



Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 12653/2022

Before: The Hon. Ms Acting Justice Hofmeyr

Date of hearing: 27 July 2023
Date of judgment: 28 July 2023

In the matter between:

GOODFIND PROPERTIES (PTY) LTD

Applicant

and

JOHN DERRICK BLAKE

First Respondent

ALL OCCUPANTS OF THE PROPERTY
SITUATED AT 701 SAKABULA FLATS, SAKABULA CIRCLE,
RUYTERWACHT, WESTERN CAPE PROVINCE

Second Respondent

THE CITY OF CAPE TOWN MUNICIPALITY

Third Respondent

JUDGMENT

HOFMEYR AJ:

1 This is an application to evict the occupants from a flat in Ruyterwacht, Western Cape.

2 It is brought by a company, Goodfind Properties (Pty) Ltd, which owns the block of flats. It purchased the block of flats in April 2019.

3 The occupiers have been living in the block of flats for more than thirty years, since 1987.

4 They fell into arrears with their rental in March 2021. The applicant brought eviction proceedings in June 2022.

5 The wife of the first respondent, Ms Sarah Blake, who resides at the flat, deposed to the answering affidavit on 6 March 2023.

6 She provides the following details about the occupiers:

6.1 Mr Blake is 70 years old and his sole source of income is a monthly government grant of R1945.00. He had been working as a security guard but retired in 2020. In June 2022, he suffered a severe stroke and is undergoing rehabilitation.

6.2 Also living at the property is Ms Blake's sister who is separated from her husband. She has also suffered from a stroke and has profound neurocognitive deficits. She is unemployed and lives off a disability grant of R1980.00 a month.

6.3 Ms Blake's son is 22 years old also lives in the flat. He suffers from schizophrenia and is disabled. He also receives a disability grant of R1980 a month.

- 6.4 Ms Blake looks after and cares for these three people on the property.
- 6.5 Ms Blake receives a grant of R450 per month. She is unable to find employment because she has to look after the occupants of the flat.
- 6.6 There are no other relatives who can be relied upon to provide alternative accommodation and no further source of income for the occupiers.
- 7 In its decision in *Changing Tides*,¹ the Supreme Court of Appeal emphasised the important role that municipalities play in dealing with homelessness that can follow eviction proceedings. In particular, it emphasised that municipalities have a duty to report to the courts about the availability of alternative land or accommodation for people who are evicted pursuant to court orders.
- 8 On 6 February 2023, the Acting Judge President of this Court granted an order in this matter requiring, amongst other things, the third respondent – the City of Cape Town – to deliver a report dealing with the special circumstances of the occupiers, as well as the following:
- 8.1 whether the eviction of the occupiers would likely result in homelessness;
- 8.2 details of all engagements between the applicant, the City and the occupiers and whether any scope exists for mediation;
- 8.3 the infrastructure in the proposed settlement area, including but not limited to availability and location of public transport, medical facilities and further social services; and

¹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA)

8.4 the impact of relocation on the occupiers.

- 9 The City's report was filed with the Court on 22 March 2022. It took the form of an affidavit. In the affidavit, the City initially identifies the first respondent correctly as an adult male. However, later in the affidavit, the deponent incorrectly uses the pronoun "she" to refer to the first respondent.
- 10 The City also incorrectly states that the first respondent is employed and gets a monthly income of R6355.00. This error tends to indicate that the deponent to the City's affidavit did not read the answering affidavit of the occupiers before preparing the report because their affidavit makes it clear that the first respondent is not employed and that the combined income of the household is from social grants.
- 11 The City's report and affidavit therefore proceeds from the incorrect premise that the first respondent receives an income from employment. He does not. He is severely disabled and not working. Despite the fact that the City was specifically ordered by this court to deal with the special circumstances of the occupiers, the City's affidavit makes no reference to the fact that the occupiers are acutely vulnerable. Amongst them are the elderly and the disabled. It is therefore not clear whether this factor was even taken into account in the City's consideration of alternative accommodation or land for the occupiers. The cavalier way in which the City prepared its report is to be deprecated.
- 12 On the issue of alternative accommodation or land, the City's affidavit is also woefully inadequate. It deals only with the provision of what is called "emergency shelter material". The City's deponent says that "this is the only form of emergency shelter that is on offer from the City". Quite how the provision of material with which to build a shelter

qualifies as alternative accommodation or land is not explained by the City. Moreover, the City's offer of emergency shelter material is made conditional on the occupiers being able to secure a site for its construction and providing proof, in the form of an affidavit, from any relevant landowner that she or he will consent to the construction of the emergency shelter material on the land and will comply with the City's building and planning by-laws in the construction of the structure.

13 However, by attaching these conditions to the provision of the shelter material, the City has made it extremely difficult for those facing homelessness even to be able to take up the offer of the provision of the material. Notably, the City does not say that it, as landowner, is willing to provide the necessary consent and give the undertakings required. It leaves it to those facing eviction to secure this consent but it is unclear how this would ever be achieved given the onerous obligations that the City insists on placing on any landowner who may be willing to give consent. Similar concerns about the City's provision of emergency shelter material have recently been raised by Justice Binns-Ward in a judgment handed down earlier this month on 10 July 2023 in *Vacation Import (Pty) Ltd v Bumina and Others* (3852/2022; 3855/2022) [2023] ZAWCHC 162 (10 July 2023).

