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

Case number: 993/2023

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

CIRCULATE TO MAGISTRATES: YES/NO

In the matter between:

VIRGINIA ENGINEERING SERVICES (PTY) LTD
(Registration number: 195[...])

Applicant

and

JAN DE LANGE

First Respondent

**ALL UNLAWFUL OCCUPANTS OF THE
IMMOVABLE PROPERTY KNOWN AS
ERF 4[....] EXTENSION [...], VIRGINIA,
ALSO KNOWN AS [...] A[...] STREET,
VIRGINIA**

Second Respondent

MATJHABENG LOCAL MUNICIPALITY

Third Respondent

CORAM: P R CRONJé, AJ

HEARD ON: 1 JUNE 2023

DELIVERED ON: 12 JUNE 2023

JUDGMENT BY: P R CRONJé, AJ

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 14h00 on 12 June 2023.

I INTRODUCTION

[1] The Applicant brought an application to have the First Respondent and/or all other unlawful occupants of the immovable property known as Erf 4[...], Extension [...], Virginia, also known as [...] A[...] Street, Virginia, evicted in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE). Only the First Respondent opposes the application.

[2] The Applicant purchased the property from Cementation Mining Limited on 21 January 2021, and the property was registered in its name on 30 August 2022.

[3] The Applicant purchased the property to erect factories on it in order to expand its business and to generate income.

[4] The First Respondent, during 2021, registered a caveat against the Title Deed of Erf 4[...] and 4[...] which made it impossible then for the Applicant to have the property registered in its name. On 12 October 2022, the Applicant dispatched a letter to the attorneys who at that stage acted for the First Respondent wherein the First Respondent was granted until 30 November 2022 to vacate the property.

[5] The Applicant, without prejudice to its rights, offered the First Respondent an opportunity to remove all improvements and assets before 30 November 2022, and if not, the concession can no longer be relied upon.

[6] The First Respondent brought an application against his eviction in 2022.

II PROFILE OF THE FIRST RESPONDENT

[7] He is a 70-year-old disabled person who has been in occupation of the property for 25 years. Although the Applicant disputes it as hearsay, a perusal of the medical documentation of the First Respondent shows that he sustained an injury to his right hand and that there may be loss of functionality and movement in the fingers. There is also limited wrist movement. Upon my enquiry it was established that he was a dependent member on the Government Employee Medical Scheme.

[8] The First Respondent's is a businessman, but failed to state his income, assets and liabilities. He relies on Section 4(6) of PIE for protection as an elderly and disabled person, also stating that he has been in occupation for more than six (6) months and it thus has to be determined whether alternative accommodation can be made available or can reasonably be made available by the municipality or another organ of state. He states that if an order of eviction is granted he will be homeless. He does not state what pertinent steps he took to secure alternative accommodation, merely stating that he is yet to find such accommodation.

[9] There is no report by the municipality.

III ARGUMENTS

[10] During argument Mr Sander submitted that the Applicant is well aware that he has no title to the property and a balance has to be struck between sections 25 and 26 of the Constitution. The First Respondent did not inform the Court that he does not have alternative accommodation and he submits that the First Respondent be given sixty (60) to ninety (90) days to vacate the property. He submits that it is not necessary that the Municipality file a report as it is a single occupant. I could not find such a limitation in the Act, nor in case law. He submits that there were many occupants in the matter of *Occupiers of erven 87 & 88 Berea v De Wet NO and others*¹ (*Berea*). He asked for costs in the event that the Court grants the eviction

¹ [2017] JOL 38039 (CC)

order.

[11] Ms Van der Sandt, for the First Respondent, also referred to *Berea*. There were 400 appellants. Some of the applicants had resided at the property for periods of up to 26 years. Most were low income earners or unemployed. A person wishing to develop the property purchased it from the liquidators. In that matter, the municipality was not a party and the Court granted orders to that effect.

[12] In *Berea* the Constitutional Court held:

“[61] It follows that where there is a risk that homelessness may result, the availability of alternative accommodation becomes a relevant circumstance that must be taken into account. A court will not be able to decide the justice and equity of an eviction without hearing from the local authority upon which a duty to provide temporary emergency accommodation may rest. In such an instance the local authority is a necessary party to the proceedings. Accordingly, where there is a risk of homelessness, the local authority must be joined.

[62] On the facts, it is apparent that there is a risk of homelessness resulting from the granting of the eviction order. The risk of homelessness triggered the City's duty to provide temporary emergency accommodation.” [my emphasis]

[13] The facts in this matter differ from *Berea*. The First Respondent has known since 2021 that his occupation is challenged. In 2022 he brought an application to stay his eviction. He has had ample time to make alternative arrangements. It cannot be expected from the Applicant to accommodate his business. I know of no provision or precedent where the Courts took business interests into consideration. The protection of the Act is deprivation of a home², dwelling or shelter.³ Each matter has

² Preamble to PIE

³ Section 1 of PIE - definition of building or structure

to be decided on its own facts.⁴

[14] She also referred to *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and another*⁵. In that matter the Court, notwithstanding that there was no certainty that alternative accommodation was available at date of the order, granted an eviction order affording the appellants four months' grace.

[15] Subsection 4(8) of PIE reads as follows:

“(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine— (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).”

[16] Ms Van der Sandt submits that in the event that the Court does order eviction, it has to be considered that he is an elderly man. She submitted that a period between six (6) to twelve (12) months would be fair in the circumstances.

IV CONCLUSION

[17] I conclude that it would be just and equitable that the First Respondent be evicted.

[18] The First Respondent had ample time to consider his position and

⁴ Port Elizabeth Municipality v Various Occupiers (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004)

⁵ [2011] 3 All SA 471 (SCA); [2011] JOL 26972 (SCA); [2011] ZASCA 47 (SCA)

alternatives. He is a businessman. He has been in occupation for over 25 years but has for approximately a year and a half known that his occupation is terminated. I deem 4 months' notice under these circumstances to be fair and reasonable.

V COSTS

[19] Given the personal circumstances of the First Respondent, his age, disability and the long period that he was in occupation and comparing that the Applicant seeks commercial interests, I exercise my discretion in ordering both parties to pay their own costs.

[20] The following order is made:

ORDER

1. The First Respondent is evicted from the immovable property situate at Erf 4[...], Extension [...], Virginia, also known as [...] A[...] Street, Virginia ('the property').
2. The First Respondent is ordered to vacate the property together with all improvements and assets by no later than 14 October 2023, failing which the Sheriff of the court is authorised to carry out the eviction order.
3. Each party to pay its own costs.

P R CRONJÉ, AJ

On behalf of the Applicant:

Adv A Sander

Instructed by:

Kruger Venter Attorneys

BLOEMFONTEIN

On behalf of the First Respondent:

Adv. N Van der Sandt

Instructed by:

DW Attorneys
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