

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 30029/2012

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/ NO
(3)	REVISED.
02/04/13 DATE SIGNATURE	

In the matter between:

BUYLINES 168 (PTY) LTD

Applicant

and

MABULA, EMMANUEL JOHN

First Respondent

MABULA, LUCY ETHEL

Second Respondent

CITY OF JOHANNESBURG

Third Respondent

**ILLEGAL OCCUPANTS OF ERF 441
WINDSOR WEST, RANDBURG**

Fourth Respondent

JUDGMENT

KGANYAGO, AJ:

- [1] This is an eviction application in which the applicant is requesting the court to grant an order evicting the first, second and fourth respondents from the property known as erf 441 Windsor Township, situated at 15 Duchesses Avenue, Windsor West, Randburg ("the property").
- [2] The first and second respondents were initially the registered owner of the property. The first and second respondents had a loan agreement with Nedbank in terms of which a mortgage bond was registered over the property. The first and second respondent fell in arrears with their bond repayments. Nedbank obtained a judgment against the first and second respondents and sold the property in a sale in execution on the 12th February 2008. Nedbank bought that property during the sale in execution for R 710 000-00.
- [3] On the 27th July 2011 the applicant bought the property from Nedbank for R350-000-00. The property was registered in the names of the applicant on the 17th May 2012.

- [4] On the 13th February 2012 Nedbank informed the first and second respondents that the applicant has bought the property. Nedbank gave the two respondents notice to vacate the property within 30 days. They did not vacate the property.
- [5] On the 10th of August 2012, the applicant instituted the present proceeding wherein they are seeking to evict the respondents. The first and second respondents are opposing the applicant's application, whilst the third and fourth respondents did not enter any notice to oppose. The first and second respondent issued summons against Nedbank and the applicant on the 13th September 2012 wherein they are seeking to set aside the sale in execution which took place on the 12th February 2008.
- [6] The respondents has raised three points in *limine* in their answering affidavit, however, they abandoned the three points in *limine* when they argued their case. Their main contention now is that there is a pending action against the applicant and Nedbank, and that the present application be stayed pending the outcome of the action that they have instituted against the applicant and Nedbank.
- [7] The first and second respondents have issued summons against the applicant and Nedbank on the 13/09/12. The said summons have not yet been served on the applicant and Nedbank. The sheriff has attempted to serve the applicant on the 14/09/12, but there was a

return of non-service. As per the sheriff's return of non-service, the applicant was no longer carrying on business at that premises.

[8] The applicant has brought their application for eviction of the respondents in terms of the PIE Act. The question is whether the respondents are the unlawful occupiers within the meaning of the PIE Act and also whether the applicant have made out a case for the eviction of the respondents in terms of the PIE Act. The other question is whether it is just and equitable to grant an eviction order.

[9] According to the PIE Act an unlawful occupier is any person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provision of this Act, would be protected by the provision of the Interim Protection of Informal Land Rights Act, 1996 (Act no 31 of 1996)

[10] The respondents does not dispute that the property is now registered in the names of the applicant. The respondents occupy the said property without the consent of the applicant. The applicant in their papers has made an allegation that the respondents are in unlawful occupation of the property and the respondents did not dispute that. Therefore, in my view the respondents are in unlawful occupation of the property.

[11] The respondents have been aware that the property has been sold in execution since 2008. They did nothing to set aside the sale in execution. The respondents only acted after they were served with an eviction application by the applicant. Their claim against Nedbank might have even prescribed since three years has lapsed since the property was sold in execution by Nedbank. Even up to date the said summons has not yet been served on the applicant or Nedbank. The respondents have failed to present satisfactory and convincing reasons as to why it took them more than four years before they institute their action for setting aside the sale that took place during 2008. That shows that the respondents have no interest in their case but just wanted to frustrate the applicant in taking occupation of its property.

[12] Beside contending that the proceeding should be stayed pending the outcome of the action that they have instituted against Nedbank and the applicant, the respondents have failed to submit any reasons why they should not be evicted. The occupiers become liable to eviction and attract the provision of PIE only if they are in unlawful occupation. No evidence was presented relating to the vulnerability of the respondents.

[13] The applicant did not consent to the respondents occupying the property. Therefore in my view, the applicant has made out a case for the eviction of the respondents from the property.

[14] The difficult question is whether despite the action which the first and second respondents have instituted against Nedbank and the applicant, they should be evicted. The first and second respondent had more than four years to challenge Nedbank but they failed to do so. On the 13th February 2012 Nedbank notified them to vacate the property and they did nothing. They only acted sometimes during September 2012 after they received the eviction application by the applicant. The summons which they have issued against the applicant and Nedbank has not yet been served. Basically there is no action that is pending.

[15] It is therefore the court's finding that is just and equitable that the respondents be evicted from the property.

ORDER

[16] The following order is made:

- (1) The respondents vacate the immovable property described as no 15 Duchesses Avenue, Windsor West, Randburg, Johannesburg on or before the 30th June 2013, failing which the sheriff be authorized to evict the respondents from the immovable property if they did not vacate the immovable property by the 30th June 2013.

- (2) The first and second respondents are ordered to pay the costs of the applicant jointly and severally, the one paying the other to be absolved.



M F KGANYAGO
ACTING JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG