

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE LOCAL DIVISION- MTHATHA)**

**CASE NO. 289/2016**

In the matter between:-

<b>NONDYEBO DANIEL</b>	1 <sup>st</sup> Applicant
<b>NOLUVUYO MAQENGQE</b>	2 <sup>nd</sup> Applicant
<b>NONTOKOZO NTSHANGASE</b>	3 <sup>rd</sup> Applicant
<b>FEZILE DLAMINI</b>	4 <sup>th</sup> Applicant
<b>GCOBISA BINJANA</b>	5 <sup>th</sup> Applicant
<b>YONELA VAVA</b>	6 <sup>th</sup> Applicant
<b>SIPHIWOKUHLE NODLABA</b>	7 <sup>th</sup> Applicant
<b>SIFISO NTOKONDABA</b>	8 <sup>th</sup> Applicant
<b>LUMKA MAPIPA</b>	9 <sup>th</sup> Applicant
<b>SOUTH AFRICAN STUDENT CONGRESS</b>	10 <sup>th</sup> Applicant
And	
<b>WALTER SISULU UNIVERSITY</b>	1 <sup>st</sup> Respondent
<b>VICE CHANCELLOR- WALTER SISULU UNIVERSITY</b>	2 <sup>nd</sup> Respondent
<b>DEAN OF STUDENTS</b>	
<b>WALTER SISULU UNIVERSITY</b>	3 <sup>rd</sup> Respondent

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**NOTICE OF APPLICATION**

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**BE PLEASED TO TAKE NOTICE THAT** the applicants shall at the hearing of this application on the 4<sup>th</sup> day of February 2016, seek an order on the following terms:-

- A. That the applicants be granted leave to seek relief as set out herein below and the notice of motion served upon the respondents on the 28<sup>th</sup> day of February 2016, be amended accordingly to be consistent with the below mentioned relief:-
1. That the applicant be and is hereby granted leave to bring this application as one of urgency in terms of rule 6 (12) (a) and (b) of the Uniform Rules of this Honourable Court and that the forms and services provided for in this Honourable Court be dispensed with.
  2. That a *rule nisi*, do hereby issue calling upon the respondents to show cause, if any, before this Honourable Court on the 23<sup>rd</sup> day of February 2016 at 10H00 or as soon thereafter as the matter may be heard why an order in the following terms should not be granted-
    - 2.1 that the respondents be interdicted and/or restrained from evicting the applicants from the university property;
    - 2.2 that the respondents be interdicted and/or restrained from prohibiting the applicants from entering the premises of Walter Sisulu University and not to evict the applicants;

**BE PLEASED TO TAKE NOTICE FURTHER THAT** the affidavits of **NONDYEBO DANIEL** together with annexures will be used in support of this application.

**BE PLEASED TO TAKE NOTICE FURTHER THAT** the applicant has appointed the offices of Mvuzo Notyesi Incorporated, whose address is fully set out hereunder, as the address at which it will accept service of all notices and documents in this application.

**BE PLEASED TAKE NOTICE FURTHER THAT** if the respondents intend to oppose this application, you are required:


1. To notify applicants' attorneys of record herein in writing, that they intend to oppose the application and in such notice appoint an address within 15 kilometers of the office of the Registrar, at which they will accept notice and service of all documents, as well as their, facsimile or electronic mail addresses where available by no later than 12H00 in the afternoon on 29<sup>th</sup> January 2016;
2. To file respondents' answering affidavit or question of law, if any, by not later than 12H00 in the afternoon on Monday , 1<sup>st</sup> day of February 2016; and
3. The applicants shall file their replying affidavit to the respondents' answering affidavit, if any, on the 3<sup>rd</sup> February 2016 at or before 9H00 in the morning together with their Heads of Argument;

4. The respondents shall file their Heads of Arguments, if any by not later than 9H00 on 3<sup>rd</sup> day of February 2016.

**PLEASE TAKE NOTICE FURTHER THAT** should no notice to oppose and answering affidavit or question of law be filed in terms contemplated above, this application will be enrolled for hearing on an unopposed basis on Tuesday, the 2<sup>nd</sup> day February 2016 at 10h00 or soon thereafter as the matter may be heard for an order setout above with no entertainment of applications for postponement.

