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

CASE NO: M408/2023

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

INNOCENT PHIWAYINKOSI MAZIBUKO	First Applicant
THUSO BILLY TSHEPSIO SEEMISE	Second Applicant
DANIEL PHASA	Third Applicant
JOHNSON THEMBA ZULU	Fourth Applicant
MMAPEO ROSSY MOEPI	Fifth Applicant
KAGISO JEFFREY KGOSIEMANG	Sixth Applicant

GUGULETHU NGCOBO	Seventh Applicant
FRANS JOSIA MODISANE	Eighth Applicant
ROSSA MMAMPHO MOEENG	Ninth Applicant
NKATLHOLANG WILLIAM MOEPI	Tenth Applicant
KGALALELO GLORIA RAMENWE	Eleventh Applicant
TYRONE CHRESTEN KOK	Twelfth Applicant
ALTHIENNE CHRISTEL KOK	Thirteenth Applicant
KAGISO ELIAS MANJIE	Fourteenth Applicant
NTOKOZO NQABENI	Fifteen Applicant
MAPULE NONVULA THOLA	Sixteenth Applicant
LOUISA NYEMBE	Seventeenth Applicant
SIBUSISO NQABENI	Eighteenth Applicant
OBAKENG RAYMOND GAOTINWE	Nineteenth Applicant
and	
RUSTENBURG LOCAL MUNICIPALITY	Respondent
CORAM: PETERSEN J	
HEARD: 15 AUGUST 2024	

Delivered: This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date and time for hand-down is deemed to be 10h00am on **06 JANUARY 2024**.

ORDER

1. The conduct of the respondent in evicting the applicants from their homes and demolishing the dwellings and/or structures they erected on the vacant land along G[...] Street in Karlien Park, forming part of The Remainder of Portion 1 of the Farm Town and Townlands of Rustenburg 272 JQ (Erf 2[...]) ("the property") without a valid or lawful court order is declared unlawful, invalid and inconsistent with section 26(3) of the Constitution of the Republic of South Africa, 1996; and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").
2. It is further declared that the order of this Court issued on 10 October 2019, does not apply to the applicants or any other person since the order achieved the purpose for which it was issued at the time. The order does not apply in perpetuity.
3. The respondents are directed to restore the applicants' possession of the property and to construct suitable dwellings for the applicants on the property within thirty (30) days of the order of this Court alternatively to accommodate the applicants on other suitable property identified by the respondent with due regard to the personal circumstances of the applicants.
4. The respondent is directed, if possible, to return all personal belongings of the applicants in its possession or the possession of its agents within thirty (30) days of the order of this Court. If compliance with this order is not possible in respect of the personal belongings of the applicants, the

applicants retain the right to institute a claim for damages against the respondent, if so advised.

5. In the event of possession of the property being restored to the applicants, the respondent is interdicted and restrained from again evicting and demolishing the applicants' dwellings on the property without a valid or lawful court order.
6. The respondent shall pay the costs of the application, which costs shall include the costs of employing counsel.

JUDGMENT

PETERSEN J

Introduction

[1] This application, one of many that engage the attention of our Courts on a regular basis, implicates the vindication of the right to housing. It evinces epithets often coined by our Courts in seeking to highlight the problem in our nascent democracy, where the values entrenched in the Constitution evade most of our people. In a most recent decision of the Constitutional Court in *Charnell Commando and Others v City of Cape Town and Another* (CCT 49/23) [2024] ZACC 27 (20 December 2024), Mathopo J, writing for the majority stated as follows:

[1] “We have a long way to go because we still live with the legacy of apartheid, the legacy of violence, the legacy of separateness, of suspicions around people, the legacy of tremendous disparities between white and black, the legacy between some living in opulence and some in dire poverty, the legacy of racism.” This statement is by Abdullah Mohamed Omar, a man who held many titles, but

relevant to this matter, a renowned freedom fighter and a lawyer who was compelled to move his practice to Woodstock, Cape Town due to the stringent and racist provisions of the Group Areas Act in the 1960s. He made this statement during the post-apartheid era, lamenting the fact that very little had changed in the lives of some members of the community.’...

[86] While social housing is undoubtedly important, it should not come at the expense of the human rights of others and their basic dignity. To the extent that both social and emergency housing lie at one end of the spectrum, a distinction may be made between individuals who meet the financial threshold for social housing, and are therefore capable of affording the basic housing, and those who lack the means to do so. The latter face heightened vulnerability and, as such, are at the state’s mercy for the realisation of their constitutionally enshrined right of access to adequate housing by virtue of their dire plight but distinct circumstances which warrant urgent consideration. The under-emphasis of emergency housing has the effect of disregarding those who urgently require assistance from the state, for reasons beyond their control. “The Constitution obliges the state to act positively to ameliorate these conditions.” In *Mazibuko*, this Court held:

“At the time the Constitution was adopted millions of South Africans did not have access to the basic necessities of life, including water. The purpose of the constitutional entrenchment of social and economic rights was thus to ensure that the State continue to take reasonable legislative and other measures progressively to achieve the realisation of the rights to the basic necessities of life. It was not expected, nor could it have been, that the State would be able to furnish citizens immediately with all the basic necessities of life. Social and economic rights empower citizens to demand of the State that it act reasonably and progressively to ensure that all enjoy the basic necessities of life. In so doing, the social and economic rights enable citizens to hold government to account for the manner in which it seeks to pursue the achievement of social and economic rights.”

[2] The applicants approach this Court seeking an order in the following terms:

- “1. Declaring the conduct of the Respondent of evicting the Applicants from their homes and demolishing the dwellings and/or structures they erected on the vacant land along G[...] Street in Karlien Park (“Property”) without a valid or lawful Court Order to be unlawful, invalid and inconsistent with the Constitution and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”).
2. Directing the Respondent to restore the Applicants’ possession of the Property and construct dwellings for the Applicants on the Property equivalent to those it demolished within 30 days of the Order of this Court.
3. Directing the Respondent to return all personal belongings of the Applicants in its possession or the possession of its agents within 30 days of the Order of this Court.
4. Interdicting and restraining the Respondent from, once again, evicting and demolishing the Applicants’ dwellings on the Property without a valid or lawful Court Order.
5. Directing the Respondent to pay the costs of this suit, including the costs of employing counsel.
6. Granting such further and/or alternative relief as this Honourable Court may deem fit.”

[3] The purpose of the application evident from the relief sought and stated in the founding affidavit is declaratory in nature and seeks a mandamus against the respondent.

Parties

[4] The applicants, the occupiers of the land situate at G[...] Street, Karlien Park (‘the property’), will be referred to as the occupiers of the property.

[5] The respondent the Rustenburg Local Municipality, which opposed the relief sought, will be referred to as the Municipality.

The background sketched by the applicants

[6] The occupiers of the property relying in the main on the facts deposed to by the first applicant in the founding affidavit, sketch the following background. They started occupying the vacant property from 2019 until July 2022 by erecting structures of varying kinds and sizes, based on their respective personal circumstances. The reason for occupying the property is based on the occupiers of the property being from disadvantaged backgrounds and desperation for a place to call home.

[7] The first applicant avers that he occupied the property in August 2021, to establish a home for himself and his family which constituted his partner and one year old son at the time of the eviction. He states that although he is employed, he was unable to enter the property market as he did not qualify for a bond or a RDP house.

[8] The second applicant, an unemployed male, avers that he occupied the property in 2019 where he lived alone in the one and half room structure he built from pre-cast concrete walling.

[9] The third applicant, employed as a security guard, started occupying the property on 1 January 2022 where he lived in a one room shack with his partner.

[10] The fourth applicant, an unemployed male, avers that he started occupying the property on 5 July 2021. He had been living at his parental home and wanted to start a life of his own when he occupied the property. He erected a two-room shack where he resided alone.

[11] The fifth applicant, an unemployed female, avers that she started occupying the property around June 2021 on the basis that she needed a more secure place to

stay with her family. She erected a one-room shack and one room-house with pre-cast walling which she occupied with her two minor children.

