

SOUTH AFRICA / JUDGMENT

Arendse and Another v Communicare NPC and Others (A76/2023) [2024] ZAWCHC 91 (25 March 2024) [2024] ZAWCHC 91

COURT

Western Cape High Court, Cape Town

BEFORE

LekhULENI, Francis M

CASE / FILE NUMBER

A76/2023

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE DIVISION, CAPE TOWN)

CASE

NO: A76/2023

In

the matter between: COLIN
ANTHONY ARENDSE
First
Appellant
ANGELA
LISA AREDNSE
Second
Appellant
And
COMMUNICARE
NPC
First
Respondent
CITY
OF CAPE TOWN
Second
Respondent
THE
HONOURABLE MAGISTRATE, WYNBERG
MAGISTRATES
COURT: MAGISTRATE ISMAEL
Third
Respondent

Heard: 02 February 2024
Delivered
(electronically): 25 March 2024

JUDGMENT

LEKHULENI J

Introduction

[1] This is an appeal against the whole judgment and order handed down by the third respondent on 26 October 2022, in which the court granted an eviction order against the appellants. The order was granted in terms of section 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act"). The eviction order entailed removing the appellants and all those who held title under them from their residence, a rental property

commonly known as 1[...] S[...] C[...], D[...] Road, W[...], Cape Town, Western Cape ("the premises"), which was administered by the first respondent. In terms of the eviction order, the appellants were ordered to vacate the premises on 31 January 2023, failing which the Sheriff was authorised to execute the order on 1 February 2023, at 09h00 or any other reasonable time thereafter. It is this order that the appellants seek to assail in this court. The appellants assert that the third respondent granted the eviction order against them in circumstances that were not just

and equitable.

Background

Facts

- [2] On 28 May 2014 at Deep River, the first and second appellant personally concluded a written lease agreement with the first respondent in respect of the premises administered by the first respondent. In terms of the lease agreement, the parties agreed, inter alia, that the lease would commence on 01 June 2014 and would continue indefinitely, subject to either party terminating the agreement by providing the other with one month's written notice. The parties agreed that the leased premises would only be used for private residential purposes. The initial rental payable by the appellants was R4285 per month. While the deposit payable by the appellants was the sum of R8570. The lease agreement contained all the terms and conditions agreed to between the parties and could only be amended or varied if it was reduced to writing and signed by both parties. The appellants took occupation of the property as agreed. After taking occupation of the property, the appellants fell into arrears with their rental payments and have been in arrears since October 2020.
- [3] On 25 June 2021, the first respondent's legal representatives dispatched a formal notice through the sheriff informing the appellants that they were in breach of the lease agreement and demanded payment of the arrear rental due and owing within twenty business days. The first respondent's legal representatives also stated that if the appellants failed to settle the arrears within the period specified, the letter served as formal notification of the cancellation of the agreement upon the expiration of the specified notice period. In addition, the first respondent's legal representatives notified the appellants that if they failed to remedy their breach, they should vacate the premises by 31 August 2020. In other words, the appellants were provided with one month from the date of cancellation of the agreement to vacate the premises.
- [4] The appellants did not respond to the demand or pay the arrear rental amount. To this end, the first respondent asserted in the application that the appellants and anyone occupying the premises through them fell within the meaning of 'unlawful occupiers' as defined in Section 1 of the PIE Act. The first respondent also averred that there exists no obligation on it to provide the appellants and all those occupying the premises through them with free accommodation, alternatively, at a reduced rental and that no agreement exists between the parties which would entitle the appellants and all those occupying the premises through them to remain on the property. The first respondent sought an order evicting the appellants from the premises.

