

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

19/05/2011
CASE NO: 9647/2007

In the matters between:

RAMAILA BELLEGINGS (EDMS) BPK APPLICANT

And

JENNY ZERVICK FIRST RESPONDENT
FRANCIOIS DU PREEZ SECOND RESPONDENT

And

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
19/05/2011 DATE	 SIGNATURE

CASE NO: 9648/2007

In the matter between:

RAMAILA BELLEGINGS (EDMS) BPK APPLICANT

And

JENNY ZERVICK FIRST RESPONDENT
FRANCIOIS DU PREEZ SECOND RESPONDENT

AND

CASE NO: 5014/2007

In the matter between:

RAMAILA BELLEGINGS (EDMS) BPK

APPLICANT

And

FRANCIOIS DU PREEZ

FIRST RESPONDENT

AND

In the matter between:

CASE No:5015/07

RAMAILA BELLEGINGS (EDMS) BPK

APPLICANT

AND

JENNY ZERVICK

FIRST RESPONDENT

FRANCIOIS DU PREEZ

SECOND RESPONDENT

JUDGMENT

MAVUNDLA. J.,

- [1] The applicant in matters 9647/2007 and 9648/2007 seeks the same relief against the respondents, their eviction from two immovable properties adjacent to each other known as the remaining portion of Erf 1221 and Remainder of Erf 1222, Bendor, Extension 11, Registration Division LS, Limpopo situated at 13 and 15 Horak Street Polokwane.
- [2] Under case number 9647/2007, the applicant seeks the eviction of Ms Jenny Zervick from the property known as the remaining portion of Erf 1222 Bendor, Extension 11, Registration Division LS, Limpopo also known as 15 Horak Street, Polokwane. It would seem that Ms Zervick resides at 14 Horak Street, Polokwane. The second respondent, resides at 15 Horak Street Bendor Valley Pookwane.
- [3] Under case number 5015/07 is sought leave of the Court to have the relevant notice in terms of s4(2) of PIE Act served upon the first respondent's attorney Mr. Corrie Nel at 31 Mark Street Polokwane, on Respondent Ms Jenny Zervick who

resides at 14 Bendor Valley Polokwane, as well as on the City Council of Polokwane by the Sheriff.

[4] Under case number 9648/2007 the applicant seeks the eviction within a month of the order, of Mr. Francois Du Preez from the property known as the remaining portion of Erf 1222 Bendor, Extension 11, Registration Division LS, Limpopo also known as 15 Horak Street Polokwane.

[5] Under case number 5014/07 leave of the Court is sought to have the relevant notice in terms of s4(2) of PIE Act served upon the respondent's attorney Mr. Corrie Nel at 31 Mark Street Polokwane, on Respondent, Mr. Francois Du Preez, who resides at 15 Bendor Valley Polokwane as well as the City Council of Polokwane by the Sheriff

[6] In the *Cape Killarney v Mahamba*¹ the Supreme Court of Appeal held that the provisions of s4(2) are peremptory. Section 4(2) requires service of the notice of such proceedings

¹ 2001 (4) SA 1222 (SCA) at 1227E-8D paragraphs [11]-[14],

to be effected by sheriff at least 14 days before the hearing of those proceedings. In the matter of Wormald and Others v Kambule² Maya AJA held that "PIE therefore requires a party seeking to evict another from land to prove not only that he or she owns such land and that the other party occupies it unlawfully, but also that he or she has complied with the procedural provisions³ and that on consideration of all relevant circumstances (and, according to the Brisley case, to qualify as relevant the circumstances must be legally relevant), an eviction order is 'just and equitable'."

[7] In respect of the matters under cases number 9647/2007 and 9648/2007, the relevant notices of motion were duly served on the respondent by the sheriff. However, it does not seem that these two matters were preceded by section 4(2) notices that were duly served on the respondents 14 days before commencement of the eviction proceedings. The commencement of eviction proceedings referred to in section 4(2) are those very proceedings in terms of which the leave of the court to effect service is sought.

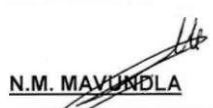
² 2006 (3) SA 562 (SCA) at 568 F-G.

³ My underlining

[8] In all these matters, it is being alleged that the respondents are in unlawful occupation of the relevant properties. That being the position, PIE is applicable and must be complied with. The starting point is to first seek the leave of the court in terms of section 4(2), after such notice has been served at least 14 days before the hearing of that application. I have, however, not been placed of proof of service in respect of the matters under case numbers 51014/07 and 51015/07. It seems to me that section 4(2) has not been complied with. It is for the applicant to satisfy the court that it has complied therewith the provisions of section 4(2), which it has not done.

[9] In the result, in all these matters, I find, that section 4(2) has not been complied with and they therefore stand to be dismissed with costs. I deem it not necessary to traverse the rest of the other issues raised for and against the granting the eviction sought.

[10] In the result the applications under case numbers: 9647/2007;
9648/2007; 5014/07 and 15015⁶⁷ are all and individually
dismissed with costs.


N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT : 19/05/2011

APPLICANT'S ATT : STRYDOM & BREEDENKAMP INC

APPLICANT'S ADV : MR. MA BADENHORST SC

RSPONDENT'S ATT : STATE ATTORNEY

RESPONDENT'S ADV : MR. HANNES KLOPPER