

SOUTH AFRICA / JUDGMENT

Ruiters and Another v Arendse and Others (19927/2023) [2025] ZAWCHC 36 (10 February 2025) [2025] ZAWCHC 36

COURT

Western Cape High Court, Cape Town

BEFORE

Andrews

CASE / FILE NUMBER

19927/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

WESTERN

CAPE DIVISION,

CAPE

TOWN

Case

No: 19927/2023

In

the matter between:

FRANCOIS
PETRUS RUITERS
First Applicant
(Id
No.: 6[...])
TRUDINE
INGRID RUITERS
Second Applicant
(Id
No.: 7[...])
and
ELSIE
ARENDSE
First Respondent
ALL
OTHER UNKNOWN OCCUPIERS
Second Respondent
OF
5[...] I[...] STREET, BELLVILLE
CITY
OF CAPE TOWN METROPOLITAN
Third Respondent
MUNICIPALITY

JUDGMENT

ANDREWS AJ

Introduction

[1] This is opposed application launched by the Applicants in terms of Section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE Act”) for the eviction of the First and Second Respondents (“The Respondents”). The proceedings were previously adjourned for a housing report to be obtained from the Third Respondent, pursuant to the court having found that the Respondents were in unlawful occupation of the property known as Erf 1[...] Bellville, situated at 5[...] I[...] Street, Bellville, Western Cape (“the property”).

[2]

The factual background requires restating for the purposes of setting the contextual narrative to these proceedings. The previous owners of the property were the estates of several deceased, who became the registered owners in terms of Title Deed T 11682/1069. Mr Chris Solomon Florence (“Mr Florence”) was appointed by the Master as the Master’s Representative in all of these deceased estates between 24 July 2006 and 24 August 2022.[1] It is unrefuted that property in question has been sold, seemingly under dubious circumstances and is currently registered in the names of the First and Second Applicants.

- [3] In this regard, Mr Florence appointed Mr Sybrand Smit from Smit & Co Attorneys as his agent to wind up all the estates and to sell and transfer the property. Mr Smit rendered various professional services during the period 26 July 2022 and 19 July 2023 in respect of the reporting of and winding up of all the relevant estates, for which Mr Florence was issued with an invoice in the amount of R200 000 for professional services rendered. Summons was issued pursuant to the account not being paid. This culminated in Mr Smit and Mr Florence entering into a settlement agreement. In terms of the settlement agreement, Mr Florence would transfer the immovable property of the late estates in the name of Mr Smit. The parties agreed to make the settlement agreement an order of Court in terms of Rule 27(6), which was done on 3 August 2023.
- [4] By virtue of the court order dated 3 August 2023 under case number 6689/2023, transfer was passed to Mr Smit in terms of a power of attorney dated 15 August 2023. The property was thereafter sold by Mr Smit to the First and Second Applicants for the agreed amount of R500 000. An amount of R300 000 was thereafter paid to Mr Florence.
- [5] The Respondents accepted for the purposes of these proceedings that they are de facto in unlawful occupation, as they have not challenged the sale of the property because the entire contents of the five (5) deceased estates files were not supplied to the Respondents by the Master of the Hight Court, despite same having been requested.
- [6] It is also uncontroverted that the Applicants have not consented to the Respondents remaining in occupation of the property. Moreover, it is not disputed that all the procedural requirements have been complied with by the Applicants as envisaged in the PIE Act.
- [7] The crisp issue which remains to be decided upon is whether it would be just and equitable for the court to grant the eviction.

The Applicable Legal Principles

- [8] Section 4(7) of the PIE Act states 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 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.’

Is it “just and equitable” to grant the eviction?

- [9] It is settled law that the provisions of the PIE Act permit the eviction of an unlawful occupier only where it is ‘just and equitable to do so, after considering all the relevant circumstances’. It is manifest that section 4(7) of PIE provides guidelines on what considerations must be taken into account when a court exercises its discretion in this regard.

[10] Section 4(8) of the PIE Act provides further that if ‘the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine – (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and (b) the date on which an eviction

order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a)’.

