



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

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

18 November 2022

DATE

SIGNATURE

CASE NUMBER: 55038/2021

In the matter between:

SANDILE PERCIVEL MSIBI

APPLICANT

And

THE OCCUPIERS OF UNIT 67 CEDAR CREEK

FIRST RESPONDENT

THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY SECOND RESPONDENT

SUMMARY: *Notice of Motion- Eviction in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act)- whether the first respondents are unlawful occupiers- whether it is just and equitable to grant an order for eviction.*

ORDER

Held: The first respondent and all those who occupy the premises known as Unit 67 Cedar Creek Trefnant Road, Ormonde Extension 28 Johannesburg by virtue of the first respondent's occupancy are declared unlawful occupiers.

Held: The application for eviction is dismissed.

Held: Each party to bear own costs.

JUDGMENT

MNCUBE, AJ:

INTRODUCTION:

[1] This is an opposed eviction application lodged by the applicant in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) against the first respondent and all those who occupy unit 67. The applicant is Mr Sandile Percivel Msibi who is represented by Adv. Jacobs. The first respondent is Mr Makaonyane Lefosa who is representing himself after being appraised of his legal rights. The second respondent is The City of Johannesburg Metropolitan Municipality. The second respondent has elected not to participate in the proceedings.

FACTUAL BACKGROUND:

[2] On or about 3 December 2020 the applicant purchased the immovable property known as Unit 67 Cedar Creek situated at Cedar Creek, Trefnant Road, Ormonde, Extension 28 in Johannesburg. The unit was purchased from the previous owner Ms Siyasanga Mangisa for the sum of five hundred and seventy thousand rand. The property was registered in the name of the applicant on 15 July 2021. The applicant through his attorneys issued a letter dated 24 August 2021 addressed to the first respondent demanding that he vacates the premises within thirty days which he failed to do. On 2 December 2021 in an ex parte application the applicant was granted leave to serve notice in terms of section 4 (2) of the PIE Act upon the first respondent. This was done by the Sheriff on 28 January 2022.

[3] The first respondent together with his family has occupied this unit 67 with effect from 1 December 2017. He opposes the eviction application on the basis that he had concluded a written sale agreement with Ms Mangisa the previous owner. He paid a total sum of one hundred and thirty thousand rand towards the purchase of this Unit 67. He disputes the validity of the sale agreement that the applicant concluded with Ms Mangisa. He contends that the agreement between the applicant and Ms Mangiisa was fraudulent and stands to be set aside.

ISSUES FOR DETERMINATION:

[4] It is common cause that the first respondent and other occupiers reside at this unit 67 Cedar Creek. It is also common cause that the applicant is the registered owner. There are two issues for determination. The first issue is whether or not the applicant has locus standi to lodge

the application for eviction. The second issue is whether or not the applicant has satisfied the court that it is just and equitable to evict the first respondent and other occupiers from the said property.

APPLICANT'S CASE:

[5] The applicant submits in his founding affidavit that he is the registered owner of unit 67 Cedar Creek situated at Ormonde extension 28 in Johannesburg. He purchased the property on 3 December 2020 and it was registered in his name on 15 July 2021. He is paying for the property's water and electricity while he has no use and enjoyment of it. On his instructions, his attorneys issued a letter dated 24 August 2021 to the occupiers demanding them to vacate the the house within thirty days. The letter was duly served on the first respondent. He further submits that the occupiers failed and or refused to vacate the premises. He submits that he has never concluded any lease agreement with the occupiers. He is unaware of any children and or elderly and or disabled person occupying the said property. In his replying affidavit, he denies that there was a sale agreement concluded between the first respondent and Ms Mangisa. He avers that the payment allegedly made by the first respondent to Ms Mangisa offered the first respondent a personal right of occupation. He avers that this right of occupation terminated upon registration of the property in his name on 15 July 2021. He alleges that the first respondent has been in unlawful occupation since 15 July 2021. He denies that there was an altercation that took place between him and the first respondent. He however concedes that he did go to the property in order to inform the tenant that he was the owner and would be expecting the tenant to vacate the property.

