**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**

Appeal Case No: **A242/2025**

Lower Court Case No: **Wynberg 12065/2024**

In the matter between:

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| **GARY PETERSON** | First Appellant |
| **TOUGHEEDAH ABRAHAMS** | Second Appellant |
| **ALL OTHER UNLAWFUL OCCUPIERS** | Third Appellant |
| **ZIYAAD ABRAHAMS** | Fourth Appellant |
| **GESAND ABRAHAMS** | Fifth Appellant |

and

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| **ABIGAIL MARRY NASSON N.O**<br>(In her capacity as the executrix of the Estate late<br>**JAMES DENVER PETERSON** | First Respondent |
| **THE CITY OF CAPE TOWN** | Second Respondent |

**Neutral citation**: *Peterson and Others v Nasson N.O and Another* Case No A242/2025 [2026] ZAWCHC (28-08-2026)

**Coram** : **LE GRANGE J** et **MAPOMA, AJ**

**Heard** : 22 May 2026

**Judgment** : 28 August 2026

**Summary :** ***Civil Appeal*** *– against the eviction order granted by the Magistrate's Court, Wynberg - in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land s Act 19 of 1998 (PIE) – primary grounds - sale agreement - alleged lien arising from improvements – precarium from the deceased owner and second appellant - just and equitable outcome.*

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**ORDER**

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1. The appeal is dismissed.

2. The appellants are ordered to pay costs of the appeal, jointly and severally, one paying the other absolved, and such cost to include counsel's costs on scale B.

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**JUDGMENT**

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**MAPOMA, AJ (Le Grange J concurring)**

[1] This is an appeal against the eviction order dated 28 May 2025, granted by the Wynberg Magistrates Court in favour of the first respondent, acting as the executrix of the Estate of the late James Denver Peterson, for the eviction of the appellants. The appellants also seek condonation for the late noting of the appeal, as the appeal was noted only on 29 September 2025, almost three months out of time.

[2] The first respondent opposes both the condonation application and the appeal itself. Although the first respondent opposed the condonation application and insisted on dismissing it and striking the appeal off the roll, the Court took the view that it would be in the interests of justice to hear both the condonation and the appeal and to consider all the issues to bring the matter to finality.

**Relevant Facts**

[3] The relevant background facts are as follows. The late James Denver Peterson ('the deceased') passed away on 28 August 2022. He was survived by his spouse, Roseline Lilian Peterson (Mrs Peterson), with whom he was married in community of property.

[4] During his lifetime, the deceased and his surviving spouse executed a will in terms of which the surviving spouse would inherit the half share of the deceased if she survived him for 10 calendar days, which happened in this case, resulting in Mrs Peterson being the sole heir of the joint estate.

[5] On 20 July 2023, the first respondent was duly appointed by the Master of the High Court as the executrix of the joint estate, whereupon she duly took over the control of the joint estate. The property that is the subject matter of these proceedings is an asset of the joint estate, thus making the first respondent the person in charge of the property.

[6] On 18 September 2024, the first respondent, realising that the appellants occupied the property without her consent, instituted the eviction proceedings in the Wynberg Magistrate's Court. The appellants opposed the eviction application, advancing various defences that include, *inter alia*, that the second appellant had a sale agreement with Mrs Peterson. They also averred that the

second appellant had a *lien* on the property because they made certain improvement believing that she owned the property.

[7] On 28 May 2025, the Magistrate, having heard the arguments from both parties, delivered judgment where she reasoned that the appellants were unlawful occupiers, and that it was just and equitable to evict them. The Magistrate granted the eviction order and directed in terms of section 4(8) of PIE, that the first, second, third, fourth and fifth appellants (the appellants) vacate the property by 9 August 2025.

[8] On 9 July 2025, the appellants lodged the notice of appeal, hence the condonation application for the late noting of an appeal and the appeal.

**Appeal grounds**

[9] On appeal, the central issue taken by the appellants is that the Magistrate failed to properly consider and find that the appellants had a valid defence to the granting of eviction against them. In this, appellants advanced three grounds in submitting that the Magistrate erred in her judgment, and that this Court should grant the appeal.

[10] The first ground is that the Magistrate should have found that the second appellant had a sale agreement in respect of the property and that she was not an unlawful occupier. On the back of this contention, it was also contended that by extension the other appellants occupied the property under the *precarium* of the second appellant. The second ground is that they have a lien in the property arising from the improvements effected by the second appellant on the property at a considerable cost. The third is that the Magistrate failed to properly consider what is just and equitable in terms section 4(7) of PIE, in that she

should have found that the first respondent has no alternative accommodation and would thus be homeless if eviction was granted.

[11] All the above grounds are heavily contested by the first respondent, who in short submits that the appeal is without merit.

