

SOUTH AFRICA / JUDGMENT

4Eleven Properties (Pty) Ltd v Makhosi and Others (2024/052019) [2024] ZAGPJHC 721 (8 July 2024) [2024] ZAGPJHC 721

COURT

South Gauteng High Court, Johannesburg

BEFORE

Windell

CASE / FILE NUMBER

2024/052019

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SAFLII

Note: Certain

personal/private details of parties or witnesses have been
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Policy

FLYNOTES:

EVICTION – Arrear rental – Rent boycott –
Respondents wilfully
withholding rental – Respondents resorted to self-help by
means of rent boycott – Depriving
applicant of revenue
stream – Did so in defiance of court order – Evident
that respondents' objective is to remain
at the property rent-free
for as long as they can – Respondents evicted –
Prevention of Illegal Eviction from
and Unlawful Occupation of
Land Act 19 of 1998.
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG
Case No: 2024-052019
1. REPORTABLE: YES/NO
2. OF INTEREST TO OTHER
JUDGES: YES/NO
3. REVISED.

In the matter between:

4ELEVEN
PROPERTIES (PTY) LTD
(REGISTRATION
NUMBER: 2022/609769/07)
and
Applicant
MAKHOSI
First
Respondent
CLIFE
Second
Respondent
MASIBIYA
Third
Respondent
NTOMBELA
Fourth
Respondent
MAPHOSA
Fifth
Respondent
EDDY
Sixth
Respondent
CHRIS
Seventh
Respondent
THEMBELANI
Eighth
Respondent
MOSES
Ninth
Respondent
ZINGIWE
KHIVANDIKWA, ALSO
KNOWN
BY THE APPLICANT AS ZINGI
Tenth
Respondent
SOX
Eleventh
Respondent
MAMA
NANA
Twelfth
Respondent
ALFRED
Thirteenth
Respondent
NDUNA
Fourteenth

Respondent
JUDITH
Fifteenth
Respondent
SIBIYA
Sixteenth
Respondent
GOLDEN
CHARLES
Seventeenth
Respondent
ABRAHAM
Eighteenth
Respondent
BHEKI
Nineteenth
Respondent
REASON
Twentieth
Respondent
MALETSWALO
Twenty-First
Respondent
ZANELE
Twenty-Second
Respondent
SIBUSISO
NTOMBELA
Twenty-Third
Respondent
ZANDILE
NTULI
Twenty-Fourth
Respondent
THE
FURTHER OCCUPIERS OF
UNITS 1, 2, 3, 4,
5, 6, 7, 8, 9, 10, 11,
12,
13, 14, 15, 16, 17, 18, 19, 20, 21,
22,
23, 24, AND 25 AT M[...] C[...]
Twenty-Fifth
Respondent
THE OCCUPIER(S) OF
UNIT
2[...]
AT M[...] C[...], SPAZA SHOP
Twenty-Sixth
Respondent
CITY

OF JOHANNESBURG
Twenty-Seventh
Respondent

JUDGMENT

WINDELL, J:

Introduction

- [1] This is an urgent application for the eviction of the respondents in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[1] (PIE).
- [2] In terms of section 4(2) of PIE an applicant must give at least 14 days' notice of the eviction application prior to the hearing of such application to the unlawful occupiers and the municipality having jurisdiction over the property. In the present matter the section 4(2) notice was granted and issued ex parte by Opperman J in the urgent court on 21 May 2024. In terms of this notice the respondents were informed that the main eviction application will be heard on 11 June 2024. The requisite notice period was thus provided to the respondents and the respondents have filed a notice to oppose and an answering affidavit.
- [3] The applicant is 4Eleven Properties (Pty) Ltd, a limited liability company, duly registered in terms of the company laws of the Republic of South Africa, with its registered address in Winchester Hills, Gauteng. The applicant is the registered owner of a multi-unit residential building known as M[...] C[...], situated at 4[...] A[...] Road T[...] C[...] (the property), comprising twenty-six units (one of which functions as an informal spaza shop). It took transfer of the property in July 2023. Mr Manyama is the director of the applicant and the deponent of the founding and replying affidavits.
- [4] The 1st to 24th respondents are all residents of the property. Although there had been engagement with the respondents since the applicant took control of the property, the applicant had not been able to confirm the respondents' full names and further details. As such, the 25th respondent (the further occupiers of units 1-26) has been cited ex abundanti cautela to ensure that all the occupiers at the property are included in this application.
- [5] The 26th respondent is 'the occupier at unit 26 Malila Court, which operates as a spaza shop'. The application for eviction against the 26th respondent is brought in terms of the common law. The 27th respondent is the City of Johannesburg (the municipality) in whose area of jurisdiction the property is situated.

