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IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

JUDGMENT

Case No: 2025-211850

In the matter between:

MONODEAL INVESTMENTS (PTY) LTD	Applicant
and	
KARRIN TRADING CC	First Respondent
and	
COFFEE BOSS (PTY) LTD	Second Respondent
BIZAFRIKA 1984 T/A JCI CHURCH	Third Respondent
MOSES NKOMA **(AND ALL THOSE HOLDING TITLE OVER THEM)**	Fourth Respondent
ALL THOSE PERSONS WHOSE IDENTITIES ARE TO THE APPLICANT UNKNOWN WHO ARE UNLAWFULLY OCCUPYING THE PROPERTY COMMONLY KNOWN AS 3[...] V[...] ROAD, PLUMSTEAD, CAPE TOWN	Fifth Respondent

CITY OF CAPE TOWN Sixth Respondent

Coram: NJOKWENI J

Heard: 14 May 2026

Delivered: 3 November 2026

Summary: Purchase and Sale of immovable property from liquidators – public auction sale – liquidation of a close corporation and sequestration of its sole member – commencement date of concursus creditorum – deeming provisions – section 348 of the Companies Act 61 of 1973 – *Huur gaat voor koop* – Lease-free purchase and sale Prevention of Illegal Eviction Act 19 of 1998 – *rei vindicatio* – Punitive Costs Order on the attorney-and-client scale, including costs of counsel on scale C.

ORDER

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1. The application for a stay of these proceedings is dismissed.

2. The first to third respondents are declared to be unlawful occupiers in respect of the immovable property situated at 3[...] V[...] Road, Plumstead, Cape Town ("the property"), in terms of the common law, including all those who hold occupation through them but do not occupy the property as their primary residence.

3. The first to third respondents, and all those holding occupation through them (who do not occupy the property as their primary residence), are ordered and directed to vacate the property by 13h00 on Friday 13 November 2026.

4. The fourth and fifth respondents, and all those holding occupation through them, are declared unlawful occupiers in respect of the property under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

5. The fourth and fifth respondents, and all those occupying the property through them, are ordered to vacate the property by 13h00 on Friday 27 November 2026.

6. In the event that the first to third respondents, and all those holding occupation through them (who do not occupy the property as their primary residence), fail to vacate the property by 13h00 on Friday 13 November 2026, the Sheriff of this Court (or his deputy) is authorised and directed to execute this order, to eject them, and to hand over vacant possession to the applicant.

7. In the event that the fourth and fifth respondents, and all those holding occupation through them, fail to vacate the property by 13h00 on Friday 27 November 2026, the Sheriff of this Court (or his deputy) is authorised and directed to execute this order, to eject them, and to hand the property over to the applicant in vacant possession.

8. The first to fifth respondents are ordered to pay the costs of this application, jointly and severally (with the one paying the other to be absolved), on an attorney-and-client scale, including the costs of counsel on scale C and, where so employed, the cost of two counsel.

NJOKWENI J

INTRODUCTION

[1] This is an opposed motion brought by the applicant, Monodeal Investments (Pty) Ltd ("applicant"), seeking the eviction and ejectment of two juristic persons, The JCI Church, and two natural persons, from immovable property at 3[...] V[...] Road, Plumstead, Cape Town ("property").

[2] The two juristic persons are as follows:

2.1 Karrin Trading CC as the first respondent ("close corporation");

2.2 Coffee Boss (Pty) Ltd as the second respondent ("Coffee Boss"); and

[3] The JCI Church respondent is Bizafrika1984 (Pty) Ltd, trading as the JCI Church, as the third respondent ("the JCI Church"), and the following identified known natural person and unknown natural persons:

3.1 Mr Moses Nkoma as the fourth respondent ("Mr Nkoma"); and

3.2 Persons whose identities are unknown to the applicant and who are unlawfully occupying the property commonly known as 3[...] V[...] Road, Plumstead, Cape Town as the fifth respondent ("unknown natural persons").

[4] The unknown natural persons are cited in this application to ensure that such persons receive notice of this application.

[5] The sixth respondent is the City of Cape Town, a Municipality established in accordance with the Local Government: Municipal Structures Act 117 of 1998, read with the City of Cape Town Establishment Notice (Provincial Notice 479 of 22 September 2000, as amended), situated on the […] Floor, The Podium, Civic Centre, 1[…] H[…] Boulevard, Cape Town, Western Cape ("City"). No substantive relief is sought against the City, which is cited herein as a party by virtue of its duties as an Organ of State under the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 ("PIE").

