

SOUTH AFRICA / JUDGMENT

Coleman and Others v Unlawful Occupiers and Others (D5527/2020B)

[2023] ZAKZDHC 11 (14 March 2023)

[2023] ZAKZDHC 11

COURT
Kwazulu-Natal High Court, Durban

BEFORE
Nicholson AJ

CASE / FILE NUMBER
D5527/2020B

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

CASE

NO: D5527/2020B

In

the matter between:

ERROL
VAUGHN COLEMAN
FIRST APPLICANT
MERVYN
ROLAND DUNN
SECOND APPLICANT
ANNE
CHERYL BERNADETTE DUNN
THIRD APPLICANT
and
THE
UNLAWFUL OCCUPIERS
FIRST RESPONDENT
JOYCE

THANDIWE SIBIYA
SECOND RESPONDENT
MANDENI
LOCAL MUNICIPALITY
THIRD RESPONDENT

JUDGMENT

Nicholson AJ:

- [1] This is an application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('PIE') for the eviction of various households from the property described as Portions [...] and [...] of Reserve [...], No. [...], Registration Division FU, Province of KwaZulu-Natal in extent of 40,4686 hectares ('the Property'); together with ancillary relief authorising the Sheriff to assist with the evictions.
- [2] The applicants, by way of title deeds,[1] assert that they either own as little as one sixth, to one half, and as much as complete ownership of either portions [...] or [...] of the Property. Save the second respondent's statement that 'there are unsatisfactory features in the manner in which the Applicants registered the properties in their names',[2] the ownership of the Property by the applicants is not seriously disputed.
- [3] The applicants assert that a group of informal settlers, whom they refer to as unlawful occupiers (the first respondent herein), and the second respondent, Ms Joyce Thandiwe Sibiya, currently occupy the Property illegally.[3]
- [4] Ms Sibiya asserts that she is a 71-year old female and a beneficiary of the Bhekamafa Community Trust ('the Trust') and resides at Ward 3, Mangethe Reserve, Mandeni, KwaZulu-Natal.
- [5] She states further that she deposes to the answering affidavit both in her personal capacity and on behalf of a committee formed by some of the Mangethe community members. She attaches three confirmatory affidavits to confirm same.
- [6] As background she states that in 1976, consistent with the policies of the Apartheid government at the time, she was among several members of the Mangethe Community who were dispossessed of their land and relocated. In or about 1993, she and other community members returned to the land where they lodged a land claim which was successful.
- [7] In terms of the claim, the government purchased some properties for the community; however, the process remains incomplete. The Trust was formed and registered to administer the purchased properties on behalf of the community.
- [8] Ms Sibiya further states that the purchased properties are now owned by the Trust and attaches a deeds registry search that shows eight properties that belong to the Trust.[4]

- [9] Ms Sibiya makes further allegations that the Property was acquired in an unsatisfactory manner by the applicants because they were aware that the Property was subject to a land claim which is currently incomplete.
- [10] It is convenient to mention here that in the replying affidavit, the applicants put up the settlement of the alleged land claim which shows that the land claim was settled by way of compensation to the Claimants, and properties outside of Mangethe were purchased for the Claimants and such land remains vacant. In the circumstances, it is apparent that the occupiers of the Property received financial compensation and alternate land, which the second respondent has not disclosed to the court.
- [11] The third respondent, the Mandeni Local Municipality has been cited as an interested party; however, despite being properly served with the they have not participated in any way in this application.

Legal Framework

- [12] Section 25(1) of the Constitution states that '[n]o one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.'
- [13] Section 26(3) of the Constitution provides:
- 'No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.'
- [14] In the matter of *Pheko and Others v Ekurhuleni Metropolitan Municipality* 2012 (2) SA 598 (CC), the Constitutional Court affirmed that s 26(3) of the Constitution does not permit legislation authorizing evictions without a court order. The PIE Act reinforced this by providing that a court may not grant an eviction order unless the eviction would be just and equitable in the circumstances.
- [15] In *Ndlovu v Ngcobo: Bekker and another v Jika*
- [2002] 4 All SA 384 (SCA) para 11, the Supreme Court of Appeal ('SCA') held that'... PIE applies to all unlawful occupiers, irrespective of whether their possession was at an earlier stage lawful.'
- [16] Section 1 of PIE reads:
- ...
- (ii) "consent" means the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question;
- (ix)"owner" means the registered owner of land, including an organ of state;

(x) "person in charge" means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question:

(xi) "unlawful occupier" means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).'

