

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 38930/2016

DELETE WHICHEVER IS APPLICABLE	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
..... DATE	 SIGNATURE

In the matter between:

MARUPING, E K AND OTHERS

First and Further Applicant

and

MEC: HEALTH, GAUTENG PROVINCE

First Respondent

CEO: HELEN JOSEPH HOSPITAL

Second Respondent

FACILITY MANAGER: HELEN JOSEPH HOSPITAL Third Respondent

JUDGEMENT

NGALWANA AJ

[1] In short, the applicants claim to have been spoliated by the respondents and the respondents claim that the applicants evacuated the premises voluntarily after lengthy negotiations as the respondents had since 2014 undertaken to renovate the premises as they were, and continue to be, unfit for human habitation.

[2] The first applicant brings this application on an urgent basis, saying she does so in her own name and on behalf of 10 others. Of the 10 she says she represents, only five have deposed to confirmatory affidavits, while three others who have done so are not in the list of persons she says she represents.

[3] The first applicant also says she does not know where the other persons she claims to represent are currently resident. All eight persons who have deposed to confirmatory affidavits do not say where they are currently resident. The first applicant does, however, identify her current residence and it is not at the premises from which she says the respondents unlawfully evicted her and others.

[4] Because of the fluid nature of the identity of the applicants, it may be difficult to determine who will be covered by the order whether in favour or against the applicants. That is why I asked Mr Letsebe for the applicants: who will be affected by this order? His response – that the order will cover every person adversely affected by what he terms “*unlawful eviction*” – is not legally palatable. An order of court cannot bind non-parties or benefit others who have either sought no relief themselves or on whose behalf no relief has been sought.

[5] The first applicant makes numerous detailed allegations including

5.1 that on 1 October 2016 the third respondent cut off the water supply to her residence and that when she complained she was told these were orders from above;

5.2 that on 2 October 2016 burglar doors were installed and locked, and the keys were removed from security personnel at the gate so that the applicants could not negotiate their movements with the security personnel;

5.3 that on 3 October 2016 the electricity supply to the property was cut off following hospital management visit the previous evening so as to make the applicants' continued stay intolerable;

5.4 in all this while rent was still deducted from the first applicant's salary on 15th of the month, including 15 October 2016.

[6] To all these factual allegations, the respondents content themselves with bare denials. The high-water mark of their case is that there were no tenants remaining in the building after 30 September 2016. Then they simply deny everything else and claim there was no force used in removing anybody. This is hardly the test in spoliation proceedings.

[7] Bare denials in these circumstances is unhelpful. The Supreme Court of Appeal had the following to say in *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another*¹:

“[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the

¹ 2008 (3) SA 371 (SCA) at para [13]

disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them."

[8] The respondents simply do not grapple with all the relevant factual allegations made by the first applicant. On the qualified *Stellenvale*² rule in

² Which derives from *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd* 1957 (4) SA 234 (C) at 235E-G

motion proceedings³ I must accept the first applicant's version of the facts. That being so, the first applicant has established both peaceful possession and wrongful dispossession. The legality of the possession – on the basis that the applicants are neither doctors nor nurses nor emergency hospital staff for whom the building had been intended – is irrelevant. The principle is simple: possession must first be restored irrespective of the parties' respective rights in respect of the property. Only thereafter, may those rights be determined in separate proceedings.

[9] The purpose of the spoliation relief is to prevent self-help. On the facts, that is precisely what the respondents have done. So the application must succeed, with costs.

[10] The relief affects only the first applicant and those persons whose representation is proven. These are:

10.1 PM Mogodi ([6...])

10.2 MA Mamabolo ([6...])

10.3 S Phalane ([5...])

10.4 KC Mabe ([5...])

10.5 TH Setlau ([8...])

³ See *NDPP v Zuma* 2009 (2) SA 277 (SCA) at para [26], 290E-F; *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C

10.6 AM Mokono ([7...])

10.7 SW Nkunkuma ([5...])

10.8 MG Khumalo ([5...])

[11] I am also satisfied that all the requirements for a final interdict have been satisfied, and that these facts impel me to exercise my discretion in favour of granting the interdict.

Order

[12] In the result,

12.1 the respondents are directed to restore the undisturbed possession to the first applicant and the other persons listed in paragraph 10 above of their dwellings at Susanhoff Residence, Helen Joseph Hospital, Johannesburg, together with the supply of water and sanitation, subject to such payment as may lawfully be levied for such water and sanitation supply;

12.2 the respondents are directed to restore the dwellings back to the condition in which they were at the time of the applicants'

removal therefrom, provided that such condition is not worse than the state in which the dwellings are currently;

12.3 the respondents are interdicted from interfering with the applicants' movements and stay on the property and dwellings at Susanhoff Residence;

12.4 the respondents are directed to pay the costs of this application jointly and severally.

V Ngalwana
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

For the applicant: L Letsebe
Instructed by: Lawyers for Human rights

For the respondents: M H Mhambi
Instructed by: Mdlulwa Nkuhlu Attorneys

Date of heads: 15 November 2016
Date of judgment: 17 November 2016