

Municipality's Obligation to Balance Evictions and Unlawful Occupiers' Right to Earn a Living

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INTRODUCTION

In *City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 9[...] of the Farm Randjesfontein No 4[...]] and Others* the SCA highlighted the persistent problem of homelessness in the country, a direct consequence of apartheid-era urban planning which restricted land and housing access for African people. Decades later, despite legislation and court rulings, this challenge endures.¹

The case involved the City of Johannesburg Metropolitan Municipality, its Executive Mayor, City Manager, and Director of Housing (collectively referred to as 'the City'), and a group of unlawful occupiers of a farm in Midrand, Johannesburg. The case focused on the intersection of property law, specifically the Prevention of Illegal Eviction from Unlawful Occupation of Land Act (PIE Act), and constitutional socio-economic rights, particularly the right to earn a living when determining emergency temporary accommodation. The core issue was whether the City, when providing temporary emergency accommodation (TEA), is obliged to consider an unlawful occupier's right to earn a living.

BACKGROUND OF THE CASE

The Occupiers are waste pickers who unlawfully occupied a portion of the Farm Randjesfontein in Midrand, Johannesburg. This property belongs to Ryckloff-Beleggings (Pty) Ltd (Ryckloff). The Occupiers depend on waste picking as their sole source of income, collecting recyclable materials from industrial sites, transporting them to their shacks on the property, and then sorting, cleaning, and storing these materials for sale to recycling companies. They reside on the property with their families.

Ryckloff sought their eviction under Section 4 of the PIE Act because the presence of the occupiers impeded a proposed commercial development on an adjacent property also owned by Ryckloff. The PIE Act regulates evictions and is intended to prevent the arbitrary and

forced removals characteristic of the apartheid era. Section 4(7) of the PIE Act allows a court to grant an eviction order if it is "just and equitable" to do so, after considering all relevant circumstances, including whether alternative land has been made available or can reasonably be made available by a municipality for the occupiers' relocation. This section also explicitly includes considering the rights and needs of vulnerable groups such as the elderly, children, disabled persons, and households headed by women.

THE HIGH COURT'S ORDER

The High Court granted an eviction order against the Occupiers and directed the City to provide them with temporary emergency accommodation and to allow the Occupiers to lawfully and safely sort their reclaimed waste at the site and enable them to reasonably travel during the day to collect waste using their flat-bed trollies. This meant the accommodation was not just a place to live but had to facilitate their waste-picking activities as their source of income.²

THE DISPUTE OVER RELOCATION CONDITIONS

Although the Occupiers did not resist eviction, the central dispute arose regarding the temporary emergency accommodation (TEA) the City was directed to provide. Although a relocation site was identified and initially acceptable to both parties, the City imposed a condition that the occupiers would not be allowed to conduct their waste picking activities on this site. The Occupiers objected to this condition, arguing that a just and equitable eviction must consider their means of earning a living. They contended that they should be relocated close to areas with high-value waste necessary for their work, and that the City had an obligation to act reasonably under section 26(3) of the Constitution, as the right to earn a living is a component of the right to dignity. The City's primary arguments were that the occupiers' "right to earn a living" was merely a "commercial interest" not relevant under PIE Act section 4(7).

It also argued that waste-related activities were prohibited at the relocation site due to zoning restrictions.

THE SUPREME COURT OF APPEAL'S ANALYSIS

The Supreme Court of Appeal clarified that the core issue was not the Occupiers' right to choose where they live, but whether they could continue to earn their living at the agreed relocation site. The Court rejected the City's argument that earning a living was irrelevant under the PIE Act. Crucially, the Court highlighted that the PIE Act explicitly requires considering vulnerable groups like children and households headed by women, both present among the Occupiers.³ The SCA held the following in respect of unlawful Occupiers' right to earn a living:

Right to earn a living

The SCA drew from previous Constitutional Court judgments such as *City of Johannesburg v Rand Properties (Pty) Ltd* and *Residents of Joe Slovo Community*⁴, and *Western Cape v Thubelisha Homes*⁵, where the Court acknowledged the principle that the link between the location of residence and the place where persons earn or try to earn their living is a relevant factor for a court to consider under PIE Act section 4(7). The Court recognized that where people live affects their ability to find and keep jobs. It stated that the government must consider this connection when deciding on alternative housing. Ignoring this would mean failing to meet its responsibilities. The Constitutional Court confirmed this in *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others*, emphasizing that when choosing new housing locations, the government must think about how close residents are to their workplaces.⁶

CONCLUSION

The SCA dismissed the City's appeal, upholding the High Court's order that TEA must allow unlawful occupiers to continue their waste-picking livelihood. The court affirmed that municipalities must consider the relationship between residence location and employment when displacing unlawful occupiers. Essentially, the ruling ensures that for an eviction to be "just and equitable," housing provision must not eliminate a resident's only means of survival.

¹*City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 9[...] of the Farm Randjesfontein No 4[...] and Others (636/23) [2025] ZASCA 47 (23 April 2025) para 1.*

²*City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 9[...] of the Farm Randjesfontein No 4[...] and Others Para 3.*

³*City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 9[...] of the Farm Randjesfontein No 4[...] and Others para 12.*

⁴*City of Johannesburg v Rand Properties (Pty) Ltd [2007] ZASCA 25; [2007] 2 All SA 459 (SCA); 2007 (6) SA 417 (SCA); 2007 (6) BCLR 643 (SCA) para 44.*

⁵*Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, as Amici Curiae) 2010 (3) SA 454 (CC) para 254*

⁶*City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 9[...] of the Farm Randjesfontein No 4[...] and Others para 22*



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