

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

**REPUBLIC OF SOUTH AFRICA**



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

Case Number: **A3062/2022**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) DATE: 28 AUGUST 2023
- (5) SIGNATURE: ***ML SENYATSI***

In the matter between:

**BEVERLEY CHETTY**

First Appellant

**INDRANI CHETTY**

Second Appellant

and

**NIRVAN BHUDAI PROPERTIES (PTY) LTD  
T/A RAWSON KYALAMI (REGISTRATION NO:  
2014/166043/07)**

First Respondent

**THE CITY OF JOHANNESBURG  
METROPOLITAN MUNICIPALITY**

Second Respondent

*In Re:*

**NIRVAN BHUDAI PROPERTIES (PTY)  
LTD REGISTRATION NUMBER: 201416604307  
T/A RAWSON KYALAMI**

Applicant

and

**BEVERLEY CHETTY  
IDENTITY NUMBER: [...]**

First Respondent

**ALL OTHER UNLAWFUL OCCUPIERS  
OCCUPYING 120 FOUNTAIN VIEW  
ERAND GARDENS 14TH STREET MIDRAND  
JOHANNESBURG, GAUTENG**

Second Respondent

**CITY OF JOHANNESBURG  
MUNICIPALITY**

Third Respondent

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**JUDGMENT**

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**SENYATSI, J (Windell J concurring):**

***Introduction***

[1] This is an appeal against the whole judgment of the Magistrates Court for the District of Johannesburg (court a quo) held in Randburg. The court a

quo granted an order in favour of the first respondent, Nirvan Bhudai Properties (Pty) Ltd trading as Rawson Kyalami, for the eviction of the appellants, Ms Indrani Chetty and her daughter Ms Beverley Chetty, from a residential property situated at 120 Fountain View, Erand Gardens, 14<sup>th</sup> Street, Midrand, Johannesburg, Gauteng (“the property”).

- [2] In the notice of appeal, the appellants contended that the court a quo made an error, amongst others, by holding that the first respondent was the owner of the property when ownership was, in fact, in dispute and the appellants were therefore not in unlawful occupation of the property. They further contended that the court a quo failed to take into account all the relevant factors in terms of the provisions of section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (“the PIE Act”) and that it was not just and equitable to evict the appellants, more so as the second appellant is an elderly woman.
- [3] The brief background of this matter is as follows: In 2005 the second appellant’s late husband (“the deceased”) and his daughter, Ms Joelyn Hesevani Chetty, registered a close corporation named Dava Chetty Properties and Legal Services (“the CC”). Ms Joelyn Chetty is a law graduate and is married to a certain Mr Edward Joseph Low Kee (“Mr Kee”). During January 2008 the CC bought the property which was registered in the CC’s name in July 2008. It is common cause that the deceased and the second appellant resided in the property at least until the passing of the deceased in 2015. During May 2010, the deceased and his daughter resigned from the CC and in their place, Mr. Kee became the sole member. On 24 February 2011 the CC was finally deregistered for annual return non-compliance.

- [4] On 10 October 2017 the first respondent, represented by its director Mr Nirvan Budhai, concluded an offer with the CC, represented by Mr Kee, to purchase the property. How the latter became a member of the CC was the subject of dispute when the matter was before the court a quo. The learned Magistrate found that at the time of the sale of the property Mr Kee was the sole member of the CC. My observation is that no evidence could be distilled from the papers, and in fact none existed, for the court a quo to come to any other conclusion than the one it reached regarding the validity of Mr. Kee's sole membership in the CC. The second appellant's daughter, Ms Joelyn Chetty, who had resigned as a member in 2010 did not assist the court a quo by apprising it with any information relating to Mr. Kee's status in the CC as contended by the appellants. According to the Windeed report attached to the answering papers the CC was "restored" and "reinstated" into business on 28 March 2018 and its sole member was Mr Kee.
- [5] The property was transferred in the name of the first respondent on 18 March 2019. On 16 July 2021, the first respondent sold the property to Mr Serge Dupya. When he inspected the property, he found no one present. The property was in fact in a state of disrepair, and it appeared to have been used as a storage facility. A contractor was appointed to attend to the repairs. Photos evidencing the damage and state of the property were annexed to the first respondent's papers. Mr Dupya placed the contents of the property into storage for safekeeping and informed the first respondent thereof. This led to criminal charges being laid against the first respondent for housebreaking and theft, which charges were dismissed by the Criminal Court in Randburg. Following this action, the first appellant obtained an ex-parte order for mandament van spolie and utilized the order to retrieve her belongings at the storage facility. On 19 October 2021 the first

respondent instituted the eviction proceedings against the appellants. The court a quo granted the final order to evict the appellants on 13 April 2022.