FIRST RESPONDENT'S CASE:

[6] In his answering affidavit, the first respondent submits that he has been residing in the said property with his family since 1 December 2017. He took occupation of the house following a written sale agreement he concluded with Ms Mangisa on 6 November 2017. The terms of the agreement were that the house will remain in the name of Ms Mangisa while he will pay her monthly towards purchasing the house. The agreed purchase price for the house was eight hundred thousand rand subject to certain conditions. One of the conditions was that he will effect initial payment in the sum of one hundred thousand rand as a move-in amount. A further condition was that Ms Mangisa will service the bond through the monthly repayments he will be making in the sum of ten thousand rand. He submits that he fulfilled his obligations and paid the one hundred thousand rand on 29 November 2017. A further payment of twenty thousand rand

was made to Ms Mangisa on 10th January 2018 which was meant to cover January 2018 and February 2018. Another condition of the sale agreement was that payment covering a period of two months payments would be waived. He then requested the months of March 2018 and April 2018 be waived. However during March 2018 Ms Mangisa requested payment which he effected in the sum of ten thousand rand.

[7] The first respondent alleges that he was surprised by a letter from the bank indicating that Ms Mangisa was in bond arrears in the sum of fifty four thousand rand. This led to the breakdown of trust between him and Ms Mangisa. The correspondence from the bank was that the house was to be put on auction scheduled for 15th December 2020. He alleges that due to the breakdown in the relationship he had with Ms Mangisa he opted to buy the house on auction. On the day of the scheduled auction, he received notification of withdrawal of the auction which was later followed by correspondence to that effect. He alleges that before Christmas 2020 he met the applicant who came to the unit 67 and demanded that he vacates from it. The conversation with the applicant escalated into a heated argument. He submits that Ms Mangisa ordered him to vacate the premises as it was sold to the applicant and allegedly used her partner to intimidate him in order to vacate the unit. He submits that he sought the assistance of the police. After some time the applicant returned to the property in a friendlier attitude.

[8] He denies the applicant's averment that he was unknown to him. He submits that the applicant used his position as a member of the board of trustees of Cedar Creek Body Corporate to buy the property at a discounted rate. He further submits that the applicant has no claim to the property as the sale agreement he concluded with Ms Mangisa was contaminated by fraud. He opposes the eviction on the basis that the purported purchase of the unit was fraudulent and stands to be reversed as a nullity. He contends that the applicant is the author of his own misfortunes. He prays among others for the dismissal of the application for eviction with costs.

APPLICABLE LEGAL PRINCIPLES:

[9] The PIE Act provides for a lawful procedure for the eviction of unlawful occupiers. The jurisdictional requirement that triggers an application for eviction in terms the PIE Act is outlined in section 4.

[10] Section 4 (1) states that '*Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.*' Section 1 provides definitions which are applicable to the PIE Act. These definitions are relevant to section 4(1), such as who is an owner, who is an unlawful occupier.' **An owner** 'means the registered owner of land, including an organ of state. **'An unlawful occupier'** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996(Act No 31 of 1996).

[11] Section 4(7) of the PIE Act provides that 'If an unlawful occupier has occupied the land in question for more than six months from the time when the proceedings as initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all relevant circumstances, including , except where the land is sold on execution pursuant to a mortgage, whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled person and households headed by women.'

[12] Section 4 (8) of the PIE Act empowers the court to evict an unlawful occupier once it is satisfied that the provisions of section 4 have been complied with. This means that the court must be satisfied that it is just and equitable to order an eviction. The determination of what is just and equitable involves a two -stage process. The first stage calls for the court to make a finding that it is just and equitable to evict. The second stage comes in once an eviction order is granted and this calls for the court to decide what reasonable conditions must be incorporated in the eviction order. The enquiry into what is just and equitable requires the court to make a value judgement of all the relevant facts coloured in the case.

[13] In order to succeed in an application for eviction, an applicant needs to satisfy the court that –

- (a) He or she is an owner of the land or immovable property;
- (b) The respondent is an unlawful occupier and

(c) It is just and equitable to grant the eviction order.

