

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 014395/2020**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: NO  
 (2) OF INTEREST TO OTHER JUDGES: NO  
 (3) REVISED: NO

DATE: 17/11/ 2022

SIGNATURE: ***ML SENYATSI***

In the matter between:

**YG PROPERTY INVESTMENTS (PTY)LTD**

Applicant

**REGISTRATION NUMBER: 2016/228935/07)**

and

**SELOTA, C**

1<sup>st</sup> Respondent

**BOSHOMANE, T. &151 OTHERS LISTED ON**

2<sup>nd</sup> to 153<sup>rd</sup>

Respondents

**ANNEXURE "A" TO THE NOTICE OF MOTION**

**THE FURTHER UNLAWFUL OCCUPIERS**

154<sup>th</sup> Respondents

**OF THE UNITS LISTED IN ANNEXURE “A” TO THE  
NOTICE OF MOTION**

**THE UNLAWFUL OCCUPIERS OF THE UNITS LISTED** 155<sup>th</sup> Respondents  
**IN ANNEXURE “B” TO THE NOTICE OF MOTION**

**EKURHULENI METROPOLITAN MUNICIPALITY** 156<sup>th</sup> Respondent

<b>REASONS</b>
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***Delivered:*** By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 17 November 2022.

**SENYATSI J:**

[1] On 26 August 2022, I granted an order against the respondents reflected in annexure “X” attached thereto.

[2] The order was to the effect that pending proceedings to be instituted in terms of section 4 of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 1998 (“PIE”) and in terms of section 5 of PIE:

2.1. an interim eviction order is granted, against the Respondents listed in annexure “Y” thereto (“the remaining respondent”), in terms of paragraph 2.3 -2.8 below, which order is wholly suspended, subject to the remaining respondents complying with paragraph 2.2. to 2.2.3 below;

2.2. the remaining Respondents are:

- 2.2.2 to make full payment of damages in lieu of rental payable by them, for the months August 2022 and September 2022, on or before 7 September 2022;
- 2.2.2. to conclude acknowledgements of debt, to arrange for the payment of any remaining rental arrears, owing by them to the applicant by not later than 14 September 2022;
- 2.2.3. to make payment of damages in lieu of rental to the applicant from October 2022 onwards on or before the first day of every month thereafter.
- 2.3. Should any individual remaining Respondent, or any number of the remaining respondents, comply with paragraph 2.2 – 2.2.3 above, the Order in paragraph 21 above, shall remain suspended until such time as the Applicant elects, at its discretion, to enter into new leases with the remaining Respondents, or any of them.
- 2.4. Should any individual remaining Respondent or any number of remaining Respondents fail to comply with paragraphs 2.2 -2.2.3 above (“the defaulting Respondents”), then in that event, the order in paragraph 2.1 above will cease to be suspended as against the defaulting respondents and the defaulting respondents, and all those occupying the property by, through or under him/her /them are evicted on an interim basis, in terms of section 5 (1) of PIE from the property, described as:

Erf 2947 Kempton Park Registration Division I.R Gauteng

Situated at:

Kempton Village

1 Long Street

Kempton Park

1619

("the property")

- 2.5. the defaulting Respondents and all those occupying the property by, through or under him/her/them are to vacate the property, within one week from receipt of notice of such default, from the applicant's attorneys.
  - 2.6. In the event that the defaulting Respondent/s, and all those occupying the property by, through or under him/her/them fail to vacate the property within the one week period specified in paragraph 2.5 above, the Sheriff of the Court or his lawfully appointed Deputy is authorised and directed to evict the defaulting Respondents, and all those occupying the property by , through or under him/her/them from the property, upon instruction from the applicant's attorneys and upon notice of default of this order to the defaulting Respondents;
  - 2.7. The Sheriff of the Court or his lawfully appointed Deputy is authorised and directed to approach the South African Police Services and/or private security for any assistance he may deem appropriate to give effect to this order.
  - 2.8. Any person evicted from the property and/or who vacates the property in terms of this order, interdicted and restrained from subsequently re-taking occupation or entering upon the property.
3. The form and contents of the notice in terms of section 5 (2) of PIE annexed to the Notice of Motion as "Y" is authorised, and service of the unissued notice in

terms of section 5 (2) of PIE in the manner described in prayer 4 below, be and is hereby condoned.