**Issues**

[12] The court is therefore called upon to determine whether the appeal should succeed on the grounds advanced by the appellants. In particular, the Court has the to determine the appellants were unlawful occupiers and that it was just and equitable to evict them. More specifically the Court should determine, *first,* whether the second appellant had a valid sale agreement in respect of the property; *second*, whether the second appellant has a valid lien over the property arising from the alleged improvements on the property, and *third and last*, whether the assessment of just and equitable was properly considered by the magistrate.

**Sale agreement**

[13] The second appellant avers that she had concluded what she considers to be a binding offer to purchase (OTP) with Mrs Petersen, the deceased's widow. The document that she submitted as the OPT is *ex facie* a standard template of a Deed of Sale that is undated and unsigned. It contains the appellant's initials at the bottom of each page but is not signed by neither the second appellant nor Mrs Petersen.

[14] Section 2(1) of the Alienation of Land Act 68 of 1981 prescribed the formalities in respect of alienation of land. It provides that no alienation of land

is of any force or effect unless it is contained in the deed of alienation signed by both parties thereto, or their respective agents, acting in their written authority. In this case, the claimed deed of sale was not signed by any of the parties. Thus, it does not meet the requirements of a valid sale of property. The law is settled that a contract that does not comply with the requirements of section 2(1) of the above Alienation of Land Act is null and void *ab initio*. It follows that the alleged sale is non-existent.

[15] It must be pointed though that in the recent judgment of the Gauteng Division in *Dlomo v De Klerk and Others*,[1] the court found that section 2(1) of the Alienation of Land Act is inconsistent with the Constitution to the extent that it fails to protect the vulnerable purchasers of residential land who had paid full purchase price and subsequently face homelessness because their agreement was not reduced in writing. Whilst this judgment is a welcome development in the broader context of land acquisition, it is still subject to confirmation by the Constitutional Court.

[16] In any event, the *Dlomo* judgment does not provide any assistance to the appellants on the facts of this case. This is so because Mrs Petersen had no authority to sell the property without the authority the first respondent. As Mrs Petersen was married to the deceased in community of property, the property is co-owned by Mrs Petersen and the deceased's estate in two indivisible equal shares, and as such vests in the first respondent being the executrix in terms of section 13 read with section 26 of the Administration of Estates Act 66 of 1965, is the person in control of the property.[2]

[1] (GP) (unreported) case no 2023-078800, 2 October 2025
[2] Section 13 of the Administration of Estates Act, Act 66 of 1965 prohibits any person from liquidating or distributing the estate of any deceased person except under the Letters of Executorship or by direction of the Master of the High Court.

[17] During the argument, Counsel for the appellants advanced another contention that the first respondent, through her legal representative in their notice to vacate sent to the appellants, intimated that, in the event that the second appellant had occupied the property based on *precarium* she might have received from the deceased, such was terminated by the first respondent, and was confirmed in the notice to vacate. The appellants' argument is that until revoked the *precarium* denoted her lawful occupation, and that the other respondents occupied under the second appellant's *precarium*.

[18] In my view the contention of the *precarium* allegedly granted by the deceased or the second appellant is on shacky ground. In *Malan v Nabygelegen Estates,*[3] Watermeyer CJ defined a *precarium* as 'the legal relationship which exists between parties when one party has the use and occupation of property belonging to the other on sufferance, by the leave and licence of the other'. By its very nature, *precarium* is a personal right that can be revoked at will of the grantor on reasonable notice.[4] A question does arise as to whether, in a case like present, *precarium* arose, where the alleged grantor is deceased, or is the unlawful occupier.

[19] Given that it is a personal right, *precarium* does not survive the death of the grantor, unless the re-granted by the new owner.[5] In this case, forstaerters there is no evidence that the deceased granted *precarium* to the appellants to occupy. If at all it existed, the *precarium* that was presumably granted by the deceased terminated at the deceased's death. On the facts, it is obvious that upon the death of the deceased, whatever *precarium* if there was any, was not re-granted by the first respondent as the new owner.

[20] It follows that the other appellants suffer the same fate if theirs is a *precaruim* under the second appellant, because a grantor of *precarium* is assumed to have a

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[3] 1946 AD 562, 573

[4] Adamson v Boschoff and Others 1975(3) SA 221 at 227-D

[5] Philander v Makiet 2020 JDR 2099 at para 20

right to use or occupation of the property. Where the purported grantor is an unlawful occupier, there can be no enforceable *precarium,* considering the ordinary principles of property law encapsulated in the maxim *nemo plus iuris ad alium transferre potest quam ipse habet* (ie. no one can transfer to another a greater right than he himself has). Thus, the unlawful occupier cannot pass a personal right that it does not have. It follows that the submission that the other appellants occupied the property at the behest of the second appellant who herself was an unlawful occupier is without merit.

**Lien**

[21] Regarding the appellants' contention of lien over the property, it was submitted that the second appellant the second appellant, believing that she had validly purchased the property, effect material improvements to it at a cost of R500 000, and was thus entitled to exercise a right of retention of the property. The first respondent denies the existence of the lien in this case, contending that the second appellant was not a *bona fide* possessor at the time of effecting the improvements.

