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

**REPORTABLE: YES/NO**

**OF INTEREST TO OTHER JUDGES: YES/NO**

**REVISED. NO**

**DATE: 13 September 2021**

**CASE NO:26720 /2019**

In the matter between:

**VINCEMUS INVESTMENTS (PTY) LTD  
t/a PONTE CITY**

Applicant

And

**NTOMBEKHAYA SINDI**

First Respondent

**DEBORAH MAPHOSA**

Second Respondent

**THE CITY OF JOHANNESBURG, MUNICIPALITY**

Third Respondent

**JUDGMENT**

**NICHOLS AJ:**

**Introduction**

[1] This is an application in terms of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE). The applicant, Vincemus Investments (Pty) Ltd t/a PONTE CITY, seeks the eviction of the first respondent, Ntombekhaya Sindi, the second respondent, Deborah Maphosa, and their households' from units occupied by the respondents in the building known as Ponte City ("Ponte"), physically situated at [...] L[...] Avenue, Berea, Johannesburg. The application is opposed by the respondents.

[2] The first respondent occupies unit number [...] in Ponte with her household and sub-tenants. The second respondent occupies unit number [...] in Ponte with her household and sub-tenants.

[3] The applicant does not seek the eviction of the respondents' sub-tenants but only that of the respondents and their respective households.

### **The issue for determination**

[4] The issue for determination is whether it is just and equitable to grant an order for the eviction of the respondents in the circumstances and on the facts adduced.

### **Points in Limine**

[5] The respondents raised two points in limine which may be disposed of quite briefly. The first relates to the non-joinder of the sub-tenants of units [...] and [...]. The respondents contend that these sub-tenants are not part of their households and are not cited as separate respondents in these proceedings. It was argued that since the sub-tenants' rights are directly affected, their non-joinder is fatal to this application. The applicant's response is that it does not seek an eviction of the sub-tenants. It is content for any court order granting eviction to clearly specify that the eviction relates to and affects only the respondents and the members of their households. On this basis alone the argument regarding non-joinder must fail and be dismissed.

[6] The second point in limine relates to the issue of *lis alibi pendens*. The respondents contend that the applicant has issued this application in identical duplicate under this matter and under case number: 26726/2019 (the Second Case).

They have filed their notice to oppose and answering affidavits in the Second Case and as long as that matter is currently pending before the court, this application should be dismissed on the basis that a defence of *lis alibi pendens* is dismissive in nature.

[7] It is trite that a special plea or defence of *lis alibi pendens* is dilatory in nature and not dispositive of proceedings.<sup>1</sup> If the applicant had issued duplicate proceedings, it would not be allowed to seek judgment on both. The applicant has however, explained that the confusion about the Second Case arose as a result of a bona fide error in relation to the recordal of the case number of this application. There exists no second application which has been issued by the applicant under case number 26726/2019 and accordingly there exists no Second Case for the applicant to even withdraw. I accept the applicant's explanation. The respondents' point in limine on the grounds of *lis alibi pendens* is dismissed.

### **Application of the law to the facts**

[8] It is common cause that the provisions of PIE are applicable. The first respondent has been in occupation of her unit since 1 February 2017 and the second respondent has been in occupation of her unit since 1 August 2017. The respondents initially occupied their respective units in Ponte in terms of fixed term written lease agreements, concluded with the applicant, which expired by effluxion of time. These leases then converted to month-to-month lease agreements terminable on one month's notice.

[9] The applicant cancelled the respondents' lease agreements on 31 July 2018 when letters of cancellation requiring the respondents to vacate their units were personally delivered to the respondents. In view of the cancellation of the lease agreements, the respondents as occupiers of the units at Ponte fall within the definition of 'unlawful occupiers'<sup>2</sup> in terms of section 1 of PIE.

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<sup>1</sup> *Starita v Absa Bank Ltd and Another* 2010 (3) SA 443 (GSJ) para 7.

<sup>2</sup> '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...

[10] It is trite that an eviction order may only be granted if it is just and equitable to do so, once a court has had regard to all relevant circumstances. If the requirements of s 4 of PIE 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 occupiers must vacate the premises.<sup>3</sup>

[11] A court must be satisfied that there has been proper service as prescribed; that the consideration of homelessness consequent upon eviction and availability of alternative accommodation has been factored in where it has been shown that the personal circumstances of the unlawful occupiers are such that eviction will result in homelessness and they do not have alternative accommodation; and that an eviction order would be just and equitable to all parties.<sup>4</sup>

[12] Our courts have pointed out that neither PIE nor s 26 of the Constitution provide an absolute entitlement to be provided with accommodation. Where eviction is sought at the instance of a private owner of property, the right to property must also be considered.<sup>5</sup> Our courts have clearly indicated in a few decisions that the purpose of PIE is not to expropriate private property but to rather delay or suspend the exercise of an owner's rights until a determination has been made whether an eviction would be just and equitable and under what circumstances.<sup>6</sup>

[13] It is common cause and I accept that the statutory formalities required for the service of the main application and the s 4(2) notice have been complied with. It is also common cause that the applicant is the owner of Ponte and entitled seek the eviction of the respondents under PIE. In considering whether an eviction order would be just and equitable, I have taken into account the history between the parties as presented by them on the papers.

