IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CITY OF CAPE TOWN SUB-DISTRICT OF CAPE TOWN, HELD AT CAPE TOWN

CASE NO:7531/22

In the matter between:

Ettiene du Toit	Applicant
And	
Mika Williams	First Respondent
Mildred Yvonne Savage	Second Respondent
Vanessa Collison	Third Respondent
Ita Magdalene Haricombe	Fourth Respondent
Mark Hutton	Fifth Respondent
Patrick Savage	Sixth Respondent
All those holding occupation on the property	Seventh Respondent
at Erf 8867 Woodstock, Cape Town	
(Also known as 52-,54-,58-,60-, 62 Searle Street, Woodstock)	
City of Cape Town	Eighth respondent

Judgment

Introduction

1. On 14/11/2025 this court granted an order for the eviction of the first to sixth respondents from the property (**the Respondents**) situated at Erf 8867 Woodstock, Cape Town, also known as 52-,54-,58-,60-, 62 Searle Street, Woodstock) ("**the property**") in terms section 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE"). .

2. The order directed as follows:
   2.1. It is just and equitable that First, Second, Third, Fourth and Sixth Respondents vacates the property known as Erf 8867, Cape Town, also known as 52-,54-,58-,60-, 62 Searle Street, Woodstock on or before the 28th February 2026. (Section 4 (8)(a))

   2.2. Authorizing the Sheriff or his Deputy to carry out the eviction on 6 March 2026. (Section 4 (8)(b))

2.3. The City of Cape Town to provide temporary emergency housing as offered in their Housing Report to all of the Respondents having indicated their acceptance thereof within 30 days of the order.

2.4. The Department of Social Welfare is to assist the Respondents in finding alternative accommodation in a care or living facility as mandated.

2.5. Costs on a party-party basis against the Respondents, jointly and severally, the one to pay the others to be absolved.

3. I gave an ex-tempore judgment on 14/11/2025 and proceed to set out the reasons for the grant of the order. For the sake of convenience, when reference is made to the "**Respondents**", reference is made to the Respondents other than the City of Cape Town. The latter will be referred to as "**the City**".

4. The order was granted pursuant to an application brought by the Applicant under section 4(1) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ("PIE")[1]. The application was adjudicated in terms of section 4(7) in relation to others, as Respondent had resided on the property on an unlawful basis for more than 6 months.

5. Respondents' counsel conceded the Applicant's *locus standi* and that their occupation of the premises is unlawful at the arguing of the matter.

6. The notice required in terms of section 4(2) of PIE was duly served.

7. Legal representation:

7.1. Applicant is represented by Hufkey Attorneys.

7.2. First and Second Respondents are represented by Wentzel Inc. acting *pro bono*, Adv. van Zyl appearing.

7.3. Eighth Respondent's attorneys did not partake in the litigation upon its re-enrolment.

8. The matter was first enrolled for hearing on 12 October 2022, it became opposed, whereafter it was eventually postponed *sine die*, unopposed, to be re-enrolled for hearing on 12 March 2025. Thereafter several postponements followed, usually at the request of Respondents until argument was heard on //2025.

---

[1] **Eviction of unlawful occupiers: -**
(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

9. The Applicant is the registered owner of the property[2] and alleges that the Respondents are unlawful occupiers[3] of the property and he is entitled to an eviction order.

10. The Respondents have opposed the application, but as set out herein above, conceded their occupation to be unlawful within the context of the Act when the matter was eventually argued, leaving the "just and equitable" inquiry to be adjudicated on.

Background

11. The underlying background facts can be summarized as follows:

11.1. On 9 September 2014 the Applicant purchased the property situated at Erf 8867. Cape Town, which property, 62 Searle Street Woodstock (the property) from the Order of the Sisters of the Holy Cross, Western Cape, which was subsequently registered into the Applicant's name only on 1 June 2022, the sale agreement being unsuccessfully challenged in the Western Cape High Court by the Respondents.

11.2. An interim interdict, pending the action to have the sale of the property to the Applicant set aside, brought by Respondents against the erstwhile seller of Erf 8867, the Order of the Sisters of the Holy Cross, Western Cape, the Archdiocese of the Catholic Church, Cape Town and the Applicant in the Western Cape High Court, was discharged upon an order of absolution from the instance being granted in the action, before the Applicant could have registration of the property passed.

11.3. Leave to appeal was refused and the Court's findings, as evinced from the extract from the judgment annexed to Applicant's replying papers, EDT-3, refutes the Respondents version of a right to first refusal or extant lease agreement entered into between the good Sisters and the Respondents and rejected claims of livelong tenure being granted to either the Respondents or their ancestors by the Order or by the Church[4].

11.4. The Respondents' evidence and argument presented of life-long tenure historically granted by Church Officials, indefinite oral lease agreements entered into with the Order and transferred to the Respondents from their parents or entered into by them with the Order were found to be unreliable hearsay, inaccurate, even fallacious and contrary to the known facts, by the High Court, prompting the granting of the absolution order.

---

[2] **'owner'** means the registered owner of land, including an organ of state, section 1 of the PIE Act.

[3] **'unlawful occupier'** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996)

[4] EDT-3 replying affidavit at paragraphs [190]-[211] pages 197 to 206 of record

11.5. The property was transferred to the Applicant and Notice was given to the Respondents that all rights to occupation that they may have possessed were cancelled and they were to vacate the property.

11.6. On the 9 of June 2022 the Applicants attorney delivered a notice of cancellation to the Respondents individually. The Respondents were notified that their occupation of the property and any agreement that they might have had to occupy has been cancelled and that they are to vacate the property by no later than 31 July 2022.[5]

11.7. Consequently, the 1st,2nd,3rd,4th and 6th Respondent hold occupation of the property without agreement or permission of the registered owner, the applicant. The 5th Respondent has passed away since then.

12. Despite the above, the Respondents remained in occupation of the premises and Applicant launched an application to evict them.

