


IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO. 2006/16243

In the matter between:

| | |
|--|---|
| DELETE WHICHEVER IS NOT APPLICABLE | |
| (1) REPORTABLE: <u>YES</u> /NO. | |
| (2) OF INTEREST TO OTHER JUDGES: <u>YES</u> /NO. | |
| (3) REVISED. | |
| <u>LINGWOOD, MICHAEL</u> <u>SCHON, ERICH</u> | <div style="text-align: center;"> <u>16/10/07</u> <small>DATE</small> </div> <div style="text-align: center;">  <small>SIGNATURE</small> </div> <div style="text-align: right;"> First Applicant Second Applicant </div> |

and

THE UNLAWFUL OCCUPIERS OF R/E OF ERF 9
HIGHLANDS

Respondents

JUDGMENT

MOGAGABE AJ

INTRODUCTION

1. Applicants are the owners of a residential property, situate at 33 Hunter Street, Highlands, Johannesburg ("the property"). Respondents are 19

- 2 -

adults and 8 children who reside on the property. In this application, applicants seek to evict the respondents from the property as "unlawful occupiers" in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (hereinafter referred to as "PIE"). Respondent are resisting the application on the grounds as fully dealt with hereunder.

2. In this judgment respondents shall for the sake of convenience interchangeably be referred to as "the occupiers".

THE CIRCUMSTANCES OF THE APPLICANTS AND THE OCCUPIERS

3. Applicants purchased the property from Nedbank on or about 14 February 2006. It consists of 9 rooms, each of which is apparently occupied by between 2 and 6 people in various household units. It appears from the papers that the occupiers' occupation at the property prior to the initiation of these proceedings, was lawful, in that they paid rental in respect of their occupation of the property, in the sum of about R300,00 per month per room to a person known to them as either Phillip (or Sipho) who never did anything to maintain the property. In November 2005, the said Phillip told one of the occupiers that he had sold the property, without disclosing the identity of the purchaser and

- 3 -

his/her intentions relating to the property.

4. In February 2006 the water supply to the property was disconnected. During this period, the occupiers were never approached by any person and nothing was discussed with them concerning their occupation of the property or the future of the property. They were only told that the property had been sold as stated by the said Phillip, but they never saw any evidence of a new owner, until they received a copy of the eviction application in July 2006.
5. All the occupiers of the property have lived on the property for more than 6 months calculated as from the time these proceedings were launched. Most of them have been residing on the property for more than 3 years. One of the occupiers has been resident on the property for a period of 16 years. All of the occupiers of the property are desperately poor. For instance, one of them is unemployed, being a recipient of a State disability grant and suffering from chronic tuberculoses. The amount of income generated by the occupiers of the property is approximately R755,00 per month, whereas the highest is about R1 400,00 per month, whilst the lowest is in the region of R400,00 per month. Certain of the occupiers generate no income at all. All of the occupiers are not formally employed, being dependent on informal means of livelihood for survival. The occupiers of the property

- 4 -

live in the inner city area to access work not available to them in rural areas, townships or informal settlements, which happen to be the only areas in which they may possibly be able to access another place to reside.

DEFINITION OF UNLAWFUL OCCUPIER

6. In terms of Section 1 of PIE and for purposes of this judgment, an unlawful occupier is defined as follows:

"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..."

7. The occupiers admit or concede that they are in unlawful occupation of the property.¹ This being so, it is common cause that they are "unlawful occupiers" of the property as so contemplated by PIE. Their defence in the main is based on the fact that an eviction order will not be just and equitable, as contemplated by Section 4(7) of the Act, by virtue of their personal circumstances and the lack of suitable alternative accommodation for them within the area of jurisdiction of the City of

¹ Answering Affidavit, p 20 para 5, p 27 last sentence of para 44

- 5 -

Johannesburg Metropolitan Municipality, placing reliance on a certain report² and the affidavit of a certain Marie Hurchzemeyer, an associate professor at the School of Architecture and Planning in the University of Witwatersrand, "*providing information on the shortage of lawful tenure options for poor people both in and outside the inner city*", evidencing that private rental accommodation in and around the inner city is well beyond their affordability.

