MAGISTRATES' COURTS JUDICIARY

JOHANNESBURG

PRACTICE GUIDELINES: EVICTION IN TERMS OF THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998 (PIE)

Johannesburg Magistrates' Court, Civil Section

1. The application for eviction must be a separate application. The procedure to be adopted (except in urgent applications) is as follows:
   1.1 The notice of motion follows Form 1A of Annexure 1 to the rules (long form).
   1.2 The notice of motion must allow not less than ten days from date of service of the application for delivery of a notice of intention to oppose.
   1.3 The notice of motion must give a date when the application will be heard in the absence of a notice of intention to oppose. **All applications for evictions are to be set down for Court 25 and no other Court**.
2. After the eviction application has been served and no notice to oppose has been delivered, or if a notice of intention to oppose has been delivered at a stage when a date for the hearing of the application has been determined, the applicant may bring an *ex parte* interlocutory application authorising a section 4(2) notice and for directions on service.
3. The order authorising the section 4(2) notice and directing service and the notice should substantially conform to "Eviction Form A" and the section 4(2) notice should substantially conform to "Eviction Form B".
4. When determining a date for the hearing of an eviction application, sufficient time must be allowed for bringing the *ex parte* application, for serving the section 4(2) notice and for the 14-day notice period to expire. **The date for hearing must be arranged with Clerk of the Court – Trial dates at Room 1060**.

5. If the eviction application is postponed in open court on a day which notice in terms of section 4(2) was duly given, and if the postponement is to a specific date, it will not be necessary to serve another section 4(2) notice in respect of the latter date.
6. All reasonable efforts should be made to identify and cite and or join all occupants as respondents accordingly in eviction applications. Magistrates' Court will be unable to grant an eviction order against occupants who are only cited as "All Occupiers" or "All Unknown Unlawful Occupiers" or "Unlawful Occupiers" or "Unknown Occupiers".
7. The **local authority** that might be affected by an eviction order must be clearly identified and joined. Where the risk of homelessness may result, the availability of alternative accommodation becomes a relevant circumstance that must be taken into account.[1] A court will not be able to decide the justice and equity of an eviction without hearing from the local authority upon which a duty to provide temporary emergency accommodation may rest.[2][3]
8. An **agreement to an eviction order** would entail a waiver of, at a minimum, the constitutional and statutory rights: (a) to an eviction only after a court has considered all the relevant circumstances;[4] (b) to the joinder of the local authority and production by it of a report on the need and availability of alternative accommodation;[5] (c) to a just and equitable order in terms of PIE;[6] and (d) to temporary alternative accommodation in the event that eviction would result in homelessness.[7]
9. PIE enjoins the court to only make an eviction order after having considered **all the relevant circumstances** and satisfying itself that it is just and equitable to do so. When faced with a **settlement agreement**, a court may take this into account as one of the relevant circumstances in its just and equitable interrogation.[8]
10. In the **settlement agreement** the court must as a first step be satisfied that the parties freely, voluntarily and in full knowledge of their rights agreed to the eviction.[9]

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[1] *Occupiers of Erven 87 and 88 Berea v Christiaan Frederick De Wet NO and others* [2017] ZACC 18 ("*Berea*" case).
[2] *Berea* ibid at para. 61.
[3] This duty must be read together with section 4(7) of PIE Act, which provides that one of the circumstances which may be relevant to the just and equitable enquiry is "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". *Berea* ibid at para. 60.
[4] Section 26(3) of the Constitution.
[5] *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at para. 38. ("*Changing Tides*").
[6] Section 4(6) – (7) and 6(1) of PIE.
[7] *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC) at para. 96. ("*Blue Moonlight*").
[8] *Berea* case ibid at para. 66.
[9] *Berea* case ibid at para. 66.

11. The eviction applicant should also set out in their papers that they have fully considered and dealt with the nature of the enquiry under section 4 of PIE which was examined in *Changing Tides* as well as the two separate enquiries that must be considered by a court: "*Firstly*, that it must be decided whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 4(7) those factors include the availability of alternative accommodation. *Secondly*, the court would consider whether "what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order."[10]
12. The court will need to be informed of all the relevant circumstances in each case (personal circumstances of the respondent(s) and composition of households, for example, number of the elderly, men, women and children) in order to satisfy itself that it is just and equitable to evict and, if so, when and under what conditions.[11]
13. The obligation to provide the **relevant information** is on the parties to the proceedings. As officers of the court, attorneys and advocates must furnish the court with all relevant information that is in their possession in order for the court to properly interrogate the justice and equity of ordering an eviction.[12] Respondents should be encouraged to provide their personal circumstances in order to assist the court in determining the justice and equity of an eviction order.
14. The court will grant an eviction order only where: (a) it has all the information about the occupiers to enable it to decide whether the eviction is just and equitable; and (b) the court is satisfied that the eviction is just and equitable having regard to the information in (a).[13]
15. Where occupiers are not represented the Supreme Court of Appeal in *Changing Tides* has provided some guidance:

    "Where [unlawful occupiers] are not represented, courts may consider issuing *rule nisi* and causing it to be served on the occupiers (and if they are not present, the local authority), together with a suitably worded notice explaining the right to temporary emergency accommodation, how they access such accommodation, and inviting them to come to court to express their views on that issue at least."[14]

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[10] *Berea* case ibid at para. 44 – 45.

[11] *Berea* case ibid at para. 46.
[12] *Berea* case ibid at para. 47.
[13] *Berea* case ibid at *para. 48.*
[14] *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA) at para. 48. ("*Changing Tides*").

16. The applicant's papers should examine and outline the "valid defence" factor under section 4(8).[15] Accordingly a defence directly concerning the justice and equity of an eviction, not necessarily the lawfulness of the occupation, must be taken into account when considering all relevant circumstances.[16]
17. It follows that the eviction application should also set out and take into account the personal circumstances of the landowner. The effect of PIE is not and should not be effectively expropriate the rights of the landowner in favour of unlawful occupiers.[17] PIE should serve merely to delay or suspend the exercise of the landowner's full property rights until a determination has been made whether it is just and equitable to evict the unlawful occupiers and under what conditions.[18]
18. These practice guidelines first came into operation on the 5th August 2011.

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[15] 'Under section 4(8) the court is obliged to order an eviction "if the … requirements of the section have been complied with" and no valid defence is advanced to an eviction order.' (*Changing Tides* ibid at para. 12).
[16] *Berea* case ibid at para. 65.
[17] *Ndlovu v Ngcobo; Bekker v Jika* 2003 (1) SA 113 (SCA) at para. 17.
[18] *Ndlovu v Ngcobo; Bekker v Jika* ibid at para. 17. See also *Berea* case at para. 80.