[6] The juristic persons, the JCI Church, Mr Nkoma, and the unknown natural persons occupy the property, each claiming to hold it under leases granted by the previous owner. I will henceforth refer to them collectively as the respondents and, where necessary, individually as the juristic persons, the JCI Church, Mr Nkoma, and the unknown natural persons. The applicant contends that the respondents' leases are invalid and that the respondents have no right to remain ("impugned leases"). Save for the eviction of the juristic persons and the JCI Church, the applicant contends that the eviction of Mr Nkoma and all unknown natural persons falls under section 4 of the PIE.

THE RELEVANT FACTS

The applicant's case

Ownership of the property

[7] JCI CC Network 100 CC, Reg. No. 2007/003077/23, is a close corporation duly registered under the close corporation laws of the Republic of South Africa

("JCICC"). Mr Jerome Benjamin Swartz was registered as its sole member ("Mr Swartz"). JCICC was the registered owner of the property currently occupied by the first to fifth respondents.

[8] On 9 June 2021, by order of this Court, JCICC was placed under provisional liquidation in case number 4293/2021, and on 10 June 2021, this Court also placed Mr Swartz under provisional sequestration. On 22 March 2024, JCICC was finally liquidated by an order of the Supreme Court of Appeal ("SCA") in case number 1175/22. On 22 March 2024, Mr Swartz was finally sequestrated in terms of an SCA order dated 22 March 2024.

[9] The JCICC Liquidators were appointed on 7 July 2021. The JCICC Liquidators sold the property to the applicant at a public auction on 5 May 2025. The property was registered in the applicant's name on 24 July 2025. A copy of the Title Deed was annexed to the founding affidavit. On that basis, the applicant is the lawful registered owner of the property.

Unlawful occupation

Denied access

[10] When the applicant purchased the property from the liquidators, its directors were unaware that the first to fifth respondents were occupying it. The applicant discovered the occupation only after the purchase, when its directors attempted to access the property on Wednesday, 23 July 2025, to inspect it and assess the necessary repairs. Ms "Rensia", who claimed to be an occupant, refused them access, and Mr Clint Collins, who claimed to represent Mr Swartz, whom he

described as the lawful owner of the property, told them to request access from Mr Swartz. This was the applicant's first attempt, after the property was registered in its name, to seek access, and all subsequent requests were likewise refused.

The access proceedings

[11] On 28 August 2025, the applicant brought an application in this Division under case number 2025-146043 seeking access to the property. The first to fourth respondents opposed that application ("the access application").

Impugned written lease agreements

The close corporation and Mr Nkoma's lease

[12] In opposing the access application, the first to fourth respondents filed opposing affidavits. Documents purporting to be leases were attached to those affidavits, namely one between JCICC and the close corporation ("close corporation lease") and another between JCICC and Mr Nkoma ("Nkoma lease").

Impugned oral leases

Coffee Boss and the JCI Church

[13] It was further alleged that the JCI Church and the Coffee Boss entered into oral leases for space in the same property with JCICC. The Coffee Boss's lease was allegedly concluded on **1 July 2024** at an agreed monthly rent of R2800. The JCI Church's lease was allegedly concluded on **1 January 2023** at an agreed monthly rent of R2500. The terms of these oral leases, *mutatis mutandis,* were allegedly identical to those of the close corporation's and Nkoma's written leases.

[14] The close corporation contended that Mr Swartz entered into the close corporation lease on **13 January 2021** and that it would have **lapsed on 30 January 2025**. On **3 January 2025,** he also signed a purported addendum to the close corporation lease, extending the initial period after it lapsed on **30 January 2025** ("addendum"). Nkoma contended that Mr Swartz also entered into his lease on an unspecified date in **June 2022**. The applicant disputes the authenticity and validity of all the aforementioned leases and the addendum.

[15] In the circumstances, the applicant contends that the purported leases and the addendum were void *ab initio* and/or have lapsed, thereby rendering them invalid and without legal force.

Notice to vacate and response

[16] Accordingly, on 19 August 2025, the applicant served a "Notice to vacate" on the juristic persons, the JCI Church, and Nkoma. The Notice to vacate, inter alia, stated:

16.1 stated that they were unlawful occupiers under PIE;

16.2 cancelled any perceived right to occupy with immediate effect.

