

iAfrica Transcriptions (Pty) Limited/hvr

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IN THE HIGH COURT OF SOUTH AFRICA(NORTH GAUTENG HIGH COURT, PRETORIA)CASE NO: 3492/2010DATE: 2010-03-02

SELECT ONE. IF NONE IS NOT APPLICABLE	
(1) DEPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	OK
DATE	23/4/10
SIGNATURE	

In the matter between

GOLDEN THREAD LIMITED

and

PEOPLE WHO INTEND INVADING
 PORTION R25 OF FARM MOOIPLAATS 355JR
 TSHWANE, GAUTENG AND 2 OTHERS

Chung
 25/4/10

Applicant

Respondent

JUDGMENT

RABIE J: This is an application for the eviction of persons who have invaded the property of the applicant known as Portion R25 of the farm Mooiplaats in the district of Tshwane in the Gauteng province and for the confirmation of an interim order preventing others from also invading the property in order to reside there.

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The applicant is the owner of Portion R25. It falls within the jurisdiction of the third respondent, the City of Tshwane Metropolitan Municipality. The property is vacant land of some 50 hectares in extent. The applicant had earlier attempted to develop this piece of land but was unsuccessful as the area was found to be dolomitic and unstable and not fit for residential purposes.

For background purposes, the following salient aspects may be briefly referred to. The applicant was earlier also the owner of Portion R18 which lies directly to the east of Portion 25. Probably due to urbanisation and over population of formal residential areas, people moved onto Portion R18.

In 2004 Portion R18 was expropriated from the applicant and
10 the informal settlement became known as Itereleng. Itereleng became over populated and its inhabitants and probably others from elsewhere started to move onto the area immediately to the east thereof, namely Portion R15.

Portion R15 belongs to a company PPC Aggregate Quarries (Pty) Limited. This invasion of the land of PPC Aggregate Quarries (Pty) Limited occurred late in 2009 and resulted in the company successfully obtaining an eviction order during December 2009 to evict the unlawful occupiers.

The evictions sparked off violent clashes which even affected
20 the nearby suburb of Laudium, which is an old and settled suburb of Tshwane. The mayor of Tshwane visited the area and made promises to the people, inter alia, that land would be made available close by.

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Nothing came of these and other promises but the inhabitants apparently saw this as a licence to invade the land of the applicant which lies, as I have said, also next to Itereleng, but on the other side from Portion R15, namely to the east thereof.

This land invasion commenced in December 2009. According to the respondents, that is the unlawful occupiers and those intending to move onto Portion R25, people started to move onto the land already in August 2009. According to the aerial photographs of 15 September 2009 and even later photographs of the area, however,
10 this is not the case. From these photographs no shacks can be discerned on Portion R25.

By the middle of December 2009, the applicant noticed that some 30 shacks had sprung up on Portion R25 and people were still erecting structures. All attempts to get hold of responsible employees especially in the Housing Department of the third respondent, were unsuccessful. Around 11 January 2010 the shacks on Portion R25 were demolished. The applicant had no hand in this and it appears to have been done by the contractor who was assisting PPC Aggregate Quarries (Pty) Limited enforcing the eviction order they had
20 obtained.

However, from 15 January 2010 the applicant saw that shacks were again being erected on Portion R25. The applicant approached the third respondent but was advised that the municipality would not

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protect the applicant and that the applicant must appoint its own attorneys. This the applicant did.

On 21 January 2010, the applicant obtained two urgent orders from this court. The one was for an interim interdict to prevent persons from invading Portion R25 and the other was to obtain permission from the court to serve the eviction application and relevant notice in terms of Act 19/1998 on those who have already unlawfully occupied Portion R25.

The return day for the interim interdict was 9 February 2010.

10 On that day, so I was informed, the court refused an application for a postponement by the respondents, but the applicant nevertheless gave the respondents additional time to respond to the application. This court thus had before it the return day of the one application as well as the eviction application in respect of the unlawful occupiers.

