

SOUTH AFRICA / JUDGMENT

A.P and Another v Cohen and Others (Appeal) (A 216/2024 ; 21188/2023) [2025] ZAWCHC 66 (24 February 2025) [2025] ZAWCHC 66

COURT

Western Cape High Court, Cape Town

BEFORE

Erasmus, Lekhuleni, Bhoopchand

CASE / FILE NUMBER

A216/2024 ; 21188/2023

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IN

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

Appeal case number: A216/2024
Case
Number: 21188/2023
In
the matter between
A[...]
P[...]
FIRST
APPELLANT
ALL
OTHER OCCUPIERS
SECOND
APPELLANT
and
GERALD
COHEN

FIRST
RESPONDENT
LESLIE COHEN
SECOND
RESPONDENT
CITY
OF CAPE TOWN
THIRD
RESPONDENT

JUDGMENT

Date of hearing: 22 and 24 January 2025

Date of judgment: 24 February 2025 – Electronically delivered

Coram: Erasmus J, Lekhuleni J, Bhoopchand AJ

THE COURT:

1. Tread not the tenuous tightrope of evictions unless all is known of the rope, its strength at the centre where balance is required without falling to either side. For it's the perch in that distraught divide that determines justice and equity to either side. A task requiring wisdom and skill, ensuring dignity in the exit of one and nurturing patience in the other till justice be seen to be done.
2. This appeal concerns the Court's obligations generally and under sections 4(7) and (8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") before it grants an eviction order. The application of these sections of PIE is not discretionary[1], even in evictions from privately owned residential properties[2]. The Appellants were the First and Second Respondents in the Court a quo, but the parties shall be referred to as cited in this appeal.[3] The First Appellant, Ms A[...] P[...], and two children[4] occupy the First Respondent's sectional title scheme unit, Flat [...] B[...] W[...], 3[...] B[...] Road, Sea Point ("the apartment"). The City of Cape Town ("the City"), a metropolitan municipality, is cited as the Third Respondent.[5]
3. On 15 March 2024, the Court a quo, sitting as the motion court hearing unopposed matters in this division, ordered the Appellants' eviction from the apartment. The Appellants were granted leave to appeal that order to this Full Bench on 31 July 2024.

BACKGROUND

FACTS

4. On 30 August 2022, the Second Respondent, the wife of the First Respondent, who manages the apartment on his behalf, agreed to lease it to the First Appellant for one year. The rent payable was R9200 per month. After the lease lapsed on 30 August 2023, the First Appellant continued to reside in the apartment. The parties agreed that the rental would increase to R10 000 per month from 1 October 2023. The First Appellant failed to pay rent for October and November 2023. The Second Respondent alleged that she was entitled to cancel the lease agreement upon breach and failure to rectify the breach upon notice. The Second Respondent issued a letter of demand for the outstanding rental on 1 November 2023. The First Appellant failed to pay the outstanding rent. The Second Respondent cancelled the lease on 14 November 2023. The Appellants did not vacate the apartment.
5. The Respondents are pensioners. The Second Respondent alleged they relied on rental income to cover their living expenses. The First Respondent's ill health, which included three major strokes, increased their expenses. They have had to cover the municipal accounts and costs relating to the apartment.
6. The Second Respondent provided a brief statement about the Appellants in her affidavit. She stated that the First Appellant was an employed engineer. Two minors lived in the apartment, and there were no sick or elderly persons present. There was no additional information about the First Appellant or the two minor children. Without further supporting details, the Second Respondent asserted that the Appellants would not be left destitute if the eviction application were granted.
7. The Respondents commenced the section 4 PIE proceedings to evict the Appellants on 30 November 2023. They served their Section 4(1) and Uniform Rule 6 notices and papers. The notice included the notice of motion and the founding affidavit of the Second Respondent, supported by various documents. The attached documents comprised the title deed of the apartment, the lease agreement, a note of outstanding rental from 1 June 2023 to 1 November 2023 totalling R31 600, a letter of demand dated 1 November 2023, the Sheriff's notice of service of the letter dated 1 November 2023, the letter of lease cancellation dated 14 November 2023, a confirmatory affidavit of the First Respondent and the Sheriff's service of the notice of motion on the Appellants and the City.
8. The notice further informed the Appellants that the proceedings were instituted in terms of section 4(1) of PIE, that they were in unlawful occupation and possession of the apartment without the Appellant's consent or any right in law thereto, that the First Appellant failed to make monthly rental payments, the lease was cancelled, and that the First Appellant failed to vacate the premises when requested to do so. The Appellants were informed of their Section 26 constitutional rights to housing, their right to be legally represented, and to apply

for legal aid if they could not afford legal representation. The street address and telephone number of Legal Aid, South Africa's local offices, were provided. The Appellants were also informed of their right to be present at the hearing and to communicate their circumstances relevant to the envisaged application for eviction.

9. On 17 January 2024, a section 4(2) notice was issued, informing the Appellants of a Court hearing on 28 February 2024 at 10h00. The Respondents sought orders for the Appellants' eviction, a just and equitable date for them to vacate, and a date to effect the eviction if the Appellants had failed to leave. The Respondents sought the costs of the application from the Appellants. They summarised the grounds for the proposed eviction, namely the cancellation of the lease agreement due to non-payment of rental and the Appellants' unlawful occupation of the apartment. The Appellants were informed that they were entitled to defend the application. The order emanating from the ex parte application seeking directions from the Court was granted on 23 January 2024 and served on the First Appellant on 5 February 2024.

THE EVICTION ORDER

10. The Appellants did not file a notice of opposition. The matter was first heard on the unopposed motion roll on 28 February 2024. The First Appellant appeared, indicating that she could not speak due to

ill health. She communicated in a note to the Respondent's Counsel that "she wishes to speak and obtain legal representation". The matter was postponed by agreement between the parties to the unopposed motion Court of 15 March 2024 ("the Court a quo") to allow the First Appellant to secure legal representation. The matter proceeded on 15 March 2024, with the First Appellant appearing once more without legal representation.

