

SOUTH AFRICA / JUDGMENT

Khoza and Others v Vosloo and Others (2025/003669) [2025]

ZAGPJHC 468 (8 May 2025)

[2025] ZAGPJHC 468

COURT

South Gauteng High Court, Johannesburg

BEFORE

AP Joubert

CASE / FILE NUMBER

2025/003669

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

No: 2025/003669

Consolidated

case no: 31313, 31314, 31315, 31316/2019

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

In

the matter between:

KHOZA
ANGELINE
1ST APPLICANT
HLOMENDLINI
KHETHUKAZI
2ND APPLICANT
NGQULUNGA
SWEETNESS BHABHA 3RD
APPLICANT
ALECK
DHLAMINI
4TH APPLICANT
NOMFUNDO
KOSI
5TH APPLICANT
SYMPATHY
KOSI
6TH APPLICANT
TINYIKO
KHOZA
7TH APPLICANT
BRIAN
MNCUBE
8TH APPLICANT
MPUME
ZUNGU
9TH APPLICANT
NOMATHEMBA
HLOMENDLENI
10TH APPLICANT
ZODWA
HLOMENDLINI
11TH APPLICANT
XOLANI
HLOMENDLINI
12TH APPLICANT
ZAMOKUHLE
HLOMENDLINI
13TH APPLICANT
NANDIPHA
HLOMENDLINI
14TH APPLICANT
NOLUTHANDO
HLOMENDLINI
15TH APPLICANT
ZENADE
HLOMENDLINI 16TH
APPLICANT
MAKHOSAZANE
NGQULUNGA
17TH APPLICANT

THANDEKA
KHOZA
18TH APPLICANT
NELISIWE
NKOSI 19TH
APPLICANT
MICHAELA
KHOZA
20TH APPLICANT
RIVONGO
KHOZA
21ST APPLICANT
and
VOSLOO, ARNOLDUS
JOHANNES 1ST
RESPONDENT
ARTU CC T/A AFCON
HOUSING
2ND RESPONDENT
THE SHERIFF JOHANNESBURG
EAST
3RD RESPONDENT
THE CITY OF JOHANNESBURG
MUNICIPALITY 4TH RESPONDENT

JUDGMENT

- [1] This application is brought on the basis of extreme urgency. The relief claimed is that the part-owner (1st respondent) and the managing agent and lessor (2nd respondent) be “directed to restore the Applicants, into occupation of their primary homes occupation and possession of properties at Erf 7[...] F[...], located on street address 3[...], 3[...] and 3[...] C[...] Street Johannesburg, pending the Applicants Recission Application to be instituted within 10 days of this Order.”
- [2] In the alternative, applicants claim that the City of Johannesburg, 4th respondent, be directed to provide emergency alternative accommodation to the applicants, who have been rendered homeless and destitute by the eviction executed on the 15th of April 2025.

How this urgent application came about

- [3] The application was brought on Tuesday 15 April 2025, notice of intention to oppose was filed the next day and the first and second respondents’ answering papers were filed on Thursday 17 April

2025. Easter weekend (Friday 18th to Monday 21st April 2025) followed. The matter came before the urgent court on Tuesday 22 April 2025. On that day, at 1pm, applicants filed their replying papers. The matter was heard during that week.