[6] During the appeal proceedings before us the issues for determination had crystalized into mainly two arguments. Firstly, whether Mr. Kee committed fraud when he sold the property on behalf of the CC, as he would have known that the company was deregistered and therefore could not perform any juristic act as the property had vested in the State as *bona vacantia*. In this regard the appellants contended that the CC could only be reinstated by a court order and since no such court order was obtained, the acts performed during its deregistered state remain invalid. Secondly, if it is found that the sale of the property was lawful, whether it was just and equitable to evict the appellants from the property.

[7] The legal principles on eviction following ownership and the state of deregistration of the CC is dealt with below. In order for this court to deal with eviction and issues of fairness and equity, it is important to consider the consequences of juristic acts concluded by a deregistered entity.

### ***Principles on ownership of an immovable property***

[8] Ownership of an immovable property confers a real right to the owner thereof and upon purchase thereof and registration of transfer, the real right passes from the seller to the purchaser. In *Legator McKenna Incorporated and Another v Shea*,<sup>1</sup> Brand JA stated the following to confirm the abstract theory of ownership:

“[22] In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery – which in the case of immovable property, is

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<sup>1</sup> (143/08) [2008] ZASCA 144; 2010 (1) SA 35 (SCA).

effected by registration of transfer in the Deeds Office – coupled with a so-called real agreement or 'saaklike ooreenkoms'. The essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and the intention of the transferee to become the owner of the property (see e.g. *Air-Kel (Edms) Bpk h/a Merkel Motors v Bodenstein* 1980 (3) SA 917 (A) at 922E-F; *Dreyer and Another NNO v AXZS Industries (Pty) Ltd (supra)* .... Broadly stated, the principles applicable to agreements in general also apply to real agreements. Although the abstract theory does not require a valid underlying contract, e.g. sale, ownership will not pass – despite registration of transfer – if there is a defect in the real agreement (see e.g. *Preller v Jordaan* 1956 (1) SA 483 (A) 496; *Klerck NO v Van Zyl and Maritz NNO (supra)* 274A-B; *Silberberg and Schoeman op cit*, 79-80).”

- [9] The passage quoted above shows that once the sale agreement complies with the Alienation of Land Act<sup>2</sup> and ownership passes, the immovable property is registered by the Deeds Office and then the agreement is valid. It was not the appellants’ case in the court a quo that the sale was invalid because it did not meet the requirements of the Alienation of Land Act, but rather that because Mr. Kee did not have the authority to act on behalf of the deregistered CC, the sale and ownership of the property could not be validly passed as the property belonged to the State. For reasons that will follow, this contention is without merit.

### ***Principles on bona vacantia***

- [10] Section 82 of the Companies Act<sup>3</sup> (the Companies Act) deals with the removal of a company from the Companies and Intellectual Property Commission (CIPC) register and states as follows:

“(1) The Master must file a certificate of winding up of a company when the affairs of the company have been completely wound up.

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<sup>2</sup> 68 of 1981.

<sup>3</sup> 71 of 2008.

(2) Upon receiving a certificate in terms of subsection (1), the Commission [CIPC] must—

- (a) record the dissolution of the company in the prescribed manner; and
- (b) remove the company's name from the companies register.

