



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

CASE NO: 29258/2021

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|-----|---|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: YES |
| (3) | REVISED. |

09 FEBRUARY 2022

Date

K. La M Manamela

In the matter between:

REDEFINE PROPERTIES LTD

Applicant

and

**THE GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA**

First Respondent

**THE MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT OF THE REPUBLIC
OF SOUTH AFRICA**

Second Respondent

**THE MINISTER OF PUBLIC WORKS AND
INFRASTRUCTURE OF THE REPUBLIC
OF SOUTH AFRICA**

Third Respondent

DATE OF HEARING: 10 NOVEMBER 2021.

DATE OF JUDGMENT: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 10h00 on **09 FEBRUARY 2022**.

JUDGMENT

KHASHANE MANAMELA, AJ

Introduction

[1] The applicant, Redefine Properties Ltd, is the registered owner of Erf 838 Halfway House Extension 3 Township, Registration Division I.R., Gauteng Province (the Property). The Property is situated adjacent to Portion 1 of Holding Number 65, Halfway House Estate Agricultural Holdings, Midrand-Rabie Ridge MSS, Registration Division IR, Gauteng Province held under Title Deed T86105/1988 (the Adjacent Property). In other words, the Property and the Adjacent Property have a common boundary. The applicant complains about the condition of (and human activities on) the Adjacent Property by some unidentified persons (the unlawful occupiers). Save for the alleged unlawful occupation, the Adjacent Property is a vacant piece of land. Through this application the applicant seeks that the first respondent, the Government of the Republic of South Africa (the National Government), as the owner of the Adjacent Property be directed to evict the unlawful occupiers from the Adjacent Property in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act), alternatively remove the nuisance.

[2] The application is opposed by the National Government, the Minister of Agriculture, Land Reform and Rural Development (the Minister of Agriculture), cited as the second respondent, and the Minister of Public Works and Infrastructure (the Minister of Public Works), cited as the third respondent. The opposition is primarily on the basis that the responsibilities or obligations in respect of the Adjacent Property lie with the Gauteng Provincial Government.

[3] The matter came before on 10 November 2021, after it was enrolled for the opposed motion week of 08 November 2021. Mr WN Shapiro SC appeared for the applicant and Ms NR Choeu and Mr GM Mamabolo jointly appeared for the three respondents. I reserved this

judgment after listening to argument by counsel. The judgment also benefitted from the written argument by counsel, for which I am grateful.

[4] It is also important to mention some pertinent issues in the background. This application was initially issued on an urgent basis. It was struck off the roll of the urgent Court on 29 June 2021 for want of urgency. But that was not the first time the applicant had approached the Court for relief. The applicant had tried earlier to cause the unlawful occupiers to be evicted from the Adjacent Property in December 2020. That application was against the MEC for Roads and Transport, and the MEC for Infrastructure Development, both of the Gauteng Provincial Government. The application was not proceeded with after the applicant was informed that it had sued wrong parties in the form of the Gauteng Provincial Government. Although this issue has no direct bearing on the determination to be made in this application, but it is not irrelevant.

Applicant's case

[5] As already stated, the applicant owns the Property bordering the Adjacent Property. The Property is an industrial site used by a tenant as a production plant for aerosol products. The Adjacent Property is vacant save for the alleged unlawful occupation which began in 2018 when the occupiers moved in. It has no access to running water, sewage disposal or any other amenities. The applicant considers the living conditions on the Adjacent Property to be a health hazard, nuisance and fire hazard.

[6] From March 2018 the applicant - through its attorneys and by way of correspondences - started engaging the functionaries of the Gauteng Government. The applicant was subsequently told that the Adjacent Property had been expropriated for establishing a roadway.

Also that the custodians of all properties “vested” in the Provincial Government were the MEC for Roads and Transport, and the MEC for Infrastructure. The applicant was advised that the Roads Maintenance Directorate had been directed to clear the site and legally remove the informal settlement, if necessary. But nothing tangible happened, despite the applicant’s threats of legal action.

[7] In September 2020 the applicant brought an application against the two MECs mentioned above to compel them to take the necessary steps to clear the Adjacent Property. It had by then been established that there were approximately 15 (fifteen) persons occupying the Adjacent Property. This lawsuit was withdrawn in March 2021 when the State Attorney advised that the Gauteng Government was not the owner of the Adjacent Property, but that the National Government was the “nominal owner”.

