

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2022/23317

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

21 November 2023

.....

DATE

SIGNATURE

In the matter between:

CONRAD LODEWYK SCHOONBEE N.O	First Applicant
ANGELA DEBORAH SCHOONBEE N.O	Second Applicant
GERHARD JOHANNES VISSER N.O	Third Applicant
obo BY DIE GROOT DORINGBOOM INVESTMENT TRUST (IT 9894/2006)	

and

WOLFGANG WOHLKINGER	First Respondent
RUI MIGUEL DE FIGUEIREDO N.O	Second Respondent
TANYA ROCHA N.O	Third Respondent
obo LWWS HOLDINGS TRUST (IT3059/2004)	
THE UNKNOWN OCCUPIERS OF UNIT 5 MONT BLANC HEIGHTS	Fourth Respondent
EKHURULENI METROPOLITAN MUNICIPALITY	Fifth Respondent

JUDGMENT

DE BEER AJ

This matter has been heard in open court and is otherwise disposed of in terms of the Directives of the Judge President of this Division. The judgment and order are accordingly published and distributed electronically and handing it down.

INTRODUCTION

1. The Applicants on behalf of the By Die Groot Doringboom Investment Trust (IT 9894/2006) (“Investment Trust”), issued an application in terms of section 4 of the Prevention of Illegal Eviction Act, Act 19 of 1998 (“PIE Act”) on 30 June 2022 and seek an order evicting the Respondents and all persons occupying or claiming occupation through them from the immovable property known as Unit 5, Mont Blanc Heights, situated at Sovereign and Oxford Streets, Bedford Gardens, Bedfordview (“the property”). The Applicants, *nomine officio* (“No”), being the registered owners of the said property also rely on the *rei vindicatio* claiming possession.
2. The First to Fourth Respondents filed a notice of intention to defend dated 8 September 2022. The Respondents’ answering affidavit was served on 14 October 2022.
3. The First Respondent occupies and or periodically occupies the said unit. The Second and Third Respondents acts *nomine officio* on behalf of LWWS Holdings Trust IT 3059/2004 (“LWWS Trust”) and claims to be in lawful occupation of the property, premised on a lease agreement entered into with the original owners, Rapiprop 149 Pty (in liquidation) (“Rapiprop”) which commenced on 1 December 2009. The Fourth Respondents’ particulars are unknown and although represented by Suder Attorneys no further description emanates from the answering affidavit. All the Respondents are represented

by Suder Attorneys. The Fifth Respondent is the municipality of Ekurhuleni cited as an interested party against whom no relief is sought.

BACKGROUND

4. The property was one of seventeen units in the Sectional Title Scheme known as Mont Blanc Heights which were auctioned off by the liquidators of Rapiprop 149 Pty (in liquidation) ("Rapiprop") on or about 14 March 2019.
5. New Canada Developments CC purchased the property from the liquidators of Rapiprop at a public auction on 14 March 2019.
6. From the available evidence it appears that the First Applicant had membership in New Canada Developments CC when the Investment Trust purchased the property.
7. The sale agreement for the property entered into between New Canada Developments CC and the Liquidators of Rapiprop 149 Pty Ltd, paragraph 7 thereof, records that occupation of the property shall be given to the purchaser on the transfer date by which the seller shall vacate the property. Vacancy however not being guaranteed. The said paragraph further refers to an Annexure A thereto. Annexure A, more specifically, paragraph 2.6, clearly records that the property was "sold subject to no lease".
8. The Applicants No, subsequently purchased the property from New Canada Developments CC on 7 February 2020 and took transfer of the property on 9 October 2020 which is held by Sectional Deed of Transfer ST 29431/2020.
9. After taking transfer of the property, the Applicants discovered that the property was occupied. Resultant, the Applicants delivered a letter dated 9 October 2020 to the occupants extending an invitation to discuss a possible lease of the property. No response was forthcoming from the occupants.

