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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NUMBER: M297/2021

Reportable: YES

Circulate to Judges: YES

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:-

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED
(Registration No 2003/023915/30)**

Applicant

and

**LESEGO SESWAI
(House 5[...] G[...] street, Riviera Park, Mahikeng,
ERF 1787 – 12)**

1st Respondent

MAHIKENG LOCAL MUNICIPALITY

2nd Respondent

SHERIFF OF THE COURT: MAHIKENG

3rd Respondent

**STATION COMMANDER, MMABATHO POLICE
STATION, NORTH WEST: SOUTH AFRICAN POLICE
SERVICE**

4th Respondent

AND

In the matter between:-

CASE NUMBER: M236/2021

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED
(Registration No 2003/023915/30)**

Applicant

and

**WINSTON MPHAHLELE
(House number 1045, Botlaba ERF 1045, Mmabatho
– 5)**

1st Respondent

MAHIKENG LOCAL MUNICIPALITY

2nd Respondent

SHERIFF OF THE COURT: MAHIKENG

3rd Respondent

**STATION COMMANDER, MMABATHO POLICE
STATION, NORTH WEST: SOUTH AFRICAN POLICE
SERVICE**

4th Respondent

AND

In the matter between:-

CASE NUMBER: M298/2021

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED
(Registration No 2003/023915/30)**

Applicant

and

SANA GWAI

1st Respondent

**(House number 1[...], B[...] Cul de Sac, Unit 5,
Mahikeng, ERF 1049, Mmabatho – 15)**

MAHIKENG LOCAL MUNICIPALITY

2nd Respondent

SHERIFF OF THE COURT: MAHIKENG

3rd Respondent

**STATION COMMANDER, MMABATHO POLICE
STATION, NORTH WEST: SOUTH AFRICAN POLICE
SERVICE**

4th Respondent

AND

In the matter between:-

CASE NUMBER: M299/2021

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED
(Registration No 2003/023915/30)**

Applicant

and

AGNES LETHEKO

1st Respondent

**(House number [...], M[...] Avenue, Mahikeng, ERF
1839, Mahikeng)**

MAHIKENG LOCAL MUNICIPALITY

2nd Respondent

SHERIFF OF THE COURT: MAHIKENG

3rd Respondent

**STATION COMMANDER, MMABATHO POLICE
STATION, NORTH WEST: SOUTH AFRICAN POLICE
SERVICE**

4th Respondent

AND

In the matter between:-

CASE NUMBER: M300/2021

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED
(Registration No 2003/023915/30)**

Applicant

and

**KESENTSENAO SHEILA PHORA
(House number 1[...], D[...] M[...] Avenue, Unit 5
Mmabatho, ERF 1063, Mmabatho - 5)**

1st Respondent

MAHIKENG LOCAL MUNICIPALITY

2nd Respondent

SHERIFF OF THE COURT: MAHIKENG

3rd Respondent

**STATION COMMANDER, MMABATHO POLICE
STATION, NORTH WEST: SOUTH AFRICAN POLICE
SERVICE**

4th Respondent

JUDGMENT

FMM REID J

Introduction:

[1] This is an application for the eviction of the abovementioned first respondents in terms of the **Prevention of Illegal Eviction from and Unlawful Occupation of Land** Act 19 of 1998 (PIE Act). A total of six (6) individual applications were issued individually as indicated in the heading above. The parties agreed to have all the applications heard together.

[2] The following issues are to be determined by this Court and encompass the relief claimed in the notice of motion:

2.1. Whether the applicant has made out a case for the eviction from the applicant's properties of each of the 1st respondents¹, and any person occupying the properties through the first respondents, together with any movable property that is on the property belonging to the first respondents in terms of sections 6(1), 4(1), 4(6) and 4(8)(b) of the PIE Act.

2.2. In the event that a case for eviction has been made out, this Court is to determine a just and equitable date on which the first respondents and any person occupying the properties through the first respondents, together with their movable property, shall vacate the properties in terms of section 4(8)(a) of the PIE Act.

2.3. In the event that the first respondents refuse and/or neglects to vacate the property by the date set by this Court in paragraph 2.2 above, the third respondent (the Sheriff) be authorised and ordered to remove the first respondents, together with any

¹ Cases number M297 Lesego Seswai

movable property that is on the property belonging to the first respondents from the properties in terms of section 4(11) of the PIE Act.

2.4. The third respondent, being the Sheriff of the Court: Mafikeng – in ejecting the first respondents, is authorised to do so with the assistance (if necessary) of the fourth respondent, being the Station Commander, Mmabatho Police Station, North West, South African Police Service (SAPS), in terms of section 4(11) of the PIE Act.

2.5. The costs of the applications.

[3] The applicant is represented by Adv SM Tisani and Adv MD Sekwakweng, whilst all the first respondents are represented by Adv TT Chiloane.

Material background

[4] On 1 September 2021 the applicant instituted *ex parte* proceedings before this Court seeking authorisation to serve the notices in terms of section 4(2) of the PIE Act on the respondents and the Municipality that has jurisdiction, being the second respondent (Mahikeng Local Municipality). The matter was heard on 9 September 2021 and an order in terms of section 4(2) of the PIE Act was granted by Djaje J (as she then was) directing the service of the section 4(2) notices.

[5] The section 4(2) notices were duly served on the first respondents on 7 October 2021 at the various residential properties. On 13 October 2021 the section 4(2) notices were served on the first respondents' attorney of record.

[6] The matters were set down for hearing on 2 June 2022 and the first respondents' attorneys of record was duly served with the notice of set

down on 28 February 2022.

[7] The first respondents were initially represented by TL Seeletso Attorneys. In the answering affidavits the first respondents raised several preliminary issues, namely:

7.1. failure of the applicant to comply with the legislative requirements as set out in section 4(2) of the PIE Act by failing to obtain the courts instructions in effecting the notices to initiate the eviction process.

7.2. the applicant's lack of *locus standi*;

7.3. non-joinder of the highest bidder or buyer;

7.4. premature application for eviction and violation of the **Disaster Management Act** 57 of 2002 and Lockdown Regulations.

7.5. These points *in limine* are dealt with in paragraphs [19] to [46] of this judgment.

[8] Seeletso Attorneys served a notice of withdrawal as attorneys of record for the first respondents on 2 March 2022. Subsequent to the withdrawal of the first respondents' attorney of record, the section 4(2) PIE notice was electronically corresponded (e-mailed) on 12 May 2022 and served personally on the individual first respondents on 13 May 2022.

[9] At the hearing on 2 June 2022 the first respondents requested a postponement to appoint new legal representatives. A postponement was subsequently granted to 7 October 2022.

[10] The first respondents then appointed Tlhaku Attorneys per notice of

appointment as attorneys of record dated 13 June 2022.

[11] The matter was duly set down for hearing on 7 October 2022. However, the first respondents filed supplementary affidavits on 5 October 2022 and their heads of argument were filed on 6 October 2022.

[12] The supplementary answering affidavits raised the following defences to the relief sought:

12.1. The statutory regime applicable to the eviction application.

12.2. The correct approach to adjudicating the dispute.

12.3. Additional factual background to be considered by this Court as required by section 4(7) of the PIE Act, with particular reference to:

12.3.1. The approaches and attempts made by the first respondents to the applicant to purchase the applicant's property.

12.3.2. That the first respondents have made improvements to the applicant's property during the course of the rental period.

12.3.3. The relevance of the circumstances in which the applicant acquired the property from the erstwhile Bophuthatswana Broadcasting Corporation.

12.3.4. The alleged different treatment of the first respondents from other employees of the SABC in the Western Cape, who is alleged by the first respondents to be in similar circumstances than the first respondents. The similar circumstances are denied by the applicant.

- 12.3.5. The personal circumstances of each of the first respondents. The individual circumstances of each of the first respondents should be considered by this Court in the assessment of the reasonableness of the eviction order.
- 12.3.6. Whether meaningful negotiations have taken place between the applicant and the first respondents prior to an eviction order being granted.
- 12.3.7. That eviction would not result in just and equitable relief.