11. The Court a quo asked the Respondents' Counsel whether the parties had reached any agreement. He conveyed that the Respondents were amenable, but there was no agreement. The Court then addressed the First Appellant, enquiring what she wanted to convey. The First Appellant offered an incoherent explanation for her previous inability to speak and briefly explained the note she handed to the Respondents' Counsel on 28 February 2024 about why she appeared unrepresented. She said she had come to speak and would consult her lawyer if anything transpired. When asked about her defence against the application for her eviction, the First Appellant spoke of her conversation with the Second Respondent. The Second Respondent mentioned her advancing age and that an agent was managing the apartment. The First Appellant said she paid over monies twice and had to borrow from others. The transcript does not clearly capture the Appellant's meaning.
12. The Court had difficulty understanding the First Appellant's

submissions

on the double payment. The Court reminded the First Appellant that she had been informed of the pending eviction application and had not defended the matter. The Court asked the First Appellant to explain the basis upon which she believed she could remain in the apartment. The First Appellant referred to the agent mentioned in the preceding paragraph, who had informed her she could pay him (presumably the outstanding rent) as she saw fit. The Court then suggested that the First Appellant could not stay in a

property for which she did not pay. The First Appellant protested that she had paid a certain amount, but the Second Respondent had cancelled her Wi-Fi and DSTV since the Appellants were using data.

13. The Court further reminded the First Appellant that she was allowed to obtain legal representation during the hearing on 28 February 2024, which she failed to do. The First Appellant could not compel the owner to retain her in a property, especially as they had adhered to the correct procedure for her eviction. The First Appellant responded that she had intended to present herself at the hearing and would subsequently consult with her lawyers. She alleged that the Second Respondent was aware she would not attend the hearing with a lawyer. The Court then decided to proceed with the application.[6]
14. The Court a quo ordered the Appellants to vacate the apartment by 30 April 2024, failing which the Sheriff would evict them on or after 2 May 2024. In effect, the Court a quo gave the Appellants six weeks to vacate the property.
15. This Court considers it appropriate to make certain observations from the transcript of the two proceedings before the unopposed motion Courts. Neither Court enquired about the language preferences of the unrepresented First Appellant before addressing the application. The Court of 28 February 2024 did not explain the First Appellant's right to legal representation when it granted the order by agreement. The Court of 15 March 2024 assumed that the earlier Court had clarified the right to legal representation when it stated: "...the Judge would have explained that to you, and I am going ahead". The second Court proceeded with the application on that basis.[7] The Second Court did not enquire about the First Appellant's personal circumstances beyond the limited interaction on her

finances, nor did it ask any questions about the minor children or whether the eviction would render the Appellants homeless.

THE REASONS FOR THE JUDGMENT AND THE APPLICATION FOR LEAVE TO APPEAL

16. The First Appellant consulted her attorney on 29 April 2024, one day before the Appellants were required to vacate the apartment. On 30 April 2024, the Appellants filed their late application requesting reasons for the eviction order and seeking leave to appeal. They also requested condonation for the late filing of their applications.

The grounds of appeal were threefold: firstly, that the Court a quo had failed to allow the First Appellant to respond to the Respondents' eviction application; secondly, that the Court did not consider whether the eviction would be just and equitable, whether it would render them homeless, and whether they qualified for emergency or alternative accommodation from the City; and thirdly, that the Court overlooked the interests of the minor children.

17. The Court a quo supplied written reasons on 13 May 2024. The reasons aligned with the transcript of the proceedings summarised earlier and the content of the Respondent's papers. The Court referenced, among others, that the First Appellant is an engineer and is employed and that there were no elderly or infirm persons living in the apartment. The Court mentioned the Second Respondent's allegation that the First Appellant could obtain suitable alternative accommodation and would not be left destitute if an order for eviction were granted. The First Appellant did not dispute the allegations concerning her rent and appeared to suggest that her payments were not in arrears. Neither did the First Appellant dispute the Second Respondent's allegations about the First Appellant's

personal circumstances. The Court held that it was just and equitable for the eviction order to be granted.

18. The Appellants filed their amended notice of application for leave to appeal on 24 July 2024. They substituted the first ground of appeal, i.e., the Court's failure to allow the First Appellant to respond to the application, with the ground that the Court failed to recognise the need to appoint an interpreter to enable the First Appellant to participate effectively and meaningfully in the proceedings. The Appellants retained the two remaining grounds of appeal.
19. The Court delivered its judgment on leave to appeal on 31 July 2024. It reviewed the proceedings in Court, and aspects already addressed shall not be repeated. The Court noted that it adjudicated an unopposed eviction application under PIE in a busy motion roll. The earlier motion Court had postponed the application to allow the First Appellant to obtain legal representation. The First Appellant had been informed of her rights and where to access legal assistance, but she did not avail herself of that opportunity.
20. The Court a quo referred to the challenges of accommodating unlawful occupants like the First Appellant. The City invariably offered affordable housing that did not meet the standard the First Appellant was accustomed to. The First Appellant did not dispute that she was an engineer residing in an apartment with two minor children under her care. The Court acknowledged that the First Appellant could

have been permitted to complete the City's housing questionnaire. The Court had not considered the City's housing report. Furthermore, the Court was not informed whether the Appellants had approached the City for a questionnaire or whether one

was provided to her.

21. The Court recognised its duty to investigate the occupier's circumstances to determine whether an eviction is just and equitable. However, the personal circumstances of the Appellants presented to the Court (by the Respondents) were not challenged either in writing or orally by the First Appellant. The Court accepted the Respondent's

allegations regarding her employment as an engineer. The First Appellant had the opportunity to inform the Court about her minor

children but chose not to do so. Additionally, the First Appellant did not address the duration for which she believed she could remain in the apartment. Furthermore, the First Appellant could engage with the Court in English.

22. The Court a quo summarised the First Appellant's submissions. She had experienced financial difficulties; the agent of the Respondent had given her an extension of time to pay, and she said that she would like to remain in the apartment and pay until her financial situation improves. The Court indicated that this was not a valid basis for allowing an unlawful occupier to remain on the premises in a PIE application. It acknowledged that it had not directly addressed any specific questions to the First Appellant aside from her financial circumstances. The Court did not enquire about her personal circumstances, which it may not have been unaware of, and there was no report from the City. There was no indication that the Respondents' legal representative provided the First

Appellant with a questionnaire to complete nor that she failed to complete one if it was provided. The Court referenced other

unlawful occupiers, often given questionnaires by the party initiating an eviction application, as the City cannot provide a report without a completed questionnaire. The Court accepted that there had not been compliance with the requirement regarding alternative accommodation.

