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

Case Number: 2021/18396

In the matter between:

SUSAN MIRIAM MSOMI

Applicant

and

FAITH MBALI MABUZA

First Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Second Respondent

Neutral Citation: *SUSAN MIRIAM MSOMI v FAITH MBALI MABUZA & CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY* (Case No: 2021/18396) [2023] ZAGPJHC 455 (11 May 2023)

JUDGMENT

MALUNGANA AJ

- [1] On 14 April 2021, the applicant, an adult female pensioner instituted eviction proceedings against the first respondent and any person occupying the premises through her, in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of land Act, 19 of 1998 (“the PIE ACT”). The City of Johannesburg Metropolitan Municipality was joined as a third respondent.

- [2] The respondent opposes the application and has since filed an answering affidavit through her erstwhile attorneys.
- [3] The applicant contends in her founding papers that she is the owner of the immovable property situated at[...], Protea North (“the property”), within the area of jurisdiction of this Court. She purchased the said property in cash through the estate agent named in the founding affidavit.¹ The estate agent informed her that there was a tenant in the property who would vacate in three months’ time.
- [4] Owing to the long delay in registering the property into her she discovered that the tenant was the first respondent. She also found out that the property was being sold by the bank after the first respondent defaulted with her loan repayments with Eskom where she worked at the time.
- [5] The applicant further contend that the first respondent is in unlawful occupation of the property, in that she occupies the property without her consent and lawful reason. She has a legal right to take possession of the property.
- [6] The ground given by the first respondent for her continuous occupation of the property was that she had filed a rescission application challenging ownership of the property in question.
- [7] The applicant denies ever receiving the rescission application referred to in the respondent’s answering affidavit. She avers in her replying affidavit, that the property was bought from the previous owners, and the latter bought at an auction.
- [8] On the eve of the hearing of the matter, the first respondent’s attorneys withdrew from the matter. However before they withdrew, they filed the first respondent’s heads of argument.² It is trite that in application proceedings the affidavits constitute not only the pleadings but also the evidence. Equally trite is that an applicant must make out his case in his founding affidavit and that he must stand or fall by the allegations contained therein.³ I will return to this aspect later in the judgment.
- [9] At this stage it is convenient to consider the applicable legal principles. Section 1 of the PIE Act defines an Unlawful occupier as:

“unlawful occupier means a person who occupies land without the express or tacit consent of the owner or a person in charge, or without any other right in law to occupy such land, excluding a person who is an

¹ Case lines 0002-4

² Case lines 015-1

³ *Business Partners Ltd v World Focus 754 CC 2015 (5) SA 525 (KZD); Shepherd v Tuckers Land and Development Corporation (Pty) Ltd 1978 (1) SA 173 (W) at 177H – 178 A. “This is not however an absolute rule. It is not a law of Medes and Persians. The court has a discretion to allow new matter to remain in a replying affidavit ... This indulgence, however, will only be allowed in special or exceptional circumstances.”*

occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)."

- [8] In terms of s 4(8), if the court is satisfied that all the requirements of this section had been complied with and no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of 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] I am alive to the fact that in determining whether or not to grant an eviction order, I must exercise a discretion based on what is just and equitable. In this regard the court must have regard to all the relevant circumstances, including availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and household headed by women.

- [10] If a version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far fetched or so clearly untenable the court is justified in rejecting them merely on the papers. See *National Director of Public Prosecutions V Zuma* 2009 (2) SA 277 (SCA) at para 26.

- [11] In *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 13 the court held that:

"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."

- [12] The facts of this case presents no difficulties in resolving the disputes of facts on paper. It appears from the applicant's papers that at some stage they visited the property to view, and the first respondent was present. The applicant has demonstrated that she is the registered owner of the property. She is a retired nurse who bought the property with the pension benefits she received on achieving her retirement as a nurse. She would like to retire in her new home.

- [13] The first respondent has provided no evidence to support that she is has instituted eviction proceedings. Neither had she provided a reasonable explanation as to why she should not be evicted. All that she said when she appeared in person was that she would like to leave the property for

her children as inheritance. This is not a valid defence to claim mounted by the applicant in this application. There is an attempt to raise a defence of robbery in the heads of argument filed by her erstwhile attorney.⁴ Nothing turn on this new defence. If no valid defence is advanced the court is obliged in terms of s 4(8) to grant an order.

[15] I have not been presented with any relevant factors concerning the first respondent's personal circumstances. However, it is apparent from the papers that she is currently unemployed. I assume that she has a family. She indicated during her court appearance that she wished for her children to inherit the property. She does not say she will be destitute if evicted.

[16] In the result I make the following order:

1. The first respondent and all those who occupy the properties through her are evicted from the property known as[...], Protea North (the property);
2. The first respondent and /or all unlawful occupiers are directed to vacate the property on or before the 30th of June 2023;
3. Should the first respondent, and /or any unlawful occupiers fail to vacate as stated in paragraph 2, above, then the Sheriff alternatively, his deputy together with the assistance as he deems appropriate is authorised and directed to evict the first respondent and all those who occupy through her.
4. The first respondent is directed to pay the costs of this application.

Acting Judge of the High Court

GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

⁴ Case lines 015 -2 para 2.6

For the Applicant: Mr Tafara Mukwani
 Mukwani Attorneys

For the First Respondent: Miss Faith Mazibuko (In Person)