

**REPUBLIC OF SOUTH AFRICA**



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

Case Number: 2023/000772

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES:NO
(3)	REVISED: /NO
[1]	1 December 2023 _____
[2]	DATE SIGNATURE

In the matter between

**NINARICH TRADING 3 (PTY) LTD**

**1<sup>st</sup> APPLICANT**

**(REG NO: 2009/023856/07)**

**NINARICH INVESTMENTS 1 (PTY) LTD**

**2<sup>nd</sup> APPLICANT**

**(REG NO: 2009/023856/07)**

and

**MTATYANA, SIMPHIWE & THOSE LISTED  
IN ANNEXURE "A" TO THE NOTICE OF MOTION**

**1<sup>st</sup> to 10<sup>th</sup> RESPONDENTS**

**MANTENGU, SANDISWE ZANELE & THOSE LISTED IN ANNEXURE "B" TO THE NOTICE OF MOTION**

**11<sup>th</sup> to 61<sup>st</sup> RESPONDENTS**

**ZIKHALI, NOKULUNGA & THOSE LISTED IN ANNEXURE "C" TO THE NOTICE OF MOTION**

**62<sup>nd</sup> to 126<sup>th</sup>**

**MBATHA, SENAMSILE FUNDISIWE & THOSE LISTED IN ANNEXURE "D" TO THE NOTICE OF MOTION**

**127<sup>th</sup> to 133<sup>rd</sup>**

**THE UNLAWFUL INVADERS/OCCUPIERS OF 31 BETTY STREET, JEPPESTOWN**

**134<sup>th</sup> RESPONDENTS**

**THE FURTHER UNLAWFUL OCCUPIERS OF THE PROPERTIES OCCUPIED BY THE 1<sup>ST</sup> TO THE 133<sup>RD</sup> RESPONDENTS**

**135<sup>th</sup>**

**THE CITY OF JOHANNESBURG**

**136<sup>th</sup> RESPONDENT**

**Delivered:** This judgment was handed down electronically by circulation to the parties' representatives by e-mail. The date and time for hand down is deemed to be 10h00 on 1 December 2023.

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**JUDGMENT**

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**MUDAU, J:**

- [1] Part B of this application served before me on an urgent basis on 3 October 2023. On that occasion the matter was struck off the roll with the necessary costs order for want of urgency. Reasons have since been requested on 24 October 2023 whilst I was on long leave and traveling. The following are my reasons.
- [2] The disputes between the parties have been ongoing for a considerable period. The relief sought by the Applicants in terms of Part A, was that the application be treated as one of urgency in terms of Rule 6(12) of the Rules of Court; that pending the finalisation of the proceedings in terms of Part B of the Application, the 1st to the 135<sup>th</sup> Respondents, and all those occupying the listed properties, through or under them, be evicted in terms of Section 5(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, number 19 of 1998, as amended ("the PIE Act") from certain identified properties.
- [3] Alternatively, that the respondents and all those occupying the property by, through or under them, be ordered, and directed to restore control and possession to the Second Applicant of the property described as Erf 413 Jeppestown Township, Registration Division IR, Province of Gauteng, situated at 31 Betty Street, Jeppestown. In addition, *inter alia* that the Respondents, and all those occupying the properties by, through or under them, be ordered and directed to vacate the properties within 48 hours of any order of the Court. Nel AJ dismissed Part A of the notice of motion on 24 May 2023, with reasons subsequently furnished on 3 October 2023. Part A is the subject of an appeal process. The applicants sought relief on the basis *inter alia* that, the eviction of the respondents will be just and equitable (as contemplated in terms of the provisions of section 4(6), (7), (8) and (9) 4 of the PIE Act) as the Respondents:
- [4] The application follows a prior spoliation and interdict application under case number 2022-047559 brought by the Applicants against the Respondents on urgent basis, which application was struck off the roll on 2 December 2022, for want of compliance with the rules of court by Twala J.
- [5] A notice of amendment of Part B of the Applicants' notice of motion seeking eviction was delivered on 31 August 2023. The Respondents did not object

thereto and on 27 September 2023, the amended pages of the notice of motion were subsequently delivered.

