

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Case No.: 2267/2016

Date Heard: 8 December 2016

Date Delivered: 13 December 2016

In the matter between:

ROMANCO 5 (PTY) LTD

Registration No.: 2007/005134/07)

Applicant

and

NOMABANDLA PATIENCE ZONO

Respondent

JUDGMENT

EKSTEEN J:

[1] The applicant seeks the eviction of the respondent from the property situated at Erf [...], Humewood, being [...] L. R., Humerail, Port Elizabeth. The application is opposed.

[2] The application was initially launched by the liquidators for Elizabeth's Developments (Pty) Ltd (Elizabeth's) who were at the time the registered owner of the property. The liquidators sought the eviction of one "Namhla" and all persons occupying the property through her. The liquidators intimated that they were unaware of her further particulars and they have been unable to obtain clarity as to her further names. Upon receipt of the papers the respondent entered an appearance to defend. She does not deny that she goes by the name of Namhla but

recorded that her true name was Nomabandla Patience Zono. I accordingly granted an application to amend the papers so as to cite the respondent as Nomabandla Patience Zono.

[3] The liquidators sold the property to the applicant and were required to give vacant occupation, hence the launching of the application. In the interim transfer of the property occurred and the applicant was accordingly substituted for the liquidators. The applicant persists in the application.

[4] At the time of the launching of the application the deponent to the founding affidavit, one De Jager, one of the liquidators, declared that notwithstanding his researches he was unable to obtain any information relating to the basis upon which the respondent took occupation of the premises. One Dakin, on the instruction of the liquidators, attended upon the property to explain to the respondent the need for her to vacate the property in question. The respondent advised Dakin that she had no intention of vacating the property and that she owned it. This, as an established fact, is not true.

[5] The attorney on behalf of the liquidators in a letter demanded to her to vacate the property. In the demand the attorney indicated that they held instructions to the effect that the respondent occupied the premises in terms of an oral agreement of lease concluded with Elizabeth's prior to its liquidation and that the lease was terminable on one month's notice. The said attorney accordingly gave the respondent one calendar months' notice of termination of the agreement and to vacate the property. This letter prompted a response from the respondent supported

by the occupiers of certain other properties in the immediate vicinity of the property in issue. It recorded:

“We would like to respond in (*sic*) the contents of the letters. This aforementioned case was investigated by our Lawyers, 2010, 2013, and 2015 and all those findings were filed for anything that will be relevant to the findings.”

[6] The response proceeded to record that the respondent's lawyers would be responding to the letters of the said attorney by the end of April 2016. The undertaking was not honoured and no response was every forthcoming.

[7] The provisions of section 4 of the Prevention of Illegal Occupation of Land Act (PIE) were duly complied with. The respondent entered an appearance to defend and, after some delay, ultimately filed answering papers. She explains in her answering papers the basis upon which she came to occupy the property. On 1 August 2007, she declares, she entered into an oral lease agreement with a certain Pauline Willart Agency to rent and occupy the house at [...] L. R.. She paid monthly rentals of R2 800 directly into the bank account of the said agent. Shortly after taking occupation she noted certain household items which had been left in the house. In due course one Norval, who claimed to be the registered owner of the property at the time, came to collect the goods. Norval advised that he was the owner of the property and indicated to her that she could rent the house for as long as she wanted to and could become the owner of it, if she wanted to, in five years.

[8] After taking occupation in 2007 the respondent states that she received notice of certain unpaid municipal bills. She sought then to report this issue to the said Pauline Willart Agency, only to find that Pauline Willart had disappeared and that her

offices were closed. In these circumstances the respondent made arrangements to pay the municipal bills.

[9] In due course Elizabeth's became the owner of the property and the respondent contends that she entered into an oral agreement of lease with Elizabeth's with a change in the monthly rental. She does not, however, allege that she ever paid the rental to Elizabeth's. De Jager, who deposed to the founding affidavit, states that he could find no evidence that any rentals had ever been paid to Elizabeth's. The respondent accordingly does not dispute that Elizabeth's became the lawful owners of the property. She bewails however that she has occupied the house for more than eight years and been under the impression that she will be given a right of first refusal to purchase the property and she was not given such an opportunity. It is not clear from the affidavit where this perception arose from and it can only be assumed to arise from the alleged oral statement of Norval to which I have referred earlier. There is no written agreement to this effect and even if there was it could only be enforced against Norval.