10. On 18 November 2020 the Applicants directly addressed a further letter to the First Respondent, requesting a copy of any possible existing lease agreement, demanding that all future rentals be made to the Applicants as the new owners. Instead of the First Respondent, LWWS Trust's Trustees without revealing any identity of the author, responded cautioning the Applicants not to interfere with their tenant. As a reason for their cautioning, they claimed to rely on an ostensible binding lease on the property.
11. In response on 30 November 2020, Applicants requested LWWS Trust's Trustees (Second and/or Third Respondents) to furnish a copy of the document in support of its purported claim to a lease over the property. Without furnishing a copy, LWWS Trust's Trustees continued to place reliance on the lease agreement.
12. The Applicants acquired a copy of a lease agreement dated 19 of November 2009 through other means. It is evident that an agreement was concluded between Rapirop (company in liquidation) and LWWS Trust. The lease is marked "FA12" and annexed to the founding affidavit. It is a long-term lease for a period longer than ten years.
13. The Respondents relies on this agreement as a defence, warranting their occupation.
14. It is quite evident that the lease agreement, which is being relied upon constitutes a long lease, a lease not less than 10 years with the option of renewal of a further 30 years, which must be in writing and be registered against the title deed of the leased premises as contemplated in section 1(2)(b) of the Leases of Land Act, Act 18 of 1969. The lease relied upon constitutes a long lease which is not registered against the title deed.
15. On or about 25 February 2021 the Applicants filed a complaint against the Respondents for outstanding rentals and consumption charges with the Gauteng Rental Housing Tribunal. In these proceedings, the Respondents also

relied on the lease agreement in an endeavour to demonstrate their right to occupation over the property. On 9 December 2021, the Tribunal issued a ruling under case number RT 624/21, awarding the Applicants an amount of R 175 000.00 for the withheld and/or outstanding rent, services and consumption charges on the property. The Tribunal also declared the lease invalid as per the prescripts of the Formalities in Respect of Leases of Land Act, Act 18 of 1969. This award is currently under review.

16. As indicated at the outset, the Applicants issued an application on 30 June 2022 and seek an order evicting the Respondents and all persons occupying the property.
17. On 12 September the Applicants procured an order before Wanless AJ providing a direction pertaining to service as contemplated in section 4(2) of the PIE Act. The Applicants executed upon this order which is evident from the returns of service.
18. There are several issues *in limine*.

POINTS IN LIMINE

19. Applicants question the Third Respondent's authority to represent the LWWS Trust in litigation which was provided by a resolution dated 19 October 2020. The main ground for the objection pertains to Maria Da Conceicao De Freitas Vasconcelos's ("Vasconcelos") subsequent resignation as Trustee on 30 September 2021. They contend that the Master of the High Court, Pretoria recorded Vasconcelo's resignation on 5 April 2022, thereby terminating the Third Respondent's authority to represent the trust which further disentitles her to depose to the answering affidavit.
 - 19.1. It is important to note that Section 21 of the Trust Property Control Act, Act 57 of 1988 does not subject a trustee's proposed resignation to approval by the Master and trust beneficiaries. The notification

procedure prescribed is just that notice to the Master and beneficiaries of a trustee's proposed resignation, ostensibly in order to put the machinery for the appointment of a substitute trustee into operation timeously.¹ The mere acknowledgement of the Master is therefore not final. The aforesaid is supported by the Masters of North Gauteng High Court's acknowledgement on 5 April 2022 wherein he records that the resignation is noted.

- 19.2. A Trustee has no authority to act until the Master issues the letter of authority. The office of trusteeship terminates with issuing of the amended letter of authority when the resigned trustee's particulars are removed. The resignation process is only finalised when a new letter of authority is issued.
- 19.3. In ***Soekoe NO & Others v Le Roux***² it was held that a Trustee remained legally accountable to his fellow Trustees for the entire period until the Master of the High Court officially removed him from the office of trustee. That appears to be by issuing a new letter of authority.
20. The second ground raised by the Applicants disputing the resolution, authorising the Third Respondent to represent, is premised on an added handwritten sentence stipulating that "provided that all the trustees are aware of the action". Applicants allege that Vasconcelos is unaware of the current litigation referring to an email dated 15 November 2021, Annexure "RA 4" to the replying affidavit.
- 20.1. Applicants in their replying affidavit state that this is a response of Vasconcelos to their letter dated 2 November 2021, Annexure "FA14 to founding affidavit.

¹ *The South African Trust Law* Second Edition, F Du Toit p110.

² Unreported OFSPD Case No: 898/2007 par 28.

