

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

CASE NO: 19/26907

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
11 February 2025 _____	
DATE	SIGNATURE

In the matter between:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY APPLICANT

and

Haweeta Abdul Mohanlal

FIRST RESPONDENT

UNLAWFUL OCCUPIER

SECOND RESPONDENT

These reasons were handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to CaseLines. The date and time for hand down is deemed to be 10h00 on 11 February 2025

REASONS FOR ORDER

S VAN NIEUWENHUIZEN AJ

[1] This matter came to me in the opposed motion court on 25 November 2024 and when called only counsel for Applicant ("the Municipality"). announced an appearance. None of the respondents attended court. The First Respondent's name was specifically called out in the passage outside the court.

[2] I proceeded with the matter and, given that all papers were filed (founding, answering, replying and supplementary affidavits, as well as heads of argument and full practice notes) I continued with the matter and conducted it as an opposed matter. I have, however, after delivering my order, failed to specify when I will provide reasons. This sets out the factual matrix to and the reasons in respect of the eviction order granted on 25 November 2024.

[3] The Municipality contended that, during or around 9 March 1998, it entered into a lease agreement with the First Respondent ("Abdul") at times referred to in the matter as "Mohanlal" – for the sake of brevity I will refer to her as "Abdul"), a copy of which was annexed to the founding papers as "EMM1".

[4] The lease makes provision for a fixed period of a calendar month (see clause 2) and commenced on 1 March 1998. This clause also stipulates that it is terminable by either party on one calendar month's written notice.

[5] The rent payable in terms of the lease is R229.66 a month, payable in advance (see clause 4).

[6] Clause 6 provides as follows:

"The Premises shall be used for residential purposes only. The Premises shall be used and occupied personally by the Lessee and his lawful dependants."

[7] According to Frank, (the Divisional Head: Corporate Legal Services and the deponent to the Municipality's founding affidavit), Abdul, during her tenancy, allowed her late father (who was never on the initial application according to the Municipality) to occupy the property while she had been occupying a house elsewhere. I read this to mean that he was not a party to the agreement. If one assumes that this

agreement was still operative he would in my view have been a dependant. But for that Abdul would have had to have entered and still have a valid agreement.

[8] It is further contended that, during about 2010, Abdul vacated the property with the intention not to return and she failed to surrender the property to the Municipality.

[9] According to Frank, Abdul returned to the property years later (apparently after she and her ex-husband separated).

[10] During or around June 2009, the Municipality informed all tenants of properties that they ought to enter into a new lease agreement if they wished to remain on the premises. Subsequently, and during 2013, Abdul was issued with a notice to surrender the property but failed to cooperate and, at that point in time, the flat was being occupied by her late father.

[11] The deponent states that the Municipality cannot enter into a lease agreement with an individual that does not reside in the property. From there then the notion that the late father was not a lawful occupier.

[12] After the Municipality became aware that Abdul no longer resided on the property, and on or about 2 April 2013, it cancelled the lease agreement between the Municipality and Abdul. A copy of the cancellation of the lease is attached to the founding affidavit as annexure "EMM2" and same also requires Abdul to vacate the unit.

[13] It is important to note that, in terms of this notice to vacate, it is recorded that an investigation was conducted by the Department's officials and that she was found not to be in occupation of the property for a long time. According to this notice, the information received and verified by the Municipality and its Department's official revealed that she is living in a house in Mackenzie Park.

[14] I interpose that Department *ex facie* the notice seems to mean the Municipality's Department of Housing Eastern Service Delivery Region, Benoni Service Delivery Centre.

[15] The notice informed her that the lease agreement which she signed was terminated on 30 June 2009. It also points out that the Municipality had requested all tenants to enter into new lease agreements effective 1 July 2009, which she failed to do.

[16] It also alleges that her father is illegally occupying the property and that he is not the tenant of record.

[17] It is, therefore, stated in the notice that her request for an extension of time (to settle her divorce) is not approved, as she no longer resides in the unit or holds any legal lease with the Department. The notice further states that her subsequent interviews with the executive manager and investigations do not permit her to leave the matter in abeyance any longer.

