

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case no: **4648/2023**

In the matter between:

WELCOME NORMAN JACOBS N.O.

Applicant

(In his capacity as Liquidator of
TWO FINE COMMODITIES (PTY) LTD (in voluntary liquidation))

and

NATHANE SOULMAN NAKEDI

1st Respondent

(ID NO: 9[....])

**ANY FURTHER UNLAWFUL OCCUPIERS OF
UNIT 23 THORA'S PLACE, VAN BLERK STREET
STERLING SMALL HOLDINGS, DISTRICT
BLOEMFONTEIN, PROVINCE FREE STATE**

2nd Respondent

MANGAUNG METROPOLITAN MUNICIPALITY

3rd Respondent

CORAM: JP DAFFUE J

HEARD ON: 25 JANUARY 2024

DELIVERED ON: 30 JANUARY 2024

ORDER

1. The first respondent as well as all persons occupying the property known as Unit 23, Thora's Place, Van Blerk Street, Sterling Small Holdings, Bloemfontein (the property) through him, cited as the second respondent, are ordered to vacate the property on/or before 31 March 2024.

2. The sheriff of the court or his lawful deputy is authorised and directed to take such steps as are necessary to evict first respondent and/or all other occupants occupying the property described in paragraph 1 above through first respondent, should they fail to vacate the property on/or before 31 March 2024.

3. The first respondent shall pay the costs of the application, including those costs reserved on 30 November 2023 and the costs relating to the relief obtained in part A of the notice of motion.

JUDGMENT

Introduction

[1] This application has been brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). An order is sought to secure the eviction of a law student and all others holding occupation through him. The application is opposed by the law student, cited as the first respondent in the application.

[2] The eviction order is sought in respect of a luxurious residence, being Unit 23 in the scheme known as Thora's Place, Van Blerk Street, Sterling Small Holdings, Bloemfontein (the property).

The parties

[3] The applicant, Welcome Norman Jacobs is the sole liquidator of Two Fine Commodities (Pty) Ltd (in voluntary liquidation) (herein later referred to as the company in liquidation), he being appointed by the Master of the High Court, Pretoria on 6 June 2023. His appointment and therefore his *locus standi*, is not in dispute.

[4] The first respondent is Nathane Soulman Nakedi, a single male law student at the University of the Free State. He is 29 years old, turning 30 on 21 March 2024, less than two months from now.

The relief sought and the opposition thereto

[5] The applicant seeks an order directing the first respondent and all others holding through him to vacate the property within 5 days from the date of the court order, failing which the sheriff or his deputy shall be authorised and/or directed to take all steps necessary to evict them. A costs order is also sought.

[6] The application is opposed by the first respondent only. It is his case that shortly after his registration as a law student at the University of the Free State in 2017, his late father who was the sole shareholder of the company in liquidation, granted him the use and benefit of the property and as a result he took lawful occupation thereof. Furthermore, his lawful occupation was never at any stage terminated and he therefore denies that he is an unlawful occupier as defined in s 1 of PIE.

[7] It is important to quote first respondent's version as alleged in paragraph 6 of the answering affidavit *verbatim*:

'I wish to further state that the company had upon the death of my father devolved to his deceased estate and for unknown reasons voluntarily liquidated and the Executrix engaged in a process of selling of the assets of the company which are mainly immovable properties including the property being the subject matter of this proceedings. The applicant has failed to lay a basis to sustain his capacity to institute the present application against myself.'

Factual background

[8] The company in liquidation is the registered owner of Unit 23 in the scheme known as Thora's Place as is evident from deed of transfer ST[...]. The floor area of the unit is measuring 173 m² and the property has been purchased by the aforesaid company on 21 February 2017 for R1 470 000.00.

[9] The applicant's appointment followed upon a special resolution taken by the company in liquidation to wind up the company as a solvent company in accordance with the provisions of s 80 of the Companies Act. Consequently, the company's status was changed to voluntary liquidation on 26 May 2023. This is also not in dispute.

[10] The COR40.1, an official document issued by the Companies and Intellectual Property Commission (CIPC) shows that Dimakatso Nakedi was appointed as director of the company on 29 July 2019. As I gathered, when perusing the papers, that this lady was possibly the executrix referred to by first respondent in his answering affidavit, I questioned his counsel, Mr Mohlanga in this regard. I was informed from the bar that this lady is the stepmother of first respondent and that she is also the executrix in the estate of first respondent's late father. A further factual version was placed before me in the first respondent's heads of argument as well as during oral argument which I strictly speaking do not have to deal with. It is first respondent's case that his stepmother has been acting at all times to his detriment notwithstanding the fact that he as the eldest son is an heir in the intestate estate of his deceased father. More about this will be said later herein.

