

# WEBINAR

**Your land or mine?  
A review of the law and trends  
in relation to unlawful  
occupation, both rural and  
urban**

**14 March 2024**

## Preamble

- Recognise the injustices of our past
- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights
- Improve the quality of life of all citizens and free the potential of each person

## Section 1, section 7 and section 10 human dignity

- Rights of Human dignity, the achievement of equality and the advancement of human rights and freedoms

## Section 25 – Property

- No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property

## Section 26 – Housing

- Everyone has the right to adequate housing
- The state must take steps with its available resources to achieve such rights
- No one may be evicted from their home or have their home demolished without a court order

## Fundamentals of interpretation :

### PE Municipality ( Sachs J)

*“The constitution imposes new obligations on the courts concerning rights relating to property... expectations that ordinarily go with title could clash head on with the genuine despair of people in dire need of accommodation. The judicial function in these circumstances is not to establish a hierarchical arrangement between the different interests involved... rather it is to balance out and reconcile the opposed claims and as just a manner as possible taking account of all the interests involved and the specific effect is relevant in each particular case”*

**Fundamentals of interpretation :**

**Daniels v Scribante**

- “The land, our purpose is the land; that is what we must achieve...”
- The rejection of the absolutist concept of property

**PIE  
NOT**



# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

“PIE”



## APPLICABILITY OF PIE

**PIE; *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA); and *Barnett v Minister of Land Affairs* 2007 6 SA 313 (SCA)**

- Occupation must be unlawful
  - defaulting mortgagee
  - tenant
- **Excludes** rural property where there was consent
  - Extension of Security of Tenure Act 62 of 1997
- From a structure or building used for **dwelling** purposes

# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

“PIE”



## APPLICABILITY OF PIE

- Must constitute someone’s home (*Barnett* case) – interpreted by considering

- the preamble of PIE:

*“AND WHEREAS 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”*

- sub-sections 4(7) and 4(9) which refer to words such as

*“relocation” and “reside”*

# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

“PIE”



## APPLICABILITY OF PIE

- section 26(3) of the Constitution

*“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.”*

PREVENTION OF ILLEGAL  
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“HOME”

***Barnett case; Stay at South Point Properties (Pty) Ltd v Mqulwana and others 2023 JDR 2330 (SCA)***

- element of regular occupation coupled with some degree of permanence
- not holiday homes; not just a shelter from elements; or student accommodation
  - purpose of PIE is to address homelessness
  - balance other rights

PREVENTION OF ILLEGAL  
EVICTION FROM AND UNLAWFUL OCCUPATION  
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“PIE”



**PROCEDURE (technical and expectations)**

**Expectations**

***Occupiers of ERF 101,102, 104 and 112, Shorts Retreat, Pietermaritzburg v Daisy Dear Investments (Pty) Ltd and Others [2009] 4 All SA 410 (SCA) (3 July 2009); and Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another 2017 (5) SA 346 (CC)***

- Prior engagement with occupiers
- Process must be done in a humane manner and without discrimination
- Get report from local municipality of alternative accommodation

**PREVENTION OF ILLEGAL  
EVICTION FROM AND UNLAWFUL OCCUPATION  
OF LAND ACT 19 OF 1998**

**“PIE”**



**PROCEDURE (technical and expectations)**

**Technical**

**PIE – section 4**

- (i) Approach the court to seek service directions on occupiers and municipality (*ex parte*)
- (ii) At least 14 days before hearing service must be effected, as directed  
  
(seek report from municipality at the same time)

# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

**“PIE”**



## PROCEDURE (technical and expectations)

### Technical

#### PIE – section 4

(iii) Less than 6 months the court is directed to take of cognisance of:

- Principles of equity & justice;
- When considering all relevant circumstances, including:
  - the elderly;
  - children;
  - disabilities; and
  - households headed by women

(although not specified we still recommend obtaining report alternative accommodation report from municipality)

# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998



“PIE”

## PROCEDURE (technical and expectations)

### Technical

#### PIE – section 4

- (iv) More than 6 months the court is required to consider:
- Principles of equity & justice;
  - When considering all relevant circumstances, including:
    - **alternative accommodation**
    - the elderly;
    - children;
    - disabilities; and
    - households headed by women
  - **Exception:** sales in execution (**NB: *Ndlovu case***)

**PREVENTION OF ILLEGAL  
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**“PIE”**



**PROCEDURE (technical and expectations)**

**Technical**

**PIE – section 4**

(vi) The court must grant the eviction:

- it is satisfied that all the requirements of section 4 have been complied with; and
  - there is no valid defence raised.
- 
- Valid defence = just and equitable not to grant the Order:

***Occupiers of Erven 87 and 88 Berea case and City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA)***

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**PROCEDURE (technical and expectations)**

**Technical**

**PIE – section 4**

(vi) Eviction Order must include:

- just and equitable date to vacate; and
- date by which can evict is fails to vacate.

(viii) Eviction Order may include directions to demolish or remove buildings or structures

# PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

**“PIE”**



## **PROCEDURE (technical and expectations)**

### **Technical**

### **PIE – section 5 (URGENT)**

- (i) Only interim
- (ii) Must be on notice
- (iii) Following factors must exist:
  - must be real and imminent danger of substantial injury or damage to any person or property;
  - owner’s likely hardship exceeds that of unlawful occupier;
  - there is no other effective remedy

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