[17] Section 4 of the PIE Act provides that:

'(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.

(3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.

....

(7) 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 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.'

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine: -

'(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) 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).'

[18] In terms of the Sheriff's return of service, the notices[5] in terms of s 4(2) of the PIE Act were served on the first and second respondent at the second respondent's home; on the second respondent personally, and for the first respondent, on an unnamed daughter of the second

respondent; and at the place of business of the third respondent. However, an answering affidavit has only been filed by the second respondent. There is a dispute as to whether that answering affidavit was filed on behalf the first respondent. I shall return to this point later hereunder.

- [19] I pause here to mention that since it emerges as common cause that the occupiers have been in occupation from as early as the year 1993, which is well over six months since the date that these proceedings were initiated, Consequently, s 4(7) of PIE is applicable.

Abandoned Eviction Order

- [20] There was a previous eviction order that has since been abandoned, which will become relevant hereinbelow; accordingly, I set out hereunder a brief chronology of the litigation. These facts are either common cause or axiomatic:

- (a) On 6 August 2004, an eviction order[6] was obtained by Daniel Alexander

Montague Dunn, for the eviction of Kayalesha Mathaba and other Unlawful Occupiers.

- (b) Between 2004 and 2015, the Sheriff of Mandeni refused to execute the order due to the wording in the order and after being reported to the Sheriffs Board, the Sheriff of Eshowe was allocated to assist.

- (c) On 20 March 2015, the second respondent was granted an urgent interim order[7] to stay the order.

- (d) On 5 December 2017, the interim order was set aside.[8]

- (e) In 2019, the Sheriff of Eshowe refused to execute the order due to the wording in the order. [9]

- (f) In light of the time that had elapsed and the prospect of further unlawful occupiers occupying the Property, on 20 May 2020, the first applicant served notices to vacate on the first and second respondent, as a precursor to the current application.[10]

- (g) On or about 14 September 2020[11] and again on 5 November 2020,[12] the Sheriff served the application papers on the respondents.

- (h) On 8 December 2020, an order was granted in terms of s 4() of the PIE Act, authorising service of the notice in terms of s 4(2) and the founding papers on the first and second respondents in terms of the Uniform rules.[13]

- (i) On 25 February 2021, the notices in terms of s 4(2) was served on the respondents.[14]

Issues

and Disputes

[21] Various disputes are raised in the answering affidavit; however, in her heads of argument, the second respondent summarises her grounds of opposition as follows:[15]

(a) the application is fatal for want of compliance with the peremptory requisites of s 4 of the PIE Act;

(b) the application is not duly supported by the second and third applicant,

thus the first applicant lacks locus standi and is not entitled to any relief; and

(c) it is not just and equitable to evict the second respondent under the circumstances.

[22] In addition, in her heads of argument, the second respondent states that she had denied being in occupation of the Property which constitutes a dispute of fact.[16]

[23] It is convenient to mention here that while in her answering affidavit, the second respondent raised a misjoinder of the Minister of Rural Development and Land Reform, Mr Xulu, on behalf of the second respondent, abandoned this point during oral argument.

[24] On the other hand, in their heads of argument, the applicants summarise the issues for determination as follows:

(a) whether the applicants are the registered owners, alternatively persons in charge of the Property;

(b) whether the first and second respondents are unlawful occupiers;

(c) whether it is just and equitable that the first and second respondents be directed to vacate the Property.

[25] The applicants' ownership of the Property is not seriously contested in the second respondent's answering affidavit, and is not contested at all in her heads of argument. Taking into account the vague assertion made by second respondent, in the absence of any evidence or legal authority that the applicants' acquisition of the land was suspicious, contrasted with the existence of the title deeds that evidence applicants' ownership, I am satisfied that applicants properly proved their ownership. Accordingly, I shall not deal with this point any further.