- [4] In my view, much of the urgency was self-created. Nonetheless, it seemed to me that this matter required urgent attention due to the obvious gravity of an eviction of this kind. I also considered that the parties required a decision, sooner rather than later. The parties were well represented, heads of argument were filed by counsel, the applicants and respondents were well prepared despite the fact that applicants brought the application on such very short notice. The evicted occupiers could, in my view, not be afforded substantial redress at a hearing in due course, as contemplated in Uniform Rule 6(12). In consequence, I heard the matter as an urgent application.
- [5] This case has a long history. The eviction orders that were sought initially, caused a multiplicity of applications (four in all) which were consolidated in an order granted by Wepener J on 29 June 2020, given the commonality of the facts, parties and legal issues involved. Subsequently, the court actively case-managed these consolidated matters to streamline the issues and secure compliance with procedural requirements.
- [6] Eventually, on 4 September 2024, the opposed eviction application served before Acting Judge Bruinders, who granted the eviction order. Ms Khethukazi Virginia Hlomendlini, who deposed to the founding papers, contends that their erstwhile attorneys, Sithi and Thabela Attorneys did not attend court on that day, despite the attorneys having been served with a notice of set down of the matter. Applicants did not say what explanation their attorneys proffered for not attending court on that day. There is also no explanation on record of why, according to the attorneys, they did not attend.
- [7] The court order was served on the applicant's attorneys Sithi and Thabela on 5 September 2024. In her founding affidavit, the deponent complains that service of the order of 5 September 2024 was not brought to her attention by the attorneys. Ms Hlomendlini then proceeds: "On or around the 23rd of November 2024, Applicant's seeking to have information of the status of our eviction matter, myself and the First Applicant attended to consult our erstwhile attorneys Sithi and Thabela Attorneys, wherein we were advised that an Order directing our eviction had since the 4th of September 2024, been granted and a copy of the Court order was handed to us."
- [8] Again, there is no explanation on record by either the applicants or the attorneys why the attorneys acted the way they did. The fact that their attorneys did not communicate the facts to them, caused the applicants to terminate their mandate "instantly". The applicants then sought other legal assistance. Nonetheless, no application for leave to appeal was filed, till this day.
- [9] The time to file an application for leave to appeal has long lapsed. The eviction order of Bruinders AJ stands. During argument counsel for the applicants disavowed any reliance on an appeal. For establishing the applicants' prima facie right for an interim interdict, counsel confined himself to the prospects of success in an application to be brought to rescind the eviction order granted against the applicants on 4 September 2024.

[10] Since at least 23 November 2024 applicants have had personal knowledge of all the facts necessary to bring an application for rescission of the eviction order. A rescission application brought under Rule 42(1) of the Uniform Rules of Court or common law must be brought within a reasonable time.

Applicants foistering blame on their attorneys

[11] As for the relief sought by the application against the City of Johannesburg for obtaining emergency alternative accommodation,

several facts are relevant. On the correspondence that form part of the papers in this matter, the applicants' then attorneys,

Webber Wentzel, as early as 14 March 2023 confirmed in a letter to the respondents' attorneys that they "will be assisting our clients to approach the City of Johannesburg for purposes of applying for alternative accommodation".

[12] The applicants blame at least some of the delays, non-appearances and other procedural mishaps on their attorneys of the day. The attorneys were not given an opportunity in these papers to give their version of the events. For the sake of this analysis, I shall assume that the version presented by the applicants when they attribute blame on their own attorneys, is factually correct. The question arising therefrom is whether negligent conduct of their attorneys exonerate the applicants from blame.

[13] The Appellate Division dealt with this issue in *De Wet and Others v Western Bank Ltd* 1979 (2) SA 1031 (A). In that judgment the Court also dealt with the approach adopted by the Full Court in *De Wet and Others v Western Bank Ltd* 1977 (4) SA 770 (T). The Appellate Division considered the genesis and principles relating to this issue (*De Wet* at 1042G to 1043A) and then applied it to the facts in the case before it.

[14] In *De Wet*, the appellants argued that their failure to appear was due to their attorney, who withdrew from the matter shortly before the hearing without informing them timeously. On that date, he wrote a letter to a certain Mr Coligionis (who was acting as the plaintiff's intermediary) asking him to notify the plaintiffs of his withdrawal. The letter reached Mr Coligionis only on 13 August, two days before the hearing. By then, it was too late to arrange representation (*De Wet* at 1043 C to H).

[15] The court found the attorney's conduct to be inexcusable. He failed to act with the urgency required in the circumstances. He had Mr Coligionis' telephone number, but did not phone him. His failure to alert his clients timeously left them unable to appear or make alternative arrangements for the hearing. The court suggested that the matter could warrant reporting to the Law Society (*De Wet* at 1043 H).

[16] However, the court also found that the appellants themselves bore some responsibility. They had not contacted their attorney at any stage and left all responsibility to Mr Coligionis. After an interim settlement in 1973, they showed little interest in the progress of their case.

They offered no acceptable explanation for their lack of engagement for more than three years (De Wet at 1044 A to C). Here the court referred to the reasoning in the Full Court, wherein they found that the appellants “cannot divest themselves of their responsibilities about the action and then complain vis-à-vis the other party to the action that their agents, in whom they have apparently vested sole responsibility, have failed them”.

