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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: **2580/18**

DATE HEARD: **22/10/2021**

DATE DELIVERED: **29/10/2021**

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional Magistrates: YES/NO

In the matter between:

SISHEN IRON ORE COMPANY (PTY) LTD

Applicant

and

JOHN PANTI MOKOTEDI

1st Respondent

THE OCCUPIERS OF ERF [...], KATHU TOWNSHIP,

ALSO KNOWN AS [...] 21ST AVENUE, ROOISAND, KATHU

2nd Respondent

GAMAGARA LOCAL MUNICIPALITY

3rd Respondent

Coram: MOSES AJ

JUDGMENT

Moses AJ:

INTRODUCTION

1. This is an opposed application by the applicant, Sishen Iron Ore Company (Pty) Ltd for the eviction of its erstwhile employee, Mr John Panti Mokotedi, the first respondent, and those who occupy the property, Erf [...], Kathu Township, also known as 21st Avenue, Rooisand, Kathu, the second respondent. The Gamagara Municipality was cited as the third respondent, but no order is sought by any of the parties hereto, against the third respondent.

2. This matter has a long history, as will be reflected in the chronology of events leading up to the above stated application being launched and prosecuted in this Court. I became seized with this matter when it was set down for hearing on 13 August 2021. As the first and second respondents' counsel fell ill just prior to the afore stated hearing date, an application was moved from the Bar by Mr Jacobs, who then appeared on behalf of the afore stated respondents, and who stood in for Mr Mello, on 13 August 2021, which application was granted, and costs to stand over for later determination. The matter was then postponed to 22 October 2021.

3. On 22 October 2021, counsel for the above stated parties appeared before me. I was advised in chambers that, inasmuch as there was a proposal on the table, the parties sought some time to discuss same and take the necessary instructions from their respective clients, and to that end, requested the matter to stand down for a while, which request was granted.

4. Subsequently the parties advised that there was initially an agreement between the parties, but that the first respondent thereafter retracted his instructions to his counsel in that regard, and that the matter must therefore proceed on the basis that it is still opposed. It thus proceeded on that basis, hence judgment was reserved, which is delivered herewith.

CHRONOLOGY OF EVENTS

The applicant's case

5. The first respondent was employed by the applicant and in consequence of his employment with the applicant, he qualified for mine accommodation at a

nominal monthly rental, during his employment with the applicant, in terms of a written lease agreement dated 11 December 2013.¹

6. The lease agreement was in respect of the rent of a house/property known as Erf [...], Kathu Township, also known as [...] 21st Avenue, Rooisand Kathu.²

7. The property is a residential property registered in the name of the applicant under Deed of Transfer/Title deed T909/2014. Clause 4.3 thereof provides that the lease agreement would be automatically and simultaneously cancelled upon the date of termination of the first respondent's employment with the applicant.³

8. The first respondent's employment was terminated on or about 31 July 2017 "*due to incompatibility*".⁴

9. He was then supposed to vacate the property by 30 August 2017 and a final notice to vacate was given to him on 1 September 2017.⁵

10. Despite the above, the first and second respondents have refused to vacate the property, and are still occupying the property to date hereof.

The first and second respondent's case

11. As per his handwritten affidavit dated 1 May 2019⁶, the first respondent avers that he was dismissed unfairly by the applicant, as a result whereof he made a case in the Labour Court under case numbers JR 1310/17 and JR 2009/17, for unfair labour practice, and because of his whistleblowing about corruption, as a result whereof he opened a case under JG 868/17. All these cases were/are still pending.

12. First respondent has also referred to him having four dependants, including a wife and three minor kids, and him being unemployed, as well as that he has a disability i.e. club foot.⁷

¹ Record p46, Annexure C

² Record p33

³ Record p34

⁴ Record p58, Annexure D

⁵ Record p59, Annexure E

⁶ Record p 71-73

⁷ Record p71

13. As it turned out, and the case that the first respondent has subsequently pleaded: He admitted that he was formerly employed by the applicant as a Safety Officer (in his paragraph 1), hence that he is no longer so employed.⁸

14. First respondent admitted the lease agreement including the terms of clause 4.3 entered into on 11 December 2013. In fact, he states that, in terms of clause 4.3 the applicant agreed to allow him to let the property by virtue of the employment relationship, and states specifically:⁹

“The applicant and I entered into an employment relationship and as a result of it a lease agreement was signed.”

15. The first respondent makes out his case as follows:¹⁰

15.1 He challenged the “*alleged unfair dismissal*”

15.2 Which is a dispute pending in the Labour Court;

15.3 Based on a review application in the Labour Court for the alleged unfair dismissal. Thus he states

“The Court should postpone the eviction application sine die pending the finalisation of the review application in the Labour Court for the alleged unfair dismissal.”

This seems to be the first ground.

16. First respondent’s second ground appears in his answer to paragraphs 11 and 12 of the founding affidavit, the contents whereof he denied. Herein he makes the following submission:¹¹

The first and second respondents “occupied the property as a result of the employment contract that I have signed with the applicant. The unlawful occupier is a person who occupies land without express or tacit consent of the owner or without any other right in law. The right law that the made the first

⁸ Record p122

⁹ Record p124

¹⁰ Record p124

¹¹ Record p124

and second respondents (sic) is the employment relationship. The review application in the Labour Court seek to set aside the dismissal and have myself reinstated to my position as if there was never a dismissal.”

