Reportable:	YES/ NO
Circulate to Judges:	YES/NO
Circulate to Magistrates:	YES/NO
Circulate to Regional Magistrates:	YES/NO

IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Case Number: **UM17/2018**

In the matter between:

RUSTENBURG PLATINUM MINES LTD Applicant

and

CERTAIN PERSONS WHO HAVE MARKED CLAIMS AND/OR ARE ERECTING OR HAVE ERECTED STRUCTURES ON OR ARE CURRENTLY PRESENT ON THE REMAINING EXTENT OF PORTION 50 (A PORTION OF PORTION 32) OF THE FARM PAARDEKRAAL 279 REGISTRATION DIVISION, J Q, NORTH WEST PROVINCE Respondents

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JUDGMENT

Matlapeng AJ

[1] This matter started its life on 02 February 2018 in the urgent court wherein the applicant sought to interdict the respondents from entering its land to put up structures and demarcate stands. An

interim order was granted and a rule nisi issued which reads as follows:

"IT IS ORDERED:

1. THAT: *A Rule Nisi issue calling upon the Respondents to show cause on or before the 22nd day of FEBRUARY 2018 why an order should not be granted in the following terms:*

1.1 *That the Respondents, certain persons who have marked claims and/or are erecting or have erected structures on or are currently present on the remaining extent of portion 50 (a portion of portion 32) of the Farm Paardekraal 279 Registration Division J.Q., North West Province, "the property" are interdicted and restrained from entering upon or constructing or building accommodation or making claims on the property*

1.2 *That the Sheriff/Deputy Sheriff is directed and authorized to enter upon the property and to remove all markers, building material, partially or erected structures on the said land.*

1.3 *That the Sheriff/ Deputy Sheriff is authorized to procure the assistance of the South African Police Services, if necessary, to effect the removal of the items referred to in paragraph 1.2.*

1.4 *The Respondents to vacate or remove themselves from the property with immediate effect.*

1.5 *In the event of the Respondent failing to vacate or remove themselves from the property with immediate effect the*

Sheriff Deputy Sheriff is authorized, with the assistance of South African Police if necessary to remove such persons.

2. THAT: *Prayers 1.1 to 1.5 of the Rule Nisi shall operate as an interim order pending the return date of the Rule Nisi."*

[2] The case was postponed on several occasions until it was finally heard on 25 October 2018. As a result of this long intervening period, the parties are agreed that urgency is no longer an issue. What remains is whether the applicant has made out a case entitling it to a confirmation of the interim order.

[3] The salient facts of this application are the following: The applicant is the owner of a farm described as the remaining extent of portion 50 (a portion of portion 32) of the farm Paardekraal No.279 Registration division, J Q North West Province. It intends to donate this property to the Rustenburg Local Municipality in order for the Municipality to develop it for the purpose of building low cost housing. On 30 January 2018 at the Council meeting of the Municipality, one of the items discussed was the donation the applicant intended making.

[4] On 30 January 2018 around 15h55, the applicant received a report that there were some people moving into the land illegally. Three of the applicant's employees attended the property and found people demarcating the property into stands and other structures were erected some were in the process of being erected.

[5] On 31 January 2018 around 9h50, the applicant's Acting Community Relation Manager, Mr Magano, accompanied by some

of his colleagues from Safety Services went to the property and tried to engage in discussions with the land invaders. Nothing came out of these discussions as the invaders were aggressive towards Magano. The police were approached but the applicant could find not any succour in that quarter. At that stage none of the structures were occupied.

[6] One of the reasons that actuated the applicant to approach this court for urgent relief was that a delay will result in the invaders not only occupying the land but also residing on it which would in turn attract the application of the provisions of Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE).

[7] The sheriff executed the court order by removing all illegally erected structures. According to the sheriff's return of service, he removed 75 structures and 350 claim markers from the property. The structures were in the form of shacks. Most of the structures were in different stages of incompleteness except for a few that were complete. None was occupied.

[8] The deponent to the respondents' answering affidavit on the other hand claims that the respondents started occupying the property on 29 January 2018 and by 02 February 2018 some of the structures were completed and occupied. A list of all respondents was attached to the affidavit and they are 731 in all. It is instructive to note that on the list, most of the respondents bar a few have residential addresses.

[9] The respondents admit that they do not have the permission of the owner to reside on the property. Their excuse is that they do not have a place to stay alternatively, where they currently reside, the houses are small and the families big with the result that some of them sleep in the dining rooms.