[8] In June 2021 the applicant launched this application, this time, evidently suing the National Government and the two Ministers. In this application the applicant essentially seeks that the Ministers be directed to institute eviction proceedings against the unlawful occupiers of the Adjacent Property, alternatively (in case the Adjacent Property is lawfully occupied), the Ministers be directed to take remedial action in respect of the nuisance thereon. As the grounds for relief, the applicant says that the Ministers are the custodians of all property owned by the National Government and, therefore, have an obligation to abate the nuisance, threat and interference posed by the condition of the Adjacent Property. Further, the Property generates income and the applicant is likely to suffer significant financial loss should the tenant terminate the lease agreement due to the unlawful occupation of the Adjacent Property. Also, the condition of the Adjacent Property poses threat to the safety of both the applicant’s tenant and the unlawful occupiers, themselves. There have been some previous incidents of flooding of

the Property due to blocked stormwater drains on the Adjacent Property; the tenant's inability to offload gas from a truck due to open fires or the burning of materials on the Adjacent Property, and the summoning of the fire brigade by the tenant due to smoke in the tenant's factory coming from the burning of waste on the Adjacent Property. The burning of material or open fires is concerning as the tenant stores large quantity of hazardous gas and alcohol on the Property. The storage of these substances ought to comply with the health and safety regulations to ensure that there is no threat to lives on both the Property and the Adjacent Property.

[9] The applicant says that it is unable to directly invoke the provisions of the PIE Act as it is not the owner [or in charge] of the Adjacent Property.¹ But should this Court be unconvinced about the eviction of the occupiers, then this Court in the interests of justice and safety should direct the respondents to take remedial steps to avert the nuisance on the Adjacent Property.

First, second and third respondents' case

[10] The three respondents are jointly opposing this application. Whilst appearing to admit that the Adjacent Property is owned by the National Government they appear to vacillate about whether it is the National Government (either through the Minister of Public Works and/or the Minister of Agriculture) or the Gauteng Provincial Government responsible for the Adjacent Property. There are even assertions that the relief sought squarely fall within the jurisdiction of the City of Johannesburg as the responsible level to enforce the by-laws and other applicable

¹ The legal standing to institute eviction proceedings under the PIE Act is granted the "owner" of land or someone "in charge" of the land. Section 1 of the PIE Act defines an "owner" as "the registered owner of land, including an organ of state". And the same provision defines a "person in charge" of land as "a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question".

local government legal instruments. The respondents raised the objections or defences of misjoinder and/or non-joinder to bolster their claims. I hasten to point out that I find no merit in such defences or objections. Overall they label the application an abuse of the process of this Court and its pursuit to be *mala fide* and laced with ulterior and extortive motives.

[11] The respondents say the so-called nuisance is a general problem around the entire Halfway House industrial area and therefore not exclusive to the Adjacent Property. The activities complained about is nothing more than a “now common refuse recycling activities” prevalent in all central business districts or CBDs. These activities do not constitute an informal settlement “undesirable and uncomfortable as it might be to the applicant and the greater population”. The activities may be “periodic nuisance created by the refuse recycling individuals pitching plastic structures when they separate their garbage for recycling”.² There may also be illegal dumping on the Adjacent Property, but not to a level of an informal settlement with permanent structures. Therefore, there are no people to be evicted and such eviction would be impossible to enforce. The applicant ought to have approached the City of Johannesburg, the police or the traffic department to lodge a complaint. I hasten to confirm that it is correct that local authorities or municipalities are authorised in terms of legislation to direct the occupiers or owners of land or premises to abate nuisances on the property they occupy or own.³ A landowner may apply to the local authority for an abatement order to be issued, but only where the conditions or state of affairs constituting the nuisance is envisaged in the relevant legislation granting jurisdiction to the local authority.⁴ But this does not bar a landowner from approaching a court of law for relief against a neighbouring landowner.

² Respondents’ Answering Affidavit at par 33.8.

³ Church, J. 2016. *Nuisance*, LAWSA, vol 19, 2nd ed, LexisNexis (online version - last updated, 29 February 2016) (hereafter Church on *Nuisance*) at 198.

⁴ Church on *Nuisance* at 198.

