

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 015971/24

DATE: 08-03-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 8 March 2024

SIGNATURE 

10 In the matter between

THULWA VICY LEBO MAFAPHLA

Applicant

and

BIG BELL INVESTMENTS

1<sup>st</sup> Respondent

LETS CARE SOUTH AFRICA

2<sup>nd</sup> Respondent

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**J U D G M E N T**

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20 CRUTCHFIELD, J: The applicant, Thulwa Vicy Lebo Mafahla ("Mr Mafahla"), brought urgent proceedings for a Rule Nisi and the stay of an eviction order. The first and second respondents being Big Bell Investments (Pty) Ltd and Let's Care South Africa NPC respectively, oppose the application, brought before me in the urgent court on 7 March 2024 at 14H00.

As to the urgency of the application, the applicant failed to set out any reasons substantiating urgency and failed to set forth the circumstances that allegedly rendered the matter urgent as well as the reasons why the applicant alleged that he could not be afforded substantial redress at a hearing in due course. Compliance with rule 6 (12) (b) of the rules of court is compulsory and failure to comply therewith justifies the matter being struck off the roll without further ado.

10           However, in addition, the applicant set the application down for hearing on Thursday 7 March 2024 at 14H00. The cases, in particular *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makins Furniture Manufacturers*,<sup>1</sup> the *locus classicus* and *In Re Several Matters on the Urgent Court Roll 2013 (1) SA549 (GSJ)*, require that any deviation from the rule that matters be set down for a Tuesday at 10H00 must be substantiated. The applicant did not provide any facts or reasons as to why the application was not set down for hearing at 10H00 on a Tuesday but at 14H00 on  
20   Thursday 7 March 2024.

The aforementioned justifies the application being struck off the roll without anything further. However, the circumstances, the nature and the content of this

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<sup>1</sup> *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makins Furniture Manufacturers* 1977(4) SA 135 (W)

application are such that the interests of justice require that I deal with the application, as I intend to do.

My brother, Manoim J on 1 March 2024, granted an interim order for the eviction of the applicant from premises described as Erf 634 Daggafontein Extension 7, Springs, situated at 164 and 165 Clydesdale Road Daggafontein, Springs ("the property").

The second respondent, Lets Care South Africa NPC, a social housing provider, established in terms of the  
10 Social Housing Act 16 of 2008, is the registered owner of the property. The first respondent, Big Bell Investments (Pty) Ltd, is the appointed administrator.

The property is designated for the provision of social housing.

My brother, Manoim J, granted the interim eviction order aforementioned ("the order"), against the applicant in terms of section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998 ("PIE"), pending proceedings in terms of s4 of PIE.

20 Provision is made in Manoim J's order for the delivery by the applicant of papers opposing the eviction application in terms of s4, the return date of which is 3 June 2024.

Before me, the applicant sought an order for a Rule Nisi calling upon the respondents to show reason why they

should be ordered not to evict the applicant from the property and that an interim order be granted in those terms. In short, the applicant sought an order staying the operation of Manoim J's order for the eviction of the applicant. The interim order sought from me is to operate pending the outcome of a rescission application to be brought by the applicant for the rescission of Manoim J's order.

The rescission application as envisaged by the  
10 applicant is not of a nature or content such that it serves to substantiate the applicant's application for the stay.

The answering affidavit evidences a concerted effort on the part of the applicant and a cohort of people around him, to "hijack" or assume control by illegitimate means of the property together with the income stream emanating from the property. I am alive to the fact as argued by the applicant that these are allegations without proof by the respondents. However, noteworthy is Mr Mafahla's concession in the application before me at  
20 paragraph 12 caselines page 103-10 that he has "taken charge" of the property. This substantiates the respondents' averments of an attempted hijacking of both the property and the income stream flowing from it to the applicant.

The applicant's concession of having "taken charge" of the property is in direct and contemptuous

violation of the orders of Mia J granted during November 2022 and Strijdom AJ in February 2023, interdicting and restraining Mr Mafahla *inter alia* from interfering in the running of the property. In keeping with Mr Mafahla's establishment of "charge" over the property and the occupiers of the property, the respondents allege that Mr Mafahla has appointed security guards answerable to him and is controlling access and egress to and from the property.

10                Furthermore, the respondents demonstrate that Mr Mafahla advocated strongly for his appointment as the manager of the property. It is of some importance that Mr Mafahla allegedly took control of the income stream flowing from the property as the property is currently under a rental boycott pursuant allegedly to Mr Mafahla's conduct at the property.

                 There is, in addition, evidence of violence and thuggery, harassment and intimidation directed against the occupiers of the property by the various individuals  
20 appointed by and answerable to Mr Mafahla. Furthermore, Mr Mafahla has installed occupiers in the property and is forcing them to pay "rental" ranging from R500-00 to R2 000-00.

