REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: 2013/35000
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

IN THE MATTER BETWEEN:

DAWOOD, FAZEL	**FIRST APPLICANT**
DAWOOD, VERNA BELINDA	**SECOND APPLICANT**
THE SHERIFF OF THE HIGH COURT, WESTONARIA	**THIRD APPLICANT**

AND

MOLEBELE, LUCAS	**FIRST RESPONDENT**
MABUZA, FREDDY SUNDUZA	**SECOND RESPONDENT**
MABUZA, MONICA DIMAKATSO	**THIRD RESPONDENT**

This Judgment is handed down in open court and electronically by circulation to the Applicant's Legal Representative and the Respondents by email, publication on Case Lines. The date for the handing down is deemed 9 June 2025.

JUDGMENT

NAIR AJ

INTRODUCTION:

[1] This is an application for eviction lodged by the first and second applicant's seeking the eviction of the second and third respondent's (hereinafter referred to as the "Occupiers") from the immovable property situated at Erf 5[…], Lenasia South Extension 4 Township, Registration Division IQ in the Province of Gauteng held under Title Deed Number T[…] (hereinafter referred to as the "Immovable Property"). The first and second applicants are the registered owners of the immovable property. Counsel for the applicant's Adv Pullinger submitted that the relief sought by the first and second applicant is in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land 19 Act of 1998 (hereinafter referred to as the "PIE Act").

[2] The third respondent is the Sheriff of the High Court, Westonaria and applies separately for relief in terms of Rule 49(11)(c) of the Uniform Rules of the High Court for an order evicting the second and third respondents from the property pursuant to the sale in execution that led to the second and third respondents' occupation of the Property being cancelled by an order of this Court.

BACKGROUND:

[3] The first and second applicants who are the registered owners of the immovable property obtained judgment against them by Changing Tides 17 (Pty) Ltd N.O. (hereinafter referred to as the "Trust"). As a result of this judgment a sale in execution of the first and second applicant's immovable property took place on 11 December 2015. The first respondent was the purchaser in the sale in execution proceedings. As a result of the sale of the immovable property to the first respondent the first and second applicants vacated the immovable property.

[4] The occupiers derived the rights to occupy the immovable property under the conditions of the sale in execution of the immovable property to the first respondent. Pursuant to the first respondent's failure to comply with conditions of the sale, the sale in execution was cancelled by order of this court granted by Van Der Linde on 16 December 2016.

[5] As a result the Trust scheduled a second sale in execution to have taken place on 30 June 2017 which prompted the respondents' to seek and urgent interdict against the sale in execution of the immovable property on 23 June 2017. The Trust opposed the urgent application which was subsequently withdrawn by the respondents.

[6] A third sale in execution of the immovable property was also scheduled for 12 October 2018 and the immovable property was sold to Tuge Lekginya Matsebe and Lindiwe Christina Matsebe. They failed to perform their obligations in terms of the conditions of the sale and the sale in execution of the immobile property was once again cancelled on 22 August 2019 by a court order granted by Matojane J.

[7] The effect of this was that the immovable property was not sold in the sale in execution and through the passage of time the first and second applicants were able to settle the arrears and judgment amount due to the Trust. The first and second applicants contend that as a consequence of the settlement agreement and by virtue of Rule 46(11)(c) of the Uniform Rules of the High Court and 21.3 of the conditions of sale as well as in terms of section 4(6) of the PIE Act the first and second applicants are entitled to be restored to possession of the immovable property that the first, second, third respondents and anybody occupying the property through or under them have no right to occupy the immovable property and are in unlawful occupation thereof.

[8] As a consequence of the cancellation of the sale in execution with the first respondent, the first and second applicants contend that the occupiers do not enjoy any right of occupation of the immovable property and despite due demand on 9 February 2021 to vacate the immovable property, they have failed to do so. Due demand to vacate the immovable property was also served personally on the first respondent on 10 February 2021.

[9] The first respondent was refunded by the third applicant, the sheriff, an amount of R144 000,00 and R16 000,00 was paid to Attorneys Moodie & Robertson as a result of the cancelled sale in execution.

HEARING ON 19 MAY 2025:

[10] The first respondent does not oppose these eviction proceedings. The second and third respondents however oppose the eviction proceedings and filed their respective answering applications.

[11] The final set down for hearing of the eviction proceedings was for 19 May 2025 at 10h00 and this notice of set down was served on the occupiers personally on 2 April 2025. None of the respondents attended court on 19 May 2025 at 10h00. The matter was allocated by myself in terms of Consolidated Practice Directive 25.15 of Practice Directive 1/2024 for hearing on 20 May 2025 at 09h30 and all parties were notified of the date and time for hearing. The occupiers were not at court on 20 May 2025 at 09h30 and the matter stood down to allow them sufficient time to arrive at court. I commenced to hear the matter on 10h35. None of the respondents were present at court. Adv AW Pullinger who appeared for the applicants submitted that the eviction proceedings continue on an unopposed basis.

