

# Is the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE Act”) applicable to Student accommodation?

*Case: Stay at South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae) (1335/2021) [2023] ZASCA 108*

## INTRODUCTION

The case of *Stay at South Point Properties (Pty)Ltd v Mqulwana and Others (UCT intervening as amicus curiae) (1335/2021) [2023] ZASCA 108* considered whether the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE Act”) is applicable to student residences at higher education institutions.

## BACKGROUND

The Appellant was the owner and manager of the property known as New Market Junction Residence (“residence”) for students enrolled at Cape Peninsula University of Technology (“CPUT”). The Respondents were students who were studying at CPUT during the 2020 academic year. There was a scarcity of student housing, which made it necessary to have alternative student accommodation. The Appellant leased the residence to CPUT for purposes of providing student accommodation. The Respondents were allocated accommodation by the Appellant in the residence and refused to vacate, upon the Appellant providing them with notice to vacate within 72 hours of the last examination of the 2020 academic year. Some Respondents were granted permission to remain in the residence for the 2021 academic year, but they were still required to vacate at the end of 2020 and stay in alternative premises, which the Appellant had made available, so that maintenance and decontamination could be done.

These Respondents also refused to vacate the residence. Consequently, the Appellant summoned private security guards to remove them forcibly on 12 January 2021.

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When the Respondents resisted the forcible removal, the Appellant approached the High Court on 15 January 2021 for an order to evict the Respondents from the residence. The Appellant relied upon *rei vindicatio* to do so. The Respondents contended that the Application of the above remedy was non-suited on the basis of the provisions of the PIE Act. The Appellant contended that the residence did not constitute the Respondent’s home and, if evicted, they would not be rendered homeless, because they had homes to go to. The order of the Western Cape Division of the High Court of Cape Town discharged a rule nisi and dismissed the appellant’s application to evict respondents.

## THE LAW

According to Section 26(3) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) no one can be evicted or have their home demolished without a court order. The PIE Act enforces the right against arbitrary eviction or demolition. Section 2 of the PIE Act states that the Act applies in respect of all land in the Republic of South Africa.

## CENTRAL ISSUE

The Supreme Court of Appeal, in the case of *Barnett and others v Minister of Land Affairs [2007] and others SCA 95 (RSA) (304/2006)*, held that the sensible and ordinary meaning of “home” is a place with regular occupation coupled with some degree of permanence.

The Supreme Court in this matter had to consider the question of whether student accommodation provided by CPUT to the students constituted a home. The Supreme Court of appeal emphasised that a home is a place with regular occupation and permanence.

The court then stated that there were three important features of the accommodation afforded by CPUT to the Respondents which were relevant to the court’s finding:

- Students came from homes in order to study at university.

- The provision of student accommodation did not displace or replace homes from which students came from and therefore logic dictated that the Respondents had homes apart from the student accommodation allocated to them.
- The Respondents had no basis to seek protection from PIE Act, as their eviction from the residence did not render them homeless.

The courts also stated that the students assisted by the CPUK with accommodation were well aware that this valuable benefit was for a limited duration.

## COURT'S INTERPRETATION

The law should regulate the eviction of unlawful occupiers from land in a fair manner, recognising the right of landowners to apply to court for eviction order in appropriate circumstances. If an unlawful occupier occupies the land in question for more than six months at the time when proceedings are initiated, the court may grant an order for eviction if it is of the opinion that it was just and equitable to do so, after considering all relevant circumstances, except where land is sold in a sale of execution pursuant to a mortgage. The PIE Act gives effect to the constitutional protections against the peril of homelessness. If occupation of land does not constitute the home of the occupier, the PIE Act does not find application. In *Lester v Ndlambe Municipality and another* (514/12) [2013] ZASCA 95 the court stated that Section 26(3) of the Constitution must be read together with Section 26(1) (that is, the right of access to adequate housing). If one cannot demonstrate that one would be without alternative accommodation, and therefore rendered homeless, the protection of Section 26(3) does not find application.

The University of Cape Town ("UCT") acted as amicus curiae in the appeal. UCT made submissions which placed the provision of student accommodation within the context of the Higher Education Act 107 of 1997. Student accommodation was primarily an incident of the right to access to higher education and higher education institutions regulate access to student accommodation in terms of the rules of that institution. UCT also added that there was a scarcity of student housing, therefore, it had become necessary to have alternative accommodation.

## CONCLUSION

In most cases students seek accommodation because they come from remote places, or their homes are based in other provinces or even outside of South Africa. The Supreme Court of Appeal held that those who were fortunate enough to benefit from accommodation provided by CPUK knew full well that each and every year new students come to the university who legitimately look to the university for the very assistance that the Respondents enjoyed. Equity requires that those who have had the benefit of accommodation should yield to those who have not. Nothing about the position of the Respondents suggested that this equitable principle should not continue to apply. The Court further stated that the features of the student accommodation made available to the Respondents indicated that this accommodation is not a home. It is a residence, of limited duration, for a specific purpose, that is time-bound by the academic year, and that is, for important reasons, subject to rotation. Accordingly, the court held that the PIE Act did not apply to the Respondents' occupation of the property, and that the Appellant was thus entitled to evict the Respondents in reliance upon the *rei vindicatio*. The High Court's refusal to order the Respondents' eviction was therefore in error, and the appeal was upheld by the SCA.

*Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action.*



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