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

Case No: **6026/2023**

In the matter between:

LEON LOCHNER N.O.	**Applicant**
versus	
JACQUILINE CHARMAINE GARDNER	**First Respondent**
NADEEM NOOR	**Second Respondent**
ALL PERSONS OCCUPYING 5 VAN GOENS STREET, BOTHASIG	**Third Respondent**
THE CITY OF CAPE TOWN	**Fourth Respondent**

Coram: **Adhikari AJ**
Heard: **30 January 2024**
Delivered: **13 February 2024**

JUDGMENT DELIVERED ELECTRONICALLY ON 13 FEBRUARY 2024

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for the hand-down is deemed to be on 12 February 2024.

ADHIKARI, AJ

[1] This is an opposed eviction application brought in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ('PIE'). The applicant seeks the eviction of the first to third respondents from a residential property situate at 5 Van Goens Street, Bothasig, Western Cape, also known as erf 7463, Milnerton, Cape Town ('the property'). The property was previously owned by Mrs Peggy Antonello ('Mrs Antonello') who passed away on 22 December 2020. The applicant is the duly appointed executor of Mrs Antonello's deceased estate.

[2] The first respondent ('Mrs Gardner') and the second respondent, her husband ('Mr Noor')[1] occupy the property with their 15-year-old son. The respondents have occupied the property since around or about 2004. The respondents initially occupied the property in terms of a residential lease agreement concluded with Mrs Antonello which was renewed from time to time. It is not in dispute that the lease agreement terminated by the effluxion of time on 31 March 2021 and has not subsequently been renewed. Further, it is not in dispute that the respondents have failed to pay any rental in respect of the property since the death of Mrs Antonello.

[3] The applicant had instituted eviction proceedings against the respondents in the Goodwood Magistrates Court, but those proceedings were withdrawn because Mrs Gardner instituted proceedings in this Court in which she sought the transfer of the property into her name pursuant to a document entitled *"Residential Real Estate*

[1] For ease of reference in the remainder of this judgment I refer to Mrs Gardener and Mr Noor collectively as 'the respondents'.

Sale Agreement" purportedly concluded between Mrs Gardner and Mrs Antonello on 25 September 2020 ('the alleged sale agreement'). This Court (per Meer J) dismissed the application brought by Mrs Gardener on 13 March 2023. Thereafter, the applicant instituted fresh proceedings in this Court for the eviction of the respondents.

[4] The respondents have delivered an answering affidavit in these proceedings in which they deny that the applicant is entitled to evict them because they had concluded an agreement with Mrs Antonello on 25 September 2020 to purchase the property and that they have paid a deposit of R950 000 for the property in terms of the aforesaid agreement. The agreement on which the respondents rely in their answering affidavit is the alleged sale agreement, that is the document entitled *"Residential Real Estate Sale Agreement"* purportedly concluded between Mrs Gardner and Mrs Antonello on 25 September 2020.

[5] At the commencement of the proceedings before me, the respondents requested a postponement from the bar, in order to obtain legal representation. No formal postponement application was brought. The applicant opposed the request for a postponement. It bears emphasis that the proceedings had been postponed on two previous occasions (that is on 12 October 2023 and 24 October 2023) for the respondents to obtain legal representation. The respondents confirmed at the hearing that the defence outlined in their answering affidavit was the sole defence on which they sought to rely, and that the purpose for which they sought a further postponement was to engage the services of a legal representative to present argument based on the defence set out in the respondents' answering affidavit.

[6] After hearing argument from both parties, I dismissed the postponement application. Reasons for the dismissal of the postponement application were given at the time. The hearing then proceeded on the merits.

STATUTORY AND CONSTITUTIONAL FRAMEWORK GOVERNING EVICTIONS

[7] PIE provides for the prohibition of unlawful evictions and regulates the procedures to be followed for the eviction of unlawful occupiers. In *Ndlovu v Ngcobo; Bekker and Another v Jika*[2] the Supreme Court of Appeal observed that:

> *'PIE has its roots, inter alia, in s 26(3) of the Bill of Rights, which provides that "no one may be evicted from their home without an order of court made after consideration of all the relevant circumstances" . . . . It invests in the courts the right and duty to make the order, which, in the circumstances of the case, would be just and equitable and it prescribes some circumstances that have to be taken into account in determining the terms of the eviction.'*

[8] Section 4 of PIE regulates the eviction of unlawful occupiers of land, sought by the owner or person in charge of that land. Section 4(1) of PIE provides that "*the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier"* and override any other law, including the common law. Section 4(2) requires that at least 14 days before the hearing of an application in terms of PIE, *"the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction"*. Section 4(5) prescribes what the notice referred to in s 4(2) must contain. Once the

---

[2] *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) at para [3].

notice has been given and the matter is heard, the court is required to decide whether it is just and equitable to evict the unlawful occupier.

[9] Whenever faced with an application for eviction in terms of PIE, in which the occupation has been found to be unlawful, a court must determine whether it would be just and equitable to grant an order of eviction, regardless of whether a case has been made out under s 4(6) or s 4(7) of PIE.[3]

[10] The constitutional approach to PIE has been outlined by the Constitutional Court in *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another.*[4] The Constitutional Court pointed out that as a starting point, it is settled law that the application of PIE is not discretionary.[5] Courts must consider PIE in eviction cases.[6] Court are not permitted to passively apply PIE and must probe and investigate the relevant surrounding circumstances and particularly so where the occupiers are vulnerable.[7]

[11] There are two separate enquires that must be undertaken by a court in proceedings brought in terms of PIE.

[12] First, the court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors.[8] Those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the

---

3 *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Limited* 2012 (2) SA 337 (CC) at para [15] and [16].
4 *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* 2017 (5) SA 346 (CC).
5 *Id.* at para [43]. See also *Machele v Mailula* 2010 (2) SA 257 (CC) at para [26].
6 *Machele* at para [15].
7 *Berea* at paras [43] – [44].
8 *Berea* at para [44].

unlawful occupiers will ordinarily be limited in duration.[9] Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant an eviction order.[10]

[13] The second enquiry, that the court must undertake before granting an eviction order, is to consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order.[11] In that second enquiry the court must consider the impact of an eviction order on the unlawful occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere.[12]

[14] The order that the court grants as a result of these two discrete enquiries is a single order. The two requirements are inextricable, interlinked and essential. The enquiry has nothing to do with the unlawfulness of occupation. It assumes and is only due when the occupation is unlawful. One of the factors to consider is whether the grant of an eviction order would pose the threat of homelessness to the unlawful occupiers. If so, then the relevant municipality's emergency housing obligations are activated, and the municipality in question must respond reasonably.

[15] Consequently, the essential enquiry which this Court must undertake is to determine whether in all the relevant circumstance it would be just and equitable to evict the respondents.

---

9 *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at para [11]-[24].
10 *Id.*
11 *Id.*
12 *Id.*

[16] As regards the requirement of justice and equity, in *Changing Tides* the Supreme Court of Appeal explained:[13]

> *'In terms of s 4(7) of PIE an eviction order may only be granted if it is just and equitable to do so, after the court has had regard to all the relevant circumstances, including the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If the requirements of s 4 are satisfied and no valid defence to an eviction order has been raised the court "must", in terms of s 4(8), grant an eviction order. When granting such an order the court must, in terms of s 4(8)(a) of PIE, determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The court is empowered in terms of s 4(12) to attach reasonable conditions to an eviction order.'*

[17] The Constitutional Court has stated that while a property owner cannot be expected to provide free housing for the homeless on its property for an indefinite period, in certain circumstances an owner may have to be somewhat patient and accept that the right to occupation may be temporarily restricted.[14]

---

[13] *Changing Tides* at para [11].

[14] *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at para [40].

[18] While an applicant seeking an eviction order in terms of PIE bears the onus to place sufficient information before the court to justify the eviction order that it seeks,[15] there is also an obligation on the respondents in such proceedings to place sufficient information before the court to enable the court to discharge its duty to enquire into all the relevant circumstances for the purposes of the enquiry required by PIE. The Supreme Court of Appeal in *Changing Tides* qualified the onus that rests on an applicant in PIE proceedings by stating that applicants for evictions are obviously not required to go beyond what they know or what is reasonably ascertainable.[16]

[19] This Court held in *FHP Management (Pty) Ltd v Theron NO & Another*[17]

