



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

Case No: 2025-015114

Reportable

In the matter between:

SHEREE FOGGITT

Applicant

and

THE HAVEN NIGHT SHELTER

First Respondent

MEC FOR SOCIAL DEVELOPMENT, WESTERN CAPE Second Respondent

CITY OF CAPE TOWN

Third Respondent

MINISTER OF SOCIAL DEVELOPMENT

Fourth Respondent

Coram: Le Grange J, Holderness J et Ralarala J

Heard: 13 March 2026

Delivered: 09 September 2026

JUDGMENT

Holderness J (Le Grange J and Ralarala J concurring)

[1] Can a homeless person be evicted from a night shelter without an order of court in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act)? Is a shelter a ‘home’ as contemplated in the PIE Act? These are the central questions which this Court is called upon to answer in this matter.

The parties

[2] The applicant, Ms. Sheree Foggitt (Ms. Foggitt), a 70 year old pensioner, was accommodated at a registered night shelter operated by the first respondent in Malmesbury, since 2024. Ms. Foggitt was represented by Mr. T Sidaki.

[3] The first respondent is the Haven Night Shelter Welfare Organisation, a registered non-profit organisation and registered public benefit organisation with its head office in Green Point, Cape Town (the Haven). Ms. R Williams SC and Ms. T Sarkas acted on behalf of the Haven in these proceedings.¹

[4] The Haven was founded in 1978 and operates 14 shelters in the Western Cape, nine of them within the Cape Town metropolitan area, together with a frail care facility, Haven Homes, at Woodstock. Its answering affidavit is deposed to by its Chief Executive Officer, Mr Shadrack Valayadum (Mr. Valayadum), and is

¹ *The Heads of Argument for the Haven Night Shelter were prepared by Ms Sarkas.*

supported by confirmatory affidavits of Ms Thandokazi Njara (Ms. Njara), a social worker at the Malmesbury/Swartland shelter, and Mr Neville Marc Littleford.

[5] The second respondent is the MEC for Social Development, Western Cape (the MEC). The MEC is the functionary in whom the responsibility for the provincial Department of Social Development (the Department) vests. The Department funds and oversees welfare organisations, including the Haven. Mr. M Titus appeared for the MEC and the fourth respondent, the Minister of Social Development (the Minister). The Minister bears responsibility at national level for oversight and policy relating to social welfare and homelessness.

[6] The third respondent is the City of Cape Town (the City), represented in these proceedings by Mr. A Coetzee. The City provides grant-in-aid funding to the Haven and operates the Safe Space shelters.

Procedural background

[7] Ms. Foggitt contends that she was evicted, and unlawfully so, for want of compliance with the PIE Act and in breach of her rights under sections 10, 26 and 27 of the Constitution of the Republic of South Africa, 1996 (the Constitution) and under the Older Persons Act 13 of 2006 (the Older Persons Act).

[8] The application was brought in two parts. Part A sought urgent interim relief directing the Haven and the MEC to immediately accommodate the applicant at a suitable facility, catering to her needs, pending the determination of Part B.

[9] Part A was resolved by agreement. Ms. Foggitt was provided with temporary accommodation on 7 February 2025 at a Safe Spaces shelter operated by the City in Green Point, and an order by agreement followed on 10 February

2025. It is common cause that the applicant has since been accommodated at a SafeSpace operated by the City.

[10] What remains to be determined is the final relief in Part B, in terms of which the applicant seeks four declarators and four mandatory orders against the Haven, together with relief of a systemic character against the MEC, the City and the fourth respondent (the state respondents).

[11] The relief sought in Part B may conveniently be separated into three parts:

1. The first part is directed at the Haven and relates to the events of January 2025. The applicant seeks a declarator that on or about 23 January 2025 the Haven unlawfully evicted her from its Malmesbury shelter by failing to comply with the procedures prescribed by the PIE Act and failed to take reasonable measures to make provision for her needs, in breach of her rights under ss 10, 26 and 27 of the Constitution and under the Older Persons Act. Ms. Foggitt seeks a further declarator, in the same terms, that the first respondent has violated those rights.
2. The second is directed primarily at the Haven's policy and practices. Ms. Foggitt seeks a declarator that the provision in the Haven's General Admissions Policy relating to the contacting of the South African Police Service or the shelter security company to assist in removing a client who refuses to leave is unconstitutional and inconsistent with the PIE Act, an order that the first respondent cease all evictions unless compliant with the PIE Act, and an order that it develop and implement, within 90 days, a transparent eviction framework ensuring full compliance with the PIE Act.
3. The third part is directed primarily at the state respondents. The applicant seeks an order that all the respondents furnish a detailed list of the

services and facilities available in the Western Cape for homeless persons over the age of 60, together with a comprehensive plan to address the gaps in those services, including budgets, current challenges, proposed improvements, funding considerations and timelines. Ms. Foggitt further seeks an order directing the Minister to review and implement national guidelines to ensure that state-funded shelters comply with the PIE Act, and an order directing the Haven and the MEC to take reasonable measures to secure appropriate accommodation for her.

[12] The Haven, the MEC and the Minister oppose the relief sought against them. The City has filed an answering affidavit but did not appear to advance a separate case. The matter was argued before the full court on 13 March 2026.

[13] The third part of the relief was expressly abandoned by Mr. Sidaki at the hearing of the matter. I therefore need not deal with it any further, save to state that the City annexed to its answering affidavit lists of private and funded residential facilities in the Western Cape and databases of Older Persons Programmes for assisted living and for independent living in the Western Cape.²

Condonation

[14] The MEC's answering affidavit was due on Friday 11 April 2025. It was delivered four days late, on Tuesday 15 April 2025. Condonation is sought for the late delivery, on the grounds that the delay was occasioned by the unavailability of counsel and the court recess, that it is minimal, and that no prejudice has been occasioned to the applicant, regard being had to the date of hearing. The application for condonation is not opposed.

² These lists were not compiled by the City and the City does not exercise any control or oversight in respect of the facilities listed therein.

[15] I am satisfied that the delay has been adequately explained and that no prejudice to the other parties has been occasioned thereby. Condonation is accordingly granted.

The approach to the disputed facts

[16] Ms. Foggitt seeks final relief on motion. It is trite that where final relief is sought on affidavit, and a genuine dispute of fact has arisen, such relief may be granted only if the facts averred by the applicant that are admitted by the respondent, together with the facts alleged by the respondent, justify the order sought. A court is not obliged to accept a version that consists of bald or uncreditworthy denials, that raises fictitious disputes, or that is so far-fetched or clearly untenable that it may be rejected on the papers.³

Background

[17] The following matters appear from the papers and are, in the main, not in dispute.

[18] Ms. Foggitt has been accommodated at various of the Haven's shelters since 2020. She was at the Napier shelter from August 2020 until October 2020, when she left of her own accord, and again from July 2021 until 4 April 2024. She was admitted to the Kalk Bay shelter in February 2023 and, on the first respondent's version, absconded in October 2023 and was re-admitted later that month.

[19] On 4 April 2024 Ms. Foggitt was informed that if she wished to remain at one of the Haven's shelters, she would have to be placed at what was described as

³*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C; *Soffiantini v Mould* 1956 (4) SA 150 (E) at 154G–H; *Canton Trading 17 (Pty) Ltd t/a Cube Architects v Hattingh NO* 2022 (4) SA 420 (SCA) para 78.

an age-appropriate shelter, being Malmesbury/Swartland. She was admitted there the following day.

[20] On admission Ms. Foggitt was given a copy of the Haven's Rules (the Rules), which she duly signed, and of its General Admissions Policy (the Policy).

[21] The Rules encompass, among other things, shelter fees payable by clients. The Policy provides that clients are allocated six months with a review at three months, that the maximum period of stay is nine months, and that a client should know the exact exit date on admission.

[22] The Policy further provides that for clients aged 60 years or older, the primary intervention will be family reunification or reintegration to an old age facility, and that if after three months family reunification has not been realised, clients of pensionable age will be transferred to a shelter with lower occupancy or to a more appropriate facility until space at an old age facility becomes available.

[23] The applicant paid shelter fees irregularly between April and December 2024. On 25 November 2024 she was given a letter advising her that if she did not pay her fees in full from 4 December 2024 she would be required to leave on 5 December 2024. A payment of R1 200 was made in December 2024. The parties differ as to whether it was made by the applicant or by her daughter on her behalf.