Background Facts

- [6] It is necessary to set the facts out in some detail. When the applicant acquired the property in July 2023, all units except for three (units 8, 12, and 25) were already occupied by tenants of the previous owner who were bound by lease agreements. In February 2024 the applicant

was informed that the three units had been occupied by unidentified individuals without its knowledge or consent. As a result, the applicant laid a charge of trespassing against the unlawful occupiers. The South African Police Services (the SAPS) has not yet implemented any measures.[2]

- [7] At the time the applicant took transfer of the property, the respondents took the view that the applicant had highjacked the property. Despite Mr. Manyama's attempts to engage with the respondents, they refused to accept the applicant as the registered owner. The applicant alleged that this was a stratagem and a 'textbook highjack play' and was seemingly an attempt by a faction amongst the respondents to take control of the property. The allegations of high jacking are disputed by the respondents.
- [8] The property required significant maintenance, upgrading, and refurbishment, notably in the areas of plumbing, electrical installation, and waterproofing. The applicant subsequently contracted a contractor to address these issues, among others, at a cost of approximately R820 000.00. The refurbishment and maintenance processes were scheduled to commence and conclude on 15 August 2023 and 15 December 2023, respectively. A temporary delay in the refurbishment and maintenance process was attributed to cash flow concerns.
- [9] In the meantime, despite several meetings between the applicant and the respondents, the dissatisfaction amongst the respondents mounted against the applicant. In November 2023 the respondents embarked on a rent boycott. The applicant also alleged that the respondents engaged in acts of intimidation and threats against the applicant and the contractors it had hired to perform refurbishment and maintenance at the property. The latter is denied by the respondents.
- [10] January 2024 marked an increase in the severity of the situation. The applicant alleged that the respondents, commanded by the first respondent, closed the gate and denied the contractor access. Furthermore, the respondents intimidated and threatened the contractor's representative, Mr. Mazibuko, who in turn departed the property in a hurry. The respondents once more deny the allegations.
- [11] In an effort to resolve the disputes between the parties, another meeting was held at the property on 6 February 2024. A group of tenants, the former owner of the property, the applicant's financier and contractors, and Mr. Manyama attended the meeting. It is alleged that the tenants disrupted the meeting and, under the supervision of the first respondent, confined the attendees and Mr. Manyama to the property. On Friday, 9 February 2024, the contractor, Mr Mazibuko, laid charges of intimidation against the first respondent at the local SAPS.[3] The first respondent was arrested on the same day but was released shortly thereafter.