[11]

It is trite that there is a structured approach which is rooted in established legal principles and jurisprudence. The court in *Madulammoho Housing Association NPC v Nephawe and another*[2] (“*Madulammoho*”) methodically distilled the considerations of justice and equity as follows:

‘The principles of justice and equity are, first, that the applicant for an eviction order bears the onus to establish that it is just and equitable to grant one; second, that evictions that lead to homelessness are not generally just and equitable; third, that a court has wide powers to require applicants for eviction orders, organs of state and unlawful occupiers to produce the information necessary to enable the formulation of a just and equitable order; and fourth, that where an eviction would lead to homelessness, the duty to provide the alternative accommodation necessary to prevent an unlawful occupier from becoming homeless generally falls on the local authority with jurisdiction over the property.’

[12]

This court, being alive to its wide powers deemed it prudent for the Third Respondent to produce a housing report in order to assist the court in making the determination on whether it would be just and equitable to evict the Respondents. This, notwithstanding that the onus of demonstrating the justice and equity of an eviction rested on the Applicants for an eviction order. Therefore, it is the Applicants who are duty bound to place facts before a court from which an inference can be drawn that an eviction would be just and equitable.[3]

[13]

In this regard, the Applicants submitted that it would be just and equitable to evict the Respondents because they are unlawful occupiers as they are occupying the property without the consent of the Applicant and without any other right in law permitting such occupation. The Applicants contended that the applicable legislative requirements and considerations as set out in the matter of *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*[4].

[14] The court in *Madulammoho*, in considering the onus and the developing jurisprudence remarked that:

‘...it is no longer sufficient to approach a court for an eviction order merely on the basis of the applicant’s ownership or control of the property and the respondent’s unlawful occupation. Before an eviction order can be granted, the facts must demonstrate that it would be just and equitable to make one. There is accordingly no presumption in favour of granting an eviction order simply because the applicant has alleged and proven ownership and unlawful occupation. Satisfying these requirements does no more than trigger a further enquiry into whether it would be just and equitable to evict an unlawful occupier. The fact that an owner is, at common law, entitled to exclusive use and occupation of their property where there are no other countervailing common-law rights held over it is a factor that counts in favour of granting an eviction order, but it is by no means dispositive of the issue.’[5] [my emphasis]

[15]

This court is also mindful of what was stated by Van Zyl AJ in *Van der Valk N.O. and Others v Johnson and Others*[6]:

‘Although the Courts, in determining whether to grant an eviction order, must exercise a discretion based on what is just and equitable, and although special consideration must be given to the rights and needs of vulnerable occupants, this cannot operate to deprive a private owner of its property arbitrarily or indefinitely. If it did, it would mean that occupants are recognised as having stronger title to the property, despite the unlawfulness of their conduct. An owner would in effect be deprived of his property by a disguised form of expropriation. As was highlighted in the case of *Mainik CC v Ntuli and others* [2005] ZAKZHC 10 (25 August 2005): “If the rental is not being paid, such ‘expropriation’ will also be without compensation. The result would be not a balance of the rights of the respective parties, but an annihilation of the owner’s rights”’

[16]

To make the determination on whether it is just and equitable to evict the Respondents, the court is also enjoined to consider the entrenched provisions of Sections 25 and 26 of the Constitution[7], which deals with the rights to housing and property.

The Third Respondent’s Report

[17] It therefore behoves this court to consider the Third Respondent’s report. In its report, the Third Respondent considered the personal circumstances of the occupiers as disclosed in the respective questionnaires which was ostensibly completed by each of the occupiers of the property.

First Respondent

[18] The First Respondent is an elderly female who resides on the property with five dependents. She is a pensioner who receives a monthly income of R2200. She indicated that she has resided at the premises for a period of 45 years and alleges that she will be rendered homeless if evicted from the premises.

- [19] Tyron Johnny Arendse (“Tyrone”), who is an occupier residing under the First Respondent, disclosed that he has no dependents. He did not disclose his occupation status, nor did he reveal his monthly household expenditure. Tyrone stated that he has been residing on the premises for a period of 20 years and alleged that he will be rendered homeless if evicted from the premises.
- [20] Ethan Craig Arendse (“Ethan”), who is also an occupier residing under the First Respondent, disclosed that he has no dependents. He did not disclose his occupation status, nor did he stipulate his monthly income or his monthly household expenditure. Ethan indicated that he has been residing on the premises for a period of 19 years and alleged that he will be rendered homeless if evicted from the premises.
- [21] Rekadou John Arendse (“Rekadou”), disclosed that he is an adult male with no dependents. He is unemployed and receives a disability grant of R2200 per month as an income. He did not reveal his monthly household expenditure. Rikadou indicated that he has been residing on the premises for a period of 41 years and alleged that he will be rendered homeless if evicted from the premises.
- [22] Elmarie Ronella Van Wyk (“Elmarie”) disclosed that she is an adult female with four dependents. She is unemployed but does ‘odd jobs’ and receives a monthly income of approximately R2500. She did not disclose her monthly household expenditure amount. Elmarie disclosed that she had been residing on the premises for a period of 43 years and if evicted from the premises, she will be rendered homeless.