[24] On 16 January 2025 Ms Njara informed Ms. Foggitt that she would be required to leave the following day due to her refusal to pay shelter fees when she was demonstrably able to pay (as she received a monthly SASSA grant), because she was uncooperative (by refusing to do chores and not complying with the Rules, and lastly due to her non-compliance in social work services. That was recorded in a memorandum. Ms Foggitt's exit date was then moved to 22 January 2025.

[25] On 23 January 2025 the Haven terminated the services it had been rendering to Ms. Foggitt and transported her from their Malmesbury shelter to the offices of

Safe Space shelters in Cape Town. She was refused permission to leave her belongings at the Haven's head office.

[26] Ms. Foggitt was thereafter taken to a Safe Space facility at the Golden Acre, however she was not granted admission there.

[27] Thereafter Ms. Foggitt was taken to the City's social development office at the same address, where she was also not rendered assistance. She was taken back to the Napier shelter and was ultimately left, with her belongings, at the offices of the Department of Social Development in Queen Victoria Street. This sequence of events is unfortunate to say the least, and the failure to assist Ms Foggitt by the City's functionaries at these offices is unexplained. I mention that this is a most unsatisfactory state of affairs, particularly considering her advanced age and the vulnerable state in which she found herself.

[28] Ms. Foggitt was thereafter without accommodation and slept on the streets of Cape Town from 23 January 2025 until 7 February 2025.

[29] On 27 January 2025, her attorney of record, Mr. R Bodart of Legal Aid South Africa, addressed correspondence to Mr. Valayadum, requesting *inter alia* immediate accommodation at a suitable shelter that caters to her needs. Mr. Valayadum replied advising that the timeline imposed in terms thereof and that he would endeavour to address the matter as soon as possible. These proceedings were launched on 31 January 2025.

[30] On 29 January 2025 Ms. Foggitt was attacked and robbed of her phone. It is heartrending to imagine the vulnerable state she found herself in, homeless at this advanced age. This Court has not lost sight of the desperate circumstances in which Ms. Foggitt and people in a similar situation find themselves in. For many

people, a life of the street, with the inherent dangers and hardship this entails, is incomprehensible.

The issues

[31] Two issues arise for determination:

1. Firstly, whether the PIE Act applies to the Haven as a night shelter operating as part of shelter-based social work services, and, accordingly, whether Ms. Foggitt's departure from the Malmesbury shelter on 23 January 2025 constituted an eviction within the meaning of the PIE Act.
2. Secondly, whether, and to what extent, the Haven bears constitutional and statutory obligations of the kind Ms. Foggitt seeks to enforce against it, whether under sections 26 and 27 of the Constitution or under the Older Persons Act.

[32] I turn to consider each issue in turn.

The first issue: Does the PIE Act find application?

[33] Section 26(3) of the Constitution provides that no one may be evicted from their home, or have their home demolished, without an order of Court made after considering all the relevant circumstances, and that no legislation may permit arbitrary evictions.⁴ The PIE Act was enacted to give effect to this provision.

[34] Section 4 of the PIE Act governs the eviction of unlawful occupiers at the instance of an owner or person in charge. It requires that proceedings be instituted,

⁴ Section 26(3) of the Constitution of the Republic of South Africa, 1996.

that written and effective notice of the proceedings be served on the unlawful occupier and the municipality having jurisdiction at least 14 days before the hearing, and that the Court have regard to all the relevant circumstances before granting an order.

[35] Where the occupier has resided on the land for less than six months, section 4(6) applies. Where the period exceeds six months, section 4(7) applies, and the court is required to consider whether land has been or can reasonably be made available. In each case the rights and needs of the elderly, children, disabled persons and households headed by women are expressly among the circumstances to be considered.

The meaning of 'home'

[36] The PIE Act applies to eviction from a home. Whether the Malmesbury shelter was the applicant's home for the purposes of the Act is therefore anterior to the remaining issues.