- [17] The appellants were largely the cause of their own problems. Prejudicing the other party (Western Bank) because of their (the appellants) disinterest and failure to manage their case responsibly, would be inequitable. Consequently, the application for rescission was refused.
- [18] Applying the principles laid down in De Wet, I am satisfied that considerable blame should be attributed to the applicants themselves, mostly due to their inaction. Nor have the applicants offered an acceptable explanation for their lack of engagement over a long period of time. Prejudicing the owners of the property that the applicants have occupied for so long because of their disinterest and failure to manage their case responsibly, in my view, would be inequitable. The applicants’ prospective application for rescission, in my view, has poor prospects of success, for this reason alone. If this be so, the applicants have very little prospect of proving a prima facie right.
- [19] On the balance of convenience, the applicants have suffered the grave consequence of having been evicted. But the owner-respondent has suffered prejudice too. As early as 24 July 2023, the respondents’ attorneys in an email to the then attorneys of the applicants, complained that his clients “are severely prejudiced, being expected to fund free accommodation since 2013 and to incur exorbitant legal costs in the process”. On the papers before me, those allegations are not disputed.

Applicants’ conduct and inaction

- [20] Nonetheless, the gravity of evicting especially the poor and the homeless, is obvious and well documented in our law. Judges are encouraged, if not required, to play a proactive role in such proceedings. Consequently, a close look at the facts and the governing principles of law are required.
- [21] Throughout the case management process, the court required the occupiers to provide comprehensive personal and financial

circumstances to enable a proper assessment of their potential homelessness in the event of eviction. Despite nine distinct opportunities and specific directives from the court to furnish supplementary affidavits detailing their circumstances, the occupiers repeatedly failed to comply. These opportunities included explicit instructions during case management meetings, invitations from respondents’ attorneys to the applicants to supplement their affidavits and formal notices served upon the occupiers. The nine opportunities are set out below, the references to the CaseLines record are in brackets:

[i] Personal service of the eviction application in September 2019, where each occupier was personally warned to place their personal circumstances before Court (009-11).

[ii] The letter by first and second respondents' attorneys on 1 March 2023 formally invited the occupiers to supplement their answering affidavit regarding their homelessness risk and personal circumstances as well as approaching the municipality for an assessment on the provision of temporary emergency accommodation (009-11). (When reference herein is made to "respondents", it refers to the first and second respondent, except when the contents clearly suggest otherwise.)

[iii] A second formal invitation by letter on 6 March 2023 reminded the occupiers of the need to supplement and warning that failure would have consequences for the adjudication of the eviction (009-11).

[iv] A third letter was sent on 6 July 2023, again recording that the occupiers had still not supplemented their evidence (009-13).

[v] A fourth letter sent on 24 July 2023, again recording that the occupiers had still not supplemented their evidence and urging them to do so (009-13).

[vi] On 31 August 2023 there was another invitation to supplement papers, whereafter Weber Wentzel withdrew as attorneys of record (000-14).

[vii] An invitation was extended during the Case Management Meeting on 29 November 2023, where it was agreed and recorded that supplementary affidavits would be filed by 30 January 2024. (The Court also made clear that the municipality needed these affidavits to prepare its report.) (0099-14).

[viii] Service of a second section 4(2) notice on 13 June 2024 (authorized by Judge Mahalelo), compelling the occupiers to appear before the municipality and to file personal circumstances information within 7 working days (009-15).

[ix] There was a last opportunity by virtue of the hearing notice for 26 August 2024, with no response or attendance by the occupiers, despite knowing that failure to supplement would undermine the defence founded on their homelessness (009-15).

[22] On many occasions, from March 2023 through to January 2024, the respondents' attorneys repeatedly invited the occupiers to supplement their papers with detailed information regarding their personal and financial circumstances. The occupiers' attorneys initially responded positively to these requests, undertaking to submit supplementary affidavits by January 2024. Despite these commitments, no supplementary affidavits were delivered. Additionally, a section 4(2) notice, authorised by Mahalelo J on 13 June 2024, explicitly required all occupiers to present themselves to the municipality and deliver detailed information within seven working days. The occupiers did not comply with this directive either.

