



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Reportable

Case No: 1335/2021

In the matter between:

STAY AT SOUTH POINT PROPERTIES (PTY) LTD

APPELLANT

and

ABULELE MQULWANA

FIRST RESPONDENT

AKHONA NTOTHO

SECOND RESPONDENT

AMANDA MSABA

THIRD RESPONDENT

ANDILE PHAKADE

FOURTH RESPONDENT

ANDISIWE SITYATA

FIFTH RESPONDENT

APHIWE MASEBENI

SIXTH RESPONDENT

ASEMAHLE DANGISA

SEVENTH RESPONDENT

AVILE GIYAMA

EIGHTH RESPONDENT

AVUMILE MZANTSI

NINTH RESPONDENT

AVUYILE SOMAGAGU

TENTH RESPONDENT

AWODWA PICANE

ELEVENTH RESPONDENT

AYANDA BUHLEBEMVULO SIKO

TWELFTH RESPONDENT

BONGA GWABENI

THIRTEENTH RESPONDENT

BONGANI PUZA

FOURTEENTH RESPONDENT

BUKHO MANGALI

FIFTEENTH RESPONDENT

EYRAM ADALETE

SIXTEENTH RESPONDENT

FULUFHELO LENNOSE KHOMOLA

SEVENTEENTH RESPONDENT

GLODIE KABUYA

EIGHTEENTH RESPONDENT

IVIWE LOLIWE

NINETEENTH RESPONDENT

KAMVELIHLE MDAYI

TWENTIETH RESPONDENT

KELETSO QHETSU	TWENTY-FIRST RESPONDENT
KHANYISILE DUBULA	TWENTY-SECOND RESPONDENT
KHOLIWE NGUMBE	TWENTY-THIRD RESPONDENT
LELOKA MOTHIBE	TWENTY-FOURTH RESPONDENT
LERATO NGQOBWA	TWENTY-FIFTH RESPONDENT
LESIBA KHALO	TWENTY-SIXTH RESPONDENT
LIMPHO RANAMANE	TWENTY-SEVENTH RESPONDENT
LITHAKAZI MQUQU	TWENTY-EIGHTH RESPONDENT
LONWABO ALVIN	TWENTY-NINTH RESPONDENT
LONWABO NOFEMELE	THIRTIETH RESPONDENT
LULAMILE DYANI	THIRTY-FIRST RESPONDENT
LUNGELO MNGUNI	THIRTY-SECOND RESPONDENT
LUTHOLWETHU NTLOKO	THIRTY-THIRD RESPONDENT
LWANDO MKWANE	THIRTY-FOURTH RESPONDENT
MANCOBA VUYISANANI	THIRTY-FIFTH RESPONDENT
MBONGENI BOQWANA	THIRTY-SIXTH RESPONDENT
MDUNA AKHONA	THIRTY-SEVENTH RESPONDENT
MELINDA SOGIBA	THIRTY-EIGHTH RESPONDENT
MIHLALI SITYATA	THIRTY-NINTH RESPONDENT
MINENHLE SG NGWENYA	FORTIETH RESPONDENT
MOJAKI REETUMETSI	FORTY-FIRST RESPONDENT
MPHO-ENTLE MOKOENA	FORTY-SECOND RESPONDENT
MVELELI MADOTYENI	FORTY-THIRD RESPONDENT
NEO MONGALE	FORTY-FOURTH RESPONDENT
NHLANHLA MKHITHIKA	FORTY-FIFTH RESPONDENT
NJABULO NHANZI	FORTY-SIXTH RESPONDENT
NOLUVUYO NOCANDA	FORTY-SEVENTH RESPONDENT
NTANDO TSHANAVHA	FORTY-EIGHTH RESPONDENT
NTLAKANIPHO NIKA	FORTY-NINTH RESPONDENT
NTOBEKA SEKHUKHUNI	FIFTIETH RESPONDENT
NTOKOZO MASEKO	FIFTY-FIRST RESPONDENT
OKUHLE JAMES	FIFTY-SECOND RESPONDENT
PAMELA NKOMANA	FIFTY-THIRD RESPONDENT
PHELOKAZI NTOLA	FIFTY-FOURTH RESPONDENT