[12] The sixth applicant, an employed rock drill operator, started occupying the property on 1 June 2021. He erected a three-room house with pre-cast walling with an additional one-and-a-half room shack, which he occupied with his brother.

[13] The seventh applicant, an employed cashier, started occupying the property on 2 August 2021. She erected a two-room house with pre-cast walling, which she occupied with her sister.

[14] The eighth applicant, an employed assistant boilermaker, started occupying the property on 1 January 2021. He erected a two-room shack which he occupied with his partner and three minor children. He claims that he occupied the property in search of a more secure place to live. Prior to occupying the property, he rented a room for R800 per month, and presently rents a two-bedroom house at R800 per month where he resides with his partner and three minor children. He asserts convenience for work purposes and costs savings of travelling, as a factor for occupying the property.

[15] The ninth applicant, a self-employed female, started occupying the property on 15 June 2021, as she wanted a home for herself and her two minor children. She had been renting a room at R400 per month prior to occupying the property. She erected a three-room house with pre-cast walling. She presently rents a two-room shack at a cost of R500 per month, which she asserts she cannot afford.

[16] The tenth applicant, an unemployed male, started occupying the property on 6 July 2021 as he wanted a home of his own. Prior thereto, he lived with his cousin at a rental property. He erected a one-and-a-half room house with pre-cast walling where he resided alone. He presently lives in a backroom at his sister's home at no cost to himself.

[17] The eleventh applicant, an adult female alleges that that she employed as a receptionist and later claims to be unemployed, started occupying the property

during 2021 when she lost her employment at that stage and could no longer afford the rental where she was residing. She erected a three-bedroom shack on the property at a costs R12 000.00 and resided there with her two unemployed cousins. She presently resides with her aunt and cousin at no cost to herself.

[18] The twelfth applicant, an unemployed male, started occupying the property during February 2022, as he was unemployed and could not afford to pay rent. He erected a one-room shack on the property where he resided alone. He presently resides at his elder brother's property with his partner and son, in a caretaking capacity.

[19] The thirteenth applicant, an unemployed male, started occupying the property during 2021, as he wanted to establish a stable home for himself. Prior thereto, he lived with his mother and sister in a one room apartment which he shared with his mother and sister at a cost of R1200 per month. He erected a one rom shack on the property. He presently resides with a friend in a one-room garage which his friend rents.

[20] The fourteenth applicant, an unemployed female, started occupying the property during July 2022, as she wanted to establish a stable home for herself. Prior thereto, she lived with a friend. She erected a two-room shack on the property which she lived with her sister and six-year-old disabled daughter. She presently rents a room at R2500.00 per month, using the disability grant of her daughter and funds provided by her brother for such rental.

[21] The fifteenth applicant, an employed male artisan, started occupying the property during February 2022. He avers that he started occupying the property as he did not have stable employment and could not afford to rent any property. He, however, asserts that he was renting a room at R850 per month. He erected a one-and-a-half room house using per-cast concrete walling where he resided alone. He presently resides at his parental home with four adult siblings.

[22] The sixteenth applicant, an unemployed female, started occupying the property during February 2022, as she could not afford rent, albeit that she rented a room

for R1300 per month. She erected a one-room shack on the property with building material supplied by a friend's mother. She resided there with her three minor children. She presently rents a back room at R1000 per month.

[23] The seventeenth applicant, a self-employed female, started occupying the property during March 2022 as she did not have a stable income and needed a place of her own. She rented a room at R1300 per month. She erected a two-room shack which she occupied with her minor son and two minor nephews. She presently lives in a one-room shack with her son and nephews with no cost indicated.

[24] The eighteenth applicant, a self-employed adult male, started occupying the property during February 2022, as he did not have a stable income and needed a place of his own. He was renting a room at R2500 per month. He erected a two-room shack with income he generated as a mobile mechanic. He resided at the property alone. He presently rents a backroom at R2000 per month.

