

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

CASE NO: A44/2022

IN THE MATTER BETWEEN:

SAMUEL SAMPI

APPELLANT

and

COMFORT MOMPAI NTSI

1ST RESPONDENT

MANGAUNG METROPOLITAN MUNICIPALITY

2ND RESPONDENT

CORAM:

VAN RYHN, J *et* MPAMA, AJ

DATE HEARD:

17 OCTOBER 2022

This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 14h00 on 30 November 2022.

JUDGMENT BY: MPAMA, AJ

[1] This appeal is against the whole of the judgment and order and emanates from the Magistrate's Court, Bloemfontein. On 16 September 2021, the court *a quo* granted an order evicting the appellant and any person occupying through the appellant from house No. [...] J[...], P[...], Bloemfontein (the "property").

[2] Mr Samuel Sampi (the "appellant") is an unemployed major male from Bloemfontein. He resides at the property with his brother, Mr Diodi Sampi. The appellant's brother is a person living with a disability and a recipient of a disability grant from South African Social Security Agency (Sassa). On 16 September 2021, the court *a quo* granted an eviction order against the appellant and his brother after they were found to be in unlawful occupation of the property.

[3] The 1st respondent, Comfort Mompoti Ntsi is the registered owner of the property. On 19 July 2019 the 1st respondent purchased the property from Ms Anna Dipuo Mahloko (Ms D Mahloko) and Modiehi Koba Mahloko (Ms M Mahloko), the representatives and heirs in the estate of the Late Serame Steven Mahloko ("Mr Mahloko").

[4] The 2nd respondent is the Mangaung Metropolitan Municipality, an organ of the State, cited herein only for the purposes of compliance with section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act¹ ("PIE Act"). No relief was sought against the 2nd respondent.

[5] Mr Mahloko and the appellant's mother, Ms Dithlare Mariam Sampi were married to each other in community of property on 02 February 2013. Mr Mahloko died on 18 January 2014 leaving his wife. Mr Mahloko's wife passed away on 10 October 2016. In their lifetime, Mr Mahloko and his wife were the owners of the property in question. The property is a house built with a housing subsidy applied for and awarded by the then Free State Department of Local Government & Housing (referred to as a RDP house). The appellant and his brother were residing at the property with their mother and they remained at the property after their mother's demise.

¹ Act 19 of 1998.

[6] Mr Mahloko's estate was not reported until March 2018. On 07 March 2018, Ms M Mahloko signed deceased's death notice in terms of section 7 of the Administration of Estates Act, 1965. It is not clear how Ms D Mahloko relates to the deceased, however on the aforesaid notice she is noted as the deceased's blood relative and on another document, (J 192 attached) referred to as Mr Mahloko's child.

[7] At the time Mr Mahloko's estate was reported, a form declaring Mr Mahloko's subsisting marriages was completed by Ms D Mahloko. This form is attached as "Annexure 19" to the record. Apparent from this form is that Ms D Mahloko declared that Mr Mahloko was single and never married. In addition, Ms D Mahloko deposed to an affidavit (J 192) stating that Mr Mahloko left no surviving spouse at the time of his demise. (annexure "Sampi 17") This was a misrepresentation of facts as Mr Mahloko in his lifetime was married to the appellant's mother and at the time of his death he was survived by his wife.

[8] Unbeknown to the appellant, Ms M Mahloko and Ms D Mahloko were appointed as the representatives of the estate of Mr Mahloko. On 19 July 2019 they sold the property to the 1st respondent for an amount of R100 000.00. The property was duly transferred and registered in the name of the respondent on 09 November 2020.

[9] On 26 April 2021, the respondent instituted an application for the eviction of the appellant and any person occupying the property through the appellant at the Bloemfontein Magistrate's Court. The matter was opposed by the appellant and despite opposition the court *a quo* granted an eviction order against the appellant on 16 September 2021. The appellant now appeals against this order.

[10] The appeal court will not interfere with the trial court's finding unless it is convinced that it is wrong.

[11] Essentially the appellant raised the following grounds of appeal:

That the court *a quo*:

- (i) Erred in not appreciating the legal consequences of cohabitation and the subsequent civil marriage, in that the appellant's mother was the owner of half of the property and she also became an intestate heir in Mr Mahloko's estate.
- (ii) Erred in not appreciating the fact that Mr Diodi Sampi was disabled.

[12] The 1st respondent filed a notice to oppose the appeal through his attorneys on 07 July 2022. However, no opposing affidavit was filed and on 30 September 2022, the respondent's attorneys filed a Notice of Withdrawal as Attorneys of Record.