13. The matter was opposed and enrolled for hearing, however an application to stay the hearing to join the National Minister of Housing and MEC Western Cape for Housing in a High Court application for expropriatory relief was granted unopposed. The High Court application was dismissed, without progressing to an opposed hearing and the matter was set down for hearing again in this court.

Eviction Application re-enrolled

14. The 1st,2nd,3rd,4th and 6th Respondents applied for and was granted permission to file supplementary opposing affidavits. The Applicant was allowed to reply thereto. Eviction proceedings have a constitutional imperative,[6] and to ensure that a complete picture is obtained before such relief is granted, some relaxation in the strict rules of presenting evidence may be justified, provided one party is not unduly prejudiced.

15. The court received a further Housing report from the 8th Respondent (the City) as well as evidence from a City official concerning temporary emergency housing and ordered investigation into the circumstances of the Respondents in terms of section 25(1) Older Person's Act 13 of 2006, should an eviction leave the Respondents vulnerable. Reports received from a social worker from the Department of Social Development about the Respondents' personal circumstances, income and expenditures, extended family and possibilities for voluntary placement in a residential facility for each of the Respondents was considered.

16. The 1st,2nd,3rd,4th and 6th Respondents denied that they were in unlawful occupation and denied *locus standi* based on failure to place the title deed before the court. This dispute on evidence was dealt euthanised in reply.

---

[5] EDT-13 attached to founding affidavit at p 61-78 of record

[6] See KSL v AL 2024 (6) SA 410 (SCA) at para 25; Leshabane v Minister of Human Settlements and Others (2024) 45 ILJ 833 (LC) at para 51; Araujo v Krige and Others 2022 JDR 2349 (GP) at para 94.

17. The Respondents had specifically contended in their first and supplementary answering affidavits[7] that the applicant's case that they were in unlawful occupation of the property was not true, and that they were in fact in lawful occupation thereof, on similar averments found unproven by the High Court previously. However, Respondent's counsel, at the arguing of the matter, indicated that this issue was not being persisted with by the Respondents, and that the point was abandoned. The Respondents conceded to be in unlawful occupation of the property. The issue was accordingly decided based on this concession, which in the end, when considering the facts, was properly made.

18. The opposing affidavits, deposed to by the 6th Respondent and confirmed by the remaining Respondents gives a prolix account of the history of the property's occupation from 1928 onwards and essentially repeats the averments made in the Particulars of Claim in the unsuccessful High Court challenge to the sale of the property to the Applicant by the Sisters of the Order of the Holy Cross, its previous owner.

19. The Respondents nowhere concede or acknowledge the adverse findings against the evidence presented to the High Court to sustain their claim to a right to remain on the property. I will return to the topic of Respondents' affidavits filed of record hereunder.

20. The Respondents requested that the court direct a second housing report be obtained from the City of Cape Town. Considering the lapse in time, this was allowed.

21. The supplementary opposing affidavits deposed to by the 6th Respondent and confirmed by the remaining Respondents, repeats the prolix account of the history of the property's occupation from 1928 onwards, essentially being a copy of the previous affidavits' averments and puts forth legal argument, referencing case law, to attack the application for eviction on several legal grounds, including the alleged failure by the City to perform its constitutional duty to provide alternative emergency accommodation to the Respondents, who all allege that they would be rendered homeless by an eviction order.

22. The alleged ground for homelessness is the unaffordability to the Respondents of securing rental accommodation in the same area. These bald allegations are not supported by new facts brought on affidavit, but Respondent could rely on what had already been submitted to the City for purposes of the first Housing report filed herein. The Respondents unfortunately did not set out what efforts they took to find alternative accommodation.

23. The personal circumstances, including the potentiality for homelessness was fully canvassed in the DSD social workers reports.

24. The relevant personal circumstances are as follows:

    24.1. The first respondent Mika Williams is an adult female aged 38 years, unemployed and has been residing at 54 Searle St., Woodstock for 33 years. Her monthly expenditure is R 5000; income is not disclosed.

[7] The affidavits filed contained hardly more than repetition of the answering affidavits previously filed, save for elaboration on the legal argument irregularly contained therein.

24.2. The second respondent Mildred Yvonne, Savage and elderly adult female who 56 Searle St Soul St. for 32 years. She receives R2190 pension, supplemented by between R1000-R2000 received her adult son. Her monthly expenditure is R3200.

24.3. The third respondent is Vanessa Collison, a married adult female, 56 years old with 2 dependants, residing at 58 Searle St, Woodstock. Her entire life, she has lived on the property. She is unemployed receiving R1000 per week spousal support and R1686.70 as life annuity. Her household expenses are given as R11 180.95. No explanation for the shortfall is proffered.

24.4. The fourth respondent is Ita Magdalene Harricombe, an elderly adult female, 68 years old and has been residing at 60 Searle St., Woodstock for 16 years. She lives with her 44-year-old son, a vulnerable adult, diagnosed with schizophrenia and a 12-year-old foster son. Their household income amounts to R5560 received from pension-, disability and foster care grants. The monthly expenditure is reported at R3700.

24.5. The sixth respondent is Sean Savage, a 69-year-old divorced pensioner, residing at residing at 62 Searle St, Woodstock for 24 years. His monthly pension of R2190 is supplemented by his adult son with R1500 per month. His household expenses are R2300

24.6. The seventh respondent is all those holding occupation on the property under title.

24.7. The eighth respondent is the city of Cape Town cited as the statutory authority in terms of the act with its address at Civic Centre, 12 Hertzog Blvd., Cape Town

25. There are no disabled, elderly or minor children other than those indicated. All the respondents claim that an eviction order will render them homeless.

26. All the Respondents have deep ties to the property as they are the descendants of the few people that managed to avoid the expropriation, forced removals and destruction of houses under the Group Areas Act 7 of 1957 of District Six by the Apartheid state beginning in 1968 until 1982, by which time over 60 000 people had been forcefully removed from the area.

