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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable

Case No: 2026-182915

In the matter between:

CLIFFORD MICHAEL HARRIS N.O.
GEOFFREY LEIGHTON ASHMEAD N.O.
BRUCE INGRAM N.O.
CLAUS JÜRGEN HINRICHSSEN N.O.
(as the trustees for the time being of the
Richard Harris Family Trust)

First Applicant
Second Applicant
Third Applicant
Fourth Applicant

And

SUBEIGA MATTHEWS
MASTOERA COLLOP
COLIN COLLOP
MARLON COLLOP
CLEO COLLOP

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

SHANAAZ ADAMS	Sixth Respondent
ZUBAIR ADAMS	Seventh Respondent
WASEEQAH ADAMS	Eighth Respondent
UZAIR ADAMS	Ninth Respondent
SHUKRI ROSS	Tenth Respondent
QUDACIA ROSS	Eleventh Respondent
SHAYDON SALIES	Twelfth Respondent
EMERICK FORTUIN	Thirteenth Respondent
ALICIA ADAMS	Fourteenth Respondent
CARLYLE ADAMS	Fifteenth Respondent
AIDEN ADAMS	Sixteenth Respondent
KSHMYA ADAMS	Seventeenth Respondent
DONALD DANIELS	Eighteenth Respondent
SANNA NEL	Nineteenth Respondent
MICHEAL MARTIN	Twentieth Respondent
DENISE MARTIN	Twenty-First Respondent
ETUMELYN YABO	Twenty-Second Respondent
SHAMIER KESTOOR	Twenty-Third Respondent
AMY-LEE ADAMS	Twenty-Fourth Respondent
ALL THOSE UNLAWFULLY OCCUPYING THE PROPERTY KNOWN AS REMAINDER ERF 2[...] CONSTANTIA (held by the Applicants under Deed of Transfer T[...])	Twenty-Fifth Respondent
THE CITY OF CAPE TOWN	Twenty-Sixth Respondent

Coram: **DA SILVA SALIE, J**
Heard on: **21 August 2026**
Delivered on: **21 August 2026**

Revised:

24 August 2026

Summary:

Urgent application - PIE - final eviction sought under s 4 on urgent basis - applicants relying on immediate danger to persons and property - s 5 providing specific statutory remedy for urgent physical removal by way of interim eviction - urgency for final relief under s 4 read with Rule 6(12) distinguishable from urgency contemplated in s 5 - availability of s 5 remedy material to Rule 6(12) enquiry - applicants failing to establish why final s 4 relief could not be obtained in ordinary course - substantial redress available - urgency not established - application struck from the urgent roll with costs.

ORDER

1. The application is struck from the roll for lack of urgency.
2. The applicants shall pay the respondents' costs of the application on scale B.

JUDGMENT

DA SILVA SALIE, J:

Introduction:

[1] The applicants are the trustees of the Richard Harris Family Trust, which is the registered owner of Remainder Erf 2[...], Constantia, situated between Pagasvlei, Groot Constantia and Constantia Main Roads. The cottage in issue is situated close to Constantia Main Road. They seek, as a matter of urgency, a final order in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"), evicting the first to twenty-sixth respondents from the incomplete and dilapidated cottage.

[2] The applicants allege that the respondents entered the property on 10 July 2026 and took occupation of the cottage without their consent. The applicants thereafter called upon the SAPS, who removed the respondents from the property. The respondents then approached the Wynberg Magistrates' Court and obtained *ex parte* relief in spoliation proceedings, pursuant to which they were restored to the property. The applicants allege that the relief was obtained on the strength of a version placed before that court which was false. When the applicants subsequently sought a reconsideration of the order, the respondents withdrew their spoliation application. There are thus no extant spoliation proceedings or order in place, but the practical effect of events is that the respondents remain in occupation of the property. It is that continued occupation which has given rise to the present application for their eviction in terms of PIE.

[3] The applicants contend that the matter cannot await determination in the ordinary course. They seek a final order of eviction, in terms of Section 4(1) of the PIE Act however brought on the urgent roll. The applicants rely on the condition of the incomplete and derelict cottage, which they contend is not fit for human occupation, as well as the unacceptable circumstances in which it is presently occupied. They allege, amongst other things: the use of open fires; unlawful electrical connections; inadequate sanitation; an increase in the number of persons occupying the property; consequent

danger to the occupiers and surrounding tenants and the property, as well as the close proximity to the coffee shop, Chadonnay Deli in Constantia, justify a final eviction order, on an urgent basis. In further support of such urgency, they contend that social media and mainstream media coverage of the occupation, including a Cape Argus front-page article of 21 July 2026, titled “*Families win right to ancestral Constantia land*” may encourage further persons to occupy the property, with the risk of an increasing occupation. I understand the applicants’ reference to these media articles and posts to be aimed at supporting their submission that further occupation may occur, particularly if the publicity creates a belief amongst others that the respondents have established an entitlement to occupy the property.