[13] On 7 October 2022 and after receiving the supplementary answering affidavits, postponement was granted by Snyman J accepting the further affidavits filed by the first respondents and granting leave to the applicant to file supplementary documents. The applicants filed supplementary replying affidavits on 20 January 2023.

[14] The matter was set down for hearing on 15 September 2023 and the notice of set down was duly served on the first respondents' attorneys of records on 31 May 2023.

[15] The applicants proceeded with the eviction process of the first respondents and the matter was argued on 15 September 2023.

Material factual background

[16] The applications for eviction of the first respondents are factually identical. The only differences in the applications, are the individual circumstances of each first respondent, and the various property's addresses. For ease of reference, where I refer to "property's address", "residential address" or "premises" in this judgment, I refer to the house that each first respondent occupies as per the address cited in the heading of this judgment, and which address is specified in

paragraph [17.1] below.

[17] The following facts are common cause between the parties:

- 17.1. The applicant is the owner of the premises currently occupied by the first respondents, and any person occupying the properties, which properties are situated at:
 - 17.1.1. House 5[...] G[...] street, Riviera Park, Mahikeng, ERF 1787 – 12 (case number M297/2021);
 - 17.1.2. House number 1[...], Botlaba ERF 1045, Mmabatho – 5 (case number M236/2021);
 - 17.1.3. House number 1[...], B[...] Cul de Sac, Unit 5, Mahikeng, ERF 1049, Mmabatho – 15 (case number M298/2021);
 - 17.1.4. House number [...], M[...] Avenue, Mahikeng, ERF 1839, Mahikeng (case number M299/2021); and
 - 17.1.5. House number 1[...], D[...] M[...] Avenue, Unit 5 Mmabatho, ERF 1063, Mmabatho – 5 (case number M300/2021).
- 17.2. The lease agreements pre-existed between the applicant, which was previously known as “Bophuthatswana Television” (Bop TV) and other individuals during the period that preceded 1994.
- 17.3. These lease agreements were usurped with the amalgamation process of the TBVC countries (Transkei, Bophuthatswana, Venda and Ciskei) into the Republic of South Africa during 1994 and came into being between the applicant, which is currently known as the South African Broadcasting Committee (SABC) and the current first respondents.

17.4. All the lease agreements have been terminated *ex lege* by virtue of the passing of the fixed term clauses there-of. The applicant provided to each of the first respondents notice of the termination of the lease agreements per notice dated 01 December 2020, with effect from 01 February 2021.

17.5. At the time of writing the judgment, the first respondents remain in occupation of the premises.

[18] The first respondents and their households are the remaining part of a group in the excess of one hundred (100) households which predominantly are former workers at the SABC, who were evicted from January 2021. Those households have either relocated voluntary, or made offers to the applicant that was accepted by the applicant as reasonable offers to purchase the residences.

Procedural and substantive compliance with the PIE Act

[19] At the onset it has to be emphasised that the PIE Act has specifically been promulgated to *inter alia* prevent unlawful evictions of people from their residences, and to cater for a fair procedure where unlawful occupants have to be evicted from land that is occupied by them.

[20] The aforesaid is reflected in detail in the preamble of the PIE Act, which reads as follows:

“Preamble

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;

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;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows..”

- [21] The applicant claims, and the first respondents deny, that the applicant has complied with the procedural requirements of section 4 of the PIE Act. These procedural requirements are the following:

“4 Eviction of unlawful occupiers

- (1) 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.*
- (2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.*
- (3) Subject to the provisions of subsection (2), the procedure for the serving of notices and filing of papers is as prescribed by the rules of the court in question.*
- (4) Subject to the provisions of subsection (2), if a court is satisfied that service cannot conveniently or expeditiously be effected in the manner provided in the rules of the court, service must be effected in the manner directed by*

the court: Provided that the court must consider the rights of the unlawful occupier to receive adequate notice and to defend the case.

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

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

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

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

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

(6) If an unlawful occupier has occupied the land in question for less 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 the rights and needs of the elderly, children, disabled persons and households headed by women.

(7) 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.

- (8) *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).*
- (9) *In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.*
- (10) *The court which orders the eviction of any person in terms of this section may make an order for the demolition and removal of the buildings or structures that were occupied by such person on the land in question.*
- (11) *A court may, at the request of the sheriff, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal subject to conditions determined by the court: Provided that the sheriff must at all times be present during such eviction, demolition or removal.*
- (12) *Any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.”*

[22] In this regard the following background is relevant:

22.1. Authorisation of the eviction procedures commenced when the

applicant received permission to institute eviction proceedings in terms of section 4(2) of the PIE Act with the court order issued under the hand of Djaje J on 9 September 2021. In the section 4(2) notice, the following is set out:

- 22.1.1. That proceedings are being instituted in terms of section 4(1) of the PIE Act for an order for the eviction of the unlawful occupier;
- 22.1.2. The date and time what the court will hear the proceedings;
- 22.1.3. The grounds for the proposed eviction. These grounds were stipulated that (a) the applicant is the owner of the property, (b) the first respondents are in occupation of the property without the express or tacit consent of the applicant and with no right in law to occupy the property, (c) that the first respondents refused to vacate the premises, and (d) that the first respondents are unlawful occupants of the property.
- 22.1.4. It is stated that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid.
- 22.2. On 7 October 2021 the Sherriff of the High Court served on each first respondent a notice in compliance with section 4(2) of the PIE Act.
- 22.3. The section 4(2) notice was served on the erstwhile attorneys of record of the first respondents on 13 October 2021.
- 22.4. After obtaining a date for the hearing of the matter on 2 February 2022, the notice of set down was served on the first respondent's attorneys of record on 28 February 2022.

22.5. Subsequent to the withdrawal of the first respondent's attorney of record the section 4(2) PIE notice was e-mailed to the current attorneys of record for the first respondents on 12 May 2022 and served personally on the attorney of record of the first respondents on 13 May 2022.

[23] The first respondents dispute compliance with section 4(2) of the PIE Act claiming that the applicant failed to obtain directives of the court in terms of section 4(2) of the PIE Act prior to service of the application.

[24] In **Unlawful Occupiers, School Site v City of Johannesburg** 2005 (4) SA 199 (SCA) it was held in paragraphs [29] and [30] that the section 4(2) notice was effective in that the "*overwhelming probabilities indicated that all the occupants of the school site would have been approached to join the local area committee in its opposition*" and that "*according to the uncontradicted evidence presented by the municipality, the pending application was well known amongst all the occupiers of the school site*". On this basis, the Supreme Court of Appeal held that the section 4(2) notice was effective.

[25] Having regard to the process set out in paragraph [21] above and the content of the notices in terms of section 4(2), I find that the section 4(2) notices were procedurally and substantively in line with the PIE Act.

[26] As such, this point *in limine* cannot be upheld and stands to be dismissed.

Remaining points *in limine*

[27] The remainder of the points *in limine* are the following:

27.1. *Locus standi*: That the applicant lacks the *locus standi* to bring the eviction application on account of having sold the applicant's

property at a public auction on 19 May 2021.

- 27.2. Non-joinder: That the highest bidder or buyer of the property that was sold on the public auction on 19 May 2021 has a direct and substantial interest in the proceedings and should be joined to the proceedings.
- 27.3. Premature procedure: That the eviction application is premature as there is a pending review application regarding the property in question against the Minister of Post and Telecommunications to dispose of the residential properties in an open auction.
- 27.4. Statutory prohibitions: That no evictions can take place during the State of National Disaster as mandated by the **Disaster Management Act** 57 of 2002.
- 27.5. Mandate: That the applicant's attorneys do not have a mandate to represent the applicant.

[28] I will deal with each of these *points in limine* individually.

Locus Standi:

- [29] In relation to the *locus standi* of the applicant, the applicant has attached to each application the deed of sale in the name of the applicant proving its ownership of the properties.
- [30] It was found in **Goudini Chrome (Pty) Ltd v MCC Contracts (Pty) Ltd** 1993 (1) SA 77 (A) on page 82, the best evidence for proof of ownership of immovable property is the title deed of the property. Although the property was sold to third parties at the public auction, ownership of the property will only pass to the third parties on transfer of the deed of sale and registration of the property in the name of the new owner. The applicants are the legal owners of the properties.