[12] This conduct, amongst others, precipitated urgent interdict proceedings against the respondents ('the interdict proceedings'). [4] The 1st to 26th respondents were cited as the respondents in the interdict proceedings. On 20 February 2024, Cassim AJ granted an order by agreement between the applicant and the respondents ('the order'). The order recorded in relevant part as follows:

1. The respondents are directed to resume payment of any rental due to the applicant with effect from 1 March 2024, and on or before the first day of every successive month thereafter, arising from the respondents' occupation of the property.
2. The rental was to be paid into the trust account of the applicant's attorneys of record, Messrs Vermaak Marshall Wellbeloved Inc. (VMW Inc.)
3. Rent shall be paid into the above account until such time as otherwise notified in writing by VMW Inc., whereafter payment shall be made directly to the applicant.
4. The applicant shall instruct its contractors to resume any necessary maintenance and refurbishment at the property, including that pertaining to plumbing and electrical installation.
5. The respondents are interdicted and restrained from:
 - 5.1. interfering, or attempting to interfere, or cause interference, in any manner with the Applicant's control and possession of the property, including not limited to:
 - 5.1.1. interfering, or attempting to interfere, or causing interference in any manner with the installation of private security at the property;
 - 5.1.2. installing, or attempting to install, or causing to be installed, any person to be in occupation of the property;
 - 5.1.3. collecting, or attempting to collect, or causing to be collected, rental payments from any person in occupation of the property;
 - 5.2. interfering, or attempting to interfere, or causing interference, in any manner with the Applicant, its contractors, agents, employees, bankers or representatives in the legitimate conduct of their business at the property; and
 - 5.3. threatening, intimidating, harassing or in any manner abusing the Applicant, its contractors, agents, employees, bankers or representatives.

[13] The granted order seems to be final in nature, despite the respondent's counsel's submissions regarding its interim nature. Even though the order was agreed to by the respondents, they did not pay any rental as ordered. Mr. Monyama asserted that he had been contacted by a number of occupiers who have expressed their desire to pay but were being prohibited from doing so. He argued that it was therefore clear that the hijacking of the property by the 1st to 26th respondents had persisted.

[14] The following had transpired since the order was granted: On 21 February 2024, the respondents' attorneys addressed a letter to VMW Inc. requesting that a meeting be held at the property. On 22 February 2024, Mr John Gregory Vermaak ('Vermaak') of VMW Inc. addressed a letter to the respondents' attorneys stated as follows:

2.1.1.1 On our advice, our client will not meet with your clients unless and until the first rental payment is made on or before 1 March 2024.

2.1.2 Similarly, continuing with the refurbishment is obviously contingent on the payment of rental. There is, of course, no impediment to your clients making rental payment as a matter of urgency given, in particular, that they have not paid for some months.

2.1.3 On our advice, our client will not meet on site given the unpleasantness that took place on the last occasion. Instead, our client is willing to meet with a representative group of no more than five of the tenants at our offices at a mutually agreed time and date. This meeting may take place with or without legal representatives at your election.

2.1.4 Prior to any such meeting, we will require an agenda for the items to be discussed at the meeting. We must stress, as we did during settlement discussions, that issues of ownership will not be debated: you as the attorney have everything you need to reassure your clients or of our client's bona fides. This issue does not need to be debated any further, subject to your investigation and your advices to your clients."

[15] On 22 February 2024, the respondents' attorneys addressed an e-mail to VMW Inc. which provided in relevant part as follows:

'2. Please note that the issue of ownership of the property is no longer in dispute.

3. Please note further that, our clients have no issues in paying rental as they have been paying rental to previous owner more than 15 years.
4. Our clients' issues relate to the renovations currently being done on the property in as far as water & lights are concerned.
5. It was our and certainly our client's understanding and as per your undertaking, that the renovations would resume immediately and our clients would then make the rental payments on 1st March 2024.
6. The main issue that was to be discussed during the meeting with your client related to lease agreements and maintenance of the property. It is puzzling that your client, who is the landlord, is refusing to meet with his own tenants.
7. We were under the impression that all the parties were amenable to an amicable resolution to the issues affecting the residents of the property.
8. It is indeed regrettable that your client has opted to treat the residents in the manner that he is, bearing in mind that some

families have been residing in that property for more than 15 years WITHOUT any problems with previous owners.