[14] An eviction application triggers constitutional considerations. A court seized with such an application is enjoined to apply the Constitutional imperatives as a starting point and to consider all relevant circumstances. Therefore the correct approach is for the court bearing in mind the values of the Constitution to decide if it is appropriate to issue an order which has the effect of depriving people of their homes.¹ It is crucial for the court to have regard to the purposes for the PIE Act. The preamble sets out the purposes for the PIE Act as follows-

[14.1] *'WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;'*

[14.2] *'AND WHEREAS no one may be evicted from their home or have their home demolished without an order of court made after considering all the relevant circumstances;'*

[14.3] *'AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances;'*

[14.4] *'AND WHEREAS special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered.'*

[15] Section 26 of the Constitution of the Republic of South Africa, 1996 (the Constitution) applies in such applications. Section 26(3) provides that no one may be evicted from their home or have their home demolished without an order of the court. The provisions of section 26(3) form part of one of the pillars of the PIE Act. In the past a distinction was drawn with regard to whether an applicant was an organ of state or a private person or entity. Where the applicant was an organ of state, eviction was held to be just and equitable if the applicant was able to address the consequences of eviction i.e. by ensuring that alternative land or accommodation was available. This approach was followed until the matter of ***City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd 2012 (2) SA 104 (CC)***. The Constitutional Court para [95] held that it was unreasonable to differentiate between the two groups.

[16] In an eviction application where the applicant is a private person it is trite that there is no obligation to provide free accommodation. Whether the applicant is a private person or entity does not absolve the local government from its constitutional obligations to take reasonable

steps to provide alternative accommodation. This duty is indicative by the enactment of the Housing Act 107 of 1997. Irrespective of who the applicant is, an eviction application still involves the two- staged enquiry. The court considering what is just and equitable exercises a wide discretion.

[17] A court considering an eviction application must consider a wide range of factors as envisaged in section 4(7) in order to come to the conclusion that the eviction is just and equitable. These considerations are –

- (i) The unlawful occupier must have occupied the land for more than six months;
- (ii) The court may grant an eviction once it formulates an opinion that it is just and equitable;
- (iii) The court to consider whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier;
- (iv) The court to consider the rights and needs of the elderly, children, disabled person or households headed by women.

[18] Section 4(7) of the PIE Act must be considered together with section 4(8) which is the empowering section as indicated supra. Section 4(8) 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)’

What section 4(8) of the PIE Act envisages is that a court is empowered to order an eviction once all procedural requirements and all necessary averments have been made. Simply put, a court must order an eviction once all procedural requirements which are those contemplated in sections 4(2) to 4(7) of the PIE Act and the findings on the lack of a defence by the unlawful occupier and justice and equity.

[19] In such an application, the court must formulate an opinion that an eviction is just and equitable. The term ‘just and equitable’ is not defined in the PIE Act. It denotes a qualitative

description of a conclusion that the court reached after examining various factors and considerations. The words 'just and equitable' are sufficiently elastic to allow courts the discretion to intervene against inequityⁱⁱ. 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 there unlawful occupiers may be rendered homeless. The question becomes who must produce such a report from the local municipality.

[20] In *Pillay and Another v Ramzan and Others (9757/2020) [2022] ZAGPJHC 306 (delivered 26 April 2022)* para 24 Lenyai AJ held 'It is my view that it is the duty of the property owner to put as much information as he or she is able to before the court to demonstrate that an eviction if granted would be just and equitable. . . It is not enough to only join the municipality. The land owner must ensure that there is a report before court from the municipality that there is a report before court from the municipality dealing with provision by the municipality for alternative accommodation as is required by the constitution.'

[21] To summarize- the general principles for assessing whether an eviction order is just and equitable are as follows-

[21.1] The applicant has to persuade the court that it is just and equitable to order an eviction.

[21.2] Eviction which may lead to homelessness will generally not be permitted.ⁱⁱⁱ

[21.3] Where it appears that an eviction might lead to homelessness, the municipality having jurisdiction over the property must be joined.^{iv}

[21.4] The municipality has a duty to report to the court on what steps can be taken to prevent the occupiers from becoming homeless. To this end, it is recognised that in certain circumstances, the owner may have to be patient and accept that the right of occupancy may be temporarily restricted in the equity enquiry mandated by the PIE Act. See *Blue Moonlight Properties 39 (Pty) Ltd supra* para [40].

[21.5] Eviction orders once granted by the court must be executed humanely^v.

[21.6] If there is no land or accommodation available, an eviction order may be refused.

[21.7] The court may grant eviction order where it has sufficient information about the occupiers and is satisfied that eviction is just and equitable having regard to the information^{vi}.

[21.8] The court is obliged to give special consideration to the rights of the vulnerable people such as the elderly, children and women headed houses.