[11] The applicant attached official documentation from the deeds office to his founding affidavit, indicating that as at 16 August 2023 the company in liquidation was the registered owner of six immovable properties, including the property relevant in *casu*. The other properties are a property bought in the tourist town, Clarens on 25 May 2016 for R620 000.00 and four other properties in Phuthaditjhaba, two of which were bought for R550 000.00 and R300 000.00 respectively.

The applicant's powers as liquidator

[12] The applicant is duty-bound to wind up the company in accordance with the Companies Act and more particularly s 80 of Act 71 of 2008 read with s 386(1) and chapter 14 of the previous Companies Act 61 of 1973. Section 80(1) provides that a solvent company may be wound up voluntarily if it has adopted a special resolution to do so, which may provide for the winding-up to be by the company, or its creditors. Section 80(5) reads as follows:

'(5) A liquidator appointed in a voluntary winding-up may exercise all powers given by this Act, or a law contemplated in item 9 of Schedule 5, to a liquidator in a winding-up by the court-

- (a) without requiring specific order or sanction of the court; and
- (b) subject to any directions given by-
 - (i) the shareholders of the company in a general meeting, in the case of a winding-up by the company; or
 - (ii) the creditors, in the case of a winding-up by creditors.'

The liquidator's powers do not have to be sanctioned by the court, but these are subject to any directions given by the shareholders of the company in the case of

voluntary winding-up by the company, or creditors in the case of a voluntary winding-up by creditors.

[13] Section 386 of the 1973 Companies Act provides for the powers of liquidators. In terms of s 386(1)(e) the liquidator shall have the power, subject to the provisions of ss (3), (4) and (5), to take such measures for the protection and better administration of the affairs and the property of the company as the trustee of an insolvent estate would be entitled to take. In terms of ss (3) the liquidator in a members' voluntary winding-up shall, with the authority granted by a meeting of members, have the power to *inter alia* sell immovable property of the company by public auction, public tender or private contract as provided for in ss (4). The same principle applies if it is a creditors' voluntary winding-up in which case the creditors must grant the authority. I mention both scenarios as it is not entirely clear from the certificate of the CIPC whether this is a members' or creditors' winding-up.

The requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) and an evaluation thereof

[14] It is appropriate to remind ourselves of the rationale of PIE, the protection of people to be vacated from their homes. Section 26(3) of the Constitution provides that no one may be evicted from their home without an order of court which may only be issued after considering all relevant circumstances. PIE gives practical effect to this right and regulates the eviction of unlawful occupiers. Provided the procedural requirements of PIE have been met, the owner or person in charge of a property is entitled to approach the court for eviction of an unlawful occupant. Unless such unlawful occupier opposes the application and discloses relevant circumstances why they shall not be evicted, an eviction order should follow.

[15] A three-fold enquiry is called for. First, it should be determined whether the occupier has an extant right to occupy the property. If that is the case, the application for eviction must be dismissed. Second, if the occupier does not have the right to occupy, it must be determined whether it is just and equitable to evict. Third, once the court is satisfied that the occupier should be evicted, the terms and conditions thereof should be determined.

[16] The applicant applied for leave to serve the required notice in terms of s 4(2) of PIE upon the first and second respondents, informing them of the intention to

apply on 19 October 2023 for their eviction. This order was granted on 14 September 2023 and on 28 September 2023 the notice of motion, founding affidavit and all annexures thereto, as well as the notice in terms of s 4(2) and court order, were served upon the occupier of the property, he being described by the sheriff as a 'male who refused to give his name'.

[17] On 19 October 2023, the day of the hearing, the first respondent's attorneys filed a notice of intention to oppose. This caused the application to be postponed to the opposed roll of 30 November 2023 with further orders pertaining to service and filing of affidavits. First respondent was ordered to pay the wasted costs occasioned by the postponement.

[18] The answering and replying affidavits of the parties were filed in accordance with the court order, but on 30 November 2023 the first respondent's attorneys did not appear. They did not show any respect or courtesy to either the court or their colleagues for the applicant, but remained on record. The first respondent who appeared in person sought a postponement. The matter was postponed to the opposed roll of 25 January 2024 whereupon it was allocated to me.