(3) In addition to the duty to deregister a company contemplated in subsection (2)(b), the Commission may otherwise remove a company from the companies register only if—

(a) the company—

(i) has failed to file an annual return in terms of section 33 for two or more years in succession; and

(ii) on demand by the Commission, has failed to—

(aa) give satisfactory reasons for the failure to file the required annual returns; or

(bb) show satisfactory cause for the company to remain registered; or

(b) the Commission—

(i) has determined in the prescribed manner that the company appears to have been inactive for at least seven years, and no person has demonstrated a reasonable interest in, or reason for, its continued existence; or

(ii) has received a request in the prescribed manner and form and has determined that the company—

(aa) has ceased to carry on business; and

(bb) has no assets or, because of the inadequacy of its assets, there is no reasonable probability of the company being liquidated.

(4) If the Commission deregisters a company as contemplated in subsection (3), any interested person may apply in the prescribed manner and form to the Commission, to reinstate the registration of the company.”

The definition of a “company” in the Companies Act includes a CC. The effect of such removal is that the company ceases to exist.

[11] In terms of section 83 of the Companies Act, the deregistration and removal from the register of companies means that the company is dissolved as from the date on which its name is removed from the companies register. This means that the legal persona of the company ceases to exist. The company will therefore no longer be able to trade, do business, enter into agreements and will not be able to take any legal action against any other party, nor will any other party be able to take any legal action against the company.

[12] In certain instances, it may happen that a company is deregistered while it is still in possession of fixed or moveable assets. After the deregistration of a company, any and all assets that it may have owned immediately prior to its deregistration, pass to the State as *bona vacantia* (loosely meaning property without an owner or ownerless property).

[13] The broad principle of *bona vacantia* being the property of the State has its origins in Roman law, specifically in the context of intestate succession where no intestate heirs exist. Similarly, in English law, assets of a person that dies intestate without any intestate heirs, pass to the Crown.

[14] In English law the situation regarding *bona vacantia* in the case of intestate succession as mentioned above, is similar to the case where a company dissolves while it still has assets. The assets of a dissolved company pass to the Crown. This position has been consistently captured in English



legislation, in this regard, reference is made to section 296 of the Companies Act, 1929; section 354 of the Companies Act, 1948; section 654 of the Companies Act, 1985 and section 1012 of the Companies Act, 2006.

[15] In South Africa, neither the old Companies Act<sup>4</sup> nor the current Companies Act (2008), contains any provisions similar to those contained in the English legislation mentioned above.

[16] Assets of a deregistered company passing to the State as *bona vacantia* in the South African context was imported from English law and firmly established in our law through a string of court cases throughout the years.

[17] In *Ex Parte Sprawson (In Re Hebron Diamond Mining Syndicate Ltd)*<sup>5</sup> as well as *Ex Parte The Government*,<sup>6</sup> the English position was confirmed. Certain principles laid down in the *Sprawson* case mentioned above were followed in later cases such as *Re Jacobsons, Ltd*,<sup>7</sup> *Ex Parte Liquidators Lime Products (Pty) Ltd*,<sup>8</sup> *Ex Parte Minister of Irrigation*,<sup>9</sup> *Ex Parte Pillay & Sons Ltd*,<sup>10</sup> *Norton District Tobacco Warehouse (PVT) Ltd v Skea*,<sup>11</sup> *Ex Parte Marchini*,<sup>12</sup> and *Ex Parte Minister of Lands; Ex Parte Ventersdorp Muslim Trust (Pty) Ltd and Others*.<sup>13</sup>

[18] The position was again confirmed in more recent cases such as *Rainbow Diamonds (Edms) Bpk en Andere v Suid-Afrikaanse Nasionale Lewensassuransiematskappy*,<sup>14</sup> *Peninsula Eye Clinic (Pty) Ltd and Others*

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<sup>4</sup> 61 of 1973.

<sup>5</sup> 1914 TPD 458.

<sup>6</sup> 1914 TPD 596.

<sup>7</sup> 1927 TPD 857.

<sup>8</sup> 1942 CPD 402.

<sup>9</sup> 1948 (2) SA 779 (C).

<sup>10</sup> 1951 (1) SA 229 (T).

<sup>11</sup> 1963 (1) SA 856 (FC).

<sup>12</sup> 1964 (1) SA 147 (T).

<sup>13</sup> 1964 (3) SA 469 (T).

<sup>14</sup> (372/82) [1984] ZASCA 41; 1984 (3) SA 1 (A).