27. Much has also been written and recorded as part of the oral history of the people who were displaced from District Six. The District Six Museum stands as a testament to that and so too in thousands of reams of documents and stories in both oral and written history and literature. Many residents of District Six at the time, those who have since passed on and those alive, have recorded the painful memories of their dispossession, and of the brutal destruction of their homes and lives in District Six. They remembered District Six, its people, their neighbours, the community, its varied cultures, its traditions and buildings which, despite immense overcrowding and social ills, was their home.[8]

[8] Taken from Allie v Ras and Another (Case no A50/2025) [2025] ZAWCHC at paragraph [3] per Saldanha J

28. The District Six Museum serves as a memorial to this history of forced removal and resistance, in which the Catholic Church played a significant role. The Victorian cottages on the property provided a rare continuity for the resident families, who were able to stay on the land, when thousands of others were forcibly removed to the Cape Flats.

29. The Sisters of the Order of the Holy Cross endeavoured successfully to protect the cottages from the widespread apartheid demolition of District Six and these became, along with the Catholic-, Anglican- and Moravian churches, Mosque and Synagogues, symbolic of the vibrant and cosmopolitan community of peoples, united in their resistance against apartheid that birthed a South Africa that "...belongs to all who live in it, united in our diversity."[9] A Republic that is:

> "...one, sovereign, democratic state founded on the following values:
>
> *(a)* Human dignity, the achievement of equality and the advancement of human rights and freedoms.
>
> *(b)* Non-racialism and non-sexism.
>
> *(c)* Supremacy of the constitution and the rule of law.
>
> *(d)* Universal adult suffrage, a national common voter's roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness."[10]

30. This court is situated within a stone's throw from the District Six Museum and cognisant of the emotional human dimension that inevitably forms part of applications of this kind in the area. It is however not inconceivable that these considerations were contributary to an ideological[11] rather than legal or reasonable opposition to the granting of an eviction order in favour of the Applicant, that guided the attorney acting for Respondents in persisting to advise to oppose the application after the High Court had refused to uphold the Respondents' challenge to the sale agreement, in circumstances where it would have been reasonable to advise differently and according to the law, not sentiment, which occupied much time and resources needlessly and ultimately was not in service of the Respondents' best interest.

31. It is imperative that motion court litigation should be conducted in an efficient manner. Deponents to the affidavits are 'testifying' in the motion proceedings. It follows that affidavits must, as a rule, contain admissible evidence. Inadmissible material falls to be struck out of affidavits. Disputes of fact ought not to be disguised in a mass of indignant argument, expostulation and other useless verbiage.[12]

32. The Respondents answering affidavit directly echoes the sentiments expressed by Peter AJ at paragraph [16] in *Venmop 275 (Pty) Ltd v Cleverlad Projects (Pty) Ltd* 2016 (1) SA 78 (GJ):

---

[9] Preamble to Constitution, Act 108 of 1996

[10] Section 1 Constitution, Act 108 of 1996

[11] As argued for in paragraphs [43],[44] and [45] of the attorney's affidavit in support of the postponement to allow Respondents to approach (unsuccessfully) the Western Cape High Court for expropriatory relief -pages 277-278 of the record

[12] *FirstRand Bank Ltd v Kruger* 2017 (1) SA 533 (GJ) at 537B–D and the cases there referred to

[16] A statement appeared in the introductory paragraphs of the answering affidavit made by ...[the deponent], that where he made legal submissions, he did so on the strength of legal advice having been obtained by him on behalf of Cleverlad from its legal representatives in the application... Its apparent purpose is to disclaim responsibility of the deponent for later argumentative matter which serves to inflate the papers and of which the deponent has no comprehension. However impressive this might be to a lay client in justifying a legal representative's fee for voluminous affidavits, I find this practice disturbing in at least four respects.

> First, by their very nature these submissions have neither evidential content nor probative value as argumentative matter they have no place in affidavits.
>
> Secondly, the argumentative submissions that follow are expressly admitted hearsay and, as such, inadmissible.
>
> Thirdly, the submissions amount to legal opinions on matters upon which the court is required to decide. Even expert legal opinion on matters of domestic law is neither necessary nor admissible (*South Atlantic Islands Development Corporation Ltd v Buchan* 1971 (1) SA 234 (C) at 237C–F; and *Prophet v National Director of Public Prosecutions* 2007 (6) SA 169 (CC) para 43).
>
> Lastly, there is the aspect of professional legal privilege... Where parties in motion proceedings disclose the substance of otherwise privileged legal advice from their legal representatives, in the form of submissions to advance their case, it is difficult to comprehend that fairness and consistency would not permit them to "cherry pick" those parts of the advice that they received without being required to disclose the whole of the advice.'

33. Where practitioners neglect their roles, it leads to the protracted conduct of the litigation in an ill-disciplined manner, the introduction of inadmissible evidence and the confusion of fact and argument, with the attendant increase in costs and delay in its finalisation, inimical to both expedition and economy.[13]

34. The court will return to this issue when dealing with costs herein.

35. The Respondents' averments of homelessness are baldly made in the affidavits. Personal circumstances relevant to the eviction inquiry were obtained from the Questionnaire required by the City to be filled in by the Respondents for compiling of its Housing Report. Fresh Questionnaires were submitted for the second housing report, some 2 years later.

36. The court ordered an investigation and report from a social worker employed by the Department of Social Development to explore their possible placement in a care or living facility, given their ages and the possibility that an eviction may also render the Respondents vulnerable in terms of section 25(1) of the Older Persons Act.

---

[13] *Venmop* (supra) at 86A, 88B-89H

37. The reports that eventuated provided the court with the relevant personal circumstances required to assess the just and equitable inquiry in terms of the PIE and informed the court's decision on the conditions to be attached to an eviction order, should it eventuate.

