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

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

CASE NO: 2024 - 027467

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

DATE
SIGNATURE

In the application by

ANDEON HOUSING PORTFOLIO	Applicant
And	
SHADUNG, LANGA WILSON (id […])	First Respondent
A PERSON IDENTIFIED AS PHINEAS, PERHAPS THE BROTHER OF THE FIRST RESPONDENT, aka as PHINEAS ALBERTO MALHUZE, A GARDENER	Second Respondent
THE CITY OF TSHWANE	Third Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Eviction – residential property – Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of1998 - section 5 – urgent eviction applications

Order

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

1. *Pending the finalisation of the proceedings in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ("PIE"), contemplated in part "B" of the notice of motion, the first and second respondents are evicted in terms of section 5(1) of PIE from the property described as Erf 3518 Kirkney Extension 38, Registration Division J.R., Gauteng ("the property").*
2. *The first and second respondents are ordered and directed to vacate the property within 48 (forty-eight) hours of service of this order;*
3. *In the event that the first and second respondents do not vacate the property as ordered in terms of paragraph 2 above, the Sheriff of the Court, or his/her lawfully appointed Deputy, is authorised and directed to evict the first and second respondents from the property.*
4. *The Sheriff of the Court, or his/her lawfully appointed Deputy, is authorised and directed to approach the South African Police Service for any assistance that s/he may deem necessary and appropriate herein.*
5. *The relief sought in prayers 6 to 9 of part "A" of the notice of motion are postponed for consideration at the hearing of part "B" of the notice of motion.*
6. *The form and content of the notice in terms of section 4(2) of PIE, annexed hereto as "A", is authorised by this Honourable Court.*

    6.1.1. The applicant is permitted to include the Part B hearing date on the section 4(2) notice once a date has been allocated by this Honourable Court, in the event that a date different from 6 June 2024 is allocated by the Registrar;

    6.1.2. In the event the Sheriff of the Court is unable to serve the section 4(2) notice timeously, or at all, or should the date of final hearing change for any

reason, the date of hearing to be included on the section 4(2) notice may be amended accordingly so that at least 14 days' notice shall be given;

6.1.3. The applicant is granted leave to supplement the founding affidavit in support of part "B" of the notice of motion to the extent necessary.

7. Pending the final outcome of the application the relief in prayers 1, 2, 3, and 4 shall operate as interim relief.

8. This order shall be served –

8.1. By affixing at the main entrance to the property;

8.2. By email to any or all of COJ@pillayinc.com , pretorialegal@gmail.com and cot@pillayinc.com, or if email delivery can not be achieved, by delivery to Pillay Thesigan Inc, 2nd Naude Street, Sandton ;

8.3. By email to langatedom@gmail.com :

9. Service shall be confirmed by Sheriff's returns of service and/or service affidavits as the case may be;

10. By this order the students residing at the property are informed that they are not parties to this present application and will not be evicted in terms of this order.

11. Costs are reserved for consideration at the hearing of part "B" of the notice of motion.

[2] The reasons for the order follow below.

Introduction

[3] This is a judgement in the urgent court. The applicant seeks an interim order evicting the respondents from its property pending the finalisation of an application for a final order.

[4] The applicant is a property owning company and is the owner of the property described as Beaumont student accommodation, at erf 3518 Kirkney, Registration Division J.R., Gauteng ("the property"). The first respondent was employed by the applicant as a caretaker of the property and was permitted to occupy the property in order to carry out his duties. The employment relationship has been terminated. The second respondent is identified only by a first name but the first respondent informs the

court that a person by that name, who is not his brother as alleged by the applicant, never resided at the property but was employed there as a gardener in the past.

[5] During December 2023 the first respondent purporting to act on behalf of the applicant concluded an accreditation agreement with a third party, Tuteh Properties (Pty) Ltd in order for the applicant's property to be accredited as private student accommodation for students at the Tshwane University of Technology. Relying on this "agreement" and despite demands that he desist the applicant started moving students into the property by February 2024.

[6] On 22 February 2024 an urgent application brought by the applicant was struck from the roll because of non-compliance with the practice directives and a lack of urgency. The applicant was ordered to pay the costs. The costs have not been taxed as yet.

[7] On 27 February 2024 the applicant obtained an order under case number 2024/019510 interdicting the first respondent *inter alia* from leasing out units or rooms at and from collecting rental from the occupants of the property. The matter was stood down to 1 March 2024 to allow the first respondent to file an answering affidavit.

[8] On 1 March 2024 the applicant obtained a further order[1] interdicting the first respondent (in the presence of the first respondent's legal representatives) from leasing out rooms, collecting rental, permitting people who are not in occupation of the property to enter the property and take up occupation, and purporting to act on behalf of the applicant for any purpose. The applicant was also permitted to serve papers on the first respondent at his email address and his attorney's email address, and by delivering documents to the second respondent at the property. The court also condoned non-compliance with rule 28 insofar as it was necessary to do so and reserved the costs.

[9] In the amended notice of motion signed on 14 March 2024 the applicant sought orders in two parts. In part A of the application it sought an order that pending the finalisation of the proceedings in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the Act") contemplated in part B, the respondents be evicted from the property in terms of section 5 (1) of the Act, and related relief. The applicant *inter alia* sought an order that the first respondent be declared to be in contempt of the order of 1 March 2024 and be imprisoned for a period of two months but this relief was not regarded as urgent and in this court the applicant sought an order that these prayers be postponed and that only the eviction relief be

[1] This interim order is the subject of an application for leave to appeal dated 19 March 2024

dealt with in the urgent court in the week of 26 March 2024.

[10] The first respondent continued to place students in occupation of the property and between 22 February and 26 February the numbers rose from about 17 to about 50. By the 28th there were approximately 108 and by 5 March 2024 there were approximately 200 students. One hundred and eight names were included in a list provided by the first respondent's attorney after the order of 1 March was granted, which means that almost 100 students (and on the first respondent's evidence perhaps as many as 200 as he stated that there are now 300 students residing there) were granted occupation despite the express terms of the court order.

[11] The applicant says that the continued occupation of the property is an impediment to the chaotic situation created by the first respondent and that as long as he remains in occupation the applicant will not be able to regain control of the property. The applicant submits that unless the first respondent and his brother Phineas who occupies the property through him are evicted on an urgent basis the hijacking of the property will continue.

[12] The applicant is unable to ascertain the personal details of the second respondent because of the hostility expressed by the first respondent, but he is known by the name Phineas and he was granted access to the property by the first respondent and not by the applicant. In the answering affidavit the first respondent states that the person referred to is Phineas Alberto Malhuze who is not his brother but is a gardener who previously worked at the property but who has been dismissed. It is stated that he no longer visits the property.

[13] The applicant also intends to preserve the integrity and viability of the private student accommodation which the applicant seeks to provide to 500 university students. It is important of course that only *bona fide* students be permitted in these property intended solely for occupation by university students.

[14] The applicant therefore seeks the interim eviction of the first and second respondent in terms of section 5 (1) of the Act.

[15] When a representative of the property management company of the applicant attended at the property on 5 March 2024 he was threatened by one of the occupants who told him he should not interfere at the property and should rather speak to the first respondent's attorneys. When the first respondent arrived at the scene he informed the representative that the list already provided to the applicant's attorneys was outdated

and that there were now about 200 students at the property.[2] The representative again attended at the property the next day and calculated by the number of curtains and windows that there must be approximately 200 students in occupation. I stressed that it is of course not conclusively known that the occupants are all *bona fide* students.

[16] The applicant addressed a letter to the first respondent on 8 March 2024 reminding him of the existing court order. On 9 March 2024 the first respondent sent a list reflecting the names of 207 students, 108 "confirmed" and 99 "reserved." It is not clear what these terms mean.

[17] The first respondent, describing himself as "Langa Wilson" (i.e. his names without his surname) and using the company registration number of the applicant as his "registration/identity number" (2014/260943/07) applied for accreditation as the provider of student accommodation to the property company of the University on 13 November 2023. He gave an email address of tsekoreholdings@gmail.com and confirmed that he is duly authorised to apply for accreditation of "Andeon housing."

The "agreement" provides in clause 9.1.3 that the accommodation provider (Langa Wilson) shall invoice the students directly and provide them with a copy of a lease agreement. Students will have to submit these documents to the financial aid office of the particular campus, who will facilitate the payment. It is clearly envisaged in the preprinted document that students would have to enter into a written lease agreement prior to taking occupation of the property.

[18] The first respondent also states in his answering affidavit that he personally vetted all the students permitted to reside at the property. The compilation and printing of a comprehensive list of occupants on any given day should therefore be relatively easy. Yet, the first respondent says that there are approximately 300 students on his calculation but he unable to provide a definitive record and was purportedly unable to comply in time with paragraph 4 of the order of 27 February 2024 in terms of which he was to provide the applicant with full details of the occupants. I point out that he did state in an email that the list that he gave on 28 February was indeed complete that this subsequently turned out to be erroneous.

[19] The applicant informed the students of the pending dispute and confirmed that the application to court would not be aimed at registered students nor would it affect their occupation of the property. The University has been furnished with a copy of the court

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[2] The first respondent stated in his answering affidavit that there were approximately 300 people and not 200.

order and the applicant would seek accreditation with the University once the fraudulent accreditation granted to the first respondent had been cancelled. Leases would then be normalised. Students were advised that they should not make any payments to the first respondent or any of his representatives and to alert the applicant of any attempt to extort money from them by threats.

However, the first respondent physically prevented delivery of letters to the property.

[20] On 19 March 2024 the court authorised a notice in terms of section 5 (2) of the Act. The court authorised service of the notice and the first respondent's email address, and the email address of the first respondent's attorneys, and by the sheriff by affecting the notice to the main application together with the order at the main entrance of the property. Service already effected in the manner described in the order was condoned. The respondents were informed that the interim application for eviction would be brought on 26 March 2024. The application was allocated for hearing by me on the 25th and both parties were informed accordingly, and were represented at the hearing.

[21] Papers were served by the Sheriff on 18 March 2024 by affixing it to the principal door of the property as the property were found locked. The Sheriff advised in the return of service that an attempt to locate the first respondent on 15 March 2024 was unsuccessful as he could not be found, and that the first respondent did not answer his telephone or respond to messages left for him. The application was similarly served on the second respondent and in the City of Tshwane. Further copies were served on 20 March 2024.

[22] The first respondent filed an answering affidavit raising a number of defences.

[23] The first respondent says that he entered into various oral agreements with the applicant on behalf of two companies, Samshum (Pty) Ltd and Tsekore (Pty) Ltd. He then rendered services to the applicant as an employee of the aforementioned two companies and he acted as caretaker on behalf of Samshum until this company's contract was cancelled and substituted by an agreement with Tsekore. He then provided caretaker services to the applicant on behalf of the latter company.

[24] Tsekore's core business is to provide student accommodation. Tsekore entered into an oral agreement with Pulse, the managing agent of the applicant whereby the two firms would operate as a partnership to provide student accommodation. He does not say who represented Pulse, or the applicant, or Tsekore in concluding this oral partnership agreement nor does he say where and when the agreement was entered

into. He does not attach the confirmatory affidavit by a party authorised by Tsekore to confirm that the latter firm was indeed involved in a partnership with the applicant and that the first respondent is indeed an employee (and director) of Tsekore. He makes no attempt to explain why the application for accreditation submitted to the University property company does not reflect the name of Tsekore but does reflect the company registration number of the applicant and reflects the name of "Langa Wilson."

Langa Wilso are the first names of the first respondent but he does not explain why his first names would appear without his surname and without mentioning the name of Tsekore.

[25] In application proceedings the affidavits serve the purpose of pleadings and evidence. The facts must be set out concisely without argumentative matter and the primary facts from which secondary facts may be inferred must be dealt with. Without the primary facts the secondary facts are mere speculation.[3] The first respondent makes averments to the effect that such oral agreements exist but do not plead the primary facts to show the existence of such partnerships agreements.

[26] In the replying affidavit the applicant states that it did have an agreement with Samshum in terms of which the first respondent was to provide services as a caretaker (i.e. an employee of Samshum) but there were no further agreements concluded between the parties and the applicant did not deal with Tsekore. The caretaker agreement was terminated on 21 February 2024.

