



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

CASE NUMBER: 2022/005801

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

DATE: 6 December 2022

In the matter between: -

MAYFIN (PTY) LTD
(REGISTRATION NUMBER: 2000/017780/07)

Applicant

and

NHLANHLA MTHEMBU

First respondent

**THE OCCUPIERS OF ER F 70, DOORNFONTEIN,
5 DAVIES STREET, DOORNFONTEIN,
JOHANNESBURG**

Second respondent

**ALL THOSE INTERFERING WITH APPLICANT'S
ACCESS, CONTROL AND POSSESSION AT
70 DOORNFONTEIN, 5 DAVIES STREET,
DOORNFONTEIN, JOHANNESBURG**

Third respondent

NATURE LEVELS PROJECTS (PTY) LTD

Fourth respondent

CITY OF JOHANNESBURG LOCAL MUNICIPALITY

Fifth respondent

J U D G M E N T

DELIVERED: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on 6 December 2022.

F. BEZUIDENHOUT AJ:

INTRODUCTION

[1] The relief sought in this application is of an interdictory nature. The applicant is the registered owner of a property known as Industry House situated at Erf 70, Doornfontein and located at 5 Davies Street, Doornfontein, Johannesburg ("**the property**"). It essentially seeks access to its own property to empty and clean the sewage-filled basement, to renovate toilets, bathrooms and kitchens, to install sewage pipes and fire extinguishers and to facilitate the supply of clean running water and legal, safe and properly connected electricity.

[2] The respondents approach this application with apprehension. They believe that it is nothing more than a stratagem to facilitate their eviction without complying with the Constitution and the statutory requirements of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 ("**PIE**"). However, they emphatically state that they have never been and would never be opposed to the applicant gaining access to the property for any *bona fide* purpose such as cleaning and renovating and the

restoring of water supply and properly connected electricity. The respondents are also aggrieved by the applicant's alleged reluctance to engage with the residents or their representatives in order to arrive at an amicable resolution of the issues mentioned in the application.

THE APPLICANT'S CASE

- [3] The applicant states that since it became the registered owner, it neither had control and possession of the property, nor received any income benefit.

- [4] The applicant paints a shocking picture of the circumstances in and surrounding the property. The floating excrement seen with the naked eye piled up in the basement to a level of over three metres high, the absence of running water in the building and the pungent smell permeating from the property even disturb neighbours in surrounding buildings who have had to vacate their properties. The state of the applicant's property is leading to heavy commercial loss and the visible illegally and dangerously connected electrical cables pose a deathly risk to the occupiers and a fire hazard to the property. There are also no statutorily required health and safety measures in place, such as the installation of fire extinguishers.

- [5] The property is fully occupied by the first to third respondents and their immediate families.

- [6] The applicant has given a written undertaking that it would only clean, control and protect its property while the occupiers continue their undisturbed occupation pending the finalisation of the ongoing eviction

proceedings.

- [7] The applicant appointed the fourth respondent to guard the premises and control entry and exit at the property without interfering with the rights and free movement of its occupiers. The applicant informs the Court that the fourth respondent attended the property on the 18th of May 2022 when the first and second respondents violently prevented the applicant and its agent from stationing its security members at the premises.
- [8] The applicant in its founding papers provides useful background regarding the eviction proceedings. The applicant instituted eviction proceedings in terms of PIE as far back as the 3rd of December 2013. The eviction proceedings were opposed and protracted for approximately two years when the application was enrolled for hearing and this Court granted an order evicting the occupiers from the property. After the eviction order was granted and before its execution, the first to third respondents applied for leave to appeal. In its application for leave to appeal the respondents raised the non-joinder of the City of Johannesburg.
- [9] Subsequent to the appeal proceedings, which remain pending, the applicant on the 15th of May 2018 successfully applied for an order joining the City of Johannesburg and the Court directed the City to compile a report relating to the temporary emergency accommodation. No report has been submitted to date.
- [10] The applicant also mentions that this particular property formed the subject matter of a raid tasked by members of the South African Police Services.

The litigation proceeded to the Constitutional Court and the raid and certain provisions of the Criminal Procedure Act, 51 of 1977 was declared unconstitutional and invalid.¹

- [11] As a consequence of the Constitutional Court judgment, the applicant submits that it is unable to gain access to the property in the absence of this Court's intervention.

THE RESPONDENTS' CASE

- [12] The respondents assert that their suspicion that this application is a means of circumventing the eviction proceedings, is supported by the fact that the fourth respondent is by its own admission a company that specialises in property salvation, evictions, demonstrations and crowd dispersals. It promises that it would rescue properties from the hands of hijackers.
- [13] The respondents deny the allegation that they prevented the applicant and its agent from gaining access to the property on the 18th of May 2022. They also deny the allegation of the perpetration of violence. The respondents proffer the explanation that the installation of turnstiles by the applicant was never discussed with the occupiers and as a consequence, objection was made. Correspondence was exchanged between the applicant and the respondents' legal representatives, who recorded that the respondents were willing to discuss and agree on a regime that would not deprive the residents of the use and enjoyment of their homes.

¹ *Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others* [2021] ZACC 37.

