REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 200/2021

In the matter between:

BERGRIVIER BOERDERY (PTY) LTD	**Applicant**
And	
LYNOL JULIUS PIETERSON	**First Respondent**
LE-ANZE CATHERINE PIETERSON	**Second Respondent**
SWARTLAND MUNICIPALITY	**Third Respondent**

Heard: 11-13 December 2023

Delivered: 03 June 2024

JUDGMENT

LEKHULENI J

Introduction

[1] This application is a prototypical example of an abuse of power exercised by the Master over his Servant, whose abuse culminated in severing the Master and Servant relationship between the two. This unsavoury relationship climaxed to an

application in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 *('the PIE Act')* in which the applicant seeks an order for the eviction of the first and second respondent *('the respondents')* from the property situated at erf 1[…] K[…], also known as 1[…] P[…] Street, K[…] *('the property').*

The Factual Background

[2] The applicant is the registered owner of the property, which the respondents currently occupy. Mr Bernard Conradie is the sole Managing Director of the applicant, a juristic person seeking the eviction order against the respondents.

[3] The first respondent began working as a truck driver for Johan Conradie, the father of Benard Conradie, in Die Tuin Halfmanshof in Porterville on 22 November 1984 at the age of 24. The first respondent's job was to transport employees from town to the farm daily. In 2010, Bergrivier Boerdery *('the applicant')*, duly represented by Mr Barnard Conradie, purchased the Zanddriftt Nr 149 farm. After 22 years of dedicated service to Mr Johan Conradie, the first respondent's career took a significant turn. He began working for Bernard Conradie at the Zanddrift farm in 2010, initially as a labourer and later as a farm manager. However, in 2020, their relationship, which had been marked by loyalty, soured and was eventually terminated by mutual agreement.

[4] In 2012, Mr Johan Conradie, the father of Bernard Conradie, informed the first respondent that there was an opportunity for the previously disadvantaged people to apply for water rights. Mr Johan Conradie alerted the first respondent of the new government policy around issuing water use licenses to previously disadvantaged communities, which could be used as equity contribution for up to 30% of existing farming operations. Mr Johan Conradie had previously used his resources to register a Trust for the first respondent, the Lynol Pieterson Family Trust *('the Trust'),* in 2010. Mr Johan Conradie was one of the initial trustees of that Trust.

[5] Indeed, the said Trust duly applied for a water use license in terms of section 41 of the National Water Act 36 of 1998, and the application was granted with effect

from 15 December 2014. The water use license was intended to be used by the Trust as the equity contribution to acquire 30% in the Bergrivier Boerdery, the company which owns the Zanddrift farm on which the water allocation would be used. According to the respondents, Bergrivier Boerdery used the water allocated to the Trust for its farming enterprise and has failed to pay the Trust a cent for such usage.

[6] In 2015, the first respondent and Mr Bernard Conradie discussed the possibility of the first respondent and his family leaving Porterville, where they lived, and moving closer to Mooreesburg, where Bergrivier Boerdery's farm is situated. It was said that this move would benefit the first respondent by shortening his commute. Pursuant thereto, the respondents began looking at potential houses in Koringberg and decided to buy a property much closer to the Zanddrift farm than Porterville, which is 80 kilometres away from the farm. The respondents identified a property and approached Standard Bank for a loan of R750 000, which was the property's purchase price, but they could not obtain a loan for the full purchase price.

[7] The respondents approached Bergrivier Boerdery to assist them with a short-term loan of R180,000 to pay a deposit on the property's purchase price. The respondents undertook to repay the applicant from the proceeds of selling their former house in Porterville.

[8] On 16 March 2015, Bergrivier Boerdery, duly represented by Mr Bernard Conradie, agreed to lend the respondents the amount of R180,000 as well as the transfer costs necessary for them to purchase the property that they had identified. Bergrivier Boerdery paid the sum of R180,000 to the transferring attorney’s trust account on 16 March 2015 and an additional amount of R21071,08 in respect of transfer costs. In total, Bergrivier Boerdery paid the sum of R201 071, 08 into the transferring attorney’s trust account for the benefit of the respondents.

[9] The respondents were in terms of the loan agreement required to repay the applicant from the proceeds of the sale of their house in Porterville. However, they could not repay the total loan amount as there was an outstanding bond in their Porterville property. The respondents sold their Porterville property for R230,000,

and there were not enough funds left over to settle their full indebtedness to the applicant. However, on 03 September 2015, the respondents repaid R140,000 to Bergrivier Boerdery from the proceeds of the sale of their Porterville property. Pursuant thereto, the respondents remained indebted to the applicant in the amount of R61 000 being the balance of the total amount paid less the R140,000 paid to Bergrivier Boerdery.

[10] The respondents occupied their new house in Koringberg, and in 2017, there was a discussion between the respondents and Mr Barnard Conradie on the sale of this property. The relevant terms of the said discussions are in dispute. As it will appear later in this judgment, the discussions are germane to determining the applicant's eviction application against the respondents. The relevant terms of the said discussions, as articulated by Mr Barnard Conradie, are that the first respondent approached him and advised him that the respondents had fallen into arrears with their bond repayments regarding the property and that Standard Bank was threatening them with foreclosure.

[11] To assist the respondents and ensure they would not be left homeless, Mr Barnard Conradie asserted that Bergrivier Beordery agreed to purchase the property from respondents and settle their outstanding liability with Standard Bank. Mr Conradie stated that he advised Mr Pieterson that if he could come up with the money, he could purchase the property from Bergrivier. Mr Conradie asserted that the first respondent was given a right of first refusal in respect of the property.

[12] In addition, Mr Bernard Conradie averred that he informed the respondents that they could continue residing at the property for a nominal rental amount of R450 per week, which, according to him, was far below the market-related rental for similar properties in the area. Subsequently, the applicant and the respondents entered into a sale agreement in which the respondents sold their property in Koringberg to the applicant. On 26 February 2018, Bergrivier Boerdery paid the purchase price of R655,000 (outstanding amount on the bond) to the transferring attorneys and took the transfer of the property.

[13] On 28 February 2018, Bergrivier Boerdery and the respondents entered into a written lease agreement in respect of the said property. The lease agreement was for a fixed period of 24 months. The respondents were required to pay rent of R450 per week and be liable for electricity, water, refuse removal, and other municipal service charges for the property.

[14] Meanwhile, the respondents gave a different version to that of the applicant regarding the circumstances that led to the sale of this property. The respondents disputed the version proffered by Mr Bernard Conradie on the circumstances leading to the sale of their property. At the hearing of this application, the first respondent testified that towards the end of 2017, Mr Bernard Conradie approached the first respondent and informed him that the first respondent would no longer be able to pay the mortgage bond on his house. The first respondent questioned Mr Conradie why that would be the case, and in response, Mr Conradie told him that he would reduce the first respondent's salary to R1200 per week as he could no longer afford to pay him R15,000 per month. The first respondent asserted that he told Mr Conradie that he disagreed with what Mr Conradie wanted to do and that between him and his wife, they would continue to service the bond as they had been doing until then.

[15] The first respondent stated that Mr Conradie subsequently reduced the first respondent's salary to R1200 per week. Later, Mr Conradie then came to the first respondent’s house and stated that the first respondent would not afford to pay the mortgage bond on the property anymore, but he would help them by having the applicant purchase the property from them for the outstanding amount on the mortgage bond which was R660 000 at the time. The first respondent asserted that Mr Conradie also informed them that they could reside on the property and that when the dividends for the water use license started being paid out, they would repurchase the house from the applicant. The respondents denied that they were struggling to pay the bond or that they told Mr Conradie that they could not pay the bond instalments. The respondents further asserted that they were up to date with their bond account and had not received any demand whatsoever for any arrear instalment from Standard Bank.

