

REPUBLIC OF SOUTH AFRICA



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

Case Number: 30321/2021

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

...18 September 2023.....

.....
DATE
SIGNATURE

JOHANNESBURG SOCIAL HOUSING COMPANY (PTY) LTD Applicant

and

MBATHA, VERONICA NTOMBIFUTHI Respondent

This judgment was handed down electronically by circulation to the parties/and or parties' representatives and uploading on CaseLines. The date and time of hand-down is deemed to be 18 September 2023 at 10h00.

JUDGMENT

JORDAAN AJ

INTRODUCTION

[1] This is an opposed application for eviction in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The applicant is the Johannesburg Social Housing Company (Pty) Ltd, a municipal-owned entity mandated by the City to manage social housing projects.¹ The applicant was tasked to manage Unit 006, Block B, Tshedzani Flats Phase 3, Corner Nefdt and Lambert Streets, Roodepoort Inner City, Roodepoort (the property) which was purchased with public funds, as part of the larger social housing project used for the provision of subsidised social housing to persons who are able to contribute to the provision of such housing through rental.²

[2] The respondent is Ms Veronica Mbatha, a private person who occupied the property through a written lease agreement.³

FACTUAL BACKGROUND

[3] On 25th February 2009⁴ a written lease agreement was concluded on between the respondent and the applicant, in terms of which the applicant would lease the property at a monthly rental amount of R 1650,00 (One Thousand, Six Hundred and Fifty rand) per month from the respondent with effect from the 01st of March 2009 for an indefinite period.

¹ CaseLines 001-6 paragraph 3

² CaseLines 001-6 paragraph 4, 001-7 paragraph 6

³ CaseLines 001-7 paragraph 8

⁴ CaseLines 001-7 paragraph 8, 001-24

[4] The respondent failed to pay the rental and other amounts due, as a result she was in arrears with her payments in the amount of R60 971.46 at March 2021. On the 30th of March 2021 the letter of demand was personally served on the respondent.⁵

APPLICANTS CASE

[5] The applicant submits that subsequent to the respondent's continued failure to comply with its obligations under the written lease agreement, the applicant cancelled the lease agreement in a letter dated 23 April 2021 and served on the 05th of May 2021.⁶

[6] The applicant therefor contends that the respondent is in unlawful occupation of the property, since the lease agreement which was the basis of the respondent's occupation of the property has been cancelled

RESPONDENTS CASE

[7] The respondent disputed that it was in unlawful occupation of the property.⁷

⁵ CaseLines 001-29

⁶ CaseLines 001-9 paragraph 13

⁷ CaseLines 013-2 paragraph 5 and 013-5 paragraph 20

[8] The respondent further submitted that its non-payment was due to dire financial constraints as a result of retrenchment and a reduced current income of R1 200 per month.⁸

[9] The respondent contended that should the eviction order be granted it would be relegated to being homeless.⁹ Respondent occupies the premises with her 12yr old daughter who is doing grade 7, her 64year old mother who is a pensioner, her 19year old nephew who is in grade 12, her 9year old niece who is in grade 3, her 21year old son accepted for tertiary studies.¹⁰

ISSUES

[10] The following issues are not in dispute between the Parties:

1. that a rental lease contract was entered between the applicant and the respondent for an indefinite period,¹¹
2. that the applicant has control and management of the property,
3. that the applicant is in occupation of the property,
4. that the applicant is in arrears with her monthly rental payments and
5. that a letter of demand was served on the applicant.¹²

[11] What is in dispute between the Parties is whether the applicant is an unlawful occupier of the property.

⁸ CaseLines 013-3 paragraph 12

⁹ CaseLines 013-4 paragraph 15

¹⁰ CaseLines 013-2 paragraph 6

¹¹ CaseLines 001-7 paragraph 9.1 and 001-15 under heading Terms

¹² CaseLines 001-29

[12] This Court is thus called upon to determine:

1. whether the respondent is an unlawful occupier of the property, and if so
2. whether the applicant has satisfied the court that it is just and equitable to evict the respondent and those who occupy the property through her.

APPLICABLE LEGAL PRINCIPLES

[13] Section 26 of the Constitution¹³ reads as follows:

1. Everyone has the right to have access to adequate housing;
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

[14] It is trite that the PIE Act has its roots, inter alia, in the provisions of section 26 of the Constitution.¹⁴ The PIE Act was enacted to provide for lawful procedures for the eviction of unlawful occupiers.

¹³ The Constitution of the Republic of South Africa, Act 108 of 1996

¹⁴ Residents of Joe Slovo Community, Western Cape v Tubelisha Homes and Others 2010 (3) SA 454 (CC) at paragraph 233

[15] The jurisdictional requirement that triggers an application for eviction in terms the PIE Act is outlined in section 4 thereof. The following is stated in Section 4 (1) of the PE Act:

'Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.'