The appellants' opposition to the eviction application

- [5] The appellants filed an answering affidavit in which they raised a preliminary point challenging the locus standi of the first respondent. The appellants contended that in terms of the Deed of transfer and the Deeds Office records, Goodfind Properties (Pty) Ltd are the current owners of the leased premises. According to the appellants, Goodfind Properties (Pty) Ltd should be the applicant before the court a quo and not the first respondent. Furthermore, the appellants contended that the delegation of authority attached to the founding affidavit authorising the Portfolio Manager of the first respondent, Ms Mapula Maragela ("Ms Maragela"), to depose to the founding affidavit, was signed by Ms Elsabe Marx, the first respondent's secretary. The appellants asserted that according to the records submitted by the first respondent to the Companies and Intellectual Property Commission ("CIPIC"), the company secretary's name is Nazli Wagner, not Elsabe Marx. They stated that no records of any Elsabe Marx as the first respondent's secretary have been filed with the CIPC.
- [6] The appellants concluded this point in limine by contending that the alleged delegation of authority is legally defective as it is not a special resolution signed by the board of directors of first respondent. To this end, the appellants contended that the first respondent does not have locus standi to bring this application.
- [7] In their heads of argument, in this court, the appellants raised a new preliminary point on locus standi. The appellants averred that the deponent of the first respondent's founding affidavit, Ms Maragela, stated that she had been duly authorised to depose to the affidavit in terms of a delegation provided to her by the General Manager of the Rental Property Management division. As proof of such delegated authority, Ms Maragela submitted a letter signed by Faieda Jacobs, the General Manager and Elsabe Marks, the company secretary. The appellants asserted that clause 3.4.1 of the delegation of authority relied on by the first respondent states that instructions to institute legal proceedings in matters other than those related to collections and arrears may be recommended by the first respondent's General Manager: Rental Property Manager but are subject to final approval of the Chief Executive Officer of the first respondent. According to the appellants, there is no evidence that Ms Houston, who appears to occupy that office, approved the institution of the present legal proceedings.
- [8] In a nutshell, the appellants argued that Ms Faieda Jacobs has no power in terms of clause 3.4.1 of the delegation of authority, to institute legal proceedings on behalf of the first respondent. According to the appellants, her authority was limited to making a recommendation to the first respondent's Chief Executive Officer, Ms Houston, who had not approved same. For the above reasons, the appellants contended that the first respondent has not, contrary to the finding of the court a quo, demonstrated locus standi to bring the application for the eviction of the appellants and that the appeal should be upheld on this ground alone.

- [9] In addition, in the answering affidavit, the appellants' further complaint is that the rental amount payable was based on affordability, which was R4284 in 2014 when the parties concluded the rental agreement. The appellants had to satisfy certain requirements then; that is, they needed to earn between R3500 and R7500 per month. The appellants contended that the first respondent's leasing administrator assured them that their application would be reviewed annually to monitor the affordability of the appellants to reduce or increase the rental. According to the appellants, this would have been done in consultation with the appellants, but this meeting never occurred.
- [10] The appellants contended that the first respondent informed the appellants sometime in 2018 to sign a new lease agreement with a new company called Goodfind (Pty) Ltd. Still, the appellants, as well as others, did not cooperate with the first respondent out of fear that they would be subjected to market-related rental which they would not be able to afford. The appellants asserted that their non-cooperation with the first respondent was due to the expectation that the first respondent was at all material times tasked with providing affordable housing to financially vulnerable families in the social housing market. The first respondent's new initiatives were done without prior consultation. Considering the above, the appellants stated that they could not afford the market-related rental and would, therefore, be left homeless the moment they are evicted as they were at all material times dependent on social housing.

The findings of the trial court

- [11] After considering the conspectus of the evidence, the court below found that Ms Maragela had the necessary authority to act on behalf of the first respondent in terms of the authority delegated to her by Ms Jacobs. The court a quo further found that Ms Maragela had clear authority to institute legal proceedings considering the delegation of authority framework referenced in her founding affidavit. On the merits of the matter, the court found that the appellants were in arrears of their rental since October 2020. The court also noted that from the papers, it was unclear how the appellants fell in arrears and their current position with the rental.
- [12] The court below found that it was not in dispute that the appellants were in arrears. In considering the second leg of the inquiry in terms of PIE, the court found that it must balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourhood and shared concerns. The court below concluded that granting an eviction order was just and equitable as no valid defence was raised as required by the PIE Act. To this end, the court granted the eviction order directing the appellants to vacate the leased premises.

The grounds of appeal

- [13] The appellants raised various grounds of appeal in their amended notice of appeal. The grounds of appeal as discernible from the notice of appeal may, in a nutshell, be summarised as follows:
- [14] The appellants contend: that the court a quo erred in not finding that the first respondent had no locus standi in the matter; that the court a quo erred by not directing that second respondent, (the municipality) to deliver a report within a stated time frame determined by the court, confirmed on affidavit, in which it deals with the emergency accommodation or transitional housing that will be made available to the appellants and the location thereof and the date when it would be made available; and that the court a quo erred by not providing the appellants the opportunity to serve and file affidavits, if any, dealing with the contents of the report of the Municipality within the stipulated time determined by the court. As a consequence, the appellants contend that the order of the court a quo rendered the appellants homeless.

Principal submissions by the parties

- [15] At the hearing of this appeal, Mr Simon, the appellants' legal representative, submitted that the first respondent has not demonstrated that it has locus standi to bring this application as Ms Jacobs, the General Manager of the first respondent, has no power in terms of the delegation of authority to institute legal proceedings on behalf of the first respondent. Mr Simon further submitted that Ms Jacobs's authority was limited to making a recommendation to the first respondent's Chief Executive Officer, who had to approve the institution of such proceedings.
- [16] In addition, Mr Simon argued that the court a quo erred in finding that the first respondent has locus standi in that the delegation of authority that the applicant relied upon is not a special resolution signed by the Board of Directors of the first respondent. Counsel argued further that save for the personal circumstances of the appellants, the court a quo did not require the Municipality to file a report indicating whether land has been made available or can reasonably be made available by the Municipality or any other organ of State for the relocation of the appellants. Instead, the argument proceeded; the court a quo simply considered the personal circumstances of the appellants without considering whether land has been and can reasonably be made available by the Municipality.
- [17] Mr Simon submitted that the court below did not consider what impact the eviction order would have on the appellants and whether they may be rendered homeless thereby or that they needed emergency assistance to relocate elsewhere. It was Counsel's submission that the court a quo was not in possession of all the necessary information when the date for the eviction of the appellants was decided upon. Mr Simon further submitted that eviction proceedings in terms of section 4 of the PIE Act necessitate a mandatory report by the Municipality. To this end, Counsel submitted that the court below has failed to come to a just and equitable decision to evict the appellants and that the appellants will be homeless if they were evicted. Counsel implored the Court to uphold the appeal with costs.

[18] Mr Lawrance, the first respondent's Counsel, argued that the appellants failed to pay their rental since October 2020, and, as such, they were unlawful occupiers as envisaged in section 1 of the PIE Act. Mr Lawrance further contended that the preliminary point raised in the appellants' heads of argument that the first respondent does not have locus standing to institute these proceedings must be disallowed as it constituted a new matter not previously raised in the papers.

[19] Counsel further submitted that in the answering affidavit and in their oral submission at the hearing of the matter before the court a quo, the appellants did not raise any argument that Faieda Jacobs has no power to institute legal proceedings on behalf of the first

respondent and that her authority was limited to making a recommendation to the first respondent's Chief Executive Officer who has to approve same. Counsel submitted that the first time they saw this point being taken was when the appellants filed their heads of argument.

