

## ISSUE 11 – 2023

### EVICTING STUDENTS: NOT ALL LEASES ARE ALIKE

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

*In this matter the Supreme Court of Appeal held that the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”) does not apply in instances where students are evicted from residences at a higher education institution. The judgment is very important for universities across the country. Beware though that in many news reports and internet articles on this judgment, there appears to be a presumption that the judgment applies to student accommodation generally. This is not so.*

The Judgment can be viewed [here](#).

### FACTS & DISCUSSION

The matter was brought to the Supreme Court of Appeal by Stay at South Point Properties (Pty) Ltd (‘South Point’), which appealed a 2021 Western Cape High Court order that dismissed its application to evict students from a Cape Peninsula University of Technology (‘CPUT’) residence. South Point had leased the premises to CPUT which, in turn, leased rooms in the residences to its students for the duration of CPUT’s academic year (in this case, the end of November 2020).

At the end of the 2020 academic year, the students remained in occupation and refused to vacate, even after receiving the requisite notice from CPUT. South Point consequently approached the Western Cape High Court in January 2021 for an order evicting the students, placing reliance on the *rei vindicatio*. (The *rei vindicatio* is the primary remedy for an owner who is reclaiming possession of his property from a defendant.)

The students defended the matter and argued that the provisions of PIE had to be followed and that they were entitled to the protection that is offered to occupiers under PIE. But South Point argued that PIE did not apply in the specific instances, as the application related to eviction from CPUT student premises which did not constitute a home, as meant in PIE.

### HELD

- The SCA stated that the central issue in this dispute was whether the student residence constituted a home, with the consequence that by evicting the students from the residence, they would be rendered homeless. If the occupation of land does not constitute the home of an occupier, PIE does not apply.
- The SCA emphasised that a home is a place with regular occupation and some degree of permanence. But the accommodation in the present matter, was different because:

1. Firstly, the student accommodation provided did not, unless otherwise shown, replace the homes from which the students came to study at CPUT. They had homes other than the residence. There was therefore no basis for them to seek the protection of PIE, as eviction would not render them homeless.
2. Secondly, the student accommodation was provided for a finite and temporary period and for a limited, defined, and transitory purpose, namely, to accommodate students for the academic year and facilitate their studies.
3. Last of all, the legislative context is relevant: It posits that provision of student accommodation occurs within the context of the Higher Education Act 101 of 1997, and that higher learning institutions make student accommodation available primarily as an incident of the right to access to higher education.

The higher education institutions, such as CPUT, therefore regulate access to student accommodation in terms of its institutional rules. In this regard, the Policy on the Minimum Norms and Standards for Student Housing at Public Universities (the Policy) must also be considered, especially the following:

*'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.'* (Our Emphasis)

This legislative backdrop and Policy is particularly relevant in the present matter because of the ongoing 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 these students enjoyed. Equity requires that those who have had the benefit of accommodation should yield to those who have not. Nothing about the position of the students in the present matter suggests that this equitable principle should not continue to apply.

- In conclusion, it is these features of the student accommodation in this matter that indicate that the 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.*

The SCA thus held that the residence or student accommodation made available to the students did not constitute a home. Accordingly, South Point was entitled to evict the students based on the *rei vindicatio*.

## COMMENT

In the instance where private home owners lease premises to students, the position is different. This is because of various considerations, including:

1. The rental is not “by its nature temporary and for a purpose that is transitory” in the same way as the student accommodation in the present matter. Private lease agreements for students are usually for a full 12 months and similar to any other residential lease agreement.
2. In many instances, the private landlords are not accredited with the higher learning institution (as referred to in the Policy) and neither is the premises made available by the higher institution. Rather, the landlords themselves advertises their premises for rent.

Therefore, beware of news and other internet articles that state casually that PIE does not apply in the event of eviction of students from accommodation. It is most likely to be applicable in the sphere of private leasing.