[25] The nineteenth applicant, a self-employed adult male, started occupying the property during May 2022 as he did not have a consistent income and needed a place of his own to call home. Prior thereto he rented a property at R1000 per month. He erected a one-room house on the property with pre-cast concrete walling and a one-room shack, which he occupied with his partner and minor son. He presently rents a one-room shack at R750 per month.

Post eviction

[26] The occupiers of the property state that post eviction, they were made aware of a court order of 6 March 2018 under case number UM38/2018 ('the 2018 court order'). The order concerns eviction proceedings between the Rustenburg Local Municipality and the Unlawful Occupiers of Stand Numbers 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of Extension 12, Zinniaville, Rustenburg, the Unlawful Occupiers of the Remaining Stands situated at Extension 12, Zinniaville, Rustenburg; and any other person who intends on taking occupation of stands or any portion thereof situated at Extension 12, Zinniaville, Rustenburg, amongst others.

[27] The occupiers of the property contend that the 2018 court order does not relate to them as the property they occupied is in Karlien Park and not Zinniaville; they were not the respondents in that matter; and that it was imperative for the applicant to apply for an order to evict them if it considered that it had a legal basis to do so.

[28] In concluding the founding affidavit, the occupiers of the property set out the law relevant to evictions by way of argument. It is trite in terms of the common law and the Uniform Rules of Court that affidavits filed in applications should be restricted to facts. Legal propositions have no place in affidavits and are best left for its proper place in heads of argument or oral submissions by Counsel. The Municipality similarly and to a greater extent than the occupiers of the property, falls foul of this salient principle.

The opposition to the application

[29] The answering affidavit of the Municipality is by no means a model of clarity. The content overall is replete with legal argument and an exposition of various legal concepts relevant to applications of this nature. It does not tangentially and meaningfully engage with the facts on which the application is based, and the factual basis for its opposition.

[30] The only content of the answering affidavit of the Municipality that deals remotely with facts is found in the very brief background it sketches relevant to the eviction. Even then, that background is predominantly predicated on legal argument.

[31] The background facts averred by the Municipality is essentially this. The property invaded by the applicants is identified as *'The Remainder of Portion 1 of the Farm Town and Townlands of Rustenburg 272 JQ (Erf 2[...])'* ('Portion 1 properties'). This constitutes all vacant land which has not been zoned by the Rustenburg Local Municipality. The Municipality contends that the occupiers of the property mistakenly refer to the property as G[...] Street, Karlien Park. The remainder of Portion 1 is accommodated in the *'Cities Planning for the Development of Roads*

and Housing' in terms of which construction is underway and controlled by available resources made available by the National and Provincial Treasuries.

[32] The Municipality contends that it has over the years experienced a crisis where Portion 1 properties were invaded, which includes Erf 2[...]. To this end, the Municipality contends it launched an application on 10 October 2019, to prevent invasion of all the properties under the remainder of Portion 1, and the erection of any structures and/or occupation of unoccupied structures. Notably, the 2019 order confirmed a rule *nisi* which had previously been issued. The application was successful, and an order was issued under hand of Judge President Hendricks (Deputy Judge President as he then was). The order was granted at a time when the structures on the property were unoccupied, and the stands illegally acquired with the intention to establish an informal settlement.

[33] The relevant parties in the 2019 application were the Rustenburg Local Municipality and the Unlawful Invaders of Remaining Portion 1 of the Farm Town and Townlands of Rustenburg 272JQ (cited as the first respondent therein). The 2019 order reads as follows:

“1. THAT: The rule *nisi* be and is hereby confirmed in the following terms:

- 1.1. That the First Respondent be and is hereby ordered not to invade REMAINDER OF PORTION 1 OF THE FARM TOWN AND TOWNLANDS OF RUSTENBURG 272JQ, and/or to demarcate stands or erects structures on the property, and/or reside on the property.
- 1.2. That all of the First Respondents who have erected unoccupied structures at the date of this order be ordered and interdicted not to take possession of same, and/or not to reside in same.
- 1.3. That the Second and Third Respondents be ordered to assist the Sheriff in enforcing the above stated order, should the First respondent not comply with same.