PHUMZA MHAGA	FIFTY-FIFTH RESPONDENT
SANDISIWE CHWAYI	FIFTY-SIXTH RESPONDENT
SANDISO MBANJWA	FIFTY-SEVENTH RESPONDENT
SIHLE YANI	FIFTY-EIGHTH RESPONDENT
SIKHO SISONKE MBOTO	FIFTY-NINTH RESPONDENT
SIMAMKELE NCWADI	SIXTIETH RESPONDENT
SINDISWA SIYAKA	SIXTY-FIRST RESPONDENT
SINOXOLO MDAKA	SIXTY-SECOND RESPONDENT
SIPHAMANDLA QOLI	SIXTY-THIRD RESPONDENT
SIPHENATHI MZWALI	SIXTY-FOURTH RESPONDENT
SIPHO NUSE	SIXTY-FIFTH RESPONDENT
SIPHO VONGWE	SIXTY-SIXTH RESPONDENT
SITHSABA MACEMBE	SIXTY-SEVENTH RESPONDENT
SIXOLILE MADWARA	SIXTY-EIGHTH RESPONDENT
SIZWE TYOKWANA	SIXTY-NINTH RESPONDENT
SOUKE MDIYANA	SEVENTIETH RESPONDENT
WILLIAM MAKASHANE	SEVENTY-FIRST RESPONDENT
XOLANI JAFTA	SEVENTY-SECOND RESPONDENT
YAMKELA MVULANKULU	SEVENTY-THIRD RESPONDENT
YONELA DALASILE	SEVENTY-FOURTH RESPONDENT
ZIMASA KATA	SEVENTY-FIFTH RESPONDENT
ZIPHINDILE NYOKANA	SEVENTY-SIXTH RESPONDENT
ZIPHO MHLABA	SEVENTY-SEVENTH RESPONDENT
ZIZIPHO DANO	SEVENTY-EIGHTH RESPONDENT
BONGA NOBOKWANA	SEVENTY-NINTH RESPONDENT
GERALD THABO MASUKU	EIGHTIETH RESPONDENT
ITUMELENG DWANGU	EIGHTY-FIRST RESPONDENT
KONELE MHLOTYANA	EIGHTY-SECOND RESPONDENT
LEHLOHONOLO THABISO MOLOMO	EIGHTY-THIRD RESPONDENT
LUNGA DINISO	EIGHTY-FOURTH RESPONDENT
MASENTLE PONI	EIGHTY-FIFTH RESPONDENT
MTHANDENI NKAZIMULO CELE	EIGHTY-SIXTH RESPONDENT
NOZIPHO PETUNIA KHUZWAYO	EIGHTY-SEVENTH RESPONDENT
SIPHOSETHU THOBIGUNYA	EIGHTY-EIGHTH RESPONDENT

**THANDOLWETHU MYATAZA
VIWE PRINCESS NJONGO**

**EIGHTY-NINTH RESPONDENT
NINETIETH RESPONDENT**

UNIVERSITY OF CAPE TOWN

AMICUS CURIAE

Neutral citation: *Stay At South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae)* (1335/2021) [2023] ZASCA 108 (3 July 2023)

Coram: SALDULKER, ZONDI and MABINDLA-BOQWANA JJA and MALI and UNTERHALTER AJJA

Heard: 21 February 2023

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date for hand down is deemed to be 3 July 2023 at 11h00.

Summary: Eviction – applicability of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) to student residence at a higher education institution – residence not considered a home – PIE not applicable.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Baartman J, sitting as court of first instance):

- 1 The appeal is upheld with no order as to costs.
 - 2 The order of the high court is set aside and replaced with the following:
 - ‘(a) It is declared that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 did not apply to the unlawful occupation by the respondents of their student accommodation, and the applicant was entitled to secure their eviction.
 - (b) Each party to pay its own costs.’
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JUDGMENT

Mali AJA (Saldulker, Zondi and Mabindla-Boqwana JJA and Unterhalter AJA concurring):

[1] This is an appeal against the order of the Western Cape Division of the High Court, Cape Town (the high court) discharging a rule *nisi* and dismissing the appellant’s application to evict the respondents, with costs, including the costs of two counsel. The respondents had been called upon to show cause why they should not be evicted from the student residence which they continued to occupy without the consent of the owner of the property. Leave to appeal to this Court was granted by the high court.