[31] The registration and transfer process has not been commenced with and as such ownership of the properties have not been passed to the purchasers of the properties. See **Legator McKenna Inc v Shea** 2010 (1) SA 35 (SCA) and **Du Plessis v Propitius and another** 2010 (1) SA 49 (SCA).

[32] I consequently find that this point *in limine* cannot be upheld and is dismissed.

Non joinder

[33] With respect to non-joinder of the highest bidder or buyer of the property sold on auction on 19 May 2021, the test for joinder is whether any party has a direct and substantial interest in the order that the court is to make.

[34] Put differently, the test is whether an order that the court stands to make can be carried out or brought into effect without prejudicing that third party. See: **Gordon v Department of Health KwaZulu Natal** 2008 (6) SA 522 (SCA) at 529E-F.

[35] In **Legator McKenna Inc v Shea** 2010 (1) SA 35 (SCA) the Supreme Court of Appeal emphasised that ownership of a property remains in the owner until it has been transferred and registered to the name of the new owner, having regard thereto that the process of transferring the immovable properties can only take place upon conclusion of a written agreement and registration of transfer.

[36] As mentioned above, the registration and transfer process of the property has not taken place and as such the applicant remains the owner of the immovable property as defined in section 1 of the PIE Act and in terms of the common law.

[37] Consequently, this point *in limine* stands to be dismissed.

Premature proceedings

[38] The first respondents claim that the application is premature as there is a pending application for review against the decision of the applicant and the Minister of Post and Telecommunications to dispose of the residential properties in an open auction.

[39] However, this application deals with the eviction of the first respondents from the property and not with the decision of the Minister of Post and Telecommunications to sell the properties.

[40] These two issues are not interlinked, and the applicant and Minister of Post and Telecommunications' decision to dispose of the residential properties has no bearing on the eviction of the first respondents from the properties.

[41] This point *in limine* can therefore also not be upheld and is subsequently dismissed.

Statutory prohibition

[42] The National State of Disaster was terminated by the President of South Africa from midnight on 4 April 2022. The Regulations and the **Disaster Management Act** 57 of 2002 does therefore not find application in this instance.

[43] This point *in limine* thus stands to be dismissed as it has become overtaken by events.

Mandate

[44] The first respondents do not lay any basis on which to claim that the attorney of record for the applicant is not mandated to act on their behalf.

[45] This point *in limine* therefore stands to be dismissed as well.

[46] On the basis of the above, I find that all the points *in limine* raised by the first respondents cannot be upheld and are dismissed for the reasons set out above.

Grounds for eviction and grounds of opposing the eviction

[47] The applicant advances the following grounds in justification of the reasons why the applicant is evicting the first respondents:

47.1. The applicant is the lawful owner of the properties and as such, in the absence of lawful lease agreements, can dispose of the properties as the applicant deems fit.

47.2. The lease agreements between the applicant and the first respondents were duly terminated and there was expressly no intention of the applicant at any stage to extend the lease agreements.

47.3. There was a fundamental change in the financial circumstances of the applicant in that its financial position became dire. This resulted in the applicant seeking intervention of National Treasury for capital investment in the amount of R3.2 billion, in order to alleviate its financial distress and ensure fulfilment of its constitutional and legal obligations. The founding affidavit sets out the financial circumstances of the SABS and it is argued for the applicant that it is evident that the SABC is not in a financial position to provide free housing as it previously did.

47.4. The SABC would likely not be functional without the capital investment of the taxpayers' money to the SABC by the National Treasury. The capital investment of taxpayers' money by the National Treasury to the SABC were provided with certain conditions, of which one condition was that the SABC should dispose of its non-core assets.

47.5. The properties occupied by the first respondents are regarded by the applicant as non-core assets as the SABC is a public broadcaster with no need to own residential properties.

47.6. In as far as eviction in terms of the common law is concerned, it is argued on behalf of the applicant that all the formal requirements of the *rei vindication* has been met, in that the ownership of the applicant of the properties has been established as the title deeds for all the properties are in the name of the SABC.

47.7. Lastly it is argued for the applicant that there is no legal ground for the first respondents to occupy the properties. The legal ground to occupy the properties came to an end with the termination of the lease agreements. As such, there is no reasonable explanation or defense raised by the first respondents for this Court to refuse eviction of the first respondents.

[48] In a nutshell, the first respondents oppose the applications for eviction on the following bases:

48.1. The eviction is against the constitutional right of housing of the first respondents. Without housing being provided by the SABC, or suitable alternative housing provided by the Mahikeng Municipality, the first respondents would be left desolate.

- 48.2. The SABC obtained the properties at no cost at all. The first respondents argue that it is unfair of the SABC to use the unfortunate circumstances of the first respondents as a means to obtain funds, in the circumstances where the properties were obtained without the SABC paying for it. The first respondents argue that this is the most important factor to consider in the determination of a reasonable price, alternatively when determining a suitable remedy, is considered by this Court.
- 48.3. That the eviction orders should not be granted as the personal circumstances of the first respondents justifies this Court to exercise its discretion for a just and equitable remedy, which remedy may include that the applicant be ordered to accept the amounts offered by the first respondents to sell the properties.
- 48.4. The personal circumstances of the individual first respondents as set out below and include the rights and needs of the elderly, children, disabled persons and households headed by women, which resort under the circumstances described in section 4(6) of the PIE Act. The first respondents argue that it would not be just and fair to order eviction of these mentioned vulnerable groups in our society.
- 48.5. The SABC has not entered into a meaningful negotiation process with the first respondents in order to resolve the matter in an amicable fashion. It is argued by the first respondents that the Court has the power, and should order the applicant to enter into meaningful negotiations with the first respondents.

[49] It is common cause that the applicant, as lawful owner of the properties, has made improvements to some of the various properties. In the same vein, it is also common cause that some of the first respondents when they were in lawful possession of the properties,

made improvements to some of the properties.

- [50] In relation to the improvements made by the applicant, the contract between the applicant and the first respondents requires that the applicant maintains the property and that the applicant should execute improvements to the property. Where the first respondents claim a right to not vacate the premises on the basis that they made improvements to the property, the first respondents are contractually obliged to leave the improvements and vacate the property where the contractual terms were not followed and they did not inform the landlord (applicant) prior to commencing the improvements to the property.

Alternative housing

- [51] It is argued on behalf of the first respondents that alternative housing should be made available to them by the applicant or the local Municipality.
- [52] Only in the event that the applications have to be determined in terms of section 4(6) of the PIE Act, the local municipality would become involved in securing alternative suitable housing for the first respondents. It is argued by the applicant that sections 4(6) and 4(7) of the PIE Act is not applicable. The first respondents deny this and argue that the provisions of alternative housing are applicable to them.

- [53] Section 4(6) and 4(7) of the PIE read as follows:

“(6) If an unlawful occupier has occupied the land in question for less 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 the

rights and needs of the elderly, children, disabled persons and households headed by women.

(7) 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.”

[54] It is argued on behalf of the applicant that the first respondents' personal circumstances do not warrant that the Municipality be ordered to avail land to the first respondents for residential purposes. This argument is on the basis that the first respondents are not without any income, whether it be an income derived from pension or employment.

[55] It is common cause that all first respondents occupied the residences for longer than six (6) months. The duty to provide alternative housing will be considered should the first respondents make out a case for it as determined in subsections 4(6) and 4(7).

[56] Even if the applicant makes out a case of eviction, it is within the powers of this Court to refuse the eviction on the individual's personal circumstances of any of the first respondents, should it be a fair and reasonable decision based on a discretion that is judicially exercised in line with the PIE Act and the Constitution.

[57] However, section 8 of the PIE Act categorically states that the court must (in preemptive terms) order eviction if (a) all the requirements of section 4 is met, and (b) no valid defense is raised by the unlawful occupier. The legislative principle underscoring the aforesaid legal position is found in subsection 4(8) which reads as follows:

“(8) 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).”