[12] Adv Pullinger filed a unilateral practice note in compliance with Consolidated Practice Directive 25.19 of Practice Directive 1/2024. It appears therefrom that the occupiers did not participate in any pre-hearing conference between the parties and it was anticipated that they would attend the hearing of the matter in person but they failed to do so.

[13] During argument by applicants' counsel I raised the aspect of short service on the occupiers as well as the City of Johannesburg Municipality of the notice that was authorised for service in terms of section 4(2) of the PIE Act. According to the Sheriff's returns of service the said notice in terms of section 4(2) of the PIE Act was served on the occupiers on 7 May 2025 some 13 days prior to the hearing of the matter on 20 May 2025 and the on the City of Johannesburg Municipality on 15 May 2025 some 5 days prior to the hearing of the matter on 20 May 2025. This fell short

of the 14 day notice period allowed for service on the unlawful occupiers and the municipality having jurisdiction. Adv Pullinger submitted that the procedure in the PIE Act was only applicable in respect of the application of the first and second applicants and not applicable to the application of the third applicant as the third applicant's application was brought in terms of Rule 46(11)(c) of the Uniform Rules of the High Court and not the PIE Act.

ISSUE TO BE DETERMINED:

[14] The issue to be determined is whether it is just and equitable to evict the occupiers from the immovable property, considering all the circumstances, including the availability of other land, as well as the date on which the eviction must take place.

PROCEDURE IN PIE ACT:

[15] Sections 4(1) to 4(5) of the PIE Act lay down peremptory procedural requirements for the obtaining of an eviction order which reads as follows:

> "(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.
>
> (2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.
>
> (3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.
>
> (4) Subject to the provisions of subsection (2), if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of court, service must be effected in the manner directed by the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.
>
> (5) The notice of proceedings contemplated in subsection (2) must –
>
> (a) state that proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid."

[16] It is conceded by applicant's counsel that the requisite notice in terms of section 4(2) of the PIE Act was short served on the second and third respondent as well as the City of Johannesburg Municipality. In *Cape Killarney Property Investments (Pty) Ltd versus Mahamba and Others*[1] (hereinafter referred to as "Cape Killarney"), the Supreme Court of Appeal interpreted section 4 of the PIE Act and set out the correct procedure to be followed in eviction applications in the High Court. Firstly, it was held that the notice of eviction proceedings contemplated in s 4(2) of the PIE Act, which must be authorised and directed by an order of court, is in addition to the notice of proceedings in terms of the rules of court as contemplated in section 4(3) of Act , i.e., the notice of motion. Secondly, it was held that since the date of hearing of an application in the High Court is usually only determined after all the papers have been served, and since the section 4(2) notice must indicate the date on which the application will be heard, that has the consequence that an application for authorisation to serve a section 4(2) notice can only be made after all papers have been filed, i.e., after the notice of motion and affidavits have been served in accordance with the rules of court as contemplated in section 4(3) of the PIE Act. The notice in terms of section 4(2) of the PIE Act must be regarded to be peremptory.[2]

[17] In Unlawful Occupiers, School Site versus City of Johannesburg[3] the Supreme Court of Appeal held that not every deviation from the literal prescription is fatal. The question remains whether, in spite of the defects in the section 4(2) notice, the object of the statutory provision had been achieved. In the present instance there were no defects in the section 4(2) notice in terms of the PIE Act as it complied with the requirements of section 4(5) of the PIE Act. The court further held that the purpose of s 4(2) is to afford the respondents in an application under PIE an additional opportunity, apart from the opportunity they have already had under the

[1] Cape Killarney Property Investments (Pty) Ltd versus Mahamba and Others 2001 (4) SA 1222 (SCA)
[2] See Cape Killarney supra at 1227 E-F
[3] Unlawful Occupiers versus City of Johannesburg 2005(4) SA 199 at par 22 to par 24

rules of court, to put all the circumstances they allege to be relevant before the court. When a respondent receives the s 4(2) notice they therefore already know what case they have to meet.

[18] I was not convinced by the submission of the applicants counsel that the requisite 14 day notice period in terms of section 4(2) of the PIE Act on the unlawful occupier and the relevant municipality may be condoned if the court finds that the object of the statutory provision had been met. I was of the view that the current case is distinguishable from the *Unlawful Occupiers, School Site* case *supra*. The latter case having dealt with the aspects of defects and omissions in the section 4(2) notice which would render the section 4(2) notice a nullity. In the present case the issue is one of short service of the section 4(2) notice in terms of the PIE Act. In the *Cape Killarney case supra* the court held that the purpose of the time period of 14 days in the section 4(2) notice is to afford the respondents in eviction proceedings a better opportunity than they would have had under the rules to put all the circumstances that they allege to be relevant before the court.[4] Where there is short service and all the remaining requirements of section 4(4) and 4(5) of the PIE Act have been met a postponement of the matter beyond the 14 day notice period as set out in the section 4(2) notice to enable to the occupiers to place their additional circumstances before court would cure the short service. The issues between the applicant and the occupiers have, however, already been addressed in the founding, answering and replying papers of the parties. It was on this basis that I was of the view that the matter be postponed for a period beyond the expiration of the 14 days to cure this defect. The matter was postponed until 9 June 2025 for this purpose. The occupiers and the City of Johannesburg Municipality were subsequently served with my order dated 21 May 2025 which was marked as “X” indicating that the matter was postponed until 9 June 2025 for the 14 day notice period in terms of section 4(2) of the PIE to expire. If the occupiers and the City of Johannesburg Municipality fail to attend court on 9 June 2025 at 10h00 the matter would then proceed on an unopposed basis. In my view the occupiers were sufficiently made aware of the consequences of them failing to attend court on 9 June 2025.

