



Eviction Refused – Landowners, Unlawful Occupiers and the “Just and Equitable” Test

“PIE recognises that in appropriate circumstances the right to full exercise of ownership must give way, in the interest of justice and equity, to the right of vulnerable persons to a home.” (Extract from judgment below)

“Unlawful occupiers” of land have strong rights under our Constitution and other laws, and most property owners and landlords understand the need to tread carefully whenever the issue of eviction arises. They are required to comply fully with the provisions of PIE (the “Prevention of Illegal Eviction and Unlawful Occupation of Land Act”) – certainly achievable but never to be taken lightly. Bear in mind that a court order is required before eviction, with additional restrictions applying during the pandemic lockdowns.

A recent Supreme Court of Appeal (SCA) decision shows just how energetically our courts will enforce those occupier rights, even when the strict letter of the law appears to be 100% in favour of the landowner.

The 84 year old grandmother who can live on in her childhood home

- A landowner bought on a liquidation auction a piece of land and a house occupied by an 84 year old widow and her disabled son.
- The widow had lived in the house since she was 11 years old, her father being employed by the farm owner at the time. She in due course married another farm employee and lived on in the house with him. Widowed, she was reassured by verbal undertakings from previous owners that she had a lifelong right to live on in the house.
- But when the new purchaser of the property (by now no longer farmland but an urban sub-division of the original farm) she was unable to produce any written agreement confirming her life right to occupation.
- The new owner then gave the widow and her son notice to vacate and when they refused to leave, he obtained an eviction order from the magistrate’s court.
- After a 12 year trek through the courts, the SCA finally confirmed the setting-aside of the eviction order, and the importance of this to landowners lies in the fact that the owner here had jumped through all the hoops required by PIE -
 - The verbal “lifelong right of occupation” granted by previous landowners was not enforceable against subsequent buyers,
 - The landowner had removed his consent to the occupants’ right of occupation, thereby terminating it,
 - The occupants were therefore “unlawful occupiers”,
 - The landowner had offered them suitable alternative accommodation.

A Court’s discretion to refuse eviction – the “just and equitable” test

- Our courts always retain a discretion to refuse eviction from residential property and “must be satisfied that the eviction is just and equitable”.
- The SCA held that in all the circumstances and facts of this particular case, eviction would not be just and equitable. Major factors were clearly the widow’s advanced age, her 73 year history of living in the house, her disabled son, and her reliance on verbal assurances from previous owners that she had a lifelong right of occupation (which she clearly if mistakenly believed would be enforceable against new owners).
- Had the land still been farmland the widow would have enjoyed the protection given to farmworkers by ESTA (the “Extension of Security of Tenure of Land Act”) and although the land had now changed to urban land, “her status as a vulnerable person, even in the context of PIE, has essentially remained unchanged.”
- Commenting that “No case in which an order of eviction from a residence is sought can ignore the visceral reality of what is sought, namely the ejection of a person from their home in vindication of a superior right to property. Nor can the legal process by which the order is obtained be divorced from our fraught history of eviction and ejection of vulnerable persons from their homes”, the Court held in all the circumstances that this was a case in which considerations of justice and equity “outweighed protection of the exercise of the right to property that an entitlement to an order of ejection provides.”
- This despite the landowner’s offer to give the widow alternative accommodation in the form of ownership of a unit in a secure residential complex, an offer she turned down because “She was accustomed to life in the house she presently occupied and enjoyed not only the freedom and space it afforded her but also the environment around it.”
- The offer of alternative accommodation, although made in good faith by the landowner, did not tilt the scales in favour of eviction because “This was not a case in which the reasonableness or otherwise of an unlawful occupier’s refusal to vacate was a central issue ... The true issue concerned the dignity of an elderly and vulnerable woman and a person with disabilities in the circumstances of the first respondent and her son. To hold that these weighty considerations are to give way merely because an alternative abode is offered would negate the first respondent’s dignity rather than protect it.”

The lesson for landowners and landlords

The significance of the landowner’s defeat here is perhaps best summarised in the Court’s own words (emphasis supplied): **“PIE recognises that in appropriate circumstances the right to full exercise of ownership must give way, in the interest of justice and equity, to the right of vulnerable persons to a home.”**

Before buying property, check for any occupiers, “lawful” or not, and make sure that you can evict them if you need to. As a landlord, ensure that your lease is watertight, and your legal rights protected. There is no substitute for full and specific professional assistance!

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