4. That:

4.1. The Sheriff of the Court or his lawfully appointed Deputy, is authorised and directed to affix a copy of the Notice of Motion, Section 5 (2) Notice and all further processed and notices, including any order of this Court herein to the principal door of each unit; and

4.2. the Sheriff of the Court or his lawfully appointed Deputy is authorised and directed to slide a copy of the Notice of Motion, Section 5(2) Notice and all further processes and notices including any Order of this Court herein under the principal door of each.

5. In so far as further service of notices in terms of the Uniform Rules of Court, any notice in terms of PIE, any Court process, any Court order, any affidavit or similar court document (“the relevant document”) is required to be served, the Sheriff is first to attempt to effect service in terms of the Uniform Rules of Court, and if not possible, the Sheriff of the Court or his lawfully appointed Deputy, is authorised and directed to affix a copy of the relevant documents to the principal door of each unit or slide same under the door of each unit.

6. Any payment made by the Respondents, in terms of this Order does not in any way constitute a novation of the lease agreements or prior termination.

7. Any defaulting Respondent is to pay his/her pro-rata share of the costs of this application, in the event of him/her failing to comply with paragraphs 2.2 – 2.2.3 above

[3] The reasons for the order are as set out below.

- [4] This is an application about whether the property owner can evict the unlawful occupiers in terms of section 5(2) of the PIE Act pending the section 4 (2) of the PIE Act hearing.
- [5] The Applicant, YG Property Investments (Pty) Ltd, is a social housing provider duly accredited with the Social Housing Regulatory Authority (“SHRA”) established in terms of the Housing Act 16 of 2008 (“the Act”)
- [6] By virtue of being the social housing provider, the applicant provides housing to low-income persons. The service is made possible by State-provided non-repayable grant funding, which assists the applicant with the authorisation of its expenses in, for example constructing or refurbishing buildings for use as social housing.
- [7] By virtue of the fact that the grant funding is non- repayable, the applicant is able to charge lower rent as it does not need to recoup its expenses by way of higher rental.
- [8] One of the qualifying criteria of the persons who fall within the target group for social housing is that the combined monthly income index established through the Regulations to the Housing Act is a minimum threshold of R6700.00 and the maximum of R22 000.
- [9] One of the requirements by SHRA, is that the applicant must achieve 95% of monthly rental collection in order to ensure the project’s feasibility and sustainability. If the applicant achieves lower than 95% of the rental collection, this puts the project at risk.
- [10] The Applicant is the registered owner of the property which comprises of 312 social housing units. The applicant has appointed a management agent, Zelri

Property CC who is entrusted with the management and rental collection from the tenants of the property with effect from August 2022.

[11] The respondents occupy various units within the property as are set out as per annexures hereto attached.

[12] The 156<sup>th</sup> Respondent, Ekurhuleni Metropolitan Municipality, is duly established in terms of section 12 (1) read with section 12 (1) read with section 14 (2) of the Local Government Municipal Structure Act 117 of 1998 has been cited as it has geographic jurisdiction over the property and it bears certain constitutional and legislative obligation over the 1<sup>st</sup> to 155<sup>th</sup> Respondents.

[13] The applicant averred that the eviction was sought on an urgent basis due to the following grounds:

12.1. The respondents have engaged in violence, intimidation and threats to the applicant's employees, security guards and service providers at the property and expelled the applicant's agent and seized control of the property, in other words, they have hijacked the property.

12.2. As a consequence of the alleged seizure of the property, the applicant faces the deterioration and ultimate loss of its property and also fears for the safety and security of its representatives and employees at the property and its remaining tenants in good standing.

12.3. Pursuant to the conduct of the core group among the respondents, the respondents have embarked in an unlawful and unconstitutional rent boycott at the applicant's property.

12.4. As a consequence of their conduct, the applicant furthermore avers that the Respondents' leases have been terminated by virtue of their repudiation thereof. Despite the termination, the respondents remain defiantly in occupation of the property, and have rendered themselves as unlawful occupiers within the purview of the PIE Act.

[14] The applicant contends that the urgent eviction is the only way to arrest the trajectory of the rental boycott and the forceful hijacking of its property, and thereby, to prevent the ever present danger to life and property further materialising.

[15] The applicant seeks the relief pending proceedings to be instituted in terms of section 4 of PIE, that the respondents be evicted from the property in terms of section 5 (1) of PIE.

[16] The Respondents are all its erstwhile tenants who concluded leases to occupy the units in the property.