[20] Mr Lawrance submitted that at no stage did the appellants give the first respondent notice that they intended to raise Ms Faieda Jacobs's absence of authority in terms of clause 3.4.1 of the delegation of authority to institute legal proceedings on behalf of the first respondent. Counsel contended that the appellants did not plead in their affidavits that Ms Jacobs' authority was limited to making a recommendation to the first respondent's Chief Executive Officer, Ms Houston. According to Mr. Lawrence, in so doing, the appellants precluded the first respondent from dealing with the substance of this allegation. Had the appellants raised this point in their answering affidavit filed in the court a quo, so the argument went, the first respondent would have been able to present the delegation of authority issued by the Chief Executive Officer to the office of the General Manager in its reply. As such, Counsel submitted that the point in limine now raised by the appellants constitutes a new matter and should be disallowed.

[21] On the merits of the application, Counsel submitted that the appellants were legally represented when the matter was heard by the court below. The court a quo called upon the appellants to place their personal circumstances through a supplementary affidavit for the court to arrive at a just and equitable conclusion. According to Counsel, given that the appellants were legally represented, if indeed it was so that they would have been rendered homeless, there is no doubt that the appellants and their legal representatives would have raised this issue pertinently. For this reason, Mr Lawrence submitted that the court a quo's decision was just and equitable and that the appellants' appeal must be dismissed with costs.

Issues

to be decided

[22] From the discussion above, this appeal raises three critical questions for consideration, namely:

1. Was the court a quo correct in dismissing the preliminary point of locus standi?

2. Whether this court should disallow the new preliminary point raised in the heads of argument that Faieda Jacobs, of the first respondent, did not have the authority to authorise the institution of eviction proceedings but the first respondent's Chief Executive Officer.
3. Whether the court a quo was correct in finding that it was just and equitable to order the eviction of the appellants, notwithstanding that a report from the Municipality was not filed.

Analysis

and legal principles

[23] For the sake of completeness, I will address the disputed issues ad seriatim.

Did the first respondent have locus standi to institute the eviction proceedings?

[24] As explained above, the appellants took issue in the answering affidavit that Ms Elsbie Marx signed a delegation of authority in favour of the deponent, Ms Maragela whose founding affidavit formed the basis of the eviction proceedings against the appellants. The appellants further contended that on the first respondent's own records filed with the CIPC, the first respondent secretary is recorded as Nazli Wagner and not Elsabe Marx, and that there is no record of any Elsabe Marx filed as the company secretary for the first respondent with the CIPC. The court a quo found that the deponent of the first respondent's founding affidavit, Ms Maragela, had the necessary authority to act on behalf of the applicant in terms of the authority delegated to her by Ms Jacobs. In my view, the finding of the court below in this regard cannot be faulted. This finding is borne out by the following reasons:

[25] In the replying affidavit, the first respondent asserted that it previously owned the leased premises before the property was bought and transferred to Goodfind Properties. However, Goodfind Properties, as the owner of the leased premises, has subsequently concluded a resolution dated 20 May 2019, empowering the first respondent to manage all its immovable properties and to institute or defend any legal proceedings. From this resolution, it is abundantly clear that the first respondent, for all intents and purposes, remained the person in charge of the premises in terms of the resolution concluded by a Goodfind Properties.

[26] Furthermore, the first respondent explained that Nazlie Wagner was the company secretary. However, she passed away, and Elsabe Marx was appointed interim company secretary for three months. In my view, the reason why Elsabe Marx signed the delegation and not Nazlie Wagner has been explained with clarity and explicitness. In addition, the resolution attached to the replying affidavit clearly authorised the first respondent to act on behalf of the applicant. In this regard, I am of the view that the appellants' preliminary point on this ground was correctly dismissed by the court below.

Whether the court should disallow the new preliminary point of locus standi raised in the heads of argument?