[2] The appellant is the owner and the manager of a residence, known as New Market Junction (the residence). It is a residence for students enrolled at the Cape Peninsula University of Technology (CPUT). The respondents are all students who were studying at CPUT during the 2020 academic year. The University of Cape Town (UCT) was admitted as an *amicus curiae* in the appeal.

[3] The appellant leased the residence to CPUT for purposes of providing student accommodation. The respondents were allocated accommodation by CPUT in the residence until the end of November 2020. However, they remained in occupation of the residence and refused to vacate, after CPUT gave them notice to do so within 72 hours of their last examination of the 2020 academic year, in terms of its procedures. The seventy-ninth to ninetieth respondents were granted permission to remain in the residence for the 2021 academic year, but they were required to vacate the premises at the end of 2020 and stay in alternative premises, which the appellant had made available, so that maintenance and decontamination could be done. These respondents also refused to vacate the residence. Consequently, the appellant summoned private security guards to remove them forcibly on 12 January 2021. When the respondents resisted their forcible removal, the appellant approached the high court on 15 January 2021 for an order to evict the respondents from the residence. The appellant relied upon the *rei vindicatio* to do so.

[4] The respondents contended that the appellant was non-suited on the basis that the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) applied to the proceedings brought by the appellant and to the extent that the appellant failed to bring the eviction proceedings in terms of PIE, the application was fatally defective. The appellant contended that the residence did not constitute the respondents' home, and if evicted, they would not be rendered homeless, because they had homes to go to. For this reason, the appellant submitted that PIE did not find application. In the alternative, the appellant contended that should PIE be applicable, then the eviction order nevertheless ought to be granted in terms of s 5 of PIE.¹

[5] At the commencement of the hearing in this Court, we were informed that the respondents were no longer in occupation of the residence. That rendered the appeal moot. Both parties agreed, however, that this appeal ought to proceed because of the wider and far-reaching implications of the eviction of students from student accommodation. I am also persuaded that this Court should hear the appeal,

¹ Section 5 provides for urgent evictions of an unlawful occupier pending the outcome of proceedings for a final order. The court may grant such an order if it is satisfied that, inter alia, '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'.

because the rights and duties of students provided with accommodation by CPUT is an issue of recurring controversy.

[6] PIE was promulgated to give effect to s 26(3) of the Constitution. Section 26(3) provides that '[n]o one may be evicted from *their home* . . . without an order of court made after considering all the relevant circumstances'. (My emphasis.)

[7] PIE's Preamble, in relevant part, provides:

'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;
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;
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.' (My emphasis.)

[8] Section 2 of PIE provides as follows:

'This Act applies in respect of all land throughout the Republic.'

Section 4(7) of PIE states:

'If an unlawful occupier has occupied *the land in question* for more than six months at the time when the proceedings are 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 the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether 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 persons and households headed by women.' (My emphasis.)

[9] Although the substantive provisions of PIE reference the occupation of land, it is plain that PIE gives effect to the constitutional protections against the peril of homelessness. It follows that, if the occupation of land does not constitute the home of an occupier, PIE does not find application. Further support for this proposition is found in *Lester v Ndlambe Municipality and Another*.² There, this Court stated that

² *Lester v Ndlambe Municipality and Another* [2013] ZASCA 95; 2015 (6) SA 283 (SCA); [2014] 1 All SA 402 (SCA).

s 26(3) needs to be read against the backdrop of s 26(1), that is, the right of access to adequate housing.³ It has been found that where one cannot demonstrate that one would be without alternative accommodation, and thus be rendered homeless, the protection of s 26(3) does not find application.

[10] What then is a home? This Court in *Barnett*⁴ held that the sensible and ordinary meaning of home is a place with 'regular occupation coupled with some degree of permanence'. At para 37 it further said:

'I believe it can be accepted with confidence that PIE only applies to the eviction of persons from their *homes*. Though this is not expressly stated by the operative provisions of PIE, it is borne out, firstly, by the use of terminology such as "relocation" and "reside" (in sections 4(7) and 4(9)) and, secondly, by the wording of the preamble, which, in turn establishes a direct link with section 26(3) of the Constitution (see eg *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA) paragraph 3).'

[11] The central issue in this appeal is whether, given what this Court has held a home to be for the purposes of s 26(3) of the Constitution and its implementation in PIE, the provision of student accommodation by CPUT to its students constitutes a home, so as to render PIE of application.

