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

CASE NO: 2024-085139

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES/NO

REVISED DATE: 20/08/2026

SIGNATURE:

In the matter between

DERRELICT (PTY) LTD

Applicant

and

JAEMON NYANZOU

First Respondent

TECLA NYANZOU

Second Respondent

**ALL UNLAWFUL OCCUPIERS OF THE
PROPERTY KNOWN AS PORTION 321
OF THE FARM WILGERSPRUIT 190, HELD
UNDER DEED OF TRANSFER T[...]**

Third Respondent

**CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Fourth Respondent

JUDGMENT

BENSON AJ.

INTRODUCTION

[1] This is an opposed application for the eviction of the First, Second and Third Respondents, and all those occupying through or under them, from the property known as Portion 321 of the Farm Wilgerspruit 190, Registration Division I.Q., Gauteng, held under Deed of Transfer T[...] ("the property"), brought by its registered owner, Derrelict (Pty) Ltd ("the Applicant"), under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").

[2] The application is opposed by the First, Second and Third Respondents on three preliminary grounds and, in the alternative, on the merits. The Fourth Respondent, the City of Johannesburg Metropolitan Municipality, was cited by virtue of its statutory interest in eviction proceedings within its area of jurisdiction under section 4(2) of PIE, but has not opposed the application, has filed no report, and did not appear.

[3] The property is situated within the jurisdiction of this Court, which is accordingly seized of the matter. That fact is not in dispute.

THE PARTIES

[4] The Applicant is Derrelict (Pty) Ltd, a private company duly incorporated in the Republic, registered on 27 March 2023 under registration number 2023/654776/07, with its registered office at 6[...] L[...] Avenue, Doringkloof, Centurion. The founding and replying affidavits were deposed to by Gert Botes, a director and shareholder of the Applicant, who describes himself as its sole director.

[5] The First Respondent, Jaimon Nyanzou, and the Second Respondent, Tecla Nyanzou, are husband and wife who reside on the property together with their two minor children, who attend school in Honeydew.

[6] The Third Respondent is cited generically as "all unlawful occupiers" of the property. Confirmatory affidavits were filed on behalf of five further individuals said to fall within this class: Silo Khumalo, Henry Peters, Brighton Mandiko, Charles Nyangobe and Jabulani Dube.

[7] The Fourth Respondent is the City of Johannesburg Metropolitan Municipality, cited in terms of section 4(2) of PIE.

BACKGROUND

[8] The property, extending to 9.1107 hectares and currently zoned as agricultural holdings, was registered in the Applicant's name on 2 October 2023 under Deed of Transfer T[...], following its purchase from the Onverwacht Trust for R3 500 000.00. The Deeds Office records and the Letters of Authority produced by the Applicant establish that the property was transferred to the Onverwacht Trust in 2005 by Phillip Pieter Theunissen and Lorinda Theunissen, and that the trustees of the Onverwacht Trust were Neville Beukman and Cindy Jane Allen.

[9] Mr Botes, the deponent to the founding affidavit, states that he became aware, even before transfer, that various persons occupied the property claiming rights derived from the previous owners or "other sources", which rights he disputes. After acquiring the property he approached the occupants with a view to reaching arrangements with them. This resulted in a written lease agreement concluded with the First and Second Respondents, the negotiation of which is documented in a series of letters passing between the Applicant's attorneys and the First and Second Respondents between 12 February 2024 and 7 March 2024 (annexures "GB9" to "GB16"), culminating in a signed

agreement dated 5 March 2024 requiring monthly rental of R6 000.00, payable from 31 March 2024. When payment was not made, the Applicant's attorneys cancelled the agreement by letter dated 11 April 2024 and demanded that the Respondents vacate.

[10] The First Respondent disputes the validity of this agreement, alleging that he was induced to sign it under duress after Mr Botes told his wife that all other occupiers had already signed and that he would "lock up the place" if the First Respondent did not do so.

[11] The First Respondent's version of how he came to occupy the property is that he moved onto it in 2021 at the invitation of one Rosa De Villiers, said to be the sister of a previous owner, and that he renovated a vandalised house on the property at a cost of approximately R150 000.00. The Second Respondent's affidavit confirms this version only insofar as it relates to her.

[12] The remaining individuals who filed confirmatory affidavits on behalf of the Third Respondent - Khumalo, Mandiko and Nyangobe - depose to having worked from 1992 for one Riaan Robertson, said to have been the previous owner (or, as suggested in the Respondents' Heads of Argument, a trustee of the Onverwacht Trust), who is said to have relocated to South Africa with them in 2005, employed further workers from 2008, left for Mozambique in 2015, returned in 2017, and died in February 2017, after allocating portions of the property to those who worked for him. Peters deposes that Rosa De Villiers, described as the sister of "the deceased", offered to sell him the farm in 2018 and gave him permission to occupy it in 2017. Dube deposes that he was a security guard for Robertson and that he was shot and injured by Mr Botes and his security personnel in May 2024, giving rise to a pending criminal charge in the Roodepoort Magistrates' Court.

[13] The Applicant, in reply, denies that Riaan Robertson or Rosa De Villiers ever held any right, title or trusteeship in relation to the property, points to the documented chain of title (Theunissen to the Onverwacht Trust in 2005; the Onverwacht Trust to the

Applicant in 2023) and the Letters of Authority identifying Beukman and Allen, not Robertson, as trustees, and denies that either Robertson or De Villiers were ever in a position to allocate occupation rights to anyone. No documentary evidence - whether of Robertson's ownership or trusteeship, of any employment relationship, of payslips, or of any other kind - is attached to any of the Respondents' affidavits in support of this history.

[14] Mr Botes further avers that the number of occupants on the property continues to increase, that dumping and unauthorised building activity is taking place, that illegal electricity-connections have proliferated notwithstanding the intervention of a dedicated task team, and that the situation has become increasingly volatile, including an incident in which he alleges he was assaulted by Dube with a knife. He states that he requires vacant possession to proceed with a proposed development of the property (warehousing or a residential scheme), that prospective investors have been deterred by the unlawful occupation, and that the Applicant remains liable for rates and is at risk from the illegal use of municipal services.

RELIEF SOUGHT AND PAPERS FILED

[15] Adv CJ Welgemoed, who appeared for the Applicant, submits that it is entitled to an order evicting the First, Second and Third Respondents in terms of section 4(1) of PIE, granting them two months from service of the order to vacate, authorising the Sheriff to give effect to the eviction thereafter with the assistance of the South African Police Service if necessary, and costs against any opposing Respondent on the attorney-and-client scale.

THE POINTS *IN LIMINE*

[16] Mr Herbst, who appeared for the First, Second and Third Respondents, raised three preliminary objections on their behalf: (a) that the deponent to the founding affidavit lacked authority to act on the Applicant's behalf; (b) that the application invokes

the wrong statute, PIE being inapplicable to occupiers of agricultural land who ought instead to have been proceeded against under the Extension of Security of Tenure Act 62 of 1997 ("ESTA"); and (c) that the Notice of Motion was required to be served before, rather than after, the *ex parte* application for directions under section 4(2) of PIE.

AUTHORITY

[17] Mr Herbst's submission, properly understood, is that a director may not depose to a founding affidavit on behalf of a company unless a board resolution authorising him to do so is attached. That submission is unsound. In *Ganes v Telecom Namibia Ltd*¹, the Supreme Court of Appeal made clear that a deponent to an affidavit in motion proceedings need not personally be authorised to depose to it; what must be authorised is the institution and prosecution of the proceedings. That authority is ordinarily established by the mandate given to the attorneys of record, not by a resolution authorising the deponent to swear to the affidavit. The absence of a board resolution attached to the founding affidavit is accordingly not, without more, a basis on which the application can fail.

[18] It is also well established that a bare denial of authority in an answering affidavit, unaccompanied by recourse to Uniform Rule 7(1), does not genuinely place authority to institute or prosecute proceedings in issue². The Respondents did not invoke Rule 7(1). In any event, Mr Botes is shown by the company's CIPC registration certificate to be its sole director, and a resolution confirming his authority was produced as annexure "GB6" to the replying affidavit. This point *in limine* cannot succeed and is dismissed.

