

Not Reportable

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – PORT ELIZABETH)**

Case No: 2509/10
Date Heard: 8/06/11
Date Delivered: 29/07/11

In the matter between

TRANSNET LIMITED

Applicant

and

MR ANDREWS

First Respondent

BERNADETTE ANDREWS

Second Respondent

**NELSON MANDELA BAY
METROPOLITAN MUNICIPALITY**

Third Respondent

JUDGMENT

REVELAS J

[1] The applicant seeks to evict the first and second respondents from their home, a property at 10 Horatio Street, Booyseville, Port Elizabeth ("the property"). The property is also described as erf 1332, Bloemendal, in the records of the Deed Office in Cape Town. The property is currently registered in the name of the applicant, according to a Deeds Office Search conducted by Mr CH Dreyer (a conveyare) of the applicant's attorney's of record. The conveyer's certificate is dated 16 August 2010. This information was also confirmed in a report of a 'Windeed' search conducted on 25 January 2011 in the Cape Town Deeds Office.

[2] The first and second respondents, Mr and Mrs Andrews to

whom I shall refer to collectively as “the respondents”, maintain that they had purchased the property in 2004 and they are its owners. They allege that it was a vacant site used as a rubbish dump when he purchased it for R13 500.00 when it from Nico Real Estate, and they cleared the property from all rubbish and then built a house upon it. Attached to their answering papers, was a copy of a written agreement of sale, purportedly between the second respondent under her maiden name, (Dennis) and someone, probably the estate agency, representing a Mr DF Smith. The agreement comprises an offer and acceptance to sell the property in question for R13 500.00, and is printed on a letter head bearing the estate agency’s name, Nico Real Estate. The acceptance was signed on April 2004. The respondents also attached a copy of a receipt from the same estate agent, for the aforesaid amount made out to Ms B Dennis (the second respondent) as proof that they indeed purchased the property from the estate agent and (not Mr DF Smith).

[3] The Mohamed couple fell in arrears with the bond repayments and the applicants issued summons against them in December 2008. When an attempt was made to serve the summons on the Mohameds, the applicant became aware for the first time that the respondents were in occupation of the house.

[4] The applicant then obtained a judgment for the perfection of the bond in the magistrate’s court, against the Mohameds and proceeded with the subsequent sale in execution in February 2010. The applicant then purchased the property at a nominal amount of R10.00. On 18 June 2010 the property was registered in the name of the applicant. In order to obtain transfer, the applicant was obliged to pay all the arrear rates and taxes on the property. As at January 2010, the outstanding balance was R40 001.11 which the

applicant paid in full. Though the account reflected that the second respondent became responsible for the account after the Mohameds, account remained unpaid for two years.

[5] However, it is quite clear from all the documentation in this application, that the property was never transferred to the respondents or registered in their names. The documentation (Windeed report) supports the applicant's version, that a bond was registered over the property for an amount of R51 000.00 in favour of the applicant, when it was transferred from a Mr and Mrs Menders to Mr and Mrs Mohamed in 1992. The respondents never owned the property. The respondents provided documentation, ostensibly from the third respondent's Electrical Engineer's Department, reflecting that the property was vacant as the dwelling on it had burnt down and was demolished during 1999.

[6] When the applicants first became aware of the respondents on the property in December 2008, the property was still owned by the Mohameds. It is also quite clear that if the respondents believed that they had legitimately bought the property from Nico Real Estate for R13 500.00, they were completely misguided. They have no legal right to occupy the property. On the other hand it seems, somewhat unfair at first blush, that the applicant, who was able to buy the property for a paltry nominal price of R10.00, should be in a position to evict the respondents and their children from their home, which they built (or renovated from a burnt out dwelling) on property they had paid money for. Their reluctance to move from the house is understandable. However, the matter is not that simple. The following important events took place since it came to the applicant's attention that the respondents were occupying the house.

[7] During 2009, the applicant did not take any legal steps

against the respondents, only against the Mohameds. When it obtained the judgment referred to above in the Magistrate's Court, Port Elizabeth, the property was declared executable. The sale in execution during which the property would be sold, was set down for 18 February 2010. The respondents were notified thereof, and they instructed attorneys Schoonraad, Delport & van der Merwe Inc, who wrote to the applicant's attorneys with a request that the sale be held in abeyance, to enable the respondents to approach the Mohameds (in whose name the property still was) in an attempt to come to an agreement with them, to take over their bond obligations towards the applicant, and have the property transferred to them.

[8] The applicant, through its attorneys, pointed out that it could not engage in any meaningful negotiations with parties who were not the registered owners of the property, but it suggested that the respondents attend the sale scheduled for 18 February 2010 to acquire the property through legitimate means.

[9] The sale proceeded as planned but, according to the applicant, the respondents disrupted the auction to such an extent, threatening to vandalize the structure on the property up for sale that the buyers who bought the property for R78 000.00 declared a dispute, and the property was re-auctioned the following day on which the applicant then bought the property (bonded in its favour), for a mere R10.00.

[10] The applicant was, then in a stronger position to negotiate with the respondents. In the process of becoming the registered owner of the property, it could invite the respondents to submit an acceptable offer to purchase the property. Such an offer was made through the applicant's attorneys on the day of the auction (19

February 2010).

