

SOUTH AFRICA / JUDGMENT

Ndou and Others v Thulamela Municipality (HCA 01/2023; 1143/2018) [2025] ZALMPTHC 5; [2025] 3 All SA 212 (LT) (24 March 2025) [2025] ZALMPTHC 5

COURT

Limpopo High Court, Thohoyandou

BEFORE

ASL Van Wyk, TV Ratshibvumo, S Mathabathe

CASE / FILE NUMBER

HCA 01/2023

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THE

HIGH COURT OF SOUTH AFRICA

LIMPOPO

LOCAL DIVISION, THOHOYANDOU

Case.

No. HCA 01/2023

Court

a quo Case no. 1143/2018

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE

24 MARCH 2025

SIGNATURE

In

the matter between:

MR
NDOU MP
FIRST
APPELLANT
NEMALILI
SHAGGY
SECOND
APPELLANT
MUTSHOTSHO
ISSAC
THIRD APPELLANT
BASELA
SHANDUKANI
FOURTH APPELLANT
MRS
NEMUTUDI
FIFTH APPELLANT
MUNYAI
TSUMBEDZO
SIXTH
APPELLANT
LIGEGE
J
SEVENTH APPELLANT
THOHOYANDOU
BLOCK F,
CIVIC
ASSOCIATION
EIGHTH APPELLANT
ALL
OCCUPANTS OF ERF 6[...] BLOCK F
THOHOYANDOU
NINTH APPELLANT
ALL
OCCUPANTS OF PARK 2[...] BLOCK F
THOHOYANDOU
TENTH APPELLANT
ALL
OCCUPANTS OF ERF [...] BLOCK F
THOHOYANDOU
ELEVENTH APPELLANT
ALL
OCCUPANTS OF PARK 1[...] BLOCK F
THOHOYANDOU
TWELFTH APPELLANT
THOHOYANDOU
THIRTEENTH APPELLANT
THOHOYANDOU
FOURTEENTH
APPELLANT
THOHOYANDOU

FIFTEENTH APPELLANT
and
THULAMELA
MUNICIPALITY
RESPONDENT

JUDGMENT

ASL VAN WYK AJ :

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be 08H00 on 24 MARCH 2025.

[1] The Respondent in this appeal, Thulamela Municipality, on an ex parte basis, initiated proceedings against the appellants in accordance with Section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998 ('PIE Act').

[2] The proceedings were initiated on an urgent basis in accordance with Rule 6(12) of the Uniform Rules of Court.

[3] The Respondent approached the court a quo, (per Makhafola J), with an ex parte application on 12 September

2018. Having read the application and after considering the application, Makhafola J held inter alia that the application was urgent and granted relief declaring the First to Fifteenth Appellants as unlawful occupiers with certain

orders to demolish structures on the Respondent's immovable properties or land. Makhafola J issued a rule nisi returnable on 4 October 2018.

[4] On 12 October 2018, the court a quo, (per Kgomo J), directed the Appellants to file supplementary affidavits to furnish it with their personal, material, and relevant circumstances. Kgomo J specifically ordered the requisite information to enable him to authenticate allegations made by the Appellants which suggested that the occupiers include a variety of persons such as elderly persons, disabled persons and women-headed households and whether relevant, just and equitable circumstances existed that warranted the refusal of an eviction order.

[5] The application was heard on 30 October

2018. Judgment was handed down on the 5th of February 2019. In the Judgment Kgomo J confirmed the interim order granted on the 12th of September 2018 where the court had declared that the Appellants are illegal occupiers and ordered the eviction and demolition of those structures erected on the Respondents immovable property or land.

- [6] The Appellants dissatisfied by the order applied for leave to appeal to the higher court. On 14 September 2023 leave to appeal to this full court was granted by Tshidada J following the unavailability of Kgomo J.

