



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

Case number:7271/2019

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHERS JUDGES: NO  
(3) REVISED

*J. Barnard*

**SIGNATURE**

27 October 2021

**DATE**

In the matter between:

**HENDRIK WEMEYER JOUBERT**

Applicant

And

**JEANETTE ANNA PRETORIUS**

First Respondent

**CATHARINA ELIZABETH MIENIE**

Second Respondent

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

Third Respondent

**STEPHANUS JOHANNES MARTHINUS PRETORIUS**

Fourth Respondent

**ALL OTHER UNLAWFUL OCCUPANTS RESIDING  
AT [...], PRETORIA**

Fifth Respondent

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**JUDGMENT**

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1. The applicant, as the registered owner of a property situated at [...], Pretoria ("the property"), seeks an order for the eviction of the first, second and fourth respondents ("the respondents") from the property in terms of provisions of the Prevention of Illegal Eviction from and Unlawful Occupation Act 19 of 1988 ("the PIE Act"). The City of Tshwane ("the City") was cited as the third respondent in these proceedings.

## **BACKGROUND**

2. The first respondent was the owner of the property, which was purchased by the applicant in a sale in execution on 14 August 2018. The property was registered in his name on 12 February 2019.

3. The first, a 67-year-old female, and fourth, a 68-year-old male, respondents tried to purchase the property back from the applicant and they were afforded until 30 July 2019 to obtain the necessary finances but were unable to do so.

4. During August 2019, they entered into a verbal lease agreement, in terms whereof they would pay the monthly municipal account (excluding rates and taxes) and a rental amount of R12 500, 00, with the applicant.

5. The respondents failed to meet their monthly payments and on 13 November 2019, the applicant demanded payment of all arrear amounts, failing to pay it, the lease agreement would be cancelled.

6. The respondents were notified, in writing to either deliver guarantees within 21 days in the amount of R1 850 000, 00 to purchase the property, or to vacate the property within one month.

7. The respondents were unable to deliver guarantees; failed to pay the outstanding amounts and failed to vacate the property within on months after the applicant cancelled the lease agreement.

**PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL  
OCCUPATION ACT, 19 OF 1988 (the PIE Act)**

8. It is common cause that the applicant is the owner of the property and that the lease agreement with the first and fourth respondents were legally terminated, rendering the first, second and fourth respondents as unlawful occupiers of the property.

9. Section 4 of the PIE Act contains both procedural and substantive provisions. On 15 September 2021 this court authorised written and effective notice pursuant to the provisions of section 4(2) of the PIE Act, ordering the costs to be costs in the main application. I am therefore satisfied that the

procedural provisions in ss 4(2), (3), (4) and (5) of the PIE Act have been complied with.

10. The requirements as set out in sub-sections 4(6), (7), (8) and (9) of the PIE Act are more substantive:

“(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are 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 the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are 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 the relevant circumstances, including, except where the land sold in a sale of execution pursuant to a mortgage, where the land has been made available or can reasonably be made available by a municipality or other Organ of State or another landowner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

- (8) If the court is satisfied that all the requirements of this section had been complied with and that no valid defence has been raised by the unlawful occupier, 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).
- (9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or his family have resided on the land question.”

11. In determining whether to grant an eviction order, I must exercise a discretion based on what is just and equitable, which means that I have to have regard to all relevant circumstances, including the availability of land for relocation of the occupiers and the rights and needs of the elderly, children and disabled persons.

12. In *casu* the first respondent suffers from several illnesses, she is on oxygen 24 hours a day, the second respondent is a 63-year-old female who

assists the first respondent as her caretaker and, the fourth respondent is a 68-year-old male, the first respondent's husband, who is still working and earns between R15 – 20 000, 00 per month.

13. On the date of the hearing of this application, the respondents, in a letter, marked as with prejudice of rights, filed on Caselines, offered to agree that the relief prayed for in par. 1, 2 3 and 4 be granted, but requested that they should only be ordered to vacate the property on or before 7 January 2022, since their children purchased a property and they will be able to move in with their children, January 2022.

14. Adv Van der Laarse, on behalf of the applicant indicated that the applicant was not prepared to grant the respondents until 7 January 2022 to vacate and insisted that they should be ordered to vacate immediately.

15. With due consideration of the above-mentioned concession by the respondent, the only remaining inquiry is to determine, in accordance with subsection 4(8)(a) of the PIE Act, a just and equitable date on which the unlawful occupiers must vacate the premises.

16. In ***Dwele v Phalatse and Others*** (11112/15) [2017] ZAGPJHC 146 (7 June 2017) Willis AJ granted the respondents, the first respondent was 75 years old, and she resided in the property for 43 years, three months to vacate the property:

“27 The final enquiry is into what justice and equity demand in relation to the date of implementation of an eviction order and what if any conditions must be attached to an order. The impact of an eviction order on occupiers is almost always severe and there is a possibility that the occupiers in *casu* may be rendered homeless, even if only for a very short while, if not given adequate time to organise their relocation. There is not only one family affected but at least three if not four in effect. It can take time for the reality to set in before an evictee begins facing that reality and starts making arrangements for the inevitable. The applicant’s hardship in the interim does not compare to what the respondents face in the near future. While losing one’s home after nearly 43 years cannot be made easy but more time to accept this fate and make the necessary arrangements can go some way to easing the pain and promoting timeous relocation. In all the circumstances I believe I cannot give the respondents less than three months. I expect that this judgement and the order to follow will only be served in the next two to three weeks and therefore believe the date should be set at the end of September 2017.”

17. *In casu* the respondents indicated that they already made alternative arrangements but will only be able to move in with their children in January 2022, which is two and a half months from the date of hearing. Considering the circumstances of the matter, especially the first respondent's ill health, I regard the 7<sup>th</sup> of January 2022 as a just and equitable date to vacate the property.

17. I therefore order as follows:

1. The first, second and fourth respondents are hereby evicted from the immovable property situated at [...], hereinafter referred to as "the property".
2. The first, second and fourth respondents are ordered to vacate the property on or before Friday 7 January 2022.
3. It is further ordered that in the event that the first and/or second respondents do not vacate the property on or before 7 January 2022, the sheriff alternatively his duly appointed deputy together with such assistance as he deems appropriate is authorised and directed to evict the first, second and fourth respondents from the property.



4. The first, second and fourth respondents are ordered to pay the costs of this application including the costs of the application in terms of s 4(2) of the PIE Act.

*J Barnardt*

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**ACTING JUDGE JF BARNARDT  
JUDGE OF THE HIGH  
COURT**

**GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 27 October 2021.

**APPEARANCES**

For the applicant: Adv. Y van der Laarse

Instructed by: .Hills Inc.

Tel: 087 944 1800

For the respondent: Adv R van Schalkwyk

Instructed by: Chris Greyvenstein Prokureurs

Tel: 082 821 5222

Date heard: 6 October 2021

Date of judgment: 27 October 2021