23. The Court a quo concluded that there was a reasonable prospect of another Court reaching a different conclusion, granted the Appellants leave to appeal and ordered that costs would be the costs in the appeal.

THE LEGAL PRINCIPLES APPLICABLE TO THIS APPEAL

24. After establishing that the occupier is in unlawful occupation, the Court hearing an eviction application exercises a wide discretion in two respects: first, whether or not to grant an eviction order, and second, the date by which the occupied property has to be vacated.[8] The Court of Appeal is not constrained by the traditional grounds of whether the court exercised its discretion capriciously or based on a wrong principle, did not apply its unbiased judgment to bear on the question, or acted without substantial reasons.[9]
25. The Appellants initially occupied the apartment under a fixed-term lease, which subsequently became periodic after its expiration. The lease was terminated due to non-payment of rent, making the Appellants' possession of the apartment unlawful. This holding over would have constituted a crime and entitled the Respondents to an ejectment order

under the common law.[10] The Respondent's common law right must now yield to the PIE eviction procedure.[11] The Constitution mandates that evictions be just and equitable to ensure social justice.[12]

26. The “just and equitable” principle ensures fairness and justice in adjudicating constitutional rights. Courts weigh the owner’s interests against those of the unlawful occupier, taking into account each party's circumstances.[13] This requires a broad perspective, much wider than a purely legalistic approach. The Court factors morality, fairness, social values, and other relevant aspects to reach an equitable judgment.[14]
27. Sections 4(6), (7), and (8) of PIE outline circumstances relevant to the unlawful occupier. They are not exhaustive and should be considered on a case-by-case basis. The Court is obliged to consider the rights and needs of vulnerable groups such as the elderly, children, disabled persons, and female-headed households. It should evaluate whether an eviction would lead to homelessness and whether alternative accommodation is available. Additional factors include

the validity of defences raised, the length of occupation and appropriate eviction dates.

28. Section 4(1) of PIE stipulates that section 4 applies to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.[15] The section 4 procedure can be systematically divided into three stages. The first stage is the notification stage. The second stage involves the Court considering the eviction application to assess its validity. The third stage encompasses the execution of the actual eviction if the order is granted.
29. Section 25 of the Constitution guarantees the owner’s right to property. Section 28 of the Bill of Rights and the Children’s Act protect children’s rights to shelter, education, and legal representation. Section 30 of the Constitution guarantees the right to use the language of one’s choice.
30. The pervasive theme underlying a Court’s duty to issue a just and equitable eviction order is the need for comprehensive information.

The information gathered informs two balancing acts that a Court must perform, one in the second stage and the other in the third stage of the procedure.[16] The enquiries cannot be concluded until the Court is satisfied that it has all the necessary information to make both findings and produce one order based on justice and equity.”[17] The requirements are inextricable, interlinked and essential. If the Court does not possess all the relevant information, it must not grant the order as an order thus granted would be arbitrary. [18] This situation is unrelated to the unlawfulness of the occupation, as it occurs only when the occupation is unlawful.[19] The eviction procedure ensures that the unlawful occupant exits with dignity.

THE APPEAL

31. The Appellants appeal the Court a quo's order on three grounds: its failure to appoint an interpreter, its failure to inquire whether an eviction order would be just and equitable and whether the eviction would render the Appellants homeless, and its failure to consider the interests of the minor children occupying the apartment.

32. The Appellant's first ground of appeal applies to all cases involving litigants who cannot speak or understand the language used in Court, not solely to unrepresented parties appearing in busy motion Courts to defend eviction matters. They have the right to use a language that they understand, which may necessarily require the

services of an interpreter. This Division must raise the standard to accommodate the language needs of multi-lingual parties using its courts. The absence of an interpreter in the unopposed motion Court does not bode well for an institution that upholds constitutional

rights, as there are daily infringements of litigants' rights to communicate in the language they understand.

33. Much of the written submissions on behalf of the Appellants focussed on the first ground of appeal concerning the Court a quo's failure to appoint an interpreter. The Appellants did not assert that the First Appellant could not speak or understand English. This ground of appeal was not raised in the Appellant's initial notice for leave to appeal, where the primary complaint pertained to the Court a quo's failure to permit the Appellants to answer the Respondents' application. This Court acknowledges the Appellants' extensive submissions couched in general terms regarding a litigant's right to communicate and be heard in their chosen language.

34. The proceedings before the Court a quo and the earlier motion Court hearing the application did not commence with the customary enquiry about whether the First Appellant understood or spoke English. The Appellants rely upon two instances in the transcript to support the first ground of appeal. The Court a quo commented that the First Appellant was not making sense. The transcript also indicates that the Court had difficulty understanding the First Appellant's submissions.

35. The Respondents argued that if the Court is required to appoint an interpreter for every unrepresented litigant to enable them to speak in their mother tongue, it would create a basis for appeal whenever the Court fails to appoint one. They assert that this Court should refrain from micromanaging future Courts. A Court of appeal should

determine whether there is any perceived language difficulty from the record. Did the person understand and converse, and did they express themselves adequately and formulate a coherent argument? They suggest further that the enquiry about language preferences may be perceived as an insult to a litigant. The Respondents' argument detracts from choosing a Court language in a context with multiple official languages. The right to speak the language of one's choice in a specialised court environment may have significant repercussions for the litigant unversed in English.

36. The Respondents contend that the record does not support the First Appellant's assertion that an interpreter should have been

provided or that the First Appellant did not understand the Court proceedings or the content of their papers, which outlined her

rights. The Respondents submitted that the First Appellant was an employed engineer, suggesting that she possessed a tertiary level of education.[20] The First Appellant entered into a lease agreement drafted in English. She signed the affidavit supporting the application for condonation of the late filing of her application for leave to appeal. She swore under oath that she understood the contents written in English. The Respondents sought to differentiate the First Appellant's command of English from the unlawful occupiers in the renowned case concerning the procedural aspects of PIE. The unlawful occupiers, in that matter, spoke Xhosa alone and were illiterate.[21]

37. This Court unequivocally accepts the submissions made on behalf of the First Appellant regarding language sensitivities. It also accepts that parties not conversant in English have the right to be served

with court processes in a language they speak and to be assisted by an interpreter during Court proceedings. The accepted practice in this Court is for the judicial officer to ask, at the outset, whether the unrepresented litigant understands and speaks English. The Court a quo, and the earlier Court erred by failing to ask this question. However, that does not imply that this Court agrees that an interpreter should have been appointed in this case. It would be ideal, if not necessary, to have an interpreter present in a busy motion Court.