16.3 required them to vacate by 31 August 2025; and

16.4 notified that the applicant would otherwise apply to this court for eviction and seek punitive costs.

[17] On the same date, 19 August 2025, the respondents' attorneys replied. They stated that their clients were lawfully in occupation under a valid lease with JCICC, and that this right was lawful and protected by law. The respondents did not vacate and remain in occupation, which the applicant alleges is rent-free.

Defendants have no legal right

[18] As the registered owner, the applicant contends that it is entitled to possession. The first to fifth respondents occupy without the applicant's consent and have no right in law to remain in occupation. They contend that Mr Swartz concluded the purported lease agreements after he was no longer a member of JCICC, and that his joint estate with his wife was first placed under provisional sequestration in June 2021 and later under final sequestration by the Supreme Court of Appeal in March 2024. As a result, the applicant contends that no lease agreements exist between the applicant and the respondents. The purported leases arise from a liquidated entity and a sequestrated individual and are void *ab initio* or have lapsed. Second, JCICC was placed under provisional liquidation on 10 June 2021 and later under final liquidation by the SCA in March 2024.

[19] The applicant asserts that the juristic persons and the JCI Church must be evicted under common law. However, Nkoma and the unknown natural persons must be evicted under section 4 of the PIE.

Just and equitable requirement.

[20] The applicant acknowledges that eviction will be granted only if it is just and equitable, and that the court has discretion to determine the circumstances and the date of eviction.

Alternative accommodation (s 4(6) and 4(7) PIE)

[21] The applicant submitted that the Fourth Respondent had not unlawfully occupied the land for more than six months before proceedings were commenced, as the applicant became owner only on 24 July 2025. Section 4(7) (and the question of the land being made available by the City) therefore does not arise. The applicant nevertheless attached a Personal Circumstances Questionnaire for the City's use and undertook to notify the City.

Prejudice to the applicant

[22] The respondents pay no rent and deny the applicant use and enjoyment of its property. The applicant alone bears the monthly municipal accounts. The respondents' earlier refusal to grant access without a court order suggests they will delay eviction as long as possible, and their continued occupation violates the applicant's property rights under section 25 of the Constitution. As a result, the applicant contends that it is prejudiced by the respondents' conduct. The applicant asserts that it has been more than fair and that the respondents have shown "blatant disregard" for its demands, which it offers as the basis for a punitive costs order.

<u>The respondents' defences</u>

[23] The respondents request that the application be dismissed with costs. In addition to the impugned leases, the grounds of opposition of the first to fifth respondents are set out below.

Stay of the application

[24] First, the applicant bought the property from JCICC's liquidators. The respondents contend that the June 2021 provisional sequestration and liquidation orders were discharged by Goliath DJP on 4 May 2022 (“the discharge orders”). Standard Bank of South Africa, which was the intervening party in those proceedings, appealed the discharge orders. However, the respondents contend that they have filed an application to rescind the discharge order the SCA overturned (“rescission application”).

[25] The rescission application was set down for hearing on 21 May 2026. If successful, it would remove the basis of the applicant's purchase and render this application obsolete. The respondents say this application should stand over until then. However, at the time of preparing this judgment, the respondents had not advised this Court of the outcome of the rescission application.

Defective notice

[26] The respondents contend that the Notice to Vacate:

26.1 Was never addressed to the Second and Third Respondents.

26.2 It did not cancel their rights or require them to vacate.

26.3 As against the First Respondent, it proceeds under PIE rather than cancelling the lease on commercial or common-law grounds.

26.4 It says nothing about the leases, even though the applicant needed to address them.

Huur gaat voor koop

[27] The respondents contend that the sale of the property to the applicants by the liquidators of JCICC did not terminate their impugned “existing leases”. They contend that this is entrenched in clause 29 of the lease, which provides that the lease's validity is not affected by a transfer following a sale.

No valid ground to terminate the lease

[28] The respondents rely on clause 30 of the lease, which, inter alia, allegedly provides that the insolvency of the lessor or lessee does not terminate the lease. This, so the respondents contend, answers the applicant's argument that liquidation and sequestration terminate the lease. They further rely on clause 21.1: the lessee may renew. The respondents contend that the addendum is the exercise of the renewal option, and the applicant does not deny that a renewal is valid.

[29] The respondents further contend that the applicant has failed to comply with the breach procedure in clause 20, which, inter alia, provides that, in the event of a breach, the applicant's remedy lies under this clause, and that the applicant has not invoked it.

PIE non-compliance and no municipal report

[30] The respondents list procedural non-compliance with PIE as a ground but develop only the homelessness argument. They have not filed a housing report, even though the City has, and they say that eviction would leave them homeless. Relying on *Occupiers of Erven 87 and 88 Berea v De Wet NO and Baron v Claytile*[1], they argue that the court must investigate the circumstances, that the organ of state must report on the impact on vulnerable occupiers and on alternative accommodation, and that, without this information, the court cannot find eviction just and equitable. They submit that the lack of this information is itself a valid defence.

ISSUES FOR DETERMINATION

[31] This application concerns the validity of the impugned leases and the addendum. Accordingly, the issues for determination have crystallised as follows:

31.1 Whether the determination of this application should be suspended pending the outcome of the rescission application 4 May 2022.

31.2 Whether the addendum to the close corporation lease entered into on 3 January 2025 is void ab initio, invalid, or has lapsed.

31.3 Whether the Nkoma lease concluded in June 2022 is void *ab initio*, invalid, or has lapsed.

[1] (CCT241/16) [2017] ZACC 24.

31.4 Whether the oral leases of both Coffee Boss and the JCI Church are void *ab initio,* invalid, or have lapsed.

[32] If the leases of the first to fourth respondents are found void *ab initio*, invalid, or lapsed:

32.1 Whether the **huur gaat voor koop** is applicable.

32.2 Whether the respondents have a legal right to remain in occupation of the premises.

[33] If the respondents have no legal right of occupation, are they unlawful occupiers?

[34] If the respondents are found to be unlawful occupiers, whether:

34.1 The applicant has met the common-law requirements for the eviction of the first to third respondents, the close corporation, Coffee Boss and the JCI Church.

34.2 The applicant has complied with the procedural requirements of section 4 PIE (including the section 4(2) notice and service on the City) for the eviction of the fourth and fifth respondents, Nkoma and the unknown natural persons.

34.3 It is just and equitable to evict the fourth respondent, having regard to all relevant circumstances, including his personal circumstances and any

vulnerable occupants. If so, the date by which the first to fifth respondents must vacate the property.

34.4 Costs should be awarded against the respondents jointly and severally on the attorney-and-client scale.

THE LAW AND ANALYSIS

Stay of the application

[35] I will first address the issue of a stay of this application. To do so, it is appropriate to briefly outline the background to a series of previous applications in this Division involving Mr Swartz' sequestration and the close corporations under his control.

[36] Mr Swartz and Mrs Lucille Swartz were married in community of property, so they shared a single joint estate. The joint estate held a 100% members' interest in two CCs, namely Pygon Trading CC and JCICC. Mr Swartz was the controlling mind of the CCs and of several other entities. The CCs and the joint estate all banked with Standard Bank.

[37] JCICC Network 100 CC was one of two close corporations wholly owned by the joint estate, with Pygon Trading CC the other. Pygon was the first CC to be liquidated. Pygon owned three sections in the Montana Sectional Title Scheme. The Montana Body Corporate launched its liquidation application on 2 October 2020

under case number **14097/2020**. Standard Bank later intervened and, on 18 May 2021, obtained a provisional liquidation order after the Body Corporate withdrew ("Pygon liquidation").

[38] On 9 June 2021, JCICC was placed under provisional liquidation in case number **4293/2021**. On 10 June 2021, at Standard Bank's request, the joint estate of Mr Swartz and Mrs Swartz was provisionally sequestrated in case number **4294/2021** ("joint estate").

[39] On 14 June 2021, Mr Swartz sought leave to intervene in the Pygon liquidation application to file a business rescue application. Leave was never granted. On 21 October 2021, the provisional trustees reported that Pygon was hopelessly insolvent, with no prospect of rescue, and did not support the application.

[40] On 23 November 2021, a settlement agreement was made an order of court by consent. Its terms, inter alia, were:

40.1 The business rescue application for Pygon was withdrawn.

40.2 R18 million plus VAT was to be paid by a set date…

40.3 If it had been paid, the provisional orders against Pygon, ***JCICC and the joint estate would have been discharged***. If it had not been paid, final liquidation and sequestration orders would have been **granted against** Pygon**, JCICC and the joint estate**. The R18 million was never paid. All three applications for final liquidation of Pygon and JCICC and for final sequestration of the joint estate were consolidated and heard together before Goliath DJP on **4 May 2022**. On the same day, despite Mr Swartz's breach of the settlement agreement and consent order, she granted the discharge orders, placed Pygon in business

rescue, and ordered the bank to pay all costs. The judgment blamed the bank's closure of the accounts for the financial woes. It did not mention the settlement or the consent order.

