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**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case No: 2025-168506

In the matter between:

**PIETER HENDRIK STRYDOM N. O.
FMHC RENTAL SA NPC (in business rescue)**

**FIRST APPLICANT
SECOND APPLICANT**

and

**HASINA PHILI
Y I BANDA aka YUSUF IBRAHIM ISMAIL
ETHEKWINI MUNICIPALITY**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT**

ORDER

The following order is granted:

1. The first and second respondents, together with any and all others who occupy under or through them, the premises described as Unit No L[...] L[...] Estate, 4[...] C[...] Road, Newlands East, Durban, KwaZulu-Natal (the premises), are hereby evicted from the premises.

2. The first and second respondents and all occupiers who occupy the premises under or through any of them, are hereby ordered to vacate the premises on or before 15 October 2026.
3. The sheriff of the court is authorised and directed to carry out the eviction on or after 20 October 2026, in the event of any occupiers referred to in paragraph 2 of this order failing to comply with the provisions of such paragraph.
4. The costs of this application shall be paid by the first and second respondents, jointly and severally, the one paying the other to be absolved.

JUDGMENT

Sibiya J

[1] The first applicant is a business rescue practitioner appointed to the second applicant, FMHC Rental SA NPC (in business rescue), a non-profit company. The first respondent, Ms Phili, is married to the second respondent, who advised that he has changed his name to Mr Ismail. The third respondent, the eThekweni Municipality did not take an active part in these proceedings, despite being served with all the relevant papers. A reference to the respondents will thus be to the first and second respondents.

[2] The applicants seek the eviction of the respondents from the premises described as Unit No L[...] 3[...] L[...] Estate, 4[...] C[...] Road, Newlands East, Durban (the premises). It is common cause that the second applicant owns the premises, and that the respondents occupy the premises with their minor children pursuant to a lease agreement concluded in 2014.

[3] The eviction is in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), which is the legislation applicable to eviction from residential property. PIE acknowledges that unlawful occupation of property does not entitle the owner of the property to evict the

occupiers on a whim but recognises that eviction may only be done following a court order authorising such eviction.

[4] A court considering an eviction of a person who has occupied the premises in question for six months or more may only grant such an order if it is of the opinion that it is just and equitable, after taking into account all relevant circumstances.¹ This protects the rights to dignity² and not to be arbitrarily deprived of one's home,³ as provided in the Constitution.

[5] The relevant circumstances the court must consider are set out in s 4(7) of PIE, while s 4(8) provides that if all the requirements are complied with and the unlawful occupier has no valid defence, it must grant an eviction order and determine a just and equitable date to vacate as well as the date of eviction if the occupier does not leave on the vacation date, taking into account the period spent in occupation. In other words, PIE does not prevent the eviction of unlawful occupiers, but regulates how it should take place for it to be legal.

[6] The relevant circumstances include the rights and needs of the elderly, children, disabled persons and households headed by women. The availability of alternative accommodation is especially important where the eviction has the potential to render the occupiers homeless.⁴ In such circumstances, it is the municipality or other organ of state and not the owner of the property that has the obligation to provide alternative accommodation.

[7] It is common cause between the parties that the applicants have cancelled the lease, the only issue in relation to such cancellation is the date on which the lease was cancelled. The respondents maintain that the applicants cancelled the lease in October 2014 and that it was never reinstated thereafter, nor did the applicants withdraw that cancellation. It is their contention that all other purported subsequent cancellations are of no effect, as there is nothing to cancel.

¹ Section 4(7) of PIE.

² Section 10 of the Constitution.

³ Section 26 of the Constitution.

⁴ *Occupiers, Berea v De Wet NO and Others* [2017] ZACC 18; 2017 (5) SA 346 (CC) para 57.

[8] The applicants rely on a cancellation effected on 29 July 2025. The applicants first served a notice of breach based on the failure to pay rental by the due date, which gave one month's notice to remedy the breach. The one-month period expired at the end of May 2025 and the respondents had not remedied the breach. This was then followed by the cancellation, which gave the respondents a calendar month to vacate the premises.

[9] It is common cause that there has been extensive litigation between the parties from 2014, in the magistrates' court and in the high court. In October 2019, this court found that the cancellation of the lease in 2014 had been unlawful because the applicant had not given sufficient notice to remedy the breach prior to cancellation. It was for that reason that the court found the cancellation to be premature. In the magistrates' court, there was a claim for eviction which was withdrawn, leaving only a claim for arrear rental, which is still pending. The present claim is not for the recovery of rental; in fact, the failure to pay rent since 2014 is common cause before me.

[10] The respondents have raised the following points in limine:

(a) *res judicata*: in that the High Court, Durban, in 2019, determined the eviction application by the applicants against the respondents in relation to the same premises and lease agreement. The application was dismissed and there was no appeal against that decision. The applicants are now seeking the same relief on the same facts.

(b) *non-service* of the application: in that the applicants did not serve this application on the respondents, and yet in October 2025, they put the respondents on terms for the filing of the answering affidavit, failing which the respondents would be barred from filing such affidavit.