[58] It is argued on behalf of the first respondents that this Court should exercise its judicial discretion against the eviction of the first respondents and dismiss the applications with costs.

The process of eviction

[59] In terms of PIE and the common law, the eviction and disposal of properties are to be done in accordance with a system that is fair, transparent and equitable which is open to all interested and qualifying persons, and in pursuit of market related prices.

[60] It is argued on behalf of the applicant that the applicant embarked on an objective exercise in terms of which external (non-government) and objective property experts have been engaged and have, after careful

consideration and valuation of the properties in the applicant's property portfolio, identified non-core assets / properties and recommended a method of disposal of the properties.

- [61] It has been recommended, and accepted by the applicant that the method of disposal of the properties was to be per public auction. The applicant states that this process was executed in line with the applicant's Supply Chain Management Procedures Manual. This is not disputed by the first respondents.
- [62] In accordance with the above, the applicant developed a strategy for the disposal of its non-core assets which included, amongst other non-core assets, the properties occupied by each of the first respondents.
- [63] The applicant served a notice of intention to sell the properties occupied by the first respondents on the first respondents on 01 November 2020.
- [64] In response to the letters of termination and letters of intention to dispose of the properties by public auction, the first respondents approached attorneys and each first respondent made an offer to the applicant to purchase the property by them.
- [65] It is submitted on behalf of the applicant that, after giving the first respondents notice of the applicant's intention to sell the properties, a process of negotiation with the first respondents ensued. The first respondents agree that there were negotiations, but deny that the negotiations were due and proper. It has to be noted that the first respondents do not specify what additional steps the applicants should have taken in further negotiating with the first respondents.
- [66] The applicant granted the first respondents an opportunity to make a reasonable offer to purchase the property prior to the property being

sold on public auction.

- [67] It is argued on behalf of the applicant that the first respondents' contentions that the offers they make are sufficient having regard thereto that the applicant obtained the properties for free, are not tenable in law. Furthermore, so the argument goes, no interpretation on the occupancy contract would allow the right of first refusal to purchase the properties are to be exclusively to the first respondents.
- [68] It is argued on behalf of the applicant that independent evaluation of the properties was conducted, which was less than market related to afford each of the first respondents an opportunity to purchase the property. The applicant has approached the individual first respondents in negotiations to go forward for the first respondents to purchase the property.
- [69] The applicant argues, and the first respondents dispute, that the first respondents did not make reasonable offers to purchase the property. For example, if a property is valued at R1,100,000.00 (One Million One Hundred Rand) and an offer of R65,000.00 (Sixty Five Thousand Rand) is made, the reasonability of the offer is disputed. As mentioned above, the first respondents view the proposed purchase prices as reasonable, specifically having regard to the fact that the SABC did not pay for ownership of the property.
- [70] It is argued for the applicant that the decision to evict the first respondent was not as a result of a unilateral executive decision, but on sound grounds and a clear and comprehensive explanation was provided to each first respondent. It is also argued for the applicant, and denied by the first respondents, that meaningful negotiations were conducted with each of the first respondents individually.
- [71] It is argued on behalf of the applicant that the SABC has displayed

leniency in allowing every resident to organise their personal affairs in accordance with the evictions. However, the first respondents remain in occupation of the same properties, claiming assertion to the same rights in opposing eviction as they did from the institution of the eviction process in the beginning of 2021.

[72] The other occupants of the applicant's properties have either purchased the properties at a reasonable price, or relocated. It is only these five (5) first respondents that remain in occupation of the properties.

The respondent's case

[73] It is argued on behalf of the respondents that this Court should regard the respondent's case as an invasive right of the applicant that is impeding on the individual first respondents.

[74] The first respondents' grounds for opposition (as set out above) can be summarised as follows:

74.1. That the applicants are acting in contravention of the first respondent's constitutional right to housing.

74.2. Consideration thereof that the applicant has obtained the properties at no cost and as such the offers of purchase amounts should be regarded as reasonable.

74.3. Eviction would not be a proper remedy as the avenues of due and proper consultation and negotiation has not been exhausted.

74.4. Eviction order would not be justified having regard to the personal circumstances of the first respondents.

[75] I will discuss each of these defences individually.

Constitutional right to housing

- [76] Housing as a constitutional human right has been embedded in section 26 of the **Constitution of South Africa** 108 of 1996, which reads as follows:

“26 Housing

(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) 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. No legislation may permit arbitrary evictions.”

- [77] The **Prevention of Illegal Eviction from and unlawful Occupation of Land Act** 19 of 1998 defines an “unlawful occupant” as:

“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 31 of 1996).”

- [78] It is argued on behalf of the first respondents that context is explained when it is understood the reason of the legislature in framing the PIE Act in the manner that it is phrased. The argument is that, in the event

of an unlawful occupier occupied a property for more than 6 months, the Court must determine if it would be just and equitable to determine whether the fair eviction of the tenant would be executable. It is submitted on behalf of the first respondents that the correct approach would be to take an active and interrogative roll to investigate the facts on each matter. I agree with these submissions.

[79] It is further submitted on behalf of the first respondent that a land owner's exercise of its rights of land has to be considered in light of the competing rights to continue using the property as a home. *In casu*, the first respondents submit that it is essentially a commercial right of the applicant opposed to the constitutional right to housing of the respondents to be considered in this application.

[80] The first respondents argue that the right to housing is intrinsically linked to the right to dignity. The issue at stake in this application raises far more than only these aforesaid rights, but has regard to the history of where this country comes from and type of society we should strive to be. It is submitted on behalf of the first respondents that the respondents are trying to assert their rights to their human dignity, which is not contained to only shelter in the form of bricks and mortar being housing.

[81] The first respondent further argues that the access to adequate housing is a constitutional issue and where people come to court to protect their constitutional rights, it is expected that the court would ensure to have justice and fairness done. The first respondent also argues that the SABC as an organ of state, which has the rationale to dispose of its assets, and seeks the best commercial return in its investment, without taking into account the constitutional rights of the first respondents.

Reasonable purchase price

[82] It is argued on behalf of the applicant that one cannot have regard to one party's right to exclusion of the other rights of the other parties. In economic relations of this country there has not always been equality. Cannot be respondents in position to rent from the employer.

[83] It is submitted on behalf of the first respondent's that the type of property, and how the property was procured, is a decisive aspect for this Court to take into consideration in determining the application. The argument is that the applicant did not pay market related price to obtain these properties, but obtained property by operation of law at no costs.

[84] The argument of the first respondents is that the rational to aim to get highest for assets does not take proper perspective of issues at stake which includes the occupants' constitutional right to housing. The argument is to the effect that it should not be required from the first respondents to pay market value for the property, since the applicants obtained the property at no costs.

Meaningful engagement in negotiations

[85] In the publication ***Conflict management in an era of urbanisation: 20 years of housing rights in the South African Constitutional Court*** as published in the 2015 South African Journal for Human Rights **2015 SAJHR 472** by Stuart Wilson, Jackie Dugard and Michael Clark, the following was said in relation to meaningful negotiations:

“Nonetheless, the court took the opportunity to expand upon the concept of meaningful engagement as constituent of reasonable state action required by s 26(2) of the Constitution. Most significant steps in the implementation of housing policy, Yacoob J held, must be taken after meaningful engagement with the people affected by it. (See: Olivia Road). Where the state intends to remove or displace people from their existing housing, engagement is normally a prerequisite to the institution of

eviction proceedings. Engagement must be individual and collective, presumably meaning that affected communities must be engaged as a group in relation to the impending removal, as well as at an individual and household level, in order to ensure all relevant personal circumstances are taken into account in the process. Engagement must be undertaken without secrecy, and should focus on meeting the reasonable needs of an affected community, and providing alternative accommodation where it is needed. Because no such engagement had been undertaken by the City in relation to the Olivia Road occupiers, Yacoob J held that the eviction order issued by the SCA should be set aside.”
(footnotes omitted)

[86] It is now a well-established principle in our law that meaningful engagement with an occupier should normally commence prior to the institution of eviction proceedings. See: L Chenwi & K Tissington **Engaging Meaningfully with Government in the Realisation of Socio-economic Rights in South Africa: A Focus on the Right to Housing** (2010) SERI and Community Law Centre (CLC) Research Report 21, Liebenberg *et al.*

[87] Where eviction initiated by Organ of State that can lead to ... meaningful and fruitful engagement “Olivia Road” case absence of any court not entertaining negotiations, would be disturbing of giving eviction if there was no evidence that the engagement was fully meaningful as it was an organ of state.