38. It is incumbent upon a Court to probe a party's ability to understand a language if the Court has difficulties understanding a party's submissions. It is, however, incumbent upon the party to inform the Court at the outset that they do not understand the language used by the Court or do not comprehend the questions put to them and would prefer an interpreter to translate or interpret for them. An examination of the transcript does not suggest that the First Appellant could not converse in English or understand the questions asked of her during her limited interaction with the Court a quo. The evidence available to this Court is insufficient to either confirm or contradict the inferences drawn by the parties. This Court need not decide on the first ground of appeal, as there is considerable merit in the other grounds.

39. This Court does stress though, that where a person's constitutional right is at stake, it becomes imperative for Courts to ensure that the unrepresented litigant understands the proceedings and can meaningfully and effectively participate in the proceedings. The Court may not simply assume that those who appear before it can

easily express themselves in English. A Court environment is somewhat intimidating, especially a packed motion Court with various robed practitioners from different backgrounds.

THE SECOND GROUND OF APPEAL

40. The Appellants' second ground of appeal concerns the failure of the Court a quo to determine whether its eviction order would be just and equitable and whether the eviction would render the Appellants homeless. This ground of appeal includes two enquiries: first, whether the Court had all the relevant circumstances at its disposal to make a just and equitable eviction order under sections 4(7) and (8) and whether the eviction itself under section 4(8) would have left the Appellants homeless. Section 4(7) applies to the first enquiry as the Appellants occupied the apartment for over six months on the day the eviction application commenced.[22] The lease agreement commenced on 30 August 2022, and the eviction application was filed on 20 November 2023. [23]
41. Section 4(7) of PIE needs to be repeated to assess the Court a quo's obligations under PIE.
- “If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”*
42. The section 4(8) enquiry follows only if the Court has considered all the relevant circumstances and is satisfied that an eviction is just and equitable:
- “If the court is satisfied that all the requirements of this section have been complied with and that the unlawful occupier has raised no valid defence, it must grant an order for the eviction of the unlawful occupier and determine a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a). In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.”*
43. The Appellants relied on the reasons given by the Court a quo and the transcript of the motion Court proceedings to support this ground of appeal. Section 4(7) obliged the Court to consider the rights and needs of the elderly, children, disabled persons and households headed by women, as well as whether the eviction order would leave the Appellants homeless. The Court a quo had access to the circumstances of the Respondents. All it knew of the Appellants was the limited information gathered during its interaction with the First Appellant and the terse statement about them in the Second Respondent's founding affidavit. The Second Respondent alleged that the First Appellant was an employed engineer, and there were two minors but no sick or elderly persons in the apartment.

44. The Court a quo did not confirm whether this was a household headed by the First Appellant, nor did it clarify details regarding her employment,

access to her workplace, and access to essential conveniences, among other things. The Court also failed to enquire whether the First Appellant or her children needed emergency or alternative accommodation should it grant the eviction order. Our Courts have

faced criticism for not adopting a gender-sensitive approach to housing and evictions.[24] Finding alternative accommodation, accessing transport to work, the risk of losing employment, and the sole responsibility to attend to household duties, provide for dependents, care for their needs, and ensure their safety are some of the challenges that a female-headed

household would encounter when relocating to a new home.

45. The Appellants' argument encompassed the legal principles enunciated earlier in this judgment. They additionally submitted that the Respondents were obliged to satisfy the Court that the eviction order sought would be just and equitable. They must do this by placing all the relevant information before the court. It is the Court that must determine whether it is just and equitable to grant the order after considering all the relevant circumstances and the specific factors that arise in each case.[25] The principles concerning evictions that have evolved over a quarter of a century apply even if a matter is heard in a busy motion Court.

46. The Applicant initiating an eviction application is responsible for satisfying the requirements of the first stage of the eviction

procedure. The Respondent or Defendant is responsible for providing the information about the unlawful occupier as it would fall within their peculiar knowledge. That would accord with the usual obligations on onus but not entirely with the flexible approach

advocated in dealing with eviction matters. Owners generally gather information about the occupiers of their properties. It would be to their advantage to do their best and present the required information to the Court to enable it to determine whether it is just and equitable to grant the order.[26] This would be especially helpful in an unopposed application, bearing in mind that an Applicant cannot predict with any certainty that their application would not be opposed when it commences.

47. The Respondents sought to defend the Court a quo's order. None of the cases cited on behalf of the Respondents detracts from the Court's obligation to consider all relevant

information, including case-specific factors, in eviction matters, including those unopposed or when an unrepresented occupier appears in an unopposed matter.[27] Relying on *R v Dhlumayo*, the Respondents argued that facts not mentioned in the Court a quo's reasons do not mean they were not considered.[28] The Court's reasons for the order were eclipsed by its acceptance that it did not direct specific questions to the First

Appellant concerning her personal circumstances. It had insufficient information concerning alternative accommodation and did not permit the First Appellant to complete the City's questionnaire. The Court concluded by saying there was a reasonable prospect of another Court coming to a different conclusion. The Respondents sought to minimise the latter concession, arguing that it did not mean the Court was wrong. This Court finds no merit in these submissions.

