

SOUTH AFRICA / JUDGMENT

Free State Development Corporation v
Telgobrite (Pty) Ltd and Others (2342/2024)
[2025] ZAFSHC 149 (26 May 2025)
[2025] ZAFSHC 149

COURT
Free State High Court, Bloemfontein

BEFORE
Opperman

CASE / FILE NUMBER
2342/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable

/ Not reportable

Case no: 2342/2024

In the matter between:

FREE
STATE DEVELOPMENT CORPORATION
Applicant
and
TELGOBRITE
(PTY)
LTD
1st
Respondent
ALL UNLAWFUL OCCUPIERS
of Erf 8[...],
Bloemfontein, District
Bloemfontein,
State Province, better

known as 1[...] R[...]
Street,
Universitas,
Bloemfontein
2nd
Respondent
MANGAUNG
METROPOLITAN MUNICIPALITY
3rd
Respondent

Coram: Opperman J

Heard: 5 December 2024

Delivered: 26 May 2025. This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 26 May 2025 at 15h00.

Summary: Eviction – commercial and residential eviction – Plascon Evans- dictum ORDER

1.
The first and second respondents claiming occupation of the property Erf 8[...] Bloemfontein, District Bloemfontein, Free State Province, better known as 1[...] R[...] Street, Universitas, Bloemfontein, Free State Province which is held under title deed number T4482/1966 (the property), are declared as unlawful occupiers of the property.
2.
The first and second respondents are ordered to vacate the property within thirty (30) days of service of this court order.
3.
The first and second respondents are ordered to remove all their property, equipment, buildings, or structures from the property described in para 1 above not later than the date referred to in para 2 above.
4.
In the event of the first and second respondents' refusal and/or failure to vacate the property as ordered in para 2 above, the

Sheriff of the above
Honourable Court is
authorised and directed:

- 4.1
To evict and/or cause to evict from the property the first and second respondents;
- 4.2
to take all steps and to do all things necessary to carry out the abovementioned eviction order and to hand possession of the property to the applicant;
- 4.3
to obtain the assistance of the South African Police Services, if necessary, to give effect to and to execute the abovementioned eviction order.
5.
The first and second respondents shall pay the costs of this application on party and party scale B.

JUDGMENT

Opperman J

Introduction

[1] The foundation on which cases of this nature must be adjudicated lies in the words of the Supreme Court of Appeal:[1]

‘[11] An owner is in law entitled to possession of his or her property and to an ejectment order against a person who unlawfully occupies the property except if that right is limited by the Constitution, another statute, a contract or on some or other legal basis. . . .’

[2] The application here is hybrid on the facts that are common cause. It was admitted by counsel for the first respondent during the hearing that the first respondent contracted to the use of the property for commercial purposes. In the meanwhile, the director of the first respondent (Mr. Tsatsi Johannes Macholo) and his family and apparently some other people, also came to use the property as a residential dwelling. The application that lies before court is for an order against the first and second respondents to vacate the applicant’s property.

[3] The applicant relies on the law of contract and the common law to evict the first respondent. [2] The application is in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) in regard to the second respondent.

[4] The case has to be adjudicated on the premises of the applicable law that is also common cause between the parties. Succinctly, commercial evictions are not subject to the same rigorous requirements as residential evictions. These evictions are characteristically

governed by the terms of the lease agreement, other contracts applicable and common law principles. The use of the property, not

its zoning or the tenant's status, determines whether an eviction falls under commercial or residential. The PIE Act primarily protects residential tenants from unlawful eviction and applies to unlawful occupiers of land. It ensures that evictions are conducted through a court order, providing protections for tenants.[3]

[5] While the PIE Act generally does not apply to commercial evictions, its principles might be considered if there is no specific contractual

process, or if the eviction involves an unlawful occupation of land. In *MC Denneboom Service Station CC and Another v Phayane*[4] the Constitutional Court ruled that:

‘[16] 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 the relevant

circumstances. No legislation may permit arbitrary evictions.”

PIE gives practical effect to this right and regulates the eviction of unlawful occupiers, even those who reside on commercial premises. Having no right to reside on the property, Mr Chiloane is an “unlawful occupier” under the Act and thus enjoys its protections. The Court was required to ensure that PIE’s requirements had been met before ordering his eviction. . . .