9. We, therefore request that you indicate when will the renovations and/or repairs will resume in the property.'

[16] On 4 March 2024, Vermaak addressed a letter to the respondents' attorneys:

'1. You will by now have been instructed that refurbishment recommenced at the property last Monday, the 26th February 2024.

2. We record that not a single payment has been received in respect of rental, notwithstanding the contents of the order taken by agreement before the Honourable Mr Justice Cassim on 20 February 2024.

3. With reference to your letter of the 22nd February 2024, we are instructed to advise as follows:

3.1. our client is pleased that the issue of ownership of the property is no longer in dispute;

3.2. renovations have obviously recommenced;

3.3. your clients' alleged understanding that the renovations would resume immediately, whereafter your clients would "then make the rental payments on 1 March 2024" does not reflect the agreement or the order, but this is, of course moot, given that refurbishment recommenced a week ago;

3.4. your suggestion that our client is refusing to meet with his tenants is, of course, not the case: what is the case is that our client is not willing to be subjected to the threats, intimidation and abuse that took place at the last meeting at the property. Our client is more than willing to meet with your clients, but in circumstances in which he will not be placed at risk;

3.5. your suggestion that our client "has opted to treat the residents in the manner that he is" is completely unacceptable:

it is your clients that have boycotted rent, it is your clients that have physically threatened, intimidated and in fact imprisoned our client's representatives, and it is this conduct which is not acceptable;

3.6. notwithstanding all of this, our client was willing to reconcile with your clients in the terms reflected in the order of the Honourable Judge Cassim AJ. Please advise your clients that unless they have paid rental by close of business today, Monday, 4 March 2 client will accept their repudiation of the lease agreements and will seek their immediate eviction from the property.'

[17] On 6 March 2024, the respondents' attorneys addressed a letter to VMW Inc. They advised that they had consulted with their clients regarding the non-payment of rental on 1 March 2024, as per court order dated 20 February 2024, and that they 'wish to advise, as per our instructions, to notify yourselves that our clients will withhold the payments of rental until, the meeting

between the parties is held and until the issue of new lease agreements has been addressed'. Attached to the letter was the minutes of the meeting held with the respondents. The minutes recorded as follows:

'We as Tenants held a meeting on the 24th February 2024. The Living conditions on this Property are dire at this Moment. The Land-Lord

refused completely to have a Meeting with us. So as to try and rectify these issues, Which we as Tenants forced Us to Stop paying

Rentals since last Year, November 2023 (Hence We requested a meeting the very same November, The Land-Lord refused to come).

We urged the Complainant that they will come and address these issues before 1st March 2024. But they never Honored Our invitation as Tenants to iron out Our dissatisfactions around the Property. And to also discuss Our New Lease Agreements going forward.

It is not Our intention to undermine the Court Order. Dated 19 February 2024. As We have been paying the Rent for the Past 10- 20 Years as Tenants in this Property but decided to stop doing so, due to the Land-lord conspicuous failure to render Services needed. That is Water, Electricity and Removal of Waste.'

[18] Vermaak responded and addressed a letter to the respondents' attorneys which provided as follows:

1. We confirm receipt of your letter of this morning accompanied by your clients' minutes.
2. The contents of your letter are quite startling to the extent they demonstrate your clients' express and explicit repudiation of the agreements of lease that currently exist.
3. We have advised our client that it could accept the repudiation based on your letter alone, and require your clients to vacate the property immediately,
4. However, in a last ditch attempt to remedy the relationship between the parties, our client is willing to meet with a representative group of your clients at our offices by no later than Friday, 8 March 2024.
5. In the interim, however, your clients are required to pay rental, the details of which being well known to them as per the order of court.