8. Section 26 of the Constitution ordains thus:

"26 (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 the home, or have their home demolished without an order of Court made after considering all the relevant circumstances. No legislation may permit arbitrary

² A report compiled by the Centre of Housing and Evictions ("CORHE") entitled "Any Room for the Poor? Forced Evictions in Johannesburg South Africa" (published 8 March 2005)

- 6 -

evictions."

The right to housing provided in Section 26(1) is limited to a right of "access to adequate housing" and not to the right to "adequate housing". Section 26(2) imposes an obligation on the State to "achieve the progressive realisation of this right". However, such obligation is not absolute but subject to consideration of three separate factors, namely (i) the duty to take reasonable legislative and other measures; (ii) within available resources and (iii) in order to achieve the progressive realisation of this right.³ The provisions of Section 26(3) prohibits (i) legislation permitting arbitrary evictions, (ii) the eviction of occupiers from their home or demolition thereof without a Court order sanctioning same and (iii) an eviction order granted by a Court without taking into account all the relevant circumstances.

9. The Housing Act⁴ enjoins every municipality to take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy, to *inter alia* (i) ensure that the inhabitants within its area of jurisdiction have access to adequate housing on a progressive basis; (ii) set housing delivery goals in respect of its area of jurisdiction; (iii) identify and designate land for housing development

³ *Government of the RSA v Grootboom* 2000 (11) BCLR 1169 (CC); 2001 (1) SA 46 (CC); *City of Johannesburg v Rand Properties (Pty) Ltd* 2007 SCA 25 (RSA) paras 36-39 unreported judgment of the SCA delivered on 26 March 2007

⁴ Section 9(1) of Act 107 of 1997

- 7 -

and (iv) initiate, plan, co-ordinate, facilitate, promote and enable appropriate housing development in their areas of jurisdiction. In terms of the Emergency Housing Policy contained in Chapter 12 of the National Housing Code, provision is made for municipalities to access funding, through the relevant provincial government to assist certain categories of persons (within their areas of jurisdiction) who qualify for emergency housing, if they are evicted or threatened with evictions (like the occupiers *in casu*) by providing them with temporary shelter, as a form of an initial phase towards a permanent housing solution.

10. Section 4(7) of the Act, which is germane to the determination of this application, reads thus:

"4(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 landowner for the

- 8 -

relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women."

11. The instant application is brought under Section 4, which pertains to evictions sought by owners or persons in charge of property by virtue of the fact that applicants allege that they are the registered owners of the property in question. It is common cause, if not undisputable that the occupiers have been in occupation of the property in question for a period of more than six months at the time applicants initiated these eviction proceedings, thus making this application to fall within the ambit of the said provisions of Section 4(7).

NON-JOINDER OF THE CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

12. Pending the determination of the instant application respondents filed a notice of motion seeking in terms of Part A thereof, the joinder of the City of Johannesburg Metropolitan Municipality ("the City of Johannesburg"), the stay of the instant application pending the determination of Part B thereof, declaring amongst other things, that the City of Johannesburg's constitutional and statutory obligations require it to make provision for the temporary emergency shelter for

- 9 -

persons such as respondents, who upon eviction would have no suitable alternative accommodation available to them.

13. There are two of such notices of motion both in identical terms, one dated 25 August 2006 stating that a certain Temba Jacky Koketi will depose to the affidavit in support of the proposed joinder application and the other dated 23 July 2007, which appears to amend and substitute Pascal Niyonzima as the deponent to the supporting affidavit, in the stead of the said Themba Jacky Koketi. The said Niyonzima deposed to the answering affidavit on behalf of respondents in resisting their eviction from the property.
14. It further appears from the perusal of the court file that such application was not served on the City of Johannesburg, more particularly by virtue of the fact that there is no documentary proof of service thereof on the City of Johannesburg either in the form of a copy of the Sheriff's return of service or an endorsement or stamp on the notice of motion indicating that such application was served and received by the City of Johannesburg. This may probably be the reason why at the hearing of this matter, counsel for respondents elected not to proceed with the proposed joinder application and the relief so sought in Part B thereof as outlined above. Both the said notices of motion were however served on applicants.