Dispute of Facts

[26] In his heads of Argument, although not in his oral argument, on behalf of the second respondent, Mr Xulu raises as a dispute of fact, in a single paragraph in his heads of argument[17], and in a single paragraph in the answering affidavit[18] that second respondent is not in unlawful occupation of the property because she had been given permission to reside "in her residence", and such permission was given by a company called Hullet.

[27] Neither party sought a referral to oral evidence.

[28] It is trite that any disputes of fact relevant must be resolved in favour of the respondents unless the assertion in question is so untenable or far-fetched that it can be dismissed on the papers[19].

[29] In *Saffiantinni v Mould* 1956 (4) SA 150 (E), at 154E-H, it was observed:

'It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The court must not hesitate to decide an issue on affidavit merely because it would be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in the affidavit.'

[30] In light of the scant facts alleged by the second respondent, I am not convinced that the dispute is bona fide because: it is unclear if second respondent asserts that the house on which she resides is not on the property, or that she simply has permission to occupy it. If the former is the case, why then did she bring an interim order staying the abandoned eviction order referred to above. If the latter is her case, who is Hullet and what are the terms and conditions of this occupation?

[31] Considering the shortcomings in the manner the dispute of facts were raised, I am satisfied that I am able to deal with this application on the papers.

Compliance with Section 4 of PIE

[32] Ms Sibiya asserts that in light of the manner that the s 4(2) notice was served on the first respondent (who constitutes the bulk of the purported illegal occupiers}, it did not come to the attention of the majority of the occupiers because only few people that she interacted with were made aware of the notice.[20]

[33] Ms Sibiya alleges further that the s 4(2) notice for the first respondent was served on the second respondent, despite there being no allegation in the founding affidavit that the second respondent either represents or is aligned to the first respondent. In both oral argument and the answering affidavit, the second respondent fell short of denying that she represents the first respondent.

[34] As authority for this point, the second respondent directs my attention to *Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others* 2001 SA 1222 (SCA) where it was held that as 4(2) notice is a precursor for the granting of an eviction, the absence of which renders the application fatal.

[35] As demonstrated herein above, a s 4(2) notice was both authorised by court and served on the first respondent; accordingly, the s 4(2) notice is a precursor to the litigation. As will be seen from the cases hereunder, the true question then is, whether the notice was effective.

[36] On the other hand, the applicants refer me to the case of Nedbank Ltd v RZT Zelpy 4808 (Pty) Ltd and Others (3591/2012) [2012] ZAKZDHC 77 (8 November 2012), an unreported judgment in this Division where it was held by Vahed J that the purpose of a notice in terms of s 4(2) of PIE is fourfold:

'It requires an applicant to firstly indicate that proceedings were being instituted for an order for the respondents' eviction, secondly to indicate the date and time that the matter was to be heard, thirdly to set out the grounds of the proposed eviction and, finally, to indicate to the respondents that they were entitled to appear at court, defend the case and, where necessary, had the right to apply for legal aid.'

[37] In Theart and another v Minnaar NO; Senekal v Winskor 174 (Pty) Ltd [2010] 2 All SA 275 (SCA) para 14 it was held:

The real and proper enquiry should be whether mere has been effective notice of the proceedings on the occupier in the sense that a court is satisfied that the occupier has been fully informed of the impending eviction, the grounds therefor, the date and place of hearing and the right to appear in court and be represented.'

[38] In Deorist A 144 (Pty) Ltd and others v Jacobs and others [2007] 4 All SA 737 (T) at para 11, the court held:

'I may add that the section requires "effective" notice. That, in my view means that the attention of the occupier must, as far as is possible, be drawn pertinently to the notice that the court authorised and directed.'

[39] The question therefore is, taking into account the manner of service of the s 4(2) notice, does it constitute effective notice. To answer this question, it is important to look at the historical facts.

[40] In her answering affidavit, the second respondent describes herself as inter alia the second respondent and beneficiary of the Bhekamafa Community Trust. Further in her answering affidavit, she states the following:

'I depose to this affidavit in my personal capacity and have also been duly authorised by a committee formed by some of Mangethe residents consisting of Mr Siyanda Mthimkhulu, Ms Duduzile Sibiya, Mr Prince Dube and Ms Zinhle Thwala to oppose this application and depose to this answering affidavit.'