Factual

Background

- [7] The Respondent placed on record its ownership over ERF 6[...] (OPPOSITE TELEPHONE EXCHANGE); PARK 2[...] (OPPOSITE LIIVHA SCHOOL); REMAINDER OF ERF [...] (NEXT TO MAHOLONI LODGE); PARK 1[...] (NEXT TO VHEMBE CTM GROUND); PARK 1[...] (NEXT TO GREEN VALLEY); PARK 1[...] (NEXT TO TELEPHONE EXCHANGE); PARK 1[...] (NEXT TO LUTHERAN CHURCH).
- [8] The Respondent provided documentary proof of its ownership over the immovable properties or land listed in paragraph 7 above in the form of Deeds of Grant and Deed Searches. The Respondent became the owner of the immovable property following the provisions of the Venda Land Affairs Proclamation no. 45 of 1990 read together with the Proclamation of Thohoyandou Township. In *Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd* [1992] ZASCA 208; 1993 (1) SA 77 (A) on page 82 thereof, the Appellate division said that ‘the best evidence of ownership of immovable property is the title deed to it’.
- [9] It is common cause that tension between the Respondent and members of Thohoyandou block F, the First to Eighth Appellants regarding empty land belonging to the Respondent is well documented and known to the members of Thohoyandou block F community since 2016. During a meeting held in August 2018 the First to Eighth Appellants indicated that they would occupy the empty land referred to above and that they will elicit, entice, and encourage community members to similarly do so. The Appellants conceded that over a period they invaded the Respondent’s immovable properties or land referred to in paragraph 7 above.
- [10] On the Appellants version they made demonstrations in the form of strike to force recognition of their plight for land distribution and their applications for serviced stands on certain identified portions of land. The Respondent, for various reasons declined the request for recognition. It is not for this court to dissect and analyse the holistic history of events save to mention that no recognition for land distribution was awarded to the Appellants, nor were any other enforceable rights granted to them to invade and/or occupy the immovable properties or land of the Respondent.

- [11] Considering the affidavits filed on record, I agree with Kgomo J, that the Respondent proved its ownership in the immovable properties or land and that the invasion or occupation thereof was unlawful. The Appellants did not challenge the Respondents ownership in the immovable properties and land. Further, the Appellants did not present evidence in the court a quo or in this appeal to disprove that their occupation was unlawfull; save to raise issues surrounding section 4(7) of the PIE Act.
- [12] The court a quo correctly found that the Appellants unlawfully occupied the Respondents immovable property or land for more than 6 months.

Grounds of appeal

- [13] The first ground raised by the Appellants is that Kgomo J misdirected himself in concluding that mediation and talks have not helped.

Notwithstanding that mediation in the general sense is a voluntary process and does not constitute a substantive defence[1], Section 7 of the PIE Act regulates mediation processes in eviction proceedings.

- [14] Section 7(2) of the PIE Act provides : ‘If the municipality in whose area of jurisdiction the land in question is situated is the owner of the land in question, the member of the Executive Council designated by the Premier of the province concerned, or his or her nominee, may, on the conditions that he or she may determine, appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and attempt to mediate and settle any dispute in terms of this Act: Provided that the parties may at any time, by agreement, appoint another person to facilitate meetings or mediate a dispute, on the conditions that the said member of the Executive Council may determine’ (emphasis added).
- [15] In *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC) at 239D the Constitutional Court held that the compulsion of section 7 regarding mediation lies in participating in the process, not reaching settlement. On the Appellants version mediation, meetings, and discussion occurred for many years and specifically on 15 August 2018 mediation proceedings were conducted in the Respondents boardroom. The Appellants and Respondent participated in a mediation process. It is legally and factually incorrect to suggest that a mutually acceptable solution should be reached between the Appellants and the Respondent in mediation proceedings and in consequence I am of the view that Kgomo J was correct to conclude that mediation and talks did not help.
- [16] The Second ground of appeal raised by the Appellants is that the court a quo misrepresented itself by emphasizing that the Appellants failed to submit their personal circumstances and that Annexure AA12, an annexure to the supplementary answering affidavit, did not assist the court when demanding such information from the Appellants. This ground of appeal relates to the just and equitable principle considering all relevant circumstances envisaged in section 4(7) of the PIE Act and is intertwined with the Appellants’ third ground of appeal.

These grounds will be evaluated in detail later in this judgment.