[4] The respondents oppose the application and raise several preliminary points. For present purposes, Mr. Orrie, Counsel for the respondents, indicated at commencement of the hearing that the respondents only proceeded on two aspects, namely, urgency and a claim relating to the merits that they had consent from the applicant, c/o Mr Matthews (now deceased).

[5] The central issue, in my view, is the urgency upon which the application is brought. The applicants have approached this Court for a final eviction order under section 4 and seek to have that relief determined urgently in terms of Rule 6(12). As I see it, the question at this stage is not whether the applicants may ultimately be entitled to an eviction order, nor is it necessary to determine the disputed claims concerning the history of occupation of the property and historical rights to the land. The question is whether the applicants have established that their claim for final relief under section 4 requires determination on the urgent roll. I ventilated these concerns in detail during argument with Mr. Wilken, Counsel for the applicant.

[6] Section 5 of PIE specifically provides a remedy where the continued occupation of property gives rise to a real and imminent danger of substantial injury or damage to

persons or property. It requires further that the likely hardship to the owner or other affected persons such as the lawful tenants exceeds the likely hardship to the unlawful occupiers, and that there is no other effective remedy available. It provides for the urgent physical removal of unlawful occupiers by way of an interim eviction order, subject to the requirements prescribed in that section, which operates until the proceedings for a final eviction order are determined.

[7] In my view, the availability of that remedy is material to the enquiry under Rule 6(12). The very circumstances upon which the applicants rely to establish urgency are substantially the circumstances contemplated in section 5. If conditions on the property are such that the respondents must be removed immediately, PIE provides a mechanism by which that relief may be sought. Section 5 contemplates urgent eviction by way of an interim order, pending determination of proceedings for a final eviction order. The legislature has thus provided for a mechanism in urgent circumstances where the owner is protected and the occupier's ultimate rights remain to be considered by the Court including whether the final eviction is just and equitable. Whether a final eviction is just and equitable is determined by the Court having regard to all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women, and where applicable, the availability of alternative land or accommodation.

[8] It is trite that a final eviction application under section 4 can be brought and heard as a matter of urgency. However, the applicants must nevertheless satisfy the requirements of Rule 6(12) and show why, in these specific circumstances, final relief under section 4 requires determination on an urgent basis. Urgency directed merely at the immediate removal of unlawful occupiers must be distinguished from urgent circumstances so dire that they warrant a final eviction order. The needs of the owners to immediately remove unlawful occupiers do not establish or justify a final eviction order being determined urgently.

[9] Rule 6(12) requires an applicant who approaches the Court on an urgent basis to set out explicitly the circumstances which render the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course. It is the latter requirement which, in my view, presents the difficulty for the applicants in this matter.

[10] The applicants have not satisfied this Court why the final determination of their section 4 application cannot take place in the ordinary course. This application brought in terms of section 4 does not persuade me on the facts to be so exceptional. The principal considerations relied upon for urgency concern the need for the respondents to be removed immediately because their continued presence on the property is said to create a danger to persons and property including themselves. Those considerations may well call for urgent intervention. They do not, however, establish why the applicants require a final determination of the eviction proceedings on the normal urgent roll.

[11] In circumstances where PIE itself provides in section 5 for urgent interim eviction where there is a real and imminent danger of substantial injury or damage to persons or property, the applicants have an alternative statutory remedy directed precisely at the immediate harm upon which they rely. Whether the applicants are able to satisfy the requirements of section 5 is not a question before me and I express no view on it.

[12] Put simply, the issue before this Court is not whether the respondents may ultimately remain on the property. The issue is whether the applicants have shown that their claim for a final eviction order must be determined now, as a matter of urgency. I am not satisfied that they have done so. If the circumstances are such that the respondents must be removed immediately, pending the determination of the parties' rights, PIE provides the applicants with the remedy contemplated in section 5.

[13] I make no finding on the disputed allegations concerning the respondents' historical or ancestral connection to the property, the lawfulness of their occupation, or whether it would ultimately be just and equitable to order their eviction. Those matters remain open for determination in the appropriate proceedings.

[14] In conclusion, I am not satisfied that the applicants have established that they cannot obtain substantial redress in due course. The requirements of Rule 6(12) have therefore not been met and the application falls to be struck from the urgent roll.

[15] As to costs, there is no reason why the costs occasioned by the urgent enrolment should not follow the result.

Order:

[16] At the conclusion of the hearing, I made the following order:

- (i) The application is struck from the roll for lack of urgency.
- (ii) The applicants shall pay the respondents' costs of the application on scale B.

GAYAAT DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances:

For Applicants:

Mr L Wilkin

Instructed by:

Harmse Kriel Attorneys

For First to Twenty-Sixth Respondents: Mr M T Orrie

Instructed by:

Orrie & Associates Inc.