[27] The first respondent raised a number of ancillary defences:

27.1 The first offence is that the cost of the urgent application that had been struck from the roll with costs had not been paid yet. These costs have also not been taxed and this dilatory plea cannot succeed. The first respondent also relied on a number of other defences:

27.2 The first respondent states that he acted as a representative of Tsekore and the failure of the applicant to join this firm constitutes a non -joinder. The applicant never sought to make out a case against this firm and the accreditation agreement relied upon by the first respondent does not reflect the name of this firm as a party to the agreement. There is also no

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[3] *Reynolds NO v Mecklenberg (Pty) Ltd* 1996 (1) SA 75 (W) 78I, *Willcox and Others v Commissioner for Inland Revenue* 1960 (4) SA 599 (A) 602A, *Radebe and Others v Eastern Transvaal Development Board* 1988 (2) SA 785 (A) 793D, *Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others* 1999 (2) SA 279 (T) 324D-F.

application to evict this firm from the property nor can there be as it is not a natural person.

27.3 The first respondent also states that the failure to join Samshum, constitutes a nonjoinder. There is similarly no merit in this submission.

27.4 The first respondent then states that he ought not to have been joined and that his joinder constitutes a misjoinder. There is similarly no merit in this submission, this being an application to evict him from the applicant's property.

27.5 In a further averment the first respondent states that the University and its property company ought to be joined. There is no need to join these entities to this application and they do not have a direct and substantial interest in the application.

27.6 The students in occupation of the property need not be joined as no order is sought against them and nothing in the application affects their rights. It is possible, though not decided in this application that the students paid money to the first respondent for accommodation and might suffer some kind of financial loss.

27.7 The first respondent states that the firm by the name of Elwandle ought to be joined as it is a preferred partner of the applicant. No case for this joinder is made out.

27.8 The first respondent attacks the *locus standi* of the deponent to the founding affidavit. In this regard to the first respondent confuses standing with authority and with the personal knowledge of the deponent. The deponent says that the applicant has resolved to instituted proceedings and has appointed its attorneys as the attorneys of record for this purpose. The deponent is an attorney with this firm. He then states that the facts stated in the affidavit are within his personal knowledge and from a reading of the affidavit there is no reason to doubt his statement under oath.

The personal knowledge of an attorney or any other person to depose to an affidavit on behalf of a party to litigation is of course a question of fact. The attack on *locus standi* therefore fails.

27.9 The first respondent also argues that while it is so that the Johannesburg High Court enjoys jurisdiction the property is situated in Pretoria and should have been brought in that City. There is however no prejudice to the first respondent as he is represented by a firm of attorneys with offices in Sandton and also in Pretoria. The matter was already dealt with in court on 27 February and 1 March 2024, and I do not see merit in the jurisdiction point argued. This court is already seized with the matter and orders were given on 27 February, 1 March and 18 March 2024.

[28] Section 5 of the Act reads as follows:

"5 Urgent proceedings for eviction

(1) Notwithstanding the provisions of section 4, the owner or person in charge of land may institute urgent proceedings for the eviction of an unlawful occupier of that land pending the outcome of proceedings for a final order, and the court may grant such an order if it is satisfied that-

(a) there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land;

(b) the likely hardship to the owner or any other affected person if an order for eviction is not granted, exceeds the likely hardship to the unlawful occupier against whom the order is sought, if an order for eviction is granted; and

(c) there is no other effective remedy available.

(2) Before the hearing of the proceedings contemplated in subsection (1), the court must give written and effective notice of the intention of the owner or person in charge to obtain an order for eviction of the unlawful occupier to the unlawful occupier and the municipality in whose area of jurisdiction the land is situated.

(3) The notice of proceedings contemplated in subsection (2) must-

(a) state that proceedings will be instituted in terms of subsection (1) for an order for the eviction of the unlawful occupier;

(b) indicate on what date and at what time the court will hear the proceedings;

(c) set out the grounds for the proposed eviction; and

(d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid."

[29] I am satisfied that the requirements in section 5 (1) of the Act have been met. There is a real and imminent danger of damage to the property and harm to the *bona fide* students who are at the property to pursue their studies, and the hardship to the applicant and the *bona fide* occupiers by far exceed the potential harm to the respondents who do not have any right to occupation.

The respondents have overseen an invasion of the applicant's property and the applicant is in danger of losing the use of his own property to the detriment of its lawful business and also to the detriment of university students.

The property is also undergoing maintenance that has not yet been completed and incomplete construction work may possibly pose a danger to students. The applicant was of course not involved in the vetting process of occupiers and cannot know whether all of the students now in occupation are indeed *bona fide* students.

[30] Student accommodation and the maintenance of standards at such accommodation is important to universities and the education system as a whole. When accommodation is substandard the reputational risk to the University is substantial and therefore universities jealously guard accreditation. The presence of adult males who are not students would be an impediment to the accreditation process.

