REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case no. 3852/2022

Before: The Hon. Mr Justice Binns-Ward

Hearing: 3 & 28 November 2022 (before Hlophe JP)

23, 26 & 30 January, 15 February and 1 March 2023

Judgment: 3 March 2023

In the matter between:

VACATION IMPORT (PTY) LTD Applicant

and

DOUDOU M BUMINA First Respondent

and three other respondents Second, Third and Fourth Respondents

and

Case no. 3855/2022

In the matter between:

VACATION IMPORT (PTY) LTD Applicant

and

ALAIN KALAMBAYI NGALEKA First Respondent

and three other respondents Second, Third and Fourth Respondents

JUDGMENT

(Delivered by email to the parties and release to SAFLII.)

BINNS-WARD J:

[1] There are two applications before court for the eviction of the respondent-occupiers and any persons occupying the premises under them from property situate in the Cape Town suburb of Ruyterwacht. They were heard together because the applicant in both matters is Vacation Import (Pty) Ltd, the participating parties are represented on both sides by the same teams of legal representatives and there are no material differences in the factual and legal issues in both cases.

[2] The matters started on their common journey when they came up before Saldanha J in the unopposed motion court on 14 June 2022. The applicant, which is the registered owner of the respective properties, viz. 2[...] O[...] Street, Norwood Gardens, Ruyterwacht and 5[...] G[...] Street, Norwood Gardens, Ruyterwacht, had applied before Saldanha J for orders in terms of s 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('PIE') directing the service of written and effective notices of the eviction proceedings on the respondents. The notices of motion and founding papers in those proceedings had, as ordinarily happens, already been served on the respondents as provided for in terms of Uniform Rules 4 and 6. Somewhat unusually, the respondents appeared with legal representation at the hearing of the s 4(2) applications. Orders were then taken by agreement postponing the eviction applications to 3 November 2022 on a timetable for the exchange of papers and heads of argument directed at rendering the matters ripe for hearing on that date.

[3] In the peculiar circumstances just described the court did not authorise the issue of what is commonly referred to as 'a s 4(2) notice'. The first question that consequently arises for consideration is whether the applications are amenable to determination on their merits when the procedure mandated in s 4(2) of PIE has not been followed.

[4] In *Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others* 2001 (4) SA 1222 (SCA), it was held that the service of a notice in terms of s 4(2) in a form endorsed by the court was a peremptory requirement in eviction proceedings instituted in terms of s 4(1) of PIE, as the current applications were. At para 11 of the judgment, Brand AJA, as he then was, held that '[s]*ection 4(1) makes it clear that the provisions of the sub-section that follow are peremptory. It also defines the "proceedings" to which the section applies, namely proceedings for the eviction of an unlawful occupier. Section 4(2) requires notice of such proceedings to be effected on the unlawful occupier and the municipality having jurisdiction, at least 14 days before the hearing of those proceedings. Section 4(2) further provides that this notice must be effective notice; that it must contain the information stipulated in ss (5) and that it must be served by the court. The term, "court" is defined in section 1 of the Act as the "High Court or the magistrates' court". Although s 4(2) could have been more clearly worded, it is obvious in my view that the legislature did not intend physical service of the notice by the court in the person of a judge or magistrate. On the other hand, mere issue of the notice by the registrar or clerk of the court would not suffice. What is intended, I believe, is that the contents and the manner of service of the notice contemplated in ss (2) must be authorised and directed by an order of the court concerned.*'

[5] A s 4(2) notice is required, in terms of s 4(5) of PIE, to *'(a) state that proceedings are being instituted in terms of subsection (1) for an order for the eviction of the unlawful occupiers; (b) indicate on what date and at what time the court will hear the proceedings; (c) set out the grounds for the proposed eviction; and (d) state that the unlawful occupier is entitled to appear before the court and defend the case and, where necessary, has the right to apply for legal aid*' . With those requirements in mind, the appeal court's judgment in *Cape Killarney* proceeded, in para 21: '*Accordingly the purpose of s 4(2) is clearly to afford the respondents in eviction proceedings a better opportunity than they would have under the rules to put all the circumstances that they allege to be relevant before the court.*'

[6] In a subsequent judgment of the appeal court, in *Unlawful Occupiers of the School Site v City of Johannesburg* [2005] ZASCA 7 (17 March 2005); [2005] 2 All

