

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

Case no: **3943/2022**

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

PALESA PRETTY RANTSOARENG N.O.

1st Applicant

VALENTINE LETSIE RANTSOARENG N.O.

2nd Applicant

PIETER MARTHINUS STEYN STRAUSS N.O.

3rd Applicant

(In their capacities as duly authorised Trustees of the

TITOE TRUST No: IT115/12)

and

JENNA CARLY TITUS

1st Respondent

(Identity number: [...])

ANY OTHER UNLAWFUL OCCUPIERS OF

[...] H[...], W[...],

BLOEMFONTEIN, FREE STATE PROVINCE

2nd Respondent

CORAM: JP DAFFUE, J

HEARD ON: 10 NOVEMBER 2022

DELIVERED ON: 11 NOVEMBER 2022

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 16h00 on 11 November 2022.

ORDER

1. The first respondent and any other occupiers of the property known as [...] H[...], W[...], P[...]Street, Bloemfontein, Free State Province (the property) holding occupation through first respondent are declared unlawful occupiers of the property.
2. The first respondent and such other illegal occupiers holding occupation through her are ordered to vacate the property not later than 31 May 2023.
3. The sheriff of the court is authorised and directed to evict the first respondent and such other illegal occupiers from the property should they fail to comply with this order.
4. The sheriff of the court is authorised to obtain the aid of the South African Police Service in the event of him/her not being able to evict the first respondent and such other illegal occupiers from the property.

5. The first respondent and such other illegal occupiers shall remove their movable property and personal belongings from the property on/or before 31 May 2023.

6. Each party shall pay their own legal costs.

JUDGMENT

Introduction

[1] This is an extraordinary application for eviction of the first respondent and other occupiers holding occupation through her in respect of [....] H[....], W[....], P[....]Street, Bloemfontein, Free State Province (the property). Although the second applicant who deposed to the founding and replying affidavits on behalf of the applicants insisted that the first respondent's averments of a romantic relationship between them were irrelevant, such averments need to be considered bearing in mind the relevant legal principles. More about this later herein.

The parties

[2] The three applicants are Mrs Palesa Pretty Rantsoareng, Mr Valentine Letsie Rantsoareng (married to each other) and an independent trustee, Mr Pieter Marthinus Steyn Strauss, in their capacities as the trustees of the TITOE Trust IT 115/12 (the Trust);

[3] Ms Jenna Carly Titus has been cited as first respondent, any other unlawful occupiers of the property as second respondent and the Mangaung Metropolitan Municipality as third respondent. The second and third respondents did not play a role in the opposed application and consequently I will refer to the first respondent as the respondent later herein.

The relief sought

[4] Having obtained authorisation from this court to institute these proceedings in terms of the provisions of s 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), the applicants now seek an order that the respondent and other occupiers holding occupation through her vacate the property within 20 days from date of service of the order together with the costs of the application.

[5] The application is opposed by the respondent.

The disputes

[6] It is the applicants' case that they as the registered owners of the property, represented by the second applicant, entered into a verbal agreement with the respondent during 2018 in terms whereof she was allowed to occupy the property for an indefinite period which right could be terminated on demand. Written demand to vacate has been given as is apparent from the letter dated 21 April 2022 which was duly served by the sheriff.¹ The respondent refused to adhere to the demand and is still in occupation of the property. Therefore, it is the applicants' case that the respondent is in unlawful occupation of the property and that they are entitled to an eviction order. They complied with the provisions of subsecs 4(1) and (2) of PIE.

[7] The respondent denies that the applicants are entitled to the relief sought. She relies on a universal partnership entered into between her and the second applicant. On her version and even in the event of dissolution of the partnership she would be entitled to remain in occupation of the property until her daughter reaches the age of 18 which is still a few years in the future as the child is presently in grade 8.

[8] According to the respondent she and the second applicant started a romantic relationship in 2005 and save for a period between 2007 and 2011, this relationship endured until recently. I shall deal more fully with her version hereunder as this is

¹ Annexures "FA4" & "FA5" at pp 132 – 134.

relevant, notwithstanding the second applicant's attitude, in order to decide what is just and equitable relief.

The principles applicable to eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)

[9] The respondent has been occupying the property since October 2018 and thus more than 6 months prior to the launching of the eviction proceedings. Therefore, subsec 4(7) of PIE applies. It reads as follows:

'(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.' (emphasis added.)

[10] 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).' (emphasis added).

