

SOUTH AFRICA / JUDGMENT

Nwobi and Another v Metsing and Others (2017/043444) [2025] ZAGPJHC 580 (10 June 2025)

[2025] ZAGPJHC 580

COURT

South Gauteng High Court, Johannesburg

BEFORE

Adams

CASE / FILE NUMBER

2017/043444

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REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
JOHANNESBURG

Case

NO: 2017-043444

DATE:

10 June

2025

(1)

NOT

REPORTABLE

(2)

NOT OF

INTEREST TO OTHER JUDGES

In the matter between:

CHIOMA
OBIEZE NWOBI
First Applicant
CATHERINE
ECHIONA NWOBI
Second Applicant
and
DANIEL
MOPEDI METSING
First Respondent
MOLEFI
ELLIOT MAKHETHA
Second Respondent
GEORGE
NKERE
Third Respondent
MARAMBA
VIMBAINASHE
Fourth Respondent
OLAOTSE
MOGOROSI
Fifth Respondent
PIET
MALEFEATSANE MOROBE
Sixth Respondent
QULUNGWANE
NCUBE
Seventh Respondent
SAMUEL
BABO MOFOKENG
Eighth Respondent
AMOGELANG
MANGENA
Ninth Respondent
BASIE
MASHIMBE
Tenth Respondent
ALL
THOSE OTHER PERSONS OCCUPYING ERF 1[...],
LORENZVILLE
TOWNSHIP, AND ANY PERSON
OCCUPYING
THROUGH THEM
Eleventh Respondent
CITY OF JOHANNESBURG
METROPOLITAN
MUNICIPALITY
Twelfth Respondent
Neutral
Citation: Nwobi and Another v Metsing and Others (2017-043444)
[2025] ZAGPJHC --- (10 June 2025)

Coram:	Adams J
Heard:	22 May 2025
Delivered:	10 June 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 10 June 2025.
Summary:	Civil procedure – eviction application – section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act) – unlawful occupation – eviction – statutory eviction – meaning of ‘valid defence’ in PIE Act, s 4(8) – when unjust or inequitable to evict, unlawful occupiers having valid defence – Local Authority’s obligation to provide temporary emergency accommodation (‘TEA’) – Eviction application granted – conditions imposed – City of Johannesburg directed to provide TEA in due course – until such time, unlawful occupiers are not to be evicted. ORDER (1). Save for those persons mentioned in paragraph (4) below, the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh respondents (‘respondents’) and all those occupying by, through and under them shall vacate the leased premises described as Erf 1[...] Lorentzville Township, Johannesburg, which property is situated at 5[...] D[...] Road, L[...], Johannesburg (‘the property’) within two months from date of this order. (2). In the event of the respondents and/or all those persons occupying through or under them, save for those mentioned in paragraph 4 below, failing to vacate the property within two months from date of this order, the Sheriff of this Court or her/his duly appointed Deputy, is authorised and directed to forthwith enter the property and to evict from the property the respondents, save for those mentioned in paragraph (4) below. (3). The Sheriff of the Court or her/his lawfully appointed deputy, is authorised and directed to approach the

South African Police Service
for any assistance that s/he may deem
necessary and appropriate herein.

(4).

The twelfth respondent ('City of
Johannesburg') is directed to provide Temporary Emergency
Accommodation ('TEA')
within two years from date of this
order to the following persons, provided that they are still resident
at the property and have
not voluntarily vacated same: -

(a)

The occupier of Unit
Number 3A, N[...] L[...], and
the other occupier of the unit (B[...] L[...], who is 3
years old).

(b)

The occupier of Unit
Number 3B, Matseliso Konyana.

(c)

The occupier of Unit
Number 4, I[...] M[...], and
the other occupier of the unit (B[...] G[...], who is 17
years old).

(d)

The occupier of Unit
Number 5, J[...] M[...], and the other
occupiers of the unit (M[...] M[...], who is 12 years old and another
occupier, who is 3 years old).

(e)

The occupier of Unit
Number 6, Thabo Mokoena.

(f)

The occupier of Unit
Number 7, Mapula Michelle Matlhoma.

(g)

The occupier of Unit
Number 8, Thato Andries Miya, and the
other occupier of the unit (Mpho).

(h)

The occupier of Unit
Number 9, Nthabiseng Bernice Langa.

(5).

The twelfth respondent is ordered and
directed to notify those respondents listed in paragraphs 4(a) to (h)
above in writing of
the nature and location of the accommodation to
be provided to them in terms of paragraph 4 above within twenty
months from date
of this order.

(6).

Those of the respondents listed in paragraphs 4(a) to (h) are ordered and directed to vacate the property within two years from date of this order, failing which the eviction order pertaining to them may be carried out, subject to the conditions set out in paragraphs (4) and (5) above, having been met. (7).

The first to eleventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of this opposed application, which costs shall include Counsel's charges on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.