SA 108 (SCA), 2005 (4) SA 199 (SCA) - a matter in which the appellants sought to rely on a patently defective s 4(2) notice to argue that the eviction order granted against them in the court of first instance was invalid - it was emphasised that the proper enquiry in determining whether the defective process should vitiate the eviction order was to examine whether the object of the provision (viz. s 4(2) of PIE) had nevertheless been achieved. At para 22, Brand JA, as he had by then become, expressed the position as follows: '*As the appellants also correctly pointed out, it was held in Cape Killarney Property (1227E-F) that the requirements of s 4(2) must be regarded as peremptory. Nevertheless, it is clear from the authorities that even where the formalities required by statute are peremptory it is not every deviation from the literal prescription that is fatal. Even in that event, the question remains whether, in spite of the defects, the object of the statutory provision had been achieved (see eg Nkisimane and others v Santam Insurance Co Ltd 1978 (2) SA 430 (A) 433H-434B; Weenen Transitional Local Council v Van Dyk 2002 (4) SA 653 (SCA) para 13).*' At para 24, the learned judge elaborated on the principle, saying '*The question whether in a particular case a deficient s 4(2) notice achieved its purpose, cannot be considered in the abstract. The answer must depend on what the respondents already knew. The appellant's* (sic) *contention to the contrary cannot be sustained. It would lead to results which are untenable. Take the example of a s 4(2) notice which failed to comply with s 4(5)(d) in that it did not inform the respondents that they were entitled to defend a case or of their right to legal aid. What would be the position if all this were clearly spelt out in the application papers? Or if on the day of the hearing the respondents appeared with their legal aid attorney? Could it be suggested that in these circumstances the s 4(2) should still be regarded as fatally defective? I think not. In this case, both the municipality's cause of action and the facts upon which it relied appeared from the founding papers. The appellants accepted that this is so. If not, it would constitute a separate defence. When the respondents received the s 4(2) notice they therefore already knew what case they had to meet. In these circumstances it must, in my view, be held that, despite its stated defects, the s 4(2) notice served upon the respondents had substantially complied with the requirements of s 4(5).*' Compare also *Theart and another v Minnaar NO; Senekal v Winskor 174 (Pty) Ltd* [2009] ZASCA 173 (3 December 2009); [2010] 2 All SA 275 (SCA); 2010 (3) SA 327 (SCA).

[7] In the current cases it was abundantly clear on the facts that service of a notice on the respondents in terms of s 4(2) of PIE would be a wasteful and unnecessarily costly supererogation. That they were adequately informed in a manner that would satisfy the object of the requirements of s 4(5) of PIE was confirmed by their appearance in court with legal representation and the terms of the order taken from Saldanha J which established an agreed tailor-made framework for them to pursue their intended opposition to the applications. It would be absurd in the circumstances to decline to entertain the applications when they came up for hearing after answering papers and counterapplications had been delivered and the respondents appeared represented by counsel instructed to deal with the eviction applications on their merits. It is also evident from the fact that the municipality delivered affidavits in both matters that it has been adequately apprised of the eviction applications.

[8] Unsurprisingly, and quite correctly, the respondents did not take the point that s 4(2) stood in the way of a determination of the applications. I have traversed the question only for the purpose of recording that the effect of the applicant's non-compliance with s 4(2) of PIE has been taken into consideration and, in my judgment, properly addressed.

[9] The respondents failed to comply with the timetable set out in the orders made by Saldanha J. They failed to deliver opposing papers even by the date set in those orders for the hearing of the applications on 3 November 2022. The evidence is that their counsel informed the Judge President in chambers on the hearing date that the respondents' legal representatives were still awaiting 'financial instructions'. The matters were then postponed until later in November for the respondents to put their cases in order, and when they had still not done so by then, further postponed until late January 2023, when they first came before me. At that stage answering papers had still not been delivered, but I was informed from the bar by the respondents' counsel that the respondents intended bringing a counterapplication for a stay of the eviction proceedings.

[10] The proceedings were further postponed on three occasions in the context of what in essence amounted to a judicial case management exercise directed at

harrying the applications into a state of readiness for argument. The respondents eventually made affidavits in support of their counterapplications for a stay of the eviction proceedings pending the determination of review proceedings instituted by them and 158 other applicants in case no. 1527/23. Those affidavits also served as their answering affidavits in the eviction applications.