[37] In *Barnett and Others v Minister of Land Affairs and Others*⁵(*Barnett*) the Supreme Court of Appeal considered the sense in which 'home' is used in this context, holding that the sensible and ordinary meaning connotes a place of regular occupation coupled with some degree of permanence, and that a holiday home does not qualify.⁶

[38] That approach was endorsed in *Stay At South Point Properties (Pty) Ltd v Mqulwana and Others*⁷ (*South Point Properties*), where the Court held⁸ that

⁵ *Barnett and Others v Minister of Land Affairs and Others* 2007 (6) SA 313 (SCA) para 38

⁶ 2007 (6) SA 313 (SCA) para 38.

⁷ *Stay At South Point Properties (Pty) Ltd v Mqulwana and Others* 2024 (2) SA 640 (SCA).

⁸ Id at para 10.

student residence accommodation, occupied for a defined academic purpose and a defined period, did not constitute a ‘home’ for the purposes of the PIE Act.⁹

[39] The Constitutional Court in *Port Elizabeth Municipality v Various Occupiers*¹⁰ emphasised that a home is more than shelter from the elements, it is a ‘zone of personal intimacy and family security.’¹¹

The contentions of the parties

[40] The applicant contended that on a proper interpretation of the PIE Act, a rigid conception of ‘home’ should be rejected, and that her extended stay at the Haven’s shelters, her lack of any alternative and her dependence on the shelter for basic care rendered the Malmesbury shelter her home. In support of this stance, she stated that she was moved between shelters at the instance of the Haven’s management, not by choice, that no term limit was imposed upon her, and that in terms of the Haven’s own Policy an older person may be expected to remain in a shelter for an extended period pending placement at an old age facility.

[41] On behalf of the Haven, it was contended that the provision of shelter is an incident of the provision of shelter-based social work services and not an end in itself. Ms. Sarkas, who appeared on behalf of the Haven, emphasised that it is by nature finite, temporary and transitory, and known by the client to be so from the point of admission. Moreover the client’s stay is governed by a personal development plan with a defined exit date, and the services are subject to rotation due to the scale of homelessness and the limited resources available.

[42] A compelling argument advanced on behalf of the Haven was that to apply the PIE Act to the accommodation it provides would render its model

⁹ Id at paras 17–18.

¹⁰ ¹⁰*Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC).

¹¹ Id at para 17.

unworkable, as there is an average of one termination a day across 14 shelters accommodating approximately 1 304 persons at any given time.

[43] Ms. Sarkas argued that these features demonstrate that the Haven night shelter is not a home as contemplated in the PIE Act. It is a shelter of limited duration, for a specific and time bound purpose, factors which adverted against the application of the PIE Act to student accommodation in *South Point Properties*, and by parity of reasoning against its application to the Haven.

[44] Mr. Sidaki on behalf of Ms. Foggitt relied *inter alia* on *Dladla and Another v City of Johannesburg and Others*¹² (*Dladla*) and *Ark City of Refuge v Bailing (Ark)*.¹³

[45] The eviction sought in *Ark* however was brought under the PIE Act itself, and neither the court a quo nor the full court on appeal was called upon to decide whether the shelter constituted a home within the meaning of the PIE Act.¹⁴

[46] The two determinative questions there were whether the occupation was unlawful, and whether eviction was just and equitable. The court in *Ark* accordingly did not have the benefit of argument on shelter-based social work services or evidence on why rotation matters to that model.

Evaluation

[47] Ms. Foggitt bore the *onus* of establishing that the Malmesbury shelter was her home within the meaning of the PIE Act. Ms. Foggitt, in my view failed to establish a factual basis upon which the shelter is said to have constituted her home. For the reasons set out above the nature of the accommodation provided by the Haven is transitory. It provides social services, and its principal objective is to

¹² *Dladla and Another v City of Johannesburg and Others* 2018 (2) SA 327 (CC) at para 42.

¹³ *Ark City of Refuge v Bailing and Others* (8969/2007) [2010] ZAWCHC 176; 2011 (1) BCLR 68 (WCC); [2011] 2 All SA 195 (WCC) (15 September 2010).

¹⁴ The decision in *Ark* was overturned on appeal to the full court – See *Ark City of Refuge v Bailing and Others* (A107/2011) [2012] ZAWCHC 285 (10 August 2012) para 21.

get client back on their feet so they can be integrated back into society, whether this is by securing employment and their own accommodation, moving back in with family where available, or moving into social housing where possible.