> '*As regards the effect of s 26(3) of the Constitution (as quoted above), read together with s 4(7) of PIE, it would appear from the judgment of Harms JA in Ndlovu v Ngcobo; Bekker and Another v Jika (supra in paras [17] – [19]) that it is not necessary for an applicant, in proceedings to evict an unlawful occupier from such applicant's property, to place more before the Court by way of evidence than the facts that such applicant is the owner of the property in question and that the respondent is in unlawful occupation of such property. <u>It is then up to the occupier to disclose to the Court 'relevant circumstances' to show why the owner should not be granted an order for the eviction of the occupier</u> (see also Ellis v Viljoen 2001 (4) SA 795 (C) at 805C – D; Ridgway v Janse van Rensburg 2002 (4) SA 186 (C) at 191I – 192A; Brisley v Drotsky 2002 (4) SA 1 (SCA) at paras [41] – [43]).*' [emphasis added]

---

15 *Changing Tides* para [30] and [34].
16 *Changing Tides* at para [31].
17 *FHP Management (Pty) Ltd v Theron NO & Another* 2004 (3) SA 392 (C).

[20] It is thus not open to respondents in eviction proceedings to fail and/or refuse to place their personal circumstances before the court. Where the answering affidavits in PIE proceedings are silent on matters which the respondents should be able to address with relative ease, a satisfactory explanation should be provided for the omission, and in the absence thereof a court will be justified in drawing the inference that a bald assertion of impecuniosity or homelessness is not genuine or credible.[18]

THE RESPONDENTS' DEFENCE

[21] Having considered the respondents' answering affidavit and having heard submissions from the respondents at the hearing, it is clear that the respondents do not dispute that the lease agreement in terms of which they had previously occupied the property was terminated and has not been renewed. Indeed, the respondents were at pains during argument to point out that they had wanted to conclude a new lease agreement with the applicant but that the applicant had refused to do so.

[22] The respondents' sole defence to the eviction application is that they have a right to remain in occupation of the property because Mrs Antonello had supposedly sold the property to them and they had paid to her a portion of the purchase price, that is some R950 000.

[23] The respondents defence, however, raises the precisely the same issues of law and fact which this Court rejected when it dismissed the application brought by Mrs Gardner.

---

[18] *Luanga v Perth Park Properties Ltd* 2019 (3) SA 214 (WCC) at para [48].

[24] In that application Mrs Gardner sought an order that the alleged sale agreement was valid and binding, as well as an order pursuant to the alleged sale agreement for the transfer of the property to her. In summary, Meer J made the following pertinent findings in dismissing the application brought by Mrs Gardner:

[24.1] The first reference to any sale agreement between Mrs Gardner and Mrs Antonello was made in the respondents' answering affidavit delivered in the eviction proceedings in the Goodwood Magistrates Court;

[24.2] The factual allegations relied on by Mrs Gardner were *"untenable and far-fetched"* not only because of the lack of explanation as to why, having paid R950 000 in the terms of the alleged sale agreement, no reference was ever made by Mrs Gardner to the existence of the alleged sale agreement until the eviction proceedings in the Goodwood Magistrates Court, but also because of Mrs Gardner's failure to respond to many of the relevant factual averments by the respondent (that is, the applicant in these proceedings);

[24.3] The alleged sale agreement did not give Mrs Gardner a right to take transfer of the property; and

[24.4] Mrs Gardner's conduct lent credence to the respondent's allegations of dishonesty and fraudulent behaviour on the part of Mrs Gardner, warranting an order that Mrs Gardner pay the respondent's costs on a punitive scale.

[25] I specifically enquired from the respondents, at the hearing, whether they sought to rely on anything other than the alleged sale agreement in support of their contention that they have right to remain in occupation of the property. The respondents were adamant that they had bought the property from Mrs Antonello and that this was the basis on which they claimed a right to remain in occupation of the property.

[26] The applicant contends that the defence on which the respondents seek to rely, as pleaded in the answering affidavit, raises the same issues of fact and law which were finally determined by Meer J in the application brought by Mrs Gardner and that as a consequence, the essential requirements for a plea of *res judicata* in the form of issue estoppel have been met.

[27] As I have stated, Meer J found that the alleged sale agreement did not give rise to any entitlement on the part of Mrs Gardner to claim transfer of the property. Meer J found that the wording of the alleged sale agreement *"is suggestive that it was not an agreement of sale, but rather an agreement to enter into an agreement in due course"* and that having regard to the wording of the alleged sale agreement, Mrs Gardner *"as of 8 April 2021 would have lost all entitlement to claim transfer of the property and her remedy … would probably have been the institution of action proceedings to recover the refundable deposit".*

[28] It bears emphasis that the alleged sale agreement does not, in any event, provide either expressly or tacitly, for any right of occupation on the part of Mrs Gardner.

