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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2016/13915

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

.....
DATE

.....
SIGNATURE

In the matter between:

**THE MEC FOR HUMAN SETTLEMENTS & LOCAL
GOVERNMENT, GAUTENG PROVINCE**

APPLICANT

And

**MADULAMOHO HOUSING ASSOCIATION
(PTY) LTD (ASSOCIATION INC UNDER SEC 21)
(REG NO: 2004/012568/08**

FIRST RESPONDENT

THE SHERIFF OF SOWETO WEST

SECOND RESPONDENT

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

THIRD RESPONDENT

**THE SOCIAL HOUSING REGULATORY
AUTHORITY**

FOURTH RESPONDENT

**MOTHLATHEDI, VICTORIA M & 88
OTHERS LISTED IN ANNEXURE “A”
TO THE NOTICE OF MOTION FIFTH TO FURTHER RESPONDENTS**

J U D G M E N T

TWALA AJ

[1] On the 20 April 2016, the Applicant appeared before Keightley J on urgent basis and was granted an order in the following terms:

A. Pending the outcome of the proceedings for final order, the Respondents as appear on Annexure A hereto be evicted from the property situate at:-

[J.....] [V.....], [S.....], [1.....]

And more fully described as:-

PORTION 3 OF ERF [2.....] [J.....] TOWNSHIP

REGISTRATION DIVISION, I.Q. GAUTENG

(hereinafter referred to as “the property”).

B. The Respondents are to vacate the property by 12H00 on 25 April 2016

C. In the event that the Respondents do not vacate the property within that period, the Sheriff of the Court or his lawfully

appointed Deputy is authorised and directed to evict the Respondents from the property.

D. Final eviction proceedings under section 4 of PIE are to be instituted within 10 (ten) days of the order of this Court.

E. Costs of the application shall be costs in the final eviction application.

[2] Before me, the Applicant, similarly on urgent basis, brought this application seeking an order in the following terms:

- I. Dispensing with the forms, service and the time periods stipulated in the Rules for the conduct of proceedings in the above Honourable Court, and disposing of this application as an urgent application in accordance with the provisions of Rule 6(12);
- II. That the order handed down by the Honourable Justice Madam Keightley on 20 April 2016 is suspended until 10 May 2016;
- III. Alternatively, that the execution of the order granted by the Honourable Justice Madam Keightley on 20 April 2016 is suspended until 10 May 2016;
- IV. The Third Respondent is ordered to immediately determine which of the 5th to further respondents identified in annexure

“KD1” to the applicant’s notice of motion will be rendered homeless by the eviction order granted by the Honourable Justice Madam Keightley and thereafter provide such homeless persons with emergency accommodation.

- V. That the respondents pay the costs of this application only in the event of this application being opposed.

The First Responded filed its opposition to this application. Further, due the urgency of this case, I handed down an order making prayers 1, 3 and 4 of the notice of motion an order of Court.

- [3] It is common cause that the Fifth to Further Respondents are occupiers of dwelling units in a Social Housing Scheme in the abovementioned property owned by the First Respondent. The Fifth to Further Respondents signed lease agreements with the First Respondent but have since failed to perform in terms of the lease agreement in that they have not paid the rental amounts as agreed or at all. It is alleged by the First Respondent that the Fifth to Further Respondents have started a rent boycott – hence the approach to Court for an eviction order, which order was granted on the 20 April 2016.

- [4] The First Respondent raised the issue that the Applicant does not have *locu standi* to bring this application. However, this was not

pursued in argument. Further, Counsel for the Applicant submitted that, it is his instruction that the Third Respondent joins issue with the Applicant in this case.

I find it most convenient to list all the sections of the Constitution of the Republic of South Africa, 1996 which are relevant for the determination of this case.

- [5] Section 10 of the Constitution provides the following:
- “Everyone has inherent dignity and the right to have their dignity respected and protected.”*
- [6] Section 25 (1) of the Constitution provides as follows:
- “No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property”.*
- [7] Section 26 of the Constitution provides as follows:
- “26. Housing**
- (1) *Everyone has the right to have access to adequate housing.*
- (2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.*
- (3) *No one may be evicted from their home, or have their home demolished, without an order of the court made after considering*

all the relevant circumstances. No legislation may permit arbitrary evictions”.

[8] Section 36 of the Constitution provides as follows:

“Limitation of rights

(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- a) The nature of the right;*
- b) The importance of the purpose of the limitation;*
- c) The nature and extent of the limitation;*
- d) The relation between the limitation and its purpose; and*
- e) Less restrictive means to achieve the purpose.*

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

[9] Section 38 of the Constitution provides as follows:

“Enforcement of Rights

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or

threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:

- a) Anyone acting in their own interest;*
- b) Anyone acting on behalf of another person who cannot act in their own name;*
- c) Anyone acting as a member of, or in the interest of , a group or class of persons;*
- d) Anyone acting in the public interest; and*
- e) An association acting in the interest of its members.*

[10] The applicant is the Member of the Executive and Political Head of the Department of Human Settlement in the Province of Gauteng. It is amongst others, his responsibility to provide adequate housing in terms of section 26(1) and (2) of the Constitution. It is my view therefore, that the applicant has an interest in this matter since it falls within his functions as the political head for human settlements in the Gauteng Province.