[13] At the hearing of this matter the court was concerned that there was no appearance for the respondent given that the 1st respondent had filed a notice to oppose and thus, at some stage, he had instructed an attorney to oppose the appeal. Mr. Nkhahle, counsel on behalf of the appellant, informed the court that the 1st respondent was adequately informed of the date of hearing and is fully aware that the matter will be proceeding in court. In amplification, Mr. Nkhahle handed in a letter written by the 1st respondent and delivered personally to the appellant. On perusal of this letter the court was satisfied that the 1st respondent was duly informed of the date of hearing of this appeal. As a result, the hearing of the appeal proceeded.

[14] The PIE Act provides procedures for the eviction of unlawful occupiers and also prohibits unlawful evictions.

[15] For an applicant to succeed in being granted an eviction order he must satisfy the court of the following requirements, that:

- (a) He is the owner of the land
- (b) The respondents are unlawful occupiers
- (c) It is just and equitable to grant an eviction order.

[16] The following sections of the PIE Act are of paramount importance:

Section 1 which defines an unlawful occupier as “a person who occupies the land without the express or tacit consent of the owner or person in charge or without any right in law in law to occupy such land.”

Section 4(8) provides as follows: “If the court is satisfied that all the requirements of this section had 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).

Section 4(9) provides as follows: “In determining a just and equitable date contemplated in sub-section 8, the court must have regard to all relevant factors, including the period the unlawful occupier and his family have resided on the land in question”.

[17] If the court is satisfied that the requirements of section 4 of the PIE Act have been complied with, and the unlawful occupier has no valid defence it must grant an eviction order.

[18] The court must determine if the eviction will be just and equitable, and in doing so it must have regard to all the relevant circumstances, including availability of land for the relocation of the unlawful occupier, the rights of the elderly, disabled, women headed households and children.

[19] Mr. Nkhahle submitted that the estate of the appellant’s mother was not reported. He is in the process of assisting the appellant to report his late mother’s estate and the appellant intends to approach the court for an order to have the transfer of the property to the respondent set aside. Mr. Nkhahle contended that the

eviction of the appellant is not just and equitable considering how the estates of both Mr Mahloko and appellant's mother were handled. He further argued that the court *a quo* erred when it found that the appellant and his brother were unlawful occupiers and their eviction was just and equitable. On behalf of the appellant, Mr Nkhahle contended that the appeal be upheld with costs.

[20] At the time of Mr Mahloko's demise, the appellant's mother by virtue of marriage became entitled to half of the joint estate. The joint estate included the property in question. In addition, in terms of section 1 of the Intestate Succession Act 81 of 1987 the appellant's mother inherited a child's share of Mr Mahloko's intestate estate together with Mr Mahloko's children. It goes without saying that the appellant's mother or her estate has a valid claim to the property. Mr Mahloko's biological children, which includes Ms D Mahloko and Ms M Mahloko, by failing to submit the correct information in respect of the marital status of Mr Mahloko when reporting his death at the Master of the Free State High Court's office at Bloemfontein, had no right in law to sell the property. By selling the property they interfered with the mother of the appellant's right to inherit from the joint estate.

[21] The court *a quo*, correctly referred to the case of **PORT ELIZABETH MUNICIPALITY v VARIOUS OCCUPIERS 2005(1) SA 217(CC)**, however failed to apply the principles enunciated in this judgment. Sachs J expressed as follows in para 32:

"The obligation on the court is to 'have regard to' the circumstances, that is, to give them due weight in making its judgment as to what is just and equitable...What the court is called upon to do is to decide whether, bearing in mind the values of the Constitution, in upholding and enforcing land rights it is appropriate to issue an order which has an effect of depriving people of their homes"

[22] The court went further and said on para 36:

“The court is thus called upon to go beyond its normal functions and to engage in active judicial management according to equitable principles of an on-going, stressful and law- governed social press”

[23] It is not in dispute that the 1st respondent is the registered owner of the property and that the appellant and his brother have stayed at the property since their mother’s death. The evidence presented by the appellant in the opposed application for eviction in the court *a quo* demonstrated that the sale of the house was tainted with illegality and the court *a quo* failed to appreciate that. In the light of the lengthy period that the appellant and his brother had occupied the house, the disability of the appellant’s brother, the problems regarding the estate of the appellant’s mother and the circumstances surrounding the sale of the property, I am satisfied that it is not just and equitable to grant an order for the eviction of the appellant and his brother. The court *a quo* was misdirected when it found that it was just and equitable to grant an eviction order.

[24] The court has a discretion to award costs. The general rule is that an unsuccessful party must pay the costs of the successful party. There is no reason to deviate from the general rule.

[25] In the circumstances, I would make the following order:

1. The appeal is upheld with costs.
2. The eviction order granted by S.S Nteshe dated 16 September 2021 is set aside.

L. MPAMA, AJ

I concur and it so ordered

I.VAN RHYN, J

On behalf of the appellant:

Adv J Nkhahle

Instructed by:

PRO BONO COUNSEL

On behalf of the 1st respondent:

no appearance