

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 032666-2023

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 12/03/2025

LENYAI J

In the matter of:

PRINCE SURPRISE MOFAMADI

First Applicant

MASEU MASHABELA

Second Applicant

And

ELLA MOKHUANE

First Respondent

OCCUPIERS OF ERF 4[...] UNIT [...] M[...]

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNUCIPALITY

Third Respondent

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14:00 on 12 March 2025.

JUDGMENT

LENYAI J

- [1] This is an eviction application in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE ACT).
- [2] The applicants aver that on the 27th March 2019 they jointly purchased Erf 4[...] M[...] Unit [...] Township (the property) from the executrix in the estate of the late Mr. N T Matseke, the registered owner of the property. The property was registered and transferred into their names on the 28th October 2021.
- [3] The applicants aver that they are the registered owners of the property, and the respondents are unlawfully occupying the property. The applicants submit that after the property was transferred into their names, they personally tried to advise the respondents that they had bought the property, and they must vacate the property. The applicants further aver that they have not leased the property to the respondents and despite repeated requests to vacate the property, the respondents refuse and allege that they bought the property from the late Mr. N.T Matseke.
- [4] The applicants further aver that the respondents have been staying in the property without their consent, and they are not paying for the rates and taxes. The applicants submit that in December 2022 the City of Tshwane Metropolitan Municipality presented them with an invoice indicating that they owed an amount of R6 575.00 which they had to pay as they are the registered owners of the property. The respondents continue to stay at the property, not paying rent and not even paying for the rates and taxes.
- [5] The applicants submit that on the 31st January 2023, through their attorney of record a letter dated the 30th January 2023 was sent to the first respondent. In the said letter the first respondent was requested to vacate the property on or before the 13th March 2023 and she has failed to do so and she together with others continue to unlawfully occupy the property.

- [6] The applicants submit that they have granted the respondents ample opportunity to make alternate arrangements and vacate their property. The respondents' continued stay in their premises is unlawful within the meaning of the PIE Act.
- [7] The applicants contend that the respondents' unlawful occupancy of their property since March 2019 is prejudicing them in the following way:
- (a) they are unable to take control and occupancy of their own property; and
 - (b) they are now forced to pay for the rates and taxes to the City of Tshwane Metropolitan Municipality despite not utilising the premises.
- [8] The applicants further aver that respondents did not raise the defense that there are elderly and or disabled persons residing at the property nor did they raise the defense of acquisitive prescription. The applicants submit that it is clear from the respondents' answering affidavit that by the 6th November 2019 they were notified by Sedile PT Attorneys that they were in illegal occupation of the property.
- [9] The applicants submit that at all material times the first respondent knew that the occupation of the property was not permanent, and neither was it lawful and she should have sought alternative accommodation to avoid any inconvenience.
- [10] The first and second respondents (the respondents) aver that the applicants brought this eviction application knowing full well that there was a pending eviction application against them in the Magistrate Court brought by the executrix in the estate of the late Thabang Noto Matseke under case number 307/2020, on the same cause of action and in respect of the same subject matter. The respondents further submitted that the magistrate court eviction application was withdrawn on the 16th May 2024, however in that Magistrate Court eviction application they had raised the defense of acquisitive prescription.

[11] The respondents further aver that the third respondent (City of Tshwane) has not provided a report to the Court regarding the provision of alternate land or accommodation.

[12] The applicants and the respondents in their joint practice note dated 27th June 2024 agreed that:

12.1 The common cause issues are as follows:

12.1.1 The applicants acquired the ownership of the property occupied by the respondents by sale in March 2019 and transfer of the property into the names of the applicants has already taken place;

12.1.2 No lease agreement was concluded between the applicants and the respondents;

12.1.3 A demand was made by the applicants for the respondents to vacate the property.

12.2 Issues to be determined by the Court:

12.2.1 Whether the respondents' occupation of the applicants' property is lawful.

[13] Section 4(7) of the PIE Act provides that:

'If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings were 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 relevant circumstances, including, except where the land is sold on execution pursuant to a mortgage, whether the 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 person and household headed by women.'