[17] The eviction of commercial occupants and juristic persons does not, however, fall within PIE’s remit. As the Supreme Court of Appeal correctly held in *Ndlovu*, the Act does not apply to the eviction of juristic persons and persons that do not use buildings and structures as “a form of dwelling or shelter”. Mr Phayane therefore was not obliged to comply with the requirements of PIE in seeking the eviction of Denneboom and persons working for it or working for Mr Chiloane, provided those persons do not also reside on the property. The High Court’s order was thus justified in respect of these persons.’ (Accentuation added.)

The property and the parties

[6] The property is Erf 8[...] Bloemfontein, District Bloemfontein, Free State Province, better known as 1[...] R[...] Street, Universitas, Bloemfontein, Free State Province, which is held under title deed number T4482/1966 (the property).

[7] The applicant is the lawful registered owner of the property. It is important to note here already that there is not any evidence before court from the first respondent that he is the lawful owner of the property and that he has a legal right to occupy the premises. On the version of the first respondent a sale agreement between the applicant and the first respondent is in dispute. For purposes of this case the applicant has shown on a balance of probabilities that the sale agreement collapsed. The first respondent did not bring any evidence to the application to demonstrate that he is the lawful owner. There is not any

substantive application before the court to adjudicate this issue and it is a case for another day if the first respondent desires to pursue the issue. The first respondent also had ample opportunity to apply to the court for the filing of additional statements in terms of rule 6

of the Uniform Rules of Court. He did not do so. I quote his answering affidavit hereunder. I was forced by the arguments of counsel in their heads of argument and during the hearing to do so. The arguments were beyond the contents of the papers.

[8] The applicant is the Free State Development Corporation (FDC), a corporation with main place of business in Bloemfontein, Free State Province. The first respondent is Telgobrite (Pty) Ltd, a private company with limited liability and registered business address Odendalsrus, Free State Province, and domicilium citandi et executandi address at 1[...] R[...] Street, Universitas, Bloemfontein, Free State Province. The second respondents are all alleged unlawful

occupiers of the property. As already indicated, Mr. Tsatsi Johannes Macholo and his family, on his own submissions to the court, also resides on the property. The third respondent is the Mangaung Metropolitan Municipality. The applicant maintains that the third respondent was cited solely on the basis of its possible interest in the application and in terms of the PIE Act. The applicant seeks no specific order or costs order (except if opposed) against the third respondent. The third respondent, ultimately, did not join the litigation here. Only the first respondent opposed the application. The director of the first respondent is involved and within the ambit of the first and second respondents. He drives the opposition to the application.

The arguments

[9] Counsel for the first respondent maintains in his practise note that the main issues are:

‘a) Whether the provisions of PIE Act are applicable in evicting a juristic person (the 1st Respondent) from commercial premises;

b) Whether the signed Agreement of Sale was “really” cancelled by the Applicant;

c) Whether the Eviction Application should be granted;’

[10] The applicant is adamant that the first respondent attempts to create a dispute of fact and that ‘the first respondent has an insurmountable hurdle to cross, which they knew about when blatantly misleading this court by alleging that it bought the property in question.’ The applicant is seeking final relief and therefor relies on the principles pronounced in *Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd*[5] (*Plascon-Evans*).

The evidence

[11] It is crucial to note that the answering affidavit of the first respondent does not in any manner whatsoever deal with the issues raised by counsel for the first respondent in their heads of argument. It claims ownership of the property to be transferred to the first respondent. It is in complete contradiction with the arguments raised during the hearing. Mr Macholo did not present the correct and complete situation to the court. I am obliged to depict the answering affidavit as a whole:

'I the undersigned

TSATSI JOHANNES MACHOLO

Do hereby make oath and state that

1.

1.1. I am an adult male person and the director of the 1st respondent, TELGOBRITE (PTY) LTD a duly registered company in terms of the company laws of the republic of south Africa, with main place of business situated at 594 NALE STREET, BLOCK7, KUTLWANONG, 9481

1.2. By virtue of the aforementioned, I am duly authorized on behalf of TELGOBRITE(PTY)LTD to dispose to this affidavit

3

1.3. In my capacity, I have in my possession and under my control all of the documents forming the subject matter of the agreement entered into with the Applicant.

