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most caring and liveable city**



UNLAWFUL OCCUPATION AND LAND INVASIONS – EVICTIONS & INTERDICTS

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UNLAWFUL OCCUPATION

- Occupation of land without the consent of owner or person in charge or without any right in law to occupy such land
- Owner means registered owner of land including an organ of state
- Building or Structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter
- All spheres of Government are always affected when land is invaded or unlawfully occupied because of the need for alternative accommodation.
- The Municipality has a duty to evict those who unlawfully occupy its land.



EVICTION – PIE ACT

- Eviction means deprivation of a person of occupation of a building or structure, or the land which such building or structure is built, against his/her will
- If eviction is initiated while unlawful occupation is less than 6 months, the Court may grant eviction order if it is just and equitable to do so, considering relevant factors such as rights and need of the elderly, children, disabled persons and women headed households
- If unlawful occupation exceeds 6 months, in addition to the above, the Court will consider whether land has been made available or can reasonably be made available by a municipality or another organ of state for relocation of unlawful occupier



EVICTON BY ORGAN OF STATE

- Organ of state may institute proceedings to evict unlawful occupier from the land falling in its area of jurisdiction and Court may grant such order if it is just and equitable to do so and if:
 - Such organ of state's consent is required for the erection of a building or structure on that land or for the occupation of the land and the unlawful occupier did so without such consent; and
 - If it is in the public interest to grant such an order
- Public Interest includes interests of health and safety of those occupying the land and the public in general



JUST AND EQUITABLE

- In deciding what is just and equitable, the Court takes into account:
 - The circumstances under which the unlawful occupation of land and the erection of buildings or structures took place;
 - The period of unlawful occupation of the land in question by the unlawful occupier and his/her family; and
 - The availability of suitable alternative accommodation or land for the unlawful occupier



OTHER PIE ACT REMEDIES

- Any person who receives or solicits payment as a fee or charge for arranging or organising or permitting a unlawful occupation is guilty of an offence and liable to a fine or imprisonment not exceeding two years or both
- The convicting court must order money received by such person to be forfeited and paid to the person from whom it was received or National Revenue Fund
- Urgent eviction proceedings, pending determination of final order, if:
 - There is real and imminent danger of injury or damage to any person or property in unlawful occupier is not immediately evicted from the land
 - Likely hardship to the owner or other affected person, if the order is not granted, exceeds likely hardship to the unlawful occupier if the order is granted
 - No other effective available remedy



INTERDICTS

- There are two types, i.e. Interim and Final Interdicts with different requirements
- Requirements for Interim Interdict are, that the applicant must show:
 - *Prima facie* right
 - Reasonable apprehension of irreparable harm
 - Balance of convenience
 - Unavailability of other satisfactory remedy
- For Final Interdict, the applicant must show:
 - Clear right
 - Actual or reasonable apprehended harm
 - Absence of other satisfactory remedy



THE COURTS

- In March 2014, the Cape Town High Court, in *Fischer & City of Cape Town v Ramahlele & Others*, ruled that the municipality had a legal right to evict in privately owned land and even unoccupied shacks constituted homes because the builders intended to live in them, therefore PIE Act was applicable
- In June 2014, the SCA overturned the judgment and referred it back for hearing of oral evidence because oral evidence would establish whether the structures were occupied or not. If they were not occupied, PIE Act was not applicable
- In June 2014, the Constitutional Court, in the *Jabulani Zulu & Others v eThekweni Municipality & Others*, was critical of a court order that was widely worded such that it encompassed both an interdict and an eviction order, circumventing the application of the PIE Act



RULE OF LAW

- Courts have acknowledged that there is potential conflict between PIE Act and the right of the lawful owner and possessor of land
- Courts have also noted that granting of remedies to unlawful occupiers should not be viewed as condonation or rewarding of their unlawful acts but municipalities still need to act within the confines of the law as they run the risk that civil unrest may result as a response to their actions and anarchy would seriously undermine the constitutional state
- Sometimes municipality may get eviction orders that are impossible to carry out because of volatile situations, like in the hostels, e.g. Chala & 60 Others: Glebelands



THANK YOU!

END