[41] Aggrieved by the discharge orders issued on 4 May 2022, Standard Bank appealed to the SCA in case number 1175/2022. On 22 March 2024, the SCA upheld Standard Bank's appeal with costs and set aside the discharge orders. It found that none of the discharge orders was competent for two reasons:

41.1 Business rescue order (Pygon): it was granted on a non-existent application. Swartz was never given leave to intervene, and the 23 November 2021 consent order had, in any event, withdrawn the application.

41.2 Discharge of the JCICC and joint estate provisional orders: the High Court had no jurisdiction to decide the merits of disputes already settled by the *transactio*, which had been made an order of court. That order was never rescinded, appealed against or abandoned, and the R18 million was never paid.

[42] The SCA held that the appeal must succeed and that the discharge orders must be set aside. The order of 23 November 2021 and the consent order relating to it must be given effect, under which the CCs are to be placed in final liquidation and the joint estate finally sequestrated. Accordingly, JCICC was placed under final liquidation, and the joint estate of Mr and Mrs Swartz was finally sequestrated.

[43] Mr Swartz never applied for reconsideration of the SCA judgment and orders, nor did he appeal to the Constitutional Court. Accordingly, the SCA orders confirmed

the commencement of the concursus creditorum, which is the date on which the applications for the JCICC and the sequestration of Mr Swartz's joint estate were filed in this Division. At most, the concursus commenced on 9 and 10 June 2021, when the provisional orders of liquidation of JCICC and the sequestration of Mr Swartz's joint estate were issued.

[44] Notwithstanding the SCA orders, the respondents continue to labour under the illusion that the discharge orders remain in force and legally binding. The respondents stated the following in the answering affidavit:

"[16] … On or about 4 May 2022, the provisional winding-up order against JCICC was discharged, whereas the lease was entered into in or around June 2022. Thus, if, at the time of signing the lease agreement, business was as usual, the applicant's contention regarding contractual capacity, or a lack thereof, holds no water."

[45] In their heads of argument, the defendants, inter alia, submit the following:

"3. JCICC has launched a rescission and variation application regarding the discharge orders to circumvent the impugned contractual capacity of Mr Swartz, who concluded the leases on behalf of JCICC. They argue that, if the discharge orders are rescinded, the SCA order placing Mr Swartz under final sequestration and JCICC under final liquidation would have no legal effect. Thus, they argue, the impugned lack of authority of Mr Swartz would be dealt a fatal blow.

4. They submitted that the rescission application was set to be heard in the 4th Division of the above Honourable Court on 21 May 2026, and if successful would remove the substratum upon which the Applicant purchased the premises and make the present matter obsolete."

[46] The submission is embarrassing because the now SCA-set-aside discharged orders were, in fact, in the JCICC's favour and in Mr Swartz's favour. Had the SCA not overturned them, Mr Swartz's authority and contractual capacity to enter into the lease agreements in question would have been confirmed, and the leases would have been valid and binding.

[47] The SCA-set-aside discharged orders no longer exist and therefore cannot be rescinded or varied. The respondents' defence seeking a stay of this application has no merit. Accordingly, the respondents' defence seeking a stay is dismissed.

The status of the Nkoma June 2022 lease agreement

The Illusion of "Business as Usual"

[48] The Nkoma lease was allegedly entered into on an unspecified date in June 2022. JCICC, placed under provisional liquidation on 10 June 2021, was represented by Mr Swartz, who was also placed under provisional sequestration on 9 June 2021. Nkoma contends that, at the time the Nkoma lease was concluded, the discharge orders were still pending, making it ***"business as usual"*** for Mr Swartz to represent JCICC in entering into the Nkoma lease.

[49] This argument misapprehends the retroactive effect of the SCA's substitution order. On 22 March 2024, the SCA held that the court which granted the discharge orders lacked competence and jurisdiction, because the parties were bound by an unrescinded consent order dated 23 November 2021.

