REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
30/8/2021

Case No.: 2020/34151

In the matter between:

BALWIN RENTAL (PTY) LIMITED — Applicant

and

ZACHARIA SIPHO MATHABA — First Respondent

THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY — Second Respondent

JUDGMENT

This judgment was handed down electronically by circulation per email and is deemed to be handed down upon such circulation.

Gilbert AJ:

1. The applicant seeks the eviction of the first respondent and all other persons who occupy through him from a residential section title unit in Olivedale, Randburg.

2. Apart from the procedural requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 ("PIE"), it is now settled that a court must make two enquiries where a private landowner applies for eviction. The first enquiry is whether there is a defence to the eviction claim, and whether it is just and equitable to grant an eviction order having regard to all relevant factors. If the court decides there is no defence to the eviction claim and that it is just and equitable[1] to all the parties grant the order, it must grant the order.[2] But before granting the order, the court must move to the second enquiry, which is what justice and equity demand, if an eviction order is to be granted, in relation to the date of implementation of that order and what conditions must be attached to that order. Although the order is a result of two discrete enquiries, it is a single order and therefore cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can such an enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.[3]

3. The first respondent did not raise any challenge relating to the procedural aspects of PIE. The first respondent appeared in court and so was aware of the proceedings. Although the first respondent, a medical practitioner and previously the chief executive officer of a state hospital, represented himself, he was able to admirably argue his position.

---

[1] It follows that the unlawfulness alone of the occupation will not suffice to enable an eviction order to be granted, because, unlike under the common law, it must also be just and equitable to grant the eviction order i.e. justice and equity may require an eviction order to be refused even if the occupation is unlawful. It is not difficult to conceive of instances where this may happen, such as whether the lessor validly cancels the lease agreement in accordance with ibreach and cancellation provisions because payment was made one day late.

[2] It is unclear to me how a court could in any event decide not to grant an eviction order once it determines that there is no defence and that it is just and equitable to grant the order.

[3] Para 12 and 25 of *City of Johannesburg v Changing Tide 74 (Pty) Limited and others* 2016 (6) SA 294 (SCA), referred to with approval in *Occupiers, Berea v De Wet N.O. and another* 2017 (5) SA 346 (CC) in paras 44-46. Although this was in the context of the interplay between sections 4(7) and 4(8) of PIE, the same applies in relation to the interplay between sections 4(6) and 4(8) of PIE.

4. The natural starting point is to determine whether the occupation is unlawful because without unlawful occupation there can be no cause for eviction.

5. The primary defence raised by the first respondent why his continued occupation of the residential property is not unlawful is that the applicant as lessor did not lawfully cancel the lease agreement. The first respondent contends that although the applicant furnished notice calling upon him to remedy his breach of the lease agreement in having failed to pay rental, the applicant did not subsequently cancel the lease agreement consequent upon that breach. Without cancellation of the lease, the lessee cannot be unlawful occupation.

6. As the applicant seeks an eviction order which is final relief, the applicant is obliged to establish its case upon application of the usual *Plascon-Evans* principles to any relevant material factual disputes.

7. The following facts are common cause or cannot be seriously disputed:

7.1. On 9 December 2019, and then again on 10 December 2019, when the first respondent was substantially in arrears, the applicant through its managing agent furnished the first respondent with seven days' notice to remedy his breach of the lease agreement by settling the arrear rentals and other amounts failing which the applicant would proceed to cancel the lease and seek *inter alia* the first respondent's eviction from the property.

7.2. The first respondent made a rental payment in January 2020. The first respondent failed to settle the outstanding amounts owing under the lease agreement. The first respondent therefore remained in breach as at January 2020.

7.3. Although the first respondent did not settle what was then the arrears as demanded in the notices to remedy of December 2019, the applicant did not cancel the lease upon the expiry of the breach period or of a twenty-day period after receipt by the first respondent of the notices to remedy.

7.4. Without at any stage bringing the payments up to date, the first respondent nevertheless made further payments in the months of April and May, and which payments the applicant accepted. No communications were forthcoming from the applicant during these months in relation to a cancellation or otherwise of the lease agreement.

7.5. After 5 May 2020, the first respondent failed to make any payments.

7.6. The applicant did not during May, June or July 2020 communicate with the first respondent in relation to a cancellation or otherwise of the lease agreement.