[48] The features which adverted against the application of the PIE Act in *South Point Properties* are present here. The provision of shelter by the Haven is for a finite period and for a limited and defined purpose. The Policy provides for six months, with a review at three months and a maximum stay of nine months and requires that a client know the exact exit date upon admission.

[49] Each client's stay is governed by a personal development plan. The arrangement is subject to rotation, and necessarily so, given the scale of homelessness in the Western Cape and the finite number of beds available.

[50] Ms. Foggitt was fully aware of these terms. She had stayed at Haven night shelters for some time. She was provided with a copy of the Rules, which she signed, and the Policy, upon her admission on 5 April 2024.

[51] The contention advanced on her behalf rests principally upon the duration of her occupation; however duration alone does not convert accommodation of this nature into a home. What *Barnett* requires is regular occupation coupled with some degree of permanence, and the permanence contemplated relates to the nature of the arrangement rather than to the period for which it endured.¹⁵

[52] Ms. Foggitt's occupation of the Malmesbury shelter ran from 5 April 2024 until 22 January 2025, under a Policy which contemplated that it would not exceed nine months.

[53] The second leg of the argument is that Ms. Foggitt had no alternative available to her. Section 26(3) falls to be read against the backdrop of section

¹⁵ At para 38.

26(1), and where an occupier is unable to demonstrate that she will be rendered homeless, the protection of section 26(3) does not find application.¹⁶

[54] On the Haven's version, alternatives were placed before Ms. Foggitt prior to the termination of its services to her. She was offered a placement at the Bellville shelter so that she might attend substance abuse programmes, a two-night stay at the Napier shelter, a bus ticket to reunite with her son in Uppington, and a placement at a Safe Space. Each was declined. Her daughter, who had assisted her before, was unwilling to accommodate her.

[55] That Ms. Foggitt was without accommodation between 23 January 2025 and 7 February 2025 is common cause, and this Court does not underestimate how traumatic a fortnight on the street must have been for an elderly and vulnerable individual such as Ms. Foggitt. However, on the Haven's version which must be accepted on the basis of the *Plascon-Evans* principle,¹⁷ it appears this was not due to the absence of any alternative.

[56] I am accordingly satisfied that the Malmesbury shelter was not the home of Ms. Foggitt within the meaning of the PIE Act, that the PIE Act did not apply to the termination of the services rendered to her, and that her departure on 23 January 2025 did not constitute an eviction within the meaning of the Act.

[57] Unfortunately, *Dladla* does not assist Ms. Foggitt on this issue. The accommodation there was provided by the City pursuant to the order of the Constitutional Court in *Blue Moonlight*, and the shelter rules under challenge were susceptible to constitutional attack precisely because they fell to be treated

¹⁶ *Lester v Ndlambe Municipality and Another* [2013] ZASCA 95; 2015 (6) SA 283 (SCA) para 17, endorsed in *South Point Properties* at para 9.

¹⁷ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

as though the City itself had made them. They were accordingly expressly not challenged as a measure taken by a private individual or organisation.¹⁸

The second issue: Whether the Haven bore statutory and constitutional obligations

The parties' submissions

[58] Mr Sidaki contended that the Haven performs a public function, receives substantial public funding and exercises a significant measure of control over the lives of those it accommodates. Arising from the foregoing he contended that it accordingly bears both negative duties not to infringe Ms. Foggitt's and its other clients' rights to dignity, shelter and due process, and has positive duties to take reasonable steps to protect and promote the rights of the vulnerable persons it serves, including the observance of fair procedures before a termination.

[59] It was further argued on behalf of Ms. Foggitt that those duties are reinforced by the fact that it is publicly funded and contracts with the Department to deliver services of a public character. In this regard reliance was placed by counsel for Ms. Foggitt on the apex court judgments in *Pridwin*,¹⁹ *Khosa*,²⁰ *Blue Moonlight*²¹ and on *Treatment Action Campaign*.²²

[60] Ms. Sarkas contended that the obligations Ms. Foggitt seeks to impose are, properly construed, obligations of the State under sections 7(2), 26(2) and 27(2) of the Constitution and section 3 of the Older Persons Act, and that whilst the Bill of Rights binds private persons, the distinction drawn between sections 8(1) and 8(2) make it clear that it does not bind them in the same way as it binds the State,

¹⁸ *Dladla* at para 34.