In paragraph 5.6¹² he

“admits that we refused to vacate the property in question: all we want is the Honourable Court to allow the review application to be heard and finalised as I strongly believe that my dismissal was unfair. I challenged the irregular appointments made by the applicant and I was dismissed for incompatibility. I vehemently believe that the Labour Court will set aside the dismissal and replace it with retrospective reinstatement and back pay.”

17. These allegations and grounds are not sustained, if one compares these statements/averments with what is stated in the “founding affidavit” of the first respondent in the review application to the Labour Court¹³, more particularly paragraph 5 thereof, under the heading “*Chronology of material facts*”.¹⁴ That “*Review Application*” is clearly an application for the review of an Arbitration Award, which was pursuant to him (first respondent) having registered an internal dispute on 24 October 2016, for an unfair labour practice because “*I was not shortlisted*” and hence not promoted to the more senior position within the applicant, of SHE System Specialist, for which he unsuccessfully applied. Hence, this is the dispute, which remained unresolved, and was then, on 23 January 2017 referred to the CCMA, where, despite conciliation, it could not be resolved in his favour. Where after, it was referred to arbitration, which led to the Arbitration Award, which was also not in his favour, and which essentially is the subject matter of that “*Review Application*”. It is not, and never was a Review Application based on the termination of his employment with the applicant on or about 31 July 2017.

THE OBJECTIVE FACTS

18. Therefore, in the context of this application for eviction the following objective facts stand out:

¹² Record p125

¹³ Record p149 – 153

¹⁴ Record p 151

18.1 The first respondent's employment was terminated with effect from 31 July 2017;

18.2 That termination is/was clearly not the subject of an application to the Labour Court for review based on an "*unfair dismissal*" and/or and unfair labour practice.

18.3 The first respondent's right to stay and occupy the property of the applicant was dependent on his continued employment with the applicant, as determined in the lease agreement;

18.4 In terms of Clause 4.3 of that lease agreement, the lease agreement would automatically and simultaneously be cancelled upon the date of termination of his employment with the applicant;

18.5 In the premises, there is no employment contract, hence no employment relationship, with effect from 31 July 2017; there is no legally binding lease agreement with effect from 31 July 2017; thus none of these gave/give him any right to stay any longer on the applicant's property.

18.6 It is common cause that the first respondent does not have the consent, expressly, and/or tacitly, with effect from 31 July 2017, to stay and occupy the property;

19. There are two more related issues to be considered.

19.1 Does the first respondent have "any other right in law" to justify this continued occupation of that property? If so, what law or legal right?

19.2 Does a pending Review Application in another Court, the Labour Court, in casu, confer any "*right*" on a person who instituted, it in the context of an eviction application, such as in this case?

19.3 As pointed out above, the "*Review Application*" relied on by the first respondent, has nothing to do with the termination of his employment with effect from 31 July 2017, nor with his continued occupation of the applicant's property, to date hereof. In the circumstances, the First Respondent and/or

the Second Respondent clearly have no other right in law to justify their continued occupation of the property.

The first and second respondents are therefore clearly in unlawful occupation of the applicant's property, and hence unlawful occupiers.

20. The first and second respondents did not elaborate in great detail what steps they have taken to acquire alternative accommodation from the date of termination of first respondent's employment, and hence also terminating the lease agreement, with effect from 31 July 2017.

21. The third respondent (Gamagara Municipality) stated that they/it do not/does not have available land for alternative accommodation.¹⁵

22. The mining company, the applicant, stated that they also do not have available/alternative accommodation for the first and second respondents. In fact, they have a waiting list of current employees to be given houses/places of accommodation.¹⁶

CONCLUSION

23. Having carefully considered all relevant facts and circumstances as stated above, and counsel's written and oral submissions, it is indisputable that the first and second respondents are unlawful occupiers in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ("*PIE Act*").¹⁷

24. The applicant has made out a clear case in terms of the said PIE Act for the eviction of the first and second respondents. I was advised by counsel that the applicant has no objection to the Court ordering the eviction of the first and second respondents by 31 January 2022. There was no objection to this submission, by and/or on behalf of the first and second respondents.

25. Given the fact the first and second respondents were not willing to agree to the proposed settlement, counsel for the applicant, Mr Kloek, submitted that costs should then follow the result, including the wasted costs of 13 August 2021.

¹⁵ Record p172-175, Report on Land Availability for Evictees

¹⁶ Record p184 – 185 The Applicant's Further Supplementary Affidavit.

¹⁷ Act 19 of 1998

26. Counsel for the first and second respondents, Mr Mello, submitted that, in the exercise of this Court's discretion, the Court should order that each party to pay their own costs, inasmuch as the first respondent is still unemployed.

ORDER

27. In the circumstances, the following order is hereby issued.

The applicant is granted an order in terms of Prayers 1.1, 1.2 and 1.3 of the Notice of Motion, as amended by this Court:

1.1 "The First Respondent be evicted from the property situated at Erf [...], Kathu Township, also known as [...], 21st Avenue, Rooisand, Kathu and everybody occupying the property through him;

1.2 The First and Second Respondents are ordered to vacate the property on 31 January 2022; and

1.3 In the event of the said Respondents not vacating the property on 31 January 2022, the Sheriff of the Court or his lawful appointed Deputy be authorised and directed to evict the said Respondents from the property".

1.4 Each party to pay its/their own costs.

MOSES AJ

ACTING JUDGE

NORTHERN CAPE DIVISION

For the applicant Adv. v WJ Kloek
 (oio) Hogan Lovells Johannesburg Inc (Elliot Maris Kimberley)

For the respondents: Adv. LMS Mello
 (oio) Thomas Kouter Attorneys, Kimberley