*v Newlands Surgical Clinic (Pty) Ltd*,<sup>15</sup> and *Body Corporate Georgian Terrace v Sananga Business Enterprise CC and Others*.<sup>16</sup> Some of the passages from some of these cases are quoted hereunder to emphasise the principle.

[19] The appellants contend as already stated, that during its deregistered state, the CC could not perform any juristic act. This is a usual contention raised in such cases either to avoid liability or give effect to certain deemed juristic acts performed.<sup>17</sup> The paramount consideration is the prejudice that is likely to be suffered by the innocent third party if the restoration of juristic personality is not retrospective, as in the present case where the innocent respondent purchased the property unaware that the CC had been deregistered by the CIPC. Each case depends on its own circumstances.

[20] In *ABSA Bank Ltd v Companies and Intellectual Property Commission and Others*,<sup>18</sup> the court held at para 52 in dealing with the effect of deregistration of a company:

“In my opinion, s83 (4) applies in all cases where a company or corporation’s name has been removed from the register in terms of part G of ch 2 and where the company or corporation has as a result been dissolved. This includes deregistration on any of the grounds set out in s 82 (3). Where a company or corporation has been deregistered by the CIPC in terms of s 82 (3) rather than in terms of s 82 (2)(b), an interested party may either apply to the CIPC for restoration in terms of s 82 (4) or to the court in terms of s 83 (4). Particularly where the interested party finds it impossible or practically difficult to comply with the prescribed requirements relating to restoration in terms of s 82 (4), an application to court in terms of s 83(4) is available as an alternative.”<sup>19</sup>

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<sup>15</sup> 2014 (1) SA 381 (WCC).

<sup>16</sup> (69125/2014) [2015] ZAGPPHC 626 (21 August 2015).

<sup>17</sup> Id at para 14.

<sup>18</sup> 2013 (4) SA 194 (WCC).

<sup>19</sup> Id at para 52.

[21] In *Missouri Trading CC and Another v ABSA Bank Ltd and Others*,<sup>20</sup> Koen J held:

“[33] The position in our law regarding reversing the dissolution of a close corporation appears to be as follows:

(a) When a corporation is deregistered by its name being removed from the register for whatever reason, it is ‘dissolved’ for the purpose of s 83(1).

(b) Basically, two main different remedies for reversing the dissolution of a close corporation are provided:

(i) an administrative process, in terms of s 82(4);

(ii) a judicial process requiring an order of court declaring the corporation’s dissolution to have been void, in terms of s 83(4);

A court can grant an order, probably in either of the above instances pursuant to s 83(4)(a), that is just and equitable in the circumstances, as the procedure in terms of s 82 does not exclude such an order also being made in an application to court.

(c) The administrative procedure in s 82 of the Act is effected upon application by ‘any interested person’, a term wide enough to also include a creditor of the corporation, ... .

(d) No provision for notice to interested parties is made where reinstatement of a corporation is sought in terms of this administrative procedure and the views of interested parties are not taken into account. Such an administrative process ‘is not as well suited as a judicial process to determine and afford appropriate remedy es applying justness and equity’.”<sup>21</sup>

[22] The *dicta* explain the position of our law succinctly. There is no doubt that the deregistration of the company under section 82 brings an end to its corporate personality akin to the death of a natural person because when the deregistration takes place when the company still possesses assets, once it is reinstated, the reinstatement has retrospective effect depending on the circumstances of the case.

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<sup>20</sup> 2014 (4) SA 55 (KZD).

<sup>21</sup> Id at para 33.

[23] In *Newlands Surgical Clinic (Pty) Ltd v Peninsula Eye Clinic (Pty) Ltd*,<sup>22</sup> the court dealt extensively with the question relating to the retrospective effect of the reinstatement of a company or a closed corporation. The Supreme Court of Appeal held that at deregistration, an end is put to the existence of a company and all subsequent actions are void and of no effect. It held further that section 84(2) does not only partially revests the property of the company during its deregistered state but also validates its corporate activities retrospectively and that any third party whose rights may be prejudiced by the retrospective reinstatement can bring an application to court for the appropriate relief.