[29] The doctrine of *res judicata* has ancient roots as an implement of justice. Its purpose was to protect the litigants and the courts from never ending cycles of

litigation.[19] The doctrine of *res judicata* applies when a dispute involves the same party, seeking the same relief, relying on the same cause of action.[20] In essence, the doctrine applies when a matter or question raised by a party in proceedings before a court has been finally adjudicated upon in proceedings between the parties and can therefore not be raised again.

[30] With time, the common law requirements of *res judicata* were relaxed, giving rise to the expression *'issue estoppel'*, which describes instances where a party can successfully plead that the matter at issue has already been finally decided even though the common law requirements of *res judicata* have not all been met. This relaxation of the common law requirements was explained as follows in *Smith v Porritt & others*: [21]

> *'Following the decision in Boshoff v Union Government 1932 TPD 345 the ambit of the exceptio res judicata has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (eadem res and eadem petendi causa) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (idem actor) and that the same issue (eadem quastio) must arise. Broadly stated, the latter involves an enquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. Where the plea of res judicata is raised in the absence of a commonality of cause*

---

[19] *Ascendis Animal Health (Pty) Ltd v Merck Sharpe Dohme Corporation and Others* 2020 (1) SA 327 (CC) at para [111].

[20] *Prinsloo NO & Others v Goldex 15 Pty Ltd & another* 2014 (5) SA 297 (SCA) para [10].

[21] *Smith v Porritt and Others* 2008 (6) SA 303 (SCA) at para [10]. See also *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite* 2000 CC and Others 2013 (6) SA 499 (SCA) at para [22].

of action and relief claimed it has become commonplace to adopt the terminology of English law and to speak of issue estoppel. But, as was stressed by Botha JA in Kommissaris van Binnelandse Inkomste v Absa Bank Bpk 1995 (1) SA 653 (A) at 669D, 670J-671B, this is not to be construed as implying an abandonment of the principles of the common law in favour of those of English law; the defence remains one of res judicata. The recognition of the defence in such cases will however require careful scrutiny. Each case will depend on its own facts and any extension of the defence will be on a case-by-case basis … Relevant considerations will include questions of equity and fairness not only to the parties themselves but also to others.'

[31] The overarching principle underlying the doctrine of *res judicata* is that '*there should be a limit to the extent to which the same issue is litigated between the same parties and that it is desirable that there be finality in litigation. The courts are also concerned to avoid a situation where different courts pronounce on the same issue with the risk that they may reach differing conclusions. It is a plea that has been recognised by our courts for over 100 years*.'[22]

[32] Given that the defence pleaded in the answering affidavit, in essence is that the respondents are entitled to remain in occupation of the property because they had purchased the property from Mrs Antonello and had paid a portion of the purchase price, being R950 000, in terms of the alleged sale agreement, it is apparent that the defence raises the same issues of law and fact that were finally determined by Meer J in the application brought by Mrs Gardner. Consequently, the

---

[22] *Caesarstone* at para [2], citing *Socratous v Grindstone Investments* 2011 (6) SA 325 (SCA) at para [13].

respondents are precluded, by virtue of the application of the doctrine *res judicata* in the form of issue estoppel, from contending that the alleged sale agreement gives them a right of occupation in respect of the property.

[33] In the result, I am satisfied that the respondents have no defence in law to their eviction from the property. The respondents are thus in unlawful occupation of the property. I turn now to consider whether the applicant has met the requirements for an eviction order.

THE APPLICANT'S ENTITLEMENT TO AN EVICTION ORDER

[34] The applicant has the requisite standing in law to seek the eviction of the respondents in that he is the person in charge of the property by virtue of his appointment as the executor of Mrs Antonello's deceased estate.

[35] The respondents have no right in law to remain in occupation of the property and are thus unlawful occupiers for the purposes of PIE.

[36] A notice in terms of s 4(2) was authorised by this Court. The s 4(2) notice complies with the requirements set out in s 4(5) of PIE in that written and effective notice of these proceedings, containing the information required in terms of s 4(5), was served on the respondents as well as on the fourth respondent, the City of Cape Town, being the municipality in which the property is situated, more than 14 days before the hearing. There has consequently been compliance with the provisions of s 4(2) of PIE in that the objects of the statutory provisions have been achieved.

[37] The respondents failed to place any meaningful detail of their personal circumstances before the Court in their answering affidavit. The only allegations made in the answering affidavit in this regard are that:

[37.1] The respondents have lived in the property since 2004.

