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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 009780/2022

DATE: 2023-11-10

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

REVISED

10

10/11/23

In the matter between

TSHIRLETSO HAROLD DIRA & FURTHER OCCUPIERS

Applicants

and

20 DELVIN MOODLEY & ANOTHER

Respondents

JUDGMENT *EX TEMPORE*

LEAVE TO APPEAL

WILSON, J: The applicants are the occupiers of the property at Erf [...], Greenstone Hill, Extension 15.

On 22 June 2023 I ordered their eviction in terms of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

An application for leave to appeal was filed late, and an application for condonation was brought. I have not
10 seen the application but, given that the respondents in the application for leave to appeal, Delvin Moodley and Heidi Moodley, the purchasers of the property, do not oppose the condonation application, I will grant it with Mr Dira and the occupiers of the property to pay the costs of the application.

On the merits of the application for leave to appeal, one point was raised on the basis of which it was submitted that another court might reasonably consider that the conclusions I reached were wrong. That point was that
20 Mr Dira and the other occupiers of the property are in possession of the property pursuant to an enrichment lien.

The enrichment lien was said have arisen from work done by a company known as Bold Images on the property in such a manner that enhanced the property's value. The director of Bold Images is a person identified on the papers as Ms Thandi Makhoba. Mr Dira says that he occupies the

property with her and her children.

Bold Images was not a party to the eviction application *a quo* nor did Ms Makhoba sign an affidavit in which she asserted Bold Images' intention to exercise an enrichment lien.

In these circumstances I found in my judgment *a quo* that it was not possible for me to conclude that an enrichment claim was being exercised in such a way as to render Ms Makhoba, Bold Images, Mr Dira, or any of the
10 other occupiers of the property lawfully in possession of it. The very beginning of such a case could only be made out if Bold Images itself was a party to the application and if Ms Makhoba, as Bold Images' director, signed an affidavit confirming that she intended to exercise the enrichment lien on Bold Images' behalf.

None of this was done in the court *a quo* and in the absence of that having been done in the court *a quo*, I can find no conceivable basis on which a court of appeal could find that any of the occupiers was in occupation of the
20 property pursuant to an enrichment lien, especially Mr Dira, who appears to have nothing at all to do with any enrichment lien claimed on Bold Images' behalf.

For all these reasons, any appeal against my judgment is doomed to predictable failure and the application for leave to appeal must be dismissed.

I make the following order:

1. The application for the condonation for late filing of the application for leave to appeal is granted with the applicants for leave to appeal to pay the costs of the application.
2. The application for leave to appeal is dismissed with costs.

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WILSON, J
JUDGE OF THE HIGH COURT
10 November 2023