- 10 -

15. I interpose to mention that the City of Johannesburg in response to applicants' eviction papers having been served on it pursuant to Section 4(2) of PIE, requiring service thereof on it at least 14 days prior to the hearing of the matter filed a notice to the effect that it "*does not have any land and/or alternative suitable accommodation available to accommodate the respondents*". It is in any event imperative to point out that such terse statement is not in affidavit form but merely foreshadowed *ex facie* the said notice. In any event and without deciding the issue, the said terse and unsubstantiated statement is not enough. Section 26 of the Constitution obliges the State to devise and implement within its available resources a coherent comprehensive and co-ordinated program designed to progressively realise the right of access to adequate housing, which must include reasonable measures to provide relief to those people in desperate need of access to housing.⁵ The said notification by the City of Johannesburg (as a municipality and thus an organ of State) does not at all comply with these requirements, including those set out in Section 9(1) of the Housing Act as outlined above

16. I further interpose to point out that applicants filed a notice opposing the joinder of the City of Johannesburg (as per the notice of motion dated

⁵ Government of the RSA and Others v Grootboom and Others 2001 (1) SA 46 (CC) at paras 39-43, 63-66

- 11 -

25 August 2006), on the grounds, *inter alia*, that such application “*has no legal consequence or effect upon applicants’ rights to have the respondents evicted from the immovable property*”, praying that same be dismissed with costs. In similar fashion to the conduct of the City of Johannesburg in filing the said notice, the said grounds on which applicants purport to oppose the said joinder application are not in affidavit form but likewise foreshadowed *ex facie* the said notice of applicants.

17. Notwithstanding such notification by the City of Johannesburg, the nett effect of such state of affairs is that the City of Johannesburg is not a party to these proceedings. This being so, no order can be made in these proceedings vis-à-vis the City of Johannesburg.

THE REQUIREMENT OF SUITABLE ALTERNATIVE ACCOMMODATION OR LAND

18. Section 4(7) provides that the availability of suitable alternative accommodation or land is one of the factors, if not the most important factor for a Court to have regard to in determining whether it is just and equitable to issue an eviction order.
19. PIE does not impose an obligation on a private landowner to provide

- 12 -

suitable alternative accommodation or land to “unlawful occupiers” of a property who are threatened or faced with an eviction application. This is so in that neither the common law nor statutory law or the Constitution imposes such a duty on a private landowner to provide housing or for that matter access to adequate housing let alone suitable alternative accommodation to homeless people or unlawful occupiers in the position of respondents. I am mindful of the fact that such obligation may in certain appropriate circumstances find horizontal application, provided a proper case is made thereanent and provided that “other agents within our society, including individuals themselves are enabled by legislative and other measures to provide housing”⁶.

20. The obligation to provide access to adequate housing or for that matter suitable alternative accommodation or land to homeless people or unlawful occupiers threatened with evictions as the case may be, entirely rest in our jurisprudence by virtue of the Constitution or statutory law on the State and/or its responsible organs i.e. municipalities, subject to the consideration mentioned in para 8 above.

21. The respondents also do affirm the City of Johannesburg's obligation “to devise and implement a comprehensive and co-ordinated plan progressively to realise our right of access to adequate housing”, which

⁶ Grootboom's case *supra* at p 678 para 35

- 13 -

"programme must include measures to provide relief for persons, such as ourselves, who upon eviction from the property would have no suitable alternative accommodation available" to them and the obligation to provide temporary shelter to persons in their positions who are threatened with eviction, thus qualifying for emergency housing.⁷

22. I am fortified in this regard by the following judicial pronouncements. **Marais J in Modderklip Boerdery (Pty) Ltd v Modder East Squatters & Another⁸** stated thus:

"The Constitution therefore gives the respondents the right to have access to adequate housing. It is effectively clear that even the State is only required to endeavour 'within its available resources, to achieve the progressive realisation of this right' ... In no legislation of which I am aware or that has been brought to my attention has the State transferred this obligation to the individual land owner. The 'right' of access to adequate housing is not one enforceable at common law or in terms of the Constitution against an individual land owner. The Act is (sic) question (i.e. PIE) does not make such rights expressly enforceable against the owners... but

⁷ Affidavit of Niyonzima pp 34-38, paras 75-88

⁸ 2001 (4) SA 385 (W) at 394J-395A-B

- 14 -

merely seeks to regulate the rights of the owner to eject the unlawful occupier in the manner already indicated."