7.7. On 4 August 2020 the applicant's managing agent addressed an email to the first respondent, which refers to previous presumably telephonic discussions and which continues as follows:

> "*It is common cause that your Lease Agreement at [....] A[....] has been terminated by the landlord due to the fact that you are inter alia in breach of the obligations under the agreement.*
>
> *This has been communicated to you on numerous occasions. We also record that the unit has been sold in the interim and needs to be vacated before 15 August 2020.*
>
> *It goes without saying that it will be in your best interest to vacate the unit as a matter of urgency. Please contact the writer URGENTLY in order to arrange a check out inspection.*"

7.8. At least as appears from the papers, this is the first written communication from the applicant since December 2019 and there was no prior written communication from the applicant cancelling the lease.

7.9. The first respondent responded on 5 August 2020 in a short email as follows:

"*1. The above matter and your e-mail has reference.*

2. I am not aware of the cancellation of the lease agreement."

7.10. On 7 August 2020 the applicant's attorneys come on record and address a formal letter to the first respondent, which includes the following paragraph:

"*It is common cause that to date, you have failed to remedy your breach under the Lease Agreement concluded with our client. Consequently, our client has elected to terminate the agreement forthwith.*"

7.11. The attorneys continue in the following paragraph of the letter:

"*In this regard, we refer you to the email correspondence from Mr Nicolaas Serfontein dated 4 August 2020 wherein you were inter alia requested to vacate the premises by 15 August 2020. You have replied to the aforementioned e-mail advising that you were not aware of the fact that the Lease Agreement was indeed terminated. Now you have been informed of the termination, it goes without saying that it would be in your best interest to co-operate with our client.*"

8. The first respondent submits that the applicant's managing agent's email of 4 August 2020 cannot upon any reasonable reading be notice of cancellation and that it rather refers to a cancellation that has already happened. Further, on the common cause facts and from what appears in the affidavits, there is no evidence of a prior cancellation of the lease agreement. This explains why, the first respondent continues, he the next day addressed the email stating that he was not aware of any cancellation of the lease agreement.

9. It is in these circumstances that the first respondent contends that the applicant has not proven a valid cancellation of the lease agreement.

10. I agree with the first respondent that the applicant's managing agent's email of 4 August 2020 is not notice of cancellation of the lease agreement.

11. However, in my view, the applicant's attorney's letter of 7 August 2020 is unequivocally a cancellation of the lease agreement. By the time these eviction proceedings were launched in October 2020, the applicant had cancelled the lease agreement.

12. The first respondent's challenge to the validity of the cancellation does not end there. The gravamen of the challenge is whether the applicant was entitled to cancel the lease agreement on 7 August 2020 in circumstances where nothing had been heard from the applicant as lessor since December 2019, and until August 2020 when, as the first respondent describes, "out of nowhere" the applicant cancelled the lease agreement. What then is the legal effect of this delay of some eight months between December 2019 when notice to remedy was furnished and August 2020 when the lease agreement was cancelled?

13. As the first respondent represented himself, he is to be given some latitude in the expression and formation of his defences. More so in the context of an eviction in terms of PIE which requires that that an order only be granted where it is just and equitable to do so and where the court is enjoined to take an active role in adjudicating the applications.[4]

14. The first respondent in paragraph 25 of his answering affidavit asserts that "*the applicant gave a tacit approval that the breach was remedied by payment of R12 650.00 on 20 January 2020*" and "[*t]his is so because after expiry of the 7 days' notice, the applicant did not cancel the lease agreement and give notice that I should vacate the property.*"

---

[4] *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at para 36, reaffirmed in *Occupiers, Berea* at para 42.

15. The first respondent continues, in paragraph 32 of his answering affidavit, that on the applicant's own version on 4 August 2020 the rental was in arrears for an amount of R83 752.82 and, the first respondent contends, the applicant was therefore required to give at least twenty days' business notice of its intention to terminate the lease agreement before doing so. The first respondent continues in paragraph 33 of his answering affidavit that between 1 February 2020 and 4 August 2020 the applicant did not give any notice to cancel and then, in paragraph 34, *"out of nowhere, the applicant notified me on 4 August 2020 of its election to cancel the agreement of lease*".

16. In my view, the first respondent has sufficiently raised as an defence for consideration whether proper notice to remedy was given by the applicant to support its cancellation of the lease in August 2020. In other words, the first respondent's challenge is not limited to whether the purported notice of cancellation of 4 August 2020 was good (which I have found was not a valid notice of cancellation) but includes whether adequate notice to remedy was given to sustain the applicant's attorney's cancellation of the lease agreement on 7 August 2020.