Emergency Accommodation

- [23] The Third Respondent explained that it is currently faced with a tremendous challenge as there is a shortage of land to create or establish more emergency accommodation sites. This, they say is because the City of Cape Town has lost critical portions of land that were earmarked for the provision of formal housing, as well as informal developments during the Covid period where they had experienced the unabated invasion of City land. In order to circumvent the City’s land availability challenge, the City is currently engaging with organs of state (Provincial Government), to negotiate land acquisition for the establishment of temporary relocation areas.
- [24] After considering the First Respondent and her occupiers’ circumstances, the Third Respondent decided that the First Respondent and her occupiers would be provided with two emergency housing kits if they are not able to obtain accommodation through their own means. These emergency housing kits allows for a structure of 6 x 3m (18m²) to be constructed.
- [25] The supply of the emergency housing kit will only be made available to the First Respondent and all those holding occupation under the following conditions:

- (a) after they have secured a site for its construction; and
 - (b) the landowner has consented thereto in writing by means of a sworn affidavit;
 - (c) the landowner will be required to provide proof of ownership together with a copy of their identity.
- [26] Additionally, the First Respondent and her occupiers are required to advise the Third Respondent on whether they accept or reject the offer for an emergency kit within 30 days. It is furthermore apparent that the First Respondent and her occupiers are obliged to assemble the material themselves.
- [27] It is however, manifest from the Third Respondent's report that all the questionnaires appear to bear the date of 10 February 2024, which pre-dates the court's November 2024 order. The Third Respondent was clearly alive to the outdated information and mentioned that the Respondents' Legal Representative disclosed further socio-economic information to the court which they say will be read into the questionnaires.
- [28] The information placed before this court and which was previously contained in the judgment of this court, delivered in November 2024 requires restating. Ms Prinsloo, on behalf of the Respondents placed on record that:
- (a) The First Respondent is a 72-year-old pensioner who has been residing on the property since 1975;
 - (b) The Second Respondents, Elmarie and Rekadou Arendse, who are the biological children of the First Respondent are also residing in the property since birth;
 - (c) Rekadou receives a disability grant;
 - (d) Elmarie does "peace jobs" with minimal income; and
 - (e) The occupiers cannot afford alternative accommodation.
- [29] No detail is provided regarding the 4 dependents listed by the occupier, Elmarie in the questionnaire. Same was however expounded on by Ms Prinsloo in her address to the court. The information reveals that the ages of the children are 8 years, 14 years, 19 years and 20 years old respectively. Three of the children are still school-going and the 20-year-old matriculated in 2023.
- [30] To my mind, it is untenable to expect the First Respondent being a 72-year-old pensioner, not only to secure a site for its construction, but to find a willing landowner who is prepared to consent thereto by means of a sworn affidavit and provide proof of registration; and as if this is not enough, she is expected to assemble the structure as well. Whilst it may be argued that she has able bodied adults holding occupation under her to assist her with the construction of the emergency housing kit, regard must be had to the undisputed fact that Rekadou receives a SASSA disability grant.

- [31] The information contained in the Third Respondent's report conflicts with the information contained in the reports of Elmarie and Rekadou respectively. In this regard, the report pertinently stated that there are no minors when there are in fact minor children residing on the premises. They further report that there are no disabled occupiers, when Rekadou receives a disability grant. The Third Respondent acknowledges that '[a]lthough the questionnaire indicates that there might be occupant(s) who are either disabled or suffering from chronic medical condition, the City is advised that none of the occupants suffer from any medical conditions alternatively that there is nothing wrong with their health'. This submission is repeated under the summary of each occupant's personal circumstances and is evidently a cut and paste transposition, with no support to reach its conclusion on the respective occupiers' health.
- [32] The Respondents have placed on record that they do not know anyone who is willing to allow them to erect these structures on their property. Therefore, on this basis alone, the conditions proposed by the Third Respondent appears unattainable and particularly onerous, more especially if the Respondents are expected to indicate acceptance within 30 days. I pause to further mention that even though the projected joint income of the household indicates that they are able to find alternative rental accommodation, this factor in isolation, in my view, does not render the eviction of Respondents just and equitable. On the facts before me, on a balance of probabilities, it appears that an eviction would ultimately lead to homelessness.