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<sup>3</sup> *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) para 11.

<sup>4</sup> *Changing Tides* para 12.

<sup>5</sup> *Changing Tides* para 16.

<sup>6</sup> *Changing Tides* para 16; *Ndlovu v Ngcobo: Bekker & Another v Jika* 2003 (1) SA 113 (SCA) para 17; *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (PTY) Ltd & another* 2012 (2) SA 104 CC para 40.

[14] The applicant maintains that it was entitled to cancel the respondents' respective lease agreement by providing one month's written notice. This is so because the leases, at that time, had both converted to month-to-month lease agreements terminable on one month's notice. Although the respondents had both at that stage and indeed until the service of this application in July 2019, consistently paid the rental due, their behaviour and conduct at Ponte became so disruptive and objectionable that the applicant felt obliged to take steps to protect its employees and the other tenants in the building. The applicant contended that the respondents sought to create an atmosphere of discontent at Ponte which had the propensity to escalate to violence.

[15] In support of this inference, the applicant averred that due to the respondents' conduct in inciting mayhem, discontent and violence at Ponte, it feared that it would lose certain commercial and residential leases as the tenants no longer felt safe. The applicant described an incident in early January 2019 when its management was informed that the respondents and others had organised a large toyi-toyi against the management of Ponte and planned to spray slogans on the walls with aerosol spray. Tenants were threatened to participate in this demonstration. In addition on 07 January 2019, the security guards at Ponte had to warn the caretaker to lock himself and his wife in his flat as a large number of tenants, led by the respondents, were making their way to his flat. This group of tenants arrived en-masse, pushed the security out of the way and commenced banging on the caretaker's door and windows. They made racist comments, threatened to kill the caretaker and his family and only dispersed when the police arrived on the scene. This version is supported by confirmatory affidavits deposed by the caretaker, his wife and one of the security guards. In reply, it is supported by confirmatory affidavits deposed to by some of the tenants.

[16] In response to these rather grave allegations, the respondents proffer a flippant bare denial. To quote the first respondent:

*'I wonder why the Applicant did not open a case and exhaust its remedies in the correct forum, if ever I sang and caused violence this is unfounded, ill-conceived and not a basis for eviction, we are placed with stupid facts in this matter I as such deny them, I invite the Applicant to re-read the PIE ACT.'*

[17] The respondents contend that their eviction is sought to hide the problems faced by the tenants at Ponte which they have helped exposed. It has no relation to arrear rental because their rental was up to date until this application was issued. If they do sing and organise a toyi-toyi this cannot be a ground for eviction. In support of this assertion, the respondents refer to the applicant's failure to comply with a Rental Housing Tribunal (RHT) order.

[18] The RHT order attached by the respondents is, however an interim ruling delivered on 14 May 2019 in relation to a complaint relating to maintenance and unfair charges. In terms of this ruling, the return date is 16 July 2019 and the respondent is, *inter alia*, ordered to arrange a meeting with the tenants and the service provider to explain how the pre-paid metering works from a financial perspective. The Respondent is also ordered to pend all eviction proceedings that are not related to non-payment of rent until the matter is finalised.

[19] The applicant disclosed the final Findings and Ruling (the Ruling) of the RHT in reply. The RHT matter was preceded by mediation between the parties. The complainant before the RHT was the tenants of Ponte City and the Respondent was Vincemus Investments (Pty) Ltd. The Complainant was represented by the respondents as members of the tenants committee and Phillip Makwala, described as an EFF representative. In terms of the relevant portions of this Ruling, as part of its general findings for 16 July 2019, the RHT noted with concern the unruly behaviour of the Complainant and their representatives (the respondents in this eviction) and that it would not hesitate to invoke the relevant sanctions in the Rental Act to deal with such conduct at the Tribunal.

[20] In terms of the further relevant portions of this Ruling relating to 11 September 2019, the RHT recorded that the complainant must advise tenants to sign new leases and raise any issues that they may have with the lease so that they can be addressed. It recorded that the same terms and conditions of last signed leases still persist, except that, since it is now month-to-month, either party may give 1 calendar month notice to vacate. Either party is entitled to issue a notice to vacate provided that it is at least for 1 calendar month. It ruled that all arrears must be paid

immediately and that the landlord is entitled to proceed with whatever legal process necessary in the event of proven non-payment of rent.