[11] Counsel for the applicant contends that the applicant was not joined in the proceedings which culminated in the order of Keightley J referred to above. The local municipality was also not joined in the proceedings as required by the PIE Act.

[12] The applicant does not want to involve itself in the issues between the parties but seeks an opportunity that, since the execution of the order

may render some of the evictees homeless, the Third Respondent investigate as to how many people or evictees may be rendered homeless as a result of the immediate execution of the order. There are children whose schooling may be affected by the execution of the order and that as well need to be assessed by the Third Respondent. The extension of time requested by the applicant is not unreasonable having regard to the issues raised above.

[13] Counsel for the First Respondent contends that the issues which the applicant wants investigated by the Third Respondent were ventilated fully before Keightley J and her Ladyship's decision was made after having considered all these issues. The Applicant is bringing an appeal against the order of Keightley J through the back door. The Fifth to Further Respondents are rent boycotters and not the poorest of the poor. Section 26 of the Constitution refers to the poorest of the poor and therefore do not apply to the case of the Fifth to Further Respondents.

[14] It is further contended on behalf of the First Respondent that there is no basis for the apprehension that the immediate execution of the order of Keightley J will render the evictees homeless. Some of the evictees have already regularised their situation with the First Respondent. The rights of the evictees and that of their children are also limited in terms of section 36 of the Constitution as against the rights of the First Respondent as provided for in section 25 of the

Constitution. The proceedings before Keightley J were brought in terms of section 5 (1) of the PIE Act and there was no need to give notice to the local municipality.

[15] I disagree with the First Respondent that this application is tantamount to bringing an appeal against the decision of Keightley J. The order by Keightley J is appealable because, although it is interim in nature, it becomes final on execution. Once evicted, it is done and there is no going back. However, the Applicant is not appealing the order but seeks an extension of time in the execution thereof.

[13] Having established the *locu standi* of the Applicant in these proceedings, the questions that need to be addressed in this case, are:

- *whether the request to suspend the execution of the order until 10 May 2016 is just and equitable;*
- *whether the prejudice, if any, to be suffered by the First Respondent is the same as that will be suffered by the fifth to further respondents if the suspension of the execution of the order is granted.*

[14] As mentioned above, there are children whose rights to education may be adversely affected by the immediate execution of the order. The evictees enjoy the right to human dignity which is enshrined in the Constitution. If the order is immediately executed and they have

no else to go, their human dignity will be infringed and the local municipality will be pressurised to provide emergency accommodation to the evictees. In my view, the Applicant is justified in its request for the suspension of the execution of the order. The period of suspension of the execution of the order is reasonable since it is until to 10 May 2016, which is only thirteen (13) days.

[15] With regard to the second question, the First Respondent contended that most of the affected evictees have already regularised their situation with the First Respondent. It is for the same reason that the Applicant would want the Third Respondent to investigate and ascertain as to how many of the evictees need help and assist them. It is the Constitutional duty of the Applicant and local municipality, the Third Respondent, to assist and provide accommodation to the few evictees that have not regularise their situation with the First Respondent. The prejudice to be suffered by the evictees and their school going children in their right to human dignity and right to education weighs way above the pecuniary loss to be suffered by the First Respondent in a period of thirteen (13) days.

[16] Section 26 of the Constitution does not make provision for a particular category of persons. It starts by saying “*Everyone*. . . .” which includes the Fifth to Further Respondents in this case. Therefore the contention that section 26 of the Constitution provides only for the

poorest of the poor and not for people like the Fifth to Further Respondents falls to be dismissed.

[17] It is my view therefore, that it would be just and equitable for this Court to grant the Applicant the order suspending the execution of the order dated 20 April 2016 until 10 May 2016.

[18] In the circumstances, I make the following order:

- I. That the forms, service and the time period stipulated in the Rules for the conduct of proceedings in this Court are dispensed with.
- II. The execution of the order granted on the 20 April 2016 is suspended until 10 May 2016;
- III. The Third Respondent is ordered to immediately determine which of the Fifth to Further Respondents identified in annexure “KD1” to the applicant’s notice of motion will be rendered homeless by the eviction order granted by Honourable Justice Madam Keightley and thereafter provide such homeless persons with emergency accommodation.

**TWALA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

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Date of Hearing:

25 APRIL 2016

Date of Judgment:

04 MAY 2016