[11] I shall outline the nature of the pending review application presently. It is sufficient at this point to note that the respondents' case in the eviction proceedings is that if the review application succeeds the properties currently registered in the applicant's name will revert to the ownership of its predecessor in title but one, Communicare NPC. That, so the argument advanced on behalf of the respondents contended, would, albeit ex post facto, demonstrate that the applicants lacked legal standing to pursue the eviction applications and show that proceedings for their eviction could competently be instituted only by Communicare.

[12] The respondents also sought condonation for their non-compliance with the terms of the order made by Saldanha J. The applicant opposed the applications for condonation.

[13] It is trite that to obtain condonation the respondents had to show good cause why they should be granted the indulgence sought. Historically, for sound policy reasons, the courts have eschewed essaying a finite definition of the concept of 'good cause'. Nevertheless, considerations that feature commonly in the determination whether good cause has been shown include the explanation offered for the default or non-compliance in issue, the extent of the non-compliance and the degree of its prejudicial effect on the situation of the other litigants and the efficiency of the courts' functioning, the nature of the proceedings in issue and the defaulting party's prospects of success as far as those can be assessed. The court makes its decision on a holistic consideration of all the relevant factors. Thus, in a given case a poor explanation might be compensated for by the perceived existence of strong prospects of success. In arriving at a decision, the court will strive to make a determination consistent with the interests of justice.

[14] Ms *Dicker* SC, who appeared for the applicant, highlighted with ample justification that the respondents' explanation for their non-compliance was unsatisfactory in several respects. The respondents' persistent failure, notwithstanding repeated postponements, to get their papers in order prejudiced not only the applicant, which was affected adversely by the delay and attendant wasted costs, but also the efficient functioning of the court. For the reasons that I shall come to shortly, I was also not persuaded that success in the pending review (the prospect of which, on the material placed before this court, I found it impossible to assess one way or the other with any confidence) would redound in any meaningful way to secure or justify the respondents' continued unlawful occupation of the property. In my view, it was only if the review proceedings were likely to have that effect that it could arguably be in the interests of justice for an interim stay of the eviction applications to be granted.

[15] Those factors militated strongly against acceding to the application for condonation. It was only because of the nature of the litigation in the eviction applications, which bears not only on the respondents' rights in terms of s 26 of the Bill of Rights but, as has been recognised by the Constitutional Court, also involves broader societal implications requiring the courts to engage actively in the issues in an interrogative manner quite different to the approach adopted in the ordinary course in adversarial litigation,[1] that I in the end decided, not without hesitance, that the respondents should be given the opportunity to have their cases in the eviction matters heard. To that effect condonation, to the extent required, will be granted.

[16] Turning then to the merits. By way of background, the properties were originally occupied by the respondents in terms of lease agreements with the then owner of the properties, Communicare. It is not disputed that those lease agreements are not no longer extant, and that the respondents have for some time, even before the transfer of the properties into the applicant's name, not been paying the owner any consideration in respect of their occupation of the properties. They have failed to respond positively to invitations issued by the applicant to regularise

[1] See, for example, *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7 (1 October 2004); 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC), especially at para 32-38.

their presence on the properties by concluding lease agreements and also disregarded notices to vacate. It is clear that they are unlawful occupiers.

[17] The properties were acquired by the applicant from Goodfind Properties (Pty) Ltd, which in its turn had acquired them from Communicare, which is a registered social housing institution in terms of the Social Housing Act 16 of 2008. The respondents have alleged in very general and unsubstantiated terms that the properties in issue were acquired by Communicare in that organisation's previous guise as the Citizens' Housing League Utility Company by means of three Crown Grants made in the 1930's and 40's, which were subject to the condition that the land involved be used for social housing. The evidence adduced in support of that allegation relates to the grant of land in an area known as Epping Garden Village and referred to as such on the accompanying land surveyor's diagram. Epping Garden Village is an area that can be found designated and demarcated as such on readily available street maps of Cape Town, such as Google Maps. It is an area discrete from, albeit adjacent to, the suburb of Ruyterwacht where the properties in issue in the current matters are situate. The second Grant related to a piece of land described therein as 'Portion 5 of the Range', which appears to have been land that used be part of either or both the Epping Forest Reserve and the Uitvlugt Forest Reserve. The third Grant related to Portion 1 of G[...] situate at Goodwood. It is not evident on the papers precisely where those pieces of land are.