- [23] An answering affidavit was eventually filed by the occupiers, in which they alleged substantial disrepair and neglect of the properties by the owners. They asserted their rights under the Rental Housing Act, contending that the cancellations of their leases were retaliatory and substantively unfair. They further pleaded their socio-economic hardships and the risk of homelessness, should the evictions proceed. However, this affidavit lacked detailed evidence and corroboration regarding their financial circumstances and homelessness, despite clear prior warnings and directives from the court.
- [24] The eviction application was ultimately set down for hearing before Acting Judge Bruinders on 26 August 2024. Despite proper notice, neither the occupiers nor their legal representatives appeared at this hearing. Consequently, the court proceeded in their absence and, on 4 September 2024, Bruinders AJ granted an eviction order against the occupiers. The order required the occupiers to vacate the premises by 31 October 2024.
- [25] The eviction order was served on the occupiers' attorneys, Sithi and Thabela Attorneys, on 5 September 2024. As already stated, this service was not communicated by the attorneys to the occupiers. The occupiers allege that they only became aware of the eviction order on 23 November 2024, during consultations with their attorneys.
- [26] On advice from a civic organisation (SANCO), the occupiers attempted to appeal the eviction order on 23 November 2024, believing this would stay the eviction. It later emerged that this appeal was procedurally invalid as leave to appeal had not been sought or granted. Realising this error, on 11 April 2025, the occupiers drafted and subsequently served a belated application for leave to appeal on 14 April 2025 through their newly appointed attorneys, Precious Muleya Attorneys.
- [27] Notwithstanding these procedural steps, on 15 April 2025, the Sheriff of Johannesburg East, assisted by members of the South African Police Service, executed the writ of ejectment based on the eviction order. This execution rendered approximately twenty-one occupiers, including minors, elderly pensioners, and vulnerable persons, homeless.
- [28] Consequently, on the same date, the occupiers instituted the present urgent application, seeking immediate restoration of occupation of their primary residences at Erf 7[...] F[...], pending the outcome of a rescission application against the order granted by Bruinders AJ. Alternatively, they sought an order directing the City of Johannesburg to provide emergency alternative accommodation.
- [29] The respondents opposed this application on the grounds that the occupiers had extensive notice and ample opportunity to litigate their position and present evidence regarding homelessness. The respondents further argued that the occupiers' urgency was self-created and that their eviction was lawfully executed pursuant to a valid court order, thereby rendering their requested relief incompetent.

[30] The applicants presently seek restoration of possession specifically in respect of Erf 7[...] F[...]. The eviction order granted by Bruinders AJ on 4 September 2024 related to four erven, namely Erven 6[...], 7[...], 7[...] and 7[...], F[...], Johannesburg. The unlawful occupiers were evicted from all four properties pursuant to that order. Upon analysis of the confirmatory affidavits filed in the present urgent application, only one of the applicants alleges that she previously resided at Erf 7[...]. The majority of applicants seeking restoration, therefore, appear to claim occupation of a property where they did not previously reside, without laying any factual basis for their restoration claim. This fact raises concerns regarding the bona fides and appropriateness of the relief sought by the evicted occupiers.

Challenging the eviction order

[31] The applicants' attempts to challenge the eviction order granted by Bruinders AJ, amount to this. After the eviction order was granted on 4 September 2024, the applicants, assisted by SANCO, attempted to file an application styled as an "application for appeal" on 23 November 2024. However, this application was irregular and incompetent as no application for leave to appeal had been sought or granted. The mere filing of this document did not stay the execution of the eviction order. Subsequently, the applicants prepared and served a formal application for leave to appeal by their newly appointed attorneys on 14 April 2025. However, this application for leave to appeal was not filed and, in law, is of no effect. The eviction order was executed on 15 April 2025. The applicants, in any event, through their counsel, abandoned any right to an appeal at the hearing of this urgent application. No rescission application against the eviction order, at the time the urgent application was brought, had been launched by the applicants. Although the applicants assert that they intend to bring a rescission application, no such application has been placed before this Court.

[32] The present urgent application does not concern an eviction order granted by default, nor is it a matter where the occupiers were deprived of an opportunity to place relevant facts before the Court for purposes of determining whether an eviction, and the date thereof, would be just and equitable. On the contrary, the record reflects that the occupiers were afforded multiple, specific

opportunities over an extended period to submit personal and financial information to the Court and to the City of Johannesburg.

