

PROVINCIAL POLICE COMMISSIONER:**GAUTENG THE METROPOLITAN****Fourth****Respondent****MUNICIPALITY OF THE CITY OF JOHANNESBURG****Fifth****Respondent****THE SHERIFF OF THE COURT WESTONARIA****Sixth****Respondent****THE ILLEGAL PROPPERTY INVADERS****Seventh****Respondent**

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email, and uploaded on caselines electronic platform. The date for hand-down is deemed to be 18 May 2022.

Summary: Urgent application- interdict and eviction of invaders of incomplete buildings on a construction site. Prevention Illegal Eviction Act not applicable.

REASONS FOR THE ORDER

MOLAHLEHI J

[1] This judgment provides the reasons for the order made by this court dated 1 May 2022, which reads as follows:

- 1) “That this application is enrolled and heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court and that the non-compliance with the rules and the Honourable Court’s practice directives pertaining to time periods, urgent applications and service, be condoned.
- 2) Directing the First, Second and Seventh Respondents, and any of their assigns, agents and/or associates acting under their instructions to immediately vacate the property more fully described as Erf 11384 Lenasia Extension 13 Township, Registration Division IQ, Province of Gauteng (“**the Construction Site**”).
- 3) Interdicting and restraining the First, Second and Seventh Respondents and any of their assigns, agents and/or associates acting under their instructions from entering the Construction Site.
- 4) Interdicting and restraining the First, Second and Seventh Respondents together with any of their assigns, agents and/or associates acting under their instructions from: -
 - 4.1 unlawfully intimidating, threatening, interrogating and/or harming in any way whatsoever, any construction workers employed by the Applicant and/or their agent and any of the Applicant’s service providers situated at the Construction Site.
 - 4.2 unlawfully obstructing any entrances or exits to the Construction Site by *inter alia*, locking gates, placing any obstruction of any kind in the road leading to such Construction Site or gathering outside of such gate leading to the Construction Site.
 - 4.3 unlawfully preventing or restricting freedom of movement of the Applicant’s personnel, the Applicant’s contractors, employees, representatives or any person/s visiting the Construction Site in any manner whatsoever.
 - 4.4 damaging any property of the Applicant, its contractors, employees and/or representatives or any other person/s visiting the Construction Site.

- 4.5 Inciting any violence or harm against any of the Applicant's staff, personnel and/or sub-contractors present on the Construction Site.
- 4.6 unlawfully threatening the Applicant with the closure of its contractor's business activities at the Construction Site.
- 4.7 unlawfully enticing, organising and/or mobilising any community members, staff of the Applicant and/or its contractors to unlawfully disrupt the construction works at the Construction Site.
- 5) Authorising the Sixth Respondent to effect service of the Order by way of affixing copies of the Order to the main entrance gate to the Construction Site, and to read the contents of the order through a loud hailer at the main entrance gate to the Construction Site.
- 6) Ordering the Third, Fourth and Fifth Respondents and the responsible head of the South African Police Services Lenasia, to immediately and in any event within 24 hours from the date and time of service of this Order, to despatch the necessary policing units to fulfil their constitutional mandate to the Applicant in respect of the Construction Site.
- 7) Ordering the Third, Fourth and Fifth Respondent to take all necessary steps to secure and protect the Construction Site for the duration of the threat to disrupt construction works and to do all things necessary, within the ambit of the prevailing laws of the Republic of South Africa and their constitutional and statutory mandate in order to disperse, prevent or cease any unlawful conduct at the Construction Site, upon receipt of a complaint by the Applicant.
- 8) No Order as to Costs."

[2] As appears from the above, the order was made following the urgent application that had been instituted by the applicant, YMB Investments, (Pty) Ltd, (YMB) seeking an interdict the respondents from entering the construction site including enticing community members from doing the same. The order further directed that the respondents be evicted from the buildings.

[3] YMB is a company with limited liability incorporated in terms of the company laws of the Republic of South Africa. The property, which was the subject of the interdict is described as capital Erf 11384 Lenasia, Extension 13, Township division IQ Province of Gauteng measuring 1247 hectares zoned as a residential area.

[4] It is common cause that YMB is in the process of building triple story buildings to house about 84 residential housing units, with the intention of either selling or leasing them.

[5] The seven respondents including Ms Molale and Mr Buthelezi are accused of invading and seeking to illegally occupying the unfinished units at the construction site. The first and second respondents are specifically accused of selling the unfinished units to the unsuspecting members of the community.

[6] The applicant in its founding affidavit indicated that the purpose of the application was to immediately arrest the criminal conduct of Ms Molale and Mr Buthelezi of unlawfully hijacked and invading the buildings at the construction site on 19 March 2022.

[7] YMB further sought an order interdicting the two respondents from unlawfully selling the unfinished residential units for the value of R2000.00 and a monthly levy of R500.00 to the unsuspecting members of the public.

[8] It is not in dispute that YMB purchased the land on which the construction development is taking place and commenced the construction during 2018, beginning 2019. The construction project was interrupted by the Covid-19 pandemic. At that time the construction was incomplete and building construction stopped.