23. In **Groengras Eiendomme (Pty) Ltd v Elandsfontein Unlawful Occupants**⁹, Rabie J said:

"It is inconceivable that, if the State is not obliged to go beyond available resources to realise the rights of the homeless immediately, or in any circumstances, the Legislature could have intended that the obligations of the State, whatever they may be, and even more than those carried by the State, should be shifted onto the shoulders of the ordinary private owner of land. To put it differently, even if ... the State has the duty to provide housing to the homeless, it could never have been the intention of the Legislature to shift that burden onto the ordinary law-abiding owner of property in the country."

24. The remarks of Langa CJ in **President of the RSA v Modderklip Boerdery (Pty) Ltd**¹⁰, are apposite:

⁹ 2002 (1) SA 125 (T) at p 23E-G para 23

¹⁰ 2005 (5) SA 3 (CC) at para 49

- 15 -

"The State is under an obligation progressively to ensure access to housing or land for the homeless... The progressive realisation of access to adequate housing, as promised in the Constitution, requires careful planning and fair procedures made known in advance to those most affected."

Harms JA in the **City of Johannesburg**¹¹ case *supra*, stated as follows at para 47:

"Eviction, at the very least, triggers an obligation resting on the City (i.e. City of Johannesburg) to provide emergency and basic shelter to any affected respondent."

and at para 72:

"I need no persuading that government, at every level in varying degrees, is constitutionally obliged to realize the right of every person to have access to adequate housing, albeit that it can only be realized progressively, if it can ever be fully realized at all."

¹¹ *Supra* fn 3 para 47

- 16 -

25. This being so, there rest no obligation on applicants as private landowners in these eviction proceedings of finding or providing suitable alternative accommodation for the occupiers. *In casu* such constitutional and statutory obligation rests on the City of Johannesburg.
26. The failure to so join the City of Johannesburg as a party to these proceedings has the effect that the order which the Court might make against the City of Johannesburg, relating to its constitutional and statutory obligations to ensure the realisation of the occupiers' right of access to adequate housing and in particular provide them with temporary emergency shelter, would in the circumstances not be capable of being sustained or being implemented, as the City of Johannesburg is not a party to these proceedings. Absent such joinder, it is impermissible for the Court to grant such order against the City of Johannesburg.
27. Insofar as it is contended that the non-availability of suitable alternative accommodation to unlawful occupiers *per se* renders it not just and equitable to grant an order for their ejectment, then I am of the considered view that it could not be said to have been the intention of the legislature that an ejectment order cannot in such circumstances be granted. To accede to such assertion and permit the continuation of the

- 17 -

unlawful occupation of the property, would be tantamount to sanctioning the indirect or informal expropriation thereof, more particularly where the ejectment relief is so sought is at the instance of a private landowner, taking into account that PIE does not sanction any expropriation by unlawful occupiers, which would on the facts of this case amount to expropriation without compensation.¹²

28. The purpose of PIE which has its roots in Section 26(3) of the Constitution is to prevent unlawful occupiers from being subjected to unlawful evictions by providing for certain procedures to be followed in evicting such unlawful occupiers. It invests the Court with the right and duty to consider whether it will be just and equitable, after having taken into account all the relevant circumstances of a particular case, to grant the eviction order. This however, should not be construed as prohibiting the ejectment of an unlawful occupier.¹³

29. However, this is not the end of the enquiry. Section 4(7) which tempers with the common law right of ownership for ejecting unlawful occupiers, obliges the Court to consider all relevant circumstances, including amongst other things, the availability of suitable alternative

¹² **Modderklip Boerdery (Pty) Ltd v Modder Squatters 2001 (4) SA 385 (W) at 395 C, Groengras case *supra* 138 at para 24**

¹³ **Groengras Eiendomme (Pty) Ltd v Elandsfontein Unlawful Occupants 2002 (1) SA 125 (T) at 138 paras 24 and 26; Ndlovu v Negobo; Bekker & Another v Jika 2003 (1) SA 113 (SCA) at 120A para 3**

- 18 -

accommodation or land for the relocation of unlawful occupiers, in determining whether the grant of the eviction order is "just and equitable".