[24] The main factor, as already stated, which should be considered is whether retrospectivity will prejudice third parties.<sup>23</sup> The answer will, as already stated, depend on the facts of each individual case. Dealing with the retrospectivity of the restoration into the register of companies, Brand JA stated the following in *Insamcor (Pty) Ltd*<sup>24</sup> :

“[19] Blieden J in the court *a quo* was of the view (see para 22 at 313H) that, although *Varvarian* was not specifically referred to, it had in effect been subsequently overruled in *Ex Parte Sengol Investments (Pty) Ltd* 1982 (3) SA 474 (T), which was followed in *Ex Parte Jacobson: In re Alec Jacobson Holdings* 1984 (2) SA 372 (W). What these two cases laid down in substance was that an order of restoration under s 73(6) of the Companies Act should, as a matter of practice, be preceded by a rule *nisi* calling upon all interested persons to show cause why the company's registration should not be restored.

[20] The reasoning behind this practice appears from the following statement by Van Dijkhorst J in *Sengol* (at 477C-F):

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<sup>22</sup> 2015 (4) SA 34 (SCA).

<sup>23</sup> *Insamcor (Pty) Ltd v Dorbyl Light and General Engineering (Pty) Ltd, Dorbyl Light and General Engineering (Pty) Ltd* (63/06, 319/06) [2007] ZASCA 6; 2007 (4) SA 467 (SCA); see also *Kadoma Trading 15 (Pty) Ltd v Noble Crest CC* (452/2012) [2013] ZASCA 52; 2013 (3) SA 338 (SCA).

<sup>24</sup> *Id.*

‘The effect of restoration to the register is that the company is deemed not to have been deregistered at all. This entails that all parties who have by deregistration of the company or thereafter acquired rights to assets which the company had upon deregistration will lose those rights as the assets will revert to the company. This includes assets which have become *bona vacantia* and as such accrued to the State. Likewise debtors and creditors of the company at time of deregistration may upon restoration find their obligations or rights resuscitated.

It follows that the restoration of the registration of a company in terms of s 73 (6) may have wide-ranging effects. Although the applicant alleges that the company had no other assets than the mineral rights, and that it had no liabilities, the possibility does exist of the discovery of forgotten assets. That this is not illusory is evidenced by the cases where this fact necessitated an application like the present . . . .

(See also *Goldstone J in Ex Parte Jacobson* at 377F-H.)”

[25] In *Sengol* the court refused to restore the registration of the company and found that innocent third parties would be prejudiced by such restoration after acquiring rights of the non-existent company.

[26] In *CA Focus CC v Village Freezer*,<sup>25</sup> where the summons was issued against one of its clients after the deregistration of the CC, the court dealt with the effect of section 26 (7) of the Close Corporations Act<sup>26</sup>, now repealed, whether it validates retrospectively the legal proceedings instituted during the period of deregistration and interrupts prescription. The action in that case had been instituted by the close corporation in order to interrupt prescription. The court correctly held that where the corporation itself institutes litigation after its deregistration where the member facilitated the deregistration, it is impermissible to restore its re-registration retrospectively.

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<sup>25</sup> (731/12) [2013] ZASCA 136; 2013 (6) SA 549 (SCA).

<sup>26</sup> 69 of 1984.

[27] In *Kadoma Trading*,<sup>27</sup> the court was again called upon to consider the effect of section 26 (7) on a sale and franchise agreement concluded between the parties during the period of a close corporation's deregistration. Maya JA concluded the section had the effect that restoration retrospectively validated the agreement and that was the case even if one of the members was unaware of the deregistration.

[28] In the instant case, the sale of the property was concluded in 2017 with the first respondent when the CC was deregistered. In 2018 an administrative process was embarked upon and the CC was restored. The restoration of the CC was never challenged in a court process. The transfer and registration of ownership took place subsequently and it was during the eviction process that ownership of the property became an issue. I find no reason to hold that the appellants were third parties affected by the re-registration of the CC. They were neither members of the CC, nor creditors or for that matter, tenants of the property. In my view, the respondent is an innocent party who will be prejudiced if the Court were to set aside the re-registration. In any event, the setting aside of the administrative re-registration was not an issue before the court a quo as well as on appeal. Consequently, less needs to be said on that point.