48. The Respondents argue that there was no indication that an eviction order would render the Appellants homeless. The question was never asked of the First Appellant, neither by the Court nor by the Respondents. The Respondents alleged in the founding affidavit that the eviction would not leave the Appellants destitute. They expressed no opinion on whether the eviction would render the Appellants homeless.
49. The Respondents joined the City in their application for the Appellants' eviction. In their submissions, they rely upon two cases relating to the necessity of joining the local municipality. In *Drakenstein Municipality*[29], a full bench of this Court held that a municipality's joinder and the provision of a report are not required as a rule in a PIE eviction. The Respondents submit that *Premier Eastern Cape v Mtshelakana*,[30] distinguished between the poor and homeless from those who could afford to rent homes. In the second case, the Court held that the Municipality should be joined only when persons are poor and would be rendered homeless by the eviction. These arguments can be easily disposed of. This is not an appeal against whether the City should be joined. The Respondents joined the City. The Respondents conflate the procedural requirement of placing information before the Court with the substantive requirement that an eviction order must be just and equitable after considering all information, including whether the order would render the occupants homeless. This Court does not condone any differentiation between the means of the occupants. In *Ndlovu*, the majority judgment recognised that in interpreting social or remedial legislation, unintended benefits may accrue to persons other than the intended beneficiaries.[31]
50. As the Court a quo has indicated, the City, cited as the Third Respondent in the eviction application, does not assist until the unlawful occupier has completed its questionnaire. The City did not provide a report, even a general report, on its capacity to provide emergency or alternative accommodation to evictees. Section 4(2) of PIE, read together with section 4(7) in the case of occupiers occupying a property for longer than six months, envisages that a municipality will provide a report on whether it can provide alternative accommodation.
51. Whilst the onus lies with the unlawful occupier to source and complete the questionnaire, a practice has developed in this division where the Applicant seeking an eviction order provides the unlawful occupier with the questionnaire. Some Applicants utilise this gesture to their advantage, raising it as a militating factor against the unlawful occupier if the latter declines to complete and submit it. The Court cannot fulfil its obligation to consider all relevant circumstances unless it has a report on alternative accommodation[32] or unless there is proof that the unlawful occupier has declined the assistance of the Municipality or

other organ of state.[33] The relevant authorities, like the Municipality, must be engaged before a Court can discharge its obligations to the evictees.[34]

52. The City is required to include in its report information relating to the unlawful occupiers, the building housing them, whether an eviction order would render them homeless, the steps it can take to provide alternative accommodation, the implications for the owners if an eviction order is delayed, details of engagements with the occupiers, and the scope for a mediated process.[35]
53. The City's "Personal Circumstances Questionnaire" requires each adult occupier to complete it fully. The information required by the City includes biographical information, nationality, contact details, income and proof thereof, expenditure and proof if required, whether the premises is an occupant's primary residence,

information about previous residences, whether the occupier has owned property previously or currently, the details of all occupants

including children and adults over 60 years, the medical details of the infirm, contact details of relatives of the occupiers, whether the occupier has benefitted from state-funded housing, other relevant information and compulsory proof of efforts to secure alternative accommodation.

54. Although the City is required to report on issues within the peculiar knowledge of the owner or their authorised agent, namely the condition of the building occupied, implications for the owners if an eviction order is delayed, and their propensity for mediation, it is inexplicable as to why the City imposes an entry requirement on the occupiers alone and does not seek the required information from the owners or their authorised agents. It is also unclear why these aspects are not sought in their questionnaire and why the City cannot set the process in motion once it has received the section 4(1) and 4(2) applications in instances where it is joined in eviction proceedings or why it has to await the completion of the questionnaire before it embarks upon fulfilling a constitutional duty. All involved must source the information the Court requires to deal with eviction cases justly, equitably, and expeditiously. The City's disinclination to engage from the outset often imposes a speed bump to the eviction process.
55. The most logical solution would be for Applicants to include the City's questionnaire as an attachment in the section 4(1) and 4(2) papers they serve upon the City. The owner or their authorised agent of an occupied property should provide an informed and truthful opinion in their founding papers on whether the eviction sought would render the occupiers homeless.
56. The Respondents endeavoured to dissuade this Court from recommending any changes to the procedure. They argue that there is no statutory or common law requirement that a questionnaire be provided, nor

should it serve as a precondition to granting an eviction order. They argue that the questionnaire is a bureaucratic reaction of the City to fulfilling its constitutional duties. They suggest that any referral to a municipality or the provision of a questionnaire should be reserved for cases where there is a risk of homelessness. This Court does not agree.

57. Section 4(2) of PIE is peremptory. The eviction application must be served on the local municipality that has jurisdiction. In *City of Cape Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*[36], the Constitutional Court stressed that the joinder of the Municipality as the main point of contact with the community is essential. Thus, the involvement of the Municipality is critical in determining whether it is just and equitable to grant an eviction order. Adding the questionnaire to the original application would eliminate excuses from the occupier, and the City would have some or all of the information it needs when the Court exercises its discretion to order the City, in the appropriate cases, to compile and provide a report.
58. This Court accepts that the Appellants had ample opportunity to respond to the eviction application. The application was initially served on the First Appellant in November 2023 and served before the

Court a quo in March 2024. The Respondents failed to correlate the need for information with the order sought. The Court must consider all information relevant to the proposed eviction to determine whether its order would be just and equitable. The terse statement they provided about the Appellants did not suffice. Faced with that information alone, the Court would have had to decline the application. The First Appellant was present in Court and could have remedied the situation by providing the information the Court required. The Court did not exploit that opportunity.

59. The Court a quo's acknowledgement that it did not direct specific questions to the First Appellant other than those concerning her financial circumstances, that it did not have a report from the City and that the First Appellant was not allowed to complete the City's questionnaire, effectively disposes of this ground of appeal. The Court had to ensure that it was fully informed of the relevant facts to properly discharge its function of determining whether an eviction order should be issued and, if so, on what terms.[37] This Court accepts that the Court a quo erred in failing to obtain the relevant information and misdirected itself in granting the eviction order.

THE THIRD GROUND OF APPEAL

60. The third ground of appeal relates to the Court a quo's failure to consider the interests of the minor children. The Appellants submit that this ground of appeal is linked to the second ground of appeal. Still, because of the unique legal position of children, it was necessary to deal with it separately as the third ground of appeal. It is apparent from the transcript and the reasons given for the judgment by the Court a quo that it had not considered the interests of the two minor children occupying the apartment