[37.2] The property is their primary residence, and they have no other property registered in their names.

[37.3] Their son was born at the property and has lived in the property his whole life.

[37.4] Their son attends school in the area, all his friends reside in the area, and it would be a *"travesty of justice"* to uproot him.

[37.5] The respondents are not in a position to secure alternative accommodation.

[37.6] The applicant and the beneficiaries of Mrs Antonello's deceased estate do not require the property for residential purposes and only wish to sell the property.

[37.7] The respondents intended to purchase the property and still intend to do so.

[38] Given the paucity of information in the answering affidavit, at the hearing, given that the respondents were unrepresented I requested that the respondents address me fully on their personal circumstances. Despite being given this opportunity, the respondents did not raise any new personal circumstances not

referred to in the answering affidavit and gave little by way of further detail in respect of their personal circumstances.

[39] The respondents in their address reiterated that they have lived at the property since 2004; that they consider the property to be their home; they have one minor child, who is 15 years of age, who attends school nearby; they wish to purchase the property; the applicant and the beneficiaries of the deceased estate do not need the property for residential purposes. The only new information provided by the respondents is that Mrs Gardner is employed, although her income was not disclosed, and that Mr Noor has sold the business that he used to run and is without an income.

[40] The respondents were, however, at pains to point out that they are aggrieved by the fact that applicant has supposedly refused to enter into a lease agreement with them. They were adamant that if the applicant was prepared to enter into a lease agreement with them, they would be in a position to pay the same rental that they had been paying to Mrs Antonello prior to her death, that is R12 000 per month.

[41] It bears emphasis that the applicant in the replying affidavit pointed out that properties in the Bothasig area (that is 3-bedroom houses) are available for rent at reasonable rates and that an eviction would not result in anyone being uprooted as alleged by the respondents. The applicant annexed to the replying affidavit a series of rental advertisements which demonstrate that 3-bedroom houses in Bothasig are available for rent at rates ranging from R11 500 per month to R18 000 per month and that 2-bedroom houses in Bothasig are available for rent at rates ranging from R3 500 to R10 500 per month. The respondents were unable to explain why they could not simply rent another property in the Bothasig area for an equivalent amount

to that which they had been paying to Mrs Antonello and which they contended that they would be able to pay in the event that the applicant was prepared to lease the property to them.

[42] Further, the respondents repeatedly stated that they wanted to purchase the property from the applicant and that they have a friend who had agreed to assist them to purchase the property for R1.6m, but that the applicant did not want to sell the property to them. The respondents were unable to explain why their friend could not assist them to purchase another property from a willing buyer for the same amount.

[43] The respondents further allege that the applicant has been acting in bad faith in refusing to sell the property to them or to lease the property to them. These allegations are spurious and without any factual foundation.

[44] Relations between the parties have become strained, in particular as a consequence of the application brought by Mrs Gardner and as a consequence of her conduct as explained by Meer J in her judgment in that matter. In light of the respondents' previous conduct, and in particular as a consequence of the baseless allegations of *mala fides* made against the applicant in the application brought by Mrs Gardner, it is understandable that the applicant no longer wishes to lease or to sell the property to the respondents. Indeed, Mrs Gardner has demonstrated a worrying degree of dishonesty as Meer J found her in judgment. In any event, the applicant is perfectly entitled to elect not to enter into a lease or sale agreement with the respondents. The respondents' belated attempts at the hearing to offer to purchase the property or to enter into a lease agreement are simply too little too late. Had they acted honestly at the outset instead of pursuing the manifestly false claim

that they had purchased the property from Mrs Antonello, they would likely not have found themselves in the current situation.

[45] The applicant alleges that the deceased estate has suffered and continues to suffer prejudice as a consequence of the respondents' failure to vacate the property. It is common cause that the respondents have not paid any rental since the death of Mrs Antonello. The allegation in the founding affidavit that the respondents are indebted to the deceased estate in the amount of some R216 000 is not meaningfully disputed.

[46] The respondents' explanation for why they have failed to pay rent for more than three years is wholly unsatisfactory. The respondents contend that the applicant and his attorney have acted in bad faith and have refused to engage with them. Nothing could be further from the truth. The correspondence filed of record demonstrates that a number of attempts were made since the death of Mrs Antonello to engage with the respondents.

[46.1] In February 2021 and March 2021 correspondence was addressed to the respondents by the applicant's attorneys offering to sell the property to the respondents.

[46.2] In response, the respondents indicated that they wished to continue with the then extant lease agreement and that they would be in a position to make an offer to purchase the property in 2022.

[46.3] On 18 April 2021 the applicant's attorneys advised the respondents that the applicant was prepared to sell the property to them for R1.6m.

[46.4] The respondents declined to purchase the property and instead launched the ill-fated proceedings before Meer J.

[47] The applicant points out that the winding up of the deceased estate has been stalled for some three years as a consequence of the respondents' conduct and that their continued refusal to vacate the property or to pay any rental is prejudicial to the deceased estate.

[48] In all the circumstances of this matter, I am satisfied that it is just and equitable for an eviction order to be granted in that the respondents have no right in law to remain on the property and their continued occupation of the property is prejudicing the deceased estate. Furthermore, the respondents, on their own version, can afford alternative accommodation from their own resources in that they can afford to pay rental in the amount of R12 000 per month and will therefore not be rendered homeless if they are evicted.

[49] In these circumstances the deceased estate, as a private entity cannot reasonably be expected to continue to provide free housing to the respondents indefinitely, and in particular in circumstances where all reasonable efforts to avoid eviction proceedings have simply been rejected by the respondents and met with dishonest claims. The deceased estate has suffered substantial financial prejudice as a consequence of the respondents' refusal to pay rental and their refusal to vacate the property and continues to suffer financial prejudice due to lost rental income and having to pay rates and municipal service charges in respect of the property. Further, the deceased estate has had to expend funds in defending Mrs Gardner's spurious application and has had to expend further legal costs to evict the respondents.

[50] Insofar as the respondents' minor child is concerned, any prejudice that he may suffer as a consequence of the impact of an eviction on his schooling can be ameliorated by an order that ensures that the timing of the eviction provides sufficient time for the respondents to either secure alternative accommodation in the area where they currently reside or to arrange alternative schooling for the minor child closer to where they are able to secure alternative accommodation.

[51] In all these circumstances I am satisfied that it is just and equitable to grant an eviction order.

[52] I am mindful that the current school term ends on 20 March 2024, however, I am of the view that an order directing that the respondents vacate the property around this date, would not afford the respondents sufficient time within which to arrange alternative accommodation so as to ensure that their minor child's schooling is not adversely affected. Having regard to all relevant factors, I am of the view that an order directing that the respondents are to vacate the property on or before 14 June 2024, being the date on which the second school term of 2024 ends and that if they fail to do so, the Sheriff of the Court be authorised to evict them, is just and equitable.

[53] As regards the issue of costs, there is no reason why costs ought not to follow the result. The applicant, in the founding affidavit, sought a punitive costs order against the respondents. I agree with the submission by Mr Wilkin who appeared for the applicant, that given the history of this matter a punitive costs order is warranted. The respondents were well aware that they have no right in law to continue occupying the property. The judgment of Meer J in the application brought by Mrs Gardner would have dispelled any reasonable notion on their part that they had

any such right. Yet, the respondents persisted with their meritless claims before this Court. Further, the respondents without any factual basis sought to impugn the integrity of the applicant despite the fact that the self-same allegations were rejected by Meer J and resulted in a punitive costs order being awarded against Mrs Gardner in those proceedings. I am satisfied that the respondents have failed to act *bona fide* in defending these proceedings. Further, the respondents' meritless defence is vexatious in that the deceased estate has been put to unnecessary trouble and expense, which it ought not to have to bear, in having to bring these proceedings[23] to evict the respondents.

In the result I make the following order:

1. The first to third respondents are directed to vacate the property situate at 5 Van Goens Street, Bothasig, Western Cape, also known as erf 7463, Milnerton, Cape Town ('the Property') on or before 14 June 2024.

2. In the event that the first to third respondents fail to vacate the Property on or before 14 June 2024 the Sheriff of this Court or his/her deputy is authorised and directed to evict the first to third respondents from the Property.

3. The first and second respondents shall pay the applicant's costs of suit on a scale as between attorney and client, the one paying the other to be absolved.

M. ADHIKARI

Acting Judge of the High Court

[23] *In re Alluvial Creek Ltd* 1929 CPD 532.

APPEARANCES:

Applicant's Counsel:	**Mr LF Wilkin**
Instructed by:	**Rabie & Rabie Attorneys**

First and Second Respondents in person