

## VARIATION OF EVICTION ORDERS AMIDST A PANDEMIC

In this article we report on how we were successful in having an eviction order, that was granted under lockdown, amended, to allow the owner to regain possession of the property while the National State of Disaster continued.

### Evictions under covid regulations

Eviction is a legal process which is conducted via the court system and no person may be evicted without following due process. The relationship between landlord and tenant and the process of eviction can be complex and burdensome. Add to that a declaration by the President on 15 March 2020 of a national state of disaster, brought on by a global pandemic and things get even more challenging.

During these unprecedented times, the courts have still been able to hear and grant eviction orders. Although, in accordance with regulation 70(2) in effect as of 1 October 2021, when South Africa moved to Alert Level 1, “a competent court may suspend or stay an order for eviction or demolition contemplated in sub-regulation (1) until after the lapse or termination of the national state of disaster unless the court is of the opinion that it is not just or equitable to suspend or stay the order...”

The eviction order:

We dealt with a matter last year where the magistrates court granted an eviction. The court however ordered that the eviction order be stayed until the end of alert level 1. As it could not be predetermined when this date would arise, and after nearly a year from the date on which the order was granted, we approached the court for a variation of the eviction order on the following grounds:

1. The eviction order was ambiguous; and
2. It could not be regarded as just and equitable to further stay or suspend the eviction order.

### The Ambiguity of the Eviction Order

In interpreting any court order in the face of ambiguity, a sensible interpretation is preferred to one which undermines the purpose of the order. Although it was clear from the order that the court intended that the eviction order be stayed until the end of Lockdown Level 1, it was unclear from the wording whether the tenants would be required to vacate the property as soon as lockdown level 1 was lifted, and on what date the sheriff would be authorised to evict them. It was further ambiguous as to whether it was intended that the eviction order be stayed regardless of whether alert level 1 was followed by a lower or higher level, or whether the end of level 1 was intended to mean the end of the state of disaster.

## Considerations of Justice and Equity:

While PIE (The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act) and further rental housing legislation is aimed at protecting tenants from unfair treatment at the hands of their landlord, it is not intended to unduly prejudice the owner of property's entitlement to the use and enjoyment of their property. The courts are therefore tasked with having to strike a balance between the rights and interests of the landlord and the tenant. Thus, the term 'just and equitable' is a relevant aspect to consider in respect of all parties to eviction proceedings and not just in regard to the interests of those individuals illegally occupying the property.

The intention of PIE is not to expropriate private property. The purpose is instead to delay or suspend the exercise of the owner's entitlement to the property until such a time that the court has made a determination as to whether an eviction would be just and equitable in the circumstances of the case.

In our matter, the court granted an eviction order on 17 September 2020. The tenants continued to live in the property rent-free for nearly a year, without the owner's consent and under the auspices and protection of a court order.

## Our case:

In our request to the court to vary the eviction order, we contended that allowing the tenants to live in the property, against the owner's will and without paying rent, had the effect of expropriating the owner's private property beyond what is constitutionally permissible and beyond what can be said to be just and equitable. We argued that the eviction order as it stood had the effect of imposing a positive obligation on the landowner to provide free housing to the illegal occupiers of the land. This was not, in our opinion, a display of balancing of what is just and equitable for both parties, and it was submitted to the court that further staying the order would amount to an unjustifiable limitation on the landowners' rights in their property.

The court agreed with our argument and the application to vary the eviction order was successful. The tenants were then ordered to leave the property at the end of January 2022.