- [6] The trite position whether a matter should be enrolled and heard as an urgent application is governed by the provisions of 6(12) of the Uniform Rules. The sub rule allows the court in urgent applications to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as to it seems meet. It further provides that in the affidavit in support of an urgent application the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he or she claims that he or she could not be afforded substantial redress at a hearing in due course.
- [7] The procedure set out in rule 6(12) as case law makes clear, is not there for taking. Mere lip-service to the requirements of rule 6(12)(b) is not sufficient. An applicant must set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress (see *inter alia*, *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011)).
- [8] In the instant case given the litigation history, I was unpersuaded that if the applicants were to wait and bring the matter in the normal course, they will not be able to be afforded substantial redress at a hear in in due course. By the applicants' own version in the supplementary affidavit, "by the time of the unfavourable outcome of the first application, the applicants, which were already cash-strapped, had run out of funds to pursue the application further".
- [9] On the applicant's version per a supplementary affidavit dated 22 September 2023, "*the applicants reasonably believed that it would be imprudent to enrol*

*part "B" hereof without first establishing Nel AJ's reasoning in dismissing part "A". In the absence of such reasoning, the applicants could not (and cannot) ascertain which element of their case had been determined in the negative. More particularly, amongst other things, the Applicants could not discern: whether Nel AJ was in disagreement regarding the existence of a rent boycott and/or building hijacking and/or attempted building hijack; and/or whether Nel AJ considered the Applicants to be obliged to pursue other remedies; and/or whether Nel AJ was at odds with Applicants contention that the balance of hardship favoured the Applicants (the Respondents all having been previously assessed for their ability to afford rent, save for the occupiers of 31 Betty Street who, at that stage, had only been in occupation of that property for 6 months); and/or whether Nel AJ was not satisfied that the Applicants had demonstrated that they are the owners of the respective properties; and/or whether Nel AJ had taken into account the justness and equity of an eviction, which does not form part of the enquiry in an eviction application brought in terms of section 5(1) of PIE; and/or...Each of the above questions would have a bearing on the Applicants' case insofar as part "B" is concerned. In effect, the Applicants were rendered unable to establish the specifics regarding the (further) case they were required to make out". Various correspondences between the parties and the office of the DJP followed in which reasons for the Nel AJ order were pursued.*

[10] *The Applicants' submitted that the urgency of this matter is, "self- evident, given, the serious prospects that the Applicants and, in turn, the purchaser, will lose the properties to the Respondents permanently, and thereby suffer irreparable harm, arising from the Respondents' patently unlawful, manipulative and disingenuous conduct;... the real risk that the purchaser and the SHRA will abandon the Betty Street social housing project completely, as has unfortunately often transpired, and as has been exacerbated by opportunistic continuation of the attacks on the social housing sector;..."*

[11] *The applicants further alleged that "simply enrolling part "B" without the City's eviction report would inevitably have led to the indefinite postponement of the application for the Court to obtain the City's input. It was therefore imperative*

*that the City first carry out its investigation and compile its report before the hearing of part "B".*

[12] Whilst this matter was enrolled as urgent in the absence of reasons Nel AJ, it seemed to me as evidenced by the parts of the supplemental affidavit referred to above. The submission by counsel on behalf of the applicants that the awaited reasons were unnecessary for the determination of Part B was in stark contrast to the relevant averments. In my judgment, the question of urgency regarding this matter was self-created. On the applicants' version, it has been urgent- since the launch in November of 2022. Accordingly, there is no reason why the application was not set down on a date on the normal roll. It is for the above reasons that the matter was struck off the roll with the necessary costs order.

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**TP MUDAU**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

## **APPEARANCES**

For the Applicant:	Adv. Hollander
Instructed by:	Vermaak Mashall Wellbeloved Incorporated
For the 1 <sup>st</sup> to 135 <sup>th</sup> Respondent:	Adv. Moela
Instructed by:	Sithi and Thabela Attorneys
For the 136 <sup>th</sup> Respondent:	No appearance
Date of Hearing:	03 October 2023
Date of Judgment:	1 December 2023