### ***Principles of eviction***

[29] The appellants contend as already stated, that it was not just and equitable to evict them. The eviction of illegal occupiers of property or land is regulated by the PIE Act. Section 6 (1) of the PIE Act provides and gives powers to an organ of the state to institute proceedings of eviction within its area of jurisdiction where the land or building is not compliant with the by-laws.

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<sup>27</sup> *Kadoma Trading* n 24 above at para 14.

[30] Where the unlawful occupier has occupied the land for more than six months when the proceedings are initiated, a court considering an eviction application must consider a wide range of factors as envisaged in section 4 (7) of the PIE Act in order to determine whether an eviction is just and equitable. These considerations include whether the 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 the rights and needs of the elderly, children, disabled persons and households headed by women.

[31] Section 4 (7) of the PIE Act must be considered together with section 4 (8) which provides:

“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)”.

[32] What section 4 (8) states is that a court can grant an eviction order once all procedural requirements and all necessary averments have been made. Simply put, a court must order an eviction once all procedural requirements contemplated in sections 4 (2) to 4 (7) of the PIE Act have been met, and the unlawful occupier lacks a defence, and it is just and equitable to do so.

[33] The term “just and equitable” is not defined in the PIE Act. It denotes a qualitative description of a conclusion that the court reaches after examining various factors and considerations. The words “just and equitable” are sufficiently elastic to allow courts the discretion to intervene against inequity. Therefore, what is just and equitable will vary from case to case. Justice and equity are important overriding factors. The relevant factors in section 4 (7) of the PIE Act do not constitute a closed list. An important consideration towards making a finding that an eviction is just and equitable is the availability of alternative accommodation. This is especially crucial in instances where the unlawful occupiers may be rendered homeless.

[34] Our courts have confirmed what the ambit of the PIE Act in respect of ex-tenants and ex-mortgagors, specifically, whether this class of occupiers fall within the definition of “unlawful occupier” for the purposes of the PIE Act and whether they are worthy or not of the substantive and procedural protections in the PIE Act. This class of occupiers was held to be protected by the provisions of the PIE Act.<sup>28</sup>

[35] To determine what is just and equitable, the court has a discretion in the wide as opposed to one in the narrow sense.<sup>29</sup> Consequently, the court of appeal for instance, is not hamstrung by the traditional grounds of whether the court of first instance exercised its discretion capriciously or upon a wrong principle or that it did not bring its unbiased judgment to bear on the question, or that it acted without substantial reasons.<sup>30</sup>

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<sup>28</sup> See in this regard *Ndlovu v Ngcobo; Bekker & Another v Jika* (240/2001, 136/2002) [2002] ZASCA 87; 2003 (1) SA 113 SCA.

<sup>29</sup> See *Media Workers Association of South Africa and Others v Press Corporation of South Africa Ltd* (33/91) [1992] ZASCA 149; 1992 (4) SA 791 (A); see also *Knox D’Arcy Ltd and Others v Jamieson & Others* (283/95) [1996] ZASCA 58; 1996 (4) SA 348 (A) at 360G – 362G.

<sup>30</sup> See *Ex Parte Neethling and Others* 1951 (4) SA 331 (A) 335E; see also *Administrators, Estate Richards v Nichol and Another* (620/96) [1998] ZASCA 82;



[36] One of the material considerations in the eviction proceedings is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach a court based on their ownership and the respondent's unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, is entitled to an order for eviction.<sup>31</sup> Relevant circumstances are always facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negate in advance, facts not known to him and not in issue between the parties.

[37] It should be remembered that the PIE Act has its roots in the Bill of Rights contained in our Constitution,<sup>32</sup> especially section 25 (1) which provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. The section is aimed at curtailing the State's powers to pass laws that can arbitrarily deprive citizens of their property rights except in terms of law of general application.