JUDGMENT

Adams J:

[1]. This is an application by the applicants in terms of s 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[1] (PIE Act). The applicants apply for orders evicting the first to the eleventh respondents ('respondents') from the residential property, being Erf 1[...], Lorentzville Township, Johannesburg, situate at 5[...] D[...] Road,

L[...], Johannesburg ('the property'). The property is owned by the applicants and the respondents are presently in unlawful occupation of the said property in that they are not paying rental for which they are liable in terms of any lease agreements in relation to the property, nor do they lawfully occupy the property in terms of any other rights entitling them to occupy the property to the exclusion of the lawful owners, being the applicants. The applicants acquired ownership of the property during 2015 and the respondents have since 2017 been living at the property rent-free.

[2]. In sum, the case on behalf of the applicants is that the respondents, who all occupy separate and individual rooms on the property and who are required to pay rental in respect of such occupation, but never do, should be evicted from the premises. The respondents have also failed to pay the charges relating to the utilisation of water and electricity on the property and other municipal services. The respondents oppose the application inter alia on the basis of a denial that they are in breach of the lease agreements in place in respect of the property. The respondents'

aforesaid denial rings hollow. There is no merit in any of the supposed defences raised by them in opposition to the applicants'

application.

[3]. The only defence raised by the respondents with a hint of merit in it relates to the claim by some of them that it would not be just and equitable for this court to order their eviction. They have therefore placed before court certain personal circumstances, which, according to them, demonstrate the inequity and injustice that would result from their eviction. The twelfth respondent ('the City') has also placed before court a report dealing with the circumstances of the respondents and which should assist the court in deciding the matter.

[4]. The main question to be considered by me is therefore whether it would be just and equitable to evict the respondents from the property. Closely related to this issue is the question whether any person is likely to be rendered homeless as a result of being evicted from the property.

[5]. On the evidence before me, in particular, the latest report from the City of Johannesburg in the form of an affidavit dated 31 October 2024 by its Executive Director: Department of Human Settlements, it appears that there is a likelihood that eight of the ten 'households' presently occupying the property would be rendered homeless if evicted. Their individual incomes, as reported to the City, are insufficient for purposes of them paying for alternative accommodation.

[6]. This then means that alternative arrangements should be made for them in the event of an order to have them evicted. The difficulty is that the City of Johannesburg does not have the resources to provide emergency alternative accommodation. They have a backlog and a long waiting list of people who need to be accommodated as a result of eviction Court orders and the state of disrepair of a number of inner-city buildings. The City has accordingly requested the Court to afford them a period of five years within which to find alternative accommodation for the affected respondents.

[7]. The applicants contend that the respondents have since May 2017 had an opportunity to seek alternative accommodation. The applicants, so they contend, cannot be expected to house the respondents indefinitely. Moreover, so the contention continues, insofar as temporary emergency accommodation is concerned this is triggered where the likelihood of homelessness upon eviction is alleged. What is more, so the applicants argue, if the Court agrees to the City's request for a further five years, it means that the applicants will be deprived for a further five years of the use and enjoyment of their property. By that time, so the contention continues, the identity of the respondents could easily have changed and the Order would be of no use because the people against whom it was made would no longer be living on the property.

[8]. Whilst there is eminently merit in these contentions on behalf of the applicant, I cannot turn a blind eye to the fact that an eviction order is likely to render some of the respondents homeless. I also cannot ignore the reality that the City of Johannesburg just does not have the resources to accommodate a further group of persons in emergency alternative accommodation.

[9]. In my view, the eviction order should be granted in respect of those respondents who will not be rendered homeless. As for the rest, the City should be afforded a further two years within which to find alternative accommodation for them. This, in my view, would make the eviction order, just and equitable in the circumstances of the matter. I therefore intend granting an order to that effect.

Order

[10]. Accordingly, I make the following order:

(1). Save for those persons mentioned in paragraph (4) below, the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh respondents ('respondents') and all those occupying by, through and under them shall vacate the leased premises described as Erf 1[...] L[...] Township, Johannesburg, which property is situated at 5[...] D[...] Road, L[...], Johannesburg ('the property') within two months from date of this order.

(d) The occupier of Unit Number 5, J[...] M[...], and the other occupiers of the unit (M[...] M[...], who is 12 years old and another occupier, who is 3 years old).

(6). Those of the respondents listed in paragraphs 4(a) to (h) are ordered and directed to vacate the property within two years from date of this order, failing which the eviction order pertaining to them may be carried out, subject to the conditions set out in paragraphs (4) and (5) above, having been met.

(7). The first to eleventh respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' costs of this opposed application, which costs shall include Counsel's charges on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.

L R ADAMS

Judge of the High Court

Gauteng Division, Johannesburg

HEARD ON: 21 May 2025

JUDGMENT DATE: 10 June 2024 – Judgment handed down electronically

FOR THE APPLICANTS: M Rodrigues

INSTRUCTED BY: Kaveer Guinness Incorporated, Bordeaux, Randburg

FOR THE FIRST TO THE

ELEVENTH RESPONDENTS: K Masuthu

INSTRUCTED BY: Ramokolo Attorneys, Polokwane, Limpopo

FOR THE TWELFTH RESPONDENT: G McMaster INSTRUCTED BY: Kunene Rampala Incorporated, Braamfontein, Johannesburg

[1] Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

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