Homelessness

[33]

The court in *Madulammoho* aptly stated that '[a]lthough there are potentially a wide variety of reasons why an eviction may not be just and equitable, the case law developed under PIE has tendered to focus on the injustice of homelessness. The appellate courts have consistently held that it will not be just and equitable to order an eviction where the execution of the eviction order would leave an unlawful occupier homeless.'

[34]

It is trite that section 4(7) of PIE does not oblige the Applicant to secure alternative housing for the Respondents. In *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*^[9] the court held:

'The position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The Constitutional Court has said that private entities are not obliged to provide free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising, or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers. That approach makes it difficult to see what basis the availability of alternative land or accommodation bears on the question

whether an eviction order should be granted, as opposed to the date of eviction and the conditions attaching to such an order.’

[35]

The Applicant referred this court to the Constitutional Court judgment of *Grobler v Phillips and Others*[10] (“Grobler”) where reference was made to section 4(7) of PIE regarding the considerations of just and equitable eviction orders. In this regard

the relevant circumstances to be considered included:

‘...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.’

Discussion

[36]

In my view, as previously stated, the proposal by the Third Respondent will render the First Respondent and those holding occupation under her, homeless. It is insufficient solace to suggest that a 72-year-old should move into a zinc structure after living in the property for 45 years, as verified by the Third Respondent’s report. The First Respondent’s late husband died intestate which triggered the application of section 1(c)(i) and (ii) of the Intestate Succession Act 81 of 1987[11]. In this regard, the First Respondent and the biological children of the deceased held a real right to inherit in the deceased estates of Johannes and Getrude Florence. In the absence of a challenge to the executor’s fiduciary duties, this court cannot slavishly follow a tick-box approach given the unique circumstances of this matter. The body of law and legal precedent provide helpful guidance and insights on the general approach to eviction applications. However, justice and equity demand that the court considers the unique circumstances of this matter through the lens of the now unlawful occupiers in circumstances where the executor has possibly breached his fiduciary duty. Furthermore, the alternatives offered to them are clearly unsuitable and possible even unjust.

[37]

The Applicants offered to pay the Respondents an amount of R30 000 on vacating the property as an ex-gratia payment towards relocation. The Respondents placed reliance on the matter of *Grobler* [12] where the appeal was upheld and the order of the SCA set aside and substituted with a new order directing applicant to purchase a dwelling; to register against the title deed a right on first respondent’s part to reside in the property for the rest of her life, and for applicant to pay the relocation costs of the first respondent and second respondent. This offer was rejected by the First and Second Respondents. The proposal by the Applicant to pay an amount towards the relocation of the Respondents, in keeping with the *Grobler*[13] order appears to be a good faith gesture. This gesture however, in my opinion, does not detract from the fact that the hurdle of

justice and equity has not been overcome.

- [38] This court is mindful that the Respondents are currently not paying rental or any of the municipal accounts. Nevertheless, in weighing up all the factors, it is further manifest that the report provided by the Third Respondent is wholly insufficient and does not assist the court in making a determination on whether it will be just and equitable to evict the First and Second Respondents. In any event, this is not a typical eviction in terms of which there has been a breach of a lease agreement. In casu there is no agreement in place between the Applicants and the Respondents. These circumstances are unique and cannot be viewed in the same way as, to use the idiomatic expression, a run of the mill-type-eviction where there has been a cancellation of a written or oral lease agreement. All indications are that an eviction order will effectively render the First and Second Respondents homeless, which is not what is envisaged in section 4(7) of PIE.
- [39] The Applicants' reliance on the fact that the joint household income indicates that the Respondents would be in a position to rent elsewhere and as such, they will not be rendered homeless, is by no means not the only factor that this court is required to consider; bearing in mind that the extent of the Respondents current financial commitments have not been placed before this court to be able to make a determination on whether they could afford to rent a property elsewhere. I echo the findings of the court in Madulammoho that there is no presumption in favour of granting an eviction order simply because the Applicants have alleged and proven ownership and unlawful occupation.
- [40] Consequently, I conclude that granting an eviction order would infringe upon the rights of the elderly, children, and disabled occupiers based on the information presented to this court. Even if the eviction date is deferred to a future date, the concerns relating to the vulnerable persons identified have not been overcome. This court cannot ignore the plight of the First and Second Respondents in the milieu of the unique factual matrix of this matter.