- 20.2. After careful reading of Vasconcelos's email it is evident that the email was addressed to the LWWS Trust's Trustees with the subject 'LWWS Holdings Trust', referring to a letter of the trust sent in a response. It is unclear to what was responded to.
- 20.3. As a result of the afore, I decline to disregard the answering affidavit on the grounds raised by the Applicants.
21. Respondents claim that the Applicant's application is defective for failure to refer to the resigned Trustee, Vasconcelos. Where less than the complement of co-trustees has been properly authorised to engage in litigation, failure to cite all the trustees will not result in a non-suit ***Desai-Chilwan NO v Ross***³. The Court enjoys a discretion to condone any defect in trustees' citation, particularly where the defect is of highly technical nature and will not cause any real prejudice to the opposing party. In this matter the third Trustee resigned from the LWWS Trust through a letter dated 30 September 2021 which the Master of the High Court took notice of on J409 with date stamp 5 April 2022. Correspondence between the LWWS Trust and Applicants failed to reveal the identity of the authors. The Third Respondents contends that she is mandated to represent the LWWS Trust. Therefor there can be no prejudice. This point *in limine* stands to be dismissed.
22. Applicants have filed a written application to admit the supplementary founding affidavit. The Applicants filed this affidavit without procuring prior consent from the Court.
23. The Respondents have filed a notice of intention to oppose the further affidavit. Respondents claim prejudice and raises the issues of the Applicants introducing a new cause of action. The Respondents specifically complaining that the Applicants filed this additional

³ 2003 (2) SA 644 (C) 650 I-J.

affidavit without the leave of court. The latter was raised after delivery of the affidavit that contains the application.

24. In ***Goldfields Ltd & others v Motley Rice***⁴ Motjapelo DJP said the following:

“It is unfortunate that a practice of laxity and non-adherence to the rules regarding the three essential affidavits, and the strict contents of age, has been allowed to develop in motion court. Parties regularly go beyond the legitimate scope of their affidavits, filed the fourth and further affidavits, pleading over and over again the issues which are not germane to the cause of action as originally pleaded, and an appropriate response to it. Voluminous impermissible affidavits are often filled without leave of court, raising and debating collateral and non-material issues, which ultimately make the volume of papers on collateral issues longer than the papers dealing with the core issues. Motion-court papers are often voluminous, not because of the basic essential affidavit on core issues, but because of collateral and sometimes the relevant issues in the plethora of affidavits exchanged *without leave of court*, often tended subject to leave of court. In effect leave of court is simply assumed” (Own emphasis)

25. Parties are not entitled simply, by their own arrangement and in the absence of permission by the court to file further affidavits after the Applicants’ replying affidavit has been filed.⁵
26. The ordinary rule is that three sets of affidavits are allowed. The court may in his discretion permit the filing of further affidavits.⁶
27. An attempted definition of the ambit of a discretion is, however, neither easy nor desirable and to the later decisions have shown

⁴ 2015 (4) SA 299 GJ.

⁵ *Hano Trading CC v JR 209 Investments Pty Ltd & another* [2013] 1 All SA 142 paras 13-14 at 165.

⁶ Rule 6(5)(e), and *Parrow Municipality v Joyce Mcgregor Pty Ltd* 1973 (1) SA 937 (C) at 939 “Every case should be determined not only according to its own circumstances but having due regard to the contents of the further affidavit(s) and especially whether some reasonable explanation has been given or is apparent for its late filing. If there is an explanation which negatives mala fides and the Court can be satisfied that there is no prejudice which cannot be remedied by an award of wasted costs, a Court should incline towards allowing a party to put his full case before the Court.”.

more reluctance to categorize or restrict the discretion of the court in this regard. In ***Milne NO v Fabric House (Pty) Ltd***⁷ it was held: “In my view it is neither necessary nor desirable to say more than that the Court has a discretion, to be exercised judicially upon a consideration of the facts of each case, and that basically it is a question of fairness to both sides.” The Appellate Division in ***James Bown & Hammer (Pty) Ltd v Simmons NO***⁸ has made the following for active pronouncement:

“It is in the interests of the administration of justice that the well-known and well-established general rules regarding the number of sets and the proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied: some flexibility, controlled by the presiding Judge exercising his discretion in relation to the facts of the case before him, must necessarily also be permitted. Where, as in the present case, an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking not a right, but an indulgence from the Court: he must both advance his explanation of why the affidavit is out of time and satisfy the Court that, although the affidavit is late, it should, having regard to all the circumstances of the case, nevertheless be received. Attempted definition of the ambit of a discretion is neither easy nor desirable. In any event, I do not find it necessary to enter upon any recital or evaluation of the various considerations which have guided Provincial Courts in exercising a discretion to admit or reject a late tendered affidavit (see e.g. authorities collated in *Zarug v Parvathie*, 1962 (3) SA 872 (N)). It is sufficient for the purposes of this appeal to say that, on any approach to the problem, the adequacy or otherwise of the explanation for the late tendering of the affidavit will always be an important factor in the enquiry.” (Own emphasis)

28. If there is notion that negatives *mala fides* or culpable remissness as the cause of the factual information not being put before the court at

⁷ 1957 (3) SA 63 (N) at 65.