The respondent's case is that at present there are at least between 300 to 400 shacks already on this property. According to the respondents an eviction order would be futile since the unlawful occupants would then simply move to the property of another private owner. They say that the occupants from Itereleng, which is over
20 crowded and where occupants suffer at the hands of so-called land owners who rent property out at exorbitant prices, have moved onto Portion R25.

Services are almost non-existent in Itereleng. The living conditions are extremely poor. Some occupants of Portion R25 also

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came from other areas. Many are in all probability unlawful immigrants. According to the respondents most of the occupants of Portion R25 are young people who cannot afford housing.

The respondents expressed their sympathy for the applicant's property rights and the fact that it is suffering serious damage and loss but say that the only practical remedy lies in the third respondent, the municipality, expropriating the land and to allow the people to settle informally on this piece of land.

) The main thrust of the respondent's case was in fact directed
10 at the third respondent, who has not done anything to address the problems of the people of the area and who, according to the respondents, have just made empty promises. The respondents noted that they require time to bring an action against the third respondent as well as the Gauteng Housing Authorities to enforce their basic minimum housing rights.

) I have already noted during the hearing that the third respondent is conspicuous in its absence. It is a very sad state of affairs, especially as the third respondent is the one body which is constitutionally bound to address the problem which exists. They
20 have not only failed dismally in that respect and has done so for many years, but they have not even attended this hearing to assist the court to come to a decision. The third respondent merely briefed counsel on a watching brief.

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Further regarding the facts I can add that the evidence of the applicant regarding the number of people and shacks on Portion R25 is to be preferred above that alleged by the respondents. Aerial and other photographs support the applicant's version and also accords with the respondents own version that people were evicted from Portion R25 after the eviction obtained in respect of Portion R15.

During January 2010, there were about 30 shacks on Portion R25. If there were shacks in September, it would have been a very small number. The interdict obtained by the applicant in January did
10 not help much and new occupants moved onto the land despite the order and the publication thereof.

At present the number has grown to around 170 shacks. New shacks are still being erected with new people joining the ranks of the other unlawful occupants. It seems clear and this was not disputed, that within a short space of time the land of the applicant would be swamped by unlawful occupants.

There can be no doubt that no case has been made out why the interdict preventing anyone from entering upon the land and to settle there, should not be confirmed. A case may very well be made
20 out that the third respondent is under some duty in respect of the people of Itereleng and others who want to occupy Portion R25. Something which, or the extent whereof, is not for this court to decide at this point, but no such duty exists for the applicant.

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The right of access to adequate housing is not one enforceable at common law or in terms of the constitution against an individual land owner and in no legislation has the state transferred this obligation to such owner. See *President of the Republic of South Africa and Other v Modderklip Boerdery (Pty) Limited* (Agri SA and Legal Resources Centre, amici curiae) 2004 (6) SA 40 (SCA)). I should add that no such duty was suggested on behalf of any of the respondents in the present application.

) Regarding the position of those who had already invaded
10 Portion R25, the same principle as aforesaid applies, except that the provisions of the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act 19/1998 ("the Act") have to be applied and considered. There can be no doubt that the respondents who have invaded Portion R25 are unlawful occupiers in terms of the Act. Further that they have been on Portion R25 for less than six months. The procedural prerequisites for an application to evict the unlawful occupiers have also been complied with. What remains is for this
) court to consider section 4(6) of the Act. It provides as follows:

"4(6) If an unlawful occupier has occupied the land
20 in question for less 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

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circumstances, including the rights and needs
of the elderly, children, disabled persons and
households headed by women."

This court has to consider whether it would be just and
equitable to evict the respondents and in this process consider all the
relevant circumstances. I should add, as I have indicated above, that
there does not appear to be any elderly persons, children, disabled
persons or households headed by women, on Portion R25. In the
answering affidavit filed on behalf of the respondents, no such
10 allegation or even a suggestion to that effect, was made.