Their repeated failure to make use of these opportunities resulted in the absence of detailed personal circumstances on the record and, consequently, no obligation on the part of the municipality to furnish a report under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). The eviction order granted by Bruinders AJ was accordingly granted on the available evidence and in compliance with procedural fairness.

The present urgent court proceedings

- [33] Following the launching of the urgent application, the matter was enrolled and heard over a period of two days. During the hearing, this court raised the issue whether it would not be appropriate to hear officials of the City of Johannesburg on the prospects of the City providing temporary emergency accommodation to the poor and homeless. (The City of Johannesburg was joined as a party in these proceedings, but did not file answering papers and was not represented at the hearing.) Counsel for both the applicant and first and second respondent agreed that the officials be called to court. Consequently, this court issued an order requiring the attendance of Mr Segala Malahlela, the Head of Legal of the City of Johannesburg. Mr Malahlela, in turn, arranged the presence of Mr Oupa Nkoane, the Head of the Department of Human Settlements (“the Department”). Messrs Malahlela and Nkoane attended the proceedings and provided oral testimony concerning the availability of temporary emergency accommodation, the general procedures followed for displaced persons and the capacity of the City and Department to accommodate the current housing crisis.
- [34] The oral evidence of Messrs Malahlela and Nkoane presented at the hearing, stack up to this: The City embarked upon creating temporary emergency accommodation during about 2018 by using derelict buildings in the inner city at Jeppe’s Town. Three buildings were identified and changed to make them fit for purpose. These three buildings were designed to accommodate 250, 200 and 98 persons respectively and have been occupied to the level of overcapacity for at least the past 3 years. The accommodation so created was intended to house the poor and homeless on the basis of temporary emergency accommodation, but for no longer than 6 months. However, Mr Nkoane’s evidence was that, once occupation has been taken, the occupiers don’t vacate the buildings, they stay. Since then, no further progress has been made in creating additional accommodation for the poor and homeless, lack of funding being the main constraint. As matters now stand, the waiting list for temporary emergency accommodation is more than 4 000 families. Once an applicant has passed the audit of the City (one criterion being an income of R2 600 or less per month), such applicant must join at the back of the queue.
- [35] Mr Malahlela testified that the City simply does not have the capacity to give accommodation to the homeless and the poor. He urged the court not to give an order that the City should provide such accommodation, because it will not be able to comply therewith. Mr Malahlela pointed out that it would be pointless to grant an order that the City cannot comply with. This has been the City’s position for at least the past three years.
- [36] Mr Malahlela also gave evidence that there are attempts afoot to improve the capacity of the City to provide more accommodation for the poor and homeless. There is a housing project, still in its planning stage, that, if it eventuates, will provide accommodation for about 250 people. It involves the restoration of a derelict building that will cost some R180 million to make it fit for purpose.

However, at this stage, the project has not been budgeted for. Mr Malahlela testified that it is uncertain whether the housing project will eventuate at all.

Issues

for consideration

[37] Against this background, several issues arise for consideration.

37.1 Whether the eviction order granted by Bruinders AJ was susceptible to rescission under Rule 42(1) or common law.

37.2 Whether the notice of motion in the eviction application was too narrow to evict all occupiers.

37.3 Whether the applicants have established a *prima facie* right to interim restoration of possession pending the outcome of an application for rescission.

37.4 Whether the applicants' failure to place their personal circumstances before the Court impact upon the relief sought by the applicants. Related thereto, whether the absence of a municipal report renders the eviction order procedurally irregular or unjust and whether the City of Johannesburg should be directed to provide temporary emergency accommodation to the applicants.

Applicants' legal submissions

[38] The applicants contended that the eviction order granted by Bruinders AJ was susceptible to rescission under Rule 42(1) of the Uniform Rules of Court. They argued that the eviction was granted "in the absence" of the occupiers and their attorneys, despite the prior filing of answering affidavits. Relying on the decision in *Pitelli v Everton Gardens Projects CC* 2010 (5) SA 171 (SCA) at para 27, the applicants submitted that a judgment obtained in the absence of a party, remains rescindable under Rule 42 if the party or its legal representatives were not present at court when the matter was determined.

[39] Applicants further relied on *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC), arguing that courts are under a constitutional duty to actively enquire into the circumstances of occupiers to ensure that any eviction order is just and equitable, even in circumstances of apparent consent and non-appearance. The applicants submitted that the absence of a municipal report assessing their risk of homelessness constituted a material procedural irregularity, rendering the eviction order unjust and liable to rescission.