[17] The fourth ground of appeal raised by the Appellants is that the court a quo misdirected itself when it found that the Respondent is unable to exercise its free and undisturbed possession and control of the land. In evaluating the facts before us it was correctly found that the Respondent is the owner of the immovable property or land, and that the Appellants' occupation or invasion was unlawful. It is trite that grounds for appeal lie in the substantive order and not the reasons for the judgment or the way the court arrived at its judgment.[2] I am of the view that the court a quo did not misdirect itself when it reasoned that because the Appellants invaded or unlawfully took occupation of the Respondents immovable properties or land, the Respondents became unable to exercise free and undisturbed possession and control of the land. The unlawful invasion or occupation pertinently and clearly disturbed the Respondents possession and invoked restrictions to exercise control freely over it. Lastly, the reasoning by Kgomo J did not relate or translate to the substantive order that was made.

[18] The Fifth ground of appeal raised by the Appellants is that the court a quo misdirected itself when it failed to consider all issues in the matter with reference to paragraph 2 (i) and (ii) of the application

for appeal. The issue of alternative accommodation is a factor that should be considered under the auspices of section 4(7) of the PIE Act in the quest to establish whether it be just and equitable to evict the Appellants. I will deal with this aspect later in this judgment. It must be emphasised that nowhere in provisions of The National Housing Code of 2009 is it mandatory or peremptory on local or provincial government institutions to provide housing programmes or emergency distress and relief accommodation to parties per se without following due process and certainly not land which is developed occasioned by the Appellants' suggested or demanded

facilities occasioned thereby.

[19] The sixth ground of appeal raised by the Appellants is that the court a quo misdirected itself when it found that most structures or buildings erected are dangerous and hazardous to the Respondent. The court failed, so it was argued, to consider all relevant circumstances of the case, and it failed to consider that the Appellants would be rendered homeless and live in the streets. If consideration is given to these grounds, I am of the view that all of them relates to the relevant circumstances a court must consider in determining whether it is just and equitable to evict the unlawful occupiers under the auspices of Section 4(7) of the PIE Act. The court a quo did consider that the Respondent, in their replying supplementary affidavit, identified and tendered alternative land for the Appellants.

[20] In *Baron and Others v Claytile (Pty) and Another* 2017(5) SA 329 (CC), a group of unlawful occupiers who were being evicted refused to accept the offer from the City of Cape Town to reside in the Delft

temporary relocation area. They also refused to relocate to Wolwerivier because the area was far from their children's schools. They further rejected the offer to relocate to Blikkiesdorp because they did not have access to basic services. The Constitutional Court emphasised that the right to adequate housing should progressively be realised. The effect thereof is that the municipality can only provide alternative accommodation within its available resources. Within the context of the Baron case, eviction proceedings cannot be delayed because of the refusal by the Appellants to accept the offered alternative accommodation.

[21] In *City of Johannesburg v Changing Tides* 2012(6) SA 29 (SCA) the Supreme Court of Appeal held that an eviction order is just and equitable if alternative accommodation is made available.

[22] A further ground of appeal is that the court a quo misdirected itself when it failed to consider that the Respondent's deponent was not authorised to depose the founding affidavit. The following was stated by the Supreme Court of Appeal in *Ganes and Another v Telecom Namibia Ltd*[3] :

'There is no merit in the contention that Oosthuizen AJ erred in finding that the proceedings were duly authorised. In the founding affidavit filed on behalf of the respondent Hanke said that he was duly authorised to depose to the affidavit. In his answering affidavit the first appellant stated that he had no knowledge as to whether Hanke was duly authorised to depose to the founding affidavit on behalf of the respondent, that he did not admit that Hanke was so authorised and that he put the respondent to the proof thereof. In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr Kurz stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See *Eskom v Soweto City Council* 1992

(2) SA 703 (W) at 705C - J.)' (emphasis added)

[23] The deposition of an affidavit need not be authorized. It is the institution or opposition of legal proceedings that must be authorized by the Respondent. Rule 7 of the Uniform Rules of the Court provides for the procedure to be followed by a party who wishes to challenge the authority of an attorney acting on behalf of another party.[4] Gorven J stated the following in *ANC Umvoti Council Caucus and Others v Umvoti Municipality*[5] :

'I am therefore of the view that the position has changed, since Watermeyer J set out the approach in the Merino Ko - operasie Bpk

case. The position now is that, absent a specific challenge by way of rule 7(1), 'the mere signature of the notice of motion by an attorney and the fact that the proceedings purport to be brought in the name of the applicant is sufficient. It is further my view that the application papers are not the correct context in which to determine whether an applicant which is an artificial person has authorised the initiation of application proceedings. Rule 7(1) must be used. This means I disagree with Mr Gajoo's submission that rule 7(1) provides only one possible procedure and that, if a respondent elects to challenge the matter of authority on the application papers, the applicant is required to prove such authority on the papers.' (emphasis added)