- [27] In the heads of argument, the appellants took aim at the first respondent's delegation of authority and argued that clause 6.5.3 of the delegation of authority empowers the first respondent's General Manager, Faieda Jacobs, to only grant final approval for the authorisation of legal proceedings and the signing of affidavits in respect of collections. The appellants further argued that clause 3.4.1 of the first respondent's delegation of authority framework only contemplates a recommendation by the first respondent's General Manager for the institution of legal proceedings, but the final approval vests in the first respondent's CEO. To this end, the appellants contended that there is no evidence that the CEO, Mr. Houston, who appears to occupy this position, approved the institution of the present legal proceedings.
- [28] Mr Lawrance lamented the fact that the appellants did not raise this point during the initial hearing. Counsel specifically objected to the new ground on the basis that the appellants seek to introduce a new case on appeal to the prejudice of the first respondent. Had the issue been raised in the answering affidavit, the contention proceeded, the first respondent would have dealt with it in reply. It was submitted that it was impermissible for the appellants to do so. Mr Lawrance argued that this preliminary point must be disallowed as it constitutes a new matter on appeal. I do not agree with this proposition.
- [29] It is trite that a court of appeal ascertains whether the court a quo came to the right conclusion based on the case that served before it. In my view, in this case, it cannot be said that the first respondent did not have an opportunity to meet this new point in limine. The appellants impugned the first respondent's locus standi to institute these proceedings in their answering affidavit. The appellants challenged the authority of the first respondent to bring this application. To my mind, it was incumbent upon the first respondent to perfect its application in its replying affidavit and file all the necessary documents to support its claim that it had the necessary locus standi. The question of locus standi was raised in the answering affidavit. The first respondent had a duty to prove that, indeed, it had standing to institute eviction proceedings against the appellants.
- [30] Notably, in the replying affidavit, at paragraphs 2 and 29 thereof, the first respondent asserted that the delegation of authority questioned by the appellants was duly signed by Faieda Jacobs, the General Manager of the first respondent. The first respondent further asserted that according to the delegation of authority framework, Ms Jacobs was empowered by clause 6.5.3 to authorise legal proceedings and, as such, had delegated her authority to Ms Maragela, the deponent of the applicant's founding affidavit.
- [31] Notwithstanding that the appellants challenged the first respondent's locus standing to bring this application, Ms Faieda Jacobs did not at all state in the replying affidavit that she was authorised or got the approval of Ms Houston, the Chief Executive Officer of the first respondent, to institute the eviction proceedings against the appellants. From the first respondent's replying affidavit, particularly paragraph 29 thereof, it is abundantly clear that it was Ms Faieda Jacobs who authorised the institution of legal proceedings in terms of clause 6.5.3 of the delegation of authority. In addition, if the Chief Executive Officer, Ms

Houston, had authorised the institution of these proceedings, these would have been incorporated into the replying affidavit.

- [32] The delegation of authority dated 15 September 2015, signed by Ms Houston authorising the General Manager of the first respondent to institute these proceedings that the first respondent sought to introduce during the appeal hearing, offends the averments made by Ms Faieda Jacobs in her replying affidavit that she authorised the institution of these proceedings. Furthermore, even if I were to accept that there was such a delegation of authority issued on 15 September 2015 to the General Manager, I find it very strange as to why such an important document was not attached in the founding affidavit nor in the replying affidavit, especially in circumstances where the authority of the first respondent was impugned. In my view, the belated application to introduce this document contradicts the version of the first respondent as stated in the replying affidavit. I am further of the opinion that this belated application is an afterthought launched to cover up the gaps in the first respondent's application.
- [33] To this end, I agree with Mr Simon that Ms Jacobs, of the first respondent, had no authority in terms of the delegation of authority to institute legal proceedings on behalf of the first respondent. Her authority was limited to making a recommendation to the first respondent's Chief Executive Officer, who had to approve the same. Consequently, I am of the firm view that the first respondent has not demonstrated that it had the necessary *locus standi* to bring this application. On this ground alone, this appeal stands to be upheld. (see *Goodfind Properties (Pty) Ltd v Kennedy and Others* [2024] 1 AII SA 751 (WCC) paras 15-20.
- [34] Under normal circumstances, this finding would lead to the end of the dispute. However, I deem it prudent to briefly consider the third disputed question, namely, whether the court a quo was correct in finding that it was just and equitable to grant an eviction order against the appellants. This approach, in my view,