[18] Hence, all occupants of the flat were given one month's notice effective 1 April 2013 to vacate the unit and to hand the keys to an official at the Human Settlements Offices in Actonville on or before 2 May 2013. Failure to do so would result in the necessary legal action being taken to evict all occupants in the unit and the locks would be changed. She was also notified that, should the Department institute legal action, she would be responsible for all costs incurred. This letter was sent by one Eddie Mkomotse. At the bottom of this notice, there is an endorsement reflecting the time as 12:34 with the note that it had been pushed under the door on 3 April 2013.

[19] I interpose here to point out that, strictly speaking, given the demand made, and that new agreements should be entered into, Abdul may well not, at that point, even have been entitled to notice but I will assume, for present purposes, that a valid agreement was in place despite the demand made and that she was entitled to notice. The notice does not qualify as a proper notice under the lease given the wording of clause 2 and the annotation on the purported notice that it was pushed under the door on 3 April 2013. Such a notice is not a calendar month notice. As to

notices in general see *Putco v Tv and Radio Guarantee Co (Pty) Ltd and other related cases*¹.

[20] Some years later and only on 4 April 2019, a further letter of demand was delivered to Abdul to surrender the unit. This letter is annexed to the Municipality's founding affidavit as "EMM3". This letter reflects the fact that, since March 2013, the Municipality was engaged with Abdul and had conducted several investigations which reconfirmed that she is not in occupation of the flat and that her late father had moved into the unit. It further confirms that the Municipality had handed the matter over to its legal department, that an attorney was appointed and that there was a delay in the implementation of the legal process and the eviction.

[21] It further confirms that, in April 2013, Abdul contacted the Department requesting an extension of time to empty the unit and surrender same to the Department, which she failed to do (by now she had had several years to do so).

[22] The letter further records that she was sensitised that the unit in question was not an inheritance and could not pass onto family members and, for personal reasons, then not be surrendered to the Department.

[23] The letter further notifies her that the matter is still in legal processes and, although she made rental payments continuously, she was equally in such period living in Mackenzie Park for a number of years.

[24] Her attention was drawn to the fact that there is no legal lease entered into between herself and the Department, according to their records, since 2009. It is also recorded that the Department found the occupation by her late father unacceptable while she lived in another property elsewhere.

[25] It is also pointed out to her that she chose not to surrender the flat but held onto same and deprived another family of access to accommodation, notwithstanding the fact that there are legal costs since the handover for legal action.

¹ 1985(4) SA 809 (A)

[26] It also indicates that no electricity was supplied to the flat since 8 March 2013, whilst her father resided in the unit.

[27] Her attention was drawn to the fact that, in the event of a tenant owning a property, he or she cannot occupy a council rental unit. Regardless of the fact that she is now divorced, the fact remained that she did not occupy the unit since 2013 and failed to surrender same and, due to personal reasons, chose to move back into the unit.

[28] It is also recorded that her brother approached the Department to have the electricity restored and indicated that she was put out of her house, which resulted in her moving back into the unit. It was also pointed out that the request (presumably this refers to the earlier request referred to above) would not be acceded to.

[29] Accordingly, she was advised that the electricity could not be restored and demand was made that she voluntarily surrender the unit to the Department, failing which legal processes would continue to have all occupants evicted from the unit.

[30] There is a note on this document, 4 April 2019, reflecting that it was pushed under the door.

[31] This letter was written by one Mrs M Mtlakana, a senior manager, on 28 March 2019.

[32] The deponent further states that, despite the various demands, Abdul and an unlawful occupant (presumably her late father) refused to vacate the property and that she has no legal right to occupy the property.

[33] Under the rubric "Just and equitable rights of children, people with disabilities and elderly persons", the deponent states that the Municipality has limited information regarding the respondents and, with regard to the justice and equitability of the eviction, or the date by which the respondents must vacate the property, the deponent sets out that he is unaware of the employment status of Abdul and that

there are no children residing at the property. He also states that the rights of the elderly, children, or disabled persons will not be infringed by the application and that it will be just and equitable to grant such application.

[34] It is further alleged that there was compliance with section 4(1) of Act 19 of 1998 and no valid defence can be raised by the respondents by virtue of the right to occupy the property.

