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

Case no: **D528/2023**

In the matter between:

TRANSNET SOC LTD

APPLICANT

and

LOGASPERIE SAMANTHA GOVENDER

FIRST RESPONDENT

**ALL UNLAWFUL OCCUPIERS OF PORTION 2,
LOT 20, FARM NUMBER 1557**

SECOND RESPONDENT

ETHEKWINI MUNICIPALITY

THIRD RESPONDENT

Coram: Mossop J

Heard: 26 April 2024

Delivered: 26 April 2024

ORDER

The following order is granted:

1. The third respondent is directed by 1 June 2024, to file a report, supported by an affidavit, in which it confirms:

(a) What steps it has taken and what steps it intends or is able to take to provide accommodation for the first respondent and her three daughters and father who presently unlawfully occupy the immovable property with a street address of [...] S[...] Road, Ottawa, Durban in the event of their being evicted from that immovable property;

(b) If such alternative accommodation can be provided, by when it can be made available; and

(c) What the effects would be if the eviction of the first respondent were to be ordered without such alternative accommodation being made available.

2. The applicant and the first respondent may, within fifteen days of delivery of the third respondent's report and affidavit referred to in paragraph 1 of this order, file affidavits in response to such report.

3. The matter is otherwise postponed *sine die*, to be finally determined on a date convenient to all parties.

4. All questions of costs are reserved.

JUDGMENT

MOSSOP J:

[1] This is an ex tempore judgment.

[2] It is not in dispute that the applicant is the owner of the immovable property with a street address of [...] S[...] Road, Ottawa, Durban ('the property'). The property is ordinarily rented out by the applicant to its employees and, in particular, to employees of the applicant that operate its trains. Such a rental ordinarily occurs in terms of a written lease agreement after the prospective tenant has provided the

applicant with certain prescribed documentation and after a credit check has been conducted by the applicant. The applicant states that employees of the applicant who rent premises such as the property are precluded, in terms of the written lease agreement, from ceding or subletting those premises to any third-party.

[3] The first respondent occupies the property, together with her three young children and her father. Neither she nor her father are employees of the applicant. The applicant now wishes to evict her and all those who occupy the property through her and to this end has brought an application in terms of s 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the Act).

[4] The first respondent resists the application on several grounds, to which I shall revert shortly. But before doing so, it is appropriate to acknowledge the general proposition that the applicant is not legally required to provide the first respondent with any form of housing. While it is a state owned company and it is an organ of state, it is not 'the state' and the renting out of immovable property is not its core business function. There is, moreover, no connection between it and the first respondent. They are two strangers to each other. Neither the first respondent nor her father are employees of the applicant or even ex-employees. The only connection between the two that exists is that the first respondent and her family are presently in the property. Many pages of the answering affidavit have been utilised by the first respondent in making the point that the applicant bears a constitutional obligation to ensure that she and her family have a place to stay. The argument is misplaced and incorrect and must be dispelled forthwith.¹

[5] The applicant wants the first respondent to vacate the property because it wishes to lease it to a current employee. As the owner of the property, it is entitled to do what it wishes with its asset. In *Chetty v Naidoo*,² the court, in dealing with the topic of ownership, held that:

¹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC).

² *Chetty v Naidoo* 1974 (3) SA 13 (A).

'... one of its incidents is the right of exclusive possession of the *res*, with the necessary corollary that the owner may claim his property wherever found, from whomsoever holding it. It is inherent in the nature of ownership that possession of the *res* should normally be with the owner, and it follows that no other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g., a right of retention or a contractual right).'

[6] Having noted that the first respondent is not employed by the applicant, it must be acknowledged that the applicant has, very fairly, indicated that it does not only rent out premises that it owns to its employees. It also lets such premises to members of the public where circumstances permit this to occur. This is, however, not such an instance, so it asserts.

[7] According to the applicant, the property had previously been let to its employee who had then, impermissibly, sublet a portion thereof to the first respondent. When the employee ultimately left the property, the first respondent assumed occupation of the entire property. That this had occurred was apparently ascertained by the applicant in 2015. Since then, the applicant has tried to negotiate with the first respondent to get her to vacate the property, with no success.

[8] Upon discovering that the first respondent was in the property, the applicant initially attempted to regularize her occupation by requiring her to sign a lease agreement, but she balked at the idea. The applicant then offered her alternative accommodation. The first respondent rejected the proposed alternative accommodation. However, in a letter penned by attorneys assisting her, she later stated that she would be willing to move to a next door property, on the condition that it was renovated by the applicant. After some contemplation, the applicant indicated that it did not have the funds available to renovate that property and consequently did not agree with the first respondent's proposal. The first respondent thus occupies the property in the absence of a valid lease agreement and against the wishes of the applicant.

[9] Its negotiations with the first respondent having failed, the applicant now seeks the assistance of this court. It has disclosed all the facts known to it, including

such information as it possesses regarding the age and gender of the occupants that it seeks to evict from the property.³

[10] The first respondent acknowledges that she sublet a portion of the property from a former employee of the applicant and then took over the whole of the property when the employee vacated the property in January 2016. She claims that she interacted with the applicant's representatives and acknowledges that she was initially given a lease agreement to sign. What happened to that lease agreement is not clearly explained in the first respondent's answering affidavit. She never explicitly states that she agreed to its terms or that she signed it. She claims that she was told by the applicant's representatives to stop making any payments that she was then making and was allegedly also told that she could remain in the property 'free of charge' until a formal lease was concluded. Given that there was apparently no fixed date by which the lease agreement had to be concluded, I consider this to be entirely unlikely. The first respondent has, on her own admission, now occupied the property rent free for the past eight years. She claims to receive a total monthly income of R3 980, comprised of earnings of R500 in respect of herself, child grants totalling R1 500 in respect of her three children and R1 980 from a pension that her father receives.