38. Evidence was taken from a City Official concerning its report and the availability of emergency alternative accommodation that may be provided to the Respondents and the Social Worker's evidence was heard concerning the circumstances of the Respondents and their expressed wishes concerning placement in a care or living facility.

39. The City official testified that it has no land available in the vicinity of where they live to relocate the Respondents to for emergency temporary accommodation, but referred 1st,3rd,4th and 6th Respondents to various social housing and old age residential facilities, whereas they offered an emergency housing kit to the 2nd Respondent, based on their respective incomes.

Analysis

40. There are two Constitutional rights that come into play in this matter. First, and in terms of section 25 of the Constitution: 'No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.' Nonetheless, section 26 of the Constitution guarantees the right to access adequate housing and provides:

> '(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, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.'

41. The PIE Act strikes at the tension that obviously arises when giving effect to the two rights as set out above. It provides that the rights of the property owner must still be respected, and that where an occupier is in unlawful occupation of the property without a valid defence, eviction in the ordinary course would be competent. The balance struck then comes in where the eviction is however made subject to it being required to be just and equitable, in all the circumstances.[14]'Just and equitable' is not an ad infinitum obstacle to eviction, as this would permanently deprive a property owner of its rights, which is not the intention of the PIE Act. What is at stake is by its very nature a temporary measure to mitigate excessive harm to occupants, and the required measures

---

[14] In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at paras 36 – 37, the following pertinent statements were made: 'PIE was adopted with the manifest objective of overcoming past abuses like the displacement and relocation of people. It acknowledges their quest for homes, while recognising that no one may be deprived arbitrarily of property. The preamble quotes ss 25(1) and 26(3) of the Constitution. In *PE Municipality* it was stated that the court is required 'to balance out and reconcile the opposed claims in as just a manner as possible, taking account of all of the interests involved and the specific factors relevant in each particular case. ... Unlawful occupation results in a deprivation of property under s 25(1). Deprivation might, however, pass constitutional muster by virtue of being mandated by law of general application and if not arbitrary. Therefore, PIE allows for eviction of unlawful occupiers only when it is just and equitable.'

would ordinarily serve to delay eviction until it is just and equitable to do so. The position was succinctly summarized in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*[15] as thus:

> '... A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve the gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution, is faced with two separate enquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order, and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants because of these two discrete enquiries is a single order. Accordingly, it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity. ...'

42. The specific provisions of section 4 of the PIE Act, the relevant parts thereof provide as follows:

> '(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 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.
>
> (8) If the court is satisfied that all the requirements of this section have 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 her family have resided on the land in question.'

---

[15] 2012 (6) SA 294 (SCA) at para 25.

43. The provisions of section 4, considered in the context of sections 25 and 26 of the Constitution, have been the subject matter of many judgments of the Constitutional Court. In the recent judgment of the Constitutional Court in *Commando and Others v City of Cape Town and Another*[16], it was held in summary that:

> 'Several defining features of the right of access to adequate housing have emerged from the jurisprudence of the courts:
>
> (a) Section 26(2) of the Constitution requires a comprehensive and workable national housing programme for which each sphere of government must accept responsibility. It also provides access to adequate housing for people at all economic levels of society.
>
> (b) Measures aimed at giving effect to the right must be reasonable, both in conception and implementation. They must be balanced and flexible; must make appropriate provision for attention to housing crises and to short-, medium- and long-term needs; and must be continuously reviewed.
>
> (c) The right of access to adequate housing must be realised progressively, by which is meant that the right cannot be realised immediately, but the state must take steps to make housing more accessible to a larger number and wider range of people as time progresses.
>
> (d) The state's obligation does not require it to do more than its available resources permit. This means that both the content of the obligation in relation to the rate at which it is achieved as well as the reasonableness of the measures employed to achieve the result are governed by the availability of resources.
>
> (e) The measures must be calculated to attain the goal expeditiously and effectively, but the availability of resources is an important factor in determining what is reasonable.
>
> (f) The state's obligation to provide access to adequate housing depends on context, and may differ from province to province, from city to city, from rural to urban areas, and from person to person.
>
> (g) Access to land for the purpose of housing is included in the right of access to adequate housing.
>
> (h) The ultimate goal is access by all people to permanent residential structures, with secure tenure, and convenient access to economic opportunities and health, educational and social amenities, but because this will take time, provision must also be made for those in desperate need.
>
> (i) In any proposed eviction which may render persons homeless, a process of meaningful engagement by the responsible authority is constitutionally mandated in terms of s 26(3).
>
> (j) The Constitution does not give a person the right to housing at the state's expense, at a locality of that person's choice (in this case the inner city). Thus, temporary emergency accommodation is not ordinarily required to be in the inner city. However, the state would be failing in its duty if it were to ignore or fail to give due regard to the relationship between location of residence and place where persons earn or try to earn their living.

---

[16] 2025 (3) SA 1 (CC) at paragraph 71

(k) In *Thubelisha Homes* this court did not require alternative accommodation to be located in a specific area. Indeed, it said that 'the Constitution does not guarantee a person a right to housing at the government's expense, at the locality of his or her choice'.

(l) In *Blue Moonlight* this court held that alternative accommodation needed to be 'as near as possible' to the property from where the occupiers were evicted. Thus, location is a relevant consideration in determining the reasonableness of temporary emergency accommodation. This is typically given effect to through orders that state that the emergency accommodation be 'as near as possible' to the property from which persons are evicted.

(m) Although regard must be had to the distance of the location from people's places of employment, locality is determined by several factors, including the availability of land.

(n) The right to dignity obliges the local authority to respect the family unit when it is obliged to supply homeless persons with temporary emergency accommodation.