[88] The ownership of the property dates back from Act 1 of 1996 in which Bop TV (Bophuthatswana TV) and its assets were transferred to SABC. It should be viewed in that context that the residential contracts continued.

Just and equitable

[89] In section 6(3) of PIE, the legislature stipulates certain aspects that the court must consider when it is to be decided whether an eviction will be just and equitable. Section 6(3) of PIE reads as follows:

“(3) In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to-

(a) the circumstances under which the unlawful occupier occupied the land and erected the building or structure;

(b) the period the unlawful occupier and his or her family have resided on the land in question; and

(c) the availability to the unlawful occupier of suitable alternative accommodation or land.”

[90] The first respondents argue that the court should not assess the unlawful occupiers at face value, but that the court should look far deeper to establish whether eviction would be the just and fair outcome. The court is to satisfy itself that the circumstances in totality do justify eviction. In determining whether it is fair to evict the first respondents, the conduct of both parties have to be taken into account.

Individual circumstances of first respondents

[91] It is argued on behalf of the first respondents that the *rei vindicatio* is not applicable in this matter. The argument is that the *res vindication* only has to determine (a) ownership of the property, (b) the first respondents were in possession of the property at the time of the initiation of the proceedings, (c) a valid termination of the right to possess the property, and (d) compliance with the PIE Act. See: **Singh v Santam Insurance Company Limited** 1997 (1) SA 291; **Ndlovu v Ngcobo**; **Bekker and Bosch v Jika** 2003 (1) SA 113 (SCA).

[92] The argument of the first respondents is that the application run the risks of perpetuating inequality, as rights of vulnerable people who are to be evicted, for example disabled persons and women headed households, are met by the first respondents in each of the four (4) matters before court.

[93] The individual circumstances of the first respondents have to be considered in determining whether an eviction order would be fair and reasonable in the circumstances. There are four (4) respondents that fall in a class of rights that are legislatively to be taken into account. These four (4) respondents are:

93.1. Ms Diteko is 63 years old and is in the process of going on pension. She served her employer for 25 years and have rented the property for over 20 years. On expiry of her service, she is now being kicked out. There was no engagement from the applicant to delay the extent of the negative impact that eviction would cause her. She is a mother of three (3) daughters, of which (2) are residing with her. It is a female headed household. She also suffers from diabetes for which she takes chronic medication. She comes from a disadvantaged background.

93.2. Mphlele is a pensioner who has three (3) children. He is now facing the prospect of losing the only home that his children know.

93.3. Ms Seswai is a 52 year old mother and was retrenched by the SABC. She is currently employed. Her household looks up to her as breadwinner even though she is not employed. She looks after her elderly mother.

93.4. Ms Thabagallo has two (2) sons, of which one (1) suffer from tuberculosis. She has been renting housing from the SABC over 20 years. She became retrenched by the SABC in 2021 and was

rehired at a reduced salary.

[94] It is submitted by Adv Tisane on behalf of the applicant that the personal circumstances and severity of households and residential scarcity is not disputed by the applicant, but that these circumstances are applicable to the general public, and not only to the first respondents. I agree with this submission.

[95] It is further argued on behalf of the applicant that the right to property and housing does not entitle the first respondents, or any citizen, to the property of its choice. Each circumstance of each individual is to be considered, but the court should balance the rights of the owner and the tenant in relation to vacating or maintaining occupancy of the property. This submission too, I find myself in agreement with.

Analysis

[96] It is argued on behalf of the first respondent that the history of how the applicant came to become owner of the properties, thus by receiving it *gratis* from the Bophuthatswana government, is a determining factor in what this Court should regard as a fair price of the property. The first respondents argue that the current market value cannot be the sole determination of a fair value to sell the property to the first respondents, and that the Court should exercise its discretion that the amounts offered by the first respondents as reasonable and fair. I do not agree with this submission. The facts of how a party became owner of a property, whether it be by succession or payment, cannot be a factor to be taken into consideration when the current circumstances and legislation is to determine the eviction of the first respondents.

Legal principles

[97] In **Port Elizabeth Municipality v Various Occupiers** 2005 (1) SA 217 (CC) at para 23 it was found that “*The Constitution has thus substantially altered the law relating to evictions by recognising that the*

'normal ownership rights of possession, use and occupation' are now offset by 'a new and equally relevant right not arbitrarily to be deprived of a home'."

[98] In **Hendricks v Hendricks and others** 2016 (1) SA 511 (SCA):

"[6] The right to habitation as a servitude is a limited real right which confers on the holder the right to dwell in the house of another, without detriment to the substance of the property. The right can historically be traced back to Roman law when the original objective was to provide accommodation to indigent foreigners. In that context it was regarded as a factual, rather than a juridical, institution. But Justinian accepted it as a sui generis legal concept and he classified it as a personal servitude. This was generally accepted by Roman-Dutch authorities. Our courts have long recognised habitatio as a personal servitude which is a limited real right. Thus it has been held to be a jus in re which founds an action rei vindicatio. The novel question before us is whether, as far as the PIE Act is concerned, a holder of this limited real right is a 'person in charge' of the property in respect of which the habitatio operates, and whether that holder can obtain an eviction order against an owner who occupies the property without the holder's consent. For the reasons that follow, both these questions must in my view be answered in the affirmative.

[7] It is well established that ownership is the most comprehensive real right and that all other real rights are derived from it. But limited real rights are absolute in the sense that they are enforceable against any and all. A limited real right detracts from the owner's dominium. Thus, in the present instance the owner of the property, the first respondent, cannot exercise full dominium over it inasmuch as she cannot occupy the property unless the appellant, as the holder of the right to habitation, has

consented thereto. Absent such consent, her occupation of the property is unlawful. She is therefore, on the facts of this case, an 'unlawful occupier' within the meaning contemplated in s 1 of the PIE Act.

[10] *The conclusion and reasoning of Rogers AJ are clearly correct. Applied to the present instance, the first respondent's bare dominium as owner of the property must in law yield to the appellant's right of habitation. For, like usus and usufruct, habitatio is a limited real right, enforceable to the extent of the right itself, against the entire world (hence its registrability against a title deed). Absent any consent from the appellant, either express, tacit or implied, the first respondent is an unlawful occupier of the property.*

[11] *When one has regard to the definition of an 'unlawful occupier' in s 1, as set out above, the appellant is indubitably a 'person in charge' of the property. This is so, not only on the basis expounded by Rogers AJ in October quoted above, but also by virtue of the fact that the appellant plainly derives her 'legal authority' as contemplated in the definition of 'person in charge' in s 1, and as set out above, from her right of habitatio. She alone could legally grant permission to a person (even the registered owner) to reside in the property.*

[12] *In the premises, the court a quo has erred in its findings. But that is not the end of the matter. Section 4(7) provides that a court may grant an eviction order only if it is satisfied that it is just and equitable to do so. In order to make that determination, it must consider the factors enumerated in the subsection. In **Port Elizabeth Municipality v Various Occupiers** the court stressed*

that the phrase 'just and equitable' entails a more elaborate enquiry than 'purely of the technical kind that flow[s] ordinarily from the provisions of land law'. And it emphasised that in conducting such an enquiry —

'the court must have regard to the interests and circumstances of the occupier and pay due regard to broader considerations of fairness and other constitutional values, so as to produce a just and equitable result'.