[10] The respondent is a single woman living with two adult children, both of whom are enrolled at tertiary institutions. She pleads that the court should find an alternative remedy to deal with the impasse in a fair and reasonable manner.

[11] At the time of the filing of the answering affidavit transfer of the property had already occurred. The said Dakin deposed to the replying affidavit on behalf of the applicant. It appears from the replying affidavit that the property in question had been purchased by the applicant for R1,4 million as one of a number of properties

purchased in order to effect a housing development. Considerable sums of money have already been spent in obtaining the necessary zoning approvals and money had been borrowed from Investec Bank for purposes of the development in respect of which interest is payable.

[12] It is common cause on the papers that the applicant is the rightful owner of the property and the respondent has not set out any facts upon which she could hold any right to occupation. Initially she advised Dakin that she owned the property. Of this nothing is said in her answering affidavit and it is clearly not true. In her answer she contended that she occupied in terms of an oral agreement with Elizabeth's. This agreement was duly cancelled as set out earlier. After the replying papers were filed and at the eleventh hour a further affidavit was filed. Therein she suggests laconically that she also entered into a written agreement through Sotheby International. This is new and contrary to her earlier assertions. She does not provide a copy of such an agreement nor does she allege any of the terms of the alleged agreement. She does not say with whom the agreement was or when it was concluded. She does not suggest that this agreement has any application at present. In my view this new allegation does not advance the matter at all. On the undisputed facts she has not paid any rental to Elizabeth's or to the applicant in respect of her occupation.

[13] She protests that she is a single woman with two children and she states that she has no alternative accommodation for herself or her children. The applicant does not, however, contend that she is improvised and therefore unable to afford other accommodation. She is in fact unhappy that she had not been granted the opportunity to purchase the property which, it is established, was sold for R1,4

million. During argument she disclosed that she is in fact a medical practitioner. She has two adult children currently enrolled at tertiary institutions and the conclusion is inescapable on the facts presented by the respondent that she is a woman of some means. There does not appear to be any impediment to her obtaining alternative accommodation. Although the notices in terms of section 4 of PIE were duly served on the Nelson Mandela Bay Municipality, the Municipality has not submitted any report. By virtue, inter alia, of the financial circumstances of the respondent as appears from the papers I do not consider however that the present is a matter in which it is material whether or not the municipality has made available or can reasonably make available land for purposes of the relocation of the respondent.

[14] The respondent requests that the court find an alternative remedy to deal with the “impasse”. Whilst the respondent does not specifically refer to the provisions of PIE I can merely assume that the respondent intended to rely on the provisions of section 7 of PIE. Section 7(1) of PIE provides for mediation in circumstances where the municipality is not the owner of the land in issue. It authorises the municipality to appoint a mediator in order to attempt to mediate and settle any dispute in terms of the Act. It does not appear to me that there is any material dispute between the parties. The applicant is the rightful owner of the property and the respondent has no legal right to occupy. I do not think that the provisions of section 7 of PIE can find application to the facts of the present matter.

[15] In terms of section 4(7) of PIE a court may grant an order for the eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances. On a consideration of all the circumstances set out above I consider

that it is just and equitable to order the eviction of the respondent and all persons occupying through her. It is, however, undeniable that respondent has no immediate accommodation at her disposal. Ms **Rossi**, who appeared on behalf of the applicant, fairly in my view, acknowledged that. She requested an order that respondent should vacate the property by 31 January 2017. I agree that such an order would afford sufficient time for respondent to find alternative accommodation.

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

1. The respondent and all other persons occupying the premises at [...] L. R., Humeral, Port Elizabeth, being situated at erf [...] Humewood, are to vacate those premises by the close of business on 31 January 2017.
2. The Sheriff is ordered and authorised to evict the respondent and all other persons occupying the premises in the event that they fail to comply with the provisions of the order in para 1.
3. The respondent is to pay the costs of the application.

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Applicant: Adv T Rossi instructed by BLC Attorneys, Port Elizabeth

For Respondent: In person