conforms with the Constitutional Court's guidance provided by Ngcobo J in *S v Jordan & Others* (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae) 2002 (6) SA 652 (CC) at para 21; See also *Minister of Justice and Another v SA Restructuring and Insolvency Practitioners Association and Others* 2017 (3) SA 95 (SCA) at para 38. To my mind, this approach ensures that all the disputed issues raised by the parties in this appeal are ventilated. I intend to follow it.

Whether the court a quo was correct in granting an eviction order without the report from the Municipality

- [35] The PIE Act provides for and regulates the implementation of evictions in accordance with Constitutional principles. Provisions in the PIE Act were enacted to give effect to section 26(3) of the Constitution. Section 26(3) of the Constitution provides that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. The Preamble of PIE Act also emphasises that no person may be evicted from their home or have their home demolished in the

absence of a court order. Section 8(1) of the PIE Act gives effect to section 28(3) of the Constitution and provides that no person may evict an unlawful occupier except on the authority of an order of a competent court. In *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others* 2012 (2) SA 337 (CC) at para 3, the court affirmed that "[t]he PIE Act was passed to give effect to section 26(3) of the Constitution with the result that its interpretation and application raise a constitutional matter.

- [36] The PIE Act clearly delineates the prescribed procedure to have unlawful occupiers evicted. Unlawful occupiers are to be given adequate notice of prospective eviction proceedings, the opportunity to make representations, and the opportunity to have their personal circumstances placed before the court. Once a competent court of law has regard to all relevant circumstances, it must decide whether it is just and equitable to grant the eviction order and, if so, it must determine a just and equitable date on which the occupiers must vacate the land. *Ruwayda Davids and Others v City of Cape Town* (unreported case No.16372/21) (07 October 2021) (WCC) at paras 81 and 82.
- [37] It is not in dispute that the appellants have been in occupation of the leased property ever since the conclusion of the lease agreement in May 2014. The appellants have occupied the property for almost a decade. According to the first respondent, the appellants have been in arrears with their rental since October 2020. The appellants and their nine (9) year old daughter occupy the premises in question. In addition, the first appellant's mother-in-law, Ms Maureen Joan Palm, who is 67 years old, also resides with the appellants. The appellants filed a medical report stating that Ms Palm is suffering from diabetes mellites, Hypertension, Hypothyroidism, asthma, depression, and generalised anxiety disorder. In addition, the treating doctor of

Ms Palm stated that he could not predict what impact the eviction would have on Ms Palm's medical conditions. However, the

treating doctor expressed concern regarding Ms Palm's mental health wellness with regards to her anxiety and depression.

- [38] It is common cause that the court a quo did not engage the Municipality in determining a just and equitable order envisaged in section 8 of PIE. It only relied on the affidavit of the appellants. In my view, the court a quo erred in this regard. It must be stressed that determining whether the granting of an eviction order is just and equitable involves an inquisitorial exercise. The court has an added responsibility to be innovative, to be actively involved in investigating the relevant facts before it can grant an eviction order. What militates against the order of the court a quo in this matter is that it ignored the provisions of section 7 of the PIE Act. For brevity's sake, section 4(7) of PIE provides:

"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 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.”

