



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

CASE NO: 2019/23781

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	DATE
	SIGNATURE

In the matter between:

MELROSE ARCH INVESTMENT HOLDINGS (PTY) LTD	Applicant
and	
NGIELE, MIRIAM	First Respondent
KAYEMBE, PITSHOU MUBENGA	Second Respondent
OTHER UNKNOWN UNLAWFUL OCCUPIERS OF UNIT 4 (WHITE WALL) BALDEEN COURT, 69 CORLETT DRIVE, BIRNAM	Third Respondent
OTHER UNKNOWN UNLAWFUL OCCUPIERS OF UNIT 4 (FACEBRICK WALL) BALDEEN COURT, 69 CORLETT DRIVE, BIRNAM	Fourth Respondent
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY	Fifth Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Eviction – residential premises – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act – Rental Housing Act – Eviction order just and equitable

Order

[1] In this matter I make the following order:

1. *The first and second respondents and anybody occupying with or through them are ordered to vacate the property at Baldeen Court, 69 Corlett Drive, Birnam, including the part of the property identified as “Unit 4 (White Wall)” and “Unit 4 (Facebrick Wall)”, within thirty days from the date of this order;*
2. *The Sheriff and Deputy Sheriff of the Court are authorised and instructed to carry out the eviction and to remove the respondents and all persons who occupy with or through her from the property situate at Baldeen Court, 69 Corlett Drive, Birnam, including the part of the property identified as “Unit 4 (White Wall)” and “Unit 4 (Facebrick Wall),” after the expiry of the thirty day period referred to above, in the event of the respondents or any other person failing to comply with the order;*
3. *The first and second respondents are ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

INTRODUCTION

[3] This is an application for the eviction of the first and second respondent and

other occupiers of two residential Units at Baldeen Court, 69 Corlett Drive, Birnam, identified as “Unit 4 (White Wall)” and “Unit 4 (Facebrick Wall).” The applicant is the owner of the property.¹

[4] The applicant acquired the property in 2018 with a view to demolish the existing structures and to develop the property. The re-development of the premises is allegedly being frustrated by the refusal of the occupiers of the aforesaid Unit 4 to vacate. Other leases at the property have been cancelled and the supermarket carrying on business at the property is subject to a one-month termination notice once the applicant is able to determine a time - frame for demolition.

[5] The first respondent occupied under a hand-written lease agreement with the previous owner dated 6 July 2015 in terms of which she was entitled to occupation on a “month to month basis either way”.² The second respondent had an oral lease with the previous owner on the basis of a monthly tenancy.

[6] In November 2018 the applicant caused cancellation notices to be served on the first and second respondents terminating the leases as from 4 January 2019.

[7] Meetings were held and both the first and second respondents obtained an indulgence to stay in occupation until the end of January 2019. Further indulgences were discussed but were refused. The respondents refused to vacate the property.

[8] The City of Johannesburg restricted municipal services to the property as amounts were alleged to be outstanding. This is a live dispute between the applicant and the City.

¹ Paragraph 15 of founding affidavit (Caselines 002-5)

² Caselines 006-10

THE RENTAL HOUSING ACT

[9] The first respondent relied *inter alia* on section 4 of the Rental Housing Act, 50 of 1999. Section 4(5)(c) provides that the landlord's rights against the tenant include its right to terminate a lease in respect of rental housing property on grounds that do not constitute an unfair practice. The first respondent states that the applicant's termination of her occupation and intention to re-develop the property constitute an unfair practice.

[10] There is nothing to indicate that the applicant's actions amount to an unfair practice. An '*unfair practice*' is defined in section 1 of the Rental Housing Act as

(a) *any act or omission by a landlord or tenant in contravention of this Act;*

or

(b) *a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord.*

THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT

[11] The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 apply to the application. In considering an eviction application a Court must have regard to, *inter alia*, section 4 of the Act. Section 4(7) to (9) read as follows:

(7) 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.

(8) 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).

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.

[12] Mojapelo AJ said in the matter of *Occupiers, Berea v De Wet NO*:³

“[47] It deserves to be emphasised that the duty that rests on the court under s 26(3) of the Constitution and s 4 of PIE goes beyond the 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 first and foremost 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.

³ *Occupiers, Berea v De Wet NO* 2017 (5) SA 346 (CC) paragraph 47. See also paragraphs 39 to 57 of the *Berea* judgment and *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) paragraph 36; *Machele v Mailula* 2010 (2) SA 257 (CC) paragraph 15; *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) paragraphs 11 to 25; *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA).

CONCLUSION

[13] It is just and equitable that an eviction order be granted. The respondents have been in occupation since the termination of their rights to occupy in 2019.

[14] I therefore make the order set out in paragraph 1 above.

**J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **11 OCTOBER 2022**

COUNSEL FOR THE APPLICANT:	E COLEMAN (heads by S P M VORSTER)
INSTRUCTED BY	CL LOURENS INC ATTORNEYS
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INSTRUCTED BY:	MAGUNDA ATTORNEYS
DATE OF THE HEARING:	4 OCTOBER 2022
DATE OF ORDER:	11 OCTOBER 2022
DATE OF JUDGMENT:	11 OCTOBER 2022