In fact, it was stated that young people had moved onto the
property. It was also not suggested during argument that the rights
and needs of the elderly, children, disabled persons and households
headed by women, were relevant considerations.

Section 4(8) and (9) then provide as follows:

"4(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
20 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

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(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 (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."

10 As to the question whether it would be just and equitable to evict the respondents, I consider that they have moved onto the property because an empty piece of land to live on, would be better than having to live in the over populated area of Itereleng.

I must take note of the conditions in Itereleng. Unfortunately the respondents who have come from other places have not informed the court of such. It was submitted on behalf of the respondents that there is nowhere for the respondents to go and that they would simply invade the next piece of open land.

20 It was submitted that the applicant as owner should accept its fate and sue the state for rent and/or damages and/or for expropriation of the land in question. The rights of the applicant were not disputed by the respondents. The damage and in fact the complete loss of this land was also not disputed.

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The fact that most of the present occupiers have done so in contempt of a court order was also common cause. It was also not in dispute that the occupiers would strengthen their position viz a viz the applicant as time goes by. It was not disputed that the respondents have no defence in common law.

It was submitted, however, as I have indicated, that it is constitutionally untenable for the owner of private land to object to a land invasion if the unlawful occupiers have nowhere else to go. This was in reality the only defence offered by the respondents.

10 In the present matter the applicant realised that if it allowed the situation to carry on, the land would soon be filled to capacity and after some time the occupants might start to establish rights which would make it very difficult and even impossible to protect its property. In casu the applicant acted immediately through the judicial system. It obtained the relevant relief swiftly and as soon as was possible. Despite that, the occupants streamed onto the land.

These facts are, in my view, relevant factors to consider. The fact that the respondents have been on the land in question for a relatively short period of time, is also a relevant factor which I have to
20 consider. I also consider relevant that there is no infrastructure or even basic services on the property. There is no water, no electricity, sewerage or any other services. The land is in any event dolomitic and unstable and not fit for residential purposes as I have indicated above.

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It can therefore, in any event, not serve as a permanent solution to the housing needs of the respondents. The notion that the third respondent would in future expropriate the area for residential purposes, therefore, does not seem to be a realistic option.

The applicant was and is entitled to protect its property. It does not carry the burden to supply the present and any would-be land invaders with accommodation. The applicant acted with all due speed to protect its rights by lawful means. The applicant was
10 entitled to do that. The court must be able to protect its citizens, in this case the applicant, from the unlawful destruction of its property by others who have no right to do so.

To dismiss the applicant's applications would amount to a stamp of approval by this court on unlawful land invasions despite the circumstances. The respondents know that they have acted unlawfully. That was never in dispute. In fact, they respected the applicant's property for many years while they remained on the area known as Itereleng. They also did not move onto Portion R25 late in
2009 but moved onto Portion R15. Only when they were evicted
20 from that portion, did they decide to move onto the property of the applicant.

There is another aspect which I consider relevant. The area directly south of Itereleng, which is also part of Portion 18, belongs to the third respondent. According to the applicant, the persons who

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want to move anywhere or want to come and live in the area, can move onto that part to the south of Itereleng. They would then still be on land belonging to the third respondent.

It is in any event an area which appears to be much larger, according to the aerial photographs, than Portion R25. It was suggested that the area was probably not chosen by the unlawful occupants because it lies further away from the tarred road bordering Portion R18 to the north and is therefore less accessible. Portion R25, which belongs to the applicant, also borders the tarred road and
10 is thus closer to the road than the southern part of Portion R18.

I am not suggesting that the respondents again take the law into their own hands and to invade that portion of land, but what I do say is that if the third respondent would take its responsibilities seriously, it might find real solutions to the desperate plight of its citizens. However, on the facts of this case, it is not incumbent on this court to necessarily consider alternative accommodation and the third respondent has refused to assist this court in possibly making a more positive order.