[12] The respondents explained that the Adjacent Property was expropriated on 24 March 1988 under the Expropriation Act 63 of 1975 by the then National Government. In 2014 and 2018 the Gauteng Department sought the “National department” through an application to issue a certificate in terms of item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (the Constitution).⁵ The certificate, among others, conferred the control, usage and vesting of the Adjacent Property to the Gauteng Government. The “vesting” process is still underway. But the ownership and control of the Adjacent Property is with the Gauteng Government and the National Ministers “are entirely precluded from dealing with the said property”.⁶

[13] Later by way of a supplementary affidavit the respondents stated that the Minister of Agriculture has “finally and officially vested” the Adjacent Property in the Provincial Government in terms of section 239 of the Constitution of the Republic of South Africa, 1993 and item 28(1) of Schedule 6 of the Constitution.⁷ It is further stated that the Minister of Agriculture has requested the Registrar of Deeds (Pretoria) to endorse the vesting of the Adjacent Property in the name of the Gauteng Government. It is also explained that in terms of the protocol of Government, the Gauteng Government is responsible for lodging the relevant documents with the Deeds Office for the required endorsement of the title deed to the Adjacent Property. Therefore, for all intents and purposes, the Gauteng Government is the owner of the Adjacent Property after the item 28(1) certificate is signed, the statement continued.

⁵ See par [20] below for the reading of item 28(1) of the Schedule 6 to the Constitution.

⁶ Respondents’ Answering Affidavit at par 33.23.

⁷ See par [20] below.

Applicable legal principles

[14] This matter concerns directly the ownership of land and the responsibilities attaching thereto. There is also the issue of the use of land, particularly the land belonging to the government or the State. The latter issue, to a large extent, is shaded by the former, but is not in any way insignificant.

[15] The ownership of land is (or the rights derived therefrom are) not absolute as may be subject to express or inherent limitations.⁸ The express or inherent limitations, including those from the Constitution and other statutory or common law may apply.⁹ These limitations may be for the regulation of the specific types of land use or to limit the use of land in specified areas.¹⁰ Also the limitation of ownership by operation of law may be in the interests of other legal subjects, mainly, by the rules governing the relationship between neighbouring landowners.¹¹

[16] The principles of the common law relevant to the relations between neighbours may impose certain limitations on the landowners.¹² This may be in the following forms: nuisance, encroachment, lateral support, and the drainage of surface waters.¹³ The neighbours enjoy a reciprocal right to use and enjoy their respective land in a manner that is conducive to their health, well-being and comfort.¹⁴ For example, neighbours may not cause damage or destruction to one another's property.¹⁵ When called upon to intervene, the court has a wide

⁸ Van Wyk, J. 2017. "Land Administration", in *LAWSA*, vol 25(1), 3rd ed, LexisNexis (online version- last updated on 31 January 2017) (hereafter Van Wyk *Land Administration*) at par 47. See Church on *Nuisance* and Van der Merwe, CG. 2014. "Things", in *LAWSA*, Vol 27, 2nd ed, LexisNexis (online version - last updated on 31 January 2014) (hereafter Van der Merwe on Things) at par 142.

⁹ Van Wyk *Land Administration* at par 47.

¹⁰ Van Wyk *Land Administration* at par 47.

¹¹ *Ibid.*

¹² Van Wyk *Land Administration* at par 55.

¹³ *Ibid.*

¹⁴ Van Wyk *Land Administration* at par 55.

¹⁵ *Ibid.*

discretion to grant such orders as deemed necessary to offer the most reasonable and equitable relief.¹⁶

[17] One of the limitations of the neighbour law imposed on the landowners is in the form of a nuisance.¹⁷ A limitation in the form of a private nuisance¹⁸ is when there is interference by a neighbour with an owner's use and enjoyment of his or her land through interference with the comfort of human existence on the land.¹⁹ The corollary of this is that through the ownership of land a landowner is entitled to inhabit and occupy land in personal physical comfort, convenience and wellbeing.²⁰ The violation of this interest occurs when the subject land or the premises thereon is invaded by the substances or phenomena such as foul odour, smoke, gas, fumes, noise or vibration, often in excessive quantities or levels.²¹ These may give rise to a cause of action in nuisance.²² But the Court ought to determine whether the alleged interference goes beyond what a neighbour can be expected to tolerate. In other words an interference will not be actionable as a nuisance unless it is unreasonable.²³ The test of unreasonableness involves an objective²⁴ evaluation of the circumstances and it is factual.²⁵

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¹⁶ Van der Merwe on Things at par 168.