[35] The deponent specifically points out that, at the time he deposed to his affidavit, there are individuals who are currently waiting for housing allocations from the Municipality and who are willing to pay for the occupation of the property and that, in the meantime, it bears all the risks as owner of the property.

[36] It is further stated that, given her behaviour, the risk of ownership is problematic and could cause the Municipality harm or damage.

[37] It is further submitted that Abdul and any other unlawful occupants are not destitute and can secure alternative accommodation for themselves and, in the circumstances, the order should be granted.

[38] From a legal perspective and seen in isolation the founding affidavit makes no valid case for a valid notice of termination but actually makes out a case that Abdul abandoned the property (leaving her late father there) and then taking up occupancy of the property again.

[39] A notice of opposition was filed and an answering affidavit filed on 20 October 2019 wherein Abdul states that she is the owner of the property and a disabled adult female residing in such property. As will be seen later the latter assertions are false.

[40] She deposes to the fact that she has read the founding affidavit and the application in terms of section 4 of the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act (Act 19 of 1998) ("PIE") and then sets forth that she is advised that she should apprise the court of the predicaments and hardships that

she suffered and is still suffering as a result of the abuse inflicted upon her by the Municipality.

[41] She alleges that she was married to one Mohanlal, which marriage was ultimately dissolved on 28 September 2015. During the marriage, and in March 1998, she applied for a flat to rent from the Municipality and that, at the time, she disclosed all her personal issues and the fact that she left her marital home and children with her husband, due to him physically being abusive to her.

[42] She, therefore, states that the application was approved with the full knowledge that she was the registered owner of (another) immovable property by virtue of her marriage in community of property, same having been dissolved.

[43] She further states that she moved into the property in dispute together with her sick father (who passed away on 27 November 2018) and stayed there until representatives of the Municipality switched off the electricity at the rented property. She states as a reason for the cut-off of the electricity was alleged to be the fact that she resided with her father in the property. This was allegedly attended to and an explanation was given in the form of an affidavit requested by the Municipality and a copy of such affidavit was annexed as annexure "OP2".

[44] In this affidavit, which was deposed to on 19 November 2009, she admits that she lives at the property with her father and further states that she sells goods and travels sometimes for one or two days on business trips to Nelspruit and Durban. She further states that she cannot tell when she will be present at her flat. It is clear from this that the affidavit hardly explains anything other than the fact that she is absent from the flat and why she cannot sign a new lease agreement or re-apply for a lease. In the chronology it fits in, in November 2009 shortly after the Municipality called on her to enter into a new lease.

[45] From this, it is clear that she never complied with the request to enter into a new agreement and also indicates that she is employed and, it would appear, gainfully so.

[46] She further submits that, during the period 2012 to 2015, she spent some time between the property and her matrimonial home looking after her minor children, as the social workers in Benoni requested that she do so because her husband was arrested for using illicit drugs in front of the children.

[47] She then continues by saying that she never spent more than 10 days away from the property while staying at the matrimonial home. Neither the explanation offered in annexure “OP2” or the latter statement are persuasive. The indications are clear that she is not permanently resident at the property. I also have no proof of the demands made by the social worker. She is also economic with the facts surrounding the age of her “minor children” in the sense that she provides no context or time frame. Logically this should be in the period before her divorce i.e. between 2009 -2015. Annexure “OP2” is vague in the extreme as to when she is really present on the property. She is a tenant who faced with a vindictory application by the owner of the property should plead her entitlement thereto (if only by a valid lease).

[48] She then contends that, at a meeting held at the offices of the Municipality, it was resolved that she could stay in the property as long as she could afford to, and she did, paying the monthly rental per the municipal amounts and she submits and confirms that her account is up-to-date and that the manager of the property, one Ragini Naranjee, was actually present at this meeting. She does not provide a date for this meeting nor does she suggest that the written agreement was formally varied or rectified to reflect the true basis on which it was concluded i.e. that she was pending a divorce and would from time to time have to attend to her minor children pending a divorce and that her sickly father may then have to live there (for an extended period) while she is absent and working, nor was her ownership of a share in the communal property reflected by a variation or rectification.