[24] In *Unlawful Occupiers, School Site v City of Johannesburg*[6] one of the issues raised by the Appellant was that the respondent had failed to prove that the deponent to its founding affidavit had the requisite authority to institute the application on its behalf. Brand JA stated the following :

'However, as Flemming DJP has said, now that the new Rule 7(1) remedy is available, a party who wishes to raise the issue of authority

should not adopt the procedure followed by the appellants in this matter, i.e. by way of argument based on no more than a textual

analysis of the words used by a deponent in an attempt to prove his or her own authority. This method invariably resulted in a costly and wasteful investigation, which normally leads to the conclusion that the application was indeed authorised. After all, there is rarely any motivation for deliberately launching an unauthorised application. In the present case, for example, the respondent's challenge resulted in the filing of pages of resolutions annexed to a supplementary affidavit followed by lengthy technical arguments on both sides. All this culminated in the following question: Is it conceivable that an application of this magnitude could have been launched on behalf of the municipality with the knowledge of but against the advice of its own director of legal services? That question can, in my view, be answered only in the negative.'

[25] There was no challenge in terms of Rule 7 by the Appellants. The appropriate procedure to challenge authority was therefore not used by them and it was accordingly not necessary for the Respondent to prove its authority on the papers. In consequence I find that the Respondents' deponent had the necessary authority to depose to the founding affidavit.

[26] A further ground of appeal is that the court a quo failed to consider the rights of the Appellants enshrined in the Constitution and failed to consider that it is not in the interest of justice to grant the eviction order. I will deal with the constitutional framework and relevant PIE legislation herein below.

The Law

[27] The point of departure in eviction proceedings is encapsulated in Section 26(3) of the Constitution of the Republic of South Africa, Act 108 of 1996 which clearly provides that ‘no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances’. In giving effect to its provision, the section further declares that ‘no legislation may permit arbitrary evictions. In

compliance with the Constitution and not to permit arbitrary evictions, the legislature enacted the PIE Act.

[28] The PIE Act dictates and regulates the procedures to be followed in initiating eviction proceedings[7], and our Courts should direct how to serve the unlawful occupiers with the owner’s intended application of evicting them and to afford them the opportunity to answer[8].

[29] Sections 4 and 5 of the PIE Act are tools available to owner(s) or person(s) in charge of land to initiate eviction proceedings against unlawful occupiers.

[30] Section 4(7) of the PIE Act provides as follows :

‘If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.’

[31] Section 4(7) of the PIE Act ensures that no person may be evicted from their home, or have their home demolished, without an order made after considering all relevant circumstances. The court a quo, in confirming the eviction order referred, correctly so in my view, to the enquiry the court must conduct in satisfying itself that it is just and equitable to do so.

[32] The court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors[9].

[33] In *Occupiers, Berea v De Wet* 2017 (5) SA 346 (CC) the Constitutional Court held the following in paragraph [47] :

‘ It deserves to be emphasised that the duty rests on the court under section 26(3) of the Constitution and Section 4 of PIE goes beyond consideration of the lawfulness of the occupation. It is a consideration of justice and equity in which the Court is required and expected to take an active role. In order to perform its duty properly the court needs to have all the necessary information. The obligation to provide the relevant information is primarily on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the

justice and equity of ordering an eviction.’ In paragraph 43 it was stated: ‘The role played by the court in such matters was elucidated further in other cases. As a starting point, this Court in Machele[10] held that “the application of PIE is not discretionary. Courts must consider PIE in eviction cases. Furthermore, this court in Pitje[11] held that courts are not allowed to passively apply PIE and must “probe and investigate the surrounding circumstances”’.