61. The Appellants relied exclusively on the case of Arendse[38], a review of an eviction of a disabled wife and her children. The Court upheld the review application as the Magistrate failed to investigate the children's personal circumstances, well-being, and schooling and that the order would render them homeless. Apart from restating the law relating to the children's rights, Arendse finds no further application to the eviction of families with children.
62. The Second Respondent stated that 'to her knowledge', two minors were residing at the property. That was the total information regarding the children. There was no indication as to whose children they were, whether the First Appellant was their parent or guardian, their ages, whether they were schooling, or whether they were afflicted with any disabilities. The Court a quo had that minimal information about the children. It did not refer to the children in its reasons for granting the eviction order. In its judgment on leave to appeal, it assumed that the two minor children 'were clearly under the First Appellant's control and care'. The evidence does not bear out the latter assumption.
63. In argument, the Respondents reiterated their reliance on *R v Dhlumayo* on the Court a quo's failure to consider the rights and needs of the children. They relied on the Court a quo's assertion that the First Appellant did not state that the children were at risk of becoming homeless due to an eviction order. They contended that it would have 'been impossible for the City to fulfil any meaningful function while Ms P[...] rested on her laurels.' The Respondents urged this Court to follow *Mayekiso*,[39] where the majority held that the presence of minors did not necessarily outweigh the rights of an owner. The facts of *Mayekiso* are distinguishable in two significant respects: the occupiers were always legally represented, and the Court had access to information about the children.[40]
64. The Respondents cited the two minor children as 'all other occupiers' in their citation of the parties. There were no 'other' occupiers apart from the two minor children. The Respondents were obliged but failed to define these children's standing and legal representation in their founding papers. The rights of the two minors are protected by sections 28(1)(h) and 28(2) of the Constitution, which requires the State to assign a legal practitioner to the children in civil proceedings affecting them if substantial injustice would otherwise result and in every matter concerning the child, the latter's best interests are of paramount importance. A civil process that puts them at risk of homelessness is one such example. The Court must consider the children's best interests, which include their schooling, access to health services, nutrition, social services and, importantly, their shelter. Section 6(2) of the Children's Act 38 of 2005 emphasises respect for the child's inherent dignity and requires them to be treated fairly and equitably.

65. The Court a quo was obliged to enquire about the children before it made an eviction order. It did not; it simply did not have the relevant information to make the order it did. The Court erred by failing to enquire about the children living in the apartment and misdirected itself in granting the eviction order. The Appellants must prevail on this ground of appeal as well.
66. This Court feels obliged to raise a further issue, unrelated to the appeal, that became evident from examining the transcript.

LEGAL REPRESENTATION

67. The unrepresented litigant appearing for the first time in a busy motion Court faces a sea of robed practitioners who conduct their business at a seemingly choreographed pace. Anxiety, unease, and intimidation barely begin to describe the unrepresented litigant's reaction. Surrounded by the formalities and complexities of the legal

process, they must navigate a world where the rules and procedures are often second nature to those experienced in the field. They may well believe that their presence hinders the smooth operation of the Court. The transcript suggests that the First Appellant may have reacted to this Court as anticipated.

68. The motion Court of 28 February 2024 referenced the First Appellant's

transient speech impediment and her written agreement to postpone the matter to 15 March 2024. The Court confirmed with the Respondents'

Counsel that the agreement 'simply' meant that the postponement was intended for the First Appellant to secure legal

representation. Neither the Court nor the parties could have contemplated that the rescheduled hearing would address a final eviction order. Even if the First Appellant had secured legal representation, she would have been entitled to time for submitting an answering affidavit, and the Respondent would have had the opportunity to reply. Consequently, the matter would have been transferred to the opposed roll for hearing.

69. On 15 March 2024, the matter proceeded to final determination. The Court a quo would not have had the transcript to guide it in handling the application. It assumed that the earlier Court had informed the First Appellant of her right to legal representation. The earlier Court had not. The Respondents argued that this was not a ground of appeal and that this Court should not introduce a perceived prejudice emanating from the First Appellant's failure to secure legal representation. They submit that the First Appellant was adequately informed of the right in the section 4(2) papers. The

postponement was agreed between the parties. A postponement was not a right but an indulgence granted by the Court. They argued further that if the First Appellant was notionally prejudiced, she should have said this under oath, meaning she should have filed an affidavit to this Court.

70. The Respondents argued that the section 4(2) notice sufficiently informed the Appellants of their right to legal representation and even provided the contact details of the local offices of Legal Aid. That is insufficient in the context of this case. The duty to assist the unrepresented Appellant in securing legal representation extends beyond the prescribed section 4(2) requirements.[41] The Court had to establish whether the First Appellant could afford a lawyer. A Court's failure to inform litigants of their rights, how to exercise them and where they could obtain assistance could result in a miscarriage of justice. Civil matters are complex, and the laws and procedures are difficult to understand.[42] In addition to the recognised sources of legal aid, a Court could call upon an ever-increasing pool of legal practitioners offering

their services gratuitously or as part of their professional practice obligations to assist needy litigants. There are Judges in this division who, during the course of adjudicating a particular matter, invite practitioners present in motion Court proceedings to assist needy litigants. The Cape Bar has a pro bono programme, and its members are required to perform a minimum number of pro bono hours per year. The Legal Practice Council is finalising their community service requirement for continuing registration.

EVICTON APPLICATIONS IN BUSY MOTION COURTS

71. This division enrolls numerous eviction applications on its unopposed rolls. This practice is invaluable for disposing of the large number of unopposed eviction matters in the prescribed manner, and there is no suggestion that it should be changed. This Court questioned whether this application should have proceeded to a final eviction

order on 15 March 2024, considering that the earlier Court of 28 February 2024 had postponed the matter to enable the First Appellant

to secure legal representation in circumstances where she was afflicted with a transient speech impediment.

72. The question was whether the application should have remained on the unopposed roll or transferred to the opposed roll by agreement with defined timelines for filing and responding to further affidavits, given that the order allowed the First Appellant to secure legal representation. Instead, the parties agreed to postpone the matter to

a date that did not allow time for the Appellants to oppose it under the URC. The earlier Court should have scrutinised the agreement's

effect and either supervised the terms of the agreement or issued the appropriate directive for its further conduct. The presiding officers in the motion Court need to be cognisant of a situation of this type without perceiving this as any interference in their prerogative to decide whether to entertain a matter, as the Respondents suggest. This would also temper the Respondents' concern about unscrupulous litigants abusing the process.

73. Neither the earlier nor the later Court had sufficient information about the Appellants to make a final eviction order that was just and equitable. That would have been evident from the Respondent's founding papers.

COSTS

74. The hearing of this appeal had to be adjourned to enable Counsel for the Respondents to obtain and acquaint himself with the appeal bundle of documents. The Respondents could have been prejudiced if this

Court did not intervene. The Appellant's attorney could not explain his failure to comply with his obligations under Rule 49(7) of the URC. This Court warned the Appellants' attorney that their failure to comply with the rules may have cost implications for the Appellants. Those are reflected in the order that follows.