(o) Majiedt J, persuasively writing for the minority in *Thubakgale,* stated that —

> 'the permanent accommodation to be provided by the Municipality must . . . include ensuring continued access to schools, jobs, social networks and other resources which the applicants in this case enjoy where they currently stay, and which they will lose if displaced. This interpretation is in line with spatial justice and the right to the city, and therefore also in line with the remedial and transformative purposes of socioeconomic rights and the Constitution more broadly. ... In the context of South Africa's highly segregated urban areas and scarce access to resources, it should also mean that spatial justice must be considered in determining what constitutes adequate housing.'

(p) The right to adequate housing (permanent accommodation in the context of Thubakgale) is not a stand-alone right that should be interpreted in isolation of other rights enshrined in the Constitution. The rights in the Constitution are interdependent, interlinked and interconnected. This is exactly what this minority judgment highlights. The right to adequate housing in the current case implicates other rights, such as the right to dignity, the right to basic education and the right to freedom of trade, occupation and profession.

(q) This court in *Grootboom* held as follows:

> 'Socio-economic rights must all be read together in the setting of the Constitution as a whole. The state is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socioeconomic rights, and, in particular, in determining whether the state has met its obligations in terms of them.'

44. A few things must be disposed of first in this matter. The respondents have contended in their answering affidavits and argument before the court, that the mere contention of homelessness automatically triggers the obligation of the Eighth Respondent to provide them with temporary

emergency accommodation and in the same or close to area they currently live at. However, this contention cannot be correct. As held in *Occupiers, Berea v De Wet NO and Another*[17]:

> 'As is apparent from the nature of the enquiry, the court will need to be informed of all the relevant circumstances in each case in order to satisfy itself that it is just and equitable to evict and, if so, when and under what conditions. .....
>
> In order to perform its duty properly the court needs to have all the necessary information. The obligation to provide the relevant information is first and foremost on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.'

45. In *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others*[18] it was emphasized that, to elevate the factor of alternative accommodation to a precondition for an eviction order, would have far reaching and chaotic consequences that would never have been envisaged by the legislature.

46. The requirement of 'Just and equitable' is not only applicable to the circumstances of the Respondents, but also those of the Applicant. It is also necessary to consider prejudice to the applicant. As stated by Sachs J *in Port Elizabeth Municipality v Various Occupiers*[19]:

> "The judicial function in the circumstances is not to establish hierarchal arrangements between the different interests involved, privileging in an abstract and mechanical way the rights of ownership over the right, not to be disposed of our home, or vice versa. Rather, it is to balance out and reconcile both claims in as just a member as possible, taking into account of all the interest involved and the specific factors are relevant in each particular case."

47. It has recently been affirmed in *Grobler v Phillips and Others* 2023 (1) SA 321 (C) at [40] that a balancing of owner and occupiers' rights is required.

> "A just and equitable order should not be translated to mean that only the rights of the unlawful occupier are given consideration, and that those of the property owners should be ignored. And does not mean that the wishes or personal preferences of an unlawful occupied or of any relevance in this inquiry."

48. It follows that even though an applicant for eviction must satisfy a Court that it is just and equitable to do so, it cannot be expected of such an applicant to also be required to prove the negative so to speak, in the sense that it must prove that considering all the personal circumstances of the occupier, the occupier will not be left homeless. The reason why this would be the case is logical, in that much of that information would be in the personal knowledge of the occupier. Accordingly, it must be accepted that there is an evidentiary burden on the occupier to provide and then establish (by way of proper proof) such personal circumstances sufficient to

---

[17] 2017 (5) SA 346 (CC) at paras 46 – 47.
[18] 2001 (4) SA 759 (E) at 769C/D - D/E.
[19] 2005 (1) SA 217 (CC) at paragraph 23

convince the Court of homelessness, in order for the protections under the Constitution and the PIE Act to apply.[20] As held in *Stay at South Point Properties (Pty) Ltd v Mqulwana and Others*:[21]

> 'It has been found that where one cannot demonstrate that one would be without alternative accommodation, and thus be rendered homeless, the protection of s 26(3) does not find application.'

49. In *casu* and having received the evidence in the DSD and Housing reports, it cannot definitively be held that Respondents have simply provided bald assertions or made out no case as to their personal circumstances, being the kind of failures on the part of occupiers many judgments are critical of. The court has, considering the facts as set out above, a comprehensive explanation as to their personal circumstances, and if true, these are the kind of circumstances that could likely lead to them being homeless, if evicted.

50. Insofar as there exists a factual dispute concerning what the Respondents have put forward to substantiate why they would be left homeless, it must be remembered that these are motion proceedings in which the applicant seeks final relief. As such, the well-established principles in *Plascon Evans Paints v Van Riebeeck Paints*[22] find application, where the Court held:

> '... These principles are, in sum, that the facts as stated by the respondent party together with the admitted or facts that are not denied in the applicant party's founding affidavit constitute the factual basis for making a determination, unless the dispute of fact is not real or genuine or the denialsin the respondent's version are bald or not creditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable, that the court is justified in rejecting that version on the basis that it obviously stands to be rejected ...'

51. As to when a factual dispute raised by the respondent party may not be considered to be real or genuine, the Court in *Thebe Ya Bophelo Healthcare Administrators (Pty) Ltd and Others v National Bargaining Council for the Road Freight Industry and Another*[23] provided the following guidance:

> '... the dispute is not real or genuine or the denials in the respondent's version are bald or uncreditworthy, or the respondent's version raises such obviously fictitious disputes of fact, or is palpably implausible, or far-fetched or so clearly untenable that the court is justified in rejecting that version on the basis that it obviously stands to be rejected ...'

52. Considering the version of the Respondents in their answering affidavits of their personal circumstances, it simply cannot be said that it obviously fictitious, far-fetched, implausible or untenable. It would be wrong to say that what the Respondents describe as their personal considerations could not resort in the realm of what would be plausible and real, considering amplification thereof by the information reported to the DSD Social Worker and in the Questionnaires for the Housing reports by the Respondents, of their history and ties in their homes and community, their advanced age, level of qualifications, retirement, income and expenditure

---

[20] Compare *Mayekiso and Another v Patel NO and Others* 2019 (2) SA 522 (WCC) at para 68; *Shanike Investments NO 85 (Pty) Ltd and Another v Ndima and Others* 2015 (2) SA 610 (GJ) at para 42; *Luanga v Perthpark Properties Ltd* 2019 (3) SA 214 (WCC) at paras 44 – 45.