NON-SERVICE

[19] This objection misconceives the scheme of section 4 of PIE. An applicant for an eviction order is required first to obtain, on an *ex parte* basis, a direction under section

¹ 2004 (3) SA 615 (SCA)

² *Firststrand Bank Ltd v Fillis and Another* 2010 (6) SA 565 (ECP)

4(2) as to the manner of service on the unlawful occupiers and the municipality. Only thereafter are the Notice of Motion, founding papers and section 4(2) notice served. There was therefore no procedural irregularity in the sequence followed by the Applicant. The Return of Service confirms that the Notice of Motion, founding affidavit and section 4(2) notice were served on the First, Second and Third Respondents, a fact in any event placed beyond doubt by their opposition to the application. This point *in limine* is similarly without merit and is dismissed.

[20] For completeness, I record a related matter that emerged from the papers. The Applicant's Heads of Argument state that the section 4(2) notice was served on "the Respondents and the City of Tshwane", which appeared inconsistent with the citation of the Fourth Respondent as the City of Johannesburg Metropolitan Municipality. The inconsistency is resolved by the Return of Service (Caselines 04), which confirms service on Ms N Sefalafala, a paralegal in the employ of the City of Johannesburg Metropolitan Municipality, at Thuso House, 6[...] J[...] Street, Braamfontein, Johannesburg. The Fourth Respondent was therefore properly served. The reference to the City of Tshwane appears therefore to be no more than a drafting slip and nothing further turns on it.

THE APPLICABILITY OF PIE AND THE ESTA DEFENCE

[21] Mr Herbst's remaining point *in limine* - and, in truth, the Respondents' principal defence on the merits - is that the application has been brought under the wrong statute. He contends that the property is agricultural land, that the Respondents are "occupiers" as defined in section 1 of ESTA, and that the Applicant was accordingly obliged to proceed under ESTA rather than PIE.

[22] The distinction between the two statutes is well settled. ESTA affords protection to persons who reside on land belonging to another with the consent, express or tacit, of the owner or person in charge, and whose income does not exceed the prescribed threshold; PIE, by contrast, applies to persons in occupation without the consent of the

owner or person in charge, or any other right in law to occupy³. An occupier who qualifies under ESTA is expressly excluded from the definition of "unlawful occupier" in PIE. The two Acts are accordingly mutually exclusive in their application to any given occupier, and the question of which applies turns, in the first instance, on whether the occupier can establish the element of consent from a person entitled to grant it.

[23] The Respondents' ESTA case therefore depends on one factual proposition: that Robertson or De Villiers were legally entitled to grant occupation rights on the property. Khumalo, Mandiko, Nyangobe and, by necessary implication, Dube rely on an allocation by Robertson, while the First and Second Respondents rely on permission by De Villiers. Unless that authority is established, the claim to ESTA protection cannot get off the ground.

[24] This version cannot be accepted. The decisive difficulty is narrow but fatal: neither Robertson nor De Villiers is shown to have had any right, title, trusteeship or authority from which consent to occupy could lawfully have been derived. The undisputed documentary record shows a 2005 transfer to the Onverwacht Trust from Phillip Pieter Theunissen and Lorinda Theunissen, and Letters of Authority identifying Beukman and Allen - not Robertson - as trustees. Against that record, the Respondents produce no trust instrument, authority document, proof of employment, payslip, lease, correspondence or other documentary material capable of substantiating the claimed relationship with Robertson or De Villiers. Applying *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A), read with *National Scrap Metal (Cape Town) (Pty) Ltd v Murray & Roberts Ltd* 2012 (5) SA 300 (SCA) and *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA), those bare assertions do not raise a real, genuine and *bona fide* dispute of fact in the face of contrary documentary proof.

[25] The position of the First and Second Respondents is weaker still. The correspondence exchanged between February and March 2024 (annexures "GB9" to

³ *Randfontein Municipality v Grobler and Others* [2009] ZASCA 129; [2010] 2 All SA 40 (SCA)

"GB16") records a negotiated, amended and ultimately signed lease agreement concluded over approximately three weeks. That history is inconsistent with the suggestion that the First Respondent's signature was procured by duress in the legal sense of an unlawful threat overbearing his free will. No particulars of such a threat, beyond a single unparticularised remark, are furnished. More fundamentally, the conclusion of a lease is inconsistent with a claim to have occupied under an independent and freestanding right derived from Rosa De Villiers, a stranger to the title.