**KINDLY PLACE THE MATTER ON THE FOR HEARING ACCORDINGLY.**

**DATED AT MTHATHA ON THIS 1<sup>st</sup> DAY OF FEBRUARY 2016.**



**MVUZO NOTYESI INC.**

Applicant's Attorneys

2<sup>nd</sup> Floor, T. H. Madala Chambers,

14 Durham Street

**MTHATHA**

**TO: THE REGISTRAR**

High Court

**MTHATHA**

AND TO : MESSRS FIKILE NTAYIYA & ASSOCIATES

Respondents' Attorneys

Suite 3rd -4th Floor

Sanlam Building

No. 50 Madeira Street

MTHATHA

Ref: Mr Ntayiya/am/T.9064

FIKILE NTAYIYA & ASSOCIATES

RECEIVED: 11/02/2016

ON: 01/02/2016

BY: B. [Signature]

50 MADEIRA STR. MTHATHA

IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE LOCAL DIVISION: MTHATHA)

In the matter between:

CASE NO. 289/2016

NONDYEBE DANIEL AND 9 OTHERS

APPLICANTS

VS

WALTER SISULU UNIVERSITY AND 2 OTHERS

RESPONDENTS

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JUDGMENT ON COSTS

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DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE YES/NO.

(2) OF INTEREST TO OTHER JUDGES YES/NO.

(3) REVISED.

18 Feb 16  
Date

Signature

DAWOOD, J:

1. The merits of this matter were settled out of court between the Applicants and the Respondents.
2. The Applicants accordingly did not seek any of the substantive relief claimed.
3. The only outstanding issue between the parties was that of costs with the Respondents arguing that each party should pay their own costs and the Applicants claiming that they were entitled to a cost order in their favour.
4. The Applicants' legal representative accepted that the merits of the matter were irresolvable on the papers but sought however to rely on the provisions of the Prevention of Illegal Eviction and Unlawful Eviction and Unlawful

Occupation of Land Act 19 of 1998 (hereinafter referred to as PIE) relying on the Respondents' failure to comply with the same as his basis for being entitled to a costs order against the Respondent.

5. The Applicants in so doing, for the purposes of their argument, accepted the Respondents contention that they were indeed in illegal occupation of the premises and based their entitlement to a costs order on the fact that the Respondent' actions fell foul of the provisions of PIE.
6. It is evident that if PIE is applicable, then on the Respondents' own version their eviction of the students would be unlawful, and the Applicant would be entitled to a costs order in the circumstances. However if it is found not to be applicable then no costs order in the Applicants favour would be warranted.
7. In determining the awarding of a cost order in this matter the applicability or otherwise of PIE is accordingly the decisive issue.

7.1 In determining this issue I have inter alia had regard to:

- a) The preamble of PIE which reads as follows:-

*"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"*.

- b) Inter alia the following authorities:-

- i) **Ndlovu v Ngcobo**<sup>1</sup> where Harms JA stated as follows:

*"[3]PIE has its roots, inter alia, in s 26 (3) of the Bill of Rights, which provides that '**no one may be evicted from their home without an order of court** made after consideration of all the relevant circumstances'. Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others 2001 (4) SA 1222 (SCA) at 1229E. it invests in the court the right and duty to make the order, which, in the circumstances of the*

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<sup>1</sup> 2003 (1) SA 113 SCA at 119 par 3

case, would be just and equitable and it prescribes some circumstances that have to be taken into account in determining the terms of the eviction.”

ii) In *Barnett and Others v Minister of Land Affairs and Others*<sup>2</sup>

“[37] On balance, I tend to agree with the government's argument that considerations of fairness and equity do not favour the defendants' continued stay. But, as I have said, this whole debate had been introduced by the defendants on the basis of the expressly stated hypothesis that the provisions of PIE have a bearing on the case. Thus the pivotal question is whether PIE does in fact apply. It is to that question I now turn. **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 ss 4(7) and 4(9)) and, secondly, by the wording of the preamble, which, in turn establishes a direct link with s 26(3) of the Constitution (see eg *Ndlovu v Ngcobo*; *Bekker and Another v Jika* 2003 (1) SA 113 (SCA) ([2002] 4 All SA 384) in para [3]). The constitutional guarantee provided by s 26(3) is that '**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**'.