[18] It is therefore by no means clear that the properties in issue were acquired in terms of the Crown Grants relied on by the respondents and even if they were whether they qualify as 'social housing' in terms of the Social Housing Act. Moreover, whereas the notice of motion in the review application seeks the review and setting aside of the decision by Communicare '*to sell or exchange 271 free standing houses and 24 apartment blocks, cottages, duplexes and semi-detached houses situated in Ruyterwacht, Cape Town, without first extending in good faith an invitation to purchase to the applicants who were in occupation at the time of the said sale*', the subject properties are not specifically identified in the application. When I raised these difficulties with Ms *Mdana*, who appeared for the respondents, she said that the applicants in the pending review application were hoping to obtain clarity on the point from the information to be gleaned from the administrative records that

would be produced in terms of Uniform Rule 53 in the pending review proceedings. (I should mention that Communicare and the Social Housing Regulatory Authority - the latter being the regulatory authority established in terms of the Social Housing Act in respect of social housing - are amongst the parties cited as respondents in the pending review application in case no. 1527/23.)

[19] Ms *Mdana* confirmed in argument, in answer to a question from the Bench, that the pending review is in essence predicated on Communicare's alleged non-compliance, when it disposed of the properties, with the statutory obligations imposed on social housing institutions. That seems to be the only basis upon which the review could be brought in terms of s 6 of the Promotion of Administrative Justice Act 3 of 2000, which it purports to have been. It should be noted in this regard that the evidence suggests that only some of Communicare's property holdings are social housing stock. Communicare's decision to sell the properties is alleged to have been unlawful (a) for its failure to comply with a mandatory procedure or condition prescribed by an empowering provision, (b) for being procedurally unfair, (c) for being materially influenced by an error of law, (d) for being taken for an ulterior purpose or motive, (e) because Communicare acted arbitrarily or capriciously, (f) because the decision to exclude homeless people already in occupation of the properties on the basis that they could not afford to buy them was discriminatory, irrational and grossly biased, (g) because the failure by Communicare and its related company Goodfind Properties (Pty) Ltd to engage the occupiers properly was so unreasonable that no reasonable person could have exercised it (sic) and (g) that the decision was otherwise unconstitutional or unlawful.

[20] I have noted from the founding affidavit in the review application, which was placed before the court at my request, that the review is also founded on an alleged breach of the principle of legality. That basis of review is founded on the following bald statement at para 249 of the affidavit: '*The decision is secondly reviewable under the rule of law and the principle of legality on the grounds of both substantive and procedural irrationality, unfairness and unlawfulness*'. It is not for me in the current proceedings to make any determinative decision pertaining to the review application, but I have struggled to discern any evidence in the founding affidavit that would provide cogent support for a legality review.

[21] Despite the lack of sufficiently conclusive evidence on the point, I am willing for the purposes of the current matters to assume in the respondents' favour, ex hypothesi, that it will be established in the review proceedings that the properties did fall within the land granted by the Crown and that it was held by Communicare in that company's capacity as a social housing institution. I am also prepared to assume, notwithstanding a lack of evidence to establish the fact, that the properties in issue qualify as 'social housing' as defined.

[22] A social housing institution is, by definition, '*an institution accredited or provisionally accredited under* [the] *Act which carries on or intends to carry on the business of providing rental or co-operative housing options for low to medium income households ... on an affordable basis, ensuring quality and maximum benefits for residents, and managing its housing stock over the long term*'. '*Social housing*' is specially defined in the Act to mean '*a rental or co-operative housing option for low to medium income households at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in* [the] *Act*'. (The evidence suggests that the housing in issue in the eviction applications was constructed in about 2008, whereas the Act only came into operation on 1 September 2009.)

[23] Section 17 of the Social Housing Act provides that '[a]*ny decision taken under this Act must comply with the principles of just administrative action*'. '*Act*' is defined to include the regulations made under the Act and also any rules, directives or instructions made under it.[2]

[24] Section 11(4) of the Social Housing Act empowers the Regulatory Authority to make rules for giving effect and detailed content to the Regulations made under the Act. Such rules may also '*further regulat*[e] *the conduct of social housing institutions'*.

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[2] Section 1, sv '*this Act*'.

