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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 22031/2018

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

.....
SIGNATURE

.....
DATE

In the matter between:

EBBY ELVIS MATHEBULA

First Respondent

NKHENSANI NOMSA MATHEBULA

Second Respondent

and

TSHEPO NDLOVU

First Respondent

**OCCUPANTS OF ERF 1958 KLIPSPRUIT EXTENSION 2
TOWNSHIP, PROVINCE OF GAUTENG**

Second Respondent

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Third Respondent

JUDGMENT

MATOJANE J

Introduction

[1] This is an application for the eviction of the first respondent and all persons occupying the property through and under the first respondent. The provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the 'PIE Act') apply.

[2] The facts, briefly stated, are as follows. On 5 June 2017 the first and second applicant purchased the property being Erf [...] Klipspruit Extension 2 Township, Registration Division IQ, Province of Gauteng, held under Deed of Transfer T33644/2017 (the 'property') for an amount of R390 000 from Margaret Tlisane, the previous registered owner of the property. The property was registered in the applicants' respective names on 30 August 2017 and a title deed was issued in their names.

[3] On 19 April 2018 the applicants delivered a notice to the first and second respondents terminating their right to occupy the property. Despite the notice, the first respondent and all those who derive their right of occupation through and under him have failed, neglected, or refused to vacate the property. The occupation of the property is now wrongful and unlawful.

Applicable legal principles

[4] In terms of section 4(1) read with section 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the 'PIE Act'), a property owner may apply to court to evict an occupier from property that the latter occupies unlawfully. Section 4 of the PIE Act further provides—

'(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is

of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

- (8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-
- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
 - (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).
- (9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.'

[5] In *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*¹ the SCA dealt with the approach the court should adopt in determining whether the evict people who are in unlawful occupation of property. The Court stated:

'The implication of this is that, in the first instance, it is for the applicant to secure that the information placed before the court is sufficient, if unchallenged, to satisfy it that it would be just and equitable to grant an eviction order. Both the Constitution and PIE require that the court must take into account all relevant facts before granting an eviction order. Whilst in some cases it may suffice for an applicant to say that it is the owner and the respondent is in occupation, because those are the only relevant facts, in others it will not. One cannot simply transpose the former rules governing onus to a situation that is no longer governed only by the common law but has statutory expression. In a situation governed by s 4(7) of PIE, the applicant must show that it has complied with the notice requirements under s 4 and that the occupiers of the property are in unlawful occupation. On ordinary principles governing onus it also has to demonstrate that the circumstances render it just and equitable to grant the order it seeks. I see no reason to depart from this. There is nothing unusual in such an onus having to be discharged. One of the grounds upon which it was permissible to seek a

¹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) para 30.

winding-up order in respect of a company under the Companies Act 61 of 1973 was that it would be just and equitable for the court to grant such an order. The law reports are replete with cases in which courts dealt with applications for winding up on that basis. In cases where the applicant failed to discharge the onus of satisfying the court that it would be just and equitable to grant a winding-up order it was refused.'

[6] On 11 January 2019 a notice in terms of section 4(2) of the PIE Act was authorised by the court and served on the first and second respondents.

[7] The respondents have opposed the application on the basis that the sale agreement entered into between the applicants and Ms Tlisane was invalid and that the property should not have been registered in the name of the applicants. The first respondent contends that his grandparents, who were the previous owners of the property, intended to bequeath the property to Tsietsi Agnes Ndlovu (Ms Ndlovu) and in this regard relies on clause 5 of the will of his grandparents which reads:

'We hereby declare that in the event of our joint and simultaneous death, or should both of us die within a period of three weeks from each other we hereby nominate, constitute and appoint TSIETSI AGNES NDLOVU I.D. [...]. to be the sole and universal heiress of our estate, property and effects.'

[8] The quoted paragraph states that the grandparents intended to bequeath their property to their daughter, Ms Ndlovu, only in the event of their joint and simultaneous death, or if they died within a period of three weeks from each other. Further, clause 2 of the will reads as follows:

'We hereby appoint the survivor of us to be the sole and universal heir or heiress of the first dying of us of his or her estate, property and effects.'

[9] The first respondent's grandmother passed away on the 3 October 2005; his grandfather passed away on 23 December 2013. Ms Ndlovu did not stand to inherit in terms of the will.

[10] After the first respondent's grandmother's death, his grandfather, Mr Naphtaly Matonsi ('Naphtaly') married Margaret Tlisane in community of property on 13 September 2008. It follows that at the time of Naphtaly's death, the joint will was no longer valid and thus cannot be relied upon as a defence by the first respondent.

[11] In its counterclaim, the first respondent alleges that Ms Tlisane was never the owner of the property and thus did not have the authority to sell it, as the property was owned by the Ms Ndlovu in terms of the will. There is not merit in this submission.

[12] First, according the Windeed Property Search and Deed of Transfer T33644/2017, Ms Tlisane was the registered owner of the property, it having been transferred into her name in 2016. Second, the name of Ms Ndlovu does not appear on any historic documents in respect of the property and there is no written proof of any such ownership.

[13] I am satisfied that all the requirements of section 4 of the PIE Act have been complied with and that no valid defence has been raised by the respondents. I now proceed to determine whether it is just and equitable to grant the order of eviction.

[14] According to the first applicant's best knowledge, the first respondent is employed and will be able to secure alternative accommodation. The respondents were invited in a notice in terms of section 4(2) of the PIE Act to appear in person to address the Court in respect of any personal circumstances relevant to the impact which the eviction order will have on their rights and needs, particularly if he, or any of those who reside under him, are elderly persons, children, disabled persons and/or households headed by women. The respondents have failed to do so.

[15] In *Ndlovu v Ngcobo*,² the SCA at paragraph 19 stated:

'Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not an issue between the parties.'

[16] The applicants have been unable to take occupation of their property despite being the registered owners thereof since 13 August 2017. They suffer severe financial loss on an ongoing basis by being deprived of that asset and home for which they are servicing a bond and are liable for the rates and taxes.

² *Ndlovu v Ngcobo; Bekker & Another v Jika* 2003 (1) SA 113 (SCA) para 19.

[17] The respondents have failed to set forth any compelling reasons to militate against the eviction application instituted against them. The respondent cannot expect to continue to reside in the applicant's property for an indefinite period.

For the reasons set out above the following order is made:

1. The eviction of the respondents from the property known as Erf [...] Klipspruit Extension 2 Township, Registration Division IQ, Province of Gauteng held under Deed of Transfer T33644/2017 is hereby ordered.
2. The respondents must vacate the property by not later than 15 September 2019.
3. Should the respondents fail to vacate the property by 15 September 2019, the eviction order may be carried out on or after 15 September 2019; the Sheriff is hereby authorised to carry out the order.
4. The first and second respondents are to pay the costs.

K E MATOJANE
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Date of hearing: 19 June 2019

Date of judgment: 19 August 2019