[21] The Ruling by the RHT is not aligned to the conclusions which the respondents argue for. That their actions as representatives of the tenants of Ponte are the reasons that the applicant seeks their eviction. It leads me to the contrary conclusion because it lends support to the applicant's averments about the respondents' disruptive and unruly behaviour as tenants at Ponte and as individuals who are at the forefront of mobilising tenants to be disruptive. The egregious behaviour of the respondents has therefore been established and is a factor that must be taken into account when deciding whether an eviction would be just and equitable.

[22] It is trite that I am also required to take account of the respondents' personal circumstances, in order to satisfy myself that any eviction order will not result in homelessness upon eviction. In this regard, I am reliant on the respondents to set out the details of their personal circumstances in sufficient particularity such that I can satisfactorily determine whether it is just and equitable to grant an eviction order, alternatively whether conditions should be appended to any eviction order.<sup>7</sup> The City of Johannesburg (CoJ) has been cited as a party to these proceedings in the event of there being any prospect of homelessness as a result of any eviction.<sup>8</sup>

[23] Although the respondents have both confirmed that they ceased paying rental once this application was served upon them, they did not adequately explain their reasons for this. The first respondent submits that she is a single mother of three children and head of her household. Two of her children are minors who reside with her. She is currently unemployed and supports her own children, her grandchild and her mother who all reside with her. She pointed out that her rental was R7000.00 per month and although she receives social grants for her children, she was in arrears with her children's school fees.

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<sup>7</sup> *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) Sa 113(SCA) para 19.

<sup>8</sup> *Changing Tides* para 47.

[24] It was contended on behalf of the second respondent that she is currently unemployed, depends on social grants and does odd jobs. The second respondent has two children, one of whom is a minor in grade 2. Both respondents averred their reliance on their sub-tenants to raise monies to pay their rentals.

[25] The respondents concluded by submitting that because they are both unemployed, they cannot afford their rental and they will be rendered homeless and destitute with their families if they are evicted. To this end, they will be relying on the third respondent to assist them with alternative accommodation. The respondents do not attach any documents in corroboration or support of these very brief and terse assertions. The proof of unemployment provided for the second respondent predates the lease agreement and contradicts the assertion that she was employed when the lease agreement was initially concluded. No social grant details are provided either. It is common cause that both respondents have sub-tenants who pay rental to them, yet no details are provided of the amounts paid by these sub-tenants. The respondents do not contend that they are unable to seek alternative accommodation in the vicinity of Ponte or at all.

[26] It is trite that a party resisting eviction must disclose all relevant circumstances to the court. In *Johannesburg Housing Corporation (Pty) Ltd v The Unlawful Occupiers of the Newton Urban Village*<sup>9</sup>, Willis J stated the following in this regard: *'All counsel who have struggled to resist an application for summary judgment will be familiar with the case of Breitenbach v Fiat SA (Edms) Bpk, in which Colman J made it plain that it would be difficult indeed to show good cause why such judgments should not be granted where the defence had been set out 'baldly, vaguely or laconically'. There is no reason why this principle should not apply to occupiers seeking to resist the application for their eviction. Of course, every move from one dwelling to another carries with it its own traumas and disadvantages. That is not enough to resist an eviction order where an occupier has no right, recognised at common law, to remain in occupation of a particular property.'*

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<sup>9</sup> 2013 (1) SA 583 GSJ.



[27] On a conspectus of the evidence, I am constrained to conclude and agree with the applicant's submission that in support of their case opposing the eviction, the respondents have proffered a vague and laconic version which is aimed at sustaining the conclusion that homelessness will ensue if they are evicted, unsupported by any primary facts.<sup>10</sup> The only reasonable inference to be drawn is that the respondents both stopped paying their rental as a direct result of the service of this application for eviction upon them and not because they were unable to do so.

[28] As stated at the outset, provided the procedural requirements have been met, an owner is entitled to an order for eviction, unless the occupier opposes and discloses circumstances relevant to the eviction order which will militate against the granting of the order. The respondents have not disclosed any information that lead me to conclude that it would be unjust and inequitable to grant an order for their eviction from the units occupied by them in Ponte. The respondents were represented throughout these proceedings by attorneys and counsel and therefore would have been advised of what was required by them in advancing their opposition.

[29] I also take note of the fact that the respondents represented various tenants at the RHT and indicated their familiarity with the rules of the RHT. They noted, correctly, that a ruling by the RHT has the effect of a court order. In its general findings and rulings dated 11 September 2019, the RHT recorded the following:

*'Effect of non-compliance of this order:*

*a. Section 13(13) of the Act, which provides that-*

*A ruling by the Tribunal is deemed to be an order of a Magistrates' court in terms of the Magistrates Court Act, 1944 (Act No. 32 of 1944) and is enforced in terms of that Act; and*

*b. Section 16(g) of the Act, which provides that-*

*Any person who fails to comply with any ruling of the Tribunal in terms of section 13(4) will be guilty of an offence and liable on conviction to a fine or*

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<sup>10</sup> *Swissborough Diamond Mines (Pty) Ltd and Others V Government of The Republic of South Africa and Others* 1999 (2) SA 279 (T) at 323 —325; *Johannesburg Housing Corporation (Pty) Ltd V Unlawful Occupiers, Newtown Urban Village* 2013 (1) SA 583 (GSJ) para 122.