As such I have to adjudicate the dispute between the parties
20 within the narrow facts before me and according to what common sense dictates. I have taken note, however, of the aforesaid facts and it would appear that there might still be some light in the tunnel for the respondents.

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In my view and having regard to all the circumstances, I find that it would be just and equitable to evict the respondents and that no valid defence has been raised by the respondents. In the result the respondents should be evicted.

The only aspect which remains is the determination of a just and equitable date on which the unlawful occupiers must vacate Portion R25 and the date on which an eviction order may be carried out if they have not vacated the land.

In determining a just and equitable date in respect of the aforesaid, I must have regard to all relevant factors, including the period the respondents and their families, where applicable, have resided on the land. In my view the respondents who have occupied Portion R25 have been there for a relatively short period of time. In fact, the bulk of the occupants only moved onto the land after the court order in January of this year, approximately a month ago, and also in defiance thereof.

In my view a period of four weeks should be more than ample time to afford the occupants the opportunity to vacate the property and that the eviction order may be carried out on the day following such period in respect of those who have not vacated the land.

In the result the following order is made:

ORDER

1. The rule nisi granted on 21 January 2010 is confirmed.

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2. The persons in occupation of Portion R25 of the Farm Mooiplaats, JR/355, Tshwane Gauteng (Portion R25) are hereby evicted from Portion R25 and shall vacate Portion R25 by not later than 29 March 2010.
3. The persons in occupation of Portion R25 are hereby ordered to demolish and remove their structures and/or shacks from Portion R25 by not later than 29 March 2010.
4. In the event of any persons in occupation of Portion R25 failing to comply with the order in paragraphs 2 and 3 above, the sheriff of this court is hereby authorised and ordered to evict any and all occupiers on Portion R25 from Portion R25, from 1 April 2010.
5. The sheriff of this court is hereby authorised and ordered to demolish and remove any and all structures and/or shacks mentioned in paragraph 3 above from Portion R25 from 1 April 2010.
6. The sheriff of this court is hereby authorised and ordered to request any person including members of the Tshwane Metro Police and members of the South African Police Services to assist him in the eviction, demolition or removal of the occupiers of Portion R25 and/or their structures and/or their shacks from Portion R25.
7. The first and second respondents are ordered jointly and severally to pay the applicant's costs of suit.

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CASE NO: 3492/2010

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

PRETORIA 01 MARCH 2010

BEFORE THE HONOURABLE MR JUSTICE RABIE

In the matter between:

GOLDEN THREAD LIMITED

APPLICANT

AND

THE PEOPLE WHO INTEND INVADING PORTION 25 OF THE
FARM MOOIPLAATS 355/JR, TSHWANE, GAUTENG
THE PEOPLE WHO INVADED PORTION 25 OF THE
FARM MOOIPLAATS 355/JR, TSHWANE, GAUTENG
THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY

1ST RESPONDENTS

2ND RESPONDENTS

3RD RESPONDENTS

HAVING HEARD counsel(s) for the party(ies) and having read the documents
filed of record

IT IS ORDERED

1. THAT the rule nisi granted on 21 January 2010 is confirmed.
2. THAT the persons in occupation of Portion R25 of the Farm Mooiplaats, JR/355, Tshwane, Gauteng (Portion R25), are hereby evicted from Portion R25 and shall vacate portion R25 by not later than 29 March 2010.
3. THAT the persons in occupation of Portion R25 are hereby to demolish and remove their structures and/or shacks from Portion R25 by not later than 29 March 2010.
4. THAT in the event of any persons in occupation of Portion R25 failing to comply with the order in paragraphs 2 and 3 above, the Sheriff on this Court is hereby authorized and to evict any and all occupiers of Portion 25 from Portion R25 from 1 April 2010.
5. THAT the Sheriff of this Court is hereby authorized and to demolish and remove any and all structures and/or shacks mentioned in paragraph 3 above from Portion R25 from 1 April 2010.

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