[25] Under the rules made in terms of s 11(4),[3] a social housing institution may not dispose of social housing stock without permission from the Social Housing Regulatory Authority obtained upon application. The rules specify various requirements that must be complied with by an intending disposer of social housing stock. These include providing comprehensive information concerning the effect of the intended disposal on *existing tenants*, including provision in the draft transfer agreement of a provision that the transfer will not negatively affect the rights enjoyed by *existing tenants* and the transferee will administer the social housing stock substantially on the same terms and conditions applicable prior to transfer or, if the property is to be sold on the open market, there must be a '*detailed plan explaining and committing to a reasonable relocation plan to alternative social housing units for tenants who qualify for such social housing, such plan having to accommodate the accommodation needs of all such tenants*'.

[26] A contextual consideration of the Social Housing Act and the related regulations and rules reveals that the legislation is concerned, in the sense relevant to the respondents' cases, with the provision of *rental* accommodation to low and medium income households. It is not concerned with the provision of emergency housing or basic shelter to non-paying occupiers. Where the legislation speaks of '*existing tenants*' and provides for the protection of their tenure, the implication is that means '*tenants*' in the ordinary sense of the word, viz. '*a person who occupies land or property rented from a landlord*'.[4]

[27] As noted at the outset, the respondents were not existing tenants of Communicare. The reversion of the property to Communicare's title pursuant to a successful review application in case no. 1527/23 would not have the effect of turning them into lawful occupiers. Put in a different way, while the outcome of the pending review might conceivably have an effect on the lawful ownership of the properties, it will not in any way affect the legal status of the respondents' occupancy of them. It is the occupancy, not the ownership of the properties, that is vitally in issue in the eviction applications.

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[3] Rules in respect of the Transfer of Social Housing Stock or Rights and the Disposal of Social Housing Stock, 2014, published under GenN 64 in GG 38427 of 28 January 2015.
[4] *Oxford Dictionary of the English Language*, sv '**tenant**'.

[28] The unlawful status of the respondents' occupancy has been established irrespective of whether the applicant's current ownership of the property might at some future date be impugned in review proceedings. The respondents have given no reason for the court to go behind the applicant's registered ownership of the property for the purpose of the eviction applications. The applicant has established its standing to institute these eviction applications. Until and unless the applicant's ownership of the property is nullified, which, on the information currently before this court is at best an uncertain prospect, the applicant is entitled to exercise its rights as owner and for that purpose to invoke the courts' assistance.

[29] A further consideration is the unpredictable and uncertain course of the review application. I am informed that papers have been served on at least some of the respondents in those proceedings but it is apparent from what Ms *Mdana* advised the court during argument that the review applicants are not yet in a position to consider supplementing their founding papers in terms of Uniform Rule 53(4). The process is therefore still at a very early stage, and far from ripe for hearing. It is also apparent that the review applicants are impecunious and the explanations given for the delays in the eviction applications illustrate that that can impede the expeditious conduct of proceedings. There will also be a question in the review of whether it should not be barred by reason of unreasonable delay irrespective of its merits. Part of the application is an application for condonation of the delay. In all these circumstances, it would be unfair to the applicant in the eviction proceedings to make the outcome of its established claim await the result of the review application.

[30] For all the foregoing reasons I am not persuaded that there is sound reason to exercise whatever inherent discretion the court might have to stay the eviction proceedings pending the determination of the review in case no. 1527/33. It is not necessary in the circumstances to decide whether such a discretionary power exists or if it does what its ambit is; cf. *Belmont Guest House (Pty) Ltd v Gore N.O and Another* [2011] ZAWCHC 323 (12 August 2011); 2011 (6) SA 173 (WCC) and *Herbstein and Van Winsen: Civil Practice of the High Courts and the Supreme Court of Appeal of South Africa* 5th ed (Juta), Chapter 10. The counterapplication will consequently be dismissed with costs.

[31] Section 4(7) of PIE is of application in the eviction applications because the occupier-respondents have been in occupation of the properties for more than six months. Section 4(7) provides:

> '*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 is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.*'

[32] It was probably with the provisions of s 4(7) in view, that Saldanha J ordered, on 14 June 2022, that '[t]*he Fourth Respondent* [ie the City of Cape Town] *is directed to file a report on the procurement of alternative accommodation by 25 August 2022*'. The orders were issued by the registrar only on 24 June 2022. According to the service affidavit made by a candidate attorney in the applicant's attorneys' office, they were served on the municipality only on 20 October 2022. Service was therefore effected two months after the date by which the municipality had been directed to file the report, and only two weeks before the scheduled hearing of the applications on 3 November 2022.