6. As things stand, and contrary to your representations to the Honourable Mr Acting Justice Cassim at court the week before last, your clients now concede that they have not paid rental since November 2023 inclusive. Withholding rental is a contravention of the regulations to the Rental Housing Act and a clear repudiation of the lease agreement.
 7. Prior to any meeting to take place within the next 48 hours, kindly expand on the issues to be discussed. To the extent that the issue is simply entering into fresh leases, your clients' conduct since November 2023 not only in entering into an unconstitutional rental boycott, but in intimidating and imprisoning our client's representatives, is certainly counter indicative to entering into fresh leases until such time as your clients have proven willing to fulfil their present obligations.
 8. If the purpose of the meeting is to seek a reduction in rental, or a delay in the commencement of payment of rental, this will not be subject to debate. In this context, it must be home in mind that your clients now owe our client a full 5 months of rental.'
- [19] The participants met on 8 March 2024 as requested. The respondents described the circumstances that led to the rent boycott and insisted on new lease agreements before they could comply with the order. Vermaak emphasised that the respondents consented to the order and must therefore comply and stated that new lease agreements would not be provided until arrear rental was paid. He also emphasised that the respondents had admitted to not paying rent by agreeing to the order, and that this was a boycott of rent.

The respondents' attorney acknowledged that they must pay rent, but only once the renovation and lease difficulties were settled.

Vermaak insisted that only if rental was paid, could the applicant suggest a workable plan for the respondents to settle their unpaid arrears, and only then could new lease agreements be entered into. The respondents' counsel promised VMW Inc. a response by Monday, 11 March 2024. Vermaak warned the respondents that repudiation notices would be served if respondents did not pay rent by Monday, 11 March

2024. Vermaak ended the meeting.

[20] The applicant alleged that the respondents were not happy with the manner in which the meeting was ended, and they became verbally aggressive towards Vermaak, essentially daring him to serve the repudiation notices. On 12 March 2024, the respondents' attorneys addressed a letter to VMW Inc. which recorded:

1. We confirm a meeting held between the parties on 8th March 2024 and at your offices.
2. We note that the Court Order dated 20th February 2024 does not deal with the issue of arrear rental and as such we consider same to be forfeited by the Landlord.

3. We are further instructed to advise the Landlord that the occupants of the property have taken a decision to continue withholding the payment of the rental until the renovations at the property have been completed.'

[21] Accordingly, on 13 March 2024, Vermaak replied as follows:

1. There is no basis in fact or in law for your suggestion that rental has been forfeited. The interdict was taken by agreement in the urgent court in circumstances in which our client was seeking to address the crisis arising from having been taken hostage in the property, and it is opportunistic in the extreme to suggest the interpretation you have done.
2. We note further your clients' wilful and deliberate election, despite being advised by attorneys, that they will repudiate the terms of the existing lease agreements.
3. We are instructed to accept the repudiation as we hereby do. Your clients are directed to vacate the property with immediate effect.
4. In the meeting on Friday, 8 March 2024, we reference fact that the regulations to the Rental Housing Act specifically require the

payment of rental. We are also instructed to reference the judgment of the Honourable Ms Justice Kathree-Setiloane, in *Teaca Properties*

(Pty) Ltd and Others v John Banza and Others (2017/36741) (2018) ZAGPJHC 72 (9 February 2018), in which she found that rental boycotts

are unconstitutional.

5. Should your clients not vacate the property immediately, we are instructed to institute urgent eviction proceedings. We trust this will not be necessary.'

[22] The respondents have either failed or refused to leave the property, and their attorneys have not responded. As a result, the eviction application was launched on 16 May 2024. The applicant submits that the applicant had no other choice to prevent the unlawful deprivation of its proprietary rights except for the urgent eviction of the respondents from the property.

Urgency

[23] It is common cause that the respondents' right to occupy the property had been terminated. The respondents are thus unlawful occupiers as contemplated in PIE. The respondents, however, take issue with the fact that the eviction application was launched in the urgent court and not in the normal course and requested the court to strike the matter for lack of urgency.