[14] Section 4(8) of the PIE Act provides that:

"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 oc-

cupier, 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).”

[15] In the matter of **Ndlovu v Ngcobo, Bakker and Another v Jika (1) (240/2001, 136/2002) [2002] ZASCA 87; [2002] 4 All SA 384 (SCA) (30 August 2002) at paragraph 11**, the court held that

“... PIE Act applies to all unlawful occupiers, irrespective of whether their possession was at an earlier stage lawful.”

[16] Turning to the matter before me the parties have agreed in the practice note that the applicants are the registered owners of the property there is no lease agreement that was concluded between the parties. The respondents have not raised any valid defense except to state that they have raised the defense of acquisitive prescription in another matter in the magistrate court. The respondents have also advised the court that the matter in the magistrate court has been withdrawn.

[17] Upon careful consideration of the papers filed and the submissions of the legal representatives in court, I am of the view that there is no defence raised in these proceedings before me by the respondents. The respondents simply mentioned that there is a defence raised in the magistrate matter which was eventually withdrawn.

[18] I am satisfied that the applicants are the lawful and registered owners of the property. The respondents are unlawful occupiers of the property as they are in occupation without the express or tacit permission of the registered owners and continue to refuse to vacate the property despite repeated requests.

[19] Section 26(3) of the Constitution of the Republic of South Africa, 1996 provides that:

“No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.”

[20] In the matter of **Pheko and Others v Ekurhuleni Metropolitan Municipality (CCT19/11A) [2015] ZACC 10; 2015 (6) BLCR 711 (CC); 2015 (5) SA 600 (CC) (7 May 2015)**, the Constitutional Court affirmed that section 26(3) does not permit legislation authorizing evictions without a court order. The PIE Act reinforced this by providing that a court may not grant an eviction order unless the eviction would be just and equitable in the circumstances. The court has to have regard to a number of factors including but not limited to the following:

- (a) whether the occupants include vulnerable categories of persons, that is the elderly, children and female-headed households;
- (b) the duration of the occupation; and
- (c) the availability of alternate accommodation in instances where occupiers are unable to obtain alternate accommodation for themselves.

[21] In the matter of **ABSA Bank v Murray and Another 2004 (2) SA 14 C at para 41 and 42**, the court held that :

“in (its) view, the failure by municipalities to discharge the role implicitly envisaged for them by statute, that is, to report to Court in respect of any of the factors affecting land and accommodation availability and the basic health and amenities consequences of an eviction, especially on the most vulnerable such as children, the disabled and the elderly, not only renders the service of the (s 4(2)) notice superfluous and unnecessarily costly exercise for the applicants, but more importantly, it frustrates an important objective of the legislation. It will often hamper the Court’s ability to make decisions which are truly just and equitable. If the PIE is to be properly implemented and administered, reports by municipalities in the context of eviction proceedings instituted in terms of the old statute should be the norm and not the exception.”

[22] Turning to the matter before me, there is no report placed before Court from the municipality to assist the Court to consider all relevant factors regarding the respondents, to determine whether it is just and equitable to evict, and also to advise on the availability of alternate accommodation. It is the responsibility of the applicants in eviction proceedings in terms of PIE to ensure that a report from the municipality is placed before Court.

[23] Under the circumstances I make the following order:

1. The first and second respondents are declared unlawful occupiers of ERF 4[...] Unit [...] M[...].
2. The application for eviction is dismissed.
3. Each party to bear their costs.

LENYAI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

Counsel for Applicant	:	Adv M.C Mavunda
Instructed by	:	Maimetele DJ Incorporated
Counsel for the Respondents	:	Adv M.S Manganye
Instructed by	:	KLM Maja Attorneys
Date of hearing	:	29 August 2024
Date of Judgement	:	12 March 2025