[16] Notably, the respondent stated that they paid R750,000 as the purchase price of the house in 2015. By the time of the alleged sale of the house in 2017, the outstanding balance was already R655,000. This was the price at which Mr Conradie took over the house without compensating the respondents for the capital they had already put into it or the property's appreciation value. The respondents further asserted that a lease agreement was concluded with the applicant in terms of which they would pay rental in the sum of R450 per week while they were waiting for Mr Conradie to pay the dividends to their Trust from which dividends (arising from the water rights) the respondents would then buy back the house from the applicant. The respondents denied the version of Mr Conradie on the reasons that led to the sale of their property.

[17] On 28 February 2020, the lease agreement terminated by the effluxion of time and continued thereafter on a month-to-month basis. During June 2020, the applicant sought to sell the property occupied by the respondents to acquire additional capital to fund its business. Mr Conradie verbally notified the respondents that they had to vacate the property by 31 August 2020. The applicant sold the property to one Van den Berg and secured alternative accommodation for the respondents in Koringberg.

[18] On 27 August 2020, the respondents' legal representatives addressed the correspondence to Mr Conradie, advising him that the respondents would not vacate the property. During the same period, Mr Conradie called the first respondent to his office. He informed him that he would terminate the first respondent's services as their trust relationship had broken down. The applicant thereafter instituted eviction proceedings against the respondents.

[19] The respondents opposed the eviction application and raised several defences to the applicant's application. Firstly, the respondents averred that Mr Bernard Conradie abused the Broad-Based Black Economic Empowerment legislation to gain access to scarce water rights. Once he had used the respondents to obtain the water rights for his farming business, he discarded them like dirt and treated them like lepers.

[20] Secondly, the respondents asserted that Mr Conradie abused his privilege on education and, with the assistance of his qualified attorney, stole the proceeds of the sale of his house in Porterville and thereafter used the respondents' water rights for his own commercial benefits without paying the respondents a cent for it and in the process leaving the respondents with a usage bill of more than one million rands. The respondents contended that since the water use license was issued, the applicant used it and expanded its farming enterprise by planting various crops, including butternuts, almonds, and watermelon. Notwithstanding, the applicant refuses to pay the Trust or the first respondent for the use of the Trust's water use rights. Simply put, the respondents asserted that Bergrivier Boerdery, the applicant herein, is using water rights allocated to the Trust. In return, the applicant is not paying dividends or 30% of its net profits for such usage.

[21] Thirdly, the respondents contended that Mr Barnard Conradie expropriated without compensation when he unilaterally reduced the first respondent's salary from R15,000 to R4800 per month. According to the respondents, Mr Conradie knew that it would be difficult for the respondents to continue paying the bond on their property. Nonetheless, the respondents contended that they were not in arrears with their bond repayments when Mr Conradie unlawfully decreased the first respondent’s salary and offered to buy their house and further told them that they could repurchase it from the applicant once the respondent received their dividends of 30% equity in the applicant.

[22] The eviction application was set for a hearing in the opposed roll. Following the allegations in the relevant founding and opposing affidavits, a dispute of facts arose. Consequently, Fortuin J then referred the following issues for the hearing of oral evidence:

> 22.1 Whether the Trust and or Mr Pieterson and or Ms Pieterson are entitled 30% shareholding in Bergrivier Boerdery and or any dividends in return for the Trust making available its water use rights in terms of the water use license issued to the Trust by the National Department of Water Affairs;

22.2 Whether the Trust and the applicant (Bergrivier) entered into the co-operation agreement annexed to the replying affidavit and whether such agreement currently governs the relationship between the Trust and Bergrivier Boerdery;

22.3 Whether or not Bernard Conradie coerced Mr Pieterson and or Ms Pieterson into selling the property known as 152 Palmiet Street Koringberg to Bergrivier Boerdery;

22.4 Whether Mr Bernard Conradie, on behalf of Bergrivier Boerdery represented to Mr Pieterson that he would be entitled to re-purchase the property once Bergrivier Boerdery had paid to the Trust any dividends to which the Trust alleges it was entitled to as a consequence of the 30% shareholding referred to above;

22.5 Whether Bergrivier Boerdery utilised the Trust's water use allocation in terms of the water use license since the license was granted in 2014;

22.6 Whether Bergrivier Boerdery paid to the Trust any money for any use of the water allocated under the water use license since 2014;

22.7 Which party bears the obligation to pay all water use charges, costs, fees, tariffs, penalties, interest, and other amounts which are or become payable in respect of the water use license and the water abstracted in terms thereof.

Discussion

[23] Indeed, evidence was presented, and Mr Barnard Conradie and the two respondents were called to testify in this matter. For the purposes of this judgment, I will not repeat their evidence word for word but will refer to it when addressing the questions raised above.

[24] For the sake of convenience, I will deal with the issues raised above *ad seriatem.*

Is the Trust and/or Mr Pieterson entitled to 30% shareholding in Bergrivier Boerdery and to the payment of Dividends?

[25] The second respondent was the first witness to testify. She is married to the first respondent. The second respondent testified that Mr Conradie attended at her house and told her and her husband (first respondent) that they needed to sell their house in Koringberg to the applicant, and that her husband would get 30% dividends from the applicant and that an amount of R655 000 would be deducted from the dividends. In her evidence in chief, Ms Pieterson testified that the respondents had agreed to sell the house to Bergrivier Boerdery because Mr Barnard Conradie had told them that Mr Pieterson had 30% shareholding in Bergrivier Boerdery and that Mr Pieterson would receive dividends from the shareholding. According to her, she was not aware of an agreement between the Trust and the applicant that provided that the shares in the applicant would only be transferred to the Trust after the water use license was rectified to show that the holder of the water use license was Bergrivier Boerdery and not the Trust.

[26] Meanwhile, the first respondent (Mr Pieterson) averred in his answering affidavit and in his evidence in chief that in 2010, Mr Barnard Conradie took over the farming activities from his father and started Bergrivier Boerdery (Pty) Ltd, the applicant herein. The first respondent asserted that he continued his employment with the applicant until August 2020. The first respondent further averred that because Mr Bernard Conradie wanted to expand Bergrivier Boerdery, he needed additional irrigation water as the already available quantity was insufficient. Mr Conradie needed to apply to the Department of Water Affairs for a water use license that would allow the utilisation of irrigation water from the Bergrivier Government Water Scheme for the expansions planned.

[27] As part of the water use license requirements, the first respondent asserted that Mr Conradie needed to satisfy the Black Economic Empowerment provisions of the National Water Act 36 of 1998, in terms of which he needed to offer a 30% equity

stake to a Black Economic Enterprise. The Black Economic Enterprise would be applying for the license to use the water on Mr Conradie's farm. According to the first respondent, the water use rights being applied for would, once approved, be the Black Economic Enterprise's contribution to acquire 30% in Bergrivier Boerdery.

[28] When he started working for the applicant in 2010, Mr Johan Conradie registered the Lynol Pieterson Family Trust (the Trust) on his behalf. This entity was used as the black economic empowerment enterprise that applied for the water use license in favour of Bergrivier Boerdery. In return, the Trust would have 30% equity in the Bergrivier Boerdery. The first respondent further testified that although the water use license was approved and allocated to the Trust for the benefit of Bergrivier Boerdery, Mr Barnard Conradie has not taken any steps to formalise the 30% equity share. However, he continuously brought him under the impression that the Trust owned 30% of Bergrivier Boerdery.

[29] Mr Peterson asserted that he has accordingly accepted that the Trust was entitled to 30% dividends in Bergrivier Boerdery and that as a beneficiary of the Trust, his family would receive financial benefits from the applicant. Over time, and when he asked Mr Benard Conradie about the 30% equity, the latter told the first respondent that there was a problem in how the Department of Water Affairs worded the water use license in that the license lists the Trust as the owner of the applicant and that the 30% equity share could only be affected once this error has been rectified. For this reason, an application for an amendment of the water use license was made to the Department of Water Affairs and Sanitation in 2017.