[50] When the SCA set aside the discharge orders and substituted them with final liquidation and sequestration orders in respect of JCICC and Mr Swartz, the *concursus creditorum* ("*concursus*") was deemed to have commenced at the time of the presentation to the court of the application for the winding-up[2]. Unfortunately, that date is not apparent from the papers, and because it is unspecified, the commencement of the *concursus* is deemed to be no later than 9 June 2021 and 10 June 2021, the dates on which the provisional orders were initially issued.[3] Its commencement is retroactively determined by statutory deeming provisions:

JCICC (Liquidation)

50.1 Section 348 of the Companies Act[4] provides that the winding-up of a company is deemed to commence when the application for winding-up is presented to the court.

The Joint Estate (Mr Swartz Sequestration)

50.2 While a provisional order creates a holding pattern, the final order fixes the *concursus creditorum* retroactively to the date of filing the application, thereby crystallising the rights of all parties as they stood at that moment in 2021. Any contract entered into by a member *after* that 2021 filing date is structurally compromised, and any contract entered into after the provisional orders of 9 and 10 June 2021 is an absolute nullity due to the total cessation of the member's powers.

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[2] "Presentation" means the exact date and time the application was filed and stamped by the Registrar.

[3] Section 348 of the Companies Act, No. 61 of 1973 provides:
"A winding-up of a company by the Court shall be deemed to commence at the time of the presentation to the Court of the application for the winding-up".

[4] Act 61 of 1973 (read with Section 66 of the Close Corporations Act).

[51] Consequently, the legal fiction that JCICC was operating normally in June 2022 is extinguished. *Ex lege*, the members' powers under JCICC ceased upon the commencement of the *concursus*. Mr Swartz lacked the authority and contractual capacity to enter into any agreements on behalf of JCICC when he purported to execute the Nkoma lease in June 2022. Accordingly, the lease is void *ab initio*.

The validity of the addendum to the close corporation lease

[52] This addendum to the close corporation lease was concluded on 3 January 2025. Mr Swartz was placed under provisional sequestration on 10 June 2021 and finally sequestrated by the SCA order of 22 March 2024. The law draws a sharp line at that moment: the hand of the law is laid upon the estate, the corporate powers of the members cease by operation of law, and no single member retains the capacity to alienate, encumber, or lease out the assets of the corporation. From at least 10 June 2021, alternatively from 22 March 2024, Mr Swartz *ex lege* could not execute lease agreements for JCICC. This was because he was sequestrated and could not be a member of a close corporation. In addition, when he executed the addendum, the JCICC liquidators were already in office. They were appointed on 7 July 2021.

[53] Consequently, the purported "window" of normality in June 2022 relied on by the respondents is a legal fiction. By virtue of the SCA’s final order, JCICC was in liquidation, and Mr Swartz’s estate has been sequestrated continuously from the 2021 filing date to the present. Mr Swartz lacked even the vestige of contractual capacity (*animus contrahendi*) and thus had no residual corporate power to execute the 2025 addendum required to bind the corporation. As a result, the addendum did

not make it out of the delivery ward; it was stillborn. Accordingly, the addendum is null and void *ab initio*.

The status of the oral lease agreements

(The JCI Church and Coffee Boss Leases)

[54] The purported oral lease of the JCI Church expired on 1 January 2023, and that of Coffee Boss on 1 July 2024. These should share the same fate as the leases of the close corporation and Nkoma. Mr Swartz was a deeply disqualified person under Section 47(1)(b)(i) of the Close Corporations Act and had no residual management powers. Concluding oral leases under these circumstances is not merely void *ab initio*; it borders on criminal contempt and fraud.

[55] Ordinarily, under Section 54 of the Close Corporations Act, a third party can rely on the doctrine of ostensible authority when dealing with a registered member in good faith. However, liquidation entirely overrides this protection. A liquidation order is a judgment *in rem* (affecting the status of the entity itself) and is published in the Government Gazette, which serves as notice to the entire world.[5]

[56] Because Mr Swartz's legal authority to bind JCICC was formally revoked by operation of law, he had neither actual nor apparent authority. A person cannot validly enter into a contract on behalf of an entity that is already legally frozen in liquidation. Because the leases are void *ab initio*, they do not legally exist. Therefore, the Liquidators do not need to "void" or cancel the leases. The Liquidator can simply ignore them, as a non-existent contract cannot bind the insolvent estate.

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[5] *De Jager Investments (Pty) Ltd v Mark* 1952(3) SA 471 (WLD) F-G. Also see: Mars on Insolvency, 4th Ed., 167.

The huur gaat voor koop defence

[57] The respondents also rely on the common-law maxim huur gaat voor koop (lease trumps sale), arguing that the new owner is bound to honour their occupancy under the impugned leases. For huur gaat voor koop to apply, there must be a valid, legally binding lease in existence at the time the property is transferred, or the estate is wound up. However, this defence fails entirely due to a fatal timing defect: *huur gaat voor koop* only protects leases that were validly concluded bef*or*e the sale or the owner's insolvency.

[58] As established, because JCICC had already been liquidated and its sole member, Mr Swartz, had also been sequestrated when the leases were signed, the leases were void *ab initio* (non-existent in the eyes of the law). One cannot enforce *huur gaat voor koop* on the basis of a void contract. Legally, there was no “huur” (lease) to go before the “koop” (sale). This defence has no merit and is accordingly dismissed.

The respondents’ legal right of occupation

[59] The respondents rely on the purported leases between JCICC and the first to fourth respondents. However, the leases are void *ab initio,* and therefore never existed and still do not.

Applicant’s clean title

[60] When the liquidators sold the property to the applicant, they did so under the statutory powers conferred by the Insolvency Act 24 of 1936 and the Companies Act

61 of 1973. Liquidators have a statutory mandate to liquidate assets to pay outstanding creditors. Because the liquidators were never bound by the leases purportedly concluded after the liquidation of JCICC and the sequestration of Mr Swartz, they sold the property free and clear of any leasehold encumbrances. As a result, the applicant acquired clean, unencumbered ownership rights upon registration of the property in its name.

The respondents' occupation status

[61] Because the purported underlying leases are nullities, the respondents are not lawful lessees. Under the PIE Act, they are classified as unlawful occupiers. The applicant, as the new owner and registered title deed holder, has the absolute right to vindicate its property (*rei vindicatio*) and to evict anyone occupying it without lawful cause or consent. As a result, all natural persons are liable to be evicted under the PIE Act.

The bifurcated legal framework

PIE Act v Common Law

[62] A complicating feature of this application is the respondents' mixed identities. The First Respondent is a close corporation, the Second a private company, and the Third a church. These are "juristic" entities. By contrast, the Fourth Respondent (Mr Swartz) and the Fifth Respondent are natural persons. Consequently, this Court is required to apply a bifurcated legal framework to the relief sought.

Common law requirements

[63] With respect to the first, second, and third respondents, the PIE Act does not apply. Juristic persons cannot reside in a property or be homeless. The eviction of the corporate and institutional respondents is governed strictly by the common-law *rei vindicatio*. As previously determined, the applicant has proven ownership, the entities are in possession, and the underlying leases are *void ab initio*. The common-law requirements for their ejectment are fully met.

PIE Act eviction

[64] With respect to the fourth and fifth respondents (Nkoma and other unknown natural persons), the applicant must satisfy both the procedural and substantive thresholds under Section 4 of the PIE Act. Procedurally, this Court is satisfied that the mandatory Section 4(2) notices were duly authorised by this Court and served by the Sheriff on the fourth and fifth respondents, as well as on the local municipality, thereby clearly exceeding the statutory 14-day notice period. Notwithstanding, Nkoma and the unknown natural persons have refused to complete the municipal eviction questionnaire for alternative emergency housing. The applicant has therefore complied with the PIE Act requirements. The refusal to complete and submit the said forms is a stratagem to hide behind the alleged homelessness.

[65] The alleged homelessness is undermined by the very basis of the fourth and fifth respondents' reliance on the purported lease agreement(s), which have been found to be null and void *ab initio*. Under the purported lease agreement(s), the fourth respondent undertook to pay a monthly rent of R3000 for five years. This equates to an annual rent of R36 000 and R180 000 over five years. Yet they occupy the property rent-free. This places the respondents in an irreconcilable paradox: they

cannot simultaneously claim to be indigent, vulnerable occupiers on the brink of homelessness while asserting the financial capacity and commercial intent to maintain a long-term lease of significant value.

[66] Furthermore, when given the opportunity to participate in the statutory verification processes designed to protect truly vulnerable persons, the fourth and fifth respondents explicitly refused to complete the municipal emergency housing questionnaires. It is trite that where occupiers refuse to provide the court or the local municipality with accurate information about their personal and financial circumstances, they cannot frustrate an owner's vindicatory rights by raising an unsubstantiated shield of homelessness.