[40] The applicants also referred to *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA), contending that an eviction may not be granted where there is a risk of homelessness without careful judicial inquiry into alternative

accommodation. They submitted that in the absence of such an inquiry at the time the eviction order was granted, the Court was obliged to rescind the order and restore the occupiers pending the determination of the intended rescission application.

- [41] In support of their plea for restoration pending rescission, the applicants cited *Khoza v Madulammoho Housing Association and others* 2023 JDR 1184 (GJ), arguing that it is competent for a court to order interim restoration of possession following eviction under a constitutional remedy pending the outcome of a rescission application with prospects of success.
- [42] Finally, the applicants relied on *Smith v Zenzo Khumalo and all the Unlawful Occupiers of the Property* and another 2024 JDR 2025 (GJ) for their submission that the High Court retains the power to direct the City of Johannesburg to provide emergency accommodation where the constitutional rights of evictees are implicated, particularly under section 26(2) of the Constitution.

Respondents' legal submissions

- [43] The respondents opposed the relief on multiple grounds. First, they contended that the eviction order was not a default judgment as envisaged by Rule 42(1), because the applicants had filed answering affidavits and placed their defences on record. Relying on *De Beer v ABSA Bank Limited* 2016 JDR 0868 (GP) at para 12, the respondents argued that where a party has filed pleadings but fails to appear at the hearing, judgment is not granted "in the absence" of that party, and the appropriate remedy is appeal, not rescission.
- [44] The respondents further submitted that the applicants' reliance on *Pitelli* is misplaced, as that decision involved circumstances where no answering affidavits were filed, unlike the present case. Similarly, they distinguished *De Allende v Baraldi t/a Embassy Drive Medical Centre* 2000 (1) SA 390 (T), noting that in that matter the judgment simply found that if a litigant was represented by an attorney at the hearing, he could not claim that the order had been given in his absence.
- [45] As to the reliance on *Berea*, the respondents contended that the facts were materially different. In *Berea* the eviction was based on a purported agreement without proper consent or judicial inquiry, whereas here the applicants were legally

represented, given repeated opportunities to present their personal circumstances, but failed to do so. Consequently, *Bruinders AJ* could not be faulted for proceeding on the available evidence.

- [46] The respondents emphasized that the applicants had been given no less than eight opportunities to present information required by the City of Johannesburg to assess eligibility for emergency accommodation. Their deliberate failure to do so frustrated the City's involvement and justified the Court proceeding without a municipal report.

- [47] On the issue of restoration pending rescission, the respondents distinguished Khoza, arguing that in Khoza a rescission application had already been filed at the time interim relief was granted, whereas in the present case, no rescission application has been launched and the applicants' prospects of success are slim to non-existent. In any event, in Khoza the court was not required to decide whether rescission was the appropriate procedure. This decision is at odds with the Full Court decision in De Beer, which decision was binding on Khoza. Consequently, Khoza was decided wrongly.
- [48] Finally, regarding the City of Johannesburg's role, the respondents argued that while a court may direct the City to engage with displaced persons, it cannot compel the City to provide emergency accommodation, unless proper procedures have been followed and eligibility have been established. They submitted that it would be inappropriate to grant mandatory relief against the City without evidence of compliance with internal housing policies and availability of emergency accommodation. In any event, the evidence of Messrs Malahleha and Nkoane have made it clear that the City of Johannesburg has not been able, for at least the past three years, to provide emergency temporary accommodation for the poor and homeless. Any order to compel the City of Johannesburg to provide emergency temporary accommodation, as demonstrated by the oral evidence presented, would be pointless, for such order could not be executed.