[16] Section 1 of the PIE Act, which is the definitions section, defines an owner and an unlawful occupier as following:

“An owner means the registered owner of land, including an organ of state. An unlawful occupier means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996(Act 31 of 1996).”

[17] Section 4 (7) of PIE provides that:

“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 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 landowner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”

[18] The term ‘just and equitable’ is not defined in the PIE Act. It denotes a qualitative description of a conclusion that the court reached after examining various factors and considerations. The words ‘just and equitable’ are sufficiently elastic to allow courts the discretion to intervene against inequity.¹⁵

[19] A reading of section 4 (7) together with section 4 (8) of the PIE Act reveals that the court is required to make two ‘just and equitable’ determinations: the first as to whether it would be ‘just and equitable to grant an order for eviction and the second as to the date upon which it should be ordered that the occupier is to vacate the property.¹⁶ The determinations as to the date upon which the occupier is to vacate the property is then followed by a determination as to a further date when the occupier should be evicted.

[20] Having regard to the provisions of the PIE Act, in order to succeed in an application for eviction, an applicant needs to satisfy the court that –

¹⁵ Phoko and Others v Ekurhuleni Metropolitan Municipality 2015(5) SA 600 (CC)

¹⁶ Section 4(8) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998

- (a) It is an owner or person in control of the land or immovable property;
- (b) The respondent is an unlawful occupier; and
- (c) It is just and equitable to grant the eviction order.

EVALUATION

[21] Having regard to the jurisdictional requirement that triggers an application for eviction in terms the PIE Act, for an applicant to be able to institute eviction proceedings, a residential tenant must be an unlawful occupier. For a tenant to be deemed as an unlawful occupier, a lease agreement between a tenant and owner or person in control must have been terminated or lapsed, whereafter and despite the termination of the agreement, the tenant continues to exercise occupation of the premises, which occupation is also without the consent of the owner and/or person in control.

[22] It is the Applicant's case that the respondent failed to pay the rental and other amounts due, as a result the respondent was in arrears in the amount of R60 971.46 at March 2021. On the 30th of March 2021 applicant's letter of demand was personally served on the respondent.¹⁷

[23] The applicant submits that subsequent to the respondent's continued failure to comply with its obligations under the written lease agreement,

¹⁷ CaseLines 001-29

the applicant cancelled the lease agreement in a letter dated 23 April 2021 and served same on the 05th of May 2021.¹⁸

[24] The applicant in their written heads of argument buttressed the unlawfulness of the occupation by the respondent by submitting that the lease agreement “is now expired and the expired lease agreement was nonetheless cancelled” and therefor contends that the respondent is in unlawful occupation of the property, since the lease agreement which was the basis of the respondent’s occupation of the property has been cancelled.¹⁹

[25] When regard is had to the applicant’s founding affidavit it states:

“The respondent, as tenant, would lease the Property with effect from 01 March 2009 from the applicant at a monthly rental of R1,650.00 (One Thousand, Six Hundred and Fifty rand) per month, for an indefinite period”²⁰(my emphasis). This renders the applicant’s submissions that the lease “expired” without merit as it was an indefinite lease which cannot without more just “expire”.

[26] The applicant contend that the cancellation of the lease was personally served on the respondent by the Sheriff as per Annexures “E1 and E2”.²¹ This contention of the applicant is with respect also without merit, while Annexure “E1” is indeed a letter of cancellation of agreement,

¹⁸ CaseLines 001-9 paragraph 13

¹⁹ CaseLines 017-8 paragraph 15

²⁰ CaseLines 001-7 paragraph 9.1

²¹ CaseLines 001-9 to 001-10 paragraph 13

the letter of cancellation of agreement was not served on the respondent as per Annexure “E2”, what was indeed served as per Annexure “E2” was a letter of demand.²²

[27] Furthermore, having regard to the Terms of the agreement, it makes provision for one month’s notice period for indefinite leases.²³ No proof of such notice is contained in the application.

[28] In the absence of proof cancellation as averred, this Court finds that the rental agreement between the applicant and the respondent was never cancelled and remains in force and effect. As a consequence, the respondent is not in unlawful occupation of the property.

[29] In the premises, the following order is made:

29.1 The application for eviction dismissed.

29.2 Each party to bear their own costs.

M T Jordaan

Acting Judge of the High Court,

Johannesburg

APPEARANCES

²² CaseLines 001-31

²³ CaseLines 001-16

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Date of hearing:	07 March 2023
Date of judgment:	18 September 2023