[49] She further submits that, in 2009, after she received the notification to report to the offices of the Applicant, wherein she was requested to renew the lease agreement, she did so and states:

“.....I do so and my lease agreement was there renewed. I submit that as was previously done in March 1998 a copy of the signed lease agreement

was not given to me. I verily submit and confirm that I signed the lease agreement during the year of 2009.”

[50] Of much more importance is what she does not say here. She does not say that the Municipality accepted her renewed lease agreement. This in itself seems to render the explanation in annexure “OP2” unnecessary. She then states in paragraph 3.8, during February to March 2019, the Municipality switched off her electricity again and she went back to their offices to complain about same. It was then that she was informed that there was a pending High Court application for her eviction and that she should await service of such documents. She further states that the issue of electricity was referred to the electricity department, and Messrs Mnhlakane and Mokgosi, both employees of the Municipality, confirmed that the electricity would be reconnected to her property. This did not happen until she received the eviction notice on 8 October 2019.

[51] Abdul further states that, after her divorce, a receiver and liquidator was appointed to sell her “*removable property*”. She states that:

“this Sadiyah Geyer instated eviction proceedings against myself and the applicant in this matter without my knowledge”.

She then continues to say that she supposes that the eviction documents were served at her matrimonial home instead of her residential address, Flat No 122, the property in issue. She also annexes the eviction order obtained by Sadiyah Geyer, as annexure “OP3”.

[52] Annexure “OP3” is indeed a court order, dated 28 November 2018, which reflects that Abdul was ordered to vacate the property known as:

“Erf 2[...] (2[...]) D[...] H[...] Park, M[...] Park, B[...], Ekurhuleni, Gauteng Province”, on or before 14 December 2018.

[53] The mere fact that the appointed receiver and liquidator had to evict her from the matrimonial property gives the lie to her story as to her purported permanent occupation of the property owned by the Municipality. If she was truly permanently resident at the property in issue no such eviction would have been necessary.

[54] The affidavit proceeds to, under the rubric “*defence in brief*” state that she denies that she is an unlawful occupier as defined in PIE. She further submits that she obtained the occupation as a result of herself having entered into a valid lease agreement during the year 2009. This lease agreement she says is still valid and in force. She concedes that the 9 March 1998 agreement is cancelled and was no longer in force during the year 2013 or 4 April 2019.

[55] Given the fact that she must have abandoned the property in Actonville leaving her sickly father there under circumstances which the Municipality could not countenance I, having assumed above that she had a valid lease, have no doubt that she abandoned the property. She clearly clung to the matrimonial property till the eviction from same and then sought to reclaim rights of occupancy in the Municipal property after such eviction. Her denial is hardly *bona fide* given that, in her statement dated November 2009, she indicated that she does not really know when she will be back at the property in issue. It is also inherently improbable that she would not have been given a copy of the lease, even more so given that, on her version, she had just been a person whose lease was cancelled. She further states that she does not own any immovable property. Whilst this is true at the time the answering affidavit was filed it is objectively clear that she had a stake in immovable property when she allegedly renewed her lease in 2009.

[56] She further invokes the National Housing Code for housing assistance emergency and relies on clause 12.3.1 of the Emergency Housing Act, which I quote as presented in her affidavit (with a complete failure to comply with the normal rules when one relies on a statute):

“The affected person are, owing to situation beyond their control, evicted or threatened with imminent eviction from land or unsafe buildings, situations whose homes are demolished or threatened with imminent demolition or situations where pro-active steps ought to be taken to forestall such consequences.”

[57] It is not clear why the aforesaid is invoked and on what basis it helps and this is even more so if one takes into account where, in paragraph 4.5 of her answering affidavit, she states that it is clear that all persons who are victims of eviction

proceedings in terms of PIE must be given assistance in terms of the Emergency Housing Programme. I will deal with the PIE considerations later in these reasons.

[58] She denies that there were any unlawful occupiers on her property and insists that she was occupying the property on the strength of a lease agreement entered into between herself and the Municipality. The lease agreement invoked by Abdul is not annexed and, even if one assumes that she did sign same, she did not produce any proof that the Municipality ever accepted her application for a new lease agreement.