[30] Meanwhile, Mr Bernard Conradie, on the other hand, testified that the first respondent was a member of the Lower Berg River Irrigation Board when water use rights became available for the BEE projects. According to Mr Conradie, Mr Pieterson heard about it at the Water Board Meeting and decided to apply for these rights. To obtain these rights, a commercial partner is necessary because to utilise the water, you need land and expertise. To this end, Mr Conradie testified that Mr Peterson approached him and told him he wanted to apply for the water use rights. He asked Mr Conradie if he would be willing to be his commercial partner.

[31] Mr Conradie agreed to the proposal but indicated to him that if the Trust applies for these water rights, he wanted to be a trustee of the Trust so that there would be transparency to what happens within the application of the water rights. Mr Conradie further testified that he insisted that the water use rights be issued in the name of the operating entity (Bergrivier Boedery); otherwise, no shares would be issued. According to him, it was stated in the original application that the water rights must be issued in the name of Bergrivier Boerdery; otherwise, no shares would be issued.

[32] The reason he wanted the license to be issued in Bergrivier Boerdery was that if the water is not issued in the name of the applicant, the company could not use the water use license as collateral to loan money from the Bank as the Banks do not acknowledge water rights issued in a different company. In this case, the water use license was issued in the name of the Trust, and as a result, he could not issue shares in favour of the Trust. Mr Conradie testified that Mr Pieterson joined him in extensive conversations with different banks and got legal opinions to get the Department of Water Affairs to have the water use licence corrected and issued in the name of Bergrivier Boerdery.

[33] I had the opportunity to observe the parties during the presentation of oral evidence in this matter. It became clear and unmistakable to me that the first respondent was an unsophisticated individual due to his upbringing and lack of education. He lacks commercial wisdom and could not decipher technical terms ordinarily used in a commercial environment and or Company law. He did not go far with his studies. He only went as far as Grade 8 at school. He has been a farm worker for the better part of his life. He was a truck driver of Mr Barnard Conradie's father for two decades. He regarded Mr Barnard Conradie, who grew in front of him, as his mentor. Mr Conradie confirmed during his evidence in chief that he was the mentor of Mr Pieterson, and that the latter regarded him as such.

[34] Mr Conradie is a qualified farmer with a degree in agricultural science from Stellenbosch University. He appeared to the court to be an erudite professional with an impeccable business expertise and acumen. The bargaining and / or negotiating power between Mr Conradie and Mr Pieterson was undoubtedly skewed and

uneven. Mr Pieterson's ability to influence Mr Conradie was limited or non-existent. While the ability of Mr Conradie to influence Mr Pieterson was overwhelming. Crucially, Mr Barnard was the first respondent's employer. Mr Pieterson was looking up to Mr Conradie for survival and livelihood. He was vulnerable and at the mercy of Mr Conradie. The upshot is that this case, in my view, must be viewed from that perspective.

[35] From the evidence presented, there are reasons for the respondents to believe that they or the Trust is entitled to 30% of equity in the applicant. The following reasons bear this out.

[36] It is common cause that the license was issued in the name of the first respondent’s Trust. The first respondent is a beneficiary of this Trust. The water use license was issued to the Trust as a measure to redress past imbalances, particularly the inequitable access to water resources. The issuing of the water use license was a project by the government which was meant to empower people from previously disadvantaged groups to have a 30% stake in existing farming enterprises.

[37] The license was applied for in the Trust's name and intended to be used by the Trust on the property referred to as Bergrivier Boerdery. In exchange, the Trust was supposed to receive a 30% shareholding in Bergrivier Boerdery. The motivation report for the water use licence application prepared by an independent expert, AgriExpert CC, records the Lynol Peterson Family Trust (the Trust) as the applicant. Crucially, the Executive Summary of this report in support of the application for the water use license explicitly stated that the application, together with the required application forms and supporting documentation, was submitted to the Department of Water Affairs on behalf of the Trust. The water use rights was for the Trust and it had was to be registered for use at the applicant’s farm. The suggestion that the license had to be registered in the name of the applicant as the owner of the license and not in the name of the Trust is somewhat misleading.

[38] The Executive summary also notes that the Lynol Pieterson Family Trust is a registered Black Economic Enterprise that was established to hold an equity stake in

the commercial farming enterprise - Bergrivier Boerdery (Pty) Ltd. Importantly, the executive summary of the application notes that on approval, the water use rights would be allocated and registered for use by Bergrivier Boerdery (Pty) Ltd on the farm Zandrift Nr 149. Once approved, the water use rights being applied for would be the Lynol Pieterson Family Trust's contribution to acquire 30% shares in the Bergrivier Boerdery.

[39] It is abundantly clear from the above that the license had to be issued in the name of the Trust. The suggestion by Mr Barnard Conradie that the license had to be issued in the name of Bergrivier Boerdery is farfetched and not supported by objective facts and evidence before this court. If that was the case, the question that begs is why the Lyonel Family Trust was involved in the application for a license. As correctly pointed out by Mr Kilowan, the respondents' counsel, from a policy perspective, the water use license would indeed not be issued in the name of the applicant because it is not an entity of which the shareholders are members of a demographic group who needed to be empowered. While Mr Conradie would have wanted to have the license issued in the name of the applicant, this would have been inconsistent with the BEE project envisaged by the Department of Water Affairs, of which Mr Conradie was aware and hence partnered with the Trust to apply for the water use license.

[40] In addition, Mr Conradie agreed in cross-examination that the Department of Water and Sanitation was entitled to pursue a policy decision to use water as a Broad-Based Black Economic Empowerment tool. The proposition that the water use license had to be issued in the applicant's name before the respondents could have a 30% shareholding equity in the applicant is false and not supported by objective facts. In my view, if regard is had to the motivation report for the license by AgriExpert CC (which Mr Conradie is aware of), the Trust was at all times entitled to the 30% equity in the applicant after the issue of the water use license.

[41] Furthermore, there is nothing in the scheme implemented by the Department of Water and Sanitation, which stated that the Trust could only get 30% when it transfers the water license to the company in which it acquires the 30% shareholding. The fact that the Trust contributed through the water use license to the

applicant entitled the Trust to 30% shareholding in the applicant. The applicant did not furnish this court with its financial statements from the date of issuing of the water use license to the date of the dispute between the parties.

[42] I am aware that dividends are only payable once there is a shareholding. Mr Barnard Conradie was adamant that he would not issue shares to the Trust as the water use license was issued in the name of the Trust. Notwithstanding, Bergrivier Boerdery benefited and continues to benefit from the water use license at the expense of the Trust. In exchange for the Trust's contribution to the water use rights, the Trust is entitled to 30% shareholding in the applicant as the Trust's water use rights are used at the applicant's farm. This is consistent with the Broad-Based Black Economic Empowerment project that the Department of Water and Sanitation envisaged when the water use license was issued. This was known to the applicant when the license was applied for, and this is what the applicant and the first respondent intended when they decided to collectively harness their resources.

[43] The respondents cannot be faulted or criticised for believing that they are entitled to 30% of the applicant's equity. Significantly, it is common cause that the applicant paid no dividends or profits to the Trust since the water use license was issued until October 2018, when the cooperation agreement was signed. Mr Conradie contended that the applicant did not use the water allocated to the Trust and could not pay dividends to an entity that was not a shareholder. Mr Conradie was adamant that Bergrivier Boerdery owned its own existing lawful water use from the day the farm was bought. He denied that the farm used the water allocated to the Trust regarding the water use license.

[44] In my view, this version is concocted and cannot be correct. It must be noted that Mr Conradie has been working closely with the first respondent. According to him, they even approached lawyers to vary the water use license to have it issued in the applicant's name (Bergrivier Boerdery). There is no impediment that Mr Conradie placed on record that could have stopped them from using the water license while they were busy with their application to correct the license. There was no need to correct the licence as it was issued to the rightful applicant, that is, the Trust. Unless

the applicant's intention was to thwart or undermine the empowerment objective that the water stake by the previously disadvantaged was meant.