*imprisonment not exceeding two years or to both such a fine and such imprisonment.'*

[30] Therefore the respondents are both already in breach of the RHT rulings pursuant to a complaint which was initiated by them on their and other tenants' behalf. They have also been aware since at least September 2019, that the applicant was entitled to cancel their lease agreements on one month's notice and they were ordered to bring their arrears up to date. If their contention that the rental is unaffordable is meritorious then they have had ample time from at least September 2019 to seek alternative more affordable accommodation.

[31] Although the respondents aver that they will require the assistance of the CoJ, to prevent their homelessness, I am not persuaded on the facts and evidence advanced by the respondents that the assertion was made as a genuine plea to prevent homelessness as opposed to prevent their eviction in this application. The only averments addressing potential homelessness upon eviction is the brief assertion that *'should we be evicted we shall be rendered homeless and destitute, to that end we rely on the third respondent to assist us with alternative accommodation'*.

[32] Regardless, it is trite that local authorities owe constitutional obligations to evicted persons who face homelessness as a result.<sup>11</sup> This obligation, however relates to:

*'those who, as a result of poverty and disadvantage, are unable to make alternative arrangements themselves and require assistance from the local authority to do so. It is particularly concerned to ensure, so far as possible, that those who face homelessness are provided at least with temporary emergency accommodation.'*<sup>12</sup>

[33] The CoJ is a party to these proceedings. The respondents were legally represented in the preparation of their papers and taking into account the respondents' own particular knowledge of their rights as tenants and occupiers, I would have expected the respondents papers to be quite clear and unequivocal on

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<sup>11</sup> *Changing Tides* para 39.

<sup>12</sup> *Changing Tides* para 47.

the issue homelessness and any engagement with the CoJ for temporary emergency accommodation in the event of eviction. In the circumstances, I am not satisfied that any facts or circumstances have been adduced which may justify the delay of the enforceability of an eviction order on equitable grounds.<sup>13</sup>

### **Conclusion and order**

[34] I am therefore satisfied that the requirements of s 4 of PIE have been complied with and that the respondents have no valid defence to an eviction order. I am also satisfied that the respondents have not established that they cannot afford and will be unable to secure affordable alternate accommodation.

[35] In the premises, I grant the following order:

1. The first and second respondent, and all those who occupy the property by, through or under them, being:

1.1 Ntombekhaya (Kelly) Sindi;

1.2 Busisiwe Sindi;

1.3 Bulelwa Sindi;

1.4 Mhlali Sindi;

1.5 Likhona Sindi;

1.6 Ncebo Sindi;

1.7 Amahle Sindi;

1.8 Deborah Maphosa;

1.9 Siyabonga Maphosa; and

1.10 Nqobile Maphosa

And specifically excluding the sub-tenants, are evicted from the premises situated at: UNITS [...] and [...] PONTE CITY, [...] L[...] AVENUE, BEREA, JOHANNESBURG ("the property").

2. The first and second respondent, and all those occupying the property by, through or under them (but excluding the sub-tenants) must vacate the property within 45 (forty five) days of the date of this Order.

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<sup>13</sup> *Ndlovu / Bekker* para 123I -124C.

3. In the event that the first and second respondents and/or all persons claiming occupation by, through or under the first and second respondents (but excluding sub-tenants) fail to vacate the property in terms of paragraph (2) above, the Sheriff of the Court is authorised and directed to evict the first and second respondents, and all those occupying the property by, through or under them (but excluding sub-tenants), from the property, together with any movable assets.

4. The first and second respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved, including the costs of the application in terms of section 4(2) of the Prevention of illegal Eviction from and Unlawful Occupation of Land Act, 1998.

**T NICHOLS**

ACTING JUDGE OF THE HIGH COURT  
GAUTENG LOCAL DIVISION, JOHANNESBURG

*This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 13 September 2021.*

Date of hearing: 10 May 2021

Date of judgment: 13 September 2021

**Appearances:**

Counsel for the applicant: Adv C van der Merwe

Attorney for the applicant: Vermaak Marshall Wellbeloved INC.

1<sup>st</sup> Floor Office Suites

54 on Bath

Corner Tyrwhitt Avenue

ROSEBANK

Counsel for the respondents: Adv Mlanga

Attorney for the respondents: Precious Muleya Attorneys

Suite 512 Klamson Towers  
151 Commissioner Street  
Johannesburg