[21] 2024 (2) SA 640 (SCA) at para 9.

[22] 1984 (3) SA 623 (A) at 634E-635C.

[23] 2009 (3) SA 187 (W) para 19. See also *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 13; *Minister of Home Affairs and Others v Jose and Another* 2021 (6) SA 369 (SCA) at para 20.

and extended families. It also cannot be ignored that the applicant could not put up actual contradictory facts in reply. I am satisfied that all considered, there is no reason why the version offered by the Respondents' personal circumstances should be rejected. As held in in *TIBMS (Pty) Ltd t/a Halo Underground Lighting Systems v Knight and Another*[24]:

> '... Credibility is only capable of being addressed on paper when the assertions are palpably absurd or demonstrably false. The threshold that had to be cleared is 'wholly fanciful and untenable'. Moreover, the appetite to resolve paper contests by reference to the probabilities, though ever present, is not appropriate. ...'

53. Furthermore, 8th Respondent (the City) investigated the suitability for temporary emergency accommodation as contemplated by section 4(7) of the PIE Act. As held in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*[25], in the context of what is just and equitable under section 4(7):

> 'In order to conclude whether eviction by a particular date would in the circumstances of this case be just and equitable, it is mandatory to consider 'whether land has been made available or can reasonably be made available'. The City's obligations are material to this determination.'

54. It is now more or less trite that part and parcel of the section 4(7) determination is the issue of temporary emergency housing.

55. The report concludes[26] by stating that the City is currently not able to offer alternative accommodation due to a lack of readily available resources, save an emergency housing kit.

56. The content expected of the report from the municipality was summarized in *Changing Tides* supra as follows:[27]

> '(a) The information available to the local authority in regard to the building or property in respect of which an eviction order is sought, for example, whether it is known to be a 'bad building', or is derelict, or has been the subject of inspection by municipal officials and, if so, the result of their inspections. (It appears from some of the reported cases, like the present one, that the local authority has known of the condition of the building and precipitated the application for eviction by demanding that owners evict people or upgrade buildings for residential purposes.) The municipality should indicate whether the continued occupation of the building gives rise to health or safety concerns and express an opinion on whether it is desirable in the interests of the health and safety of the occupiers that they should be living in such circumstances.
>
> (b) such information as the municipality has in regard to the occupiers of the building or property, their approximate number and personal circumstances (even if described in general terms, as, for example, by saying that the majority appear to be unemployed or make a living in informal trades), whether there are children, elderly or disabled people living there, and whether there appear to be households headed by women;

---

[24] (2017) 38 ILJ 2721 (LAC) at para 29.
[25] 2012 (2) SA 104 (CC) at para 41
[26] As confirmed in oral evidence by city official, Enoch Kampepe
[27] Id at para 40.

(c) whether in the considered view of the local authority an eviction order is likely to result in all or any of the occupiers becoming homeless;

(d) if so, what steps the local authority proposes to put in place to address and alleviate such homelessness by way of the provision of alternative land or emergency accommodation;

(e) the implications for the owners of delay in evicting the occupiers;

(f) details of all engagement it has had with the occupiers in regard to their continued occupation of or removal from the property or building;

(g) whether it believes there is scope for a mediated process, whether under s 7 of PIE or otherwise, to secure the departure of the occupiers from the building and their relocation elsewhere and, if so, on what terms and, if not, why not.'

57. Not all the above requirements for a report, as articulated in Changing Tides, would always be relevant. Circumstances would dictate which of these considerations need to be addressed in a report. For example, an individual eviction of a single non-paying tenant from a housing unit (such as a flat) in an ordinary and maintained residential building would not require the report to deal with the state of the building, or health and safety considerations. But certainly, dealing with the personal circumstances of the occupant and whether that occupant would be left homeless are issues that must always be dealt with.

58. The purpose of the report is not to stop eviction. The purpose of the report is to determine whether eviction should be delayed and / or whether temporary emergency accommodation should or could be provided. As said in *Grobler v Phillips and Others*[28]:

> 'In *Port Elizabeth Municipality* this court stated that an offer of alternative accommodation is not a precondition for the granting of an eviction order but rather one of the factors to be considered by a court ...'

59. And recently, the Full Court on appeal in *Msibi v Occupiers of Unit 67 Cedar Creek Trefnant Road Ormonde Ext 28 and Another*[29] held that:

> 'The fact whether land has been made available or can reasonably be made available for the relocation of the unlawful occupier and the rights and needs of the mentioned persons, is not a requirement but a circumstance that may be brought for the consideration of a Court minded to grant the order of eviction. In my judgment, subsection (7) cannot be read to mean that if an applicant is unable to show that a land has been made available or is capable of being made available, such an applicant must be non-suited as if he or she failed to satisfy a Court that all the requirements of the section have not been complied with. Subsections (7) and (8) shares an inextricable relationship.'

60. A further factor to consider is that the Respondents have been in occupation of the property for many years without paying any rental, but litigated extensively, frustrating Applicant's rights. The Court in *Nyathi v Tenitor Properties (Pty) Ltd*[30] dealt with this as follows:

---

[28] 2023 (1) SA 321 (CC) at para 38. See also *Blue Moonlight* (supra) at para 96.
[29] 2025 JDR 0640 (GP) at para 22.
[30] 2015 JDR 1296 (GJ) at paragraph 32. See also *Citiq Residentials (Pty) Ltd v Mlumba* 2018 JDR 2188 (GJ) at paragraph 13

'... the occupants are not paying for their occupation, nor is anyone else paying for it; while the respondent is availing the building for their occupation. This fact represents an economical aberration for which there is, objectively, no justification.'