[59] Later in her answering affidavit, she alleges that the new agreement she signed in June/July 2009 was such that she could renew her lease agreement with the Municipality on a three-yearly interval. This is completely contradictory to her statement, in annexure “OP2”, which suggests that, in November 2009, she does not know when she will be back at the address and it appears to me as patently false.

[60] In any event, Abdul nowhere points out, or provides any proof thereof, that any further agreement was signed after the three years had expired. In fact, she submits that Ragini Naranjee (referred to above) has at all times, when she attended the offices, refused to accept her renewal application. I emphasise that, on her version, this is a renewal application under the alleged “renewed” lease agreement, dated June/July 2009.

[61] She accuses the said Naranjee of a desire for revenge and states that it was suggested by other people, whom she cannot identify, that the said Naranjee was in a close relationship with her ex-husband. Her defence has now moved from speculative to the surreal. Not only was she so busy that she did not know when she would really be at the property (see Annexure “OP2”) she allegedly entered into a new agreement in 2009 (renewable on a 3 yearly basis – of which she has no copy) but could never renew same because Naranjee is said to be in a close relationship with her ex-husband. Even if Naranjee was in the way of a renewal this means she never renewed the “new lease”. In any event as part owner in the communal property she would not have qualified for a new lease.

[62] She further submits that she has been in occupation of the property in line with the prescripts of her lease agreement and she confirmed that she stayed there with her father with the permission of the Municipality. It is common cause that her father has by now passed away.

[63] She ultimately demonstrates that she is no longer the owner of the property she is alleged to have owned.

[64] Abdul admits that she received the notice to vacate in 2013 but persists in the denial that she had not renewed her agreement. What is of much more importance is that that was her version in the affidavit. There was never, at the time that the notice to vacate was given, any response from her or from her lawyer to the effect that she had renewed her agreement, nor was there any request made at that time to the Municipality to supply her with a copy of the renewed agreement. This apart from the fact that in 2013 she would not have qualified for a renewal.

[65] When Abdul denies that the agreement between herself and the Municipality was duly and lawfully cancelled, she does not state to which agreement she refers. I accept by implication, this must refer to the so-called new agreement, but one is left to wonder whether such agreement ever came into existence, because there was no proof that the Municipality ever approved of her renewal or having entered into same ever renewed it after the expiry of the 3 year period.

[66] She claims that she qualifies under the Emergency Housing Programme and hence she can remain in occupation of the property.

[67] Abdul further contends that, at the time of the answering affidavit (approximately 7 December 2021), she was 50 years of age and had no educational qualifications, which rendered her unemployable and she regards herself as an elderly person who needs protection by law. Yet, some twelve years before that, in 2009, when she was approximately 38 years of age, she was so busy that she had no idea when she would be permanently at the property in dispute.

[68] Ultimately, she contends that it is not just and equitable that she should be evicted from the premises.

[69] The Municipality challenged her affidavit in their reply, for obvious and good reason, apart from the fact that her defences set out make no sense if scrutinised in context. On the one hand, she seeks to avoid the notice of cancellation and invoke another agreement but does not demonstrate the existence of the new agreement, and, subsequently, implying that she always had the right to stay there (presumably under the initial agreement), which is, in itself, suspicious. I say so because she does not demonstrate that her renewed agreement, the agreement she allegedly concluded in 2009, which would have operated for another three years, was ever received for renewal during the period 2012 to the date the proceedings were instituted. Nor did she resort to legal assistance to ensure the renewal of the alleged renewed agreement after the expiry of three years.

[70] To the extent that the Municipality demonstrates that she was the owner of a property at the time of the initial lease and on her own version after she entered into a new lease they are, of course, correct. She thus never qualified to enter into a new lease with the Municipality until after the divorce. The Municipality does not accept that she suffers any of the alleged hardships and predicaments at their hands and further denies that they abused her in any fashion. They also deny that she disclosed her personal issues (presumably this refers to her pending divorce and the difficulties with her father) and, in that regard, the very Naranjee accused of being in a relationship with her former husband supports the replying affidavit of the said Frank..