[10] The respondents further raised the following defences in their affidavit namely, that the order granted by this Court on 02 February 2018 is final in character and as a result, there is no *rule nisi* to be confirmed or discharged. In amplification, they aver that as the sheriff was authorised to remove their building material, the structures already erected as well as to remove the respondents who were already on the property, this was done and the matter has reached finality.

[11] The second defence is that PIE was applicable in this matter. In developing the defence they stated that as there were already structures erected and some of them were occupied and this constituted homes for the respondents. As a result, the applicant approached the court whilst using a wrong procedure.

[12] It follows that two crisp questions arise to be determined namely:

12.1 whether the interim order issued by the court is final in character.

12.2 whether the provisions of PIE are applicable.

[13] An order which is final in effect cannot be confirmed or discharged. A party aggrieved by such an order has to lodge an appeal against it. The form of the order does not determine whether it is final or not. Its effect is crucial in determining its finality. In **Metlika Trading LTD & Others v Commissioner of SARS 2005 (3) SA 1 (SCA)** the court held at paragraph [23] that:

> *"In determining whether an order is final, it is important to bear in mind that "not merely the form of the order must be considered but also, and predominantly its effect…."*

[14] It was also held in **Zweni v Minister of Law and Order 1993 (1) SA 523 (A) at paragraph 8** that:

> *"A 'judgment or order' is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and third, it must have effect of disposing of at least a substantial portion of the relief claimed in the main proceedings."*

[15] Mr Monnahela on behalf of the respondents made a forceful argument that the order is final in effect in that the sheriff has executed the order and removed all the structures on the property. As a result, there is nothing further to be done.

[16] I disagree. Interim interdicts are generally and by their nature granted *pendente lite*. This is to protect the rights of a party pending the finalisation of pending proceedings. In **Cronshaw & Another v Coin Security Group Pty Ltd 1996 (3) SA 686 (A)** the

Appellate Division held that an interim interdict was appealable if it were final in effect and not susceptible to alteration by the court of the first instance.

[17] Coming to the facts of the present matter, it is correct that at first blush, the interim order granted by this court may seem to be final. However, that is more apparent than real. The respondents were given the opportunity to come and place their version before the court. They were invited to provide reasons, if any, why they should not be finally interdicted from entering or constructing or building accommodation or marking claims on the property. Had they had reasons why they should be allowed to invade the property, the court that granted the interdict would have reconsidered and altered the order. However, they failed to raise to the challenge.

[18] The fact that the sheriff in the interim had removed the structures and other building material did not render the order final. Nothing prevented this court from making a ruling that the applicant should restore the *status quo ante*. Therefore the interim interdict was still susceptible to alteration by this court. The respondents, instead of arguing on the merits of their case stated through their counsel in their heads that: *"The intention was to prepare substantive heads regarding all the issues raised. However, it occurred to counsel on Sunday, 14 October, after properly considering the matter that it would not be competent for this court to grant an order sought by either of the parties in the papers. The only order that counsel considered competent was for the court to strike the matter of (sic) the roll"*.

In my respectful view, this was not only an ill-considered decision, but a presumptuous one to the extreme. As a result, the applicant's submissions for an interdict went unanswered.

[19] The respondents failed to show cause why they should not finally be interdicted from invading, building or demarcating the property because of the stance of their counsel namely to participate but only to a limited extent in arguing their case. The requirements for a final interdict are well known and do not need repeating. The applicant has placed the facts before me to satisfy those requirements. As a result, I hold without any hesitation, that the applicant had made out a case for a final interdict.

[20] The second question to be decided is whether PIE is applicable. The respondents contend that PIE is applicable in this instance as they allege that some of the structures were occupied. This is denied by the applicant. They amplify this submission by stating that the mere fact that they had erected structures on the land is sufficient to attract the protection of PIE. They rely as authority for this proposition in what was said in **Zulu and Others v eThekwini Municipality and Others 2014 (4) SA 590 (CC) at paragraph 27** where it was held that:

> *"Based on the above, there can be no doubt that the interim order authorised the taking of steps which could have the effect of evicting from the Lamontville property persons who were already living on the property or had completed building their homes on the property when that order was granted. Even on the Municipality's and the MEC's version, when a person has built his or her shack on the property of*

another, that is an act of occupation of the latter's property and eviction protections apply if that person is to be prevented from occupying that shack."