[19] I am also of the view that the aspect of the section 4(2) notice period in terms of the PIE ACT to the unlawful occupiers and the relevant municipality does not

[4] See Cape Killarney supra at 1228

apply to Rule 46(11)(c) of the Uniform Rules of Court. I take into consideration that the relief sought in prayers 1 to 4 of the applicants notice of motion for the eviction of the occupiers is sought in terms of Rule 46(11)(c) of the Uniform Rules of the High Court and not in terms of the PIE Act.

EVICTION OF OCCUPIERS IN TERMS OF RULE 46(11)(c) OF THE UNIFORM RULES:

[20] Rule 46(11)(c) of the Uniform Rules of the High Court provides that if the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.

[21] It appears from a reading of Rule 46(11)(c) of the Uniform Rules of the High Court that the sheriff would only require to give the affected persons and occupiers notice of the application for an order evicting the purchaser or any person claiming to occupy the immovable property through the purchaser or otherwise occupying the immovable property. Such notice presumably would be in a long form notice of motion Form 2(a) of the First Schedule. The respondents were accordingly served with the notice of motion, founding affidavit and annexures in respect of the application brought in terms of Rule 46(11)(c) of the Uniform Rules of Court. I am satisfied that the occupiers and the City of Johannesburg Municipality have been on more than one occasion notified of the date for the hearing of the eviction proceedings. The further safeguard which the court considered was to grant the order dated 21 May 2025 which was marked as “X” informing the parties of the date of the hearing on 9 May 2025 . This order was personally served on the second respondent and on the spouse of the third respondent as well as on the City of Johannesburg Municipality. I am satisfied that the parties were properly informed about the hearing of the matter on 9 June 2025 and elected not to attend court again. This matter therefore proceeded on an unopposed basis.

[22] Adv Pullinger referred to paragraph 4 of the supplementary affidavit of the applicants’ attorney, Mr Timothy Paul Cloete, deposed to on 5 June 2025 indicating that information was obtained from the first and second applicants regarding the

occupiers availability of alternative accommodation. Neither the first nor the second applicant deposed to a confirmatory affidavit in this regard and this part of the evidence therefore amounts to hearsay no regard was had to it. In any event, from the occupiers failure to attend these proceedings after initially opposing the application, I can safely infer that the occupiers would not be rendered homeless. If they were to be rendered homeless one would have expected them to attend court and place this fact before the court.

[23] The Constitutional Court in ***Grobler versus Phillips and Others***[5] held that in deciding whether it is just and equitable to grant an order of eviction, a court must consider all relevant circumstances. This includes, except where the land is sold in a sale in 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. This also entails considering the rights and needs of the elderly, children, disabled persons and households headed by women. In the absence of the occupiers raising the issue before me in argument that it would not be just and equitable to grant an order of eviction, I am satisfied that the first, second and third applicant's have succeeded on a balance of probabilities that it is just and equitable for the occupiers to be evicted from the immovable property. A just and equitable date for eviction of the occupiers from the immovable property in my view would be 31 July 2025 which is approximately in 7 weeks from the date of my judgment.

COSTS:

[24] It is trite the costs should be granted in favour of the successful party. I take into account that this application was initially vehemently opposed by the occupiers who raised many points *in limine* in their answering affidavits necessitating the applicants to respond thereto. The application was as a result of this opposition by the occupiers placed on the opposed motion court roll for hearing which necessitated that filing of further documents in compliance with the Consolidated Practice Directive 1/2024 of this court. The occupiers did not comply with filing any joint practice note or heads of argument on their behalf but the applicants were required to comply therewith in order to have the matter heard before court. The occupiers

[5] Grobler versus Phillips and Others 2023 (1) SA 321 (CC) at par 33

further failed to withdraw any opposition to the application. In my view these actions of the occupiers attracts a punitive costs order and in light of the seniority of Adv Pullinger who appeared for the applicant's I am of the view that costs be granted in favour of the applicants on scale C.

ORDER:

[25] An order for eviction is granted as per the draft order dated 9 June 2025 which is marked as "X" and attached to this judgment.

M NAIR
ACTING JUDGE OF THE
HIGH COURT
JOHANNESBURG

Date of appearance: 9 June 2025
Date Judgment delivered: 9 June 2025

For the Plaintiff: AW Pullinger
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