[71] The Municipality unsurprisingly states that the electricity was terminated as far back as March 2013 and remained terminated.

[72] In addition, another affidavit is provided in the reply, that of Mrs MMabatho Ntlakana, the Municipality's Senior Manager of Operations in Region D and same is annexed as annexure "B" to the replying affidavit. She states that the Municipality's records do not reflect any reinstatement of the electricity supply. Mr Mokgosi who is implicated in the alleged reinstatement of the electricity supply is no longer in the

employ of the Municipality. She states that she never agreed to such a reconnection of the supply and that Abdul unlawfully in not surrendering the property after the first lease was allegedly lawfully terminated. (I have already expressed my views on the validity of the notice and the fact that she probably abandoned the property in issue for the matrimonial property, hence the need for the eviction.)

[73] The Municipality also states, in its reply, that Abdul has confirmed that she received financial assistance from her (former) husband and her daughter and that she could go and live with her daughter and would not be thrown out in the streets, and that the ownership of the property, Erf 2[...], certainly existed at the time she received the notice to vacate the property. The co-ownership of the said property at best for the Municipality disqualified her from entering in a new lease.

[74] The Municipality states, in its reply, that there are 119 informal settlements in the Municipality with an estimated 165 000 families living there and that around 2000 applicants are still awaiting homes/flats from the Municipality.

[75] It is further stated that people like Abdul are causing a greater backlog and that she provides no reason why she cannot go and live with her daughter or use the funds from the sale of the property in the divorce to find a new place to live. Effectively what the Municipality is stating is that there are other people in a worse off position than Abdul.

[76] I should point out that Naranjee specifically takes issue with the circumstances which were disclosed when Abdul applied for the flat in 1998. She states that she was instructed to assist Abdul in the completion of the paperwork and no personal issues were disclosed to her at the time.

[77] Naranjee also points out that it was Abdul's husband who applied initially for the property in 1998 and that he failed to qualify and it was only then that she made the first application for a lease. She very specifically deals with the details of the accusations made and makes it clear that the only request that was ever made was that Abdul be given a further week before she vacated the property and the Municipality's Executive Manager acquiesced to this request.

[78] She quite rightly points states in her affidavit that Abdul, having alleged that she has a valid lease agreement, later alleges that Naranjee refused to let her enter into a new lease agreement, which two versions are mutually destructive. Naranjee, as one would expect, very specifically engages the allegations that she is acting inspired by revenge and that there are rumours of a relationship with Abdul's ex-husband.

[79] I now refer to the supplementary affidavit filed by Abdul.

[80] She was initially represented by attorneys of record by the name of C Malumane Attorneys and indicates that there were new developments and hence the supplementary affidavit became necessary. She corrects an obvious error in her answering affidavit, i.e. that she actually owns the property which she is asked to vacate, and states that she is only renting same and also states that she is not disabled as was originally stated in her answering affidavit. She does not produce a proper explanation for having signed an affidavit, which is effectively false inasmuch as it claims that she is disabled. She does make an allegation that this could have been an error on Mr Malumane's part or anyone else who was dealing with the file at their offices. What she does not explain is how it came that she signed such an affidavit without correcting it.

[81] To the extent that the Municipality took issue in their replying affidavit with the allegation that the property (Erf 2[...]) was sold, Abdul admits that her answering affidavit was opaque in not revealing the full factual situation regarding the proceeds of the sale of this property. She alleges that she only learned about this on 3 September 2020 when she consulted with her new attorney, Mr Khumalo, who drew her attention to the allegations and the statements of account received from Mr Malumane and Mr Phala. Copies of these are annexed as "HA1" and "HA2" to her supplementary affidavit.

[82] Abdul further states that the amount paid to her by Mr Malumane is R69 242.08 and that was paid to her new attorneys of record and it was going to be

used for purposes of her legal costs. She, therefore, denies that she has the means to acquire another property.