[26] I am accordingly satisfied that none of the Respondents has raised a genuine dispute of fact as to occupation with the consent of the owner or a person with the right to grant such consent, and that the Respondents' ESTA defence, however elaborately argued on the law, is not sustained on the facts before this Court. It follows that the Respondents do not qualify as "occupiers" within the meaning of section 1 of ESTA, that they are not excluded from the definition of "unlawful occupier" in section 1 of PIE, and that PIE is the correctly invoked statute. This point *in limine*, and the corresponding defence on the merits, is dismissed.

[27] Again for the sake of completeness, and if I am wrong on the issue of consent, I address the remaining ESTA points briefly. I am prepared to accept, without deciding, that the property's present agricultural zoning and non-township status may satisfy the land-related requirements of section 2 of ESTA relied upon in the Respondents' Heads of Argument. That does not assist them. Section 1 of ESTA requires both qualifying land and qualifying occupation with consent, or another right in law, from a person entitled to confer it. *Mkangeli v Joubert* 2002 (4) SA 36 (SCA) proceeds on that footing. Since the Respondents have not established the consent element, neither the property's classification nor the assumed income threshold can bring them within ESTA.

UNLAWFUL OCCUPATION

[28] It is common cause that the Applicant is the registered owner of the property and that the First, Second and Third Respondents reside on it. For the reasons given above,

no lawful right of occupation - contractual or otherwise - has been established by any Respondent; to the contrary, the one written agreement that did exist, the lease concluded with the First and Second Respondents, was validly cancelled for non-payment of rental and has not been revived. I find that the First, Second and Third Respondents, and all those occupying through or under them, are accordingly in unlawful occupation of the property as contemplated by PIE.

JUST AND EQUITABLE RELIEF

[29] A finding of unlawful occupation does not, without more, entitle the Applicant to an eviction order. Section 4(7) of PIE requires the Court, where the unlawful occupation has endured for longer than six months, to have regard to all relevant circumstances, including the availability of suitable alternative accommodation or land, and the rights and needs of the elderly, children, disabled persons and households headed by women, before granting an order that it considers just and equitable.

[30] The occupation has endured for longer than six months. The enquiry is therefore not limited to ownership and unlawfulness, but requires a proportionate assessment of the competing interests placed before the Court, including the circumstances of the occupiers, the position of minor children, the availability of suitable alternative accommodation or land, and the prejudice to the Applicant if unlawful occupation continues.

[31] Of particular relevance is that the First and Second Respondents reside on the property with their two minor children, who attend school in Honeydew. Their interests, though not determinative, must be given real weight⁴. The Fourth Respondent, cited precisely because of its statutory responsibilities in this context, has filed no report addressing the availability of alternative accommodation or land, whether emergency or otherwise, for the First and Second Respondents and their minor children. In the

⁴ (*Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC); *Occupiers of 51 Olivia Road, Berea Township v City of Johannesburg* 2008 (3) SA 208 (CC))

absence of that information, the Court cannot determine, as at the date of this judgment, what practical arrangements exist or can be made to prevent the eviction from rendering the affected children homeless.

[32] Balanced against this are the Applicant's established rights and interests as owner: its entitlement to the use, enjoyment and disposal of its property; the escalating scale of unauthorised occupation, dumping and illegal electricity connections; the increasing volatility on the property, including the violent incidents alleged in the papers; its ongoing liability for rates; the genuine efforts made before litigation to regularise occupation by negotiated lease; and the prejudice to its development plans caused by continued unlawful occupation. The Respondents have placed no evidence before the Court of any personal vulnerability, whether by reason of age, disability or otherwise, beyond the presence of the minor children of the First and Second Respondents. Nor have they produced evidence of an inability to secure alternative accommodation.

