

Unlawful Occupation as a Threshold, Not A Conclusion: Reaffirming the “Just and Equitable” Standard Under PIE

Ahmad v Mazari (A2022/048458) [2026]
ZAGPJHC 269 (17 March 2026)

INTRODUCTION

In *Ahmad v Mazari*,¹ the Gauteng Division of the High Court, Johannesburg, reaffirmed that unlawful occupation alone does not justify eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (“PIE”).² The Court emphasised that a finding of unlawfulness is only the starting point in eviction proceedings and that a separate inquiry into whether eviction is just and equitable is required.

The judgment highlights the Courts’ role in ensuring fairness and equity, particularly where an occupier has a substantial proprietary interest in the property, such as a purchaser under an instalment sale agreement. It confirms that eviction cannot be used to achieve outcomes that would be disproportionate or inequitable.

BACKGROUND FACTS

On **14 July 2015**, the First Appellant concluded an instalment sale agreement with the First Respondent for the purchase of a residential property, in terms of which a purchase price of approximately **R950 000.00 (Nine Hundred and Fifty Thousand Rand)** was payable in 51 instalments. By **May 2019**, only a small balance of the purchase price, recorded in a conveyancer’s letter as **R60 833.00 (Sixty Thousand Eight-Hundred and Thirty-Three Rand)** remained outstanding.³

The First Respondent purported to cancel the agreement on the basis that the First Appellant had, from **November 2018**, ceased paying the occupational rent due under the agreement. The Notice of Cancellation bears the date 19 March 2019, although the First Appellant contended that it was only delivered to her in 2021.

By **Michelle Venter** (Senior Associate),
Wandile Sangweni (Associate), and
Lindokuhle Tshabalala (Candidate Attorney)

18 August 2026

The First Appellant did not dispute that she had withheld the rent and the outstanding balance of the purchase price, but explained that she had done so only after the First Respondent refused to give effect to her demand that the property be transferred into her name. She tendered payment of the outstanding balance against transfer of the property, and evidence indicated that this amount had been secured in her attorney’s trust account for payment to the First Respondent on transfer.⁴

The First Respondent instituted eviction proceedings against the Appellants in terms of PIE. On 4 September 2024, the Court a quo granted an eviction order, finding that the agreement had been validly cancelled and that the Appellants were therefore unlawful occupiers.⁵

THE JUDGMENT

On appeal, a full bench of the High Court upheld the appeal with costs and set aside the eviction order, replacing it with an order dismissing the application.⁶

The full Court held that the Court a quo had erred in law by failing to conduct the second leg of the PIE enquiry.⁷ While the unlawfulness of occupation had been established, the court a quo failed to determine whether eviction would be just and equitable.

The Court reiterated that eviction under PIE requires a positive finding that it is just and equitable considering all relevant circumstances.⁸

On the facts, eviction was found to be unjust. Since the First Appellant had already paid a vast majority of the purchase price, the eviction would result in her losing both her home and her substantial investment, an outcome the Court characterised as inequitable.⁹

The Court further relied on section 27 of the Alienation of Land Act,¹⁰ noting that a purchaser who has paid at least half of the purchase price is entitled to demand

transfer of the property against registration of a mortgage bond.

The First Respondent failed to discharge the onus of establishing that eviction was just and equitable, having regard to his papers and to the principle established in *City of Johannesburg v Changing Tides 74 (Pty) Ltd*¹¹ that a private Applicant for eviction bears the onus of satisfying the court that an eviction order would be just and equitable.¹²

THE MEANING OF “JUST AND EQUITABLE” IN EVICTION LAW

The phrase “*just and equitable*” lies at the heart of PIE and has been the subject of extensive judicial interpretation. It reflects the constitutional imperative to infuse eviction proceedings with considerations of fairness, dignity, and substantive justice.

In *Port Elizabeth Municipality v Various Occupiers*,¹³ the Constitutional Court, endorsing the approach of Horn AJ in the earlier decision of *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others*,¹⁴ held that the “*just and equitable*” requirement obliges a court to balance two diametrically opposed interests, i.e. the real right of ownership and the genuine need of occupiers for accommodation, and to reach a decision that is just and equitable to both. The Court further held that this obliges courts to go beyond their normal functions and to engage in active judicial management of the eviction process.

In *Blue Moonlight*,¹⁵ the Constitutional Court, after analysing sections 25 and 26 of the Constitution, confirmed that PIE allows for the eviction of unlawful occupiers only when it is just and equitable, and that the enquiry requires courts to balance the property rights of the owner against the housing needs of the occupiers, having regard to an open list of relevant factors. In other words, the enquiry into whether an eviction is just and equitable is inherently context-sensitive and does not lend itself to a rigid definition.

The Court in *Occupiers, Shulana Court v Steele*,¹⁶ considered section 26 of the Constitution¹⁷ together with sections 4(6) and 4(7) of PIE and confirmed that a court may only grant an eviction order once satisfied that it is just and equitable to do so, after considering all relevant circumstances.