[24] First, as far as the issue of self-created urgency is concerned, the applicant offered the following explanation for the delay in

instituting these proceedings. After the letter of 13 March 2024 was sent, the applicant was unable to promptly instruct VMW Inc. to prepare the application due to the substantial expenses that had already been incurred by the applicant in the interdict proceedings and the subsequent engagements with the respondents' attorneys. The applicant had also anticipated that the respondents would fulfil their rental obligations on 2 April 2024, as a result of the threat of eviction proceedings. I am satisfied that the delay was sufficiently explained.

- [25] Second, the respondents have not alleged any prejudice as a result of this application being launched on an urgent basis. It is because there is in fact none. Conversely, it is trite that commercial interest may justify the invocation of Rule 6(12).[5] The financial implications of the rental boycott on the applicant and on Mr. Manyama, and the prejudice that will be suffered by them if the application is not heard on an urgent basis is self-evident. I say so for the following reasons.
- [26] The applicant has not received any rental payments from the respondents since November 2023. The rental payable by the respondents amounts to R42 500.00 per month. The applicant has therefore already lost more than a quarter of a million Rand in unpaid rental. Out of the notional rental of R42 500.00, the applicant's finance costs amount to R28 000.00 and rates and services a further R10 000.00. It goes without saying that the applicant's legal expenses have been substantial, necessitating the negotiation of a financial agreement with the applicant's attorneys.
- [27] The respondents have wilfully chosen to withhold rental from the applicant and have used the applicant's refusal to conclude new lease agreements with them and the property's lack of maintenance to justify their non-payment. On the other hand, the applicant is obligated to continue paying rates and service charges to the municipality, as well as servicing its debt to its financier, the Trust for Urban Housing Finance ("TUHF"), resulting in additional expenses for an investment that yields no return. In addition, the applicant has been quoted R820 000.00 to complete the maintenance and renovations needed at the property. The applicant has paid just under R600,000.00 to the contractors to date.
- [28] It is further clear from the stance adopted by the respondents that they will not pay any rent if their demands are not met. Not even the order by court could persuade them otherwise. Moreover, the applicant's chances of ever recouping its losses are exceedingly slim. Although the respondents are of the demographic that can afford rent, they seemingly do not possess an adequate amount of movable property to satisfy any judgement debt. In any case, the applicant stated that it lacks the resources to pursue each occupier for outstanding rent.
- [29] The applicant is a closely held company designed to benefit Mr. Manyama and his family. The financial burden the rent boycott created has meant that he has struggled to pay his children's school fees, and his own rent. He submitted that the respondents' actions have put the project under severe risk of collapse which may well ruin him financially.

[30] The applicant cannot be reasonably anticipated to continue investing in the property while the respondents reside rent-free and have no intention of ever repaying their arrears (as confirmed by their attorneys on 12 March, 2024). The maintenance at the property in accordance with paragraph 4 of the order, has resumed and is still continuing. Nevertheless, the unlawful rent boycott continues.

[31] Third, the respondents submitted that if the application was indeed urgent, it should have been brought in terms of section 5 and not in terms of section 4 of PIE. It is argued that the application should for this reason alone be struck from the urgent roll. Section 5 provides for urgent evictions and states that:

‘Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land of that land pending the outcome of the proceedings for a final order and the Court may grant such an order, if it is satisfied that-

- (a) There is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;
- (b) The likely hardship to the owner or any other affected person if an order of eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and
- (c) There is no other effective remedy is available.’

[32] Although the application was not brought in terms of section 5, which caters for an interim order and urgent eviction under very specific circumstances, it does not mean that an application in terms of section 4 for a final order cannot be granted in the urgent court. The respondents were given the requisite notice of the application. The purpose of section 4(2) was thus achieved. As a result, the respondents have had enough time and opportunity to oppose the application and make a thorough case in court. The respondents took advantage of this opportunity and filed their responding affidavit, bringing all pertinent information before the court for the purpose of deciding the application.[6]

[33] The pertinent issue as far as urgency is concerned is the following. Will the applicant have substantial redress if the matter is heard in the ordinary course (Uniform Rule 6(12))? The Gauteng Division of the High Court is notoriously known as the busiest division in the country. In a perfect world the applicant would have been able to set the main application down for hearing within a relatively short time, as long as the respondents have been given at least 14 days’ notice of the eviction application. The first available date on the ordinary opposed motion court roll is in the first term of 2025. For the reasons set out above, such a delay in hearing the matter would cause substantial and irreparable financial prejudice to the applicant.