[22] It is trite that enrichment lien can be asserted as a defence against eviction.[6] In *Lakka v Buekes and Another*,[7] the court stated the legal position as follows:

> "It is trite that a bona fide possessor who has preserved or made improvements to another's property at his or her expense has a right of retention against the property to secure compensation for his or her necessary and useful expenses. This is a real right and an absolute defence against eviction by the owner or any future owners of the property. The exceptions being where ownership is acquired though a sale in execution where the purchaser was unaware of the right of retention and the retentor, with full knowledge of the sale fails to inform the purchaser of this right and sales in insolvency.

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[6] Passano v Erasmus (A163/2023) [2025] ZAGPPHC 249 (12 March 2025) at paragraph 25
[7] (CA & R 60/2018) [2020] ZANCHC 11 (23 March 2020) at paragraphs 57 and 58.

Where it is the previous owner of property who has been enriched (as in this case the Visagies) at the expense of the lien holder, it is to him that the lien holder should seek redress for purposes of a possible enrichment claim, but the right to retention can be held against the new owner (even though he or she has not been enriched) until the lien holder has been duly compensated."

[23] In *Pheiffer v Van Wyk and Others,*[8] the SCA stated the following:

"[12] A real lien (an enrichment lien) is afforded a person who has expended money or labour on another's property without any prior contractual relationship between the parties. The lien holder is entitled to retain possession until his enrichment claim has been met. It is an established principle of our law that the owner of the property subject to a right of retention may defeat the lien by furnishing adequate security for the payment of the debt"

[24] In this case, the real issue is whether, based on the facts, the second appellant qualifies as a *bona fide* possessor. Bona fide possession is when the possessor thinks, on reasonable or probable grounds, that he or she has some kind of ownership in the property possessed.[9] For the purposes of determining the right of retention, the Court in this regard has to make an objective assessment whether, on the objective evidence the second appellant would have subjectively thought that she had some kind of ownership when she embarked on improvements on the property.

[25] On the conspectus facts, the second appellant's contention that at the time she made the improvements she reasonably believed that she had a valid contract of sale implausible and cannot be sustained. In her own words, she delivered a document purporting to be a deed of sale, that she herself did not sign, to Mrs Petersen to sign. She did not receive the signed deed of sale, yet she effected improvements knowing that she was not the owner of the property as ownership of the property could only arise from a duly signed deed of sale.

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[8] 2015 (5) SA 464 (SCA) at 467.

[9] Wille's Principles of South African Law, 9th ed, 452

Further, nowhere does she state that she paid any purchase price for the property.

[26] Thus, in my view, it is inconceivable that the second appellant could have thought that she bought the property. She is not a *bona fide* occupier. Accordingly, her contention that she has a lien over the property is not sustainable and must fail. This takes me to the next issue of whether the second respondent, the City of Cape Town ('the City') did not provide adequate alternative housing to the first appellant whom, it is averred, would be rendered homeless should the eviction proceed.

**Just and equitable**

[27] The attack on the Magistrate's judgment is that she failed to consider the personal circumstances of the first appellant and the imminent homelessness in the event of eviction. The record shows that the Magistrate considered the municipal report of the City, that was submitted in terms of section 4(7). In its report, the offered the emergency accommodation to the qualifying persons. This was declined by the first appellant.

[28] In her judgment, the Magistrate properly considered the facts and struck balance between the interests of the property owner and those of the occupier as accordance with the principles laid down by the Constitutional Court[10] and the SCA,[11] in her determination of the just and equitable decision. In my view, the Magistrate cannot be faltered in that regard.

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[10] Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC); City of Johannesburg v Blue Moonlight Properties 39 (Pty) Ltd 2012 (2) 104 (CC)

[11] See City of Johannesburg v Changing Tites 74 (Pty) Ltd 2012 (6) SA 298 (SCA)

**Costs**

[29] It is an established principle that costs follow the results. I find no reason to deviate from this principle in this case. The first respondent has succeeded in opposing the appeal and is therefore entitled to an award of costs.

**Order**

[30] In the result, I would make the following order:

1. The appeal is dismissed.

2. The appellants are ordered to pay costs of the appeal, jointly and severally, one paying the other absolved, and such cost to include counsel's costs on scale B.

**ZL MAPOMA**

**ACTING JUDGE OF THE HIGH COURT**

**I agree and it is so ordered**

**A LE GRANGE**

**JUDGE OF THE HIGH COURT**

**Appearances**

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| Counsel for the Appellants | : | Adv WA Fisher |
| Instructed by | : | Attorneys, Cape Town |
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| Counsel for the 1st Respondent | : | Adv A Engelbrecht |
| Instructed by | : | Strauss Daly Inc, Cape Town |