4

1.4 I confirm that the facts deposed to herein falls within my personal knowledge unless the context indicates otherwise.

JURISDICTION

5

2.1 I humbly submit that the Honourable court has the necessary jurisdiction to adjudicate the matter in that the property falls within the jurisdictional area of this Honourable Court

RELIEF SOUGHT

6

3.1. THAT this application brought against 1st respondent in terms of the Prevention of illegal eviction from and Unlawful occupation of land Act 19 of 1998 (The PIE ACT") in which the applicant seeks an order evicting the unlawful occupiers be set aside with costs.

7

3.2 That the applicant transferring attorney MTHEMBU AND VAN VUUREN ATTORNEYS be ordered to transfer the property as per the sale agreement as the mandate is before the court

8

3.3 Now that the Mandate is before the court the hounorable to “perfecta” the contract for the purpose of transfer and registration.

9

3.4. The applicant to be ordered to pay the costs of transfer/failure of which I will pay them effective immediately

10

3.5 That Mr Van VUUREN of MTHEMBU AND VUUREN ATTORNEYS be mandated to transfer effective immediately as the signed documents are in his possession

11

3.6 THAT the applicant be ordered to release my credit score immediately as our lease agreement lapsed 30/04/2019 (Accentuation added.)

FACTUAL BACKGROUND

12

4.1 On or about the 30/01/2019 and at Bloemfontein the 1st Respondent, represented by a duly authorized representative, Mr TSATSI JOHANNES MACHOLO and the Applicant there and then represented

by Ikhraam Osman entered into the sale agreement of the abovementioned property with the indefinite clause. The agreement carried with it the occupational interest OF R15 000.00 p/m till transfer or registration which was to be done before the 30/04/2019.

13

4.2. The applicant appointed MTHEMBU AND VAN VUUREN ATTORNEYS to attend to the transfer or registration of the said property as his attorney record for the purpose of transfer.

14

4.3. A true copy of the SALE AGREEMEENT is annexed hereto marked annexure "TJ1".

Respondent therefore humbly requests that the terms and conditions therein contained be read in as if specifically, so pleaded.

15

4.4 The transaction came out in two (2) folds from the Applicant

4.4(a) The signed sale agreement the Respondent

4.4(b) The signed transfer documents for the transferring attorney of record MTHEMBU AND VAN VUUREN ATTORNEYS

16

4.5 The obligations in-terms of the sale agreement where met on my part within a month of signature thereof by the applicant in the matter. Therefore, relinquishing all the obligations on my part and making the transaction ready for second leg that would be the registration.

17

4.6 The applicant as a result thereof he was to instruct the transferring attorney on the mandate that would be the indefinite clause referred to paragraph 6.3.5 of the applicant founding affidavit.

18

4.7 To this date the second leg is still with MTEMBU AND VAN VUUREN ATTORNEYS as to why the property was not transferred if he received the mandate from the applicant.

19

4.8 The last time I was with Mr VUUREN of MTHEMBU AND ASSOCIATES he was awaiting the mandate from the applicant in this matter to transfer. But its only now I see the mandate is before the court hence I approach the court to perfect the contract ready for registration as the outstanding mandate is before it for the applicant attorney of record to complete the transfer.

20

4.9 Should it be established that the Applicant Transferring attorney had the mandate all this time to register or transfer the property in due time therefore such Attorney to be held liable for loss of business I had to endure over the years. or should be established that the mandate was unduly withheld by the applicant in this application there the loss of business should fall flat on his door upon quantification.

21

Legal background

5.1 Now that a clear legal right has been established in-terms of the offer to purchase referred to in here as annexure TJ1. That there is a legally binding contract between the applicant and the 1st Respondent. And or the applicant or his transferring Attorney are unduly delaying the registration, as it has become apparently clear. The only remedy available to the applicant or his transferring attorney of record is for the court to enforce the registration or transfer at deeds of which is only remedy available in terms of contract law.

22

6. Under the circumstances, it is thus just and equitable that the relief prayed for by the applicant be set aside

DEPONENT: TJ MACHOLO'

[12] The answering affidavit above does not address the application before the court at all. It is a procedurally irregular application for the court to, among others, order the transfer of property. This issue was not argued or addressed by counsel for the first respondent during the hearing of the case.