THE PHRASE "JUST AND EQUITABLE"

30. The remarks of Sachs J in **Port Elizabeth Municipality v Various Occupiers**¹⁴ in expounding on the concept of "just and equitable" are apposite:

"The phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of land law. The emphasis on justice and equity underlines the central philosophical and strategic objective of PIE. Rather than envisage the foundational values of the rule of law and the achievement of equality as being distinct from and intension with each other, PIE treats these values as interactive, complimentary and mutually reinforcing

The Court is thus called upon to go beyond its normal functions and to engage in active judicial management

¹⁴ 2005 (1) SA 217 (CC) at paras 35-37

- 19 -

according to equitable principles of an ongoing, stressful and law-governed social process... The Constitution and PIE require that, in addition to considering the lawfulness of the occupation, the court must have regard to the interest 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.

Thus, PIE expressly requires the Court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interest in a principled way and to promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern."

- 20 -

31. The needs of the elderly, children, disabled people and household headed by women, although not *per se* precluding the grant of an eviction order, are in my view, legitimate factors to be taken into account in determining whether it is just and equitable to grant an eviction order.
32. The following dicta of Sachs J in the **Port Elizabeth Municipality case**¹⁵, is pertinent:

"a Court should be reluctant to grant an eviction against relatively settled occupiers unless it is satisfied that a reasonable alternative is available, even if as an interim measure pending ultimate access to housing in the formal housing programme."

In *casu*, most of the occupiers of the property appear to have been living on the property for relatively long periods. One of them has been living on the property for a substantially long period of sixteen years. In line with the aforesaid dicta of Sachs J, a Court should be reluctant to issue an eviction order, particularly by virtue of the non-availability of alternative accommodation, let alone the provision of an interim measure in the form of temporary emergency shelter. The organ of

¹⁵ at para 28

- 21 -

State i.e. the City of Johannesburg, on whom rests the constitutional and statutory obligation to ensure the progress realisation of the occupiers' right of access to housing and in particular provide them in the event of their eviction with temporary emergency shelter, has not been joined as a party of these proceedings. A Court in any event is entitled *mero motu*, to raise the issue of non-joinder, even against the will of the parties, and even if the matter has already reached the appeal stage and can only be dispensed with if the interested party has unequivocally waived his or her right to be so joined and undertaken to be bound by any decision which the Court may make.¹⁶ In the instant proceedings the City of Johannesburg has neither waived such right nor indicated any willingness to abide by the decision of the Court.

Until it has been so joined and furnishes the envisaged comprehensive program for the realisation of their right of access to adequate housing and the provision of such temporary emergency housing as an interim measure demands the realisation of the right of access to adequate housing, the Court is in the circumstances, reluctant to issue an eviction order.

MEDIATION

¹⁶ *Tockies Butchery (Edms) Bpk en Andere v Stassen* 1974 (4) SA 771 (T)

- 22 -

33. Sachs J in the **Port Elizabeth Municipality** case stressed the necessity and importance of parties involved in litigation instituted under PIE to engage in mediation in an endeavour to achieve mutually acceptable solutions. In *casu*, it is undisputable that the parties never at all engaged in any negotiations let alone mediation in an endeavour to finding solutions mutually acceptable to all. In accordance with the pronouncements of Sachs J on enlisting such mediation mechanism, all the parties (including the City of Johannesburg once so joined in these proceedings) should take all reasonable steps to achieve an agreed mediated solution.¹⁷

The following dicta of Sachs J underscores the premium which the Constitutional Court places on the utilisation of the mechanism of mediation in evictions brought under PIE:

at para 43

"absent special circumstances, it would not ordinarily be just and equitable to order eviction if proper discussions, and where appropriate, mediation, have not been attempted."

and at para 45

¹⁷ At paras 39-43 and 61

- 23 -

"One of the relevant circumstances in deciding whether an eviction order would be just and equitable would be whether mediation has been tried. In appropriate circumstances, the Courts should themselves order that mediation be tried".