[38] This leads to the next question: can the cottages on the sites that were put up by the defendants for holiday purposes be said to be their homes, in the context of PIE? I think not. Though the concept 'home' is not easy to define and although I agree with the defendants' argument that one can conceivably have more than one home, the term does, in my view, **require an element of regular occupation coupled**

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<sup>2</sup> 2007 (6) SA 313 SCA at 327 par 37 – 49 the following was said



*with some degree of permanence. This is in accordance, I think, with the dictionary meanings of home: 'the dwelling in which one **habitually lives; the fixed residence of a family or household; and the seat of domestic life and interests'** (see eg *The Oxford English Dictionary* 2 ed vol VII). It is also borne out, in my view, by the following statement in *Beck v Scholz* [1953] 1 QB 570 (CA) at 575 - 6:*

*'The word "home" itself is not easy of exact definition, but the question posed, and to be answered by ordinary common sense standards, is whether the particular premises are in the personal occupation of the tenant as the tenant's home, or, if the tenant has more than one home, as one of his homes. Occupation merely as a convenience for . . . occasional visits . . . would not, I think, according to the common sense of the matter, be occupation as a "home".'*

[39] Moreover, within the context of s 26(3) of the Constitution - and thus within the context of PIE - I believe that my understanding of what is meant by a 'home' is supported by Sachs J, speaking for the Constitutional Court, in *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) (2004 (12) BCLR 1268) in para [17], where he said:

*'Section 26(3) evinces special constitutional regard for a person's place of abode. It acknowledges that a home is more than just a shelter from the elements. **It is a zone of personal intimacy and family security.** Often it will be the the only relatively secure space of privacy and tranquillity in what (for poor people, in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that has established itself on a site that has become its familiar habitat.'*

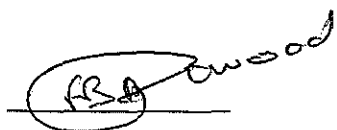
[40] These sentiments cannot, in my view, apply to holiday cottages erected for holiday purposes and visited occasionally over weekends and during vacations, albeit on a regular basis, by persons who have their habitual dwellings elsewhere. Thus I conclude that for purposes of

one has regard to the preamble of the Act and who it is intended to protect.

- 7.7 I accordingly having regard to the authorities referred to and the facts peculiar to this case find that the provisions of PIE are not applicable to the present Applications and the Applicants cannot rely upon the non-compliance with PIE as a basis for their entitlement to costs.
8. I however wish to caution that this does not grant a license to institutions to simply “evict” students from their rooms without adequate notice or following due process.
9. There has to be a disciplinary process and code of conduct that needs to be agreed upon, implemented and followed for situations where it becomes necessary for students to vacate university premises, if one does not already exist.
10. Students do need to be given adequate notice ordinarily since their deprivation of accommodation and access to study materials would cause them prejudice.
11. The Respondents version is that they had no alternative but to act in this manner due to the prevailing circumstances, the mounting destruction to University property, threats to personnel and their inability to hold a meeting with the students.
12. It appears on the Respondents’ version that the circumstances were extra ordinary in this case, that is why they resorted to extremely drastic measures called for by dire circumstances.
13. I am in light of the foregoing, in the circumstances of this case inclined to exercise my discretion by ordering that each party pays their own costs.

14. I accordingly make the following order:-

- a) Each party to pay their own costs.

A handwritten signature in black ink, appearing to read 'DAWOOD J', is written over a horizontal line. The signature is stylized and somewhat cursive.

DAWOOD J

JUDGE OF THE HIGH COURT

DATE HEARD:

04 February 2016

JUDGMENT DELIVERED:

18 February 2016

FOR THE APPLICANTS:

MR NOTYESI

INSTRUCTED BY:

MVUZO NOTYESI INC.

2<sup>ND</sup> FLOOR, T H  
MADALA CHAMBERS,

14 DURHAM STREET

MTHATHA

FOR THE DEFENDANTS:

MR BODLANI

INSTRUCTED BY:

FIKILE NTAYIYA & ASS

SUITE NUMBER 3 - 4<sup>TH</sup>  
FLOOR

SANLAM BUILDING

MTHATHA