17. As appears above, it is common cause that the only notices to remedy that were given were those in December 2019. The first notice, dated 9 December 2019, refers to the breach by the first respondent of the lease agreement in failing to pay the then total rental amount due of R29 238.92, which the applicant records is a breach of clause 29 of the lease agreement. The second notice of 10 December 2019 refers to the overdue sum being R29 717.86 and that the failure to pay this amount constitutes a breach of clause 29 of the lease agreement. The applicant does not explain why two notice to remedy were given, each showing slightly different amounts. But what is clear from these notices is that the material failure or breach relied upon by the applicant is the failure of the first respondent to pay what was then the overdue rental and other charges, whether in the amount of R29 238.92 or R29 717.86.

18. The parties accept, correctly so, that the Consumer Protection Act, 2008 ["CPA"] does apply to the lease agreement.[5]

19. Section 14 of the CPA is headed "*Expiry and renewal of fixed-term agreements*". Section 1 provides that "*[t[his section does not apply to transactions between juristic persons regardless of their annual turnover or asset value*". This exclusion does not apply as the first respondent is not a juristic person.

20. Section 14(2)(b)(ii) provides that:

> "*(2) If a consumer agreement is for a fixed-term –*
>
> *…*
>
> *(b) despite any provision of the consumer agreement to the contrary –*
>
> *…*
>
> *(ii) the supplier may cancel the agreement 20 business days after giving notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time.*"

21. As set out above, the only written notices that were given by the applicant that could fall within the ambit of section 14(2)(b)(ii) are the two notices of December 2019.

22. The first respondent initially asserted that this notice failed to comply with subsection as the subsection requires twenty business days to be given to remedy the defect, and in this instance only seven days' notice was given. The first respondent did not press this point in argument in light of the decision of *Transcend*

---

[5] See *Transcend Residential Property Fund Limited v Mati and others* 2018 (4) SA 515 (WCC); *Makah v Magic Vending (Pty) Limited* 2018 (3) SA 241 (WCC) and *Magic Vending (Pty) Limited v Tambwe and others* 2021 (2) SA 512 (WCC) where it was not doubted that a lease agreement would fall within the ambit of the CPA

Residential Property Fund[6] where the court that a notice to remedy that only gives seven days rather than twenty days to remedy is nonetheless compliant with the CPA provided that the lessor waits at least twenty days before cancelling the lease agreement.

23. A separate question is whether the December 2019 notices to remedy remained effective as notices to remedy compliant with the subsection notwithstanding the subsequent delay of some eight months before the lease agreement was cancelled in August 2020.

24. The first respondent's material failure as a consumer to comply with the lease agreement of which notice was given by the applicant as supplier is the failure to pay the then already overdue rentals as at date of those notices. No other failure is mentioned.

25. It is clear from the arrear rentals set out by the applicant in paragraph 7.3 of its founding affidavit and as supported by its rental statement that sufficient payments were made in January, April and May 2020 which if added together would have exceeded the arrears claimed in the December notices. Can the applicant in those circumstances still contend that the notices to remedy given in December 2019 remain good for purposes of founding the subsequent cancellation in August 2020?

26. The applicant in paragraph 7.3 of its founding affidavit appears to appropriate the payments in January, April and May 2020 in such a manner to continue to reflect an arrears amount owing for the period preceding January 2020. The applicant seeks to keep alive as an ongoing breach by the first respondent of the lease agreement his failure to pay the arrears reflected in the December 2019 notices to remedy. But if the payments that are subsequently made on 20 January 2020, 2 April 2020 and 5 May 2020 are appropriated towards the oldest debt, then the arrears amount reflected in the notices would have been settled as at 5 May 2020 and so the

[6] Above, para 56.

breach as set out in those notices would have been remedied before the lease agreement was cancelled in August 2020.

27. Absent is an agreement to the contrary, ordinarily and all other things being equal, payments are appropriated to the oldest debt first.[7] In any event, the indebtedness that was the subject of the notices to remedy was the most onerous for the first respondent as it would be a failure of payment of those amounts that may give rise to cancellation, and so should be settled first. The applicant has not specifically asserted any entitlement to appropriate the payments to a specific indebtedness. I was not referred to any provision in the lease agreement relating to appropriation of payments.

