

NOT REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH**

**Case no: 1795/2016
Date heard: 15th December 2016
Date delivered: 17th January 2017**

In the matter between:

NELSON MANDELA BAY METROPOLITAN MUNICIPALITY

Applicant

vs

JAN ERASMUS

First Respondent

**CURRENT AND FURTHER UNLAWFUL
OCCUPIERS OF ERVEN NUMBERS 274456
TO 42389 OF PHASE 1 A AND ERVEN 41405 TO
43897 OF PHASE 1 B, 2, 3 AND 4
AT KHAYAMNANDI DESPATCH
("COLLOQUIALLY KNOWN AS KHAYAMNANDI")**

Further Respondents

JUDGMENT

TSHIKI J:

[1] The applicant herein seeks an order for the eviction of the respondents from erf no 27456 – 41389 phase 1 A and erf 41405 – 43897, phase 1 B, 2, 3 and 4 at Khayamnandi, Despatch and to demolish and remove all their structures that they have erected.

[2] Further to the above, that all the respondents and future invaders be interdicted and restrained from:

- (a) entering and being on erven number 27456 – 41389 Phase 1A and erven 41405 – 43897 Phase 1 B, 2, 3, and 4 Khayamnandi Despatch for the purposes of unlawfully occupying or invading that property or erecting structures;
- (b) erecting, completing and/or occupying any structure's there or extending their current structures;
- (c) intimidating, harassing, assaulting and interfering in any way with:
 - (i) the employee's agents or contractors of the applicant;
 - (ii) any person involved in or connected with law enforcement at property and service of process;
- (d) inciting persons to enter the property or to effect structures on the property for the purpose of unlawfully occupying or invading the property or erecting, completing extending and/or occupying any structures thereon."

[3] The applicant herein is the Nelson Mandela bay Municipality whose property has been occupied by the respondents without the consent of the owner.

[4] When the applicant became aware of the invasion of its property by the respondents it filed an application for interdict and other relief eg eviction against the respondents. The matter was then argued in Court on the 15th December 2016 when the judgment was reserved.

[5] In this case, the respondents do not deny that they have invaded the applicant's property when they occupied it.

[6] In his argument, *Mr Rorke* for the applicant contended that the land that has been occupied by the respondents is the land that has been, *inter alia*, earmarked by the applicant for allocation of houses to other people who were earlier promised. The self-help caused by the respondents will surely exacerbate and also destabilise the whole issue of the ques for land allocation which has been arranged by the applicant's officials in their municipality. The respondents had not been allocated land in that area and that those allocated were given land by the applicant in an orderly manner.

[7] The owner of the property is in principle entitled to evict those who unlawfully occupy its land, however, there are always problems created by the need for land which at this day and time is not controllable in this country and especially in the applicant municipality. Although the applicant herein, as the owner, is entitled to evict those who unlawfully occupy its property, however it has to also do so within the legal regime (see section 4(8) of the prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998). It means that the provisions of the PIE Act which came into operation on the 5th June 1998 provide for the eviction of unlawful occupiers of land. See ***Ndlovu vs Ngcobo; Bekker v Jika*** 2003(1) SA 113 (SCA) in a judgment where the majority judgment held that PIE disposed of certain common law rights relating to eviction. For an example, the definition of unlawful occupier in section 1 of PIE also relates to a person who occupies land without the express or tacit consent of the owner in charge of such land. It means that PIE by definition includes an unlawful occupier also means that PIE applies to all occupiers, irrespective of whether their occupation of such land was previously lawful.

[8] The effect of PIE is not to expropriate private property but to delay or suspend the exercise of a land owner's full proprietary rights until a determination has been made whether it is just and equitable to evict the unlawful occupier and under what conditions. (See ***City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd*** 2012 (2) SA 104 (CC) at 118E-H. See also ***Wormald NO & Others v Kambule*** 2006 (3) SA 562 (SCA) at 569G. See also ***Port Elizabeth Municipality v Various Occupiers*** 2005 (1) SA 217 (CC).

[9] It makes sense to me that the people who are in need for land must wait for their turn to come otherwise there will be chaos if everyone has to simply use self-help. It must also be noted that there are procedures to be followed and considered before the allocation of land has to be made.

[10] In my view, there is sense in what *Mr Rorke* has submitted that lawfulness must always be encouraged and not be countenanced. Self-help and unlawfulness must always be discouraged at all costs.

[11] There will always be those who cannot defend themselves eg children and women. The Court in that regard has to protect them at all costs for obvious reasons. This is so because they are the vulnerable citizens of our society.

[12] I also agree with *Mr Rorke* for the applicant by discouraging the use of self-help. This is so because it is only the applicant municipality the owner whose interests have to be paramount in whatever decision is taken by the Court. I say this

because the applicant represents the interests of all the citizens of the applicant municipality who are staying within its municipality.

[13] In my view, I do not agree with the people who simply go and grab the land when it is easy for them to approach the applicant municipality and join list of people who have already applied for sites or land.

[14] *Mr Naidu* for the respondents has submitted that the scourge of homelessness is known in our society. In his view, the legal obligation is not with the respondents but with the applicant. Be that as it may, *Mr Naidu* has also argued sensibly when he submitted that it is not correct for the respondents to resort to self-help in occupying the land as they have done so in this case, and they surely did not make things easy for the applicant.

[15] In my view, if the applicant wants to have orderly allocation of land in the applicant municipality they must encourage the citizens of their municipality for the allocation of the land and or houses.

[16] The respondents and those who have occupied the land without approaching the applicant municipality cannot be allocated the land before those who have already applied and allocated land before, the land in issue in this case is for those who have applied. In my view, it must just be the question of first come first allocation.

[17] Therefore, the order I grant is as follows:

[17.1] The respondents are ordered to vacate the land situate in Khayamnandi Despatch known as erf no 27456-41389 phase 1 A and erven 41405-43897 Phase 1 B, 2, 3 and 4 at Khayamnandi, Despatch and to demolish and remove all their structures that they have erected. The respondents are given a period of three months for doing so which must be calculated ten days from the date of delivery of this judgment. However, if the time allocated by the Court is not sufficient, the respondents can approach the Court for an extension of time.

[17.2] The respondents are ordered to pay costs of this application.

P.W. TSHIKI
JUDGE OF THE HIGH COURT

For the applicant	:	Adv Rorke
Instructed by	:	Karsans Inc
		Uitenhage
		Ref: K Karsan/bg file no N2516
		Tel: 041- 991 1320

For the respondents	:	Mr Naidu
Instructed by	:	The Legal Aid Board
		Port Elizabeth
		Ref: HCU/ V Naidu
		Tel: 041 – 408 2800