14 There is also no explanation in the City's affidavit for why "emergency shelter material" is "the only form of emergency shelter that is on offer from the City". There is simply no detail provided about the resources available to the City, what alternative accommodation or land is available, and why the shelter material is all that the City is in a position to provide to these acutely vulnerable people.

15 It is also apparent that no consideration has been given to whether the City should step in and assume the rental obligation of the occupiers until alternative accommodation or

land becomes available. The facts before court are that these occupiers dutifully paid their rental every month for more than 30 years until, it seems, the first respondent stopped his employment in 2020 and then they started to fall into arrears from March 2021. The monthly rental that was being paid in 2021 was in the order of R3,250. It escalates at a marginal percentage each year.

- 16 In the light of these inadequacies in the report from the City, the report fails to provide the court with the information it requires for the purposes of section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. In *Changing Tides*, the Supreme Court highlighted the fact that:

*“courts are required, in matters such as this one, to go beyond their normal functions and to engage in active judicial management according to equitable principles of an ongoing, stressful and lawgoverned social process. This has major implications for the manner in which [the court] must deal with the issues before it, how it should approach questions of evidence, the procedures it may adopt, the way in which it exercises its powers and the orders it might make.”*²

- 17 The issue of the inadequacy of the City’s report was taken pertinently in the heads of argument of Mr Nduli, who appeared for the occupier-respondents. During argument, I raised the question of its adequacy with Ms Oosthuizen, who appeared for the applicant. Ms Oosthuizen fairly conceded that the City’s report failed to meet its constitutional obligations in cases of eviction and, moreover, failed to comply with the order granted by this court in February. In her own words, it appeared that the affidavit had been produced

² *Changing Tides* supra, para 26 quoting from *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) para 36

using a standard “template”. As the Constitutional Court and the Supreme Court of Appeal have previously observed, it is essential that proper investigations been done to place all the relevant facts before a court in eviction proceedings.³ As a result, the matter will need to be postponed to enable the City to meet its obligations to provide a proper and detailed account of the availability of alternative accommodation or land for the occupiers.

18 Given the City’s prior failure to comply with this court’s order, it is also necessary to make provision for a representative of the City to be present in court and available to testify when the matter is heard again. This is required so that if the report filed remains inadequate in any respect, the court and the parties can make the necessary enquiries of the official who will give oral evidence on the day.

19 I therefore make the following order:

(a) The application is postponed to Friday, 22 September 2023 at 10am or so soon thereafter as the matter may be called.

(b) The applicant is directed to procure the service of this order, together with the answering affidavit of the occupier-respondents in this matter and a copy of this judgment, on the third respondent at the office of the City Manager by no later than 3 August 2023.

³ *Changing Tides* supra, para 27

(c) The third respondent is directed to file a further report, on or before 24 August 2023, confirmed on affidavit, in order to report to the court on the following:

(i) the steps that have been taken by the City to meet with the applicant and occupier-respondents to mediate the issue of their continued occupation of the property;

(ii) the steps the City has taken or intends to take in order to provide alternative land or emergency accommodation for the occupier-respondents in the event of their being evicted and when such alternative land or accommodation can be provided;

(iii) in the event that the third respondent cannot provide either alternative land or emergency accommodation to the occupier-respondents, the reasons why it cannot do so;

(iv) in setting out the reasons in (iii) above, the third respondent is directed to explain:

- if the reasons relate to resource constraints, what those constraints are in the context of the overall budgeting of the third respondent;
- any existing plans that it has in place to deal with the need for alternative accommodation or land to be made

available to persons who are evicted pursuant to a court order within the area of jurisdiction of the municipality;

- the extent to which the specific personal circumstances of those who face eviction are taken into account in the allocation of alternative accommodation or land, such as, in this case, the fact that three of the four occupier-respondents are severely disabled and one is elderly;
- the extent to which people who face eviction from properties falling within the jurisdiction of the third respondent have managed to comply with the conditions set by the third respondent for the provision of emergency shelter material referred to in the third respondent's report dated 22 March 2023;
- the third respondent's assessment of whether providing emergency shelter material is effective in providing people who are evicted with a means to avoid homelessness.

- (v) what the effects would be if the eviction of the occupier-respondents were to take place without alternative land or emergency accommodation being made available, particularly in the light of their disabilities and age; and

- (vi) what steps may be taken by the third respondent, including to assume responsibility for paying the monthly rental under the lease for the property, to alleviate the effects of the current occupation of the property if the occupier-respondents are not immediately evicted and pending alternative land or accommodation being made available.

- (d) The applicant's attorneys of record are directed, within 5 days of receiving the third respondent's further report pursuant to paragraph (c) above, to provide a copy thereof to the occupier-respondents or their legal representatives;

- (e) The applicant and the occupier-respondents may, by 14 September 2023, file affidavits in response to the third respondent's further report;

- (f) The applicant's attorneys of record are directed, by no later than 14 September 2023, to subpoena the responsible official of the City of Cape Town, or, if such person cannot be identified, the City Manager, to appear in person at the hearing on 22 September 2023 and to provide such functionary with a letter of notice succinctly setting forth the reasons why he or she has been subpoenaed in terms of this order.

- (g) The question of costs is reserved.

K HOFMEYR
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

Applicants' counsel: **Adv A Oosthuizen**

Applicants' attorneys: BBM Attorneys, Cape Town

First and Second Respondent's counsel: **Adv B Nduli**

Respondent's attorneys: Legal Aid