THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Reportable

Case No: 1335/2021

In the matter between:

STAY AT SOUTH POINT PROPERTIES (PTY) LTD	**APPELLANT**

and

ABULELE MQULWANA	**FIRST RESPONDENT**
AKHONA NTOTHO	**SECOND RESPONDENT**
AMANDA MSABA	**THIRD RESPONDENT**
ANDILE PHAKADE	**FOURTH RESPONDENT**
ANDISIWE SITYATA	**FIFTH RESPONDENT**
APHIWE MASEBENI	**SIXTH RESPONDENT**
ASEMAHLE DANGISA	**SEVENTH RESPONDENT**
AVILE GIYAMA	**EIGHTH RESPONDENT**
AVUMILE MZANTSI	**NINTH RESPONDENT**
AVUYILE SOMAGAGU	**TENTH RESPONDENT**
AWODWA PICANE	**ELEVENTH RESPONDENT**
AYANDA BUHLEBEMVULO SIKO	**TWELFTH RESPONDENT**
BONGA GWABENI	**THIRTEENTH RESPONDENT**
BONGANI PUZA	**FOURTEENTH RESPONDENT**
BUKHO MANGALI	**FIFTEENTH RESPONDENT**
EYRAM ADALETE	**SIXTEENTH RESPONDENT**
FULUFHELO LENNOSE KHOMOLA	**SEVENTEENTH RESPONDENT**
GLODIE KABUYA	**EIGHTEENTH RESPONDENT**
IVIWE LOLIWE	**NINETEENTH RESPONDENT**
KAMVELIHLE MDAYI	**TWENTIETH RESPONDENT**

KELETSO QHETSU	**TWENTY-FIRST RESPONDENT**
KHANYISILE DUBULA	**TWENTY-SECOND RESPONDENT**
KHOLIWE NGUMBE	**TWENTY-THIRD RESPONDENT**
LELOKA MOTHIBE	**TWENTY-FOURTH RESPONDENT**
LERATO NGQOBWA	**TWENTY-FIFTH RESPONDENT**
LESIBA KHALO	**TWENTY-SIXTH RESPONDENT**
LIMPHO RANAMANE	**TWENTY-SEVENTH RESPONDENT**
LITHAKAZI MQUQU	**T WENTY-EIGHTH RESPONDENT**
LONWABO ALVIN	**TWENTY-NINTH RESPONDENT**
LONWABO NOFEMELE	**THIRTIETH RESPONDENT**
LULAMILE DYANI	**THIRTY-FIRST RESPONDENT**
LUNGELO MNGUNI	**THIRTY-SECOND RESPONDENT**
LUTHOLWETHU NTLOKO	**THIRTY-THIRD RESPONDENT**
LWANDO MKWANE	**THIRTY-FOURTH RESPONDENT**
MANCOBA VUYISANANI	**THIRTY-FIFTH RESPONDENT**
MBONGENI BOQWANA	**THIRTY-SIXTH RESPONDENT**
MDUNA AKHONA	**THIRTY-SEVENTH RESPONDENT**
MELINDA SOGIBA	**THIRTY-EIGHTH RESPONDENT**
MIHLALI SITYATA	**THIRTY-NINTH RESPONDENT**
MINENHLE SG NGWENYA	**FORTIETH RESPONDENT**
MOJAKI REETUMETSI	**FORTY-FIRST RESPONDENT**
MPHO-ENTLE MOKOENA	**FORTY-SECOND RESPONDENT**
MVELELI MADOTYENI	**FORTY-THIRD RESPONDENT**
NEO MONGALE	**FORTY-FOURTH RESPONDENT**
NHLANHLA MKHITHIKA	**FORTY-FIFTH RESPONDENT**
NJABULO NHANZI	**FORTY-SIXTH RESPONDENT**
NOLUVUYO NOCANDA	**FORTY-SEVENTH RESPONDENT**
NTANDO TSHANAVHA	**FORTY-EIGHTH RESPONDENT**
NTLAKANIPHO NIKA	**FORTY-NINTH RESPONDENT**
NTOBEKA SEKHUKHUNI	**FIFTIETH RESPONDENT**
NTOKOZO MASEKO	**FIFTY-FIRST RESPONDENT**
OKUHLE JAMES	**FIFTY-SECOND RESPONDENT**
PAMELA NKOMANA	**FIFTY-THIRD RESPONDENT**
PHELOKAZI NTOLA	**FIFTY-FOURTH RESPONDENT**

