

**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

CASE NO: 1355/2011

In the matter between:

OMAR ABDI YUSSUF First Applicant

ABDINUUR MOHAMMED ALI Second Applicant

and

YE KHAN INVESTMENTS CC
(Reg. No. CK1991/009740/23) First Respondent

YOUSOUF EBRAHIM KHAN Second Respondent

J U D G M E N T

Weinkove A.J.

1. I originally gave a judgment in this matter on 28 April 2011, which judgment must be read together with the transcript of the evidence I heard in argument. That transcript is contained in the Court file and is also an annexure to Applicants' replying affidavit in the condonation application.
2. Applicants contend that leave should be granted because the Court misdirected itself by not holding that the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 ("the Pie Act") should have been applied. The argument is that the

premises concerned is not a “guest house” as described in the founding papers but is in fact a “hostel”. Counsel for Applicants concedes that this submission is not clearly made out in the papers but submits that some allowance should be made for the many different attorneys who took over as Applicants’ attorneys. Counsel submits that the premises were used for long term occupation of persons and not for the short time renting of premises such as would be the case in a guest house. Counsel for Applicants rely on a decision in the matter of

Blue Moonlight Properties 39 (Pty) Ltd v The Occupiers of Saratoga Avenue and another, All South African Law Reports March [1] 2009 at p.485.

That case concerned an application for eviction of people who were unlawfully occupying business premises and using it as a residence, albeit that the premises was previously some kind of carpet manufacturing property which had ceased production and which was being used by various tenants who were occupying these premises as a home.

3. Respondents have referred me to a decision in the matter of

Shoprite Checkers (Pty) Ltd v Jardim, 2004 (1) SALR p.502

where the Court held that the provisions of the Pie Act are not applicable to ejection of persons occupying non-residential properties.

4. The Pie Act was promulgated to provide for the prohibition of evictions of persons who were unlawful occupiers of property and who had no access to other accommodation.

5. In the definitions clauses of the Act, an unlawful occupier

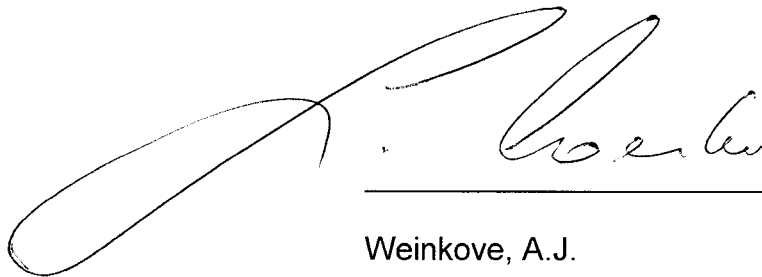
“means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996)”.

The Act was passed to provide some protection to squatters and other persons who were occupying land or premises unlawfully and without any leases because they were desperate and had no other form of shelter or home. I am unpersuaded that a guest house qualifies for protection in terms of the Pie Act because occupants in a guest house are occupying the premises for a fixed period of time with the express consent of the owner or the person in charge of the premises. This is a commercial property, like a hotel, which provides for short term occupation of persons who are visitors and not to persons who are long term occupiers of land or property because they have nowhere else to live.

6. In the circumstances of this case I do not accept that another Court could reasonably come to the conclusion that a guest house qualifies for protection in terms of the Pie Act. The provisions of the Pie Act would not ordinarily apply in a case of this nature unless directly and expressly raised as a defence. I also do not accept that there is a difference between a “guest house “and a “hostel” which would render the latter

susceptible to the provisions of the Pie Act, but not the former. No guests are specified in the affidavits as being in need of protection and the reference to the Pie Act is couched in vague terms as an after thought. That is not the purpose of the Act or the Constitution which provides protection to persons who are destitute and have taken refuge in some or other property because they have nowhere to live. The Act cannot be applicable to persons who move into a guest house or hotel. In the result, the application is refused, with costs.

7. As far as the application for condonation is concerned, it is unnecessary for me to deal with this. Respondents have in any event withdrawn any opposition to this application for condonation of the late filing of the application for leave to appeal. There will accordingly be no special order for costs in respect of the late filing of the application for leave to appeal.



Weinkove, A.J.