28. In any event, no appropriation by the applicant appears in the statement of account annexed to the applicant's founding affidavit, where the payments are simply reflected as credits and are then deducted at the end of the statement from the amounts that are debited to the statement. Nor does it appear that the first respondent sought any particular allocation when making the payments. The allocation made in the founding affidavit appears to be an *ex post facto* exercise.

29. I therefore proceed on a basis favourable to the first respondent that by the time the eviction proceedings were launched, the first respondent had rectified the breach that was the subject of the two notices to remedy that had been furnished by the applicant in December 2019.

30. The question that arises is whether this settlement by the first respondent in May 2020 of the arrears reflected in the notices to remedy of December 2019 prevented the applicant from cancelling the lease agreement in August 2020.

31. Section 14(2)(b)(ii) of the CPA expressly provides that the supplier may cancel the agreement after giving the requisite notice "*unless the consumer has*

[7] See the discussion on appropriation of payments in Christie, *The Law of Contract of South Africa*, (LexisNexis) 7th Ed, (2016) at pp 495 to 498.

rectified the failure within that time", i.e. within twenty business days after the written notice.

32. In the present instance although the first respondent may have remedied his breach of the lease agreement that was the subject of the December 2019 notices to remedy by the time the lease was cancelled in August 2020, that remedying of the breach did not take place within twenty business days of the written notices. The first respondent has not produced any evidence of sufficient, or any, payments within the twenty business day period to have timeously purged his default. The breaches were only remedied in May 2020, well beyond the twenty day period.

33. In my view, then, the application of section 14(2)(b)(ii) of the CPA does not invalidate the cancellation.

34. What remains is whether the applicant nonetheless waived its entitlement to cancel the lease agreement because it said nothing about cancellation from December 2019 to August 2020. Bearing in mind the factual presumption that a party is not likely deemed to have waived his or her rights and that clear evidence of a waiver is required,[8] I again approach the issue on the common cause facts.

35. On the common cause facts, from at least December 2019 the first respondent has always been in arrears in a substantial amount. Although he made a payment of R12 650.00 on 20 January 2020, a further payment of R12 640.00 on 2 April 2020 and a third payment of R12 650.00 on 5 May 2020, at no stage has he been up to date in relation to his payments. The applicant had given the first respondent notice twice in December 2019 to pay arrears exceeding R29 000.00 but he only made payment of R12 650.00 on 20 January 2020. The next payment would only be made some ten weeks later, on 2 April 2020. Can it be said that the applicant has in these circumstances waived its entitlement to rely upon its right to cancel which had accrued during December 2019 or early 2020 upon the first respondent failing to timeously remedy his breach. The only evidence suggesting that the

[8] *Feinstein v Niggli* 1981 (2) SA 684 (A).

applicant may have so waived its right is its silence. No overt act is pointed to by the first respondent to support a contention of waiver.

36. On these common cause facts, I cannot find that the applicant has waived its accrued right to cancel. Rather, on the common cause facts the first respondent must have been aware that he was occupying the premises on 'borrowed time'. The position may have been different had the first respondent between January 2020 and August 2020 brought his payments up to date. That did not happen. To the contrary, since the last payment in May 2020 no payments at all have been made by the first respondent.

37. In the circumstances, I find that the applicant's cancellation of the lease agreement in August 2020 relying upon its accrued right to cancel consequent upon its notices to remedy furnished in December 2019 is good.

38. Having found that the cancellation is good and that therefore the first respondent's occupation of the premises became unlawful as from 7 August 2020, is it nonetheless just and equitable to all the parties to grant an eviction order? As appears above, this remains part of the first enquiry.

39. I am unable to find that it would not be just and equitable to grant an eviction order. The first respondent did not miss the deadline to purge his default by a few days, or even weeks. At best for the first respondent, as appears above and upon adopting an appropriation of payment most favourable to him, he purged his default of failing to pay the arrears as at December 2019 only five months later, in May 2020. But he remained in arrears throughout. The first respondent has not paid any rentals since May 2020. It is now fifteen months later and the first respondent remains in occupation. And the lease in any event expired with the effluxion of time on 31 October 2020.