SUBMISSIONS MADE:

[22] Both parties made written and oral submissions and cited authorities. All submissions and authorities have been considered. Adv. Jacobs in his oral submissions argues that the basis on which the first respondent attacks the applicant's the locus standi is the sale agreement he (first respondent) concluded with Ms Mangisa. Adv. Jacobs contends in his written submissions that the applicant is a rightful and registered owner of the said property consequently the first respondent has no valid defence. He argues that the first respondent only had a personal right of occupation which did not equate to ownership. He submits that the first respondent repudiated the sale agreement he had with Ms Mangisa and is in unlawful occupation of the property. Adv. Jacobs prays for prayers 1, 2, 3 on the notice of motion to be granted.

[23] The first respondent in his written submissions contends that he was not in unlawful occupation of this unit. He submits that the agreement between the applicant and Ms Mangisa was void ab initio due to fraud. He argues that the insistence by the applicant that he is the rightful owner fails when applying the causal theory which demands valid factors to the transaction. He lists factors such as the fact that the property was not put on open market as indicative of collusion between the applicant and Ms Mangisa.

[24] The first respondent in his oral submissions reiterated that the house was sold to two individuals- himself and the applicant. He argues that the applicant's sale agreement was fraudulent and was concluded in bad faith which is against public policy. He prays for the dismissal if the application with costs.

EVALUATION:

[25] In determining the first issue whether the applicant has locus standi, the applicant's counsel submits that the applicant is the registered owner of the property. My assessment of the first respondent's contention is that he does not dispute that the property is registered in the name of the applicant. Rather he challenges the manner in which the applicant acquired

ownership of the property. The first respondent submits that he is the rightful owner or the occupier of the property. He submits that the sale of the property and subsequent registration of the property in the name of the applicant is tainted with fraud. He contends that by applying the causal theory, the registration of the property in the name of the applicant becomes void ab initio. The contention by the first respondent that he bought unit 67 from Ms Mangisa and any subsequent sale of the property to the applicant must be assessed based on the presented evidence.

[26] It is evident that the first respondent had repudiated the sale agreement he concluded with Ms Mangisa per the email dated 7 May 2018. The email reads **'It is equally instructive, therefore, that since you chose not to be honest with me, the agreement you and I signed was based on untruths hence it is rendered null and void ab initio.'** The reading of this email is indicative that the sale agreement between Ms Mangisa and the first respondent fell through. The applicant had purchased the property long after the sale agreement between the first respondent and Ms Mangisa fell through. The property was registered in the name of the applicant on 15 July 2021 long after the email dated 7 May 2018 was addressed to Ms Mangisa. In addition, the first respondent in his answering affidavit makes a concession that he stopped making payments to Ms Mangisa upon realising that she was not making payments towards servicing the bond. On the other hand, the applicant is the registered owner of the property.

[27] I am mindful that passing of ownership only takes pace when there has been delivery effected by the registration of transfer coupled with a real agreement between the parties. The applicant in this matter is the registered owner of the property in question in terms of the Title Deed. The allegation of fraud is not fully substantiated in a manner that would incline this court to conclude that the sale and subsequent registration of the property in the name of the applicant was tainted with irregularities. The facts demonstrate that there was a real agreement which was concluded between the applicant and Ms Mangisa. See ***Legator McKenna Inc and Another v Shea and Others 2010(1) SA 35 (SCA)*** para [22]. The first respondent's contention that the sale agreement concluded between the applicant and Ms Mangisa was void due to alleged fraud is with respect without merit. The reliance by the first respondent to the causal theory is with respect misplaced.

[28] The last issue is whether or not the applicant has satisfied this court that it is just and equitable to evict the first respondent and those who occupy the premises from the property.

This calls for the assessment of all the relevant factors. As indicated supra, section 4(7) of the PIE Act sets out factors to be considered which is not a closed list.

(a) Unlawful occupation(including period of occupation of land)

[29] It is common cause that the first respondent has occupied this unit 67 for more than six months. Adv. Jacobs argues that the first respondent had the right of occupation but did not acquire a real right of ownership of the Unit 67. He contends that from the date the property was registered in the name of the applicant, the first respondent was in unlawful occupation. The first respondent on the other hand submits that he has been occupying the property with his family from 1 December 2017. He denies that he is an unlawful occupier on the basis that he bought the house from Ms Mangisa. It is clear from the papers that when the first respondent took occupation of the unit 67 he did so with the expressed consent of Ms Mangisa who was the registered owner of the property at the time. The first respondent's occupancy of the unit was linked to the purported sale agreement he had with Ms Mangisa for the unit. The sale agreement fell through as evident by the email dated 7 May 2018 which the first respondent penned to Ms Mangisa. There is a contradiction in the version of the first respondent- on the one hand he maintains that he has a valid sale agreement for the unit yet on the other hand he penned an email to Ms Mangisa repudiating the agreement between them.

[30] The first respondent concedes that he was asked to vacate the unit as it had been sold. I am persuaded that from the time Ms Mangisa informed the first respondent to vacate the property, the initial consent granted to him was withdrawn. In addition to the withdrawal of consent by Ms Mangisa, the letter from the applicant's attorneys addressed to the first respondent to vacate the premises caused the occupation to be void of consent. The first respondent together with other occupiers by virtue of the subsequent withdrawal of consent they became unlawful occupiers. The finding of unlawful occupiers is one part of the enquiry. The second part is to determine whether authorising the eviction is just and equitable.

(b) Just and equity factors:

[31] The first respondent has been occupying the premises since 1 December 2017 with his family. His family comprised among others his young children. It is so that the unlawful occupation deprives the applicant of the rights to property as envisaged by section 25 of the

Constitution. However it is important to balance competing rights of the owner of property as envisaged by section 35 with the right of the unlawful occupier not to be rendered homeless as envisaged by section 26(3) of the Constitution. One of the special considerations in eviction application are the rights of the vulnerable people. In this matter this includes the rights of the first respondent's minor children as compounded by section 28 of the Constitution. The best interests of children are of utmost paramount. The facts demonstrate that unit 67 has been the primary resident of the first respondent and his family since he took occupation in 2017.

[32] Children require protection from any actual or potential harm. The first respondent's version is that the said unit 67 is within close proximity to the minor children's school. It is unclear what effect or impact an eviction order may have to the first respondent's minor children rights to security and education. I can only reasonably infer that to be evicted from the home they have known for some years will affect their wellbeing. It would be a grave injustice to pay lip service to the paramountcy principle in instances where the minor children are affected. As cautioned by Sachs J in *AD and another v DW and Others (Centre for Child Law as amicus curiae ; Department For Social Development as intervening party 2008 (3) SA 183 (CC)* para [50] where he held ' Determining the best interests of the child cannot be circumscribed by mechanical legal formulae.'

[33] In considering whether the land has been made available or can reasonably be made available by a municipality for the relocation of the unlawful occupiers, it is unfortunate that there is no such information placed before this court. The rationale for joining the local municipality in eviction applications is to ensure that at a local government, the state adheres to its constitutional obligations in section 26 of the Constitution. It is the duty of every Court to prevent homelessness. Applying *Blue Moonlight Properties 39 (Pty) Ltd* supra para [40], this means that the owner of the unit 67 has to be patient and accept that the right of occupancy may be temporarily restricted in the equity enquiry as mandated by the PIE Act.

[34] On the facts of this matter, the report on alternative accommodation is material if not decisive for the determination of what is 'just and equitable'. This is so for the simple reason that the applicant in his founding affidavit avers that the allegations fall within his personal knowledge and he states that '**I am not aware of children and I am not aware of any elderly and or disabled persons occupying the said property**'. In other words, according to the applicant, he is unaware that there are minor children occupying unit 67. It is interesting that the

applicant denied the averments made by the first respondent that they were involved in an alleged altercation yet concedes that he went to the unit. It is odd that in his founding affidavit the applicant avers that the particulars of the first respondent were unknown to him when this is clearly incorrect. He had been at the unit and had engaged with the first respondent. It is unclear why the applicant failed to disclose in his founding affidavit the fact that he had a previous encounter with the first respondent when he went to inform him that he had bought the unit. I find the first respondent's averment that they had an altercation more persuasive during the visit by the applicant persuasive.

[35] The applicant relies on these two grounds to persuade the court that it is just and equitable to order the eviction- (i) that there is no lease agreement in existence and (ii) that the occupants are adult persons capable of earning an income to provide for themselves and for alternative accommodation. These grounds are with respect not persuasive. I therefore accept the first respondent's version that there are minor children who occupy the property. In such an application this court is obliged to give special consideration to the minor children as part of a vulnerable group as imposed by the PIE Act and the Constitution.