PHUMZA MHAGA	**FIFTY-FIFTH RESPONDENT**
SANDISIWE CHWAYI	**FIFTY-SIXTH RESPONDENT**
SANDISO MBANJWA	**FIFTY-SEVENTH RESPONDENT**
SIHLE YANI	**FIFTY-EIGHTH RESPONDENT**
SIKHO SISONKE MBOTO	**FIFTY-NINTH RESPONDENT**
SIMAMKELE NCWADI	**SIXTIETH RESPONDENT**
SINDISWA SIYAKA	**SIXTY-FIRST RESPONDENT**
SINOXOLO MDAKA	**SIXTY-SECOND RESPONDENT**
SIPHAMANDLA QOLI	**SIXTY-THIRD RESPONDENT**
SIPHENATHI MZWALI	**SIXTY-FOURTH RESPONDENT**
SIPHO NUSE	**SIXTY-FIFTH RESPONDENT**
SIPHO VONGWE	**SIXTY-SIXTH RESPONDENT**
SITHSABA MACEMBE	**SIXTY-SEVENTH RESPONDENT**
SIXOLILE MADWARA	**SIXTY-EIGHTH RESPONDENT**
SIZWE TYOKWANA	**SIXTY-NINTH RESPONDENT**
SOUKE MDIYANA	**SEVENTIETH RESPONDENT**
WILLIAM MAKASHANE	**SEVENTY-FIRST RESPONDENT**
XOLANI JAFTA	**SEVENTY-SECOND RESPONDENT**
YAMKELA MVULANKULU	**SEVENTY-THIRD RESPONDENT**
YONELA DALASILE	**SEVENTY-FOURTH RESPONDENT**
ZIMASA KATA	**SEVENTY-FIFTH RESPONDENT**
ZIPHINDILE NYOKANA	**SEVENTY-SIXTH RESPONDENT**
ZIPHO MHLABA	**SEVENTY-SEVENTH RESPONDENT**
ZIZIPHO DANO	**SEVENTY-EIGHTH RESPONDENT**
BONGA NOBOKWANA	**SEVENTY-NINTH RESPONDENT**
GERALD THABO MASUKU	**EIGHTIETH RESPONDENT**
ITUMELENG DWANGU	**EIGHTY-FIRST RESPONDENT**
KONELE MHLOTYANA	**EIGHTY-SECOND RESPONDENT**
LEHLOHONOLO THABISO MOLOMO	**EIGHTY-THIRD RESPONDENT**
LUNGA DINISO	**EIGHTY-FOURTH RESPONDENT**
MASENTLE PONI	**EIGHTY-FIFTH RESPONDENT**
MTHANDENI NKAZIMULO CELE	**EIGHTY-SIXTH RESPONDENT**
NOZIPHO PETUNIA KHUZWAYO	**EIGHTY-SEVENTH RESPONDENT**
SIPHOSETHU THOBIGUNYA	**EIGHTY-EIGHTH RESPONDENT**

THANDOLWETHU MYATAZA **EIGHTY-NINTH RESPONDENT**
VIWE PRINCESS NJONGO **NINETIETH RESPONDENT**

UNIVERSITY OF CAPE TOWN **AMICUS CURIAE**

Neutral citation: *Stay At South Point Properties (Pty) Ltd v Mqulwana and Others (UCT intervening as amicus curiae)* (1335/2021) [2023] ZASCA 108 (3 July 2023)

Coram: SALDULKER, ZONDI and MABINDLA-BOQWANA JJA and MALI and UNTERHALTER AJJA

Heard: 21 February 2023

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website, and release to SAFLII. The date for hand down is deemed to be 3 July 2023 at 11h00.

Summary: Eviction – applicability of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) to student residence at a higher education institution – residence not considered a home – PIE not applicable.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Baartman J, sitting as court of first instance):

1 The appeal is upheld with no order as to costs.

2 The order of the high court is set aside and replaced with the following:

'(a) It is declared that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 did not apply to the unlawful occupation by the respondents of their student accommodation, and the applicant was entitled to secure their eviction.