[34] I am thus satisfied that the matter is urgent. The applicant has demonstrated that it is experiencing financial losses as a consequence of the rent boycott and the respondents' failure to vacate the property. The applicant's damages are accruing as a result of the rent boycott, whilst the applicant is renovating the property at great expense and still obligated to pay for the municipal charges. The applicant will be unable to continue paying its service providers which could result in the property being sold at a significant loss or, worse yet, being liquidated. No hearing in due course will undo the harm that the respondents' rent boycott has done to the applicant's business.

Just and equitable

[35] The court is constitutionally and legislatively obliged to enquire into whether the granting of an eviction order would be just and equitable in the circumstances. The justness and equitability of an eviction turns on the question of whether the unlawful occupiers, due to circumstances beyond their control, will be rendered homeless should an eviction order be granted. Typically, an eviction order will be deemed unjust and inequitable and will not be granted in cases where the eviction will leave the occupiers homeless. On the other hand, if the unlawful occupiers are capable of securing alternative accommodation, their eviction will generally be just and equitable.

[36] In their answering affidavit the respondents submitted that the property is home to over 100 residents, including minor children, women, and the elderly. Most of the respondents have been residing in the property for more than 15 years and they reside with their school going children who will be severely affected if they were to be evicted. They admitted that they are capable of paying rent and stated that it is their intention to resume paying rent, as soon as their grievances have been attended to by the applicant. It is alleged that the prejudice that the respondents will suffer if evicted, far outweighs that of the applicant, 'who has refused to furnish the respondents with new lease agreements, has refused to render services and maintain the property'.

[37] The respondents further alleged that they had been paying their monthly rental ever since the applicant took ownership of the property. However, when the services and maintenance stopped, they took a decision to withhold the rentals until their grievances have been addressed. They stated that despite numerous requests for meetings between the applicant and the respondents, the applicant refused to meet with residents, to an extent that he informed the residents, telephonically during November 2023, that whoever does not want to stay there can move out, all he wants is his rent. It then became clear to the respondents that the applicant had no intention to attend to the tenants' grievances. It became worse when, during August 2023, the municipality's employees came to the property to disconnect and remove meter for water, due to arrears. To the extent that it was the respondents who collected money amongst themselves in order to settle municipality's water account.