Further legal principles applicable to eviction proceedings

- [49] The legal principles relevant to the adjudication of eviction proceedings and the grant of interim relief pending rescission, are well settled in our law. As summarised in *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at paras 24 to 25, and explained in Erasmus, Superior Court Practice, Part D 9-1 [service 24, 2024], a court is required to undertake two separate enquiries when adjudicating an eviction application. First, the Court must determine whether it is just and equitable to grant an eviction order. Second, if eviction were to be ordered, the Court must determine a just and equitable date for its implementation and consider attaching appropriate conditions. In weighing the rights of property owners against the plight of unlawful occupiers, the availability of alternative accommodation is relevant, but primarily informs the second enquiry, namely the determination of the eviction date, rather than the grant of the eviction itself.
- [50] In *Smith v Senzo Khumalo and All the Unlawful Occupiers* 2024 JDR 2025 (GJ) at paras 25 to 27, the Court reaffirmed that justice and equity require that unlawful occupiers who receive notice of eviction proceedings should take proactive steps to seek alternative accommodation. Occupiers cannot simply remain in unlawful occupation

indefinitely to the detriment of the property owner's constitutionally protected rights. While the availability or absence

of municipal alternative accommodation is a relevant consideration, it does not preclude the granting of an eviction order, provided that justice and equity are appropriately considered when setting the date for eviction.

- [51] Similarly, in *Msibi v Occupiers of Unit 67 Cedar Creek* 2025 JDR 0640 (GP) at paras 18 to 24, the Full Court held that the absence of a municipal report does not constitute a legal impediment to the granting of an eviction order. PIE provides a procedure to regulate evictions, but does not allow unlawful occupiers to indefinitely defeat the rights of property owners. Although the circumstances of vulnerable occupiers, such as the elderly, children, and disabled persons, must be carefully considered, these factors do not in themselves automatically preclude eviction where it remains just and equitable to grant such an order.

Notice of motion in the eviction proceeding

- [52] The applicants argued that the eviction order granted by Bruinders AJ unlawfully extended to occupiers who had not been cited in the founding papers or properly served, asserting that the reference to "further any other unlawful occupiers" only appeared for the first time in the judgment itself. They contended that, absent citation and service, the order was procedurally defective. The respondents submitted that the notices of motion in the original eviction applications expressly sought the eviction of "the First Respondent and all persons claiming any right of occupation through them". They argued that the section 4(2) notices served on the occupiers similarly identified "for the eviction of you, the unlawful occupants, and all those holding under you" as respondents, thereby properly extending the proceedings to all persons unlawfully occupying the premises. The respondents maintained that the procedural safeguards required by PIE were complied with and that the eviction order properly encompassed all occupiers holding their right of occupation under the cited respondents.

Findings of this court

- [53] This is an application for an interim interdict. The *prima facie* right on which the applicants rely for obtaining interim relief, is that the judgment of Bruinders AJ granting the eviction order, was wrong and that the applicants' intended rescission application of that eviction order, is likely to succeed. If the anticipated rescission application were to fail, the applicants' have no right to found its claim for interim relief.
- [54] I am of the view that applicants' anticipated application for rescission, will fail. There was no error in Bruinders AJ's eviction order as contemplated in Rule 42(1) of the Uniform Rules of Court or at common law. In my opinion, having regard to the facts set out in the judgment, the papers filed in the application and the legal principles referred to herein, the notice of motion in the eviction application was not too narrow to evict all occupiers.
- [55] The application for rescission of the eviction order should not succeed in circumstances such as the present. The applicants filed a notice of opposition and an answering affidavit and was represented by an attorney, but simply did not appear when the eviction application

was heard. No reason was advanced why this occurred. No affidavit of the then attorneys was presented in evidence. The applicant was not “absent”, as contemplated in law. The eviction order has been executed. Even if a rescission of the eviction order were to be granted, an order compelling restoration is discretionary and will probably not be granted, especially as the occupiers have been in occupation of the building since 2013, without paying any rental to the owner, whatsoever.