[36] Courts are now called upon to have regard to the circumstances of the occupier and to pay due regard to considerations of fairness in order to come up with a just and equitable solution. The rights of the registered owner are no longer superior to the rights of the unlawful occupier. There is no report from the second respondent on the availability of alternative accommodation which is fatal to an eviction application. This is especially in circumstances such the present one where there is a real risk of homelessness. An eviction is just and equitable if alternative accommodation is made available.^{vii}

[37] I wish to remark on Adv. Jacobs's argument that the issue is crisp in that there is no valid defence to the application as equating to an automatic order for eviction. That to my view is with respect over-simplifying the issue. Such an approach would amount to what Sachs J calls 'mechanical legal formulae'. I wish to emphasise that an eviction application denotes a two stage enquiry- (a) to determine if the respondent is an unlawful occupier and (b) for the court to be satisfied that an eviction order is just and equitable. To assess the aspect of justice and equity is, in my view the very essence of the purpose for the PIE Act. It calls for weight up of all competing rights of the land owner and the unlawful occupier and thereafter making a value judgment based on the facts of each case. The submission also with respect overlooks other

relevant factors such as the rights of children; provisions of section 26 (3) of the Constitution which are the weighty considerations of justice and equity. The weighing of these competing rights must be done in a balanced manner using the Constitution as a yardstick.

CONCLUSION:

[38] In conclusion I am satisfied that the applicant is the registered owner of unit 67 and accordingly is vested with the locus standing to lodge an eviction proceeding. I am satisfied that the first respondent and those who occupy unit 67 are unlawful occupiers. However despite the finding of unlawful occupancy, in terms of section 4(8) of the PIE Act I am not satisfied that all the requirements in section 4 have been complied with. This conclusion is based on the finding that it is not just and equitable to order the eviction of the first respondent and those who occupy the said property. On the facts of this matter an eviction order will render the first respondent's children homeless. To order the eviction of the first respondent in the absence of the report from second respondent will be contrary to justice and equity. Placing all the circumstances on the balancing scale, I hold the view that it is not just and equitable to grant the relief. An appropriate order coloured by the facts of this matter is to declare the first respondent and other occupiers as unlawful occupiers but dismiss an order for eviction.

COSTS:

[39] The last aspect to be addressed is the issue of costs. Awarding of costs is at the discretion of the court which must be exercised judicially. I am of the view that a just and appropriate order as to cost is that each party to bear own costs.

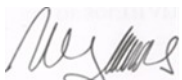
Order:

[40] In the circumstances the following order is made:

[40.1] The first respondent and all those who occupy the premises known as Unit 67 Cedar Creek Trefnant Road, Ormonde Extension 28 Johannesburg by virtue of the first respondent's occupancy are declared unlawful occupiers.

[40.2] The application for eviction is dismissed.

[40.3] Each party to bear own costs.



**MNCUBE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearances:

On behalf of the Applicant : Adv. M. Jacobs
Instructed by : Vezi & De Beer Incorporated
Corner of South Village and Alpine Road
Lynwood, Pretoria

On behalf of the 1st Respondent : In personam

Date of hearing : 1 September 2022

Date of Judgment : 18 November 2022

- ⁱ See *Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217(CC)* para 32.
- ⁱⁱ See *Pheko and Others v Ekurhuleni Metropolitan Municipality 2015(5) SA 600 (CC)*.
- ⁱⁱⁱ See *Occupiers, Shulana Court, 11 Hendon Road, Yoeville Johannesburg v Steele [2010]4 All SA 54 (SCA)*; *Port Elizabeth Municipality v Various Occupiers supra*.
- ^{iv} See *Occupiers of Erf 101,102, 104 and 112 Shorts Retreat, Pietermaritzburg v Daisy Dear Investment (Pty) Ltd*.
- ^v See *Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resource Centre, Amici Curiae); President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae) 2004 (6) SA 40 (SCA)* which judgment was upheld in the Constitutional Court *2005 (5) SA 3 (CC)*.
- ^{vi} See *Occupiers of Erven 87 & 88 Berea v Christiaan Frederick De Wet NO [2017] ZACC 18 para [48]*.
- ^{vii} See *The City of Johannesburg v Changing Tides 74 (Pty)Ltd and Others 2012(6) SA 294 (SCA)* para 14.