[41] Further in the affidavit, she states:

'During the rule of the apartheid government and particularly in 1976, I was amongst the members of the Mangethe Community ("the community") that were dispossessed of rights in land as a result of racially discriminatory laws and practices. We were forcefully removed and placed in the Wangu Reserve. In 1993, I and many other community members returned back to our land and then lodged a restitution claim as a community against the Minister of Rural Development and Land Reform, the Regional Land Claims Commission and the then registered

land owners in terms of the provisions of the Restitution of Land Rights Act 22 of 1994.'

[42] In the premises, in the second respondent's own words, she was authorised to depose to an answering affidavit on behalf of a committee, which represent community members, and these community members consists of persons who returned to the land in 1993 i.e the unlawful occupiers. Accordingly, it is apparent that the second respondent is in some kind of leadership position in relation to the first respondent.

[43] Further, taking into account the wording of the urgent interim interdict that was obtained staying the 1996 eviction order, which reads as follows:

'1. That a rule nisi do issue calling upon the respondents to show cause on 11 May

2015 why an order in the following terms should not be issued:

1.1 the respondents are interdicted from evicting any persons residing on the land or property described as 1/6 share in and to Sub 50 of Reserve [....] No. [....] situate in the Regulated area of Mangethe Administration District of Natal, in the extent forty, forty-six eight six (40 4686) hectares.' (my emphasis)

[44] It is apparent from this order that the second respondent did not bring this application on her own behalf but brought the application on behalf of the unlawful occupiers living on the property.

[45] Taking into account the averments in the answering affidavit referred to above, the wording of the interim urgent interdict and the failure of the second respondent to deliberately state that she is not in any way aligned with the first respondent, any notion that the content of the notice in terms of s 4(2) of the PIE Act did not come to the attention of the first respondent must be rejected.

[46] In the premises, the service indeed constituted effective notice; accordingly, this point cannot be sustained.

Locus Standi

[47] The second respondent asserts that, in the founding affidavit, the first applicant does not explain that he had acquired the right to represent the second and third applicants in these proceedings and although the second and third applicants filed confirmatory affidavits such confirmatory affidavits are insufficient because supporting affidavits ought to have been filed which set out the relief sought.

[48] For that reason, the second respondent is of the view that the first applicant lacks the requisite locus standi; accordingly, this application should be dismissed.[21]

- [49] In terms of the founding affidavit, the first applicant owns two one-sixth shares in Portion [...] and owns Portion [...] in its entirety. Accordingly, the first applicant in terms of s 4(1) read with s 1(xi) of the PIE Act is entitled to bring this application without the aid or consent of the second and third applicants.
- [50] In the premises, the first applicant does have the requisite locus standi, with or without the support of the second and third applicant. Accordingly, it is unnecessary for me to make a finding on whether this application was supported by the second and third applicants for the purposes of locus standi.

Unlawful Occupiers

- [51] Neither the first nor the second respondent aver that they are occupying the Property with the consent of the applicants. Their reason for occupying the land appears to be that they have had a historical claim to the land since 1976 and now occupy the land pursuant to a land claim.
- [52] In the applicants' replying affidavit, it has been demonstrated that the land claim is now finalised with the Claimants receiving financial compensation, and other properties being purchased for them.
- [53] The second respondent confirms that she is both a committee member for the Mangethe Community members and a beneficiary of a trust that administers properties that were bought by the Minister of Rural Development and Land Affairs for the Claimants.
- [54] In the circumstances, it is apparent that whatever land claim that was lodged over the Property has now been settled.
- [55] The second respondent states that the house that she occupies is occupied with the permission of a company named Hulett. However, she does not allege that Hulett is the owner of the Property and house thereon, nor does she provide any evidence as to how Hulett would give her permission to occupy the property and the terms under which she occupies her property.
- [56] In the circumstances, neither the first nor the second respondent demonstrates that they occupy the Property with either the express or tacit consent of the owners or persons in charge, nor have they demonstrated any other right in law to occupy such land.
- [57] In the premises, both the first and second respondents are unlawful occupiers.