[83] On 10 May 2022 the matter was set-down before Maier-Frawley J who postponed the matter *sine die* and made the following order:

“2 The Applicant is, prior to re-enrolling this matter for hearing, to undertake investigations into the First Respondent's personal circumstances and serve and file a supplementary affidavit containing a report detailing:

2.1. The availability of alternative accommodation which may be provided by the Applicant to the First Respondent;

The availability of temporary emergency accommodation which may be provided by the Applicant to the First Respondent in the event of her eviction;

2.2. The Applicant's investigation into the First Respondent's personal circumstances;

2.3. The personal circumstances of the First Respondent, as known to the Applicant consequent to the aforesaid investigation; and

2.4. Any other facts or considerations which the Applicant considers necessary or prudent to place before the Court for the purposes of the court determining the justice and equitability of granting an eviction order in this application.

3 The First Respondent, not more than fifteen (15) court days after service of\ the Applicant's supplementary affidavit and report as aforesaid, is to serve and file a supplementary affidavit containing:

3.1. Full details of her personal circumstances as relevant to these proceedings; and

3.2. Any other facts or considerations which the First Respondent considers necessary or prudent to place before the Court for the purposes of the court determining the justice and equitability of granting an eviction order in this application”

[84] On 6 May 2024, and pursuant to the aforesaid order the Municipality filed a supplementary affidavit, the deponent of same being one Njabulo Sibusiso Trevor Zulu, who describes himself as a male Divisional Head Specialised Legal Services

By-Law Drafting and Supply Chain Management Support of the Municipality, with its offices situated in Germiston.

[85] He states that the Municipality is not in a position to offer alternative accommodation due to a lack of readily available resources and submits that the personal circumstances of the respondents do not give rise to a situation where the Municipality can provide assistance. He points out that the Municipality receives a large number of requests for alternative accommodation on a monthly basis and such requests include individuals who would be rendered destitute in the event that evictions were granted. He submits that Abdul would not be rendered destitute or homeless.

[86] He states that Abdul is 54 years of age, divorced and resides with her daughter at the Municipality's property, her daughter, Stephanie Abdul, being 30 years of age, and her son, Brandon Abdul, being 20 years of age. Stephanie Abdul is unemployed and Brandon Abdul, at the time, was in Grade 12 at Liverpool High School.

[87] He further states that there are no individuals with disabilities or elderly at the property and, without disclosing his source, alleges that Abdul suffers from high blood pressure and is treated at the Actonville Clinic. I do not regard high blood pressure in a person 54 years of age that is being treated as of any relevance. In addition, Abdul is employed as an operator at EDEAP, an entity situated at 11-12 Apex Road.

[88] According to him Abdul is earning R7 200.00 a month, which is the total income of the household, and Abdul indicated that the household expenses are only R4 200.00 and that she also owns a Toyota Sedan vehicle with registration number PDT 861 GP. Abdul told him they have no other family members in the country.

[89] Under the rubric "Other circumstances that make it just and equitable to grant an eviction" he stated the following:

"8. The City of Ekurhuleni(Applicant) comprises of approximately two million inhabitants living in an agglomeration of 9 small towns and 17 townships. The

amalgamation of two existing regional entities, namely Kyalami Metropolitan and the Eastern Gauteng Services Council served as the beginning of the now large City that accommodates a population of about 3.5 million inhabitants. At the heart of the City's plans and service delivery operations are the communities of Tembisa, Katlehong, Vosloorus, Duduza, Daveyton and Thokoza, which collectively house over 68% of the Municipality's total population.

9. The Applicant's population has grown exponentially from an estimated 2 368 283 in 2000 to 3 379 104 in 2016. The Applicant's population growth rate is steady at 2.47% per annum, coming down from a high of 4% per annum in the period between 1996 and 2001. The current population represents over 6% of the total population of South Africa (Stats SA: 2017). An important feature of growth in the Ekurhuleni population is the net migration into the Applicant's jurisdiction.

10. The Applicant, like other major cities in its region, is at the epicentre of the migration trend facing South Africa. This trend presents a set of challenges and opportunities for the development of cities in the Gauteng City Region. The intersection of rapid population growth spurred by in-migration, historical backlogs and lacklustre housing delivery has resulted in a phenomenon – low intensity land invasions and the growth of informal settlements. In responding to these challenges, the Applicant must deliver spatially-integrated human settlements that respond to the need to redress spatial injustices, but also attend to the immediate basic needs of the people (whilst at the same time improving the liveability) in informal settlements.