[17] In terms of the lease agreements the respondents were required to make payment of their due monthly rental and other obligations to the applicant. The applicant contends that it complied with its obligations by providing accommodation, and the respondents repudiated the lease agreements by engaging in a rental boycott and hijacking the property.

[18] As regards to the interdict, the applicant avers that in anticipation of the appointment of a new managing agent, one of the managing agent's personnel, Mr Thabang Musetha (the building manager) was allocated a unit on 27 July 2022 at the property. On the same evening Mr Musetha was unlawfully evicted



from the property by a group of respondents and his personal belongings were removed there from.

[19] On 1 August 2020, a large group of the respondents marched and blockaded the applicant's property. The respondents closed the main gate and prevented people (including other tenants) from entering or leaving the property.

[20] Further to the march and blockade, the respondents allegedly picketed in front of the main entrance to the property and expelled the applicant's security personnel from the property after seizing the master keys to all the units.

[21] An interdict was sought against the respondents on 3 August 2022 which was granted by Wepener J of this Division. ("Wepener Order").

[22] Following the granting of the order, the applicant's security personnel attempted to regain control of the property and the gate. Notwithstanding the Wepener J Order, the group of respondents resisted the attempt and assaulted the security personnel by pouring them with boiling water and pelted them with stones and in the process damaged the vehicles parked nearby. The security personnel had no option but to flee for their lives, leaving the property unguarded and still under the unlawful possession of the respondents.

[23] On the 5 August 2022 and that time accompanied by members of the South African Police Service, the applicant's security personnel attempted to regain control of the property. The respondents who were manning the property gate resisted and refused to agree to the police's request to allow the applicants security personnel to take charge of the property. The police refused to take further action to enforce the Wepener J Order. As a consequence, the applicant's security personnel could not regain control at the gate and the property.

- [24] The applicants attempt to engage the respondents to regain control of its property yielded no results. Its attempts through its attorneys' demand letter to cooperate also came to naught. Notwithstanding the warning from the applicant's attorney that the conduct of the respondents was unlawful as it was clearly a building hijacking, the respondents refused to barge.
- [25] As a consequence of the property having been hijacked and the master key to all the units being in the possession of the applicant, the applicant approached this court for vindication of its rights. This is more so as all other tenants are at risk as their units could be accessed with the master key.
- [26] In an answer to the applicant's case, the respondents contend that the case was not urgent and claim that an eviction application was pending. That eviction application was however removed from the court roll.
- [27] The evidence of the respondents' opposing affidavit was to simply deny all the serious allegations against them without offering any version.
- [28] However, on 26 August 2022, the respondents filed a further opposing affidavit which was in addition to the one filed by Mr Maduka ("Mr Maduka") on 25 August 2022. The second affidavit was signed by Ms Cynthia Maphala Selota ("Ms Selota") and it was filed without leave of this Court and without an agreement from applicant that it could be filed. I condone the second affidavit so as to have the full picture of what the respondents' defence is in the proceedings.
- [29] In the second affidavit Ms Selota states that she has read the founding affidavit of the applicant and contends that the applicant is engaged in the abuse of court process. She contends that the third respondent was evicted in *absentia* from his unit by the court on 9 June 2020 by Twala J (Twala J Order) and the order was executed on 15 August 2022.

- [30] Ms Selota furthermore contends that during 2022, the applicant launched eviction proceedings against the 98th respondent (“Ms Andiswa Mabundzi”) under case no 2022/4161 the return date of which was 5 September 2022.
- [31] Furthermore Ms Selota contends that there is also a pending eviction application against the 146<sup>th</sup> respondent (“Mr Patrick Magopo”) in this court under case no 21/58692 in terms of which the section 4(2) of the PIE Act was authorised on 22 March 2022 with the return date being 18 August 2022. As a consequence of the pending applications against the three respondents mentioned, it is the respondents’ submission that the applicant is engaged in the abuse of court process.
- [32] The remainder of the second opposing affidavit simply amounts to denials and certain inferences that what is alleged in the founding papers relating to the information prior to the 1<sup>st</sup> August 2022 (it being the date on which the new management agent was appointed) is impossible.
- [33] As a consequence of the application, some of the respondents, as already stated, had entered into settlements and paid their overdue rental as per annexure “X” attached to the consolidated replying affidavit.
- [34] The issue for termination was whether the applicant made out a case for eviction in terms of section 5 (1) of the PIE Act and whether it was engaged in the abuse of court process and the interdict.
- [35] Section 5 (1) of the PIE Act envisages urgent proceedings for eviction and provides as follows:

*“Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an*

*unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that –*

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;*
- (b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and*
- (c) There is no other effective remedy available”*

[36] Section 5(2) of the PIE Act provides as follows:

*“Before the hearing of the proceedings contemplated in (1), the court must give written and effective notice of the intention of the owner or person in charge to obtain an order for eviction of the unlawful occupier to the unlawful occupier and the Municipality in whose area of jurisdiction the land is situated.*

[37] It is clear that all three elements of section 5(1) of the PIE Act must be demonstrated before the order is granted. This court has had a chance in the past to deal with the ramifications of section 5(1) applications. In *Shanike Investments No 85 (Pty) Ltd and Another v Ndimma and Others*<sup>1</sup> the court held as follows:

*“[19] It will be apparent that the subsections to section 5 (1) substantially mirror the requirements for an urgent intern interdictory or mandatory order namely:*

- (a) The basis of urgency and well-grounded apprehension or irreparable harm, which is set out in subsection 1 (a);*

<sup>1</sup> 2015(2) SA 610 at paras 19-21

- (b) *The factors affecting the balance of convenience which are set out in subsection 1(b);*
- (c) *There is no other effective remedy (subsection 1 (c)); and*
- (d) *The right to eject is dependent on the respondent being an 'unlawful occupier' for the purpose of affording the remedy under section 5 and as that term is defined in section 1.*

[20] *It is therefore evident that the requirements, including that of urgency are statutorily prescribed. The requirement of urgency will be met in terms of section 5 (1) (a) if the court is satisfied... that there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land.'*

*'Land' in the section (1) definition includes a portion of land.*

[21] *In order to determine whether the matter is urgent it is first necessary to consider whether the application is able to satisfy the court that each individual respondent, acting on his own or in association with others, poses a real and imminent danger of inflicting substantial injury or damage to any person or to the prosperity."*

[38] In *SWDC Holdings (Pty) Ltd v Buthelezi and Others*<sup>2</sup> it was held as follows in regard to the allegations of violence:

*"There is in respect of the allegations of violence a dispute of fact, and that dispute affects both legs of the applicant's case. The approach which I am required to adopt in dealing with the situation which is set out in the well-known decision of Webster v Mitchell*<sup>3</sup>. *The relevant extract from the headnote reads as follows:*

<sup>2</sup> (16494/2018) [2018] zagpjhc456 at 22

<sup>3</sup> 1948 (1) SA 1186 (W)

*'In an application for a temporary interdict the applicant's rights need to be shown by a balance of probabilities. It is sufficient if such right is prima facie established, though open to some doubt.*

*The proper manner is to take the facts as set out by the applicant together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether having regard to the inherent probabilities, the applicant could on those facts obtain final relief at trial.*

*The facts set up in contradiction by the respondents should then be considered, and if serious doubt is thrown upon the case of the applicant, he could not succeed. In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown the court acts on the balance of convenience.*

*If though there is prejudice to the respondent, and that prejudice is less than that of the Applicant, the interdict will be granted, subject if possible, to conditions which will protect the respondent."*

[39] I am also bound to follow the *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty Ltd)*<sup>4</sup> principle which is to the following effect:

- (a) The general rule is still that proceedings where disputes of fact have arisen on affidavits, a final order, where an interdict or some other form of relief, may be granted if the facts averred in the applicant's affidavit which have been admitted by the respondent, together with the facts alleged by the respondents, justify such an order.
- (b) The power of court to give such final relief on the papers before it is, however, not confined to such situations.

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<sup>4</sup> 1984 (3) SA 623 (A)

(c) In certain cases denial by a respondent of a fact alleged by an applicant may not raise a real, genuine or bona fide dispute of fact. If the respondent in such a case failed to apply for the deponent (s) concerned to be called for cross-examination under Rule 6 (5) (g) of the Uniform Rules of Court, and if the court is satisfied as to the inherent credibility of the applicant's averments, the court may decide the disputed fact in the applicant's favour without hearing oral evidence.

[40] The fact is that the section 5 (1) of PIE Act application was brought as a result of the situation having escalated by not only the rental boycott, but by seizing of the master keys to the whole property and the expulsion of the security personnel of the applicant. This conduct is exacerbated by the expulsion of the building manager of the management agent from the property leaving the property completely unsecured. This behaviour by the respondents, who have not provided any answer to the allegations but simply denied them, is impermissible as taking law in one's hands undermines one of the key foundations of our constitutional order.