[45] Mr Barnard Conrade knew that Bergrivier Boerdery could not benefit under the BEE scheme without the Trust. I am mindful of his desire to use the licence as collateral; however, that did not deter the applicant from using the Trust's water rights. The fact that the license was issued in the name of the Trust did not stop or serve as an impediment to the extraction of water in favour of the applicant. In any event, the license was issued in the name of the Trust, consistent with supporting documents submitted to the Department of Water Affairs when the application was made.

[46] I must also emphasise that it was Mr Pieterson's unchallenged evidence that since the issuance of the water use license, the applicant's farm increased its crop by 190 hectares. According to Mr Peterson, before the issuance of the water use license in favour of the Trust, the applicant only had water rights for 33 hectares and, therefore, did not have enough water to plant an additional 190 hectares of crops. It was Mr Peterson's oral evidence that after the allocation of the water use license to the Trust, the applicant expanded its agricultural activities by planting 60 hectares of permanent almond trees, irrigated throughout the year for the last four years. The first respondent also contended that the applicant planted 30-hectare watermelon per year for the last four years and 100-hectare butternut per year for the last four years. This was in addition to the 190 hectares of crops that are irrigated with water, which came from the water use license allocated to the Trust.

[47] While I accept that the first respondent is unsophisticated, I believe that he has been a farmworker for many years and understands how the farm and the expansion work. There are no reasons for this court to reject the first respondent's version. Of great importance, in the motivation Report made in support of the water use licence application, which Mr Conradie acquiesced and assented to, Mr Pieterson is described as an agriculturist through and through, having worked on various farms since 1981 to the present. The report described him as a person who started his career as a farmworker on the farm of Dennis Shaw in the Piketberg area and took the job of a truck driver with Conradie Boerdery in Saron in 1984. He

worked for 22 years for Conradie Boerdery, mainly in export grape production. In 2003, he was appointed as assistant manager for Moravia Development, an LRAD-funded farm for previously disadvantaged individuals on the Moravian Church lands near Moravia.

[48] Significantly, the report states that Mr Pieterson was instrumental in establishing about 70 hectares of wine grapes and bringing vines to full production. From this description, it is incontestable that Mr Peterson is highly experienced in farming, notwithstanding his limited academic qualification. Thus, his testimony on the expansion of the Bergrivier Boredery after the issue of the water use license to the Trust must be accepted.

[49] The applicant has never compensated the Trust or the respondents for using these water rights. Mr Conradie did not deny that he expanded his crop by 190 hectares. Evidently, because he had no other water available, it follows that it came from the water allocated to the Trust. Notwithstanding, the applicant refused or neglected to pay for this water and gradually increased the amount owed to the Department of Water and Sanitation by the Trust for the water used. To the extent that the applicant used the water allocated to the Trust ever since the issuance of the water use license created a lawful and legitimate expectation that the respondents would be entitled to 30% equity from the applicant.

[50] As previously stated, Mr Conradie disputed that he used the water allocated for the Trust before the co-operation agreement was concluded in 2018. According to him, the applicant has been using its existing lawful water since the farm was bought. He disputed that he used the water allocated to the Trust before 2018. From a conspectus of all the evidence, this version, in my view, cannot be correct. It must be stressed that as of 31 July 2017, the Trust was indebted to the Department of Water and Sanitation for water usage in the sum of R580 510,52. As of 31 December 2019, the Trust was indebted to the Department of Water and Sanitation for water usage in the sum of R1,387,984. 86.

[51] In my view, the Department of Water and Sanitation would not have issued an account for such an excessively high amount if the water was not used as suggested

by Mr Conradie. Mr Conradie gave an implausible explanation of how this account was incurred. According to him, even though no water was used, the Department of Water and Sanitation bills clients for the water allocated in terms of the water use license. I find this explanation far-fetched and implausible. In my view, the Department cannot issue accounts if there was no water that was used. The account was issued because water was clearly used for the applicant's benefit. Furthermore, Mr Conradie asserted that he approached the Department of Water Affairs and informed them that they had not used the water, and the latter told him they had stopped billing the Trust.

[52] Mr Conradie did not submit any evidence to prove or substantiate his proposition. Importantly, in paragraph 25 of the applicant and the Trust's application to vary the license in terms of section 50(1), read with section 52 of National Water Act 36 of 1998, the following is stated that contradicts Mr Conradie's version:

> "Notwithstanding that the LPF Trust cannot benefit from the issue of the license in the incorrect name, the Department continues to issue water accounts to the LPF Trust, the latest of which is attached hereto to as Annexure **"H"**. *Our client wishes to settle this account,* but insofar as it cannot commercially benefit from the license at the moment, it is extremely unfair to demand payment from our client without the license being amended as stated before." (emphasis added)

[53] Mr Conradie further contended in his testimony that he wrote hundreds of emails to the Department of Water and Sanitation to correct the billing as he did not use the water. Surprisingly, no such e-mails were presented before this court to confirm his assertion. On the contrary, the documentary evidence presented by the respondents clearly indicates the amount due for the water usage, which militates against Mr Conradie's version. Save for his *ipsi dixit*, nothing to the contrary suggests that the applicant did not use the water rights allocated to the Trust. From the totality of the evidence, I am satisfied that, indeed, the Trust is entitled to 30% equity in the applicant as a BEE partner pursuant to the water use rights in the farm of the applicant.

Whether the Trust and the applicant entered into a co-operation agreement?

[54] From the evidence presented at the hearing of this application, it is common cause that the parties entered into a co-operation agreement in 2018. According to Mr Barnard Conradie, the Trust and the applicant had initially agreed that the Trust would acquire 30% of the shareholding in the applicant on condition that the Trust successfully applied for and obtained a water use licence registered in the name the Bergrivier Boerdery for use by the applicant, and in terms of which the applicant would be entitled to utilize the water allocation pursuant to the water use licence.

[55] Furthermore, Mr Conradie contended that the Trust did not obtain the water use license in the terms agreed upon and thus was not entitled to 30% of the shareholding in the applicant, especially because the license was not issued in the name of the applicant but the Trust. Subsequent thereto, the Trust and the applicant entered into the co-operation agreement, in terms of which the Trust and the applicant agreed that given the failure of the Trust to obtain the water use license in the terms agreed, the Trust would receive payment in an amount equal to 30% of any net profit after tax generated by the applicant. Mr Barnard Conradie asserted that in terms of the cooperation agreement, the Trust is liable to pay all water usage charges, costs, fees, tariffs, penalties, interest, and other amounts which are payable in respect of the water use license and the water abstracted in terms thereof. It is incontestable that it is the applicant and not the Trust that benefited from the water use Rights. In my view, the Trust can only pay this account once all the payments due to it by the applicant are fully compensated.

[56] On the other hand, the first respondent denied in the answering affidavit the existence of the co-operation agreement entered between the Trust and Bergrivier Boerdery in terms of which Bergrivier Boerdery is entitled to use the Trust's water rights. The first respondent accused Mr Conradie of lying in this regard. However, during his oral testimony, particularly during cross-examination, the first respondent conceded that the Trust and the applicant had entered into the co-operation agreement annexed to the replying affidavit as annexure RA1.

[57] To this end, Ms Adhikari, the applicant's Counsel, submitted that from this contradiction, it is evident that the first respondent has been dishonest to the court. Counsel argued that the first respondent disingenuously denied in his answering affidavit the existence of the co-operation agreement entered between the Trust and the applicant in terms of which Bergrivier Boerdery is entitled to the use of the Trust's water rights. Ms Adhikari further submitted that the first respondent failed to explain the contradiction in his different versions. To this end, Ms Adhikari submitted that the order referring this point for viva voce evidence falls to be resolved in favour of the applicant, and the respondents' version falls to be rejected.