11 . The Applicant has 1 299 490 households and according to the household survey conducted in 2016, 18.7% of these households live in informal dwellings. It is important to note that informal settlements also pose other service delivery challenges in particular those linked to infrastructure such as water supply, sanitation , electricity, roads and storm water reticulation .

12. There is currently land shortage within the city for purposes of providing housing subsidies for qualifying beneficiaries. There is a housing backlog that goes back many years in the Applicant municipality, with hundreds of thousands of individuals still awaiting allocation of housing.

13. The Applicant municipality has an estimated 130 (one hundred and thirty) informal settlements which currently are occupied by thousands of households. These constitute some of the poorest of the poor who do not even have an income (unlike the First Respondent). It is not just and equitable that the Respondents should be allowed to jump the queue and benefit in living on a property that should be allocated to someone else.

14. As the First Respondent is gainfully employed, she would be able to seek and obtain alternative accommodation elsewhere. With a salary of R7200.00 (seven thousand two hundred Rands), it would be fair and reasonable to expect the First Respondent to rent accommodation elsewhere in the vicinity of Actonville.

15. Neither the First Respondent nor her children rely on a government subsidy. It should be noted that the Respondents also have a motor vehicle. I humbly submit that the occupiers of the property are not indigent.

16. Given the personal circumstances of the Respondents, I humbly submit that should an eviction order be granted, they will not be rendered homeless. It is further humbly submitted that the Respondents will not be displaced in the event that an eviction order is granted”

(my underlining)

[90] Neither Abdul or any of the notional unlawful occupants filed any further affidavit.

[91] PIE enjoins me as follows:

“(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a)”

[92] On a conspectus of all the facts and the circumstances under which Abdul orchestrated occupation of the property I am not satisfied that her contractual defences were *bona fide* raised.

[93] I was concerned as to whether a new PIE notice should not have been delivered but I take comfort from the fact that, in terms of paragraph 6.7 of the joint Practice Note, Abdul’s lawyer took no issue with the lack thereof and, in fact, is of the view that it is not necessary for a further Section 4(2) notice to be delivered, or that Abdul would be prejudiced as a result thereof. I have noticed that the final Practice Note was not signed by both parties, but the joint practice note dated 28 April 2022 were signed by the legal representatives of both parties and reflect the same view. Given the fact that an appropriate 4(2) notice was given historically, I was satisfied.

[94] I should add that Abdul’s present attorneys of record only withdrew on 12 November 2024, whilst the final joint Practice Note was already filed on 7 November 2024. If they were not satisfied with same, they had ample opportunity to deal therewith.

[95] I am also not satisfied that upon a consideration of the respondents’ present circumstances their unlawful occupation should be countenanced. Abdul has an income and a job and should be able to find alternative accommodation together with all her family presently occupying the property unlawfully. The respondents personal

circumstances do not justify a prevention of eviction.² Justice and equity favours the truly indigent. I specifically considered the date for the eviction and concluded that 28 February 2025 would be a just and equitable date for the eviction allowing Abdul to scout for another property.

**S. VAN NIEUWENHUIZEN
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Date order granted: 25 November 2024

Date reasons provided: 11 February 2024

Representation for Applicant:

Counsel:

Adv N Felgate

Instructed by:

KM MMUOE ATTORNEYS

2nd Floor Edinburgh Building

Hyde Park Lane Office Park

Cnr Jan Smuts and William Nicol Drive

Hyde Park

Tel: 011 484 0945

Fax: 086 479 4697

Email: katlego@mmuoe.com and

philisa@mmuoe.com

Ref: KM MMuoe/sn/114089

Representation for the First Respondent:

Counsel:

None

Former Attorneys for First Respondent:

² Compare Pitje v Shibambo 2016 ZACC 5 relied upon by the first respondent; City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA) relied on by the applicant.

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Quinton Khumalo Inc
19 Angus Street

Germiston South

Germiston

Tel: 011 825 1138

Fax:011 873 2578

Email: gkhumalo@ymail.com

Ref: Mr Khumalo/zm/C001700