[19] The first respondent's attorney who eventually drafted heads of argument, Mr M Kekana of Maweza Nkogatsi Inc in Johannesburg, did not serve and file his heads of argument timeously. This was only done the morning of the hearing. However, numerous facts not forming part of the record, were relied upon in these heads of argument. Respondent's counsel, Mr Mohlanga, also reiterated these facts during his oral argument, although Mr Steenkamp, applicant's counsel, objected vehemently. I allowed the argument and references to facts not pleaded which I would not have done in normal circumstances. In this regard I took cognisance of what was said by Nkabinde J in *Pitje v Shibambo*¹, a unanimous judgment of the Constitutional Court.

[20] Although the first respondent's version has to be accepted that his late father granted him the right to occupy the property on behalf of his company, it is common cause that his father must have died prior to 29 July 2019, the date when his wife

¹ 2016 (4) BCLR 460 (CC) paras 15 – 21.

and first respondent's stepmother was appointed as director of the company. Even if she had given tacit consent to first respondent to occupy the property thereafter, such consent could have no further effect upon appointment of applicant as the liquidator of the company. As mentioned, the first respondent's only defence is that he was once during his late father's life given the right to occupy the property and that his lawful occupation was never terminated. Bearing in mind the death of his father and the ultimate liquidation of the property owner, this is no defence at all.

[21] Upon his appointment, the applicant took charge of the company as liquidator and consequently also of *inter alia* the property applicable to this application. As such, he was entitled to sell the property and to disregard any rights that the first respondent or others holding occupation through him might have had pertaining to the property. Although the applicant has not, *ex facie* the application papers, demanded that first respondent and other possible occupiers of the property vacate same, it is common cause that he has never granted express or tacit consent to first respondent to occupy the property. As a matter of fact, he proceeded in accordance with his duties to sell the property to a purchaser for the amount of R910 000.00 in terms of a written contract attached to the papers. It is furthermore apparent from the papers that an amount of R98 354.04 is due and payable to the Mangaung Municipality for municipal rates and taxes in arrears and R119 346.08 to National Real Estate for levies in arrears.

[22] I am satisfied that the first respondent and all others holding occupation through him are unlawful occupiers of the property. The applicant has proven the first element of the three-fold enquiry provided for in s 4 of PIE.

[23] The second issue to be determined is whether it is just and equitable that first respondent and others be evicted from the property, and if so, finally and thirdly the terms and conditions of such eviction will have to be determined.

[24] The first respondent is a 29-year-old single male person and according to the application papers a law student. He has been staying for free in the property for the last seven years. He has not been paying any municipal rates and taxes and/or levies. The property occupied by first respondent can be classified as a luxurious property, bearing in mind the purchase price thereof as well as the floor area. I take

judicial notice of the fact that the floor area of a batchelor flat is anything between 20 and 30 m², an average two-bedroom flat is anything between 60 and 80 m² and that the property *in casu* must be at least be a three-bedroom, two-bathroom unit. Compare that to the thousands of tiny four-room RDP houses across the country cramped by large families.

[25] Although the municipality has filed a report indicating that it does not have serviced and/or unserviced sites readily available and that first respondent must in any event first of all register to be placed on a waiting list whereafter due processes will be followed in order to *inter alia* screen and verify him, this information cannot stand in the way of evicting the respondent from the property.

[26] The first respondent is the eldest son of his late father and I have been informed from the bar that the father has died intestate. The effect hereof is that the first respondent will be entitled to inherit from his father's estate. Bearing in mind the father's shareholding in the company, there is reasonable possibility that first respondent stands to inherit a substantial inheritance. His complaints towards the executrix who fails to ensure that the deceased estate is finalised in order for inheritances to be paid out cannot be a stumbling block preventing the eviction order. His attorney and counsel also submitted that a mediation process should have been followed and that the voluntary liquidation and subsequent sale of the property without consultation with the heirs could have been avoided. This dissatisfaction may be considered in a different forum and various options are available to first respondent as a dissatisfied heir. This aspect cannot be accepted in order to prevent eviction *in casu*. In fact, it is apparent that the first respondent is a member of a wealthy family and that he will not be homeless if the application is granted.

[27] The first respondent has failed to place further facts before the court to enable me to establish when he would be graduating, if that has not already happened, and/or why it is not possible to earn an income in order to provide for his own housing, even in the form of a bachelor flat. Surely, by now he should have been an LLB graduate. The LLB course is a four-year course and no reasons have been advanced why the first respondent has not qualified by the end of 2020. No explanation has been forthcoming to indicate why he cannot obtain employment.

[28] The applicant is duty-bound to wind up the company's estate as soon as possible and it cannot be expected of him to delay the carrying out of his duties to liquidate whatever assets there are.