Just and Equitable Principle

- [58] Mr Xulu argues on behalf of the second respondent that it will not be just and equitable to evict the respondents from the Property because:

- (a) the second respondent has been in occupation of the Property since 1993 and there has been no explanation by the applicant why the present application was not instituted at the earliest opportunity;
- (b) the eviction of the second respondent will likely render her and her family homeless;
- (c) the second respondent is an old person over the age of 70 and has lived on the Property for many years;
- (d) the occupiers' circumstances and vulnerability cannot be gainsaid.

[59] Section 4(9) of PIE states:

'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.'

[60] With regard to the duration of the illegal occupation, in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) ('Blue Moonlight Properties') at para 40 it was held that:

'It could reasonably be expected that when land is purchased for commercial purposes the owner, who is aware of the presence of occupiers over a long time, must consider the possibility of having to endure the occupation for some time. Of course a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period. But in certain circumstances an owner may have to be somewhat patient, and accept that the right to occupation may be temporarily restricted, as Blue Moonlight's situation in this case has already illustrated. An owner's right to use and enjoy property at common law can be limited in the process of the justice and equity enquiry mandated by PIE.' (my emphasis)

[61] In *Grobler v Phillips and Others* 2023

- (1) SA 321 (CC) para 37, it was held that in terms of s 4(7) of PIE, the obligation to provide alternative accommodation lies with a 'municipality, or other organ of state or another land owner'.

[62] *Sachs J in Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) para 35 stated the following:

'[35].... The phrase "just and equitable" makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and in tension with each other, PIE treats these values as interactive, complementary and mutually reinforcing. The necessary reconciliation can only be attempted by a close analysis of the actual specifics of each case.'

[36] The court is thus called upon to go beyond its normal functions and to engage in active judicial management according to equitable principles of an ongoing, stressful and law-governed social process. This has major implications for the manner in which it must deal with the issues before it, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make. The Constitution and PIE require that, in addition to considering the lawfulness of the occupation, the court must have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values, so as to produce a just and equitable result.'

[63] In *Hattingh and Others v Juta* 2013

(3) SA 275 (CC) the Constitutional Court held:

'In my view the part of [section] 6(2) that says: "balanced with the rights of the owner or person in charge" calls for the striking of a balance between the rights of the occupier, on the one side, and those of the owner of the land, on the other. This part enjoins that a just and equitable balance be struck between the rights of the occupier and those of the owner. The effect of this is to infuse justice and equity into the inquiry.

...'

[64] In *Grobler*, para 44, the Constitutional Court held:

'A just and equitable order should not be translated to mean that only the rights of the unlawful occupier are given consideration and that those of the property owner should be ignored. And it does not mean that the wishes or personal preferences of an unlawful occupier are of any relevance in this enquiry.'

[65] It is apparent from the chronology hereinabove that there has been an attempt to evict the first and second respondents. Although litigation was successful, the eviction order was not carried out in light of the Sheriff failing to carry out the eviction. Further, the second respondent proceeded to stay the eviction order which further delayed the eviction, which caused the applicants to abandon that eviction order. In the circumstances, while it is correct that this application was brought after the respondents had been residing on the Property for a long time, applicants' actions were far from supine.

[66] It has emerged as common cause in the papers that the Government had purchased other properties for the respondents and had paid out financial compensation. The answering affidavit does not explain why the respondents do not reside on those properties nor what the respondents have done with the financial compensation.

[67] It is further apparent from *Grobler* that the wishes or personal preferences of the unlawful occupier are of no relevance. In the present case it is apparent from the papers that the respondents do have alternate land available to them but appear to prefer the Property, notwithstanding the fact that they had received financial compensation and other land.

[68] In Blue Moonlight Properties, the Constitutional Court observed that it cannot be expected of the property owner to provide free housing for the homeless on its

property for an indefinite period and in Grobler, the Constitutional Court held that the obligation to provide alternate accommodation lies with the municipality or other organ of State or another landowner.