34. In *casu*, the parties having not at all entered into any negotiations or attempted any mediation, I am of the view in line with the said dicta of Sachs J, that an eviction order would not in the circumstances be just and equitable, regard being had to the history of the occupiers paying rental in respect of their occupation of the property: As such the possibility could not be excluded, if the parties had done so, of them finding or achieving mutually acceptable solutions.
35. The said dicta of Sachs J should not be construed to mean that the Constitutional court has engaged in judicial law making by adding another requirement in deciding whether an eviction order is just and equitable. In my view the said pronouncements entail that the issue as to whether the parties had engaged in mediation, would constitute one of the relevant circumstances to be taken into account, in deciding whether it would be just and equitable to issue an eviction order.
36. In **Transnet t/a Spoornet v Informal Settlers of Good Hope and**

- 24 -

Others,¹⁸ applicant sought the eviction of the respondents who consisted of members of two communities, from occupying two properties on land owned by applicant. The two properties had become known as the "Rail Reserve". The property was adjacent to a railway line and fell within the jurisdiction of the third respondent, the Germiston Council. The Council had filed an affidavit purporting to establish that there is no alternative land available within its jurisdiction for the housing of the occupiers of the Rail Reserve. In view of the fact that there was no information before the court on which it could decide whether there was land which could reasonably be made available by *inter alia* a municipality for relocation of the unlawful occupiers or to enable the Court to be in a position "*to judge the needs of the elderly, children, disabled persons and households headed by women*", Browde AJ with regard as to who must furnish such information, stated as follows at p 522:

"It is true, as has been submitted by counsel, that much of the information is peculiarly within the knowledge of the unlawful occupiers, but in my judgment that does not mean that the applicant does not bear the ultimate onus of proving the circumstances which would warrant an

¹⁸ [2001] 4 All SA 516 (W)

- 25 -

order for the eviction of all the members of the two respondent communities."

Browde AJ concluded his judgment by stating that a further investigation into the matter was required and that an eviction order would serve to exacerbate an already tragic situation and proceeded to make an order postponing the matter *sine die*, ordering applicant to conduct a survey to enable it and the Court to assess the needs and rights of the occupiers and the prospects of relocating them to another site and reserving the costs of the application for determination by the Court adjudicating the application if and when reinstated.

The order made in the **Transnet** case is illustrative of the innovative orders made by High Courts in PIE matters¹⁹ and which has to some extent informed the order I propose making in the instant application as set out hereunder.

CONCLUSION

37. Having regard to all the relevant circumstances including the rights of applicants to the use and enjoyment of their property; the relatively

¹⁹ Port Elizabeth Municipality case at para 36 and fn 35

- 26 -

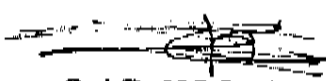
lengthy if not substantial period during which the occupiers have so occupied the property, the fact that this relatively small group of occupiers are apparently as a matter of fact genuinely homeless and desperately poor and needy, the non-availability of suitable alternative accommodation and in particular the provision of an interim measure in the form of temporary emergency shelter for the occupiers, including the needs of *inter alia* children, the elderly, disabled, I am not persuaded that it will be just and equitable to issue an eviction order. In my considered view, the justice and equity of the matter dictates that the City of Johannesburg which is a necessary and interested party by virtue of its aforesaid constitutional and statutory obligations, be joined in the proceedings so that the occupiers are enabled to enforce their Section 26 housing rights against the City of Johannesburg, by pursuing the relief sought in Part B of the notice of motion as outlined above, as well as to allow the parties to engage in mediation in an endeavour to achieve mutually acceptable solutions, and in achieving the underlying philosophy of PIE, "*to promote the constitutional vision of a caring society based on good neighbourliness and shared concern*" and in line with the spirit of ubuntu which "*suffuse the whole constitutional order.*"²⁰

²⁰ Port Elizabeth Municipality case at paras 36&37
Modderklip case at para 55

- 27 -

38. ORDER

1. The application is postponed *sine die*;
2. Respondents are ordered to join the City of Johannesburg Metropolitan Municipality to these proceedings within 7 (seven) days of date of this order;
3. The parties are directed to engage in mediation in an endeavour to exploring all reasonable possibilities of securing suitable alternative accommodation or land and/or of achieving solutions mutually acceptable to the parties;
4. The costs of this application thus far incurred are reserved for determination by the court adjudicating the application if and when same is reinstated;


S J R MOGAGABE AJ
ACTING JUDGE OF
THE HIGH COURT

Counsel for Applicants:

Mr M Fehler
Instructed by Mervyn Fehler Attorneys

Counsel for Respondents

Adv M Chaskalson
Instructed by the Wits Law Clinic