[33] The tardiness with which service of the orders was effected was most remiss of the applicant's attorneys. It may well have contributed to the unsatisfactory manner in which the municipality responded to the court's direction.

[34] The municipality did not file a report as the orders directed it to do. Instead, an employee of the City, who did not identify his position, made an affidavit, reportedly '*with advice from the legal representatives of the City*' (also not identified), stating that for the City to be able to issue a housing report it required '*the personal circumstances of an individual*'. The City's employee averred that the required

information was obtained '*by requesting the head of the household to complete an occupier questionnaire or for occupiers to provide the City with an affidavit which contains their personal circumstances*'. The witness stated that the City had not been provided with the required information and was therefore not able to provide a report. He said '[i]*f the Respondents require the assistance of the City, they are required to deliver the completed questionnaire to the City within 15 days of attesting* [t]*hereto*'.

[35] The affidavit filed by the City did not comply with the terms of paragraph 3 of the orders made by Saldanha J. Properly construed, the orders required the City to investigate the situation and report to the court. They were formulated in accordance with the guidance provided by the Constitutional Court as to how courts of first instance should go about giving effect to s 4(7) of PIE. A court can only make an eviction order if it is able to form the opinion referred to in the subsection. It can do that only if it is provided with the necessary information. The relevant local authority has been identified in the jurisprudence as the independent and impartial body to which the court can look to obtain the required information. The affidavit provided by the City is not a report as envisaged by paragraph 3 of the court's order. It does not provide the court with any relevant information for the purpose of s 4(7) of PIE.

[36] The deponent to the applicant's founding affidavits testified that the applicant's endeavours to gather pertinent information from the unlawful occupiers were met with an uncooperative response. In my experience, perhaps not unexpectedly, that is not uncommon in eviction cases. If, however, the unlawful occupiers are also uncooperative with the City when it undertakes the mandated investigation, then they will have only themselves to blame if the court does not take their interests adequately into account in determining what is just and equitable in the circumstances. But the necessary investigation must first be undertaken by the City and properly reported on.

[37] In the circumstances, the making of the substantive orders in the eviction applications will have to be deferred until the City has made the report required in terms of the order of 14 June 2022. A fresh direction will be issued to the City in that regard. I shall afford the parties the opportunity to make written submissions in

respect of the framing of an order in terms of s 4(8) of PIE after the City's report has been filed.

[38] At this stage an order will issue in the following terms in each of the matters:

1. To the extent necessary, the respondents' non-compliance with the timetable set out in the orders made by Saldanha J on 14 June 2022 is condoned.

2. The counterapplications in case no. 3852/22 and case no. 3855/22 are dismissed.

3. The applications for eviction in case no.s 3852/22 and 3855/22 are postponed for later determination in terms of the framework set out below, in paragraphs 4 to 9 of this order.

4. The City of Cape Town is directed to investigate the apparent rights and needs of the unlawful occupiers of the properties in issue in case no.s 3852/22 and 3855/22 with special reference to those of any of the occupiers who are elderly, children, disabled persons, or women heading households and to report thereon to this court before **Wednesday, 26 April 2023**. Without derogation from the generality of the aforegoing, the report must address whether land can reasonably be made available by the municipality for the relocation of any the unlawful occupiers who cannot reasonably provide for their own alternative accommodation.

5. The applicant is directed to procure the service of this order together with a copy of this judgment on the City of Cape Town at the office of the City Manager by no later than **13 March 2023** and thereafter to promptly file proof of service at the office of the presiding Judge's registrar.

6. The applicant is afforded until **4 May 2023** to deliver any written submissions it may wish to on the content of the City's report.

7. The occupier-respondents are afforded until **11 May 2023** to deliver any written submissions they may wish to on the content of the City's report.

8. The written submissions referred to in paragraph 6 and 7 shall be served at the addresses of respective parties' attorneys of record and at the office of the presiding Judge's registrar.

9. Determinative orders in respect of the applications for eviction and the incidence of costs in those applications and the counterapplications will be made on a date to be advised after the court has considered the City's report and any written submissions delivered in terms of paragraphs 6 and 7.

A.G. BINNS-WARD
Judge of the High Court