75. The Court elicited certain information about the First Appellant from the Appellant's attorney. He confirmed that the First Appellant was employed as an engineer and maintained her employment while she held over the apartment. During this period, she paid no rent. The Appellants seek an order dismissing the Respondent's eviction

application with costs. The Respondents seek an order dismissing the appeal with costs.

76. The Appellants have prevailed, and the usual order is for the costs to follow the outcome of the appeal. The question arises whether the First Appellant should benefit further from the delay between the eviction order and the finalisation of this appeal. Ten months have elapsed, and the First Appellant has availed herself of fourteen months of living rent-free at a coveted address, at the expense of the Respondents.

77. The Respondents have steadfastly defended the Court a quo's eviction order despite that Court acknowledging it had not complied with the obligations imposed by PIE. The Respondents could have assisted the eviction process by determining whether the order they sought would have rendered the Appellants homeless. They could have provided the Court with further information about the First Appellant and the children. The Respondents cited the minors as a party to the litigation without appreciating their legal standing or right to representation. The Court has considered these factors in the order that follows.

CONCLUSIONS

78. The Appellants appealed the orders granted by the Court a quo, sitting as the motion Court hearing unopposed applications. The Appellants raised three grounds of appeal against the judgement and orders of the Court. The Court granted the Appellants leave to appeal. It also unequivocally identified the difficulties that this matter presented and effectively acknowledged that the order did not comply with the procedure required in a PIE application. The Appellants must prevail in two of the three grounds of appeal raised against the eviction order granted by the Court a quo.

79. This Court considered it unnecessary to decide the appeal against the Court a quo's alleged failure to appoint an interpreter. The interaction between the Court and the First Appellant was insufficient to make a finding either way. The eviction order was granted without the Court having access to all the relevant information about Appellants, including any risk the order had of rendering them homeless. The remaining grounds of appeal had to succeed, especially as the Court a quo acknowledged that the order did not comply with the PIE requirements.
80. This Court has identified two issues that deserve attention. They do not relate directly to adjudicating this appeal but may facilitate and refine the determination of eviction matters. Communication between motion Courts in postponed matters is essential to avoid the later Court handling the matter in a manner that was not intended.

There is no reason why the City's housing questionnaire cannot be enhanced. There is a need to explain legal representation to unrepresented litigants.

81. This Court holds the view that the motion Court hearing the matter on 28 February 2023 should have ordered the application to be transferred to the opposed roll with clear directions for its further

conduct and case management, including orders for the Appellants to file their answering affidavit, the Respondents to file their

replying papers, and the City to provide a report on aspects requiring its attention.

82. This Court is not persuaded that the eviction application should be dismissed. This Court has considered the interests of both parties. It is of the view that the correct order would be to reinstate the application on the opposed roll of this division with orders to expedite the hearing thereof. This will be reflected in the order made below.

ORDER

1. The appeal is upheld with costs,
2. The First Appellant shall bear the wasted costs of the hearing of this appeal on 22 January 2025; Counsel's costs are to be taxed or agreed to on the B scale
3. The Court a quo's orders are set aside and replaced with the following:
 - 3.1 The eviction application is transferred to the opposed motion roll.
 - 3.2 The First and Second Applicants shall amend or supplement their papers, if necessary, within five days of this order,
 - 3.3 The Respondents shall file their answering affidavit within fifteen days of receipt of the First and Second Applicants amended papers, if any,

3.4 The Respondents shall complete the City of Cape Town's Housing questionnaire within five days of this judgment, failing which the Court hearing the application shall be entitled to assume that the Respondents do not require emergency or alternative accommodation,

3.5 The First and Second Applicants shall file their replying affidavits within ten days of receiving the Respondents answering affidavit,

3.6 The City of Cape Town is to conduct the necessary investigations and report to the Court within twenty days of receiving the Respondents completed questionnaire, in the absence of which it is absolved of the responsibility to provide a report,

3.7 The First and Second Applicants shall file their heads of argument within five days of filing their replying affidavit,

3.8 The Respondents shall file their heads of argument within five days of receiving the First and Second Applicants' heads of argument.

3.9 The parties, jointly or singularly, if the other does not cooperate or fails to comply with this order, shall approach the Judge President of this division for an expedited hearing date.

3.10 If the Respondents do not strictly comply with this order without good cause shown, the First and Second Applicants may assume they do not intend to oppose the eviction application and proceed to obtain the necessary order.

Bhoopchand AJ

I agree,

Lekhuleni J

I agree, and it is so ordered.

Erasmus J

Judgment

was handed down and delivered to the parties by e-mail on 24 February 2025.

Appellants Representative: Mr K Lingani

Instructed by Lingani & Partners Attorneys Inc

Respondents Counsel: J P Steenkamp

Instructed by Gideon Engelbrecht Incorporated

[1] Machele v Mailula [2009] ZACC 7; 2010

(2) SA 257 (CC); 2009

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- (8) BCLR 767 (CC) at para 15 (“Machele”)
- [2] Ndlovu v Ngcobo; Bekker v Jika 2002 4 All SA 384 (SCA) (“Ndlovu”), and many cases that have followed over twenty-two years.
- [3] Submissions made on behalf of the parties shall be attributed to them.
- [4] The two minor children were cited as the Second Respondent. There were no other unlawful occupants.
- [5] The City did not participate in either the eviction application or this appeal. The collective references to the Respondents in this judgment do not include the City.
- [6] The First Appellant’s interaction with the Court was by no means clear. It took effort to make sense of what she was saying.
- [7] Record at page 91a
- [8] Ndlovu, supra at para 13
- [9] Ex parte Neethling and Others 1951
- (4) SA 331 (A) 335E, Administrators, Estate Richards v Nichol and Another [1998] ZASCA 82; 1999
- (1) SA 551 (SCA) 561C-F, Ndlovu id.
- [10] A comprehensive analysis of the origins, remedies, and constitutional impact of the claim for holding over is contained in two papers, namely: The Nature of the claim for holding over: a historical analysis, L Hawthorne, Fundamina 16 (1) 2010 ISSN: Print 1021-545x, Unisa Press pp 153–163, The nature of the claim for holding over: South African Law, L Hawthorne, Fundamina 16 (2) 2010 ISSN: Print 1021-545X, Unisa Press pp 52–63. See also: London and South African Exploration Company, Ltd v Moodoodoodam, 1886 HCG 305 and Nicholson v Myburgh
- (1897) 14 SC 384., the earliest cases on the subject. Sapro v Schlinkman 1948 (2) SA 637 (AD)) concerns a case of holding over where a lessee breaches the agreement.
- [11] Port Elizabeth Municipality v Various Occupiers [2004] ZACC 7; 2005
- (1) SA 217 (CC); 2004
- (12) BCLR 1268 (CC) at para 12 (“Port Elizabeth Municipality”)
- [12] Port Elizabeth Municipality supra
- [13] Malan v City of Cape Town
- [2014] ZACC 25 (“Malan”)at para 83
- [14] Port Elizabeth Municipality at para 33 citing Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others