                 As a result, pursuant to the facts referred to by me as well as additional information placed before Manoim J,

that Court considered the test in s5 of PIE to have been met and granted the order of 1 March 2024, accordingly.

There is a long history to this matter including the orders granted by Mia J and Strijdom AJ during November 2022 and February 2023 respectively.

Mr Mafahla relies for the interim stay of Manoim J's order on him and his daughter being left homeless as a result of any eviction that takes place. Mr Mafahla's daughter allegedly lives with him and is school going and  
10 both he and his daughter will be prejudiced pursuant to the applicant's interim eviction in terms of Manoim J's interim order.

Mr Mafahla, however, was served personally with the eviction application that served before Manoim J, on 15 February 2023. Mr Mafahla has known of the possibility of his eviction from the property since 15 February 2023. Notwithstanding, no details whatsoever were furnished by Mr Mafahla to this court in respect of any steps taken by him to obtain alternate accommodation in the interim  
20 pending the return date of Manoim J's order.

Furthermore, no details whatsoever were placed before me by the applicant in respect of the duration for which his daughter has allegedly lived with him, no details were furnished as to the age of Mr Mafahla's daughter, where she attends school or what grade she is currently

studying at school. Nothing whatsoever was forthcoming from Mr Mafahla in this regard. This is important because the respondents allege that the applicant's children live in Pretoria, not with Mr Mafahla in the property. Mr Mafahla allegedly lives with his girlfriend and her daughters in the property. The respondents do not seek the eviction of Mr Mafahla's girlfriend or her daughters. Furthermore, the respondents do not seek the eviction of Mr Mafahla's daughter in the event that she is living with Mr Mafahla in  
10 the property.

Manoim J granted the order in terms of s5(1) of PIE pursuant to the respondents' case that the applicant's presence at the property was the source of danger to occupiers of the property and the property itself in terms of s5(1)(a), the probability of hardship on the part of the respondents and occupiers of the property if an eviction was not granted and that that probability outweighed any likely prejudice to Mr Mafahla if any such order was granted in terms of s5(1)(b) of PIE. Furthermore, Manoim J found  
20 that no effective alternate remedy was available to the respondents in the circumstances of this matter in terms of s5(1)(c) of PIE.

In respect of the applicant's claim to homelessness and prejudice to both him and his daughter to be considered by me in terms of the application before me, the

respondents referred me to case law to the effect that the alleged homelessness of Mr Mafahla and his daughter and any prejudice to them, are not factors for consideration at this stage.

Furthermore, the personal circumstances of an unlawful occupier are not relevant to the inquiry under s5 of PIE. See, in this regard *Ndlovu v Ngcobo*, *Bekker v Jika* (1) (240/2001, 136/2002) [2002] ZASCA 87; [2002] 4 All SA (SCA) (30 August 2002), *Teaca Properties (Pty) Ltd and*  
10 *Others v John Banza and Others* (2017/36741) [2018] ZAGPJHC 72 (9 February 2018) and *Shanika Investments NO 85 (Pty) Ltd and Another v Ndimma and Others* 2015 (2) SA 610 (GJ).

Accordingly, the alleged homelessness of the applicant and his daughter and any prejudice to them pursuant to Manoim J's order are not issues for consideration before me.

However, even if the issue of homelessness of Mr Mafahla and his daughter are issues for consideration at  
20 this stage, Mr Mafahla, as already stated by me, placed no evidence whatsoever before me of an inability to secure alternate accommodation. The respondents allege that at the hearing before Manoim J, Mr Mafahla stated in open court that he had paid attorneys to represent him in those proceedings and evinced surprise at their failure to do so.

In addition, the respondents allege that Mr Mafahla has taken control of the rental income stream from the property and thus is in possession of funds, sufficient for him to obtain alternate accommodation.

The order of Manoim J is for interim relief, pending Mr Mafahla setting out reasons why that order should not be made final on the date stipulated therein.

No basis is set out before me, no facts alleged and no circumstances advanced pursuant to which I should stay  
10 the order of Manoim J for the interim eviction of Mr Mafahla.

The envisaged rescission application does not justify an interim order being granted by me for the stay of Manoim J's interim order.

Given the absence of facts and circumstances substantiating an application for the stay of the interim order, the application brought by Mr Mafahla before me stands to be dismissed. I intend to grant such an order.

The costs of this application brought as a matter of urgency and forcing the respondents to be in a court on  
20 short notice, should follow the order on the merits. There is no reason for me to order otherwise.

Accordingly, the application brought by Mr Mafahla in terms of the notice of motion dated 5 March 2024 (case line 013-3) is dismissed with costs.

I hand down the judgment.

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**CRUTCHFIELD J**

**JUDGE OF THE HIGH COURT**

**DATE: 8 March 2023**

I hand down the judgment.

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CRUTCHFIELD J

JUDGE OF THE HIGH COURT

DATE: 8 March 2023