- [13] *Some of the factors to be considered in terms of s 4(7) are the rights and needs of the elderly, children, disabled persons and households headed by women. As a result of the outcome of the case the magistrates' court did not have to consider s 4(7) at all. Due to the lack of opposing papers, there is a dearth of information on these and other potentially relevant aspects. It appears from the papers that, at the time of the respondents' divorce (in 2010), there was one minor child (they had three children). There is no indication on the papers of whether this child, and possibly one or both of the others, may still be dependent on their parents. There is also no indication whether anyone of the occupiers of the property is disabled. In all probability that household is headed by a woman, the first respondent, in view of her divorce from the second respondent. In the circumstances, the matter must be remitted to the Somerset West Magistrates' Court for a full enquiry as contemplated in s 4(7) into whether it would be just and equitable to order the eviction of the respondents (in effect only the first respondent) and all those occupying the property through them or her (the first respondent).*

[14] *It is necessary to add one last observation. This unseemly family feud is highly regrettable. It is plain on the papers that hard, inflexible positions have been adopted on both sides. Ultimately, no one wins in a matter such as this. The more desirable outcome, beneficial to all concerned, is to bury the hatchet and to co-exist in harmony on the property. One can only hope that good common sense will prevail.*

(footnotes omitted)

[99] In **Ekurhuleni Metropolitan Municipality and another v Various Occupiers, Eden Park Extension** 2014 (3) SA 23 (SCA) it was found by the Supreme Court of Appeals that:

*“Members of a community unlawfully occupied homes built by a provincial department of housing on land owned by a municipality. The occupation was prompted by dissatisfaction with the process in which the houses were allocated. The department and municipality applied to a high court for eviction in terms of s 4 of the **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act** 19 of 1998 (PIE), but this was refused as not just and equitable in the circumstances. They then appealed to the Supreme Court of Appeal. That court surveyed the law on eviction: the relation of the state's duty to take reasonable measures to provide access to adequate housing (s 26 of the Constitution) to PIE's requirement that eviction be just and equitable (para [13] at 29G – I); the meaning of 'just and equitable' in ss 4(6) and (7) of PIE (paras [17] – [18] at 31F – 33A); 'relevant circumstances' in the latter sections (para [19] at 33B); the relation of ss 4(6) or (7) – (8) and (12) (para [16] at 30H – 31E); the nature of the court's discretion to order eviction (para [20] at 33G – I); and the onus (para [21] at 34A – D).*

The court concluded that eviction would not be just and equitable. Weighing for eviction was the act of self-help which disrupted the authorities' housing plans and frustrated the expectations of the persons to whom the houses had been allocated. But weighing against eviction was the flawed housing-allocation process; and the failure to honour a promise to the occupiers that they would receive preference. (Paragraphs [22] – [23] and [26] – [28] at 34E – 35E and 37F – 38H.)

[19] Thus both the Constitution and PIE emphasise that the court must take into account all relevant factors before granting an eviction order. As Wilson notes, the enquiry to be undertaken is therefore whether, given all the relevant factual, legal and socio-economic circumstances, it is just and equitable to order the eviction of the unlawful occupier.

'This requires a court to make a value judgment, but it must not do so in a vacuum.'

There are various considerations relevant to this determination, as outlined both in the Act and through the case law, with each factor taking on either an increased or lesser importance depending on the prevailing factual matrix of each matter. According to Chenwi the following are potentially relevant to the enquiry:

"(i) (T)he manner in which the occupation was effected; (ii) the duration of the occupation; (iii) the availability of suitable alternative accommodation or land; (iv) reasonableness of offers made in connection with suitable alternative accommodation or land; (v) the timescales proposed relative to the degree of disruption involved; (vi) the willingness of the occupiers to respond to reasonable alternatives put before them; (vii) the extent to which serious negotiations have taken place with

equality of voice for all concerned; and (viii) the gender, age, occupation or lack thereof and state of health of those affected . . . [and] the manner of execution of the eviction order, that is, whether it was executed humanely Furthermore, the interests of surrounding communities as well as the negative impact of "land gaps" on investor-confidence in the country, and the right of landowners (discussed subsequently), have been regarded by the courts as relevant factors.'

[20] The discretion to be exercised in determining whether or not to grant an order of eviction based upon what is just and equitable is one in the wide and not the narrow sense. Consequently, as Harms JA explained in **Ndlovu v Ngcobo; Bekker and Another v Jika** 2003 (1) SA 113 (SCA) ([2002] 4 All SA 384) para 18 —

'(a) court of first instance . . . does not have a free hand to do whatever it wishes to do and a Court of appeal is not hamstrung by the traditional grounds of whether the court exercised its discretion capriciously or upon a wrong principle, or that it did not bring its unbiased judgment to bear on the question, or that it acted without substantial reasons'.

[21] Further, while 'technical questions relating to onus of proof should not play an unduly significant role' in an enquiry such as this, that does not mean, as Wallis JA observed in *Changing Tides*, that the onus of proof can be disregarded. Wallis JA added (paras 29 – 30):

'. . . After all what is being sought from the court is an order that can be granted only if the court is satisfied that it is just and equitable that such an order be made. If, at the end of the day, it is left in doubt on that issue it must refuse an order. There is nothing in PIE that warrants the court maintaining litigation on

foot until it feels itself able to resolve the conflicting interests of the landowner and the unlawful occupiers in a just and equitable manner.

The implication of this is that, in the first instance, it is for the applicant to secure that the information placed before the court is sufficient, if unchallenged, to satisfy it that it would be just and equitable to grant an eviction order. Both the Constitution and PIE require that the court must take into account all relevant facts before granting an eviction order. Whilst in some cases it may suffice for an applicant to say that it is the owner and the respondent is in occupation, because those are the only relevant facts, in others it will not. . . .'

[22] Doubtless, the position of the respondents is desperate. Most, if not all, of them live below the bread line. One of the respondents, Mr Alfred Hlatshwayo, put it as follows in his affidavit (paras 35 – 36):

'The respondents are poor people with an average household surviving on social grants and disability grants from the Government. A small minority of the respondents have full-time employment. The majority of the respondents has no formal employment and is depended on hawking in the streets of Eden Park and surrounding areas like Katlehong, Thokoza and Greenfields. This involves selling vegetables and fruits, soft drinks, sweets, cigarettes and other goods.

Some of the respondents survive and support their families by doing casual piece-jobs for a daily fee as cleaners, domestic work or general construction workers around areas like Boksburg, Alberton and Germiston, Katlehong and Thokoza which are all not far from Eden Park.'

That, however, can hardly excuse their conduct, which by their own admission appears to have been part of a deliberate strategy to gain some kind of preference in the allocation of housing resources over many others who sadly also live in lamentable conditions and are in urgent need of relief. Ordinarily, such conduct may, without more, justify the scales in the just and equitable enquiry being tipped against them. For, given the resort to self-help encountered here, a court may rightly decline to countenance such conduct. Indeed, as Yacoob J made plain in Grootboom (para 92):

'This judgment must not be understood as approving any practice of land invasion for the purpose of coercing a State structure into providing housing on a preferential basis to those who participate in any exercise of this kind. Land invasion is inimical to the systematic provision of adequate housing on a planned basis. It may well be that the decision of a State structure, faced with the difficulty of repeated land invasions, not to provide housing in response to those invasions, would be reasonable. Reasonableness must be determined on the facts of each case.'

[23] While those observations in Grootboom speak to land invasions generally, where — as here — the land or houses concerned have already been allocated to other named beneficiaries, the effect of an invasion is generally far more deleterious, for not only are the carefully crafted plans and policies of the relevant authorities scuppered, but more importantly the rights and expectations of those beneficiaries are negated. The resort to self-help, breeding as it does chaos and anarchy, is the very antithesis of the rule of law. Tellingly, Mr Hlatshwayo explains:

'After almost 9 years of waiting for a house to be approved and allocated to me, I was informed by the first applicant . . . [that] a house was available to be allocated to me and my family in Palm Ridge . . . I was expected to take occupation of the house with immediate effect.

I reported to the housing office within the 3 days period as instructed by the first applicant. At the housing office, I was advised that the house that has been approved and allocated to me had been invaded by an unknown person. The first applicant's officials refused to give me details as to where exactly the house was situated in Palm Ridge as they feared, at the time, that I might take the law into my own hands.'