[13] Part A of the application in the notice of motion here was granted on 23 May 2024. The first respondent did not reply or answer to it. An order for a notice in terms of s 4(2) of the PIE Act was granted. The indication is that the court had to regard the PIE Act applicable to the facts of the case. The notice was properly served. The notice applies and talks to the private occupation and dwelling of the second respondent.

[14] The law of contract and common law principles were applied to cause the application for eviction on the commercial eviction. The evidence presented to the court shows that the contracts were terminated. At the heart hereof is the basic principle that commercial transactions, freely and honestly entered into, and not vitiated by fraud,

misrepresentation, duress or public policy, should be respected and enforced. This is what happened:[6]

1. The sale agreement entered between the applicant and the first

respondent on 20 February 2019 was cancelled by the applicant by way of correspondence addressed to the first respondent, on 16 July 2019 and 23 July 2019. This was due to the first respondent failing to provide the required clearance certificates and/or guarantees in respect of the purchase price. Copies of the letters of cancellation dated 16 July 2019 and 23 July 2019 were entered into evidence as annexures RA1.1 and RA1.2.

2. On 30 July 2019 the erstwhile attorney of the first respondent

responded to the applicant's notice of cancellation of the sale agreement and proposed certain amendments to the sale agreement to be negotiated between the parties and to be included in an addendum to the sale agreement; annexure RA2 refers.

3. The applicant agreed to continue with leasing the property to the first respondent as the sale agreement cannot proceed and had been cancelled by the applicant in terms of the contract.

4. On or about 31 October 2019 the first respondent provided a proposal to the applicant in respect of the terms of the lease agreement and the way forward. The first respondent stated explicitly that the proposal is 'as a result of cancelled offer to purchase'. The first respondent, as far back as 30 October 2019, was aware that the sale agreement was cancelled (Annexure RA3).

5. The parties entered into a lease agreement, which lease agreement

forms the subject matter of this eviction application before Court. The respondent conducts business from the property in terms of a written and signed lease agreement concluded between the applicant and the first respondent (founding affidavit FA3).

6. The first respondent breached the agreement by failing to pay all the rental amounts when due in terms of the agreement as well as to pay the electricity charges and water consumption as well as rates and taxes levied in terms of the Agreement. The outstanding balance in terms of the agreement, as of July 2023, is an amount of R 1004 451.48 (one million four thousand four hundred and fifty-one rands and forty-eight cents) as per FA4.
 7. The applicant elected to cancel the agreement and to demand that the first respondent and all other persons occupying the property through it must immediately vacate the property and allow FDC to take occupation. A copy of applicant's notice of termination, dated 19 November 2019 supports this as per FA5.
 8. Despite written demand, the first respondent neglected and/or failed to and/or refused to settle the arrear rentals due or vacate the property. On or about the 16th of November 2022 the applicant caused for notice(s) to be served on both the first and second respondent by means of Sheriff (FA6.1 to FA6.4).
 9. The notice to vacate has been properly served on the first and second respondents, more than a calendar month has elapsed since delivery of the notices and first and second respondents failed and/or neglected to respond/react to the notices and/or vacate the property. The first respondent's rental account continues to be in arrears for more than twenty business days.
- [15] The PIE Act was applied to evict the private occupiers that dwell on the property in issue. There is not any allegation of hardship or any form of inequitable consequences alleged by the respondents or even by counsel in their presentation of the case for the respondents during the hearing. This even so after the notice in terms of s 4(2) of the PIE Act was served on the respondents.
- [16] It has been proven beyond doubt that the first and second respondents are occupying the property without any form of remuneration to the owner. There is not any contract, law or legislation that allows them to stay on the property. None was averred in the answering affidavit except that the first respondent maintains that he bought the property and that it must be transferred into his name – this in stark contrast to the proven facts that the contracts were terminated. To reiterate: the arguments launched in the heads of argument and during the hearing were outside the papers. It was never the case for the first respondent.
- [17] As indicated, the Plascon-Evans rule came to the fore and was applied to make the above findings.[7] What is real is that the answering affidavit by the first respondent is a statement riddled with general unsubstantiated averments. The allegations are so far-fetched and clearly flawed if measured to the evidence as a whole, that the court is justified in rejecting it on the papers. All the contracts have been proven to have been cancelled. A reading of the papers shows that the cancellation of the contracts due to non-compliance and lapse of tenure or term of contract was done in detailed and careful obedience to the prevailing law. The notices of eviction were done and done correctly so. The inherent credibility of the

applicant's averments in the founding and replying affidavits as corroborated by the documents attached thereto, results in the reality that the application must be granted.