- [56] The occupiers have not, during the many years of litigation and, especially, after the eviction order had been granted, made any attempt whatsoever to find alternative accommodation. During argument I asked counsel for the applicants whether there was any obligation on the occupiers to attempt to find alternative accommodation to which he answered, “no”. I cannot agree. See also Smith at paras 25 to 27, referred to in para [50] above. The applicants had many opportunities to place their personal circumstances before court, but failed to do so, failures for which they have themselves to blame. These facts put a different perspective on the absence of a municipal report, which absence in my view does not render the eviction order procedurally irregular or unjust. In any event, the oral evidence rendered at the hearing makes it plain that the City of Johannesburg lacks the ability to provide temporary emergency accommodation to the applicants. This, according to the evidence, has been so for at least the past three years, which covers the period when Bruinders AJ made his eviction order. The alternative order sought by the applicants that the City of Johannesburg should be directed to provide temporary emergency accommodation to the applicants, should not be granted, for all the reasons already mentioned. In addition, the City of Johannesburg is not capable of providing temporary emergency accommodation and an order compelling the City to do so, cannot be complied with. Such an order will serve no purpose and should be avoided. In any event, the applicants are entitled to approach the City of Johannesburg for assistance of their own accord.
- [57] There is in my view another reason why it is highly probable that applicants’ prospective application for rescission of the eviction order, will fail. An application for rescission, both under Rule 42(1) and at common law, must be brought within a reasonable time. The case law on this point, is explicit.
- [58] The eviction order was granted on 4 September 2024. The applicants’ attorneys were aware of the order since it was granted. The applicants claim that their attorneys did not advise them that the eviction order was granted until their meeting held on 24 November
2024. Yet, since at least that date, the applicants did not bring a rescission application, at least not before they were evicted pursuant to the court order granted by Bruinders AJ. They were evicted on 15 April 2025. In the founding papers applicants advance some explanation why they did not bring an application for rescission before the order for eviction was executed. I am not satisfied that applicants’ explanations for their long delay to bring a rescission application, are satisfactory. There were long periods of inaction for which the applicants gave no explanation. I am of the view that an application for condonation for the long lapse of time before the application for rescission of the eviction order was brought,

will fail. The principles governing condonation were dealt with comprehensively in *Van Wyk v Unitas Hospital and Another (Open Democratic Advice Centre as Amicus Curiae)* [2007] ZACC 24; 2008 (2) SA 472 (CC). Paragraph [22] of the judgment also provides an illustration of the application of such principles:

“[22] An applicant for condonation must give a full explanation for the delay. In addition, the explanation must cover the entire period of delay. And, what is more, the explanation given must be reasonable. The explanation given by the applicant falls far short of these requirements. Her explanation for the inordinate delay is superficial and unconvincing. It amounts to this. During the entire period of approximately 11 months she was considering whether or not to appeal the decision of the Supreme Court of Appeal. During this period she sought advice from a number of individuals whom she has not disclosed. In addition, she alleges that she does not have unlimited funds although she admits that that this is not a compelling reason for the delay. She has not furnished any explanation as to why it took approximately 11 months for her to decide whether or not to appeal. Nor has she furnished any explanation how she overcame her funding difficulty.”

[59] Given the history of this matter, the question arises whether the legal processes protecting and enforcing the contesting rights and obligations of occupiers and owners have now not run its course. The principle of finality expressed in the maxim *interest rei publicae ut sit finis litium* (it is in the public interest that litigation be brought to finality) is of long standing in our law. In *Zondi v MEC, Traditional and Local Government Affairs, and Others* 2006 (3) SA 1 (CC) at para [28] the Constitutional Court held that it is in the public interest that litigation should be brought to finality, because the “parties must be assured that once an order of Court has been made, it is final and they can arrange their affairs in accordance with that order.” See also *Freedom Stationary (Pty) Ltd and Others v Hassom and Others* 2019 (4) SA 459 (SCA) at p 465 A to C and the authorities referred to therein. In *Van Wyk* the Constitutional Court held at para [31]:

“There is an important principle involved here. An inordinate delay induces a reasonable belief that the order had become unassailable. This is a belief that the hospital entertained and it was reasonable for it to do so. It waited for some time before it took steps to recover its costs. A litigant is entitled to have closure on litigation. The principle of finality in litigation is intended to allow parties to get on with their lives. After an inordinate delay a litigant is entitled to assume that the losing party has accepted the finality of the order and does not intend to pursue the matter any further. To grant condonation after such an inordinate delay and in the absence of a reasonable explanation, would undermine the principle of finality and cannot be in the interest of justice.”

[60] I find that the applicants have not made out a case for the relief they seek.

[61] When I raised the issue of costs with counsel, they were in agreement that there should be no order as to costs. I agree.

[62] In consequence, the following order is made: The application is dismissed. There is no order as to costs.

AP JOUBERT

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Heard on:

22 – 25 April 2025

Delivered on: 8 May 2025

Appearances:

For the Appellant: Adv. L Mhlanga

Instructed by: Precious Muleya Incorporated Attorneys

For the Respondent: Adv. B D Hitchings

Instructed by: Warfemius van der Merwe Inc

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Prepared on 12 October 2026 · Esheria