As is apparent from Mr Hlatshwayo's account, a disregard for the rule of law often engenders self-perpetuating cycles of lawlessness. And, it goes without saying, lawlessness, if left unchecked, can only serve to imperil our constitutional democracy.

[24] But while the respondents' conduct, which is undoubtedly a weighty factor in the enquiry, is deserving of the strongest censure it needs to be placed in its proper historical and factual context. Once that is done and the considerations to which I now turn are balanced as against their unlawful conduct one's initial lack of sympathy becomes tempered somewhat. The appellants accept that they have a duty to ensure that they should have in place a coherent housing policy that is reasonably and appropriately implemented. Of the housing policy in place, Mr Abraham Lorenzen, the regional director: housing development of the municipality, stated:

'During 2003, the First and Second Applicants took a decision to commence with the implementation of the Eden Park 5. The

Second Applicant issued [the directive] in November 2003 that states that beneficiaries from the 1996/1997 waiting list application be prioritised and, around the same period, the First Applicant passed [the resolution] supporting the directive as well as amplifying the directive. . . .'

The truth of the matter, though, is that chronologically the resolution predated the directive. Absent an explanation from the appellants (and there was none) it is difficult to comprehend how the resolution supported and amplified the directive. The directive declared that the provincial department's 'waiting-list data base was developed to provide a tool . . . for chronological, transparent and fair allocation of subsidies in Gauteng'. The directive acknowledged that 'various problems [had] plagued] the Waiting List at a provincial and municipal level' and that the allocation of housing subsidies to beneficiaries '[had] not been totally aligned to the Waiting List and as a consequence a significant number of beneficiaries [who had] applied in 1996 and 1997 [had] not yet received any subsidy assistance'. The directive further provided that '(a)ll beneficiaries that are captured on the [provincial department's] Waiting List as 1996 and 1997 applicants, are eligible for housing assistance'. The tenor of the municipality's resolution, on the other hand, is that it prioritised beneficiaries from the Alberton, Thokoza and Eden Park areas and widened the scope of eligibility for those who were in possession of 'Form Cs' from the two-year period (1996 – 1997) to a four-year period, being 1996 to 1999. By way of explanation, the municipality stated in its replying affidavit that it 'adopted the MEC['s] directive but amplified it to prioritise people from Alberton, Thokoza and Eden Park who applied for houses from 1996 to 1999'. But that is simply inaccurate, for, far from adopting the directive and amplifying it as the municipality asserts, it, in truth, adopted different criteria. There were thus on the face of it two different official policies at play.”

[100] In the matter of **City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA)** the Supreme Court of Appeal held the following:

“This case concerned a private party's attempt to evict occupiers from a building it owned and raised the relationship between ss 4(7) and 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE); how a court hearing such a matter was to acquire the information it required in order to decide whether to order eviction; the onus in matters of this type; when a local authority was to be joined; and the local authority's reporting obligations.

and further:

“The relationship between ss 4(7) and 4(8) of PIE

The SCA noted that courts had not considered the relationship of s 4(7) and s 4(8) where a private landowner applied for eviction. (Paragraph [12] at 304F.)

It held that in such a case a court had to make two inquiries. It had first to consider all relevant factors and to decide if it were just and equitable to order eviction. If it decided it was just and equitable to evict, it had to make a second inquiry into what justice and equity required in respect of the date of eviction and conditions attaching to the order. Once the first and second inquiries were concluded, a single order was to be made. (Paragraph [25] at 311F – 312D.)

Onus

The SCA held further that an applicant for an eviction order under s 4(7) of PIE bore the onus to satisfy the court that it was just and equitable to so order. The applicant thus had a duty to place enough evidence before the court to discharge the onus, in light of the court's

obligation to have regard to all relevant factors before ordering eviction. (Paragraph [34] at 316B – D.)

The legal framework

[11] 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.

[12] There does not appear to have been a consideration of the precise relationship between the requirements of s 4(7) (or s 4(6) if the occupiers have been in occupation for less than six months) and s 4(8) in the context of an application for eviction at the instance of a private landowner. In some judgments there is a tendency to blur the two enquiries mandated by these sections into one. The first enquiry is that under s 4(7), the court must determine whether it is just and equitable to order eviction having considered all relevant circumstances. Among those circumstances the availability of alternative land and the rights and needs of people falling into specific vulnerable groups are singled out for consideration. Under s 4(8) it is obliged to order an eviction 'if the . . . requirements of the section have been complied with' and no valid defence is advanced to an eviction order. The provision that no valid defence has been raised refers to a defence that would entitle the occupier to remain in occupation as against the owner of the property, such as the existence of a valid lease. Compliance with the requirements of s 4 refers to both the

service formalities and the conclusion under s 4(7) that an eviction order would be just and equitable. In considering whether eviction is just and equitable the court must come to a decision that is just and equitable to all parties. Once the conclusion has been reached that eviction would be just and equitable the court enters upon the second enquiry. It must then consider what conditions should attach to the eviction order and what date would be just and equitable upon which the eviction order should take effect. Once again the date that it determines must be one that is just and equitable to all parties.

[13] Two factors that have loomed large in our case law on evictions, both under PIE and otherwise, are the risk of homelessness and the availability of alternative land or accommodation. In the case of occupations of public land and evictions at the instance of public bodies, the emphasis has fallen on the constitutional obligations of the arms of government mandated to address the housing needs of the people affected by the eviction, and in particular to address the plight of those who face an emergency situation of homelessness. The starting point is the judgment in Grootboom where a declaratory order was made that the state was obliged to develop a programme, including the provision of relief for people who had no access to land, no roof over their heads and were living in intolerable circumstances. In Port Elizabeth Municipality the Constitutional Court upheld an order of this court that an eviction order from privately owned land, at the instance of the local authority, should not have been made when it was unclear whether the alternative accommodation being offered by the municipality would afford a reasonable measure of security of tenure. In Olivia Road it endorsed a settlement agreement concluded between the municipality and the occupiers of the building, after a process of mediation, that provided for the occupiers to vacate the building, and in Joe Slovo it crafted an elaborate eviction order under which the evictees were to be relocated elsewhere; there was to be engagement between the municipality and the residents and the entire process was subject to supervision by the court. The difficulties facing courts in this

regard are illustrated by the fact that some 21 months later the Constitutional Court discharged the order in its entirety.

[16] The issue of the availability of alternative accommodation is more difficult in the context of an eviction at the instance of an owner of property that is not an organ of state. There another constitutionally protected right, the right to property,²⁰ comes into play. As pointed out in this court in **Ndlovu v Ngcobo; Bekker and Another v Jika** the effect of PIE is not to expropriate private property. What it does is delay or suspend the exercise of the owner's rights until a determination has been made whether an eviction would be just and equitable and under what conditions. The Constitutional Court endorsed that approach in **Blue Moonlight**.

[17] That situation differs from the case where an organ of state seeks the eviction. In such a case it is almost always also the body responsible for providing alternative accommodation. The majority of cases where an organ of state asks for an eviction order will involve departments at various levels of government, that are either themselves responsible for the provision of housing or, if not, are nonetheless closely linked to departments that do bear that responsibility. In those circumstances to link the availability of alternative land or accommodation to the ability to obtain an eviction order is relatively straightforward. It will generally only be just and equitable to grant an eviction order at the instance of one arm of the state, if the related arm of the state bearing the obligation to attend to the housing needs of the population is able and willing to address the consequences of that eviction by ensuring that alternative land or accommodation is available to those evicted. Conversely eviction will ordinarily not be just and equitable in that situation if alternative land or accommodation is not made available.”

(footnotes omitted)

[101] Seen in context, the purpose of the PIE Act is to prevent arbitrary

evictions, and the applicants acted in terms of the PIE Act throughout the process of eviction of the first respondents.

[102] The applicant submits that the case law referred to by the respondents of the Western Cape, cannot be compared to the application before this Court. The Western Cape matter is to be differentiated from the matter before Court as it is a completely different state organ that bought the property and the occupation of the residents could continue.