[69] Taking the facts of this matter into account and the relevant authorities, it is not 'just and equitable' to allow the first and second respondents to reside on the Property.

[70] In the premises, the application must succeed.

The Municipality

[71] As stated hereinabove, the papers have been served on the Mandeni Local Municipality; however, they have taken a supine approach. It is apparent from the authorities that they have a constitutional mandate to provide housing and/or alternative accommodation in circumstances such as these.

[72] Their failure to participate in this matter does not absolve them from their constitutional mandate.

[73] The applicants have requested that the order be stayed for a period of 30 days. However, taking into account the period the occupiers have been in occupation of the land and the supine approach of the Municipality, my view is that 30 days would be insufficient.

[74] Given the constitutional mandate of the Municipality, this order must be served on the Mandeni Municipality, and given the supine stance of the Mandeni Municipality, this order must also be served on the MEC for Cooperative Governance and Traditional Affairs: KwaZulu-Natal and the Premier of KwaZulu-Natal to ensure that the Mandeni Municipality carries out its constitutional responsibility, and provide them with sufficient time to find alternative accommodation for the occupiers.

[75] In the circumstances, my view is that 90 days' notice to the first and second respondents is sufficient.

Condonation

[76] Both the applicants and the second respondent filed their heads of argument and practice notes outside of the timeframes provided for in the Practice Directive; accordingly, both parties filed applications for condonation, and neither party opposed the other's application.

[77] The degree of lateness was not very much, and both sets of heads of argument arrived with the file. Accordingly, there were no prejudice.

Order

[71] I make the following order:

- (1) Both the Applicants and the Respondents are granted condonation for the late filing of the heads of argument and practice note, with no orders as to costs.
- (2) The First and Second Respondents and all those occupying the property described hereunder through them: Portion [...] and [...] of Reserve [...], No. [...] and Registration Division FU, Province of KwaZulu-Natal, in extent 40, 4686 (forty, four six eight six) hectares, are directed to vacate the property within ninety (90) days of service of this order.
- (3) Applicant is directed to forthwith, serve this judgement on the First and Second Respondents by the Sheriff or his Deputy by providing the Second Respondent with at least ten (10) copies of the judgement, and reading out the order in both English and IsiZulu on a loud hailer at a place where the community regularly meets.
- (4) The Applicant is directed to forthwith, and with the aid of the Sheriff, serve this judgement on the Mandeni Municipality, the MEC for Cooperative Governance and Traditional Affairs: KwaZulu-Natal and the Premier of KwaZulu-Natal.
- (5) The Second Respondent is directed to pay the costs of this application.

NICHOLSON AJ

Date Heard:

22 February 2023

Delivered on:

14 March 2023

Appearances:

On behalf of the Applicants: Advocate JG Bhika

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- [1] Volume 1, pages 32 - 48.
- [2] Volume 2, page 101, paragraph 12.
- [3] Volume 1, pages 18 and 19, paragraphs 6 and 7.
- [4] Volume 2, paragraph 10, page 101/121 .
- [5] Volume 1, pages 78 - 80.
- [6] Volume 1, page 49.
- [7] Volume 1, page 52.
- [8] Volume 1, Page 54.
- [9] Volume 1, paragraph 22, page 24.
- [10] Volume 1, pages 58 to 62.
- [11] Volume 1, pages 69 to 71.
- [12] Volume 1, pages 78 to 80.
- [13] Order by Ploos Van Amstel J, dated 8 December 2020.
- [14] Volume 1, pages 93 to 94.
- [15] Second Respondent's Heads of Argument, paragraph 2.
- [16] Second Respondent's Answering Affidavit, paragraph 9.
- [17] Page 4, paragraph 9
- [18] Volume 2, page 104, paragraph 28
- [19] See Ngqumba & 'n ander v Staatspresident & andere 1988 (4) SA 224 (A) at 259C - 263D;
National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009 (2) SA 277 (SCA) [also
reported at 2009 (4) BCLR 393 (SCA)
- Ed] at paras [26]-[27].
- [20] Answering affidavit: paragraphs 20, 21, 22, 23 and 24: vol 2: page 104.
- [21] Volume 2, page 102, paragraphs 13, 14 and 15.

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