- 1.4. That the Sheriff, with protection of the Second and Third Respondents (if necessary), be authorized to demolish all unlawful, unoccupied structures and demarcations at the property situated at REMAINDER OF PORTION 1 OF THE FARM TOWN AND TOWNLANDS OF RUSTENBURG 272JQ.
- 1.5. At the First respondents, be ordered and interdicted not to be in a radius of 100 meters from REMAINDER OF PORTION 1 OF THE FARM TOWN AND TOWNLANDS OF RUSTENBURG 272JQ, with intention of violating the terms of the aforementioned orders...”

[34] The Municipality therefore contends that the 2019 order applied to the applicants and all other members of the public. It is based on the 2019 order that the Sheriff and the South African Police Service, on 22 August 2022 demolished unoccupied illegal structures on the property.

Submissions

[35] The occupiers of the property do not dispute that the Municipality may institute proceedings for purposes of evicting illegal occupiers and demolishing their structures, but contend that the Municipality *in casu*, failed to do so, which consequently renders its conduct unlawful. They contend that the attempt by the Municipality to rely on the 2019 order does not justify the alleged unlawful eviction of the occupiers of the property and the demolition of their dwellings and/or structures.

[36] The occupiers of the property further contend that the 2019 court order did not apply to the occupiers of the property in 2022, as they were not part of that group; and makes no reference to potential occupiers and/or future occupation. With reliance to two authorities, *Potential Unknown Occupiers of Erf, Mantsopa v Municipality and another v Mantsopa Local Municipality* (1381/2015) ZAFSHC 162 (28 August 2015); and *Residents of Moidraai Farm, Sasolburg v Metsimaholo*

Local Municipality and Others [2020] JOL 46526 (FB), the occupiers of the property contend that there is no such person as a potential unlawful occupier in terms of PIE.

[37] In *Residents of Moidraai Farm, Sasolburg v Metsimaholo Local Municipality and Others*, the court found that the 2017 court order must be considered against the prevailing factual background and the circumstances at the time of the granting of the order. It then specifically found that it would be improper to expect the court to take into account the circumstances of unlawful occupiers who were not in occupation of the land then, but only in the future; since the court would not be in a position to implement the provisions of PIE to persons and situations which were not in existence or had arisen yet. To do so it found would be a gross violation of the rule of law, PIE and the Constitution for the court to apply the circumstances relevant to the unlawful occupiers of land in 2017 to the applicants, who only occupied the land during 2019, without giving them the right of audience in accordance with the *audi alteram partem* rule. The court found that the order of 9 March 2017 was a valid order which served its purpose and was duly discharged. As such it could neither serve as a notice as required by PIE nor as a basis for an *ex parte* against the applicants. It consequently found the 2017 order invalid as against the applicant. The same position prevails *in casu* according to the occupiers of the property.

[38] The occupiers of the property ultimately contend that they have made a case for the grant of the interdictory relief which is two-fold, a mandatory interdict and a prohibitory interdict. In terms of the mandatory interdict sought, the occupiers of the property seek restoration of the status *quo ante* before their unlawful eviction and/or demolition of their dwellings; and in terms of the prohibitory interdict, the occupier's of the property seek an order prohibiting the Municipality from evicting them from the property and/or demolishing their structures without a lawful court order. They contend that all there requirements for a final interdict have been met, in that they have a clear right in terms of the Constitution and PIE; their rights have been breached and that there is no alternative remedy available to them at this stage, following their eviction and/or demolition of their structures.

[39] The Municipality in the main places much reliance on the 2019 order to justify its actions. It makes a broad allegation that it is abundantly clear from the reading of the 2019 order that it applied and prevented any further land invasion of the Remainder of Portion 1 of the Farm Town and Townlands of Rustenburg; and that it applied to the occupiers of the property *in casu*.