The applicant also received a threatening letter and the South African Student Congress (SASCO. In the letter seemingly written in support of Tsekore threats of violence are made against the applicant. This cannot be countenanced in an environment where students are to be educated.

[31] The right to occupation initially granted to the first respondent was a limited right and was linked to his employment as a caretaker. He did not have permission to rent out rooms or to use the property for business purposes and on his own behalf of on behalf of anybody else.

[32] The first respondent was subject to an interdict from 27 February 2024 onwards. He was aware of the orders and his legal representative was present at both the hearings when the orders were granted. A copy of the order was placed at the main entrance to the property and the order was attached to a letter addressed to the first respondent by the applicant's attorneys. Three days after the order of 1 March 2024 the first respondent informed the applicants representative that the number of students in occupation of the property had since doubled.

The first respondent did not attempt to conceal the information and informed the applicants representative of this fact as if the order did not exist. The applicant draws the inference that the first respondent's conduct is that he does not fear the implications of his non-compliance and will do as he pleases. I need not however decide the contempt of court application now as it is not inherently urgent.

The requirements for an interdict

[33] The requirements for a final interdict[4] are –

33.1 a clear right;

33.2 an injury actually committed or reasonably apprehended;

33.3 the absence of any other satisfactory remedy.

[34] The requirements in an application for an interim interdict are also not contentious.[5] They are –

34.1 a *prima facie* right, coupled with a balance of convenience in favour of the granting of the interim relief OR a clear right obviating the need to show a favourable balance of convenience (and in which case a final interdict may follow);

34.2 a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; and

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4 Van Loggerenberg *Erasmus: Superior Court Practice*, vol 2, 2023, D6-14, footnote 122.

5 See *Setlogelo v Setlogelo* 1914 AD 221 at 227, followed by South African courts overt the last century and the authorities listed by Van Loggerenberg *Erasmus: Superior Court Practice*, vol 2, 2023, D6-16C, footnote 165.

34.3 the absence of any other satisfactory remedy.

[35] I am satisfied that the applicant has, if not a clear right to the use and enjoyment of its building, then at least a *prima facie* right and that the balance of convenience favours the applicant. It needs to protect its property from damage and to regularise its relationship with the University and then to use the property to earn income by providing legitimate accommodation to legitimate students.

The first respondent on the other hand does not have any right to the property and failed in the answering affidavit to make out a proper case.

Urgency

[36] An urgent[6] application must be brought as soon as possible and an applicant is expected to furnish cogent reasons for any delay.[7]

[37] Questions of urgency and degrees of urgency are questions of fact. I am satisfied on the basis of the case made out on the founding affidavit that the matter now merits a hearing in the urgent court.

Conclusion

[38] For all the reasons as set out above I make the order in paragraph 1. The judgment will be furnished to the parties on the public holiday and the deemed date of the judgement will therefore be 2 April 2024, the first court day after the judgement.

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[6] See *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A), *Luna Meubelvervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers* 1977 (4) SA 135 (W) *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ), *Siyakhula Sonke Empowerment Corporation (Pty) Ltd v Redpath Mining (South Africa) (Pty) Ltd and Others* 2022 JDR 1148 (GJ) paras 7 and 8, *Allmed Healthcare Professionals (Pty) Ltd v Gauteng Department of Health* 2023 JDR 3410 (GJ), Van Loggerenberg Erasmus: *Superior Court Practice* 2023 vol 2 D1 Rule 6-1. See also the *"notice to legal practitioners about the urgent motion Court, Johannesburg"* issued by the Deputy Judge President on 4 October 2021.

[7] *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) 94C–D*; Stock v Minister of Housing* 2007 (2) SA 9 (C) 12I–13A*; Kumah v Minister of Home Affairs* 2018 (2) SA 510 (GJ) 511D–E.

MOORCROFT AJ
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 **2 April 2024**

COUNSEL FOR THE APPLICANT:	C VAN DER MERWE N SIBANYONI
INSTRUCTED BY:	
COUNSEL FOR THE FIRST RESPONDENT:	PILLAY THESIGAN
INSTRUCTED BY:	PILLAY THESIGAN INC
DATE OF ARGUMENT:	25 MARCH 2024
DATE OF JUDGMENT:	31 MARCH 2024