[58] It is correct that the version proffered in the answering affidavit by the first respondent on the existence of the co-operation agreement is at variance with his viva voce evidence in court. In his oral testimony, the first respondent admitted to this agreement. In my view, this discrepancy in the first respondent's version is attributable to the first respondent's ignorance on legal matters and his complete dependence on Mr Bernard Conradie in such cases. The first respondent asserted that he had signed all the documents that Mr Conradie had directed him to do. He believed that Mr Conradie, who grew up in front of him, would have his interest at heart. Considering the first respondent's naivety and ignorance on contractual matters, particularly the inequality in bargaining power between him and Mr Conradie, I am of the view that to suggest that he was deliberately being dishonest and intending to mendaciously mislead the court is not correct.

[59] Notwithstanding, I am of the view that the discrepancy does not go to the heart of the issues raised in this matter, particularly regarding the cooperation agreement. At the hearing of the oral testimony, it became evident that, indeed, the parties entered into a cooperation agreement in October 2018 after they failed to have the license amended and registered in the name of the applicant. For the sake of completeness, I deem it appropriate to consider the relevant provisions of this agreement that are germane to this matter. The cooperation agreement expresses the intention of Bergrivier Boerdery (the applicant) and the Trust to combine their respective resources to expand the Bergrivier farming enterprise. Bergrivier Boerdery and the Trust sought to enter into an agreement whereby the Trust would acquire 30% of the shareholding in Bergrivier Boerdery on condition that the Trust

successfully applied for and obtained a water use license (a) registered in the name of Bergrivier Boerdery (b) for use by Bergrivier; and (c) in terms of which Bergrivier Boerdery would be entitled to utilize an additional amount of water ('the maximum volume') to conduct the Bergrivier Boerdery farming enterprise.

[60] In terms of the cooperation agreement, with effect from 1 October 2018, Bergrivier Boerdery and the Trust agreed to co-operate by combining their separately held resources and jointly operating the farming enterprise on the terms set out in that agreement ('referred to as the arrangement'). The Trust agreed to make the Trust resources (water used rights) available to Bergrivier Boerdery to give effect to the arrangement and to ensure that the maximum volume remains permanently available for use by the Trust or Bergrivier Boerdery exclusively to conduct the farming enterprise and any expansion thereof. Furthermore, the Trust agreed to pay all water use charges, payable for the water use license and the water abstracted in terms thereof.

[61] In exchange for the Trust's contribution to the arrangement, Bergrivier Boerdery agreed to remunerate the Trust by providing it with full details of the gross profit and net profit after tax generated by Bergrivier Boerdery as certified by Bergrivier's auditors. Bergrivier Boerdery undertook to pay the Trust an amount equal to 30% of any net profit after tax generated by Bergrivier Boerdery. The agreement between the parties also noted that unless the parties mutually agreed otherwise, Bergrivier Boerdery would capitalize 50% of the Trust's earnings for further investment into the farming enterprise, and the remaining 50% of the Trust earnings would be paid to the Trust within 20 business days after delivering the earning certificate.

[62] The agreement also records that upon making the application for a water use license, the Trust was granted the water use licence, which was erroneously registered in the name of the Pieterson Trust and noted the Pieterson Trust as the owner of the farm, as a consequence of which Bergrivier Boerdery and the Trust were unable to give effect to their previous agreement in terms of which the Trust would be entitled to 30% shareholding in Bergrivier Boerdery. The agreement noted that in a further attempt to give effect to the intention of the parties, Bergrivier

Boerdery and the Pieterson Trust concluded a further agreement in terms of which Bergrivier agreed, subject to certain conditions, to issue shares in the share capital of Bergrivier Boerdery in exchange for the Pieterson Trust successfully procuring the amendment of the water use license registered in the name of Bergrivier Boerdery and noted Bergrivier Boerdery as the registered owner of the farm.

[63] I have carefully considered the agreement between the parties, and I have noted that it is clearly biased in favour of Bergrivier Boerdery. The agreement clearly demonstrates the power imbalance between Mr Peterson for the Trust and Mr Barnard Conradie for the applicant. Concernedly, the agreement incorrectly records that the water-use license was erroneously registered in the name of the Pieterson Trust. As explained elsewhere in this judgment, the Lynol Pieterson Trust made the application for the water use license in terms of section 41 of the National Water Act 36 of 1998.

[64] Crucially, the Report for the water use license application in terms of the National Water Act 36 of 1998 submitted in support of the application for the water license makes it abundantly clear that the water use license had to be issued in the name of the Trust. On page 5 of the report, it is recorded that *"Application is herewith made on behalf of the Lynol Pieterson Family Trust for an additional 215 hectares, equivalent to 1 505 00 m3 per annum, of summer water application from the Berg River"*. Paragraph 2.2 of the said document specified the farm Zanddrift Nr 149, situated on the banks of the Berg River, as the property on which the water use is intended.

[65] Thus, the suggestion that the license had to be issued in the name of Bergrivier Boerdery does not make sense and is at variance with the objective facts. The water use license was always going to be registered in the name of the Trust, as specified in the motivation report. In the bigger scheme of things, it appears that the applicant intended to use the Trust to front on its behalf to access the scarce water resources. The applicant's agitation seems to have come about when the Trust was reflected as the owner of the farm. It appears that is where this supposed error emanates from.

[66] Importantly, the water use license was issued in favour of the Trust as a measure for Mr Peterson, being a person from the previously disadvantaged group, to have a 30% stake in the Bergerivier Boerdery. Whilst I understand the reason why Mr Barnard Conradie wanted the licence to be issued in the name of the applicant, the suggestion that the license had to be issued in the name of the Bergrivier Boerdery is false and unsupported by the application and all the documentary evidence placed before court. More so, if indeed the Department of Water and Sanitation made a genuine error in issuing the license in the name of the Trust as the owner of the farm, I want to believe that it would have long corrected this error after several applications for variations were made. Bergrivier Boerdery was never intended to be the licensee of the water use rights. However, the true reasons for the correction were obscured from the Department of Water Affairs, hence it refused to approve this change. As the first respondent has correctly conceded, I find that the Trust and the applicant did enter into a co-operation agreement.

Has Bergrivier Boerdery utilised the Trust's water use allocation in terms of the water use license since it was granted in 2014?

[67] As discussed above, Mr Peterson's evidence was that since the license was issued in 2014, the applicant used the water allocated to the Trust. In addition, Mr Pietersen's evidence was that the applicant's crop increased by 190 hectares, and butternuts and other vegetables were planted. From the first respondent's testimony, it is incredibly clear that from the time the water use license was issued to the Trust in 2014, the applicant used and benefited from it. The Trust incurred an account of R1,387,984.86 for water rights used by the applicant as of 31 December 2019. As discussed above, the cooperation agreement regulates the applicant's usage of water allocated to the Trust from October 2018. From the evidence adduced at the hearing, the 2018 agreement between the parties is still extant and governs the relationship between the parties. It is common cause that the applicant used and is still using water allocated to the Trust. This was pursuant to the cooperation agreement signed by the parties in October 2018. My finding to the above question is yes; the applicant has been using the water rights allocated to the Trust since the license was issued.

Has Bergrivier Boerdery paid the Trust any money for using the water allocated under the water use license since it was granted in 2014?

[68] Paragraph 5.1.2 of the cooperation agreement provides that in exchange for the Trust's contribution to the arrangement in terms of the agreement, the applicant shall remunerate the Trust with an amount equal to 30% of any net profit after tax generated by the applicant for the farming enterprise. Furthermore, in exchange for the Trust's contribution to the agreement, the applicant agreed to provide the Trust with an earning certificate setting out the gross profit and the net profit after tax of the applicant's farming enterprise.

