

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

Case No: 2249/2012

In the matter between:

EMILY DAISY LOWERY

Applicant

and

JANET JORDAN

Respondent

JUDGMENT

REVELAS J

[1] In the course of an ongoing dispute which arose from the simultaneous occupation of a certain dwelling by both parties in this matter, Mrs Jordan (the respondent) obtained an eviction order against Mrs Lowery (the applicant) in this Court on 12 May 2011. In terms of the order, Mrs Lowery was ordered to vacate the premises within thirty days of the order.

[2] On 29 August 2011, leave to appeal against the eviction order was granted. The appeal is to be argued on 10 December 2012 which is next week, Monday.

[3] Section 49(11) provides that where an appeal has been noted, the operation and execution of the order appealed against, shall be suspended pending the decision of such appeal, unless directed otherwise by the court.

[4] Mrs Lowery, as applicant, subsequently brought an application that Mrs Jordan, as the respondent, be held in contempt of court for not complying with the suspension of the eviction order by operation of the pending appeal, in her favour. This relief (the contempt application) was abandoned, but Mrs Lowery still sought an interdict against Mrs Jordan to remove any obstruction which may prevent her from having access to the dwelling in question (23 Tembani Road, Greenbushes, Port Elizabeth) and allow her undisturbed possession thereof. This application came before Alkema J on 18 October 2012 when the matter was postponed and Mrs Jordan granted leave to bring an application for the upliftment of the suspension of the eviction order, pending the outcome of the appeal. Mrs Jordan brought the application in person because she could not afford to pay her attorneys of record.

[5] In my view, the balance of convenience favours Mrs Jordan. She is the owner of the house and she obtained an eviction order against Mrs Lowery who now seeks access to the property by operation of the suspension. Moreover, the long history of conflict and acrimony between

the two women in this matter has overwhelming demonstrated that the parties cannot live in one house.

[6] In my view, Mrs Lowery has not made out a case for granting her the interdict prayed for, which is in effect an eviction order against Mrs Jordan.

[7] Considerations of fairness and justice compel me to order the upliftment of the suspension of the eviction order, pending the outcome of the appeal. In my view, no order as to costs should be made since Mrs Jordan appeared in person.

[8] I make the following order:

- (1) The application to grant the applicant (Mrs Lowery) access to and undisturbed possession of the property situated 23 Tembani Road, Greenbushes, Port Elizabeth is hereby dismissed.
- (2) The suspension of the eviction order dated 12 May 2011 is hereby uplifted, pending the outcome of the appeal against the aforesaid eviction order, and Mrs Jordan is to have undisturbed possession of and undisturbed access to the aforesaid property, pending the appeal.

E REVELAS
Judge of the High Court

For the Applicant:

Mr Naidoo

Instructed by:

Justice Centre
Port Elizabeth

For the Respondent:

Mrs Jordan

Instructed by:

In Person (Mrs Jordan)

Date Heard:

4 December 2012

Date Delivered:

5 December 2012