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## UNINTENDED CONSEQUENCES OF THE PIE ACT

The Prevention of Illegal eviction from and Unlawful Occupation of Land Act commenced on 5 June 1998 (PIE).

PIE was brought about to ensure that no natural person may be arbitrarily removed from their residence, unless so ordered by the court. In simple terms, no property owner may remove residential tenants or unlawful occupiers without a Court Order authorizing the Sheriff to carry out an eviction. PIE has placed additional burdens on the property owner in that he/she now has to go further to prove to the Court that it would be just and equitable for the Court, after considering all relevant circumstances, to grant an eviction order. PIE has added various hurdles to property owners who are seeking to reclaim their property lawfully.

The general public is of the view that PIE has afforded tenants and unlawful occupiers greater rights than that of the lawful owner of the property, which, for the most part, is true. However, a significant, and likely unintended, consequence of PIE is that it is now **easier** for an Owner to bring an eviction application against an unlawful occupier who is residing on the property.

Prior to the Commencement of PIE, the jurisdiction of the Courts to hear eviction matters was governed by Section 29(1)(b) of the Magistrates' Court Act 32 of 1944. Under this section, the Magistrates Courts could only hear Action Proceedings in terms of Residential and Commercial Evictions, and same were limited by the monetary value of the tenant's right to occupation.

Action Proceedings require witnesses and oral evidence, and can become arduous, lengthy and often expensive, should the matter become opposed. Many attorneys prefer bringing their Clients' matters to Court by way of Application Proceedings, as they are generally faster and cheaper as evidence is made by way of written submissions. Prior to PIE, when approaching the Magistrates' Court for an eviction order, owners could only make use of Action Proceedings, which if opposed was often a very lengthy process. If an owner wanted to seek the eviction order by way of Application Proceedings, he/she would have to approach the High Courts of South Africa, which is generally a more expensive process than that of Magistrates' Court.

However, due to Section 9 of PIE, Magistrates' Court now has jurisdiction to hear **both** Action and Application proceedings with regard to residential evictions. It is important to note that PIE only applies to residential occupancy and eviction, and excludes commercial occupation and eviction matters. This means that owners of commercially let property cannot bring commercial evictions before a Magistrates' Court by way of Application proceedings. Further, owners of residential property no longer need to concern themselves with the value amount of the tenant's right to occupation, as they don't need to comply with Section 29(1)(b) if they bring their eviction by way of Application.

Thus an anomaly is present in South Africa's eviction process, in that there are now more options available to property owners seeking to evict residential tenants than there are for property owners seeking to evict commercial tenants. Should the latter wish to bring an eviction by way of Application, they are required to do so out of one of the High Courts of South Africa. The irony is that companies who rent to commercial tenants are now approaching the High Court to obtain an eviction order, whilst property owners who rent to residential tenants are now able to go out of a lower court when seeking the eviction of their tenants.

Whilst PIE generally added more obstacles to an owner looking to lawfully evict unlawful occupiers, it simultaneously gave that owner an extra option in the eviction process, one which is now used frequently to seek the eviction of residential tenants.

To obtain an eviction order in the quickest and least arduous way possible, whether commercial or residential, it is essential to use attorneys that specialize in the eviction process and its many nuances. Alan Levy Attorneys are specialists in property law, and have a highly experienced and effective eviction and rental collection department that provides high quality and efficient service to its customers.

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