[12] There are three important features of the accommodation afforded by CPUT to the respondents which are relevant. First, the students came from homes in order to study at the university. Unless otherwise demonstrated, student accommodation does not displace or replace the homes from which students come, and hence, logically, the respondents have homes other than the residence. There is then no basis to seek the protection of PIE. Eviction does not render the students homeless.

[13] Second, the provision of student accommodation is for a finite period of time and it has a limited and defined purpose, that is, to accommodate students for the duration of the academic year and thereby assist them to study at the university. The arrangement is by its nature temporary and for a purpose that is transitory. Students

³ Ibid para 17.

⁴ *Barnett and Others v Minister of Land Affairs and Others* [2007] ZASCA 95; 2007 (6) SA 313 (SCA); 2007 (11) BCLR 1214 (SCA) para 38.

who are assisted by CPUT with accommodation are well aware that this valuable benefit is of limited duration.

[14] Some legislative background is relevant to the third feature of the accommodation afforded to the respondents by CPUT. The *amicus* advanced submissions which placed the provision of student accommodation within the context of the Higher Education Act 101 of 1997 (HEA). UCT, for example, provides student accommodation, both on and off campus, to 8 040 students of some 28 000 students who are registered at the university. The *amicus* submitted that student accommodation is primarily an incident of the right to access to higher education, and higher education institutions, such as UCT, regulate access to student accommodation in terms of its institutional rules.

[15] In this regard, the *amicus* referred to the Policy on the Minimum Norms and Standards for Student Housing at Public Universities⁵ (the Policy). The Policy, in relevant part, states as follows:

'The Policy is applicable to all public universities and privately owned accommodation accredited by public universities. These Norms and Standards should be incorporated into the criteria developed by each public university and stipulated in the university's policy and rules. Private providers shall establish clear and comprehensive standard lease agreements after consultation with relevant University officials and student representatives. Universities should rate and differentiate off-campus student accommodation according to standards set by each University.' (My emphasis.)

[16] This legislative backdrop is relevant to the third feature of the accommodation afforded to the respondents. This is particularly so in the context of the current scarcity of student housing in the higher education sector in our country. Those who are fortunate enough to benefit from accommodation provided by CPUT know full well that each and every year new students come to the university who legitimately look to the university for the very assistance that the respondents enjoyed. Equity requires that those who have had the benefit of accommodation should yield to those who have not. And nothing about the position of the respondents suggests that this equitable principle should not continue to apply. It is also for this reason, as the

⁵ Policy on the Minimum Norms and Standards for Student Housing at Public Universities, GN R 897, GG 39238, 29 September 2015.

amicus reminded us, that student accommodation forms part of the larger policy framework of higher education.

[17] These features of the student accommodation made available to the respondents indicate that this accommodation is not a home. It is a residence, of limited duration, for a specific purpose, that is time-bound by the academic year, and that is, for important reasons, subject to rotation.

[18] It follows that PIE did not apply to the respondents' occupation of the property. The appellant was thus entitled to evict the respondents in reliance upon the *rei vindicatio*. The high court's refusal to order the respondents' eviction was therefore in error. Accordingly, the appeal must be upheld.

[19] As the respondents have now vacated the property, we do not order their eviction. It suffices to declare that PIE did not apply to the unlawful occupation by the respondents of their student accommodation. The appellant was entitled to secure their eviction. As to costs, the appellants rightly did not seek a costs order against the respondents.

[20] In the result, the following order is made:

- 1 The appeal is upheld with no order as to costs.
- 2 The order of the high court is set aside and replaced with the following:
 - (a) It is declared that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 did not apply to the unlawful occupation by the respondents of their student accommodation, and the applicant was entitled to secure their eviction.
 - (b) Each party to pay its own costs.'

N P MALI
ACTING JUDGE OF APPEAL

Appearances

For the appellant: D C Joubert SC
Instructed by: Cliffe Dekker Hofmeyr, Cape Town
Claude Reid Attorneys, Bloemfontein

For the respondents: R Nyman with N Mashava
Instructed by: Herold Gie Attorneys, Cape Town
McIntyre Van der Post, Bloemfontein

For the amicus curiae: M O'Sullivan with T Sarkas
Instructed by: Fairbridges Wertheim Becker, Cape Town
Lovius Block Incorporated, Bloemfontein