40. As the lease agreement was cancelled in August 2020, the first respondent had occupied the land as unlawful occupier for less than six months at the time these eviction proceedings were initiated in October 2020.[9]

41. In the circumstances, section 4(6) is applicable rather than section 4(7) of PIE and therefore the availability of alternate accommodation by the municipality or other organ of state for the relocation of the first respondent and the other occupants of the premises assumes lesser prominence. In this instance, the applicant is a private landowner. In my view, the availability or not of alternate accommodation is not a factor in the overall assessment of all the relevant factors, including the personal circumstances of the first respondent, whether an eviction order is just and equitable so as to find that the order should not be granted.[10]

42. In my view it is just and equitable that an eviction order be granted.

43. I move on to the second enquiry, namely what justice and equity demand in relation to the date of implementation of the eviction order and what conditions must be attached to that order.

44. In the week preceding the hearing, I directed the parties to consider, and to make submissions, on the effect of the presently applicable Covid-19 regulations issued in terms of section 27(2) of the Disaster Management Act, 2002. I also referred the parties to my earlier decision of *Rathabeng Properties (Pty) Limited v Mohlaoli and others*[11] where I considered this issue and what was to be made of the then prevailing regulations for Adjusted Alert Level 3, which provides for a suspension or stay of an order for eviction.[12]

---

[9] For purposes of calculating the period of occupation for sections 4(6) and 4(7) of PIE, the occupation is calculated from the date the occupation becomes unlawful: *Ndlovu v Ngcobo; Bekker and another v Jika* 2003 (1) SA 113 (SCA), para 17.

[10] See para 16 of Changing Tides, citing *Ndlovu v Ngcobo;* above para 17, particularly that the effect of PIE is not to expropriate private property.

[11] [2021] ZAGPJHC 8 (15 February 2021).

[12] GNR 11 in GG44066 (11 January 2021).

45. It is now some six months since that judgment. The country emerged from what was the then Adjusted Alert Level 3 but re-entered a new Adjusted Level 3 from 26 July 2021.[13] My comparison of the relevant regulation as was applicable when I handed down judgment in February 2021 with the regulation now in place,[14] shows that the regulations remain the same.

46. In *Rathabeng Properties* I expressed considerable difficulty in making sense of and applying the relevant regulation, particularly as the regulation 36(2) provides that the court "may" suspend or stay an eviction order until after the lapse or termination of the national state of disaster. I ultimately decided that there was room under sections 4(8) and 4(12) of PIE for the court to consider the factors listed in regulation 37(2) as part of all the relevant factors that a court must take into account when deciding the date of implementation of the eviction order and what conditions must be attached to that order, but without being hamstrung with the problematic formulation and application of the regulation. In particular sections 4(8) and 4(12) of PIE provide an enabling mechanism for the court to stipulate for a stay or suspension of an eviction order for a lesser period than may have been provided for in regulation 37(2), which was until the lapse or termination of the national state of disaster.

47. The parties have not made any submissions as to why my earlier analysis in *Rathabeng Properties* judgment was incorrect or should otherwise be distinguished. Indeed, the first respondent in his written submissions on the effect of the regulations on the eviction submitted that it would be just and equitable to stay the eviction order until the lapse of Alert Level 3, as I did in *Rathabeng Properties*.

48. The first respondent had stated that he had become unemployed in November 2020 when he was dismissed as a chief executive officer of a hospital

---

[13] GNR 650 in GG 44895 (25 July 2021).

[14] Chapter 4 of the Consolidated Regulations, as substituted by GNR 651 of 25 July 2021, particularly regulation 37.

and that he has been unemployed since then. The first respondent stated in his answering affidavit of April 2021 that his dismissal was the subject of pending arbitration proceedings. Those arbitration proceedings have since taken place, in July 2021. In a supplementary affidavit, the first respondent discloses the arbitration award in which he was unsuccessful and so remains unemployed, and without compensation from his former employer, the Gauteng Department of Health. The first respondent had been dismissed by his employer because of alleged fraudulent overtime claims. The arbitrator confirmed the dismissal. His erstwhile employer's recordal of the reason for the dismissal, for gross dishonesty and fraud, has, accordingly to the first respondent, prevented him from earning any income since.

49. The first respondent also furnished proof of his inability to pay school fees for his children and the repossession of his car. The first respondent explains that his family survives on donations from congregants.

50. The applicant's counsel made the point that the first respondent was a medical doctor who had now stayed rent-free in the property since May 2020 and therefore, counsel submitted, must have had a considerable savings expense in not having to pay for rental and must be in a position to now afford alternate accommodation. The applicant also submitted that the first respondent displayed no *bona fides* in making a full and proper disclosure of his financial position, such as by way of bank statements.