¹⁹ *AB and Another v Pridwin Preparatory School and Others* 2020 (5) SA 327 (CC) (*Pridwin*) at paras 85 to 86 and 153.

²⁰ *Khosa and Others v Minister of Social Development and Others* 2004 (6) SA 505 (CC) at para 111.

²¹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at paras 67 and 74.

²² *Minister of Health and Others v Treatment Action Campaign and Others (No 2)* 2002 (5) SA 721 (CC) at para 99.

and that its night shelters are not residential facilities within the meaning of the Older Persons Act.²³

[61] It was further contended on behalf of the Haven that *Pridwin*²⁴ framed the obligation of the private entity there in issue as a negative one, and that the enquiry is not simply whether the function performed is public in character but whether there has been a devolution of power away from the public entity that would ordinarily perform it. It asserts that, unlike the position in *AllPay*, its services are at best supportive of the Department's functions and it does not step into the Department's shoes, and that, absent a contractual nexus or an undertaking to secure the achievement of the State's positive obligations, no constitutional obligation of the kind contended for attaches to it.²⁵

[62] The MEC and the Minister stated that the Department had offered to assist the applicant to apply for placement at an old age home, that a social worker was appointed to interview her and to inform her of her rights in that regard, and that this offer was not taken up by her.

Evaluation

[63] Section 8(2) of the Constitution provides that a provision of the Bill of Rights binds a natural or juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right. The enquiry is right specific and is not resolved on the basis function performed is public in character.

²³ Only Haven Homes at Woodstock being such a facility, and no case having been made out in relation to that facility.

²⁴ *Pridwin* at paras 85 and 86.

²⁵ *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others (No 2) (Allpay 2)* 2014 (4) SA 179 (CC); *Governing Body of the Juma Musjid Primary School v Essay NO* [2011] ZACC 13 para 58; *Netcare Hospitals (Pty) Ltd v KPMG Services (Pty) Ltd* [2014] 4 All SA 241 (GJ) paras 67–71; *City of Cape Town v Khaya Projects (Pty) Ltd (Khaya Projects)* [2016] 4 All SA 1 (SCA).

[64] *Pridwin*, in my view, does not support the Ms. Foggitt's contention regarding the statutory and constitutional obligations which she seeks to impose on the Haven. The Constitutional Court unanimously held that a private entity, in that case a school, under an obligation not to interfere with or diminish the right which forms the subject of its services without appropriate justification, and it framed that obligation as a negative one.

[65] The Court did not hold that such an entity assumes the positive obligations of the State. Section 8(2) does not obstruct the autonomy of private parties; it does however require of them that they not interfere with the rights of others.²⁶

[66] The enquiry is whether there has been a devolution of power to a private body and away from the public entity which would ordinarily perform the function. In *AllPay*, Cash Paymaster provided the single route by which social grants might be accessed, performing that function on behalf of and to the exclusion of the department concerned, and doing so in terms of legislation.

[67] This is clearly distinguishable from the position of the Haven *in casu*. The Haven is voluntary association which provides shelter-based social work services from its own resources and those of a diversified donor base, of which government funding forms a part. Its services are supportive of the functions of the Department; however it does not stand in the Department's stead.

[68] In *Khaya Projects* the Supreme Court of Appeal held that, absent a contractual nexus between the private party and the organ of state, and absent any undertaking by the private party to ensure that the positive constitutional obligations of the organ of state would be achieved, no constitutional obligation attached to it.²⁷ There is no such nexus and no such undertaking in the present matter. The Department funds registered non-profit organisations which apply for

²⁶ At paras 85 and 86.

²⁷ See in this regard para 24 to 29.

funding, and which provide shelter services as part of their core functions. It does not exercise control over the Haven's operations.

[69] This accords with what the court held in *Ark*, where funding and the use of state-owned land at a nominal rental were held not to give rise to any constitutional obligation on the part of the shelter with regard to the realisation of the right of access to adequate housing, beyond its obligation to comply with the PIE Act and with the Constitution generally when seeking an eviction.