¹⁷ Van Wyk *Land Administration* at par 55 relying, among others, on *Regal v African Superslate (Pty) Ltd* 1963 1 SA 102 (A); *Gien v Gien* 1979 2 SA 1113 (T) and *Pappalardo v Hau* 2010 2 All SA 338 (SCA).

¹⁸ In Muller, G *et al.* 'Silberberg and Schoeman's: The Law of Property', 6th ed, LexisNexis (online version) (hereafter *Silberberg and Schoeman's Law of Property*) at par 6.2 states that there are three main categories of the limitations which may be imposed on the ownership of property: public law limitations (imposed on all owners of a particular kind of property to benefit society or certain sections of society); restrictions imposed in the interests of neighbour relations, and individual restrictions.

¹⁹ Church on *Nuisance* at par 170.

²⁰ *Ibid.*

²¹ Church on *Nuisance* at par 170.

²² *Ibid.*

²³ *Silberberg and Schoeman's Law of Property* at par 174.

²⁴ *Gien v Gien* 1979 (2) SA 1113 (T) at 1120.

²⁵ *De Charmoy v Day Star Hatchery (Pty) Ltd* 1967 4 SA 188 (D) 192.

[18] The primary relief sought in this matter implicates primarily the Constitutional right to property in terms of section 25²⁶ of the Constitution. The alternative relief concerns the right of access to adequate housing under section 26²⁷ of the Constitution. The latter right proscribes the law which may allow arbitrary evictions.²⁸ The PIE Act represents the law which guarantees the freedom from arbitrary evictions even to the unlawful occupiers of land. The provisions of the PIE Act and the Less Formal Township Establishment Act 113 of 1991²⁹ have an effect on neighbour law and neighbourhood law. Overall the rights or interests involved here, as stated by the Constitutional Court in *Port Elizabeth Municipality v Various Occupiers*,³⁰ would require to be balanced.

[19] Although the ownership of the Property by the applicant is common cause, the same cannot be said of the ownership of the Adjacent Property. There is reference to “nominal ownership” and custodianship in the quest by the respondents to explain that although the Adjacent Property is registered in the name of the National Government, this level of government, including the cited Ministers do not have any legal obligations with regard to this piece of land. The source of this appears to be item 28(1) of Schedule 6 to the Constitution.

²⁶ Section 25(1) of the Constitution reads: “No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”

²⁷ Section 26 of the Constitution reads in the material part: “(1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (3) No one may be evicted from their home ... without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.”

²⁸ Section 26(3) of the Constitution.

²⁹ The provisions of the Less Formal Township Establishment Act 113 of 1991 were considered in *Diepsloot Residents & Landowners Association v Administrator Transvaal* 1993 1 All SA 132 (T); 1993 1 SA 577 (T); 1993 2 All SA 59 (T); 1993 3 SA 49 (T); *Diepsloot Residents' & Landowners' Association v Administrator, Transvaal* 1994 2 All SA 299 (A); 1994 3 SA 336 (A) which concerned an interdict against the settlement of persons on the land designated in terms of the Less Formal Township Establishment Act 113 of 1991, on the ground that such settlement would cause a public nuisance and interfere with the common-law rights of the applicants.

³⁰ *Port Elizabeth Municipality v Various Occupiers* 2005 1 SA 217 (CC); 2004 12 BCLR 1268 (CC).

[20] Item 28(1) of Schedule 6 to the Constitution provides for the registration of immovable property owned by the State. It reads as follows:

“(1) On the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

(2) No duty, fee or other charge is payable in respect of a registration in terms of subitem (1).”

[underlining added for emphasis]

[21] Evidently, item 28(1) is pivoted upon section 239 of the previous Constitution (i.e. the Constitution of the Republic of South Africa 200 of 1993). Section 239, similarly to item 28(1), dealt with the transitional arrangements in respect of the assets and liabilities of the State.

[22] Section 239(2) contained provisions similar to those in item 28(1) and read:

“(a) A registrar of deeds shall upon the production of a certificate by a competent authority that immovable property described in the certificate is vested in a particular government in terms of this section, make such entries or endorsements in or on any relevant register, title deed or other document to register such immovable property in the name of such government.

