D, E and F respectively.



EF DIPPENAAR J
JUDGE OF THE HIGH COURT
GAUTENG JOHANNESBURG

HEARING

DATE OF HEARING : 11 AUGUST 2026

DATE OF JUDGMENT : 24 AUGUST 2026

APPEARANCES

APPLICANT'S COUNSEL : Mr C Van der Merwe

APPLICANT'S ATTORNEYS : VERMAAK MARSHALL
WELLBELOVED INC.

**LEGALLY REPRESENTED¹⁰
RESPONDENTS' COUNSEL** : Mr F Silamulela

**LEGALLY REPRESENTED
RESPONDENTS' ATTORNEYS** : SHUMANI.F. SILAMULELA ATTORNEYS

437TH RESPONDENT'S COUNSEL : Mr EN Sithole

**ATTORNEY FOR THE 437TH
RESPONDENT** : MOTSOENENG BILL ATTORNEYS INC.

¹⁰ As per annex A128 of the answering papers.