[40] The extensive reference by the Municipality to, *inter alia*, The Rustenburg Local Municipality Land Use Scheme 2009 and 2020 and the Spatial Planning and Land Use Management Act 16 of 2013 ('Spluma') in its answering affidavit and in its submissions in the heads of argument, respectfully does not avail it. The relief sought in the present application does not allude tangentially to any of these issues and is restricted to the conduct of the Municipality in 2022, which the Municipality in answer, seeks to justify with the 2019 order. Nothing more and nothing less.

Discussion

[41] The occupiers of the property seek final relief by way of a mandamus. The approach of a court in motion proceedings has been re-affirmed from time to time by our apex courts. In *National Director of Public Prosecutions v Zuma* [2009] ZASCA 1; 2009 (2) SA 277 (SCA) at para 26, the SCA said:

"Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the *Plascon-Evans* rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant's ... affidavits, which have been admitted by the respondent ..., together with the facts alleged by the latter, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers..."

[42] The structures erected on the property were demolished by the Municipality on 22 August 2022. The occupiers of the property maintain that the structures which they called home were occupied (resided in) at the time. The Municipality, however, contends that the structures were unoccupied. Photographic evidence adduced by the occupiers of the property purport to portray structures that they maintain were demolished, with signs of habitation.

[43] An analogous scenario manifested itself in *Seale and Others v City of Johannesburg Metropolitan Municipality and Another* (2023/078684) [2023] ZAGPPHC 754 (25 August 2023), where the defence of the municipality and the retort by the applicants was similar to that *in casu*. The following was said at paragraphs 6 and 7:

“[6] The Respondents state that they only use the interdict to demolish unoccupied structures, prevent people from settling on the land, and not to evict people from living on the land. In fact, they were dismantling false shelters – unoccupied but only filled with a few household items on the day of the demolition, to create the impression that they occupied the property. According to the supporting affidavit of the service providers, on the day of the evictions, the team took pictures inside and outside of the structures, certifying them unoccupied, to later demolish them. They attached photographs of the empty structures they demolished, some half-built, some finished.

[7] The Applicants deny this. Their case is that the community has occupied the property since 2017, but mostly since 2022. They also submitted photographs of the eviction. In these photographs are trucks filled with material and a water cannon (the JMPD confirmed this during the inspection *in loco*) spraying water on what looks like burning debris, amongst other things. There are also photographs of household items like a plastic bathtub, cutlery, mattresses, blankets, pillows and the like lying outside in the open.”

[44] On the dispute created *in casu* by the Municipality on the structures being unoccupied; and the version of the occupiers of the property that the structures

were occupied, on the application of the *Plascon Evans* rule, the version of the occupiers of the property must prevail.

[45] As to the 2019 order, the structures were demolished by the Municipality, relying on the 2019 order. There are several patent problems with the reliance of the Municipality on the 2019 order. The 2019 order specifically cited “Unlawful Invaders of Remaining Portion 1 of the Farm Town and Townlands of Rustenburg 272JQ”. On the version of the Municipality, the remaining portion covers several pieces of municipal land in the Rustenburg and not only the land the occupiers of the property claim to have occupied.

[46] There is no evidence with accompanying proof that any of the occupiers of the property were part of the unlawful invaders as envisaged in the 2019 order; and even if they were how service of the 2019 order reasonably would have come to their attention. The Municipality very broadly alleges that the 2019 order included all other members of the community (society).

[47] The tenet of the 2019 order is clear. It addressed conduct which was extant at that time. The unlawful invaders (not occupiers) were interdicted from taking possession of the unoccupied structures or to reside in same. The South African Police Service were ordered to assist the Sheriff to enforce the order, and if the unlawful invaders failed to comply with same the Sheriff was authorised to demolish all unlawful, unoccupied structures and demarcations at the property situated at REMAINDER OF PORTION 1 OF THE FARM TOWN AND TOWNLANDS OF RUSTENBURG 272JQ. It is highly improbable in my view, that the 2019 order envisaged all the vacant land alleged to be encompassed under the remaining portion.