[11] In the interim, the applicant had settled the arrear rates and taxes for two years in respect of the property in excess of the amount of R41 100.11. This debt was solely for the respondents' responsibility but was paid by the applicant. The applicant also informed the respondents on 15 March 2010 of its intention to sell the property on the open market if the respondents did not make an offer to purchase the property. The respondents sought another indulgence for a period of three months to enable them to seek the necessary finance to purchase the property. Through their attorneys, the respondents indicated their willingness to pay the applicant R750.00 per month as rental for their occupation from 1 July 2010, pending the finalisation of application for financial assistance to buy the property. The applicant was amenable to this arrangement but wished to formalize it.

[12] Its attorneys then wrote a letter indicating that the expected date for the transfer of the property into its name was 18 June 2010 and forwarded (in the same letter dated 3 June 2010) a written lease agreement which was to come into operation on 1 July 2010, in terms whereof the respondents could lease the property from the applicant. The respondents failed to sign the agreement and continued to occupy the property without paying rental.

[13] On 27 August 2010 the applicant served an application in terms of Section 4(2) of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998, as amended, ('the Act') on the respondents giving notice of its intention to evict them from the property. The respondents were duly notified that the application would be heard on 21 September 2010.

[14] The subsequent application to evict them was set down for 19

October 2010, and served on the respondents, who filed a notice of opposition on 18 October 2010. On 19 October 2010 the parties agreed to postpone the matter to 27 January 2011. Thereafter the application was postponed on two further occasions and it was eventually argued before me on 9 June 2010.

[15] The applicant is the owner of the property and the respondents are in illegal occupation. If the procedural requirements of the Act had been met, as they were in this case then in terms of Sections 4(6) and 4(7) of the Act, an eviction order would be justified if in the circumstances of the matter, it is just and equitable to do so. (See: *Ndlovu v Ngcoco*; *Bekker and Another v Jika* 2003(1) SA 113(SCA); *Jackpersad NO and Others v Mitha and Others* 2008(4) SA 522 at 528H-529B.

[16] In exercising the broad judicial discretion I have in a matter such as this, the particular circumstances, rather than generality should inform my decision (See *Jackpersad supra*, at 528I). The applicant's interest in this property which is of comparatively little value appears to be of a commercial nature. On the other hand, I bear in mind that the property is the respondents' home where they raise their children.

[17] The respondents however, have not put forward any information about their financial position and how that might affect their ability to find alternative accommodation, and such details would fall in their own and exclusive knowledge. Also of concern, is the fact that the respondents did not put forward any evidence regarding what happened to their transaction after they had "purchased" the property. They ought to have realized that it was never transferred into their names and that the substantial sum paid by them afforded them no proprietary rights. It is almost

inconceivable that they did not take steps to ensure the repayment of their R13 500.00 to the estate agent. An affidavit from the agent in question could also have assisted in determining this question.

[18] The absence of any details as to the extent, nature and cost of the improvements or renovations allegedly effected by the respondents on the property, is particularly unhelpful. The respondents started living on the property five years after it became vacant and while it was still the property of Mr and Mrs Mohamed. The value of improvements, if any, can safely be set off against the huge municipal account referred to above, which was their responsibility but was paid by the applicant. An enrichment claim may lie against the Mohameds, on whose property the respondents lived rent-free for years.

[19] Also of significance is the fact that the respondents were at one stage amenable to lease the property, but later adopted the stance that they would continue occupying the property regardless of any other party's ownership and rights. They clearly shunned all opportunities to legitimately occupy the property.

[20] The fact that the respondents considered purchasing the property if they were able to obtain financial assistance, is an indication that they could have perhaps afforded cheaper, alternative accommodation. On the papers before me, their own determination not to make any form of financial contribution towards their continued occupation of the property is the only reason why the respondents have not vacated the property yet.

[21] In the circumstances I am satisfied that the applicant is entitled to an eviction order and there is no reason, given the nature of their opposition, why the respondents should not pay the

costs of the application.

[22] I make the following order:

1. The First and Second Respondents and such persons as might occupy the property, are hereby evicted from the said property known as Erf 1332 Bloemendal, which is situated at 10 Horatio Street, Booyesen Park, Bloemendal, Port Elizabeth.
2. All moveables and furniture belonging to the respondents and/or such persons who occupy the aforesaid premises through them shall be removed from the said premises.
3. The eviction of the respondents and persons aforesaid and removal of furniture and property, shall take place no later than 12:00 on Thursday 29 September 2011, by which time and date the respondents and any persons occupying the property through them shall vacate the property.
4. The Sheriff or his deputy, shall carry out the eviction order as set out above with the assistance of a locksmith, if necessary, on the aforesaid date.
5. The respondents are ordered to pay the costs of this application.

E REVELAS
Judge of the High Court

Counsel for the Applicant:	Adv B Pretorius Port Elizabeth
Instructed by:	Greyvensteins Inc Port Elizabeth
Counsel for the Respondents:	Adv Vusani Port Elizabeth
Instructed by:	JF Stoffels Attorneys Port Elizabeth
Date Heard:	8 June 2011
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