[9] On 19 March 2022, YMB appointed Lethal Force Security to secure and protect the construction site, after receiving information few days before that the buildings were being vandalised and things were being stolen.

[10] On arrival at the construction site Lethal Force was, according to YMB confronted by ten men, some of whom were armed, and demanded to meet with the owner of the building.

[11] On 22 March 2022 the deponent, Mr Surtee, to the founding affidavit opened a case against the invaders or trespassers at the Lenasia police station. He received information after reporting the case that more people were moving into the buildings. He proceeded to the construction site where he met with Mr Buthelezi, who at the time had apparently already registered hundred and sixty persons to occupy the unfinished units. He further informed him and other directors that he was informed that the building had been abandoned by an owner who owes the South African Revenue Services (SARS) a significant amount of money and apparently immigrated to Australia.

[12] The respondents opposed the application and filed an answering affidavit. They opposed the application on the following grounds:

12.1 “The application is not urgent

12.2 The applicant fails to make out a case against the first and second respondent and there has been a non-joinder of the first and second respondent

12.3 The applicant is on a frolic and simply abuses the processes of the court

12.4 The applicant seeks a final interdict for the respondents to be evicted from the property.

The applicant has failed to set out the facts and evidence which will entitle the court to grant a final relief.”

13 The respondent also raised a point about mis-joinder of the first respondent. I pause to indicate, having regard to the established principles of joinder, that there is no merit in this point, as the facts and circumstances of this case show that even though she may not be staying in the unfinished units, she has been accused of constructively orchestrating the process of the alleged invasion, occupation and of selling illegally the units to members of the public.

14 The respondents further in their answering affidavit deal with the issue of the circumstances of those they contend are occupiers in the buildings. They make the following allegations:

- “(a) There are 13 minor children residing in the building. The majority of whom a school going.
- (b) There are twenty-five elderly persons and one of them is mentally challenged.
- (c) About thirty percent of the people in the building consists of female headed household.
- (d) One of the occupiers gave birth in December 2021.”

15 In paragraph 55 of the answering affidavit the respondents in stating the reason for being on the premises state the following:

- “55. As a results of hooliganism and vandalism that took place before occupiers moved and occupied units on {insert date} (the date was never filled in), the occupiers had successfully managed to obtain the following services:
- 55.1 Each unit comprises running water
 - 55.2 we use candles and flammables, to cook we use gas stoves, which are utilised safely with doors and windows open,
 - 55.3 We have managed to obtain portable toilets services that are removed every three days at a costs of Five rand (R5.00) each house.”

16 The deponent to the answering affidavit denies that the first respondent reside in any of the buildings on the construction site but that she resides at a house far from the buildings.

17 In granting the relief sought I agreed with YMB that the respondents’ conduct was unlawful and that they were not entitled to act as they did. The record will reveal that a fair amount of time was spent interrogating the safety of the occupation of the

buildings and more particularly the safety of the children having regard to the condition of the buildings as reflected by the photos annexed to the papers.

18 I also concluded that the provisions of the Prevention of Illegal Eviction of Land Act 19 of 1998 (the PIE Act) did not in the circumstances find application. The fundamental reason for this is that the respondents on their own version say that they invaded the property and were not occupiers. The underlying reason for the occupation of the buildings is to provide security and policing services seeing that the owner had abandoned the construction site. They claim to have occupied the buildings with the sole purpose of addressing crime in the area as the buildings had become a haven for prostitutes and drug dealers.

19 In my view, the balance of probabilities favours the proposition that the respondents were involved in criminal conduct and sought in some way to hijack the buildings. The owner intervened, as soon as it received information that the respondent was invading and hijacking the property. This version supports the proposition that the respondents were not residing in the building but were invading it at the point the owner objected to their conduct. There is no evidence that they had been residing in the buildings for any significant period of time.

20 Furthermore, the respondents have failed to demonstrate in their answering affidavit that they can be regarded as the occupiers of the building, constituting, as it would be, their "homes" and thus are entitled to claim protection under the PIE Act. In other words, they have failed to demonstrate in their answering affidavit that they had exercised regular occupation coupled with some degree of permanence in the building to qualify them with the protection under the PIE Act. As would appear in the answering affidavit, they failed to indicate the period of occupation of the building.

21 It was for the above reasons that I concluded that the YMB had successfully made out a case entitling them to the relief sought in the notice of motion.

22 The above is in line with approach adopted in the unreported judgment in City of Cape town & Another vs Occupiers of Erf 4832 Phillipi case number 5746 and 5747 2000 (C), where the court held that to condone land invasion would be “to allow the law of the jungle to prevail rather than the rule of law.” This court cannot countenance the illegal conduct of the respondents. Their conduct cannot be justified under the principles envisaged under PIE.

23 It was for the above reasons that I granted the order quoted at paragraph [1] of this judgement.

E MOLAHLEHI J
Judge of the High Court
Gauteng Local Division,
Johannesburg

Representation

For the applicant: Adv Cajee

Instructed by: AR Mohamed Attorneys

For the respondent: Adv

Instructed by: JVS Attorneys

Order: 31 March 2022

Reasons: 18 May 2022.