[69] It is common cause that the Trust complied with the agreement and provided the water to the applicant. The applicant used the water in terms of the agreement and made huge profits but failed to pay 30% of the net profit after tax due to the Trust. According to Mr Conradie, Bergrivier Boerdery has not made a profit in the two years since the cooperation agreement was signed. Mr Conradie stated that Bergrivier Boerdery informed the Trust that there were no profits and that there would be no benefits for the Trust. However, in the past financial year (that is, 2021/2022 financial year), Bergrivier Boerdery is recorded as made profit. It is interesting to note that Mr Conradie did not produce any documents or financial statements to prove that Bergrivier Boerdery suffered a loss in the first two years. The applicant also failed to produce financials for its net profits after tax in the 2021 and 2022 financial years. Mr Conradie did not provide the court with the certificates envisaged in the cooperation agreement of the losses suffered by the applicant. These documents are in his control and possession.

[70] I am mindful that the respondents could have requested discovery from the applicant. However, in a case such as this, there was a duty upon Mr Conradie to take the court to his confidence and produce all its financial statements or any certificate of profitability showing that the Bergrivier Boerdery has been running at a loss for two years after the cooperation agreement was signed. The cooperation agreement envisaged audited financial statements. As previously stated, these documents are in the control and possession of the applicant. Mr Conradie knew that the issue relating to the 30% equity in the applicant was in dispute and would be

germane in this matter. In my view, if the applicant had nothing to hide, the applicant had a duty to produce these documents to support his assertion. The applicant provided no evidence whatsoever that it made a loss in the first two years of the issuance of the water use license, and it did not produce the documents for the net profits it made, if any.

[71] In addition, the applicant did not provide any evidence whatsoever of the amount owed to it by the Trust and specifically for what and when it was incurred, especially bearing in mind that from the record, the attorneys who acted on behalf of the Trust to amend the license acted *pro bono*. When the court questioned Mr Conradie for clarification purposes, Mr Conradie speculated that the Trust could be indebted to the applicant in the sum of R350 000 to R400 000. No supporting vouchers or source documents were produced to support this contention.

[72] I pause to mention that Bergrivier Boerdery is seeking an order for Mr Pieterson and his family to be evicted from a house owned by Bergrivier Boerdery, which it bought from the respondents. According to the respondent, Mr Conradie promised them that they would repurchase the house when they receive their 30% dividends. The respondents contended that Bergrivier Boerdery is indebted to them in respect of water use rights, which Bergrivier Boerdery does not dispute that it has used since October 2018. In these circumstances, it becomes inherently obligatory for the applicant to play open cards and disclose its financials.

[73] What I find very concerning is that Mr Conradie testified that the profits made in the previous financial year (2021/ 2022) had not been paid over to the Trust because Mr Peterson made the Trust unmanageable as he did not attend Trust meetings where important decisions had to be taken. I must stress that this version of Mr Pieterson making the management of the Trust ungovernable by failing to attend Trust meetings was not put to Mr Pieterson during cross-examination. This only emanated from the evidence in chief of Mr Conradie. The court did not have the opportunity to hear Mr Pieterson's response to this assertion.

[74] Furthermore, nothing was presented before this court to prove that, indeed, Mr Pieterson was called to attend Trust meetings and failed and or refused to do so.

It was not clear from the applicant’s evidence when specifically did Mr Pieterson fail to attend the Trust meetings. No dates and / or invitations to attend meetings were presented in court where Mr Pieterson allegedly failed to attend Trust meetings. No resolution was presented in court of the remaining trustees' decision to remove Mr Pieterson as trustee for this alleged misconduct. Mr Conradie testified in chief and in re-examination that about four invitations to attend Trust meetings were delivered to Mr Pieterson by hand, and the latter signed and acknowledged receipt. These notices with proof of delivery are in the control and possession of Mr Conradie.

[75] Surprisingly, they were not produced in these proceedings to corroborate his version, mainly because it was the reason that he removed Mr Pieterson as a Trustee. Most troubling, there was no decency or courtesy to advise Mr Pieterson that he has now been removed from his own family trust. Additionally, it must be noted that according to Mr Conradie, he did not pay the 30% profits because the first respondent failed to attend Trust meetings. In my view, the applicant had a duty to prove these allegations. What I find very concerning, which manifests to an abuse of power over the vulnerability of Mr Pieterson, is the unexplained change of name of the Lynol Pieterson Family Trust to the Bergrivier Boerdery Werkers Trust.

[76] I cannot accept it that Mr Pieterson on his own decided to have his Trust changed to Bergrivier Boerdery Werkers Trust. Even if the parties wished to include more beneficiaries from the previously disadvantaged group in the Trust, the sudden metamorphosing of the first respondent’s Trust into the name of the applicant is unexplainable and raises more questions than answers. In my opinion, this demonstrates an imbalance of power and an abuse of authority. It seems to me that the Master (employer) abused the loyalties of the Servant (employee) in breach of the relationship of trust and confidence between the master and his servant. From the available evidence placed before this court, I am of the view that Mr Barnard Conradie took advantage of Mr Pieterson's vulnerability and exploited it to his advantage. The respondents' observation in the answering affidavit that once Mr Barnard Conradie used them to obtain the water rights, he discarded them like dirt and treated them like lepers is not farfetched, to say the least. This, in my view, must not be countenanced.

[77] Most importantly, the applicant uses the water rights allocated to Mr Pieterson's Trust as a BEE partner. From the evidence, he made considerable profits in his farming enterprise using the water rights allocated to the Trust. This is borne out by the alleged two payments he made to the Trust. Even so, he could not pay Mr Peterson or the Trust what was due to him in terms of the cooperation agreement. In a case like this, I am of the view that Mr Conradie should have made full disclosure. His *ipsi dixit* without more is lacking and deficient. It must be borne in mind that this case was referred to oral evidence to ventilate all the issues properly.

[78] Interestingly, it is unclear which year Mr Pieterson failed to attend Trust meetings. Crucially, when Mr Conradie was asked about the payment of the 30% profits in terms of the cooperation agreement, he testified that Mr Pieterson attended Trust meetings in his office on the farm where he informed him that there were no profits and showed Mr Pieterson the financial statements of Bergrevier Boerdery. He further stated that in those meetings, he told Mr Pieterson that there was nothing to be paid in terms of the cooperation agreement. From this evidence, it is abundantly clear that the first respondent attended Trust meetings if at all there were such meetings. It seems to me that when it is convenient for Mr Conradie, he asserts that Mr Pieterson attended Trust Meetings. When it does not suit him, he vacillates and avers that Mr Pieterson did not attend Trust meetings. I believe the version that Mr Pieterson failed to attend Trust meetings is a sheer fabrication that was contrived to remove him as a trustee.

[79] Furthermore, and in addition to the above finding, what I find very strange is that Mr Pieterson was working for Mr Conradie. He left his employment in 2020 because of their impasse in respect of the house. Mr Pieterson was on the farm daily. He regarded Mr Conradie as his mentor. Mr Conradie confirmed that he was mentoring him. Based on this evidence, the version that Mr Peterson failed to attend the Trust meetings and that this made it difficult for him to pay the 30% profit to the Trust is unsustainable.

[80] Crucially, in response to a directive from this court, the applicant delivered to the court proof of payment made by the applicant to the Trust, the first payment being made on 19 December 2022 in the amount of R453214.00 and the second

payment being made on the 14 March 2023 in the amount of R453214.00. It is not known what the net profit of the applicant after tax was as envisaged in the co-operation agreement. Notwithstanding these two payments, since the co-operation agreement was concluded in 2018, nothing has ever been paid to the first respondent, who is the beneficiary of the Trust.

[81] During cross-examination, Mr Conradie testified that Mr Pieterson received nothing because the Trust first had to repay its loans to the applicant, who had to pay the legal fees and other consultant fees. The debts of the Trust due to the applicant were not placed before the court save for the say-so of Mr Conradie. In my view, it was incumbent upon the applicant to place before this court documentary evidence to substantiate his version that the Trust is indebted to the applicant and the reason for such indebtedness. Unfortunately, nothing was placed before this court.