[18] All has been done to ensure that the case concludes justly and equitable. There is essentially no bona fide dispute of facts as averred by the first respondent. This argument is clearly taken to delay the matter. If the first respondent's gripe was with the cancelation of the sale agreement, he had to initiate litigation; he did not do so.

Conclusion

[19] The law demands that the first and second respondents be evicted since they are illegally occupying the property in defiance of the Constitution of the Republic of South Africa, 1996 and all other prevailing law and legislation. Costs must follow the cause.

Order

[20] In the result, the following order is made:

5. The first and second respondents shall pay the costs of this application on party and party scale B.

OPPERMAN J

Appearances

For applicant:

Adv I Sander

Instructed by:

Peyper Attorneys

Bloemfontein

For first respondent: Adv T Mofokeng

Instructed by:

Mphatswe Attorneys

[1] Wormald and Others v Kambule (524/2004) [2005] ZASCA 84; [2005] 4 All SA 629 (SCA); 2006 (3) SA 562 (SCA) (22 September 2005).

[2] The pacta sunt servanda principle is applicable. In Basson v Chilwan and others

[1993] ZASCA 61; 1993 (3) SA 742 (A) at 762H Eksteen JA referred to contractual freedom as: "The paramount importance of upholding the sanctity of contracts, without which all trade would be impossible ..." Further, "If there is one thing that is more than public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily

shall be held sacred and shall be enforced by courts of justice. Therefore, you have this para-mount public policy to consider - that you are not lightly to interfere with this freedom of contract.” Justice Ackermann in *Ferreira v Levin* NO; *Vryenhoek v Powell* NO 1996

- (1) SA 984 (CC) at paragraph 26 described it as “a central consideration in a constitutional state”. These statements aim for reasonable certainty, so that parties can go about their business knowing the rules of the game; constitutional economic integrity is vital. Moseneke J (as he then was) pointed out in his dissent in *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC) at paragraph 98 that: “Public policy cannot be determined at the behest of the idiosyncrasies of individual contracting parties. If it were so, the determination of public policy would be held ransom by the infinite variations to be found in any set of contracting parties.”

- [2] The pacta sunt servanda principle is applicable. In *Basson v Chilwan and others*

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- [3] *Wormald and Others v Kambule* supra, para 11.

- [4] *MC Denneboom Service Station CC and Another v Phayane* (CCT 71/14) [2014] ZACC 29; 2015 (1) SA 54 (CC); 2014 (12) BCLR 1421 (CC) (3 October 2014).

- [5] Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).
- [6] Founding and replying affidavits of the applicant.
- [7] In Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd
- [1984] ZASCA 51; [1984] (3) SA 623 (A) the Supreme Court of Appeal found that the rule formulated in Stellenbosch Farmers' Winery and Another v Martell & Cie SA and Others [2002] ZASCA 98; 2003 (1) SA 11 (SCA) required clarification and qualification where final relief was sought in motion proceedings. The general rule is still that in proceedings where disputes of fact have arisen on affidavits, a final order, whether an interdict or some other form of relief, may be granted if the facts averred in the applicant's affidavits, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the court to give such final relief on the papers before it is, however, not confined to such a situation. In certain cases, denial by a respondent of a fact alleged by an applicant may not raise a real, genuine or bona fide dispute of fact. If the respondent in such a case has failed to apply for the deponent(s) concerned to be called for cross-examination under rule 6(5)(g) of the Uniform Rules of Court, and if the court is satisfied as to the inherent credibility of the applicant's averments, the court may decide the disputed fact in the applicant's favour, without hearing oral evidence. Therefore, when factual disputes arise in motion proceedings, relief should be granted only if the facts stated by the respondent, together with the admitted facts in the applicant's affidavits, justify the order.

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