(b) No duty, fee or other charge shall be payable in respect of a registration in terms of paragraph (a).”

[underlining added for emphasis]

[23] The above legal principles are applied to the facts or the legal submissions on behalf of the parties in this matter to the extent applicable, next.

Applicable legal principles and the submissions by the parties (discussed)

General

[24] The applicant's case, put in simple terms, is that, as the owner of the Property it is affected by the unlawful occupation or nuisance emanating from the Adjacent Property. It applies that the first respondent and/or the second and third respondents as the owner and/or entities responsible for the Adjacent Property be compelled to either evict the unlawful occupiers, alternatively, to take steps in order to remediate or ameliorate the conditions of use or occupation of the Adjacent Property. The applicant says its hands are tied, so to speak, as it cannot directly evict the unlawful occupiers under the PIE Act. This legislation requires that applicant for an eviction be either the owner or the person in charge of the Adjacent Property.³¹

[25] The respondents' case or defence (after all the haze of the misjoinder and non-joinder is cleared) is that, although the Adjacent Property is owned by the National Government the latter has "vested" the Adjacent Property in the Provincial Government or such process is underway. This defence is advanced jointly with a rather bizarre denial of the use or occupation of the Adjacent Property in contravention of the law or by-laws.³² There is also another ground of opposition or defence, which appears to have been raised partly to premise the respondents' assertion that the two Ministers have been misjoined to this application. The latter ground is that any orders granted against the Ministers would be inconsequential as they are not responsible for the Adjacent Property. Next, I discuss the defence of the "vesting" of the Adjacent Property and the other defences.

³¹ See footnote 1 above for the definitions of "owner" and a person "in charge" of the land in terms of the PIE Act.

³² See par [11] above.

Vesting of property owned by the State

[26] The issue of the vesting of the Adjacent Property is significant, mainly, as it affects the determination of which government (national or provincial) bears the responsibilities to give effect to any relief that may be granted in this matter. It ought to be discussed and determined first.

[27] As already hinted above, item 28(1) of Schedule 6 to the Constitution provides for the registration of immovable property owned by the State. My reading of this provision tells me that it merely facilitates the “vesting” from the one part of government to another of an immovable property owned by the State.³³ The “vesting” places the administration of the property in the second government in which it is vested, but the ownership of the property remains with the first government.³⁴

[28] Evident from the provision the process clearly involves the production of a certificate of the vesting to the Registrar of Deeds. The latter would then be required to make entries or endorsements in its relevant register(s), title deed or other relevant document to effect the vesting of the immovable property in the name of the beneficiary government.

[29] The process of vesting would be finalised or achieved when the Registrar has completed the abovementioned tasks. This, in my view, means that before the Registrar of Deeds makes entries in or endorsements of the relevant documents the vesting is not attained. This would mean that the registered owner’s rights and obligations in respect of the material property or land remain unaffected by the pending “vesting”. The owner is not discharged or absolved of

³³ See par [20] above for the reading of item 28 of Schedule 6 to the Constitution.

³⁴ *Yellow Star Properties 1020 (Pty) Ltd v Department of Development Planning and Local Government (Gauteng)* (549/2007) [2009] ZASCA 25; 2009 (3) SA 577 (SCA) ; [2009] 3 All SA 475 (SCA) (27 March 2009) at par [13].

the obligations. The owner also retains the rights applicable to the ownership of the material property.

[30] Consequently, I respectfully disagree with the respondents' contention to the effect that there is a transfer of rights immediately upon the furnishing of the certificate by a competent authority for the vesting before the certificate is given effect to by the Registrar of Deeds. In my view, before the Registrar records the vesting (i.e. by making entries and endorsements to the relevant documents or records) the owner is not precluded from dealing with the Adjacent Property. However, to the extent that there may be any such preclusion it would apply only *inter partes* the two government entities involved in the vesting process, but not third parties, such as the applicant. I agree with the respondents that a certificate in terms of item 28(1), among others, confers the control, usage and vesting of immovable properties in the government in whose favour it is issued. But I disagree – with respect - that such certificate has an effect in law beyond the two governments before the Registrar has effected the registration of the vesting in her records. Also, it is my view, that the vesting process is incapable of creating a state of *limbo* between the certification by the one government and the recording of the vesting of the impugned property in the name of the other government.