[11] There clearly is no surfeit of money in the first respondent's household. Yet, she claims to have spent R180 000⁴ in improving and maintaining the property. I am simply not able to accept this claim, for two reasons: firstly, it seems unlikely that there would be such funds available for this purpose, for any income would surely have been used by the first respondent to maintain her family and she makes no claim to any additional income; and, secondly, because the first respondent has not put up any evidence of such expenses having been incurred by her.

[12] In her answering affidavit, the first respondent proceeds to accuse the applicant of double standards because it has allegedly concluded a lease agreement with another family who are not employees of the applicant and who occupy a

³ *Pillay and another v Ramzan and others* [2022] ZAGPJHC 306 para 24.

⁴ Accepting that the first respondent's income per month is R3 980, this would mean that she used her entire income for a period of 45 months to carry out the improvements. The proposition need only be stated to be rejected.

nearby property owned by the applicant, but it will not do the same with her. Given her unlawful occupation of the applicant's property, she is in no position to demand that she be treated as others are treated. In any event, she was initially asked to sign a lease agreement but refused to do so. The first respondent complains, further, that the applicant has not meaningfully engaged with her regarding her departure from the occupied property. Given the fact that on her own version there have been interactions between both sides for the past eight years, I take this complaint with a large pinch of salt.

[13] The approach to determining applications brought in terms of this section of the Act was set out by Wallis JA in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others*,⁵ where he held that the provisions of this section trigger a two-stage enquiry:

'A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve a gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution, is faced with two separate enquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant the order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly, it cannot be granted until both enquiries had been undertaken and the conclusion reached that the grant of an

⁵ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) para 25.

eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.’

[14] The applicant makes a strong case for the eviction of the first respondent and her family. In *Ndlovu v Ngcobo; Bekker and another v Jika*,⁶ the Supreme Court of Appeal stated as follows:

‘Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.’

[15] In my view, the first respondent has not established a legal right to remain in occupation of the property. It seems inevitable that an order authorising her and her family’s eviction from the property must issue. But where must they go if such order issues?

[16] The respondent has a very limited income and her ability to take up alternative accommodation and yet support her family is gravely restricted. With that income, some form of subsidised housing appears to be the first respondent’s only hope. The third respondent has such housing schemes.

[17] A court authorising an eviction in terms of the Act must be satisfied that it is just and equitable for an eviction order to be granted. That can only be determined if the court has considered the possibility of alternative accommodation being made available for the relocation of the unlawful occupier and if it has considered the rights and needs of the elderly, children, disabled persons and households headed by women. Information relating to these latter matters was placed before the court by both the applicant and the first respondent. The prospect of alternative

⁶ *Ndlovu v Ngcobo; Bekker and another v Jika* 2003 (1) SA 113 (SCA) para 19.

accommodation that may potentially be offered by the third respondent has not.⁷ I am at this stage entirely uninformed of any alternative accommodation that the first respondent may take up if her eviction is ordered.

[18] The third respondent is habitually joined in these applications but plays no meaningful role unless directed to do so by the court. In this case, it has not delivered any papers, has not attended court, and has not participated in argument today. It has offered no assistance to this court whatsoever.

[19] The first respondent remains a member of our community and is entitled to be respected and to have her dignity preserved. She is not in her current position by design or through choice. She is doing her best to provide for her family and to keep them intact and safe. It cannot be in the interests of justice that she and her family be rendered homeless. That would simply be solving one problem by creating another problem. The third respondent, through its indifference to her plight, appears to regard her as a non-person, unworthy of its assistance. She is not that. She is a citizen of this country, and she is entitled to assistance in her moment of need from the entity that is burdened with providing that assistance. I intend to give the third respondent the opportunity to redeem itself by requiring it to assist this court in resolving this vexing social issue.

[20] I accordingly make the following order:

1. The third respondent is directed by 1 June 2024, to file a report, supported by an affidavit, in which it confirms:

(a) What steps it has taken and what steps it intends or is able to take to provide accommodation for the first respondent and her three daughters and father who presently unlawfully occupy the immovable property with a street address of [...] S[...] Road, Ottawa, Durban in the event of their being evicted from that immovable property;

⁷ *Pillay and another v Ramzan and others* [2022] ZAGPJHC 306 para 24.

(b) If such alternative accommodation can be provided, by when it can be made available; and

(c) What the effects would be if the eviction of the first respondent were to be ordered without such alternative accommodation being made available.

2. The applicant and the first respondent may, within fifteen days of delivery of the third respondent's report and affidavit referred to in paragraph 1 of this order, file affidavits in response to such report.

3. The matter is otherwise postponed *sine die*, to be finally determined on a date convenient to all parties.

4. All questions of costs are reserved.

MOSSOP J

APPEARANCES

Counsel for the applicants	:	Ms M A Mbonane
Instructed by:	:	Tembe Kheswa Nxumalo Inc. 62/64 Florida Road Morningside Durban
Counsel for the respondent	:	In person
Instructed by	:	Not applicable