Unlawfulness of occupation therefore merely triggers the enquiry; it does not determine its outcome, and courts must go further and consider all relevant circumstances before granting an eviction order.

Importantly, the “*just and equitable*” standard requires courts to go beyond their ordinary functions and engage in active judicial management.

This requires courts to act proactively, exercise investigative powers, call for further evidence, and issue protective orders where necessary. In doing so, courts are expected to be innovative and, at times, to depart from conventional legal approaches.

Similarly, in *City of Johannesburg v Changing Tides 74 (Pty) Ltd*,¹⁸ the Supreme Court of Appeal confirmed that the “*just and equitable*” enquiry is informed by considerations such as:

- the circumstances under which the occupiers came to occupy the property;
- the length of their occupation; and
- the availability of suitable alternative accommodation or land.

However, as the court in *Ahmad v Mazari* has demonstrated, the enquiry is not confined to cases involving indigence or homelessness. In *Sarrahwitz v Maritz NO*,¹⁹ the Constitutional Court (per the minority judgment) recognised that it may be inherently unjust and unequitable to evict a purchaser who has paid the full purchase price for the property and lived there for a significant period of time, despite cancellation of the underlying agreement.

The present judgment extends this reasoning to cases of substantial performance. It confirms that the “*just and equitable*” standard is sufficiently flexible to prevent outcomes that would be disproportionate or unjust, including those that would result in unjust enrichment or the forfeiture of substantial proprietary interests.²⁰

Thus, “*just and equitable*” in eviction law may be understood as requiring:

- a contextual and fact-specific enquiry;
- a balancing of competing rights and interests;
- an assessment of proportionality and fairness; and
- an outcome that is consistent with constitutional values, particularly dignity and substantive justice.

THE CASE ANALYSIS

The Two-Stage Enquiry under PIE

The judgment reinforces that eviction proceedings under PIE require a **two-stage enquiry**:

1. whether the occupation is unlawful; and
2. whether eviction is just and equitable.

Failure to engage the second stage, as occurred before the court a quo, therefore amounts to an error of law.²¹

BEYOND HOMELESSNESS: A BROADER EQUITY INQUIRY

The judgement demonstrates that the “*just and equitable*” standard extends beyond the prevention of homelessness. Courts must consider the full factual matrix, including the conduct of the parties and the consequences of eviction.

EQUITABLE PROTECTION OF PURCHASERS IN POSSESSION

The judgment is significant for purchasers under instalment sale agreements. It suggests that substantial performance, coupled with a tender of full payment, may render eviction unjust and inequitable. The Court's reliance on statutory protections under the Alienation of Land Act further strengthens this position.

ONUS AND EVIDENTIARY BURDEN

The judgment reiterates that the burden rests on the Applicant to establish that eviction is just and equitable.²² A failure to place sufficient evidence before the Court in this regard will be fatal to an eviction application.

CONCLUSION

Ahmad v Mazari is a significant reaffirmation of the Constitutional character of eviction proceedings in South Africa. It confirms that eviction is not a remedy granted as a matter of course, but one that must be justified through a careful and context-sensitive enquiry into justice and equity. The decision strengthens the protection afforded to occupiers particularly purchasers in possession and underscores the judiciary's role in preventing inequitable outcomes.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any action contemplated herein.

¹ *Ahmad v Mazari* (A2022/048458) [2026] ZAGPJHC 269 (17 March 2026).

² Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

³ *Ahmad v Mazari*, at para 2.

⁴ *Ahmad v Mazari*, above, at paras 3 – 4.

⁵ *Ahmad v Mazari*, above, at paras 1 and 5 – 6.

⁶ *Ahmad v Mazari*, above, at para 11.

⁷ *Ahmad v Mazari*, above, at para 6.

⁸ *Ahmad v Mazari*, above, at para 6; *Occupiers, Shulana Court v Steele*, below, at para 9.

⁹ *Ahmad v Mazari*, above, at paras 8 – 9.

¹⁰ Alienation of Land Act 68 of 1981, s 27.

¹¹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA).

¹² *Ahmad v Mazari*, above, at para 9; *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*, above at para 34.

¹³ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at paras 33 and 36.

¹⁴ *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others* 2000 (2) SA 1074 (SE).

¹⁵ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paras 36, 37 and 39.

¹⁶ *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* [2010] 4 All SA 54 (SCA) at paras 9 and 12.

¹⁷ The Constitution of the Republic of South Africa, 1996.

¹⁸ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) at para 15.

¹⁹ *Sarrahwitz v Maritz NO* 2015 (4) SA 491 (CC) at paras 95 and 96 (per Cameron J and Froneman J).

²⁰ *Ahmad v Mazari*, above, at para 8.

²¹ *Ahmad v Mazari*, above, at para 6.

²² *Ahmad v Mazari*, above, at para 9; *City of Johannesburg v Changing Tides 74 (Pty) Ltd*, above, at para 34.



Michelle Venter
(Senior Associate)



Wandile Sangweni
(Associate)



Lindokuhle Tshabalala
(Candidate Attorney)