[31] Therefore, absent proof of registration by the Registrar, the ownership and control of the Adjacent Property is not yet “finally and officially”³⁵ vested in the Gauteng Provincial Government but remains with the National Government until the completion of the vesting process, as provided in item 28(1) of Schedule 6 to the Constitution.³⁶

³⁵ See par [13] above.

³⁶ See par [20] above for the reading of item 28.

Eviction of the unlawful occupiers

[32] The conclusion reached regarding the vesting of the Adjacent Property means that the National Government is the relevant party for purposes of the relief sought in this matter, be it eviction of the unlawful occupiers or the remediation of the nuisance.

[33] The applicant, in the main, seeks that this Court direct the respondents to launch eviction proceedings against the unlawful occupiers. As an alternative the applicant prays that the respondents be directed to take steps to remove the nuisance.

[34] As part of the opposition of the relief sought, the respondents have labelled the relief sought incompetent. They deny any unlawful occupation of the Adjacent Property worthy of an eviction process. They further argue that even if this Court can order that eviction proceedings be instituted, none of the respondents play the executive or political role envisaged by the relief sought by the applicant. Other government entities ought to have been joined in this litigation, they further argue. I have already dismissed the latter part of the defence. The respondents' latest ground of opposition is that the vesting process - under way - would saddle the Provincial Government with the relevant responsibilities. Therefore, the applicant ought to have cited the latter or rather waited for the vesting process to unfold, the respondents contend. I have also found that the National Government's ownership of the Adjacent Property remains unaffected by the vesting process until it is completed.³⁷

[35] As the owner of the Adjacent Property the National Government has rights and obligations attaching to such ownership comparable to those of private landowners, including

³⁷ See pars [29]-[31] above.

regarding the eviction of unlawful occupiers of its land and remediation of nuisance thereon.³⁸ But I do not consider it appropriate to direct the respondents to evict the unlawful occupiers. It does not appear to be a suitable solution under the circumstances of this matter. In my view the determination to be made in this matter ought to be derived from the principles or rules governing the relationship between neighbouring landowners. It ought to flow from the obligations attaching to the ownership of immovable property³⁹ and the reciprocal right of neighbouring landowners to use and enjoy their respective land in a manner that is conducive to their health, well-being and comfort.⁴⁰ This is essentially what the current dispute is about.

Remediation of the nuisance

[36] I find that the applicant has established that there is a nuisance of a private nature occurring on the Adjacent Property. But it does not really make any difference if the nuisance could also be classified as a public nuisance.⁴¹ The nuisance interferes with the applicant's use and enjoyment of the Property (or of those occupying the Property with the applicant's consent) due to the interference with the comfort of human existence on the Property.⁴² The applicant's tenant on the Property cannot inhabit and occupy the Property in the physical comfort, convenience and wellbeing due to the violations stated above emanating from the Adjacent Property.⁴³ The interferences are beyond what the tenant of the Property or the applicant can be expected to tolerate. The nuisance ought to be remedied.

³⁸ See pars [15]-[18] above.

³⁹ *Regal v African Superslate (Pty) Ltd* 1963 (1) SA 102 (A) at 209.

⁴⁰ *Van Wyk Land Administration* at par 55.

⁴¹ *Three Rivers Ratepayers Association and Others v Northern Metropolitan* 2000 (4) SA 377 (W) in which Snyders J dealt with a public nuisance in the form of people occupying land (colloquially referred to as "squatting") belonging to the municipality and held (at 380) that there is no difference between the legal principles or rules regarding a public nuisance and a private nuisance.

⁴² *Church on Nuisance* at par 170.

⁴³ *Ibid.*

[37] The essence of this part of the relief sought is that the respondents, particularly the first respondent (i.e. the National Government) as the owner of the Adjacent Property, halt or remedy the nuisance interfering with the use and enjoyment of the Property. I say this whilst mindful of the fact that the applicant may have pointed the relief sought towards the second and third respondents (i.e. the Ministers). But I proceed from an angle of the ownership of the Adjacent Property, as I have already stated.