61. The Respondents have had ample warning to at least attempt to make arrangements for alternative accommodation, of their own accord, prior to being faced with an eviction application. They have known of the sale of the property and its eventual registration into Applicant's name for several years and thus had years to make such arrangements. They did nothing. However, and when faced with an actual eviction application, their first approach was to say that they are entitled to stay there and are in lawful occupation, when that was clearly not the case, especially considering the findings made by the Western Cape High Court in granting absolution of the instance in the action they brought to have the sale set aside.

62. This conduct and what is nothing else, but an undue benefit enjoyed for years must be included in the factors weighed when conducting the balance evaluation at this stage.

63. In the end, when I consider all the above factors, I arrive at several conclusions. First, there can be no doubt that as a matter of general principle, the Applicant is entitled to an eviction order, as the Respondents are in unlawful occupation of the property with no defence for it, and the Applicant is entitled to regain possession of the property so it can earn a revenue from it.[31] This was conceded by Respondents in argument.

64. The inquiry then turns to the question of whether the Respondent qualify for temporary emergency accommodation and / or whether it is available, once they are required to vacate the property. Therefore, and whilst eviction is justified, it would be just and equitable to delay it for a period, so as to allow the Respondents opportunity to find alternative accommodation applicant to fulfil the aforesaid.[32] As made clear in Msibi supra:[33]

'On the strength of Changing Tides, which was a binding authority to the Court below, the enquiry related to possible homelessness is directed to the question of the implementation date of the eviction as opposed to the granting of the eviction order. ...'

65. The Constitutional Court in the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) and Another*[34], perspicuously stated the law to be as follows:

"[40] It could reasonably be expected that when land is purchased for commercial purposes the owner, who is aware of the presence of occupiers over a long time, must consider the possibility of having to endure the occupation *for some time*. Of course, a property owner cannot be expected to provide free housing for the homeless on its property for an *indefinite period*. But *in certain circumstances and owner may* have to be *somewhat patient and accept*

---

[31] In *Changing Tides* (supra) at para 19, it was held: 'In most instances where the owner of property seeks the eviction of unlawful occupiers, whether from land or the buildings situated on the land, and demonstrates a need for possession and that there is no valid defence to that claim, it will be just and equitable to grant an eviction order. That is consistent with the jurisprudence that has developed around this topic. In Ndlovu v Ngcobo Harms JA made the point that ownership and the lack of any lawful reason to be in occupation are important factors in the exercise of the court's discretion ...'.

[32] See Msibi (supra) at para 32

[33] Id at para 27.

[34] 2012 (2) SA 104 (CC).

that the right to occupation may be temporarily restricted, as Blue Moonlight situation in this case has already illustrated. An owner's right to use and enjoy property at *common law can be limited* in the process of the justice and equity inquiry mandated by PIE."

66. The Supreme Court of Appeal in *Wormald N.O. and Others v Kambule* [35], had already reverberated the following binding statement of law:

> "[11] An owner is in law entitled to possession of his or her property and *to and ejectment order* against the person who unlawfully occupies the property except if that right is limited by the Constitution, another statute, a contract on some other legal basis."

67. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act[36] (*PIE*) is the only statute that may limit as opposed to permanently deprive an owner of his or her common law right of ownership. If regard is had to the preamble of the *PIE*; it exists to provide for the prohibition of unlawful eviction. It is to the unlawful eviction that the *PIE* is purposed to frown upon. The *PIE* does not define what an unlawful eviction is, however, it defines the unlawful occupier to mean a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land. Axiomatically, an unlawful eviction must mean depriving a person of occupation of land, in the circumstances where occupation thereof, is with the express or tacit consent or is justified by some other legal basis.

68. Regard being had to the provisions of section 25 of the Constitution, other than prohibiting unlawful evictions, primarily, the *PIE* exists to provide for procedures for the eviction of the unlawful occupiers. In emphasis, an unlawful occupier cannot use the provisions of the *PIE* to legitimise, as it were, his or her continued unlawful occupation. Simply put, unlawful occupiers are prone to ejectment, once the procedures legislated in the *PIE* are complied with.

The conclusion

69. Respondents ask to interpret section 4(7) of the *PIE* to mean that absent alternative accommodation being made available in order to prevent homelessness, a Court must not order an eviction. If the section was to be interpreted in that manner, every eviction application must be refused since, the unlawful occupiers will, as a result, generally be without accommodation once evicted.

70. Section 4(7) of the *PIE*, reads thus: -

> "(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 is sold in a sale in 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.*"

71. *Ex facie* the provisions of the subsection, a Court seems to possess a discretion, once it forms an opinion that it is just and equitable to do so, to grant the order. The question to consider is whether

---

[35] 2006 (3) SA 562 (SCA).
[36] Act 19 of 1998.

74. Discernibly, the Court in *Changing Tides* chose to name the provisions in subsections (7) and (8) as enquiries as opposed to legal requirements. There are no legal requirements mentioned in those subsections. To justify the granting and indeed the refusal of an eviction order, there must be demonstration that an enquiry has been conducted by a Court. The issue of alternative land and accommodation is a factor that resides in the subsection (7) enquiry. Even though, the text of each subsection suggests two places to make an order, there is a single order to be made after both enquiries have been conducted. According to *Changing Tides*, the issue of being rendered homeless arises only in the second enquiry contemplated in subsection (8). This Court agrees that a consideration of any possible pleaded homelessness belongs to implementation date stage, since it is only after the implementation date that homelessness may enter the fray. That enquiry is directed to the implementation date as opposed to the refusal of the eviction order.