(b) Each party to pay its own costs.'

JUDGMENT

Mali AJA (Saldulker, Zondi and Mabindla-Boqwana JJA and Unterhalter AJA concurring):

[1] This is an appeal against the order of the Western Cape Division of the High Court, Cape Town (the high court) discharging a rule *nisi* and dismissing the appellant's application to evict the respondents, with costs, including the costs of two counsel. The respondents had been called upon to show cause why they should not be evicted from the student residence which they continued to occupy without the consent of the owner of the property. Leave to appeal to this Court was granted by the high court.

[2] The appellant is the owner and the manager of a residence, known as New Market Junction (the residence). It is a residence for students enrolled at the Cape Peninsula University of Technology (CPUT). The respondents are all students who were studying at CPUT during the 2020 academic year. The University of Cape Town (UCT) was admitted as an *amicus curiae* in the appeal.

[3] The appellant leased the residence to CPUT for purposes of providing student accommodation. The respondents were allocated accommodation by CPUT in the residence until the end of November 2020. However, they remained in occupation of the residence and refused to vacate, after CPUT gave them notice to do so within 72 hours of their last examination of the 2020 academic year, in terms of its procedures. The seventy-ninth to ninetieth respondents were granted permission to remain in the residence for the 2021 academic year, but they were required to vacate the premises 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. When the respondents resisted their 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 the *rei vindicatio* to do so.

[4] The respondents contended that the appellant was non-suited on the basis that the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) applied to the proceedings brought by the appellant and to the extent that the appellant failed to bring the eviction proceedings in terms of PIE, the application was fatally defective.The appellant contended that the residence did not constitute the respondents' home, and if evicted, they would not be rendered homeless, because they had homes to go to. For this reason, the appellant submitted that PIE did not find application. In the alternative, the appellant contended that should PIE be applicable, then the eviction order nevertheless ought to be granted in terms of s 5 of PIE.[1]

[5] At the commencement of the hearing in this Court, we were informed that the respondents were no longer in occupation of the residence. That rendered the appeal moot. Both parties agreed, however, that this appeal ought to proceed because of the wider and far-reaching implications of the eviction of students from student

[1] Section 5 provides for urgent evictions of an unlawful occupier pending the outcome of proceedings for a final order. The court may grant such an order if it is satisfied that, inter alia, 'there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not forthwith evicted from the land'.

accommodation. I am also persuaded that this Court should hear the appeal, because the rights and duties of students provided with accommodation by CPUT is an issue of recurring controversy.

[6] PIE was promulgated to give effect to s 26(3) of the Constitution. Section 26(3) provides that '[n]o one may be evicted from *their home* . . . without an order of court made after considering all the relevant circumstances'. (My emphasis.)

[7] PIE's Preamble, in relevant part, provides:

'WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;

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;

AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances.' (My emphasis.)

[8] Section 2 of PIE provides as follows:

'This Act applies in respect of all land throughout the Republic.' Section 4(7) of PIE states:

'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.' (My emphasis.)

[9] Although the substantive provisions of PIE reference the occupation of land, it is plain that PIE gives effect to the constitutional protections against the peril of homelessness. It follows that, if the occupation of land does not constitute the home of an occupier, PIE does not find application. Further support for this proposition is

found in *Lester v Ndlambe Municipality and Another*.[2] There, this Court stated that s 26(3) needs to be read against the backdrop of s 26(1), that is, the right of access to adequate housing.[3] It has been found that where one cannot demonstrate that one would be without alternative accommodation, and thus be rendered homeless, the protection of s 26(3) does not find application.

[10] What then is a home? This Court in *Barnett*[4] held that the sensible and ordinary meaning of home is a place with 'regular occupation coupled with some degree of permanence'. At para 37 it further said:

'I believe it can be accepted with confidence that PIE only applies to the eviction of persons from their *homes*. Though this is not expressly stated by the operative provisions of PIE, it is borne out, firstly, by the use of terminology such as "relocation" and "reside" (in sections 4(7) and 4(9)) and, secondly, by the wording of the preamble, which, in turn establishes a direct link with section 26(3) of the Constitution (see eg *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) paragraph 3).'