[82] From the evidence presented, ever since the water-used license was issued to the Trust in 2015, the only entities that have benefited tremendously from it and continue to benefit from it are the applicant and Mr Conradie. The applicant has eternally contrived a strategy to avoid paying the Trust or the first respondent what is due to it. The Trust or the first respondent have never reaped the fruits of this license ever since it was issued to the Trust in December 2014. Unfortunately, the BEE policy that the Department of Water and Sanitation envisioned to empower the first respondent as a member of the previously disadvantaged group has been rendered a dream deferred. From the entirety of the evidence, it is evident that from 2018, when the co-operation agreement was concluded, the applicant used the water allocated to the Trust. Considering the two payments disclosed above, it is reasonable to infer that the applicant made huge profits pursuant to the usage of the water rights of the Trust.

[83] Mr Pierterson, the beneficiary of the Trust, has received nothing in respect of the cooperation agreement to date. Notwithstanding, the applicant wants to evict the respondents from its house even though it has not paid the market value of the property and not even a cent to Mr Pieterson, the beneficiary of the Trust, in terms of the co-operation agreement. In my view, this is unconscionable and should not be

countenanced by this court. I am further of the firm view that the respondents have all the reasonable grounds to resist the eviction application of the applicant on the grounds that the applicant is indebted to the Trust and or to Mr Pieterson for the 30% profit share pursuant to the co-operation agreement and the equity arising from the sale of their house. As discussed above, Mr Barnard did not take the court into his confidence and disclose the losses that the applicant suffered and the alleged debt due by the Trust to the applicant. It is, therefore, my conclusion that Bergrivier Boerdery did not pay the Trust any money for using the water allocated under the water use license since it was granted in 2014.

Which party is obligated to pay for the water use charges abstracted in the water use license?

[84] From the evidence presented, it is common cause that the Trust was ordinarily responsible for paying the water use charges, costs, and fees, which became payable in respect of the water extracted under the relevant license. As previously stated, from the customer statement issued by the Department of Water and Sanitation, the Trust was indebted to the Department in the sum of R1,387, 984.86 as of 31 December 2019. Furthermore, in terms of paragraph 4.1.2.2 of the co-operation agreement, the Trust undertook to pay all water use charges, costs, fees, tariffs, penalties, interest and other amounts which are or become payable in respect of the water use license and the water used in terms thereof.

[85] In exchange for the Trust's contribution to the arrangement in terms of the co-operation agreement, Bergrivier Boerdery agreed to pay the Trust 30% of the after-tax profits from 31 August 2018. The Trust would, in turn, pay the water account to the Department of Water and Sanitation. Save for the two payments made, it is common cause that the applicant never paid the Trust ever since the issuance of the license despite enjoying the fruits of the license. Save for the two payments made recently, it is common cause that the applicant did not pay the Trust as envisaged in the co-operation agreement. The applicant averred that the reason for nonpayment was that the Trust had been indebted to the applicant and that the first respondent made the Trust unmanageable.

[86] This argument by the applicant does not make sense, to say the least. In any event, with the first respondent's limited knowledge of the law and vulnerability, it seems to me that the Trust was never the first respondent's idea. On a conspectus of the evidence, it can be reasonably inferred that the Trust was meant to be the tool or vehicle for the first respondent to put up a front for the applicant.

[87] I must stress that the co-operation agreement does not give the applicant the power to withhold payment in those circumstances. The ripple effect of the applicant's non-payment is that the respondents have not received any benefit whatsoever from the license that was issued and meant to benefit them as members of the previously disadvantaged group. Instead, and to the contrary, the great beneficiaries of the water use license are Mr Conradie and the applicant. The applicant used the water allocated to the Trust and caused the Trust's water bill to increase. In my conclusion, the evidence demonstrates that the water rights extremely benefitted the applicant. The applicant must provide their financial statements to the respondents. In my view the parties must jointly hire an independent forensic accountant to calculate how the water bill should be apportioned, taking into account the 30% profit owed to the respondents from 2014 to the present, which has not been paid as well as the fair value of the property when it was sold to the applicant.

Whether Mr Barnard Conradie misrepresented to the respondents when he purchased their property?

[88] As discussed in paragraph 10 of this judgment, the circumstance under which the applicant bought the respondent's house is in dispute and, moreover, questionable. The respondents, particularly the first respondent, contended that Mr Conradie informed him that he would reduce his salary and, as a result, would not be able to pay for his house. In the founding affidavit, Mr Conradie asserted that towards the end of 2017, the first respondent approached him and advised him that he had fallen into arrears with his bond account with the bank and that they were threatening him with foreclosure. To assist the first respondent and his family and to ensure that the respondents will not be left homeless, the applicant agreed to purchase the property from them and to settle their outstanding liability with Standard

Bank. The respondent further suggested that the respondent could continue to reside on the property at a nominal rental of R450 per week. The respondent agreed, and accordingly, the parties entered into a sale and a lease agreement.

[89] From the totality of the evidence, I am of the view that the version proffered by respondents is more plausible than the one asserted by Mr Conradie. The first respondent testified that Mr Conradie had reduced his salary and informed him that the first respondent would no longer be able to pay his bond. The respondents were not in arrears with their bond payments. The bank statements submitted in court substantiate their version that they were not in arrears with their payments. It follows that they would not have been in arrears as they had afforded the instalments from the salary the first respondent was paid.

[90] It appears that Mr Conradie anticipated their house being repossessed since he unilaterally changed the terms and conditions of employment by reducing the first respondent's salary. That on its own is unlawful as no employer is entitled to reduce the employee's salary as and when it suits him without due labour processes being taken into consideration. I find it highly strange how the respondents would approach Mr Conradie about their bond when they were paying promptly and not in arrears. The respondent's version that Mr Conradie reduced his salary and told him that he would no longer be able to pay the bond is plausible. Mr Peterson testified that even after his salary was reduced, they paid their bond instalment and were not in arrears. That demonstrates how dedicated and responsible the respondents were in meeting their financial obligations.

[91] This version is corroborated by the version of Mr Conradie that he was prepared to buy the house and only pay the outstanding amount as the first respondent has been paying the bond with the money, he loaned him. This suggests that he reduced the first respondent's salary as he alleges it was a loan and informed the first respondent that he (the first respondent) could no longer afford to pay the bond. This, in my view, is contrary to the provisions of section 34(1) of the Basic Conditions of Employment Act 75 of 1997. This is an issue which I would refer to the Department of Labour for Investigation.

[92] In addition, I have concerns about how the property was sold to the applicant. It must be borne in mind that the respondents bought the property in 2015 for the sum of R750,000. The property was only sold and transferred into the applicant's name on 26 February 2018. The applicant paid the sum of R655 000 for the said property. The respondents had reduced the capital amount of the bond from R750 000 to R655 000 when the applicant, in his terms, conveniently bought the property. It is incontestable that the property appreciated in value in the three years that it was registered in the names of the respondents.

[93] If it was a *bona fide* purchase, it should have been purchased at its market value and not take the outstanding capital amount as the purchase price. The interests of the respondents were not considered, as the respondents were shortchanged. Clearly, the sale benefitted the applicant and not the respondents. The applicant not only misrepresented the facts; to put it mildly, the applicant swindled the respondents.

[94] The applicant bought the property at a price far less than its market value without compensating the respondents for the equity in the property. If it was a *bona fide* purchase, the applicant must have paid the respondents the equity in the property. In my view, it was unconscionable that the applicant would only settle the outstanding bond amount without paying the respondents the equity in the property after they had paid for the property for three years and had reduced the property's capital amount.

[95] During the hearing, Mr Conradie testified that when Mr Pieterson approached him about the house, he informed Mr Pieterson that he could only assist him by purchasing the house for the outstanding amount. This was because Mr Pieterson had been making the monthly bond payments using money that Mr Conradie had loaned him monthly. To this end, Mr Conradie asserted that he told Mr Pieterson that he would not pay him the house's market value.