[29] It is apparent that the first respondent became aware of the application for eviction on 28 September 2023. Furthermore, as indicated by his counsel during oral argument, he became aware that the property was put on the market insofar as the auctioneers' notice boards were erected in front of the property. It appears from the deed of sale, forming part of the documents that the property was put up for public auction on 2 August 2023. Consequently, the first respondent must have become aware of the intention to sell the property before that date. That provided him with sufficient opportunity and time to obtain alternative housing.

[30] I am satisfied that an eviction order may only be granted in terms of s 4(7) of PIE if it is just and equitable to do so and after having regard to all relevant circumstances. I am indeed so satisfied. As mentioned in *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others*² the court must grant an eviction order in terms of s 4(8) if the requirements of s 4 have been satisfied and no valid defence to the eviction order has been raised. I quote from the judgment:

'[25] A court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve the gradual realisation of the right of access to housing in terms of s 26(1) of the Constitution, is faced with two separate enquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under s 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner's protected rights under s 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order it is obliged to grant that order. Before doing so, however, it must consider what justice and equity demands in relation to the date of implementation of that order and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that it grants as a result of these two discrete enquiries is a single order. Accordingly it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded

² 2012 (6) SA 294 (SCA) at para 25.

until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.'

[31] It would be unjust and inequitable to order the first respondent and others occupying through him to vacate the property within a mere five days of the date of this order as sought in the notice of motion. In the exercise of my discretion I am of the view that the first respondent and those occupying through him, if at all, should at least be granted a period of two months in order to find alternative occupation. My order will reflect this.

Consideration of a punitive costs order: the lack of respect and courtesy

[32] The first respondent is represented by Mr Kekana of Maweza Nkogatsi Inc. of Johannesburg who instructed Motaung Attorneys of Bloemfontein as their local correspondents. The answering affidavit has been prepared by these legal practitioners and duly served and filed prior to the hearing of the matter on 30 November 2023. On that day no legal practitioner appeared on behalf of the first respondent who attended the hearing in person. No apology was ever tendered. The attorneys' attitude is deplorable. The first respondent sought an indulgence which was granted and the matter was accordingly postponed to the opposed roll of 25 January 2024. Naidoo J, who presided over the matter on 30 November 2023, was extremely dissatisfied with the manner in which the attorneys neglected their client and issued a letter, directing them to explain why punitive costs orders should not be made against them. Unfortunately, the order for postponement in terms whereof costs were reserved, did not call upon the attorneys to explain why they should not be penalised with a punitive costs order. Notwithstanding, the directive of Naidoo J, the attorneys did not respond at all. According to Mr Mohlanga, he has been appointed as late as Monday night, 22 January 2024 with partial instructions to appear on behalf of the first respondent. Mr Kekana, the Johannesburg attorney, emailed heads of argument prepared by himself through to his counsel just before the hearing of the application who then presented me in chambers with a copy thereof. Consequently, these heads of argument were not filed timeously in accordance with the Practice Directives of this division. No explanation whatsoever has been advanced for the failure to comply with these directives. Also, neither Mr Kekana, nor his local correspondent, attended the court proceedings. I seriously

considered postponing the matter in order to call upon the attorneys to show cause why they should not be penalised with an appropriate costs order, but such action would merely have delayed the issue further. The first respondent elected to appoint Mr Kekana as his attorney and he must live with it.

[33] The successful applicant is entitled to his costs, including the costs in order to obtain the order in part A of the notice of motion as well as the costs reserved on 30 November 2023. Such order shall be issued.

[34] Consequently, I make the following order:

1. The first respondent as well as all persons occupying the property known as Unit 23, Thora's Place, Van Blerk Street, Sterling Small Holdings, Bloemfontein (the property) through him, cited as the second respondent, are ordered to vacate the property on/or before 31 March 2024.
2. The sheriff of the court or his lawful deputy is authorised and directed to take such steps as are necessary to evict first respondent and/or all other occupants occupying the property described in paragraph 1 above through first respondent, should they fail to vacate the property on/or before 31 March 2024.
3. The first respondent shall pay the costs of the application, including those costs reserved on 30 November 2023 and the costs relating to the relief obtained in part A of the notice of motion.

JP DAFFUE J

On behalf of the Applicant:
Instructed by:

Adv GC Steenkamp
Matsepes Attorneys
BLOEMFONTEIN

On behalf of the Respondent:
Instructed by:

Adv HD Mohlanga
Maweza Nkogatsi Inc. Attorneys
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