- [34] In *Port Elizabeth Municipality v Various Occupiers* 2005(1) SA 217 (CC) it was emphasised by the Constitutional Court that the Constitution, read with the just and equitable enquiry required to be undertaken in the PIE proceedings, grants our courts a wide discretion in ensuring justice and equity prevails in relation to all the parties concerned.
- [35] In paragraph 28 of the *Port Elizabeth* matter, it was stated: ‘Section 6(3) states that the availability of a suitable alternative place to go to is something to which regard must be had, not an inflexible requirement. There is therefore no unqualified constitutional duty on local authorities to ensure that in no circumstances should a home be destroyed unless alternative accommodation or land is made available. In general terms, however a court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if only as an interim measure pending ultimate access to housing in the formal housing programme.’ In paragraph 32 it was stated: ‘The obligation on the court is to have regard to the circumstances, that is, to give them due weight in making its judgment as to what is just and equitable.... It follows that it is incumbent on the interested parties to make all relevant information available... Indeed, when the evidence submitted by the parties leaves important questions of fact obscure, contested or uncertain, the court might be obliged to procure ways of establishing the true state of affairs, so as to enable it properly to ‘have regard’ to relevant circumstances’.
- [36] In paragraph 33 of the *Port Elizabeth* matter, the Constitutional Court with approval referred to *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others* 2000 (2) SA 1074 (SECLD) when it considered the principle of ‘just and equitable’. It said that the *Peoples Dialogue* matter manifested some similarities to the *Port Elizabeth* matter and Section 6 was helpfully analysed by Horn AJ. Horn AJ ‘pointed out that in matter brought under PIE one is dealing with two diametrically opposed fundamental interests. On the one hand there is a traditional real right inherent in ownership reserving exclusive use and protection of property by the landowner. On the other hand, there is the genuine despair of people in dire need of adequate accommodation. It was with this regard that the legislature had by virtue of its provisions of PIE set about implementing a procedure which envisaged the orderly and controlled removal of informal settlements. It is the duty of the court in applying the requirements of the Act to balance these opposing interests and bring out a decision that is just and equitable. He went on to say that the use of the term ‘just and equitable’ relates to both interests, that is what is just and equitable not only to the persons who occupied the land illegally but to the landowner as well. He held that the term also implied that a court, when deciding on a matter of this nature, would be obliged to

break away from a purely legalistic approach and have regard to extraneous factors such as morality, fairness, social values and

implications and circumstances which would necessitate bringing out an equitable judgment.’

[37] In paragraph 34 of the Port Elizabeth matter, the Constitutional Court went further and said ‘Horn AJ went to emphasise that each case would have to be decided on its own facts. Hopefully once the housing shortage had been overcome incidents of unlawful invasion of property by desperate communities in search for accommodation will disappear. In the interim the courts would do the best they could and apply criteria that were just and equitable and acceptable to all concerned. What remained essential, he concluded, was that removals be done in a fair and orderly manner and preferably with a specific plan of resettlement in mind.’ In paragraph 35 it was stated: ‘The approach by Horn AJ has been described both judicially and academically as sensitive and balanced. I agree with that description. 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. In paragraph 36 and 37 it was stated: 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 implication 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...’ ‘Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law...”

[38] Section 8 of the PIE Act categorically states that the court must (in pre-emptive terms) order eviction if (a) all the requirements of section 4 are met, and (b) no valid defence is raised by the unlawful occupier. The legislative principle underscoring the aforesaid legal position is found in subsection 4(8) which reads as follows:

‘(8) If a 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)

[39] The requisites for the right to claim relief premised on interdict is well founded in *Setlogelo v Setlogelo*[12]. Considering the evidence presented at the court a quo, together with the admitted and/or undisputed facts, I am satisfied that the requirements[13] to confirm the interim order granted by Makhafole J were met.

Evaluation

[40] Upon an analyses of the judgement by the court a quo and considering section 4(7) of the PIE Act referred to in paragraph 30 above it is clear that the Appellants occupied the Respondents immovable property or land for more than six months. The court a quo did not passively apply the provision of the PIE Act. It probed and investigated the surrounding circumstances as it was obligated to do. In my view, the court a quo correctly assumed an inquisitorial role in determining whether information and data existed that should be considered as relevant

and in the interests of justice to grant an eviction order or not to do so.

[41] The court a quo considered all relevant circumstances as encapsulated in Section 4(7) of the PIE Act. The application was adjourned on 12 October 2018 for the Appellants to file supplementary affidavits to explain their personal circumstances which are factors a court must consider in determining if there are reasons that are in the interests of justice not to evict them.