[33] The Applicant submits, correctly, that a municipality's constitutional obligation to provide emergency accommodation, and its associated duty to place information before the Court, is not triggered automatically merely because the municipality has been cited. It arises where the circumstances raise a real possibility that eviction will render occupiers homeless⁵. I accept that proposition. The difficulty remains evidential. The assertion that the Respondents "drive expensive vehicles" and are "seemingly in a position to borrow money from the bank" appears for the first time in reply, is unparticularised, and was not answered. It does not however sufficiently exclude the risk of homelessness in the household of the First and Second Respondents, where minor children are present. By contrast, the individually identified Third Respondents are working-age adults, no minor dependants are alleged on their behalf, and no specific vulnerability is advanced. The order must therefore distinguish between those positions and make clear how the municipal report bears on the timing and conditions of enforcement.

⁵ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) paras 35-41

[34] I do not consider the allegation that Mr Botes shot and injured Dube, or the cross-allegation that Dube previously attacked Mr Botes with a knife, to determine the just-and-equitable enquiry. Those matters remain for the pending criminal proceedings and, if relevant, any civil claim arising from them.

[35] In all the circumstances, it is just and equitable that an eviction order be granted. The fact that these reports from the relevant municipalities cited in applications such as these are rarely or reluctantly furnished, is unfortunate to say the least, but it is also just and equitable that enforcement be structured so that the Fourth Respondent's report is obtained before any renewed issue concerning the timing or conditions of eviction of the First and Second Respondents' household is determined. The order that follows therefore grants eviction, allows a period for voluntary vacation, directs the Fourth Respondent to report on suitable alternative accommodation or land for the First and Second Respondents and their minor children, and reserves the parties' rights to return to Court on supplemented papers if the report discloses a material impediment to enforcement within that period.

COSTS

[36] Costs should follow the result. The First, Second and Third Respondents opposed the application unsuccessfully, including on an unsubstantiated version of the history of the property contradicted by the documentary record. I am not persuaded, however, that this justifies a punitive costs order on the attorney-and-client scale. Parties are ordinarily entitled to test even a weak defence without attracting punitive costs, provided the litigation is not conducted vexatiously. A costs order on the ordinary scale, being Scale B under Uniform Rule 67A, is appropriate. No costs order is made for or against the Fourth Respondent, which did not participate in the litigation.

ORDER

[37] In the result, I make the following order:

1. The First, Second and Third Respondents, and all those occupying the property known as Portion 321 of the Farm Wilgerspruit 190, Registration Division I.Q., held under Deed of Transfer T[...] ("the property"), through or under them, are evicted from the property in terms of section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.
2. The First, Second and Third Respondents, and all those occupying through or under them, are granted three (3) months from the date of service of this order to vacate the property.
3. The Fourth Respondent is directed to file a report with this Court, within thirty (30) days of the date of this order, addressing the availability of suitable alternative accommodation or land for the First and Second Respondents and their minor children, and identifying any practical steps required to avoid homelessness if eviction is enforced after the period referred to in paragraph 2.
4. Subject to any further order granted pursuant to paragraph 6, should the property not be vacated within the period referred to in paragraph 2, the Sheriff of this Court is authorised and directed to evict all persons who remain in occupation, and is authorised to enlist the assistance of the South African Police Service or such other appropriate service provider as may be necessary to effect the eviction.
5. This order shall be served on the unlawful occupiers by placing copies of it at conspicuous places on the property to the extent that personal service cannot be effected by the Sheriff.
6. The Applicant, and the First and Second Respondents are granted leave to approach this Court on the same papers, duly supplemented, for further or alternative relief regarding the timing of, or conditions attaching to, the eviction ordered in paragraph 1, should this prove necessary in light of the report referred to in paragraph 3.
7. The First, Second and Third Respondents shall pay the costs of this application, jointly and severally, the one paying the others to be absolved, on Scale B as contemplated in Uniform Rule 67A.

BENSON AJ
JUDGE OF THE HIGH COURT PRETORIA

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 20 August 2026.

Heard: 4 March 2026

Delivered: 20 August 2026

APPEARANCES

For the Applicant:	Adv CJ Welgemoed, instructed by J Broodryk Attorneys, Doringkloof, Pretoria
For the First, Second and Third Respondents:	Mr Herbst, instructed by Randela Attorneys Inc, c/o Makula Attorneys Inc, Pretoria
For the Fourth Respondent:	No appearance