(c) *jurisdiction*: in that the applicants brought eviction proceedings in which it was alleged that the lease was terminated on 13 October 2014, and the court, having already determined that the cancellation was unlawful and dismissed the eviction application from the same premises in 2019, is *functus officio* and any judgment this court arrives at will result in conflicting judgments, which will offend the principle of precedent. Accordingly, the applicants have not demonstrated that the occupation is unlawful, as the respondents are merely defending their legal rights.

[11] There is no merit to the points raised by the respondents, for the reasons set out below.

[12] In relation to res judicata, while it is common cause that the lease relied on by both parties is the same one concluded in January 2014, the default complained of and the cancellation relied on are different. In 2014, the cancellation was effected in a manner that was determined by the court in 2019 to have been unlawful.

[13] The respondents have continued to occupy the premises without paying rental in terms of the lease concluded in January 2014. The breach complained of in the present case is related to the failure to pay rental by the seventh of the month beyond 2014, and beyond the date of the judgment in 2019, in 2025. The court did not pronounce that the applicants were precluded from properly cancelling the lease, only that the cancellation that had been effected was premature and unlawful. This meant that the cancellation was ineffective.

[14] The only cancellation that has been determined by the court is that of 2014, and not the cancellation of 2025. This issue is before the court for the first time in the present application. There is no court that has determined the lawfulness or otherwise of the cancellation in 2025 on the grounds set out in that cancellation. It is this court that is called upon to do so.

[15] As stated by the respondents in their answering affidavits, the requirements for res judicata are that a prior judgment was already given with respect to the same subject matter, based on the same ground and between the same parties.⁵ These requirements have also been stated as being same parties, same cause of action and same relief⁶. In the present application, although it is the same parties seeking the same relief as what was decided in 2019, the cause of action is different as

⁵ *Consol Ltd t/a Consol Glass v Twee Jonge Gezellen (Pty) Ltd & Another* 2005 (6) SA 23 (C) as quoted in the Respondents' Answering Affidavits para 21

⁶ *Prinsloo NO and Others v Goldex 15 (Pty) Ltd and Another* [2012] ZASCA 28; 2014 (5) SA 297 (SCA) para 23

relates to a new breach and cancellation, not the one that was alleged in 2014⁷. Accordingly, the issue is not res judicata.

[16] Regarding the non-service of the application, it is indeed unfortunate that the applicants acted in the manner they did, seeking to enforce the time limits for filing an answering affidavit prior to effecting service of the application in accordance with the provisions of PIE. However, no prejudice was occasioned as a result of that communication, as the first respondent managed to file her answering affidavit prior to the matter serving before court. The order directing service in terms of s 4(2) of PIE was granted on 27 October 2025 and the respondents were given sufficient time to file their affidavits, the matter being set down for hearing on 17 November 2025.

[17] At that hearing, the first respondent was granted leave to file the annexures to the affidavit already filed, and the second respondent was given more time to file his answering affidavit. The returns of service of the s 4(2) notice are proof that there was proper service of the application, and the lengthy affidavits by the first and second respondents prove that they, indeed, received the papers.

[18] There is again no merit to this point.

[19] Regarding jurisdiction, the point itself does not make sense. Insofar as it relates to the court having already pronounced on the cancellation, what I stated in paragraph 14 above, in relation to res judicata, remains relevant. The principle of precedent can never be offended in the present circumstances, as it is trite that each matter before court is decided on its own merits. This is the only court seized with the eviction of the respondents based on cancellation of the lease agreement effected in 2025.

[20] Having determined the lack of merit to the points in limine, I turn now to the application. It is common cause that the applicants' property is rental and not free housing, and that the basis on which the respondents started occupying it was the conclusion of a lease agreement. There is no duty on the applicants to provide free

⁷ *Cornish and Another v Rametsi and Another* [2026] ZANWHC 23 para 13; *Zulu NO v Mbazo and Another* [2024] ZAKZDHC 32 para 20

housing to any person. As set out in the founding affidavit, the second applicant is under business rescue. The respondents' failure to pay rental for more than ten years and yet to remain in occupation of the premises is a contributing factor to the financial predicament of the second applicant.

[21] It is common cause that the lease has been terminated, and that the respondents continue to stay on the premises with their growing family. There is no challenge by the respondents to how the cancellation was effected, save to say that the applicants could not cancel because it was already cancelled in 2014. I am satisfied that the cancellation process followed, as set out in paragraph 8 above, was lawful.

[22] The respondents advance no valid legal argument for their entitlement to occupy the premises without the payment of rental, especially when they agree that the lease is terminated. They are thus unlawful occupiers, and the provisions of s 4 have been duly complied with.

[23] In determining whether it is just and equitable to evict the respondents, I have had regard to the fact that the respondents indicate that they have lived on the premises for more than ten years with their five children who were under eleven years old at the time of the affidavits. There are no elderly or disabled occupants. The first respondent alleges that she is the main leaseholder and the breadwinner and therefore it is a woman-headed household. She concludes with a bold statement that if the eviction is granted they will be rendered homeless.