- [14] The respondents aver that the applicant made previous attempts to evict the residents illegally from the property. In support they refer to the application for eviction that was brought without joining the City of Johannesburg. Thereafter, the application for leave to appeal was brought on the 23rd of October 2015 and varied on the 2nd of November 2015.
- [15] On the 31st of March 2016 the applicant brought an application for the immediate execution of the eviction order, pending the hearing of the application for leave to appeal. The respondents opposed this application. Eventually the parties agreed that the interim execution application would not be proceeded with and that the City would be joined to the proceedings.
- [16] The City has conducted an assessment of the occupiers, but has done nothing to provide alternative accommodation.
- [17] The respondents complain that the applicant has sought to make life at the property intolerable for the residents. For example, it has caused both the water supply and the electricity supply to the property to be terminated. The respondents allege that the health risks that the applicant refers to at the property are wholly exaggerated.
- [18] The respondents referred to no less than five different police raids that were executed at the property. It is therefore not surprising that the litigation found its way to the Constitutional Court and it also explains the respondent's apprehension about the relief sought in the present application and the applicant's *bona fides*.

DRAFT ORDERS

[19] Having considered the papers and during argument, the Court engaged with counsel for both the applicant and the respondents with a view of finding a via media for the benefit of both parties. Counsel was therefore requested, in consultation with their attorneys and clients, to submit two separate draft orders to this Court for consideration. This was done and the Court expresses its gratitude to counsel.

APPLICABLE LEGAL PRINCIPLES

[20] It is trite that the rights to dignity and privacy are fundamental constitutional rights. Dignity is not only a foundational value, but also a justiciable constitutional right.²

[21] Privacy however, like all rights, is not absolute.³

[22] In *Bernstein*⁴ Ackerman J stated as follows: -

"The truism that no right is to be considered absolute implies that, from the outset of interpretation, each right is always already limited by every other right accruing to another citizen. In the context of privacy, this would mean that it is only the inner sanctum of a person, such as his/her family life, sexual preference and home environment, which is shielded from erosion by conflicting rights of the community. This implies that community rights and the rights of fellow members place a corresponding obligation on a citizen, thereby shaping the

² *Dawood v Minister of Home Affairs; Shaladi v Minister of Home Affairs; Thomas v Minister of Home Affairs* [2000] ZACC 8; 2000 (3) SA 936 (CC); [2000] 8 BCLR 837 (CC) at paragraph [35].

³ *Minister of Police and Others v Kunjana* 2016 (2) SACR 473 (CC).

⁴ *Bernstein and Others v Bester and Others N.N.O.* 1996 (2) SA 751 (CC).

abstract notion of individualism towards identifying a concrete member of civil society. Privacy is acknowledged in the truly personal realm, but as a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks accordingly."

- [23] Madlanga J in *Gaertner*⁵ stated the following at paragraph [49] of the judgment: -

"Privacy, like other rights, is not absolute. As a person moves into communal relations and activities such as business and social interaction, the scope of personal space shrinks. This diminished personal space does not mean that, once people are involved in social interactions or business, they no longer have a right to privacy. What it means is that the right is attenuated, not obliterated. And the attenuation is more or less, depending on how far and into what area one has strayed from the inner sanctum of the home."

- [24] The right to privacy and dignity of the respondents and occupiers must be weighed against the fact that the property in its current state is unsuited to human habitation and in a state of disrepair with no toilet or ablution facilities, no water supply or sewage disposal, illegal electricity connections, inadequate ventilation and refuse, which includes human waste. The respondents cannot persuasively argue against the irrefutable photographic evidence adduced by the applicant that the property is a death trap and that it is in no-one's interests that the respondents and occupiers continue to live under such circumstances.

- [25] The applicant has no responsibility for the situation. Since it acquired the

⁵ *Gaertner and Others v Minister of Finance and Others* 2014 (1) SA 442 (CC).

property with the view of redeveloping it, it has tried to obtain control over the property and has been prevented from doing so.

[26] In the premises, it would be in the best interests of both parties to grant an order as set out below.

COSTS

[27] From a reading of the two draft orders presented to the court, neither party seeks an order for costs against the other. In my view this is a sensible and conciliatory approach.

ORDER

[28] In the circumstances I make the following order: -

- "1. *The applicant, its employees and agents are permitted unfettered access to Industry House, 5 Davies Street, Doornfontein (Erf 70) ('**the property**') to the property to clean the basement as well as to conduct necessary renovations, including the building of toilets, bathrooms and the installation of water pipes, sewage pipes and fire extinguishers.*
2. *The applicant, its employees and agents are permitted to access the property for purposes of facilitating the supply of clean running water and legal electricity connections.*
3. *The applicant is permitted to utilise the services of a security company solely to ensure the safety of its employees and agents.*
4. *The applicant, its duly appointed security company and agents shall in the execution of their respective duties and functions*

as set out in this order, take no steps whatsoever to evict any of the occupiers or interfere with their continued use of the property, pending the finalisation of the appeal against the eviction order granted on 3 September 2015 and pending the assessment to be conducted by the City of Johannesburg Metropolitan Municipality into the personal circumstances of the occupiers.

5. *The first to third respondents are interdicted and restrained from encouraging or facilitating, directly or indirectly, any interference with the access of the applicant, its employees, its security company and agents to the property for the purpose set out in this order.*
6. *The applicant, its employees and/or agents shall insofar as practicable meaningfully engage with the first and second respondents' attorneys of record, during the cleaning up and renovation process.*
7. *Each party shall pay its own costs."*



F BEZUIDENHOUT

**ACTING JUDGE OF
THE HIGH COURT**

DATE OF HEARING: 14 & 15 November 2022

DATE OF JUDGMENT: 6 December 2022

APPEARANCES:

On behalf of applicant: Adv L Mhlanga

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On behalf of fourth respondent: No appearance.

On behalf of fifth respondent: No appearance.