

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: 72834/15

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

DATE: **29 JANUARY 2024**

SIGNATURE

In the matter between:

MAKAFANE CYRIL MABATHOANA

(Identity number: 6[...])

First Applicant

ZANELE DESIREE MOBATHOANA

(Identity number: 8[...])

Second Applicant

And

REVELATION TSHENOLO MOTHIBEDI

First Respondent

**ALL THE UNIDENTIFIED ILLEGAL OCCUPANTS
OF 6[...] M[...] STREET, KENSINGTON
GAUTENG**

Second Respondent

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Third Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines The date and for hand-down is deemed to be 29 JANUARY 2024.

JUDGMENT

KUBUSHI, J

[1] This is an application launched by Makafane Cyril Mabathoana, the First Applicant and Zanele Desiree Mabathoana, the Second Applicant (“the Applicants”) who seek an order declaring Revelation Tshenolo Mothibedi, the First Respondent, in contempt of the Court Order under the above case number which was handed down by Msimeki J on 27 October 2015 (“the contempt application”). Pursuant to the contempt order, if granted, the Applicants further seek an order committing the First Respondent to immediate imprisonment for a period of six (6) months alternatively a period the Court deems fit, and that a warrant of committal be issued and authorised for the immediate arrest of the First Respondent by the Sheriff, with the assistance of the South African Police Services, for direct committal to prison for the stated period. The Sheriff and the South African Police Services be ordered to execute the warrant of committal within 24 hours after receipt of the Writ and hand the First Respondent over to the relevant prison authorities for her incarceration.

[2] Moreover, the Applicants seek an order directing that the execution of the Warrant of Ejectment marked annexure “MCM3” be authorised against ‘All the unidentified illegal occupants of 6[...] M[...] Street, Kensington, Gauteng, the Second Respondent, within 30 days after service of this Court Order as contemplated in the regulations of the Disaster Management Act 57 of 2002. The First Respondent be ordered to pay the costs as between attorney and client, including the Sheriff’s fees.

[3] The contempt application was enrolled on the unopposed motion court roll of 23 January 2024 and was postponed to the unopposed motion court roll of 25 January 2024 with a request that the Applicants’ counsel furnish the Court with short heads of argument. The matter was argued unopposed on 25 January 2024. During

argument in Court, the Applicants' counsel sought to abandon the relief for the order to declare the First Respondent in contempt of the Court Order issued by Msimeki J, and proceeded only with the relief for the eviction of the Second Respondent from the property.

[4] The contempt application emanates from an eviction application that was previously launched under the same case number by the Trustee of the Insolvent Estate of Ernest Boyence ("the Trustee"), for the ejectment of the Occupiers of the Property known as 6[...] M[...] Street, Kesington, Gauteng ("the eviction application"). In that matter, Msimeki J granted an order for the eviction of the Occupiers of the Property known as 6[...] M[...] Street, Kesington, Gauteng and any other occupiers of the property formally known as the REMAINING EXTENT OF ERVEN 2[...]6 AND 2[...]8, KESINGTON TOWNSHIP REGISTRATION DIVISION I.R., GAUTENG PROVINCE HELD BY TITLE DEED T[...] better known as 6[...] M[...] STREET KESINGTON, JOHANNESBURG, GAUTENG ("the Occupiers of the Property"). Pursuant to Msimeki J's Court Order, the Trustee, with the assistance of the Sheriff evicted the Occupiers of the Property who re-occupied the property with the assistance of the community. Several other attempts were undertaken by the Trustee to evict the Occupiers of the Property from the said property without success.

[5] In the mean while the property was sold by the Trustee to a company called Investwise Initiatives (Pty) Ltd ("Investwise"). Investwise in turn sold the property onwards to another buyer. From the copies of the Windeed and the Deed of Transfer attached to the contempt application, it is apparent that the property is registered in the names of the Applicants and they are now the lawful owners. According to the Applicants they bought the property from a company called Easy Life Prop (Pty) Ltd. The Applicants, as such, have locus standi to launch this application on the ground that they are the lawful owners of the property in question. It, however, appears that the Applicants are unable to take possession of the property because the First Respondent, without providing any proof thereof, claims to be the lawful owner of the property and refuses to vacate the property. The Applicants contend that they have tried several avenues to evict the Respondents from the property without success, hence the present application.

[6] The contempt application launched by the Applicants is, however, flawed in many respects. The Applicants found their case on the Court Order of Msimeki J that was granted on 27 October 2015. The Court Order is annexed to the Applicants' founding affidavit as Annexure "MCM2". The main flaw is that the parties cited in the Court Order are not the same parties cited in the contempt application. The Applicant in the Court Order is the Trustee and the Applicants are not cited, at all, in that Court Order, which means that they were not litigants in the eviction application. They can, therefore, not rely on the Court Order without having been substituted as the Applicants in place of the Trustee who is the person who instituted that application, or being joined as applicants in the eviction application. The First and Second Respondents in the contempt application are also not cited as parties in the eviction application (Court Order) which means they were not litigants in the eviction application. The order in the eviction application was granted against 'the occupiers of the property' whereas in the contempt application the order is sought against 'the unidentified illegal occupants'.

[7] Based on the aforementioned, the Applicants acted correctly in abandoning the relief of contempt and commission against the First Respondent. The relief the Applicants sought against the First Respondent, for contempt and committal, would not have succeeded because the First Respondent was not a party to the eviction application. She was not specifically mentioned by name. What the Applicant want to use as evidence to tie her by name to the eviction application is the allegation in the supporting affidavit deposed to by the Trustee, that the property has been hijacked by the First Respondent, who is not the previous owner. She was lawfully evicted and has reoccupied the property unlawfully and is renting out rooms to tenants and collecting the rent money illegally. The allegation in the supporting affidavit does not form part of the evidence proffered in the eviction application. The supporting affidavit forms part of the contempt application papers. This, therefore, would not have entitled the Applicants to the relief they sought against the First Respondent.

[8] The relief sought against the Second Respondent for an order authorising the execution of the warrant of ejectment issued pursuant to the Court Order granted by Msimeki J, can, also, not succeed. This, as already stated, is so because in that application (the eviction application) the order was granted against 'the occupiers of

the property' whereas in the contempt application the order is sought against 'the unidentified illegal occupants'. In order for the Court Order to operate against the unidentified illegal occupants, they should have first been joined to the proceedings in the eviction application. This having not been done, they cannot have been expected to comply with the eviction application.

[9] Over and above that, since the Applicants have not been substituted to continue with the application launched by the Trustee, they cannot continue to use the same case number in the contempt application as that which was used in the eviction application. What the Applicants, as the current owners of the property, should have done, was to have applied to be joined as applicants in the eviction application, or at the very least to have launched a fresh application for the eviction of the Respondents.

[10] In the circumstances the application falls to be dismissed.

E M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 25 January 2024

Date of judgment: 29 January 2024

APPEARANCES:

For the Applicants: Adv. T Manda instructed by Ngomane Attorneys