⁸ 1963 (4) SA 656 (A) at 660.

an earlier stage, the court should incline towards allowing the affidavits to be filed.⁹

29. However, there must be a proper and satisfactory explanation as to why it was not done earlier and, what is more important, *the court must be satisfied that no prejudice* is caused to the opposite party that cannot be remedied by an appropriate order as to costs.¹⁰
30. The court will not allow the introduction of a new matter if the new matter sought to be introduced amounts to an abandonment of the existing and the substitution therefore of a fresh and completely different claim.¹¹
31. It has further been held that where further affidavits are filed without the leave of court, the court can regard such affidavits as *pro-non-scripto*.¹² It is prudent to note that a Court can and not must regard it as *pro-non-scripto*.
32. It is essentially a question of fairness to both sides as to whether or not further sets of affidavits should be permitted.¹³
33. The explanation furnished by the Applicants for the late filing of the supplementary affidavit is in essence that the Respondents launched a review application against the Gauteng Rental Housing Tribunal's decision and that they obtained evidence regarding the history of LWWS Trust which was not available at the time they filed their original founding affidavit.

⁹ *Bangtoo Bros National Transport Commission* 1973 (4) SA 667 (N)

¹⁰ *Transvaal Racing Club v Jockey Club of SA* 1958 (3) SA 559 (W), *Cohen V Nel* 1975 (3) SA 963 (W).

¹¹ *Triomf Kunsmis (Edms) Bpk v AE&CI BPK* 1984 (2) SA 261 (W) at p267-270.

¹² *Standard Bank of SA Ltd v Sewpersadh* 2005 (4) SA (C) at 153-154.

¹³ *Milne NO v Fabric House (Pty) Ltd* 1957 (3) SA 63 (N) at 38J-39A.

34. Although there is a plausible explanation to the late filling, no evident culpable remissness, the Applicants assumed that the court would allow the late filling of the supplementary founding affidavit. The practice is to first obtain leave of a court before the filling of further affidavits. Considering, allowing the further affidavit is essentially a question of fairness to both sides as to whether or not further sets of affidavits should be permitted. Regard being had to ***Transvaal Racing Club v Jockey Club supra*** I am not satisfied that there is no prejudice to the Respondents and accordingly disallow the filling of further affidavits.
35. The Respondents filed their heads of argument out of time and seeks condonation for the late filling thereof. They tendered an explanation of their inability to file it timeously. I find no prejudice to the Applicants for the late filling of the heads of argument and accordingly allows the same.

ISSUES

36. The remainder of the issues are:
- 36.1. The eviction in terms of section 4 of the PIE Act, evicting the Respondents and all persons occupying or claiming occupation through them from the immovable property known as Unit 5, Mont Blanc Heights, situated at Sovereign and Oxford Streets, Bedford Gardens, Bedfordview ("the property"). The Applicants No, being the registered owners of the said property rely on the *rei vindicatio* claiming possession.
- 36.2. The Respondents claim that they are lawfully occupying the property and continues to do so premised on an agreement concluded 9 December 2009 which extends into 2060 with the possible extension of another 30 years. A lease that constitutes a long-term lease which is common cause between the parties.

36.3. It is prudent to note that it is common cause that:

36.3.1. The Applicants No are the owners of the property.

36.3.2. The Respondents occupied the property when the application was issued.

36.3.3. The Respondents continue to occupy the property and the premises is utilised as a dwelling.

36.3.4. The Respondents' only defence to the application pertains to the reliance on a long-term lease agreement.

36.3.5. The long-term lease was not registered against the title deed.

36.3.6. The unregistered long-term lease is only enforceable against a successor in title if successors in title knew of the lease when the property was bought.

36.3.7. The onus of proof rests on the Respondents.

36.4. Accordingly, the question that begs answering is whether the Applicants had knowledge of the unregistered long-term lease when they purchased and are they bound by this lease because of that knowledge?