[11] The central issue in this appeal is whether, given what this Court has held a home to be for the purposes of s 26(3) of the Constitution and its implementation in PIE, the provision of student accommodation by CPUT to its students constitutes a home, so as to render PIE of application.

[12] There are three important features of the accommodation afforded by CPUT to the respondents which are relevant. First, the students came from homes in order to study at the university. Unless otherwise demonstrated, student accommodation does not displace or replace the homes from which students come, and hence, logically, the respondents have homes other than the residence. There is then no basis to seek the protection of PIE. Eviction does not render the students homeless.

[13] Second, the provision of student accommodation is for a finite period of time and it has a limited and defined purpose, that is, to accommodate students for the

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[2] *Lester v Ndlambe Municipality and Another* [2013] ZASCA 95; 2015 (6) SA 283 (SCA); [2014] 1 All SA 402 (SCA).
[3] Ibid para 17.
[4] *Barnett and Others v Minister of Land Affairs and Others* [2007] ZASCA 95; 2007 (6) SA 313 (SCA); 2007 (11) BCLR 1214 (SCA) para 38.

duration of the academic year and thereby assist them to study at the university. The arrangement is by its nature temporary and for a purpose that is transitory. Students who are assisted by CPUT with accommodation are well aware that this valuable benefit is of limited duration.

[14] Some legislative background is relevant to the third feature of the accommodation afforded to the respondents by CPUT. The *amicus* advanced submissions which placed the provision of student accommodation within the context of the Higher Education Act 101 of 1997 (HEA). UCT, for example, provides student accommodation, both on and off campus, to 8 040 students of some 28 000 students who are registered at the university. The *amicus* submitted that student accommodation is primarily an incident of the right to access to higher education, and higher education institutions, such as UCT, regulate access to student accommodation in terms of its institutional rules.

[15] In this regard, the *amicus* referred to the Policy on the Minimum Norms and Standards for Student Housing at Public Universities[5] (the Policy). The Policy, in relevant part, states as follows:

'*The Policy is applicable to all public universities and privately owned accommodation accredited by public universities*. These Norms and Standards should be incorporated into the criteria developed by *each public university* and stipulated in the university's policy and rules. Private providers shall establish clear and comprehensive standard lease agreements after consultation with relevant University officials and student representatives. Universities should rate and differentiate off-campus student accommodation according to standards set by each University.' (My emphasis.)

[16] This legislative backdrop is relevant to the third feature of the accommodation afforded to the respondents. This is particularly so in the context of the current scarcity of student housing in the higher education sector in our country. Those who are fortunate enough to benefit from accommodation provided by CPUT know 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

[5] Policy on the Minimum Norms and Standards for Student Housing at Public Universities, GN R 897, *GG* 39238, 29 September 2015.

those who have had the benefit of accommodation should yield to those who have not. And nothing about the position of the respondents suggests that this equitable principle should not continue to apply. It is also for this reason, as the *amicus* reminded us, that student accommodation forms part of the larger policy framework of higher education.

[17] These features of the student accommodation made available to the respondents indicate 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.

[18] It follows that PIE did not apply to the respondents' occupation of the property. 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. Accordingly, the appeal must be upheld.

[19] As the respondents have now vacated the property, we do not order their eviction. It suffices to declare that PIE did not apply to the unlawful occupation by the respondents of their student accommodation. The appellant was entitled to secure their eviction. As to costs, the appellants rightly did not seek a costs order against the respondents.

[20] In the result, the following order is made:

1 The appeal is upheld with no order as to costs.

2 The order of the high court is set aside and replaced with the following:

'(a) It is declared that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 did not apply to the unlawful occupation by the respondents of their student accommodation, and the applicant was entitled to secure their eviction.

(b) Each party to pay its own costs.'

N P MALI
ACTING JUDGE OF APPEAL

Appearances

For the appellant:	D C Joubert SC
Instructed by:	Cliffe Dekker Hofmeyr, Cape Town
	Claude Reid Attorneys, Bloemfontein
For the respondents:	R Nyman with N Mashava
Instructed by:	Herold Gie Attorneys, Cape Town
	McIntyre Van der Post, Bloemfontein
For the amicus curiae:	M O'Sullivan with T Sarkas
Instructed by:	Fairbridges Wertheim Becker, Cape Town
	Lovius Block Incorporated, Bloemfontein