[38] The Court is allowed a wide discretion to issue an order for the resolution of a dispute between the neighbours in the most reasonable and equitable manner.⁴⁴ In the exercise of its discretion this Court cannot and should not close its eyes to other concerning issues which may affect the rights or interests of other persons, even if such persons are not appearing before the Court. I have in mind, mainly, the so-called unlawful occupiers. For section 1 of the Constitution states that this country is founded on values, among others, of “*human dignity, the achievement of equality and the advancement of human rights and freedoms*”.⁴⁵ The relief granted would strive towards the inclusion of these values.

Conclusion

[39] Therefore, considering what is stated above, I will grant relief not necessarily in the exact terms of the notice of motion. There is a basis for this in the facts I found proven in the matter. I have also considered the practicability in which the harm complained of could be prevented by the first respondent.⁴⁶ The Constitutional values and principles referred to above played a significant role in this regard. Overall, I also find the interests of justice to warrant this.

⁴⁴ Van der Merwe on Things at par 168.

⁴⁵ Section 1 of the Constitution, with italics supplied.

⁴⁶ Church on *Nuisance* at 186.

[40] I will simply direct the first respondent or the National Government to halt the nuisance complained of. This the first respondent can do in whatever manner it deems fit, including eviction proceedings, but the steps taken ought to be compliant with the applicable legislative instruments. The first respondent will be required to furnish a report to the applicant on compliance with the order granted. In order to avoid a possible “merry-go-round” in litigation, which will no doubt frustrate the applicant, especially after the vesting process has been completed, I will authorise the applicant to approach this Court on the same papers with whatever supplementation it is required.

[41] Costs of the application would follow the outcome. Although the relief granted is only against the first respondent this does not translate into victory for the second and third respondents. Besides, it is also significant that the respondents joined forces in their opposition of this matter, raising the same defences and utilising the same legal representatives. This fact by itself would render any order distinguishing which costs were incurred with regard to the first respondent and those possibly with regard to the other respondents irrational. I also find such a scenario inimical of the interests of justice. It is equally significant to bear in mind that the applicant was forced to take the route that it did after trying to amicably resolve the issue with the government, both at national and provincial levels to no avail. The applicant should be assisted not to be out of pocket as reasonably as it may be. Therefore, the costs payable by the first respondent shall be at the scale of attorney and client, as prayed for by the applicant.

Order

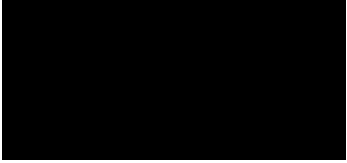
[42] In the premises, I make the following order:

- a) subject to b) hereof, the first respondent is directed within 60 (sixty) days from date of this order to take steps, either directly or indirectly through the second

respondent and/or third respondent or any other government entity or person, to remediate the nuisance on Portion 1 of Holding Number 65, Halfway House Estate Agricultural Holdings, Midrand-Rabie Ridge MSS Local Authority, Registration Division IR, Gauteng Province held under Title Deed T86105/1988 (hereafter referred to as “the Adjacent Property”) interfering with the use and enjoyment of Erf 838 Halfway House Extension 3 Township, Registration Division I.R., Gauteng Province (hereafter referred to as “the Property”), and thereafter furnish a written report to the applicant within 15 (fifteen) days of steps taken in this regard;

- b) the remediation in terms of a) hereof is directed to reasonably comply with the applicable health and safety legislation and to ensure that the use and occupation of the Adjacent Property does not pose a threat to the safety and wellbeing of the applicant, its tenants, the property of the applicant and/or the tenants; employees of the applicant and/or tenants, and the lawful users and/or lawful occupiers of the Adjacent Property;
- c) the first respondent is directed to take reasonable steps to prevent the nuisance stated in a) hereof from re-occurring in the future;
- d) The applicant is granted leave to approach this Court on the same papers, supplemented insofar as it may be necessary, for orders declaring the first respondent to be in contempt of the orders in a), b) and c) hereof in the event the first respondent fails timeously to take the steps set out above; and

- e) the first respondent is directed to pay the costs of the application at the scale of attorney and client.

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Khashane La M. Manamela
Acting Judge of the High Court
09 FEBRUARY 2022

Appearances:

For the Applicant	:	Mr WN Shapiro SC
Instructed by	:	MacGregor Erasmus Attorneys Inc, Durban c/o Macintosh Cross & Farqharson, Pretoria
For the Respondents	:	Ms NR Choeu Mr GM Mamabolo
Instructed by	:	State Attorney, Pretoria