LAW

37. The PIE Act applies to eviction of all Unlawful occupiers, meaning persons who occupy land with the express or tacit consent of the owner or person in charge, or without any other right in law to occupy the land.¹⁴
38. The Act must be complied with before eviction of residential occupants can be ordered. Fourteen days before the hearing of the eviction proceedings, the occupier and the local municipality must be given the prescribed notice of the proceedings.¹⁵
39. The court has a discretion in ordering eviction. In the exercise of their discretion, various prescribed factors must be considered which is evident from Section 4(6)-(8) of the PIE Act.
40. Provided the 'procedural requirements' have been met, the owner is entitled to approach the court for an eviction order relying on ownership and the Respondents unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner is entitled to an order for eviction.¹⁶
41. Claiming possession, an applicant must prove:
- 41.1. Ownership of the immovable property and
- 41.2. That the Respondents were in possession when the application was instituted.
42. Wrongfulness because of position of an owner's property by another is *prima facie wrongful*, it is not necessary for the applicant to allege and proof that a Respondents position is wrongful or against the wishes of the applicant.¹⁷

¹⁴ *Ndlovu v Ngcobo; Bekker v Jika* [2002] 4 All SA 384 (SCA), *Barnett v Minister of Land Affairs* 2007 (6) SA 313 (SCA).

¹⁵ Section 4 of the PIE Act.

¹⁶ *Ndlovu v Ngcobo Bekker v Jika supra*.

¹⁷ *Chetty v Naidoo* [1974] 3 All SA 304 (A).

43. Should the Respondents wish to rely on the right of possession e.g. a lease, the Respondents must allege and prove the right.¹⁸ The Respondents bear the onus.
44. A long lease (i.e. a lease which is for a period of not less than 10 years, or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time indefinitely at the will of the lessee or for periods which together with the first period of the lease amount to not less than 10 years) must be in writing and be registered against the title deed of the leased premises in order to be binding on the lessor's successor in title, unless the successor knew of the lease when he acquired the premises.¹⁹
45. In the case of a long lease the lessee acquires a limited real right for the full duration of the lease *only* if the lease has been registered against the title deed of the leased land. Where a long lease has not been registered, the lessee acquires a limited real right for the first 10 years if he is in occupation of the property. An unregistered long lease is, however, enforceable against the lessor's successor in title for each full duration if the successor knew of the lease when he bought the property.²⁰
46. The onus of proving the requisite actual knowledge rests on the Respondents. Knowledge implies actual knowledge of the onerous long-term lease.²¹

CONCLUSION

¹⁸ *Woerman NO v Masondo* 2002 (1) SA 811 (SCA).

¹⁹ *Section 1(1) and (2) of the Formalities of Leases of Land Act 18 of 1969. The South African Property Practice and the Law* Delpont, Service 15 2008, p 257.

²⁰ *The South African Property Practice and the Law* Delpont, Service 15 2008 p 264-8-7.

²¹ *Grant and Another v Stonestreet and Others* 1968 (4) SA 1 (A) at 16H - 17A. *Ismail v Ismail and Others* 2007 (4) SA 557 (E) par 8.

47. It is evidently clear that the property was not sold on auction subject to a lease, more specifically a long-term lease.

47.1. This is corroborated by Annexure A to the original purchase agreement, par 2.6, that provides "sold subject to no lease". It was contended on the Respondents behalf that the Applicants tendered into evidence two different Annexure A's to the original purchase agreement. In my view nothing turns on this allegation, the crucial stipulation, par 2.6 in both annexures records that the property is sold subject to 'no lease'. The latter was conceded by the Respondents' counsel.

47.2. It was also contended on behalf the Respondents that the Applicants had a duty and were obliged to investigate the possibility of possible long-term leases when the property was bought. Special reference was made to clause 8.1.2 of the original purchase agreement stipulating that the property was sold subject to all burdens, including leases. Considering the evidence, the purchaser entered into an agreement clearly stipulating that the property was not subjected to any lease. The lease is not registered against the title deed. The so-called auction pack, which I was referred to makes no mention of long-term lease. Par 7 of the original purchase agreement clearly makes reference to Annexure A that contains par 2.6. Accordingly, nothing more ought to have been done by a purchaser in these circumstances.

47.3. The onus, the Respondents need to discharge is proof of 'actual knowledge' of the 'long lease'. The fact that there is a reference that there might be a head lease in an auction pack that was available on auction date or a reference to leases in the conditions of sale is in my view is not evidence of actual knowledge of the onerous long lease that extends to 2060. Nowhere is it evident that Applicants acquired the property subject to an onerous long lease.