[11] Applications for the eviction of unlawful occupiers of immovable property have inundated the courts of this country. It is apparent from the law reports that a considerable number of judgments have been reported over the last 20 years. It is apposite to refer to what was already said more than 20 years ago in *Ndlovu v*

Ngcobo, Bekker and Another v Jika (Ndlovu).² Harms JA, writing for the majority, stated in *Ndlovu* as follows:

‘The effect of PIE is not to expropriate the landowner and PIE cannot be used to expropriate someone indirectly and the landowner retains the protection of s 25 of the Bill of Rights. What PIE does is to delay or suspend the exercise of the landowner's full proprietary rights until a determination has been made whether it is just and equitable to evict the unlawful occupier and under what conditions. Simply put, that is what the procedural safeguards provided for in s 4 envisage.’

[12] In *Changing Tides* the court dealt specifically with an application for eviction at the instance of a private person or body. It summarised the applicable considerations as follows³:

‘[25] Reverting then to the relationship between ss 4(7) and (8), the position can be summarised as follows. 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 demand 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

² 2003 (1) SA 113 (SCA) para 17; See also *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (Blue Moonlight)* 2012 (2) SA 104 (CC) paras 30 - 41 and *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others (Changing Tides)* 2012 (6) SA 294 (SCA) para 25.

³ *Changing Tides* loc cit para 25.

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 until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.’ (emphasis added.)

[13] The facts of each application for eviction based on alleged unlawful occupation are always the point of departure. Gamble J, writing for the majority, confirmed the dicta in *Ndlovu*, *Blue Moonlight* and *Changing Tides* in *Mayekiso v Patel*⁴ and emphasised the competing constitutionally entrenched rights at play, to wit s 26(3) of the Constitution which provides that people may not be evicted from their homes without an order of court granted after considering all the relevant circumstances, and s 25(1), which protects the rights of owners of private property against arbitrary expropriation.

Evaluation of the evidence

[14] It is an objective fact that the trustees in their aforesaid capacities are the owners of the property as is apparent from deed of transfer ST15912/2018.⁵ The respondent’s version that the second applicant bought the property in his personal capacity is not correct. Her allegation must be seen in context, especially insofar as her version is, save for a bare denial, not attacked at all. The second applicant and respondent were not only engaged in a romantic relationship, but closely involved in not only identifying the property to be bought from the developer, but also the selection of designs for the newly-built house and purchasing of inter alia furniture and curtains.⁶ The other two trustees did not feature at all. Although it may appear at first blush that the second respondent used the Trust as his alter ego, it is not

⁴ 2019 (2) SA 522 WCC paras 58 & 59.

⁵ Annexure “FA3” at pp 29 – 31.

⁶ Annexure “OP5.1” at p 119 and further.

required for purposes of the adjudication of the dispute to consider this aspect any further. The trustees' right against arbitrary expropriation is protected.

The defence: a universal partnership.

[15] Recently the Supreme Court of Appeal reiterated the character of a partner's right in a universal partnership in *Khan v Shaik (Khan)*.⁷ I do not intend to deal with the requirements to establish a valid universal partnership as this may have to be dealt with in another court one day insofar as the relationship between the second applicant and the respondent is concerned. It suffices to point out that upon termination of such partnership an accounting shall take place between the former partners. Also, insofar as a partner's claim is based on contract, it is a personal and not a real right. This means that in this case the respondent does not have a direct claim to the property,⁸ either based on an undivided share as co-owner, or a right of habitatio or any other right to use or occupy the property.

[16] The respondent may institute action against the second applicant, if so advised, in order to claim what she believes she is entitled to in terms of the termination of their alleged partnership. However, reliance on such a partnership is not a defence in an application for eviction for the reasons stated in *Khan*. Furthermore, the property is not registered in the name of the second applicant, but in the names of the trustees of the Trust who have never become parties to this alleged universal partnership. A similar defence has been rejected in *Botha NO v Deetlefs & Another*⁹ and more recently the court held in *Charsley NO v Bunge*¹⁰ as follows:

'In opposing the application for eviction, the respondent is seeking to do precisely what the Supreme Court of Appeal indicates is not permissible. She asserts a right to live on the property indefinitely, in the absence of any usufruct or similar agreement concluded with the owners of the property, being the trust. She bases this claim on the existence of the universal

⁷ 2020 (6) 375 (SCA) paras 6 – 8.

⁸ Ibid paras 10 & 11.

⁹ 2008 (3) SA 419 (N) paras 13 – 20.

¹⁰ 2021 JDR 0845 (KZD) at para 12.

partnership with the deceased, who himself was not the owner of the property.’

[17] Although the respondent submitted in her heads of argument that the application should be referred for oral evidence in order to ventilate the dispute as to the terms of her agreement with the second applicant and whether or not the Trust had given the requisite consent thereto, respondent’s counsel did not pursue this aspect during oral argument. If the quoted authorities are considered, it would be a futile exercise to refer the matter for oral evidence.