[67] The PIE Act is designed to ensure equity and humanity; it is not a mechanism for sophisticated litigators to abuse in an attempt to entrench an occupation arising from a post-liquidation contract entered into by a disqualified, sequestered individual. By refusing to disclose their true financial position to the municipality while simultaneously asserting the validity of an R180,000 lease, the respondents have failed to establish a factual basis for concluding that an eviction would not be just and equitable. Consequently, their plea of homelessness is rejected as disingenuous. The applicant’s right to their property under Section 25 of the Constitution must prevail.

[68] Substantively, Section 4(7) of the PIE Act requires this Court to determine whether an eviction is "just and equitable" after considering all relevant circumstances. While the Court is mindful of the disruptions caused by eviction, the fourth respondent cannot use the PIE Act to entrench an occupation arising from

statutory disqualification and a total lack of contractual capacity. Mr Swartz was a sequestered insolvent who purported to execute leases on behalf of an entity already frozen in liquidation. To deny an eviction in these circumstances would be to sanction commercial fraud and severely prejudice a *bona fide* commercial purchaser who holds clean title deeds.

Abuse of court process and the just and equitable date

[69] The respondents have been unlawfully occupying the applicant's property at least since July 2025. This application was heard, and judgment was reserved, in May 2026. Due to the unfortunate and unavoidable three-month absence of the presiding judge for circuit court duties, it is now November 2026. The respondents have used this administrative delay, alongside a series of unmeritorious defences, as a tactical shield to stall their inevitable fate. They have enjoyed over 16 months of rent-free unlawful occupation at the expense of a bona fide commercial purchaser.

The just and equitable eviction date

[70] Having found the respondents to be unlawful occupiers, the Court must determine a “just and equitable” eviction date under Section 4(7) of the PIE Act. In doing so, the Court must balance the occupiers’ rights against the severe financial prejudice suffered by the owner. Given that the respondents have had notice of their lack of tenure since the SCA judgment of 22 March 2024 and have benefited from an extended litigation stay, an immediate, compressed move-out timeline is entirely justified. 30 November 2026 provides the respondents with sufficient, humane opportunity to vacate while preventing further abuse of the court process.

CONCLUSION

[71] In conclusion, having considered all the relevant facts, the law, and the conspectus of the evidence on the papers, I am satisfied that the order I am about to make is just and equitable, and that an eviction order be granted against the fourth and fifth respondents, alongside the eviction and ejectment of the first to third respondents. The distinction in their statuses will, however, be reflected in the time allowed to vacate the premises.

ORDER

[72] In these circumstances, the following order is made:

1. The application for a stay of these proceedings is dismissed.

2. The first to third respondents are declared to be unlawful occupiers in respect of the immovable property situated at 3[...] V[...] Road, Plumstead, Cape Town ("the property"), in terms of the common law, including all those who hold occupation through them but do not occupy the property as their primary residence.

3. The first to third respondents, and all those holding occupation through them (who do not occupy the property as their primary residence), are ordered and directed to vacate the property by 13h00 on Friday 13 November 2026.

4. The fourth and fifth respondents, and all those holding occupation through them, are declared unlawful occupiers in respect of the property under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

5. The fourth and fifth respondents, and all those holding occupation through them, are ordered to vacate the property by 13h00 on Friday 27 November 2026.

6. In the event that the first to third respondents, and all those holding occupation through them (who do not occupy the property as their primary residence), fail to vacate the property by 13h00 on Friday 13 November 2026, the Sheriff of this Court (or his deputy) is authorised and directed to execute this order, to eject them, and to hand over vacant possession to the applicant.

7. In the event that the fourth and fifth respondents, and all those holding occupation through them, fail to vacate the property by 13h00 on Friday 27 November 2026, the Sheriff of this Court (or his deputy) is authorised and directed to execute this order, to eject them, and to hand the property over to the applicant in vacant possession.

8. The first to fifth respondents are ordered to pay the costs of this application, jointly and severally (with the one paying the other to be absolved), on an attorney-and-client scale, including the costs of counsel on scale C and, where so employed, the cost of two counsel.

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P NJOKWENI

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	Mr M Holland
Instructed by:	Parker Attorneys Incorporated
For the first to fifth respondents:	Mr William Fisher
Instructed by:	Marius Abrahams & Associates
For the sixth respondent:	No appearance