- [38] First, on their own version, the respondents have wilfully chosen to withhold rental from the applicant and have used the applicant's refusal to conclude new lease agreements and the property's lack of maintenance to justify their non-payment. It is also clear from the papers that the respondents keep on shifting the goalposts to avoid paying rent to the applicant. On 20 February 2024, the respondents obtained an order by agreement in which they agreed to start paying rent on 1 March
2024. On 22 February 2024, the respondents said that renovations must commence before they will pay rent. On 6 March 2024, the respondents said that they will not pay rent until a meeting had happened and the new leases have been addressed. On 12 March 2024, the respondents said that they will not pay rent until the renovations are complete.
- [39] Second, the respondents have failed to make out a case of homelessness or that there are women, children, the elderly or disabled, whose rights to shelter would be violated if evicted. The respondents can procure alternative accommodation by paying rent. This is evident from the fact that they had paid rent for numerous years prior to November 2023. The risk of any individual occupier being rendered destitute is thus non-existent in this case. Temporary emergency accommodation is only available to persons who will be rendered homeless upon their eviction due to no fault of their own. The respondents have wilfully withheld rental and the
- question of homelessness therefore does not arise and the respondents are not entitled to TEA from the 27th respondent. Consequently, the only prejudice the respondents will suffer in the event of eviction from the property is the inconvenience of having to relocate.
- [40] Third, the respondents resorted to self-help by means of a rent boycott, thereby depriving the applicant of a revenue stream. This they did in defiance of a court order. In *Teaca Properties (Pty) Ltd and Others v John Banza and Others*, [7] Kathree-Setiloane J described this sort of conduct as 'repugnant to Constitutional values and the rule of law' which cannot be sanctioned. The applicant made numerous attempts to resolve the rent boycott before initiating eviction proceedings against the respondents. Engaging with the tenants and obtaining an order against them were among the measures implemented. Nevertheless, these endeavours were unsuccessful, and the applicants were ultimately compelled to initiate eviction proceedings.
- [41] The applicant has been strung along by the respondents since the order was granted. It is now evident that the respondents' objective is to remain at the property rent-free for as long as they can. It has been eight months since the applicant received any rental payments from the respondents, and there is no likelihood of receiving rental payments from them in the future, whatsoever. This conduct cannot be allowed to persist any longer.
- [42] In the circumstances, I consider it just and equitable to evict the respondents. In the result the following order is made:

1. The first to twenty-sixth respondents, and all those occupying the property by, through or under them, are evicted from the property described as: ERF 7[...] T[...] C[...] T[...] REGISTRATION DIVISION I.R. GAUTENG situate at: UNITS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 AND 26 M[...] COURT 4[...] A[...] ROAD T[...] C[...] LUB ("the property").
2. The first to twenty-sixth respondents, and all those occupying the property by, through or under them, are ordered and directed to vacate the property within 60 days of service of this court order.
3. In the event that the first to twenty-sixth respondents do not vacate the property in terms of paragraph 2 above, the Sheriff of the Court, or his/her lawfully appointed Deputy, is authorised and directed to evict the first to twenty-sixth respondents from the property.
4. The Sheriff of the Court, or his/her lawfully appointed Deputy, is authorised and directed to approach the SAPS for any assistance that s/he may deem necessary or appropriate herein.
5. Service of the Order of this Court, may be effected in the following manner:
 - 5.1 the Sheriff, or his lawfully appointed Deputy, is authorised and directed to display Order of this Court, in the foyer at the property;
 - 5.2. the Sheriff, or his lawfully appointed Deputy, is authorised and directed to affix the Order of this Court, to the units occupied by the respondents, alternatively to slide a copy thereof under the doors of such units;
 - 5.3 on the respondents' attorneys by way of e- mail to mzukisindabeni@gmail.com.
6. The first to twenty-fifth respondents are ordered and directed to pay the costs of this application, including the costs of the application in terms of section 4(2) of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act, 1998, jointly and severally, the one paying the other to be absolved. The twenty-sixth respondent is ordered and directed to pay the costs of the main application only.

L. WINDELL

JUDGE OF THE HIGH COURT

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 8 July 2024.

APPEARANCES

Counsel for the applicant: Advocate L. Peter Attorneys for the applicant: Vermaak Marshall Wellbeloved Inc. Counsel for the respondents: Mr M. Ndabeni Attorneys for the respondents: M. Ndabeni Attorneys Date of hearing: 11 June 2024 Date of judgment: 8 July 2024

- [1] Act 19 of 1998
- [2] The case number CAS 437/01/024 was assigned.
- [3] Case number CAS 136/2/2024 was allocated.
- [4] Under case number 2024-015113. The founding affidavit in these proceedings sets out the conduct of the respondents in detail.
- [5] Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd 1982 (3) SA 582 (W) at 586G.
- [6] See Lewray Investments v Mthunzi [2018] ZAGPJHC 432 (23 May 2018).
- [7] (2017/36741) (2018) ZAGPJHC 72 (9 February 2018)

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