75. Respondents' concession aside, the court is obligated by subsection (8) to grant an eviction order since Respondents have no valid defence, and all the requirements of section 4 are complied with. It is always just, equitable and fair to set a vacation date within a period which will enable the unlawful occupier to vacate with dignity and in the interim period obtain alternative accommodation, if there is evidence of available means to do so.

76. The court considered the admonitions expressed by Sachs J in *Port Elizabeth Municipality v Various Occupiers* (supra) at paragraph 37:

> [37] Thus, PIE expressly requires the court to infuse elements of grace and compassion into the formal structures of the law. It is called upon to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern. The Constitution and PIE confirm that we are not islands unto ourselves. The spirit of ubuntu, part of the deep cultural heritage of the majority of the population, suffuses the whole constitutional order. It combines individual rights with a communitarian philosophy. It is a unifying motif of the Bill of Rights, which is nothing if not a structured, institutionalised and operational declaration in our evolving new society of the need for human interdependence, respect and concern.

77. For these reasons, the court made the order to allow Respondents little over 3 months to vacate the property from the date of its order.

Costs

78. The extraordinary duration of this matter has in no small way been caused by an unreasonable stance adopted by the Respondents, who sought to use every opportunity, big or small to postpone the matter to be heard to finality.

79. Reasonable concessions were not made timeously, but a dogged refusal to accept facts and to press on with denials and postponement to allow for costly and ultimately fruitless litigation in the High Court are hallmarks of the way Respondents conducted their opposition to the application.

80. The court's difficulties with the affidavits filed by Respondents have been elaborated upon elsewhere, however in the context of an eviction application the court also refers to the following remarks of Davis AJ (Papier J concurring) made in *Luanga v Perthpark Properties (Pty) Ltd* 2019 (3) SA 214 (WCC):

> [49] As to Mr Langenhoven's third answer — that it is the responsibility of the court to ensure that it has sufficient information before it to discharge its duty to consider all relevant circumstances — that is undoubtedly correct. The court is required and expected to take a proactive role in ensuring that it has all the necessary information before it. But the Constitutional Court made it clear in Occupiers, Berea v De Wet NO supra [47] para 47 that courts are entitled to look for assistance to the attorneys and advocates for the parties, who have a duty as officers of the court. Courts must be astute not to allow eviction proceedings to be delayed through the deliberate failure to furnish relevant information which falls within the peculiar knowledge of a respondent, and which can reasonably be expected to form part of the answering affidavits where the respondent is legally represented.
>
> [50] Courts need to be able to rely on the integrity and assistance of the parties' legal representatives for the purpose of discharging their duties in terms of PIE. The just and equitable determination of eviction matters envisaged in s 4 of PIE cannot be permitted to be thwarted by the deliberate withholding of relevant information for tactical reasons. It is unthinkable that legal practitioners should be able, by withholding relevant information or failing to acquire readily accessible information, to engineer delays in eviction matters because the court is forced to call for further information, or to set up points to be taken on appeal, as was done in this case.

81. There had been failure to furnish relevant information which falls within the peculiar knowledge of the Respondents, and which can reasonably be expected to form part of the answering affidavits the obligation to provide the information relevant to the justice and equity enquiry envisaged in s 4 of PIE rests first and foremost on the parties to the proceedings, and attorneys and advocates, as officers of the court, must furnish the court with all relevant information in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.

82. The answering affidavits, aside from containing impermissible argument, were also lacking necessary and relevant information germane to the Respondents' personal circumstances. The court was forced to call for further information by having investigations done by the DSD and relied on the questionnaires, stale as they were, provided to the City and considered for the Housing Reports.

83. The Respondents, however, cannot bear the blame for this, as they are lay persons, not lawyers, and understandably were hoping against the odds, finding comfort in the advice they were receiving. Hope does, as Alexander Pope wrote[39], spring eternal in the human breast.

84. There is no doubt that the Respondent's attorneys did not properly apply their minds in settling the affidavits, which are susceptible to the critique of Peter AJ in *Venmop* supra referred to hereinabove. Ordinarily the court would consider adopting a measure to focus the attorneys'

[39] In his 1733 poem "An Essay on Man"

minds and to prevent any repetition, such as granting costs on *de bonis propriis* or disallowing costs.[40]

85. Applicant in fact requested the court to grant costs *de bonis propriis* on a punitive scale attoeney client scale.

86. Section 48 (d) of the Magistrates' Courts Act, 32 of 1944, confers on a magistrate the power to make an order of costs on the attorney and client basis, but it should be exercised with discretion, according to the circumstances, and not arbitrarily. It should not be easily granted.

87. The circumstances under which a court can make an order of costs *de bonis propriis* against an attorney should be reasonably serious, as, e.g., dishonesty, wilfulness or negligence of a serious degree.[41]

88. An order of costs *de bonis propriis* is made against attorneys where a court is satisfied that there has been negligence in a serious degree which warrants an order of costs being made as a mark of the court's displeasure.[42]An attorney is an officer of the court and owes a court an appropriate level of professionalism and courtesy.

89. The Respondents attorneys are acting pro bono. A cost order on a punitive scale against them *de bonis propriis* will have a chilling effect on the institution of pro bono representation of deserving members of the public, which would be out of all proportion to the degree of seriousness of the attorneys' deviation from the duty owed to the court in this instance and consequently the court declined to make the cost order prayed for by the Applicant.

Acting-Magistrate
Adv. J-P de Pontes
Cape Town

MAGISTRATE
Private Bag X9017, Cape Town 8000
2025 -12- 18
TWENTY FIVE
CAPE TOWN MAGISTRATE'S COURT

[40] See *Snyman & Others v Cooman and Others* 2024 (4) SA 302 (NMW) at paragraph [11]
[41] *Waar v Louw* 1977 (3) SA 297 (O)
[42] *Waar v Louw* (supra) at 304G – H referenced with approval by the Constitutional Court in *South African Liquor Traders' Association and Others v Chairperson, Gauteng Liquor Board, and Others* 2009 (1) SA 565 (CC)