51. The first respondent does not explain under oath why he began defaulting in payment of rent from December 2019, long before his dismissal in November 2020, and why he ceased paying any rentals since May 2020.

52. The applicant submitted that in these circumstances, an equitable order would be that the first respondent be ordered to vacate the premises within four weeks of the date of order. The first respondent countered that an appropriate period would be three months from the date of the order. The first respondent motivated three months by stating that this would afford him a sufficient period to find locum positions and earn sufficient monies for a rental deposit and a first month's rental for new premises. The first respondent also pointed out that this would bring him close to the

end of the year so that when he relocated at the end of the year it would cause less disruption for his children who by then should have finished this year's schooling. But the disruption of his children' schooling appears to be overstated as that has had already largely taken place by his failure to pay school fees.

53. The first respondent does not explain why he has not sought locum positions previously, or, if he has, this has not been disclosed to the court. The first respondent is highly qualified, being a medical practitioner and with considerable administration skills given that he had been the chief executive officer of a state hospital. The first respondent does not appear to be unemployable, and where on his own version is able to potentially find work as a locum. While it may be that the first respondent does not obtain employment of his choosing, particularly in light of the reasons for his dismissal, given that he is an unlawful occupier staying rent free in an relatively upmarket sectional title unit since at least May 2020, he is not in a position to hold out for better employment but would have to take what is available in order to be able to pay for alternate accommodation.

54. In these circumstances, I find that a just and equitable date by which the first respondent must vacate the property is within two weeks and that should the first respondent not so vacate the premises in those two weeks, the eviction order may be carried out a further two weeks later.

55. As was the case in *Rathabeng Properties* and based upon such relevant factors as are available in this matter, I am of the view that it will be just and equitable to stay or suspend the eviction order until after the end of Adjusted Level 3 (or the end of Alert Level 4 or 5 should such an Alert Level immediately follow on from Adjusted Level 3). This also accords with the first respondent's submissions, as set out above. This means that the first respondent and other occupants of the property will have two weeks after the end of Adjusted Level 3 (or the end of Alert Levels 4 or 5 should such an alert level immediately follow on from Adjusted Level 3) to vacate the property, failing which the eviction order may be carried out a further two weeks thereafter. This effectively affords the first respondent and his family a month to vacate to the property once the present Adjusted Level 3 ends (or Alert Levels 4 or 5 end should such an alert level immediately follow on from Adjusted

Level 3). Although it is uncertain when Adjusted Alert Level 3 ends, in my view the first respondent has sufficient time to find alternate accommodation, particularly given how long he has been staying rent-free on the property and should have been looking for alternate accommodation for many months now.

56. The applicant has succeeded in these proceedings and there is no reason why the usual costs order should not follow. Costs were not sought on any particular scale.

57. The following order is made:

57.1. The first respondent, and all those claiming occupation through, by or under him are evicted from Unit [....], A[....] Estate, A[....] Drive, Olivedale, Randburg, Gauteng registered in terms of the Certificate of Registered Sectional Titles as Section No. [....] on Sectional Plan No. S[....] in the scheme known as A[....] situated at Olivedale Extension 47 Township, City of Johannesburg Metropolitan Municipality ("the property").

57.2. On condition that the present Adjusted Level 3 under the regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 ("the Regulations") has ended (or the relevant period under Alert Level 4 or 5 under regulations has ended if such alert levels immediately follow on from the present Adjusted Level 3), the first respondent, and all those that occupy through, by or under him are ordered to vacate the property within fourteen days of the condition being fulfilled.

57.3. If the property is not vacated within the fourteen-day period in sub-paragraph 2 above, the sheriff and/or deputy sheriff, assisted by such persons as he or she requires including the South African Police Services, are authorised and directed to give effect to sub-paragraphs 1 and 2 above, including removing from the property the first respondent and any other occupants and/or their belongings, no earlier than fourteen days after the fourteen-day period in sub-paragraph 2 above.

57.4. The first respondent is to pay the costs of the application, including any costs of the removal in terms of the preceding sub-paragraph.

Gilbert AJ

Date of hearing:	16 & 19 August 2021
Date of judgment:	30 August 2021
Counsel for the applicant:	Mr G L Kasselman
Instructed by:	Krause Botha Attorneys, Randburg
Appearance for the first respondent:	In person
Counsel for the second respondent:	No appearance.