[21] In my view the respondents' reliance on this passage is sadly misplaced. The context in which the passage was written is crucial to get its meaning. My understanding of the **Zulu** matter is that the appellants in that case sought leave to intervene and the court found that the fact that they have built on a particular piece of property although they did no occupy it, was sufficient for them to be regarded as having an interest in the matter to entitle them to intervene.

[22] In **Barnette & Others v Minister of Land Affairs and Others 2007 (6) SA 313 (SCA)** the court held **at par 37** in relation to the application of PIE that:

"On balance, I tend to agree with the government's argument that considerations of fairness and equity do not favour the defendants' continued stay. But, as I have said, this whole debate had been introduced by the defendants on the basis of the expressly stated hypothesis that the provisions of PIE have a bearing on the case. Thus the pivotal question is whether PIE does in fact apply. It is to that question I now turn. I believe it can be accepted with confidence that PIE only applies to the eviction of persons from their homes. Though this is not expressly stated by the operative provisions of PIE, it is borne out, firstly, by the use of terminology such as 'relocation' and 'reside' (in ss4(7) and 4(9) and, secondly, by the wording of the preamble, which, in turn establishes a direct link with s 26(3) of the Constitution (see e.g. Ndlovu v Ngcobo; Bekker and Another v Fika 2003 (1) SA 113 (SCA) ([2002] 4 All SA 384) in para [3]). The constitutional guarantee provided by s 26(3) is that 'no-one may be evicted from their

home, or have their home demolished, without an order of court made after considering all the relevant circumstances."

[23] It further held at paragraph 38 of the report that:

> *"This leads to the next question: can the cottages on the sites that were put up by the defendants for holiday purposes be said to be their homes, in the context of PIE? I think not. Though the concept 'home' is not easy to define and although I agree with the defendants' argument that one can conceivably have more than one home, the term does, in my view, require an element of regular occupation coupled with some degree of permanence. This is in accordance, I think, with the dictionary meanings of: 'the dwelling in which one habitually lives; the fixed residence of a family or household; and the seat of domestic life and interests' (see e.g. The Oxford English Dictionary 2 ed vol VII)."*
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> This is the law as I understand it.

[24] Coming to the case under consideration, it seems clear to me that the respondents invaded the property between the 30 – 31 January 2018. The land has been vacant before then. The evidence is that the donation of the piece of land was only to be discussed at council meeting of 30 January 2018. The respondents, in an effort to jump the queue of people who would be provided with houses, rushed to occupy the land. The evidence from the applicant is that the structures that they put up on the property were incomplete. This is supported by the sheriff's return of service wherein the sheriff states that they removed the structures (that were unoccupied). There were 75 uninhabited structures which the sheriff demolished.

[25] It is clear in my mind that those structures on the property were not occupied. I am fortified in this view by the following: Nowhere in the sheriff's return of service is it stated that there were personal effects belonging to the invaders. The respondents, in their answering papers, attached a list of names and their residential addresses who are said to be the invaders. This lends support to the applicant's submission that the structures were unoccupied. Furthermore, there is no allegation by the respondents that the Sheriff removed their personal belongings which are ordinarily found in homes namely, furniture and groceries. These structures cannot be regarded as the respondents' homes. It may be accepted that the respondents were in the process of establishing their second homes as they already have other homes as evidenced by their residential addresses. At the stage when the order was obtained, the structures did not perform the "function of a form of dwelling or shelter for human" to enjoy protection under PIE.

[26] The applicant did not pursue any order for costs against the respondents. As a result, no order in that regard will be made.

[27] In the circumstances the following order is made:

1. The rule nisi is confirmed;
2. There is no order for costs.

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D I MATLAPENG

ACTING JUDGE

North West Division, Mahikeng

APPEARANCES:

DATE OF HEARING	:	25 OCTOBER 2018
DATE OF JUDGMENT	:	22 NOVEMBER 2018
COUNSEL FOR THE APPLICANT	:	ADV. M. SMIT
COUNSEL FOR THE RESPONDENTS	:	ADV. O. I. MONNAHELA
ATTORNEYS FOR THE APPLICANT	:	MTHINI ATTORNEYS C/O ZISIWE ATTORNEYS
ATTORNEYS FOR THE RESPONDENTS	:	CLIFFE DEKKER HOFMERY INC. C/O NIENABER & WISSING ATTORNEYS