[41] The media is replete with articles dealing with building hijackings. If the courts do not intervene, this will, in my considered view, undermine our rule of law and risk this country going into chaos. I say so given that the police were powerless to enforce the law by assisting the applicant to regain control of its property.

[42] I now deal with whether the respondents have provided evidence to show that the interim relief will be prejudicial. In order to do so it is important to consider the answer provided by both Mr Maduka and Ms Selota. Mr Maduka's evidence is significantly thin on this point and does not provide the court with any information regarding any prejudice to be suffered by the respondents.

- [43] I now turn to the answering affidavit by Ms Selota to assess if there is any factual basis for prejudice to be suffered if the interim order in terms of section 5 (1) of the PIE Act is favourably considered. Having considered the evidence from the papers I have not found that Ms Selota has shown any prejudice to be suffered by the Respondents.
- [44] From the papers, it is evident that the applicant has established a *prima facie* right. It has demonstrated that due to the rental boycott, it is not able to achieve the 95% rental revenue as required by the law governing the government social housing scheme. It has also demonstrated an imminent danger by showing that not only was the building hijacked but that its security personnel were expelled from the property to be free for all.
- [45] I now deal with whether the respondents have asserted any right to resist the application for eviction. The respondents do not aver, for instance that they have the owner's consent to be in the property or that they have valid lease agreements and that they are paying rental in terms thereof. They have remained silent on this point and the only inference to be drawn is that they have rendered themselves to be unlawful occupiers by boycotting the rent and by hijacking the property. They therefore fall within the purview of the PIE Act.
- [46] The last point I need to deal with is whether the applicant has engaged in the abuse of court process by citing in this application the three respondents who were the subject of the section 4 (2) of the PIE Act application, in other unrelated proceedings.
- [47] It is important to consider the legal principles on abuse of the court process. If for instance the subject of litigation is based on the same facts and cause of action which had been previously determined by court, it has been held by our courts



that bringing the same action for determination is the evidence of abuse of court process.

[48] In *Scalandair Shipping and Forwarding v Slash Clothing Co (Pty) Ltd*<sup>5</sup> the court had to decide whether the action brought in the high court on a matter that was also falling within the magistrate's court jurisdiction was indicative of the abuse. The court held that it had concurrent jurisdiction and that the bringing of the action to it did not amount to abuse of court process.

[49] In the instant application, it is evident that although the three respondents who had initially been cited individually in the section 4(2) of the PIE Act applications had yet had their actions finalised, the facts had escalated to imminent threat of violence and damage to person and property. It is therefore my considered view, the applicant was within its rights to bring the section 5 (1) application which included the three respondents and that conduct does not amount to abuse of the court process .

[50] I was therefore satisfied when I considered the application, having regard to the papers and the submissions by both counsel for the parties that the applicant has succeeded to show a *prima facie* right to obtain the interim relief.

[51] I was fortified in my order by the fact that the respondents were given an opportunity to settle the arrear rental and enter into settlement arrangement regarding the damages on loss of revenue by the applicant.

[52] More importantly, I had regard to the undisputed fact that the project was a social housing scheme funded with the State's grant and that in order for it to remain viable in terms of the law, it had to continue collecting at least 95% of the rental from its tenants which it was not able to achieve due to the rental boycott and property being hijacked.

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<sup>5</sup> 1987 (2) SA 635 (W) at 639 I -J

[53] I therefore stand by the order I made.

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**ML SENYATSI**  
**JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION, JOHANNESBURG**

Date of order granted: 26 August 2022

Date of reasons: 17 November 2022

### **APPEARANCES**

Counsel for the applicants: Adv C van der Merwe

Instructed by: Vermaak Marshall Well beloved Inc.

Counsel for the 4<sup>th</sup>, 7<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 31<sup>st</sup>, 36<sup>th</sup>, 64<sup>th</sup>, 81<sup>st</sup>, 82<sup>nd</sup>, 85<sup>th</sup>, 90<sup>th</sup>, 99<sup>th</sup>, 121<sup>st</sup>, 142<sup>nd</sup>, 144<sup>th</sup>-145<sup>th</sup> and 148<sup>th</sup> respondents: Mr AJ Masiye

Instructed by: AJ Masiye Attorneys

Counsel for the remaining respondents: Mr E T Paile

Instructed by: E T Paile Inc Attorneys