[18] The respondent has received a notice by the trustees of the Trust to terminate her occupation of the property. I am satisfied that no valid defence has been raised to the claim for eviction. Consequently, she is in unlawful occupation of the property and it would be just and equitable to grant an eviction order. Before doing so, I must consider what justice and equity demand in relation to the date of implementation of the order.

Just and equitable relief.

[19] I shall deal with the relief sought, having regard to all the relevant circumstances. The respondent made the following averments which in most instances are supported by documentary proof:

a. A romantic relationship between the second applicant and the respondent started in 2005 at a stage when the respondent was 25 years old. During that year he persuaded her to move into a flat in N[....]. He paid the rental, water and electricity accounts and also contributed towards some of her living expenses.¹¹

b. In the beginning of 2007 the second applicant indicated that she should relocate to a property in Fleurdal as he was concerned that people would become aware of their relationship. He again paid the relevant expenses and contributed to her other financial needs.

¹¹ Answering affidavit paras 2.2 & 2.3 at pp 47 & 48.

c. At the end of 2007 the relationship broke down where after the respondent entered into a brief relationship with another man as a result of which she fell pregnant. Her child was born in October 2008.

d. In 2011 the parties started seeing each other again and rekindled their relationship. At that stage the respondent was staying with her sister. During 2015 the second applicant insisted that she moved to a new complex in order to provide more privacy for them. He entered into a lease agreement in respect of the complex known as Olienhout in Kiepersol where the respondent stayed until she temporarily relocated to another property before she eventually moved to the property presently occupied by her.¹²

e. In 2015 the second applicant also bought a Polo Vivo for her. He maintained the vehicle and even paid for fuel.¹³

f. The second applicant not only bought clothing for the respondent, but took her on trips to expensive hotels, paying for accommodation and airline tickets.¹⁴

g. In December 2019 the second applicant purchased a Mercedes Benz which he provided to the respondent.¹⁵

h. The second applicant bought furniture for the property in Olienhout as well as the present property.¹⁶

i. In 2021 an incident occurred between the parties as a result of which the respondent laid a charge with SAPS for common assault against the second applicant. The relationship has by then deteriorated and became worse in the beginning of 2022. On 26 April 2022 she was served with a letter to vacate the property on/or before 3 June 2022.

¹² See annexures "OP1.1" – "OP1.10" at pp 63 - 85; paras 2.7 & 2.8 at p 49.

¹³ Paragraph 2.8 at p 49; annexures "OP2.1" – "OP.2.5" at pp 86 - 91.

¹⁴ Paragraph 2.10 at p 50; annexures "OP3.1" – "OP4.2" at pp 92 -118.

¹⁵ Paragraph 2.13 at p 51; annexure "OP6" at pp 137 - 139.

¹⁶ Paragraph 2.15 at p 52; annexures "OP9.1 – "OP9.3" at pp 159 – 173.

j. The respondent is employed and earns a gross salary of R20 000.00. She is a single mother having to care for her daughter who is in grade 8. According to her she does not have alternative accommodation at present, insofar as neither her sister, nor her mother can provide her with accommodation. She is also not in a financial position to provide for her own accommodation.

[19] Having detailed the background facts provided by the respondent to which the second applicant did not reply on the basis that these facts are irrelevant, I am satisfied that although the applicants are entitled to eviction, the period of 20 days set out in the notice of motion is not reasonable.

[20] During oral argument I indicated to the parties that I believed that the respondent should be granted a period of six months to vacate the property; also that I would not be inclined to grant costs to the applicants as the successful parties. After having received instructions, both counsel indicated that their clients would be prepared to accept an order for eviction on the terms as put to them, including a costs order as suggested.

Conclusion

[21] It is a pity that the parties could not reach an agreement before the hearing of the matter as this would have saved enormous legal costs. When I noticed that there was no compliance with rule 41A pertaining to referral of the dispute to mediation, I requested the parties to deal with my concerns. They did so. It is apparent that the parties tried to settle the matter on more than one occasion and even as late as the day before the hearing, but to no avail.

Order

1. The first respondent and any other occupiers of the property known as [...] H[...], W[...], P[...]Street, Bloemfontein, Free State Province (the property) holding occupation through first respondent are declared unlawful occupiers of the property.

2. The first respondent and such other illegal occupiers holding occupation through her are ordered to vacate the property not later than 31 May 2023.
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5. The first respondent and such other illegal occupiers shall remove their movable property and personal belongings from the property on/or before 31 May 2023.
6. Each party shall pay their own legal costs.

J P DAFFUE, J

On behalf of the Applicants:

Instructed by:

Adv J Els

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BLOEMFONTEIN

On behalf of the Respondents:

Instructed by:

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