[42] The supplementary affidavit filed by the Appellants contained none of the information requested by the court. It is trite that the obligation to provide the relevant information are primarily on the parties to the proceedings. In this instance the Appellants were specifically ordered to provide the requisite information and cannot thereafter

complain of non-compliance with Section 4(7) of the PIE Act or raise the alleged non-compliance as a result of their wilful failure(s) to provide the requisite information to avoid the consequences of eviction. The personal circumstances and information requested by the court a quo fall squarely within the Appellants' personal knowledge. The Appellants were legally represented and as officers of the Court,

legal practitioners must furnish the Court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction. There is no excuse for not providing these when so requested by the court, if such information was available. In my view, the court a quo considered and complied with the first leg of the Section 4(7) enquiry.

[43] The second leg of this enquiry relates to whether land has been made available or can reasonably be made available by a municipality. The court a quo considered the Respondent' (municipality') tender to make available land from the total parcelling of land

belonging to them, where the Appellants may resettle at reasonable prices and within the same local vicinity. Considering the evidence on record, the Respondent did not suggest that land can reasonably be made available to the Appellants but factually tendered demarcated residential sites and/or stands in its supplementary replying affidavit, as per annexure F, G, H, and I. I am satisfied that the second leg of the Section 4(7) enquiry was considered comprehensively by the court a quo.

[44] I am satisfied that the court a quo assumed an inquisitorial role in determining all relevant circumstances of the Appellants and whether it was just and equitable to evict them as encapsulated by Section 4(7) of the PIE Act. It followed that the court a quo was statutorily obligated to grant an eviction order in accordance with Section 4(8) of the PIE Act. I am of the view that the court a quo considered a reasonable period for the eviction of the Appellants.

[45] As a result the appeal must fail.

[46] For all the aforesaid reasons, the following order is made:

46.1 The appeal is dismissed with costs.

46.2 The 60 (sixty) days referred to in paragraph 67.3, 67.4 and 67.5 of the court a quo's judgment, shall be calculated from the date of judgment by this court.

ASL VAN WYK

ACTING JUDGE OF THE HIGH COURT

I agree.

TV RATSHIBVUMO

DEPUTY JUDGE PRESIDENT

S MATHABATHE

FOR THE APPELLANT: MR MALULEKE BEN INSTRUCTED BY: MALULEKE BEN ATTORNEYS
THOHOYANDOU FOR THE RESPONDENT: ADV MADAVHA with him ADV AD RAMAGALELA
RESPONDENT'S ATTORNEYS: SC MDHULULI ATTORNEYS C/O: MULAUDZI ATTORNEYS
THOHOYANDOU DATE HEARD: 06 DECEMBER 2024

JUDGMENT

DELIVERED: 24 MARCH 2025

[1] Growthpoint Properties Ltd v Africa Master Blockchain Company (Pty) Ltd 2020/43806 [2022] ZAGPJHC 836 (26 October 2022) para 27 read with footnote 22.

[2] Cape Empowerment Trust Ltd v Fisher Hoffman Sithole 2013 (5) SA 183 (SCA) at 198I–J.

[3] 2004 (3) SA 615 (SCA) at para [19]

- [4] Eskom v Soweto City Council 1992 (2) SA 703 (W); Ganes and Another v Telecom Namibia Ltd 2004 (3) SA 615 (SCA) at para [19]; Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 (SCA) at para [16]
- [5] 2010 (3) SA (KZP) at para [28]
- [6] 2005 (4) SA 199 (SCA) at para [16]
- [7] S4(2) and S5(2).
- [8] Vhamusanda Vho-Makhumbane & Another v Thulamela Municipality HCA02/2023 [2023] ZALMPTHC (15 November 2024) at para 14.
- [9] City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (Socio- Economic Rights Institute of South Africa As amicus curiae) 2013 (1) All SA 8 (SCA).
- [10] Machele v Mailula 2010 (2) SA 257 (CC).
- [11] Pitje v Shibambo 2016 (4) BCLR 460 (CC) at para 19.
- [12] 1914 AD 221 at 227.
- [13]
- (i) a clear right, (ii) injury actually committed or reasonably apprehended, and (iii) the absence of similar protection by any other ordinary remedy.

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