[70] The obligation to provide access to adequate housing, and to social assistance to those unable to support themselves, rests upon the State. The Constitutional Court has affirmed that a private owner is under no obligation to house an unlawful occupier free of charge, and that offers of alternative accommodation made by a private party do not, by being made, give rise to an obligation to provide it. The response of the occupier to the offers made is itself a relevant consideration.²⁸

[71] The argument founded upon the Haven's Policy for clients aged 60 years and older stands on a different footing. The Policy provides that where family reunification has not been realised after three months, a client of pensionable age will be transferred to a shelter of lower occupancy or to a more appropriate facility until space at an old age facility becomes available.

[72] It was submitted by Ms. Foggitt that the Haven never took that step. In my consideration the Policy is an internal instrument by which the Haven regulates the discharge of its own functions. It confers no right upon a client enforceable against the Haven, and it cannot convert into a legal obligation that which the Constitution does not impose upon it. In any event, on the Haven's version, which does not fall to be rejected as implausible or wholly untenable, transfers and

²⁸ *Grobler v Phillips and Others* [2022] ZACC 32; 2023 (1) SA 321 (CC) paras 37, 38 and 40 to 42, and para 48.

alternatives of precisely that character were placed before Ms. Foggitt and were declined.

[73] Moreover, the Haven's night shelters are not residential facilities within the meaning of the Older Persons Act.²⁹

[74] It remains to consider the claim founded upon section 10. The right to dignity attaches to every person and is enjoyed wherever that person finds herself, and a finding that the Malmesbury shelter was not Ms. Foggitt's home does not dispose of that claim.

[75] What the Haven owed Ms. Foggitt in this regard was a negative duty not to impair her dignity without justification. On the Haven's version, the termination of services followed a series of warnings, social work interventions in the form of group and individual sessions and contact with her family, a documented termination process, and the offer of the alternatives referred to above. She was thereafter transported to Cape Town and taken in turn to a Safe Space facility, to the City's social development office and to the offices of the Department.

[76] For these reasons, I am of the view that the Haven does not bear the constitutional and statutory obligations which Ms. Foggitt seeks to enforce against it.

Conclusion

[77] For the reasons set out above, the applicant has not made out a case for the relief sought in Part B, and the application falls to be dismissed.

Costs

²⁹ In section 1 of the Older Persons Act a "residential facility" is defined as a building or other structure used primarily for the purposes of providing accommodation and of providing a 24-hour service to older persons.

[78] Costs ordinarily follow the result. The first respondent seeks the dismissal of the application with costs, including the costs of counsel. The second and fourth respondents seek the dismissal of the relief against them with no order as to costs, and, in relation to prayer 10, expressly invoke the principle in *Biowatch*.³⁰ The applicant, who is legally aided, seeks costs on the party and party scale against the first respondent.

[79] The applicant is an indigent older person who litigated with the assistance of Legal Aid South Africa and raised constitutional issues. I accept that the *Biowatch* principle is invoked expressly by the state respondents in relation to the relief sought against them but its application to the costs of the Haven, a private non-profit organisation, is a separate question and was not the subject of argument.

[80] I am not inclined, in light of the vulnerable circumstances in which Ms Foggitt finds herself, her age and in the context of what I consider to be genuine constitutional relief which she sought, to mulct her in costs.

[81] In the circumstances I propose to order that there be no order as to costs.

Order

[82] In the result I propose to make the following order:

1. The first respondent's non-compliance with the time period for the delivery of its answering affidavit is condoned.
2. The application is dismissed.
3. There shall be no order as to costs.

³⁰ *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) paras 22–25.

M Holderness

JUDGE OF THE HIGH COURT

I agree and it is so ordered.

A le Grange

JUDGE OF THE HIGH COURT

I agree.

N Ralarala

JUDGE OF THE HIGH COURT

APPEARANCES

For the applicant: Mr R Bodart
Instructed by: Legal Aid South Africa, Malmesbury

For the first respondent: Adv R Williams SC
Adv T Sarkas
Instructed by: Riley Incorporated, Wynberg

**For the second and
fourth respondents:** Adv M Titus
Instructed by: The State Attorney, Cape Town