[96] In my view, this version is illogical and does not make sense at all. For almost three years, the respondents have been paying the bond. They reduced the capital on the bond account from R750 000 to R655 000. It is incontestable that the house

as an immovable property had appreciated from the date the respondents bought it to the date it was sold to the applicant. I find it highly unlikely and cannot accept that Mr. Conradie loaned money to the first respondent monthly for three years to pay the bond. This simply does not make sense. What complicates and compounds the difficulty in Mr Conradie's version is that it is not known how much the first respondent was allegedly indebted to him regarding the alleged loan account. It is not known how much he paid the first respondent as a loan monthly. It is implausible that Mr Conradie would pay the first respondent a salary and a loan monthly for three years. This version simply does not make sense and should be rejected. A conspectus of all the evidence leads to the ineluctable conclusion that the applicant owes the respondents a substantial sum for the equity of the property. I am therefore satisfied that Mr Barnard Conradie misrepresented the true facts to the respondents when he purchased their property.

Should the respondents be evicted from the House in question?

[97] The applicant seeks an eviction order of the respondents from the house in question. As discussed above, the house is registered in the applicant's name. The PIE Act prohibits unlawful evictions and regulates the procedure to be followed for the eviction of unlawful occupiers. Before an eviction order is granted, the court must consider all the relevant circumstances. In the locus classicus case of *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at para 11, the court stated:

“The prevention of illegal eviction from an unlawful occupation of land act 19 of 1998 was adopted with the manifest objective of overcoming the above abuses and ensuring that evictions, in the future, took place in a manner consistent with the values of the new constitutional dispensation. Its provisions have to be interpreted against this background.”

[98] The PIE Act endows the courts with the right and duty to make an eviction order which must be just and equitable. The courts are not permitted to passively apply the PIE Act but must probe and investigate the surrounding circumstances, particularly where the occupiers are vulnerable. *(See Occupiers of Erven 87 and 88 Berea v De Wet N.O and Another* 2017 (5) SA 346 (CC) at para 15). This begs a

legitimate question of whether the respondents are ‘unlawful occupiers’ in this property within the meaning of the PIE Act and whether it is just and equitable to issue an eviction order in circumstances where there were agreements that were not fulfilled by the applicant and with circumstances that were deliberately made by the applicant to impoverish the respondents. I do not think for a moment that the respondents are unlawful occupiers of this property. Section 1 of the PIE Act, in relevant part, defines an 'unlawful occupier' as:

> *'(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.'* (my emphasis)

[99] Evidently, an unlawful occupier occupies land without the consent of the owner or without any other right in law to occupy. *(See Residents of Jeo Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Right and Evictions and Another, Amici Curiae)* 2010 (3) SA 454 (CC) 144). It is not automatic that upon the applicant's application for the eviction of the respondent, the respondent must be evicted from the property. Each case must be assessed on its own merits. Even if unlawfulness is established, it does not mean that an eviction order will automatically be granted. I am fortified in this view by the dictum of the Constitutional Court in *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC), at para 31, where the court stated:

> “Even though unlawfulness is established, the eviction process is not automatic and why the courts are called upon to exercise a broad judicial discretion on a case by case basis. Each case, accordingly, has to be decided not on generalities but in the light of its own particular circumstances. Every situation has its own history, its own dynamics, its own intractable elements that have to be lived with (at least, for the time being), and its own creative possibilities that have to be explored as far as reasonably possible. The proper application of PIE will therefore depend on the facts of each case, and each case may present different facts that call for the adoption of different approaches.”

[100] In the present matter, the applicant bought the property from the respondents under very dubious circumstances. The respondents did not receive a fair and reasonable value for the property when it was bought by the applicant. In my opinion, the respondents have the right to demand a fair value for the property before they can be evicted. Section 4(8) of PIE requires a court to grant an eviction order if the court is satisfied that all the requirements set out in section 4 have been met and if no valid defense has been raised by the respondent. In my view, a valid defense has been raised in this case.

[101] To compound it all, it is indisputable that the respondents are impecunious pensioners. The first respondent worked for the Conradie family loyally and distinctly from his youth until his employment was terminated in 2020. As a person from the previously disadvantaged group, he applied for and was granted a water use license through his Trust.

[102] Since the water use license was granted, it has been used and exploited to the benefit of the applicant and Mr Conradie. The applicant expanded its farming enterprise pursuant to the water use license. The applicant continues to date to enjoy and exploit the benefits of the water use licence issued to the Trust of the first respondent at the expense of the respondents. Sadly, the first respondent has not received any benefits from the license in question, not even a cent. Despite this, the applicant is seeking an eviction order against the respondents, as it allegedly requires the funds from the sale of the house to maintain its business operations.

[103] Equally, it is beyond question that the respondents require the funds arising from the proceeds of the sale of their property to the applicant. The respondents or the Trust are still waiting to be paid the 30% net profit arising from the water use license to buy their own property so that they may enjoy the years of retirement that lie ahead of them. Ordering the respondents' eviction under these circumstances would result in a great injustice to the respondents. Thus, the order sought by the applicant in this case, is unconscionable and cannot be countenanced.

Conclusion

[104] In my view, the respondents have raised a substantive defence to the applicant's application for eviction. From the totality of the evidence, I am of the view that it will not be just and equitable in these circumstances to grant an eviction order against the respondents.

[105] The fact that shares have not been issued does not prevent the applicant from paying 30% of its shareholdings to the Trust as was envisaged when the water use license was applied for. In the same way, notwithstanding that no shares have been issued, the applicant and Mr Conradie have continued to reap the fruits of the water rights allocated to the Trust. I am of the opinion that the applicant must properly comply with the cooperation agreement and promptly pay what is due to the Trust to enable it to settle the account with the Department of Water and Sanitation and to benefit the beneficiary. Alternatively, to the extent that the applicant solely benefited from the water use rights, it must settle the water account. Until those disputes are resolved positively to the benefit of all involved, the eviction of the impecunious respondents is incompetent, and it, therefore, fails.

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[106] Finally, whilst I note that no counterclaim has been raised on behalf of the respondents, however emanating from the stated issues that this court was asked to determine, what came out prominently at the hearing of this matter is that the respondents are being owed by the applicant. Despite these proceedings being clothed as eviction proceedings, the bottom line is that the issues are much broader than that. It would have delayed the finalisation of this matter if this court were to order that the respondents file their counterclaim. Based on the evidence presented, it is abundantly clear that the applicant is indebted to the respondents for the fair value of their property. I believe that an expert should be appointed by the parties to calculate the amount owed to the Trust for the 30% shareholding from 2014 to date and to determine the entitlement of the respondents to the proceeds from the sale of their property at fair market value.

Costs

[107] The respondents were legally represented in this matter by Mr Kilowan, who was acting pro bono. Notwithstanding, the respondents must have incurred some

actual costs in the form of disbursements and travelling expense to attend court in connection with this application. In my view, it would be appropriate to compensate them for the actual costs they have incurred.

Order

[108] For all these reasons, the following order is granted:

108.1 The applicant's application for the eviction of the respondents is hereby dismissed.

108.2 The findings made in the subheadings above are incorporated into this order.

108.3 The applicant is ordered to pay the actual costs incurred by the respondents in opposing this application.

108.4 The Registrar of this court is directed to forward a copy of this judgment to the Department of Labour to investigate the alleged salary reduction of the first respondent.

108.5 The Registrar is also directed to forward a copy of this judgment to the Master of the High Court—Cape Town so that the Master can investigate how the first respondent was removed as a trustee and how the Lynol Pieterson Family Trust was changed to Bergrivier Boerdery Werkers Trust.

108.6 Both parties should jointly appoint an independent forensic accountant to calculate the 30% share of the Trust from 2014 to date. The accountant must also assist in determining the fair value of the impugned property when it was sold to the pplicant.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

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For the Respondents: Adv Kilowan
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