Costs

- [41] The matter of costs remains in the unfettered discretion of the court. Given the nature of these proceedings, I deem it in the interest of justice that each party bear his or her own legal costs.

Order

- [42] In the result, the Court, after having heard counsel for the respective parties and having read the papers on record make the following orders:

1. The application is dismissed.
2. Each party is to pay his/or her own costs.

P D ANDREWS

Acting Judge of the High Court, Western Cape Division

APPEARANCES

For the Applicant:

Advocate Lourens van Zyl

Instructed by:

Sybrand Smit & Co Attorneys

For the First and Second Respondents:

Attorney, Ms T Prinsloo

Instructed by:

Legal-Aid South Africa

Date of Hearing: 24 January 2025

Date of Judgment: 10 February 2025

NB: The judgment is delivered by electronic submission to the parties and their legal representatives.

[1] Master's representative under Letters of Authority for the following estates: (a) Estate Late Jan Andries Petrus Arendse; (b) Estate Late David Frederick Christian Arendse; (c) Estate Late Elena Katrina Arendse; (d) Estate Late Johannes Fred Florence and (e) Estate Late Getrude Rebecca Florence.

[1] Master's representative under Letters of Authority for the following estates:

(a) Estate Late Jan Andries Petrus Arendse;

(b) Estate Late David Frederick Christian Arendse;

(c) Estate Late Elena Katrina Arendse;

(d) Estate Late Johannes Fred Florence and

(e) Estate Late Getrude Rebecca Florence.

[2] 2023 JDR 0049 (GJ) at para 8

[3] City of Johannesburg v Changing Tides 74 (Pty) Ltd 2012 (6) SA 294 (SCA) at para 34

[4] Supra at para 11: 'In terms of s 4(7) of PIE, an eviction order may only be granted if it is just and equitable to do so, after the court has had regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the

elderly, children, disabled persons and households headed by women. If the requirements of section 4 are satisfied and no valid defence to an eviction has been raised the court “must”, in terms of s4(8), grant an eviction order. When granting such an order the court must, in terms of s4(8)(a) of PIE, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The court is empowered in terms of s4(12) to attach reasonable conditions to an eviction order’.

[5] Supra, at para 10-11

[6] (20449/2021) [2023] ZAWCHC 20 (30 January 2023) at para 26.

[7] The Constitution of the Republic of South Africa, 1996: ‘25. Property 1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property... 26. Housing 1. Everyone has the right to have access to adequate housing...’

[7] The Constitution of the Republic of South Africa, 1996:

‘25. Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property...

26. Housing

1. Everyone has the right to have access to adequate housing...’

[8] Supra, at para 12. See also: Occupiers, Berea v De Wet 2017 (5) SA 346 (CC) at para 57; Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele [2010] 4 All SA 54 (SCA) at para 16

[9] 2012 (6) SA 294 (SCA) at para 18.

[10]

[2022] ZACC 32 at para 28.

[11] Section 1(c) (i) and (ii) state the following: ‘1. Intestate succession — If after the commencement of this Act a person (hereinafter referred to as the “deceased”) dies intestate, either wholly or in part, and— (c) is survived by a spouse as well as a descendant— (i) such spouse shall inherit a child’s share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and (ii) such descendant shall inherit the residue (if any) of the intestate estate;’

[11] Section 1(c) (i) and (ii) state the following:

‘1. Intestate succession — If after the commencement of this Act a person (hereinafter referred to as the “deceased”) dies intestate, either wholly or in part, and—

- (c) is survived by a spouse as well as a descendant—
- (i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the Gazette, whichever is the greater; and
- (ii) such descendant shall inherit the residue (if any) of the intestate estate;'

[12] Supra at pg 32

[13] At para 49

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