[103] In summation, it is submitted by the applicant that PIE is for the protection of indigent people, in circumstances where people are rendered homeless, mostly on an arbitrary basis. There is a responsibility on citizens of our country to sustain themselves.

[104] In the publication 2015 SAJHR **Conflict management in an era of urbanisation: 20 years of housing rights in the South African Constitutional Court** 2015 SAJHR 472 Stuart Wilson, Jackie Dugard and Michael Clark the “abstract” reads as follows:

“Over the past 20 years, of the 23 socio-economic rights decisions handed down by the South African Constitutional Court, 15 judgments have related to the s 26 right to adequate housing, making it by far the most litigated socio-economic right. The relative frequency of housing rights cases before the Constitutional Court relates to the intensity of post-apartheid struggles over access to urban and peri-urban land. Analysing the contours and consequences of the housing rights related judgments over the past 20 years, we highlight the Constitutional Court's role as arbiter of clashing rights of ownership and occupation in the context of evolving and inadequately-managed urbanisation.

In summary, then, the right of access to adequate housing has been expansively developed, not to define what adequate housing actually is, but to control the exercise of public and private power when interfering with, or attempting to give effect to, the right itself.

III Eviction from residential property

*... At common law, a landowner was entitled to evict an occupier, through the rei vindicatio, upon mere proof of ownership and the absence of consent or some other right in law to occupy (see Chetty v Naidoo 1974 (3) SA 13 (A) 20A-E). An owner was entitled to an eviction order notwithstanding the hardship an ejectment might cause, and irrespective of how many people were in occupation of the land subject to the order, and for what purpose they occupied it. As André van der Walt has pointed out, the apparently race-neutral language of the common law masked the fact that the ease with which eviction orders could be obtained assisted the apartheid state in corralling black people into the small reserves of land in which they could legally reside (see A van der Walt 'Exclusivity of Ownership, Security of Tenure, and Eviction Orders: A Model to Evaluate South African Land Reform Legislation' (2002) TSAR 254, 258. See also **Port Elizabeth Municipality v Various Occupiers** 2005 (1) SA 217 (CC) para 10). Simply by restricting black landownership by statute, it was possible to allow the rei vindicatio to do a great deal of the work of racial segregation. The eviction of black people could be painted as the enforcement of race-neutral common law.*

...

*Fully aware of the repressive potential of the common law, the first democratic Parliament passed the **Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act** 19 of*

1998 (PIE Act). The Act gave effect to s 26(3) of the Constitution's requirement that a court consider all the relevant circumstances before making an eviction order. It required the eviction of an unlawful occupier to be 'just and equitable', having regard to a range of factors, including whether alternative accommodation could be made available by the state. The PIE Act was intended to protect the millions of South Africans in urban areas who had no common law entitlement to the land that they lived on, at least until housing could be rolled out at scale.

The first housing case that analysed an eviction and spelt out, in greater detail, the interaction between the subsections related to housing is **Modder East Squatters v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd**. In this case, the Supreme Court of Appeal (SCA) considered the interaction between the right of access to adequate housing in s 26 of the Constitution and owners' property rights in s 25 of the Constitution. This judgment was later confirmed by the Constitutional Court.”
(footnotes omitted)

[105] I cannot do any better than the closing submissions of Adv Tisane: “Poverty does not equate to the right to property.”

[106] Having consideration to the merits in the application, the applicant has proven to this Court that it qualifies to have the first respondents evicted. This Court is satisfied that a proper case has been made out and the application is bound to be successful. Having consideration of all the issues as mentioned above, I hold the view that it is just and equitable for an eviction order to be granted.

Time period for eviction

[107] In terms of section 4(9) of the PIE Act the court is legislatively bound to have regard to all the relevant factors, including the period that the unlawful occupier and his or her family have resided on the land in question.

[108] In an assessment to determine what period would be regarded as a fair and reasonable period to be evicted, it is submitted on behalf of the first respondents that a period of six (6) months is fair, when having consideration to the people that are vulnerable, retired and retirement end of month. The argument is that the time period should assist in granting sufficient time to assist in care of children and to obtain alternative appropriate housing.

[109] Having regard to the period of notice to be given to the first respondents, I am of the view that the duration of the proceedings and the date that the first respondents became aware that they may be evicted, is a factor to be taken into account. The first respondents are aware of the process of eviction that has been instituted as from 1 September 2021. In fact, they were witness to several of their former colleagues that were evicted from January 2021.

[110] The first respondents have been informed of the intended evictions in a notice of intention to sell the properties on 01 November 2020. That correspondence which terminated the residents' occupation is dated 1 December 2020, a follow up letter dated 2 February 2021, and another letter was sent during the end of March 2021.

[111] Each of the eviction applications against the first respondents have been lodged prior to March 2021. As such, the first respondents had knowledge of the applicant's intention to evict the first respondents for at least three (3) years. I deem this time period as sufficient for the first respondents to have been in a position to commence making arrangements or plans to relocate their children from schools, and it is

a sufficient period to consider other options to obtain housing.

[112] On the above basis, I hold the view that a period of three (3) months' notice will be sufficient to evict the first respondents from the premises. The notice is to commence from the date that this order is served on each of the first respondents'.

Costs

[113] The normal principle relating to costs occurred in litigation, is that the successful party is entitled to its cost.

[114] In these circumstances, I hold the view that a variation of the normal cost order would be justified. The respondents were acting on *bona fide* legal advice received. In consideration thereof that the respondents are mostly elderly people, or households headed by women, I exercise my discretion and consider it just and fair that they not be ordered to pay the costs of the application.

[115] I consequently order that each party pay their own costs.

Order:

[116] In the premise, I make the following order:

- i) The first respondents are to be evicted from the applicant's properties of each of the 1st respondents, and any person occupying the properties through the first respondents, together with any movable property that is on the property belonging to the first respondents in terms of sections 6(1), 4(1), 4(6) and 4(8)(b) of the PIE Act.
- ii) A just and equitable date on which the first respondents and any person occupying the properties through the first respondents, together with their movable property, shall vacate the properties

in terms of section 4(8)(a) of the PIE Act, is within a period of three (3) months from receipt of this order.

- iii) In the event that the first respondents refuse and/or neglects to vacate the property by the date set by this Court in paragraph (ii) above, the third respondent (the Sheriff) is authorised and ordered to remove the first respondents, together with any movable property that is on the property belonging to the first respondents from the properties in terms of section 4(11) of the PIE Act.
- iv) The third respondent, being the Sheriff of the Court: Mafikeng – in ejecting the first respondents, is authorised to do so with the assistance (if necessary) of the fourth respondent, being the Station Commander, Mmabatho Police Station, North West, South African Police Service (SAPS), in terms of section 4(11) of the PIE Act.
- v) No order is made as to costs of the applications.

FMM REID
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION MAHIKENG

DATE OF HEARING: 15 SEPTEMBER 2023

DATE OF JUDGMENT: 11 APRIL 2024

APPEARANCES:

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C/O MOLEFAKGOTLA ATTORNEYS

SHASONS CENTRE

SHIPPARD SREET

MAHIKENG NORTH WEST

NO APPEARANCE FOR THE 2ND TO 4TH RESPONDENTS

2ND RESPONDENT:

MMABATHO LOCAL MUNICIPALITY

CNR UNIVERSITY DRIVE & HECTOR

PETERSEN STREET MAHIKENG

3RD RESPONDENT:

SHERRIFF OF THE COURT

MAHIKENG

**24 JAMES WHATT CRESCENT
INDUSTRIAL SITES
MMABATHO**

4TH RESPONDENT:

**STATION COMMANDER
MMABATHO POLICE STATION
SOUTH AFRICAN POLICE SERVICE
NORTH WEST SAPS
105 BATHLAPING STREET
MMABATHO**

AND TO:

**STATE ATTORNEY MAHIKENG
FIRST FLOOR EAST GALLERY
MEGA CITY COMPLEX
CNR SEKAME ROAD & DR JAMES
MOROKA DRIVE
MMABATHO**