[38] It is impermissible in our law to take the law into one's own hands. In *President of the Republic of South Africa and Another v Mooderklip Boerdery (Pty) Ltd; Agri SA and Others Amicus Curiae*,<sup>33</sup> the Constitution Court said the following:

“[45] The execution of an eviction order does not ordinarily raise problems which cannot be accommodated through the existing mechanisms. They allow for the execution of court orders so that the citizens have no jurisdiction to take the law into their own hands. Consequently, order in society is preserved and inappropriate societal disruptions are prevented.”

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1999 (1) SA 551 (SCA).

<sup>31</sup> See *Ndlovu v Ngcobo* n 32 above at para 19.

<sup>32</sup> Constitution of the Republic of South Africa, 1996.

<sup>33</sup> (CCT20/04) [2005] ZACC 5; 2005 (5) SA 3 CC; 2005 (8) BCLR 786 (CC).

[39] It is not enough in eviction proceedings to raise a defence that amounts to a bare denial. In *Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers of the Newton Urban Village*,<sup>34</sup> the court held as follows:

“[122] All Counsel who have struggled to resist an application for summary judgment, will be familiar with the case of *Breitenbach v Fiat* in which Colman J made it plain that it would be difficult indeed to show good cause why such judgments should not be granted where the defence had been set out ‘baldly, vaguely or laconically’. There is no reason why this principle should not apply to occupiers seeking to resist the application for their eviction. Of course, every move from one dwelling to another carrier with its own traumas and disadvantages. That is not enough to resist an eviction order where the occupier has no right, recognised at common law, to remain in occupation of a particular property. The ease for remaining in occupation of the property has been set out by the occupiers laconically.” [footnotes omitted]

## **Conclusion**

[40] It is apparent from the wording of section 82 (2) of the Companies Act that it is not only the court that can re-instate a company on the CIPC register but also “any interested person”. Mr Kee as the only member of the deregistered company was entitled to approach CIPC on a prescribed form to re-instate the company on the CIPC’s register. There is no denial that this was done because the registration and transfer of ownership of the property in favour of the respondent was effected two years (in 2019) after the sale agreement was concluded. The effect of the CC’s reinstatement is that it gave retrospective effect to any act the CC may have done during its deregistered state. The sale as it stands between the CC and the first respondent has not been challenged or set aside. There is no allegation that both parties were *ad idem* about the alleged mistake caused by the so-called fraud. It follows therefore that on the facts available to the court a

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<sup>34</sup> 2013 (1) SA 583 (GSJ.)

quo and this court on appeal, that the appellants' contention that the sale is invalid must fail.

[41] On an evaluation of the facts placed before the court a quo, there is no reason to interfere with the court a quo's discretion in evicting the appellants. In my view, there were no circumstances before the court below justifying a refusal to evict the appellants. The first appellant did not provide any evidence or reasons why it would not be just and equitable to grant an eviction order, but simply supported what the second appellant stated. The property was used for storage and this was supported by pictures made available to the court a quo. The pictures further painted a property in a state of serious disrepair.

[42] The facts clearly show on a balance of probabilities that the appellants are not indigent and will not be rendered homeless by the eviction order. They are also not occupying the property in terms of any lease or other right to occupy. They have never been members of the CC and in fact, the second appellant's daughter (Ms Joelyn Chetty), who is married to Mr. Kee, did not make any effort to either assist the appellants as a family member or come to the defence of her husband, Mr Kee, who is accused of fraud. There is no explanation proffered that could be distilled from the record of the court a quo as to why action was never taken to challenge the so-called fraudulent sale transaction. Based on the papers before us, we can only conclude that the challenge to the eviction is done to frustrate the first respondent's property rights. It is my view that the court a quo did not err in finding that it was just and equitable to evict the appellants.

### ***Order***

[43] In the circumstances, the following order is made:

1. The appeal is dismissed with costs.

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**ML SENYATSI**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

I concur,

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**WINDELL J**  
**JUDGE OF THE HIGH COURT**  
**JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 28 August 2023.

## **APPEARANCES**

For the Appellants: Adv. S Buthelezi

Instructed by: Hlapane Attorneys

For the Respondent: Adv. V de Wit

Instructed by: Dev Maharaj & Associates

Date of Hearing: 04 May 2023

Date of Judgment: ... August 2023