[48] The Municipality adduced no evidence that the 2019 order was enforced at the time it was granted. After all, why apply for an order, secure same and then not enforce it. After a hiatus of three (3) years, given the Covid pandemic and restrictions it brought about during that period, the Municipality on 22 August 2022, nearly three (3) years later enforced the 2019 order, claiming the structures remain unoccupied all that time. This is simply inexplicable.

[49] I agree with the dictum in *Seale and Others v City of Johannesburg Metropolitan Municipality and Another* which applies equally to the present application. The following was said regarding the 2017 interdict in favour of the municipality in that matter:

“[45] Furthermore, an interdict sought to prevent harm from happening (such as the invasion of land), is only for prevention of *imminent* harm. A 2017 interdict could not have referred to harm so far in the future.

[46] Holding on to an interdict so long turns the interdict into a one-sided decree, as the now unknown people intending to unlawfully occupy property are not afforded to contest the granting of a final interdict in court and could not have contested the granting of the final interdict at the time it was granted. They will also not be identified during proceedings as there are no proceedings.

[47] The identities of those respondents, in fact, now change daily. The people “intending to unlawfully invade the land” when the order was granted are not the Applicants.

[48] The 2017 order is abused as a continuous justification for self-help by the Respondent. Furthermore, when an interdict such as the one that the CoJ relies on is used to evict the people from the land, this contravenes s 26(3), as it allows for an eviction before a court has considered any relevant circumstances. As stated above, the Constitution requires more, and PIE, not an interdict, was designed to ensure that the process also considers the occupiers’ circumstances.’

[50] The Municipality simply could not rely on the 2019 order to justify the evictions or demolitions it claims, of 22 August 2022. It was imperative for the Municipality to approach the Court with an application in terms of PIE. The sentiments expressed at paras 27 to 35 of *Seale and Others v City of Johannesburg Metropolitan Municipality and Another* resonate with this Court and are endorsed in the present application. The remainder of the discussion and findings in that matter, with the necessary changes to the relief sought in the present application, is equally

applicable. I also align myself with the ratio in *Residents of Moidraai Farm, Sasolburg v Metsimaholo Local Municipality and Others* [2020] JOL 46526 (FB), which accords with *Seale and Others v City of Johannesburg Metropolitan Municipality and Another*.

Conclusion

[51] I am satisfied that the occupiers of the property have established a case for the relief sought. An order of restoration by way of a mandatory interdict and a prohibitory interdict stands to be granted.

Costs

[52] Costs follow the result. The occupiers of the property are accordingly entitled to costs of the application, including the costs consequent upon the employment of counsel.

Order

[53] The following order is accordingly made:

1. The conduct of the respondent in evicting the applicants from their homes and demolishing the dwellings and/or structures they erected on the vacant land along G[...] Street in Karlien Park, forming part of The Remainder of Portion 1 of the Farm Town and Townlands of Rustenburg 272 JQ (Erf 2447) (“the property”) without a valid or lawful court order is declared unlawful, invalid and inconsistent with section 26(3) of the Constitution of the Republic of South Africa, 1996; and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”).
2. It is further declared that the order of this Court issued on 10 October 2019, does not apply to the applicants or any other person since the order

achieved the purpose for which it was issued at the time. The order does not apply in perpetuity.

3. The respondents are directed to restore the applicants' possession of the property and to construct suitable dwellings for the applicants on the property within thirty (30) days of the order of this Court alternatively to accommodate the applicants on other suitable property identified by the respondent with due regard to the personal circumstances of the applicants.
4. The respondent is directed, if possible, to return all personal belongings of the applicants in its possession or the possession of its agents within thirty (30) days of the order of this Court. If compliance with this order is not possible in respect of the personal belongings of the applicants, the applicants retain the right to institute a claim for damages against the respondent, if so advised.
5. In the event of the possession of the property being restored to the applicants, the respondent is interdicted and restrained from again evicting and demolishing the applicants' dwellings on the property without a valid or lawful court order.
6. The respondent shall pay the costs of the application, which costs shall include the costs of employing counsel.

A H PETERSEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicants : Adv R Richards
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