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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NUMBER: 2019/37944

REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO

REVISED: NO
27 SEPTEMBER 2021

In the matter between:

AGLIOTTI, ALAN GORDON

Applicant

and

AGLIOTTI, DANICA

First Respondent

**OCCUPIERS OF ERF [....] PARKMORE,
JOHANNESBURG TOWNSHIP, REGISTRATION DIVISION
IR PROVINCE OF GAUTENG**

Second Respondent

JOHANNESBURG METROPOLITAN MUNICIPALITY

Third Respondent

JUDGMENT

This judgment is handed down electronically by circulation to the parties or their legal representatives via email and by uploading same onto CaseLines. The handing down of this judgment is deemed to be 27 September 2021.

MOOKI AJ:

[1] The applicant seeks to have the first and second respondents evicted from premises situated at Erf [...], Parkmore, Johannesburg Township, Registration Division I.R., Province of Gauteng (“the property” or “the premises”). He seeks eviction in terms of the Prevention of Illegal Evictions from Occupation of Land Act, 19 of 1998 (“PIE”).

[2] There is no challenge to the procedural requirements for the grant of relief under PIE. The second and third respondents did not participate in the application. I refer to the first respondent as “the respondent” for ease of reference.

[3] The applicant purchased the property at a public auction on 12 September 2017. The property was transferred into the applicant’s name on 9 September 2019. The respondent resides on the premises, which she also uses to conduct business as a guesthouse.

[4] The applicant has not given the respondent permission to occupy the premises. She refuses to vacate. The respondent admits that the applicant is the lawful owner of the property.

[5] The respondent has known of the eviction application since November 2019. She threatened to institute legal proceedings against the applicant. Those proceedings were, ostensibly, to challenge the applicant’s right to the property. The respondent had not brought any legal challenge pertaining to the property as at the hearing of this matter.

[6] There are no minor children or disabled persons residing at the property. The respondent owns and/or has control of three different properties. The applicant

contends, on that account, that the respondent has alternative accommodation. The respondent does not deny that the three properties constitute adequate housing. She does not deny that the properties are available to her for her accommodation. She did not plead that an eviction would render her homeless.

[7] The applicant was compelled to sell the property that was his residence leading to the eviction proceedings. He could not afford bond repayments. The bank was to sell the property on auction.

[8] The applicant is a boarder at a one-bedroom cottage, having had to give-up his previous residence. His lease commenced on 1 January 2021 for a period of 3 months. He remains in occupation on a month-to-month basis. He contends that he will have nowhere live absent the respondent's eviction.

[9] The respondent has not shown a lawful entitlement to residing on the property. She is in unlawful occupation.

[10] The court is then to consider whether it is just and equitable that the respondent be evicted from the property. There is no closed list. A court must consider the circumstances peculiar to a matter before court.

[11] It is manifestly just and equitable that the respondent be evicted. She has no entitlement to residence in the property. She will not be rendered homeless. Her contention that the three properties are owned by trusts or that the properties are saddled in debt are not weighty considerations. She did not say how the trusts being saddled with debt was a bar to her using any of the properties for her accommodation. Indeed, she did not contend that she could not reside in any of the three properties. This is to be contrasted with the applicant, having purchased the subject property for millions of Rand and now being obliged to be a lodger in a cottage.

[12] I grant relief as sought by the applicant. The respondent should be given the opportunity to get her affairs in order in relation to where she will keep accommodation. A period of two months from the date of service of this order ought to be sufficient.

[13] I make the following order:

1. The first respondent and all persons (collectively “respondents”) occupying with and through the first respondent are hereby evicted from the immovable property situated at Erf [...] Parkmore, Johannesburg Township, Registration Division IR Province of Gauteng, referred to as “the property”.
2. The respondents are ordered to vacate the property within a period of two months of this order being served on them.
3. It is further ordered that if the respondents do not vacate the property as set out in (2), then at that event the Sheriff; alternatively, the Sheriff’s appointed deputy, together with such assistance as is deemed appropriate, is authorised and directed to evict respondents from the property.
4. The first respondent is ordered to pay the costs of this application and the costs of the s 4(2) application of the PIE Act.

O. MOOKI

*Acting Judge of the High Court
Gauteng Local Division, Johannesburg*

Heard:	19 July 2021
Judgment:	27 September 2021
Applicant’s Counsel:	R Putzier

Instructed by: Dewey Hertzberg Levy Inc

Respondent's Counsel: P W Makhambeni

Instructed by: Ranamane & Kgabo Attorneys