- [39] This section requires a court to consider the rights and needs of the elderly, children, disabled persons, and households headed by women. Section 4(7) also requires that before an eviction order is granted, the court must be satisfied that such an order will be just and equitable to the applicant and the unlawful occupier. In determining whether an eviction is just and equitable, the court is required to consider, amongst others, whether land has been made available or can reasonably be made available by a Municipality or an organ of State for the relocation of the occupier. These factors are specifically listed as relevant factors to which a court must have regard.
- [40] In *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* (102/2009) [2010] ZASCA 28 (25 March 2010) para 3, the court held that where information relating to these matters is not placed before the court, the court will not be in a position to consider these circumstances in determining whether the eviction was just and equitable.
- [41] As stated above, the appellants have occupied the leased premises for almost a decade. It was brought to the court's attention that there was a minor child and an elderly sick pensioner occupying the leased premises together with the appellants. To this end, the court a quo was enjoined to invoke section 4(7) in determining whether it would be just and equitable to evict the appellants. The court was

obliged to determine the needs of the elderly pensioner and those of the minor child before it could grant the order. The court was also obligated to determine whether the eviction order would render the appellants homeless. It is noted with concern that the issue relating to alternative land to which the appellants could be relocated was not explored or considered at all by the court a quo.

- [42] The court below, incorrectly, did not consider the Municipality as a necessary party to assist in making a just and equitable order. In *Occupiers of ERF 101,102, 104 and 112, Shorts Retreat, Pietermaritzburg v Daisy Dear Investments (Pty) Ltd and Others* 2010 (4) BCLR 354 (SCA) at para 14, the court stated that the Municipality's position in eviction proceedings under PIE differs from that of a third party in ordinary litigation because it has constitutional obligations it must discharge in favour of people facing eviction. It should, therefore, not be open to it to choose not to be involved. Moreover, the court stated that section 4 of PIE obliges the courts to be innovative and, if it becomes necessary, to depart from the conventional approach.

- [43] As previously stated, the court a quo granted an eviction order without a report from the Municipality indicating whether land has been made available or can reasonably be made available for the relocation of the appellants. The court simply considered the personal circumstances of the appellants without considering whether the land had been made available by the Municipality. In *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005
- (1) SA 217 (CC) at para 28, the court noted that in general terms, a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.
- [44] It must be stressed that from a constitutional framework, the Constitution sets out the functions and powers of local government. Section 152 states the objects of local government and requires municipalities to strive to achieve these objectives. Amongst others, the objectives of local government are to ensure the provision of services to communities in a sustainable manner and to promote social and economic development. In tandem with section 152, section 153(a) of the Constitution buttresses the function and powers of a local government and provides that a municipality must structure and manage its administration and, budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community. While section 156(1) (a) and (b) authorises municipalities to carry out their functions.
- [45] These constitutional provisions plainly demonstrate that local government (the Municipality) has an important role to play in the provision of housing. It was thus inherently necessary in this case for the court a quo to engage the Municipality before granting an eviction order. More so, in *City of Cape Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at para 45, the 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 the determination of whether it is just and equitable to grant an eviction order.
- [46] From the foregoing, it is incontestable that the court a quo was not in possession of all the necessary information, particularly whether there were interim measures that could be made to accommodate the appellants or whether there was any land that has been made available by the Municipality. Section 4(8) provides that the eviction of the unlawful occupier must be just and equitable. In deciding on a date for the eviction of the appellants, the court below must have considered all the relevant information at its disposal including whether land has been made available or can reasonably be made available before the date for the eviction of the appellants could be established. I repeat, the court below did not have all the relevant facts at its disposal to grant an eviction order within the confines of section 4(8).

[47] In my opinion, the court a quo erred in failing to obtain a report from the Municipality as the circumstances of this case warranted such a report before an eviction order could be granted.

Conclusion

[48] Given all these considerations, I would propose this order.

48.1 The appeal is upheld with costs.

48.2 The order granted on 26 October 2022 under case number 2471/22B in the Wynberg Magistrates Court is set aside and replaced with the following order:

48.3 The eviction application is dismissed with costs.

LEKHULENI JD

JUDGE OF THE HIGH COURT

I agree and it so ordered:

FRANCIS M

APPEARANCES

For the Appellants: Mr Simon

Instructed by: Dlova Attorneys INC

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For the first Respondent: Mr Lawrance

Instructed by: Toefy Attorneys

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