

# Dispute Resolution

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## Ignore me at your peril: Protecting vulnerable groups in eviction matters

*In City of Johannesburg Metropolitan Municipality and Others v Occupiers [of Portion 971 of the Farm Randjesfontein No 405] and Others (636/23) [2024] ZASCA 47 (23 April 2025), the Supreme Court of Appeal (SCA) was called upon to determine whether a court, as part of the just and equitable enquiry envisaged in section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), should consider an unlawful occupier's right to earn a living.*

### Background

In this case, Rycloff-Bellegings (Pty) Ltd (Rycloff) was granted an order in the Gauteng Division of the High Court, Johannesburg, evicting the first to seventy-first respondents (the respondents) from Portion of Erf 371 of the Farm Randjesfontein (Property). Rycloff also owned Erf 64 Midridge Park, Extension 9, which is adjacent to the Property and housed a large commercial business centre, which Rycloff was in the process of finalising an offer to lease for and redevelop.

Before the SCA, the City of Johannesburg (City) appealed the High Court's order in respect of it being ordered to provide temporary emergency accommodation to the respondents where *"they can make a living"*. The *"living"* in question was the respondents' sole source of income of waste picking, which they conducted on the Property, where they resided with their families. The respondents collected waste from industrial sites near the Property that they sorted, cleaned and stored before selling to recycling companies for money.

The City and the respondents identified and agreed upon Kya Sands as the temporary emergency accommodation where the respondents would be relocated to, but the dispute in this case centred around whether the respondents could continue to conduct waste picking at Kya Sands.

### Submissions

The nub of the City's case was that the right to earn a living being a *"commercial interest"* was irrelevant for purposes of the section 4(7) enquiry in terms of PIE and that the collection, sorting and storing of waste by the respondents was an unlawful activity in this instance because such activity was being conducted in an area zoned for *"special"* use, contrary to the relevant zoning regulations. Aligned with the City's position, Rycloff contended that the High Court's order exceeded what is envisaged in section 26 of the Constitution in respect of the City's obligations to give effect to the right to adequate housing and that the impugned order offended the doctrine of separation of powers in that it deprived the City of its discretionary power to identify suitable temporary accommodation.

Conversely, the respondents contended that their eviction from the Property would not be just and equitable in terms of section 4(7) of PIE, if the enquiry contemplated by this section did not take into account their means of earning a living, particularly if regard was had to their right to dignity and co-related socio-economic rights enshrined in the Constitution.

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Section 4(7) of PIE provides that:

*"(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."*

### Findings

The SCA found *inter alia* that the City contradicted its earlier position in a letter to the respondents' attorneys in which it indicated it would not encroach on the respondents' right to earn a living, and that Kya Sands was identified as being suitable temporary emergency accommodation for the respondents due to it being located near a recycling facility to cater for the respondents' needs.

In addition, the court found that City's reliance on *7 Turnover Trading 191 (Pty) Ltd v Moshela and Others* [2020] ZAGPPHC 240 was misplaced because in that case, the unlawful occupier resisted eviction on the basis that he wished to continue conducting business from the subject property. The respondents were distinguishable from the respondents in *Turnover* in that they took no issue with being relocated but took issue with being relocated to a place where they would not be able to earn a living.

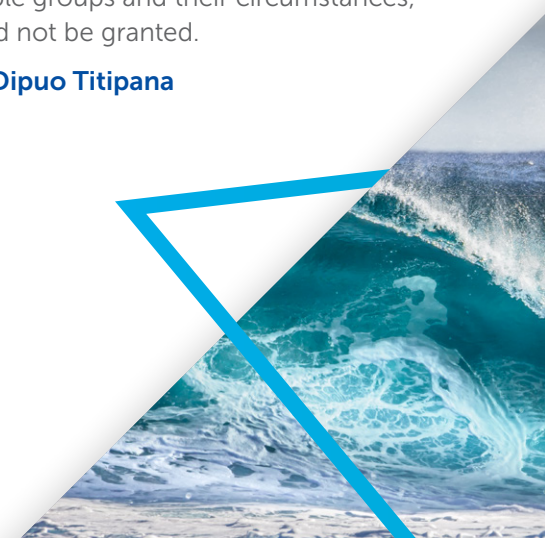
Furthermore, in the present matter, there were children and households headed by women, two vulnerable groups of society expressly mentioned in section 4(7) of PIE, and with the interests of children being of paramount importance in terms of section 28(2) of the Constitution.

Pertinently, the court reaffirmed its and the Constitutional Court's pronouncement in cases like *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) that the link between the location of residence and employment opportunities is a relevant factor for consideration for purposes of a section 4(7) enquiry.

### Conclusion

This case demonstrates that an organ of state must act reasonably in giving effect to the right in section 26 of the Constitution. It must be cognisant not just of its immediate obligation to provide alternative accommodation in eviction matters but act in a manner that advances socio-economic rights, particularly when dealing with the interests of the most vulnerable people in society, such as women and children. Where it does not adequately consider these vulnerable groups and their circumstances, an eviction order should not be granted.

**Lucinde Rhoodie and Dipuo Titipana**





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charges

The levy imposed by the Trump administration on goods imported into the US from South Africa is impacting both South African and US businesses, whether supply agreements are already concluded or are being negotiated (particularly where significant minimum supply quantities are an issue), as parties try and deal with an overnight 31% increase in the landed price of goods in the US.

The provisions of *force majeure* clauses in supply agreements governed by South African law, which were so carefully scrutinised during the COVID-19 pandemic, may provide some relief, but that will depend on the wording of the clause. *Force majeure* (directly translated from Latin as “superior force”) having been generally defined as

*“An act of God that is unforeseen and unforeseeable and out of the reasonable control of one or both of the parties to a contract, and which makes it objectively impossible for one or both of the parties to perform their obligations under the contract”,*

the imposition (by a government) of a levy on the import of goods is not *force majeure*.

The alternative to consider is whether the imposition of the levy gives rise to a supervening impossibility of performance, but supervening impossibility of performance only arises where the performance of an obligation becomes objectively and permanently impossible through no fault of either of the parties. In the context of the imposition of the levy, it cannot be said that performance is objectively and permanently impossible, only that it is significantly (potentially prohibitively) more expensive.

Although an increase in price through a levy in the US will be felt most keenly by the ultimate US purchaser of the product, the imposition of the levy will obviously impact on the procurement of goods from South Africa, and if they are procured, will impact the terms of supply agreements still to be drafted. As for existing agreements, they are already under a microscope on both sides of the Atlantic as contracting parties impacted by the tariffs look either to avoid contracts or enforce them.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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