[24] However, the respondents in their lengthy affidavits, the first respondent's spanning 101 pages and the second respondent's 93 pages, have not indicated an inability to pay or demonstrated how an order for eviction would adversely affect them and their family. It is important to point out that the respondents are aware that their personal circumstances are relevant to the court making an eviction order.

[25] When I raised the fact that they did not even indicate their employment status in their affidavits, the second respondent tried to advance that information 'from the bar' without explaining why it had not been put under oath, saying only that 'they'

were unemployed since 2016. This is inconsistent with the statement in the affidavit of 2025 that the first respondent IS the breadwinner.

[26] I mention at this stage that at the start of the hearing, I was informed by counsel for the applicants that the respondents had indicated that they intended to bring an application for a postponement. It was confirmed that no such application was before me or had been brought to my attention. Mindful of the fact that the respondents had no legal representation, I invited the second respondent to address me about why this application, if any, was not before me. His response was that it was the applicants' duty to bring it to the attention of the court.

[27] Further probing did not yield any positive results, as the second respondent was avoiding answering the questions posed and, instead, would complain that he was not being given an opportunity to address how he wanted to. Having failed to get a response on the postponement, I then ruled that there is no application for postponement properly before me. I pause to mention that I was not referred to the application on CaseLines, and even as I write this judgment, it is not part of the papers on CaseLines. It was only foreshadowed in the respondents' heads of argument, indicating that they wanted to supplement their papers to include details of the birth of another child. It was not intended to address issues of employment, disabilities or even how the eviction would render them homeless.

[28] Importantly, the respondents have stayed in the property owned by the second applicant without paying rental for more than 12 years. In this period there has been numerous litigation between the parties regarding the same premises. It bears repeating that they have at no point stated in their affidavits that they have difficulty in paying the rental agreed or any amount. Instead, there is a complaint that in one of the applications the applicants sought to dispossess them of their Mercedes benz vehicle.

[29] As long as the respondents occupy the property, the applicants cannot get qualifying tenants who will pay as agreed in the lease and the business rescue will not succeed.

[30] Having considered all of the above, I am satisfied that the applicants have made out a case for the cancellation of the lease. It also appears to me that the eviction of the respondents would be just and equitable, as I am certain that if affordability or lack of finances was an issue the respondents would have stated as much in their papers. The assertion that eviction will render the respondents homeless, without more, is not in my view sufficient to trigger a duty on the municipality to address availability or otherwise and provision of alternative housing.

[31] In my view on all the relevant facts the eviction of the respondents from the applicants' premises will not render them homeless. Theirs is not a woman-headed household, as this concept generally refers to a home where there is no adult male or male spouse. The fact that the second respondent spoke for both of them at this hearing at the one in 2019 also suggests otherwise. It is unfortunate that the affidavit of the second respondent is a 'cut and paste' of that of the first respondent, making references to "my husband", and "I am a woman" in certain parts, and does not add anything to the application, except pages.

[32] While the household does consist of a woman and minor children under the age of 12 years old, it is my view that their rights and needs will not be adversely affected by the eviction order as there is no barrier to the respondents obtaining other accommodation.

[33] Having regard to the period of 12 years that the respondents have stayed on the premises, it is my view that a period of six weeks will be sufficient notice for them to vacate. This period takes into account that the lease was terminated in July 2025 and they had to vacate by August 2025, which they have failed to do.

[34] The applicants have asked for costs and I have no reason not to allow their costs and I follow the general principle that costs follow the event. The respondents represented themselves, with the second respondent speaking on behalf of the two of them, and it was common cause that they had obtained legal advice in dealing with this matter.

[35] In the result, having considered the application for eviction and having heard counsel for the applicants and the second respondent, in person, I grant the following order:

1. The first and second respondents, together with any and all others who occupy under or through them, the premises described as Unit No L[...] L[...] Estate, 4[...] C[...] Road, Newlands East, Durban, KwaZulu-Natal (the premises), are hereby evicted from the premises.
2. The first and second respondents and all occupiers who occupy the premises under or through any of them, are hereby ordered to vacate the premises on or before 15 October 2026.
3. The sheriff of the court is authorised and directed to carry out the eviction on or after 20 October 2026, in the event of any occupiers referred to in paragraph 2 of this order failing to comply with the provisions of such paragraph.
4. The costs of this application shall be paid by the first and second respondents, jointly and severally, the one paying the other to be absolved.

SIBIYA J

Appearances

Counsel for the Applicants	:	Mr C Pretorius SC
Instructed by	:	Hay & Scott Attorneys
Reference	:	RF Brent/JS/09F209008
Counsel for Respondent	:	in person Mr Ismael for both
Email	:	socialadvices@gmail.com
Date of Hearing	:	20 July 2026
Date of Judgment	:	09 September 2026