- [15] Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others (495/99) [2001] ZASCA 87; [2001] 4 All SA 479 (A) (10 September 2001)
- [16] City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (SCA) [2012] ZASCA 116; 2012 (6) SA 294 (SCA); 2012 (11) BCLR 1206 (SCA); [2013] 1 All SA 8 (SCA) (14 September 2012) at para 12 (“Changing Tides”) at para 25
- [17] Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another (CCT108/16) [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC) (8 June 2017) (“Berea”) at para 45
- [18] Port Elizabeth Municipality supra at paras 32 and 58-60; and Changing Tides supra at paras 26-7
- [19] Port Elizabeth Municipality supra at para 32, Berea at para 48
- [20] This Court confirmed that the First Appellant was indeed an employed engineer.
- [21] Cape Killarney Property Investments (Pty) Ltd v Mahamba & Others 2000 (2) SA 67 (C).
- [22] The majority judgment of the Supreme Court of Appeal (SCA) in Ndlovu states, "The period of the occupation is calculated from the date the occupation becomes unlawful." (paragraph 17). All of sections 4(6), 4(7), and 4(9) of PIE refer to the period the unlawful occupier has occupied the land. The textual interpretation indicates that unlawfulness qualifies the occupier and not the period of occupation. The context and purpose suggest that the period of occupation relates to the extent of upheaval an order of eviction would entail for the unlawful occupiers, e.g., transferring of children from one school to another, access to medical facilities, the extent to which the unlawful occupier has settled in the community and the time it would take to uproot and resettle elsewhere.
- [23] The lease reflects the commencement and termination dates in the incorrect order. In Port Elizabeth Municipality, the Constitutional Court stated that justice and equity require the Court to be considerate of settled communities or individuals facing displacement. The longer a person occupies a property, the more established they are in the neighbourhood, the more well-settled their homes and the more integrated they are in employment, schooling and enjoyment of social amenities, the greater their claim to the protection of the Courts. A Court will be far more cautious in evicting well-settled families with strong local ties than persons who have recently moved onto land and erected their shelters there. Should it be decided that eviction is called for in the former case, it will be especially important to ensure that equitable arrangements are made to diminish the negative impact of eviction (para 27).

- [24] Sujee Z "The Need for Feminist Approaches for Housing Cases in South Africa" PER / PELJ 2021(24) - DOI <http://dx.doi.org/10.17159/1727-3781/2021/v24i0a9590>
- [25] Port Elizabeth Municipality *supra* at paras 22-23, Berea, *supra* at paras 40-41
- [26] Changing Tides *supra*, paragraphs 28-34,
- [27] Malan v City of Cape Town 2014 (6) SA 315 (CC), Brobler v Philips and Others 2023 (1) SA 321 (CC), Port Elizabeth Municipality *supra*
- [28] R v Dhlumayo and Another 1948 (2) SA 677 (A)
- [29] Drakenstein Municipality v Hendricks 2010 (3) SA 248 (WCC)
- [30] Premier Eastern Cape v Mtshelakana 2011 (5) SA 640 (ECM)
- [31] Ndlovu, *supra* at para 16
- [32] The Occupiers of Erf 101, 102, 104 and 112, Shorts Retreat, Pietermaritzburg v Daisy Dear Investments (Pty) Ltd & others [2009] 4 All SA 410 (SCA) at para 10, occupiers of Shulana Court 11 Hendon Road, Yeoville, Johannesburg v Steele [2010] 4 All SA 54 (SCA) at paras 14 and `15, Occupiers of Mooiplaats v Golden Thread Ltd & others 2012 (2) SA 337 (CC) at para 17.
- [33] Swartz v Butcher N.O and Others (A144/2024) [2024] ZAWCHC 405 (29 November 2024) at paras 29,30, 32, and 34
- [34] Changing Tides *supra* at para 21.
- [35] Changing Tides *supra* at para 40
- [36] City of Cape Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another 2012 (2) SA 104 (CC) at para 45
- [37] Port Elizabeth Municipality *supra*, at paras 32-37
- [38] Arendse v Arendse and 3 Others (12659/2009) [2012] ZAWCHC 156; [2012] 4 All SA 305 (WCC); 2013 (3) SA 347 (WCC) (20 August 2012)
- [39] Mayekiso and Another v Patel NO and Others 2019 (2) SA 522 (WCC)
- [40] In attempting to gauge the Respondents' nonchalant stance on the dearth of information available to the Court a quo, this Court asked the Respondents' Counsel whether the Respondents expected the Court to scrutinise the papers to establish that the First Appellant was 44 years old and then assume that at least one of the two children would be of a school going age? Did the Court have to independently enquire about the children's schooling and whether the Appellants' eviction in May would compromise them? This proposition elicited a frantic response from the Second Respondent seated at the back of the Court. She waved

repeatedly to attract the Court's attention, wanting to convey that neither child was attending school. The Respondents knew, at least, in this respect, more about the unlawful occupants than they declared in the founding affidavit. It is not solely the Respondents' fault that the Court had insufficient information about the occupiers. It is the Court's responsibility that these enquiries were not raised. Was it necessary for a Court to fish for information that may have been known to the Respondent? The Respondent's response was directed at the Appellants, asking why they did not ask for leave to present further evidence.

[41] Changing Tides at para 48

[42] Nkuzi Development Association v Government of the Republic of South Africa [2001] ZALCC 31; 2002 (2) SA 733 (LCC)

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