- 47.4. There is no evidence tendered by the Respondents that the liquidators of Rapirop intended to continue with the lease as envisaged in Section 37(2) of the Insolvency Act, Act 24 of 1936.²² This is fundamental especially when reliance is placed on the continued existence of a long lease.
- 47.5. There is also no evidence to support the fact that the property was subsequently sold by New Canada Developments CC to the Applicants subject to a lease.
- 47.6. I am unpersuaded by the efforts of the Respondents that the Applicants knew about the long lease and that they are therefore bound to it.
48. It is further uncontested that the Applicants after registration of the property began enquiries about the tenants which is indicative of their initial unawareness. When the Applicants became aware of the tenancy, which is after the registration on 09 October 2020, they caused letters to be sent to the Respondents inviting them to enter into agreements of lease. The Second and Third respondents did not respond, and it is only later when a further letter was addressed to the First Respondent that the Second and Third Respondents replied by stating that the First Respondent is their tenant. The Second and Third Respondents placed great reliance on a valid lease agreement without tendering a copy thereof to the Applicants. The Applicants through other means acquired a copy of the said lease.
49. In considering the prescribed factors in the PIE act it is evident that there are no Respondents that need to be relocated, nor are there elderly, children, disabled children or households headed woman. The Respondents, generally, did not raise any other defence than that of lease which entitles them to occupy the property.

²² Boshof v South African Mutual Life Assurance society 2000 (3) SA 597 (C) at 599.

50. The Applicants satisfied the procedural requirements of the PIE Act. The evidence herein dictates that the requirements of the section have been complied with, no valid defence has been raised by the unlawful occupiers. I am satisfied that I can exercise my discretion in favour of granting an order for the eviction of the unlawful occupiers in these circumstances.
51. Applicants suffer and will continue to suffer financial prejudice if the Respondents remain in occupation of the property. Despite the Gauteng Rental Housings ruling, the Respondents have made no effort in effecting rental payment. It appears that they have not received any rental since the registration of the property back in 2020.
52. Spurious disputes of fact in application proceedings warrants a robust approach. It is recognised that Respondents frequently attempt to create disputes of fact where there are none and courts should not be deterred from deciding on the facts where this done. Courts were enjoined to adopt a robust approach to such dispute of fact.²³ In this matter there is no material dispute of fact that necessitates the leading of oral evidence.²⁴
53. The Respondents have failed to discharge the onus that rested upon them. The Respondents occupation of the Applicants property is consequently unlawful. In the premises it is just and equitable to evict the unlawful occupier Respondents. Resultant I make the following order:
1. That the Respondents and all persons occupying or claiming occupation through them, are evicted from the immovable property known as Unit 5, Mont Blanc Heights, situated at corner Sovereign and Oxford Streets, Bedford Gardens, Bedfordview (“the property”) within 14 days from the date of service of this order.

²³ *Soffiantini v Mould* [1956] 4 All SA 171 (E) 175; 1956 (4) SA 150 (E) at 154 E-H.

²⁴ *Plascon Evan Paints Ltd v Van Riebeeck Paints Pty Ltd* 1984 (3) SA 623 (A) at 643E-635D.

2. Failing compliance with the above, the Sheriff is directed and authorised to take all steps that are reasonably necessary, including approaching and enlisting the assistance of the South African Police Service, in order to eject the Respondents and all persons occupying through them, from the property.
3. Interdicting and restraining the Respondents from entering and/or occupying the aforesaid property pursuant to them having vacated or being ejected from the property in terms of prayer 1 above.
4. Granting the Applicant's leave to approach this Honourable Court on the same papers, supplemented by affidavit, in pursuance of an application holding the Respondents in contempt of court should the Respondents breached the orders granted in terms of prayers 1,2 and three above,
5. The Respondents to pay the costs of this application jointly and severally, including the cost of any eviction.

DE BEER AJ

**ACTING JUDGE OF THE GAUTENG
DIVISION, JOHANNESBURG**

APPEARANCES:

For the Applicants: Adv. CJC Nel

Instructed by: Van Der Meer & Schoonbee Attorneys

For the Respondents: Ms. F Suder

Instructed by: Suder Attorneys

Date of Hearing: 20 November 2023 – Open Court

Date of Judgment: 21 November 2023