



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
 (2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
 (3) REVISED

DATE: 8/3/2018

SIGNATURE: *[Signature]*

8/3/18

Case No. 71797/2017

In the matter between:

THE MINISTER OF POLICE

APPLICANT

And

LESIBA MOSES LEGOABE

FIRST RESPONDENT

**ANY OTHER UNLAWFUL OCCUPIER OF ERF 604
 TRAKA STREET ELARDUSPARK**

SECOND RESPONDENT

CITY OF TSHWANE METROPOLITAN
MUNICIPALITY

THIRD RESPONDENT

JUDGMENT

MILLAR AJ

1. The first respondent in this application is a former employee of the applicant, a Lieutenant-Colonel in the South African Police Service. One of the benefits of his employment was the right to occupy the property from which the applicant now seeks to evict him.
2. This application is before me for confirmation of a *rule nisi* granted on 24 October 2017 and subsequently extended on 14 November 2017 to the opposed roll on 5 March 2018.
3. The first respondent had appeared on 14 November 2017 and the rule had been extended so as to afford him an opportunity to obtain legal representation and file papers.
4. By the time this application was heard, the first respondent had filed an answering affidavit and the applicant a reply.
5. The applicant appeared in person and handed in a letter from the Legal Aid Board which showed that his application to them for assistance had been declined. There were no reasons for the decline. The first respondent handed in the letter to demonstrate that he had attempted to comply with the order of 14 November 2017.

6. The facts of the matter are largely common cause. The main point of dispute was in respect of whether the first respondent was still employed by the applicant or not.
7. It is the case for the applicant that the first respondent is no longer in the employ of the applicant. The applicant relied *inter alia* upon a letter of dismissal dated 26 March 2015 to establish the dismissal. This was not disputed by the first respondent.
8. The case for the first respondent, both in his answering affidavit and amplified in argument was that he had been dismissed but that it was unlawful and fell to be set aside. He said that he had been dismissed for what he termed "political reasons" and that an investigation had been requested by him into the matter. He said that the investigation was at a sensitive stage and that the Minister of Police as well as other senior officers were aware of this.
9. In his answering affidavit he had named an Advocate. Ntsoane and a Lieutenant-Colonel Groenewald as both being aware of this investigation.
10. The first respondent had attached to his answering affidavit a document purporting to be an affidavit by Advocate Ntsoane. This document was unsigned although the word "confirmed" had been written on the space provided for signature. Advocate. Ntsoane was stated by the first respondent to be unavailable to testify. There was no explanation as to why the document had not been signed and the first respondent contended that the contents had been confirmed to him. The applicant applied to strike this document out and after hearing the parties, I granted the order.

11. The first respondent was steadfast in his assertion that due to the sensitive political nature of the alleged investigation he was unable to disclose any details of it. He contended that this was why he had not challenged his dismissal through the usual channels for doing so.
12. The applicant denied that any such investigation was underway and had produced, in reply, an affidavit by Lieutenant-Colonel Groenewald in which she had denied any knowledge of the alleged investigation.
13. The first respondent has failed, to my mind, on any basis¹ to establish on the papers that the alleged investigation is underway or that his dismissal some three years ago is impeachable. This being the case, the first respondent was no longer entitled to occupy the property from 26 March 2015 and has been in unlawful occupation since then.
14. The applicant also contended that the continued occupation of the property by the first respondent would result in substantial injury or damage to the property. The applicant attached photographs of the property from which it appears that the property is derelict and in a poor state of repair as well as affidavits from persons who live in close proximity to the property as to its deteriorating condition.
15. The electricity supply to the property has been disconnected and the first respondent is alleged to be building an open fire in the garage on a daily basis. This together with the overgrown state of the garden is stated to constitute a fire hazard, not only for the property occupied by the first respondent but also for neighboring properties.

¹ *Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 624 A-B.

16. The respondent denied this in his answering affidavit but also stated that the obligation to maintain the property was not his but that of the Department of Public Works. He went on to say that if he was paid to do so, he would maintain the property.
17. The first respondent has failed to place any facts before the court which would indicate that he falls into the group of persons for whom special care and consideration should be given when considering an application such as the present.²
18. The applicant has established: -
- 18.1 That the first respondent is no longer employed by the applicant;³
- 18.2 That there is a real and imminent danger of damage to the property.⁴
19. Having regard to the above, I am of the view that it would be just and equitable to grant the order sought.⁵
20. In the premises it is ordered:
- 20.1 The first respondent, together with all persons claiming any right, title or interest to occupation of the land or building described as erf 8604 Traka Street, Elarduspark are directed to vacate the property and building within 30 days of the granting of this order;

² *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at page 229 paragraph 23 and *Wormald N.O and Others v Kambule* 2006 (3) SA 562 (SCA) at paragraph 18.

³ *African Granite Co (Pty) Ltd v MUN* 1993 ILJ (LCN) and section 1 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

⁴ *Shanike Investments NO (Pty) Ltd v Ndima and Others* 2015 JOL 327578B (GJ) at paragraph 20.

⁵ *City of Johannesburg v Changing Tides* 74 2012 (6) SA 294 (SCA) paragraph 11.

- 20.2 In the event that the first respondent together with all persons claiming any right, title or interest to occupation of the land or building described as Erf 8604 Traka Street, Elarduspark failing to vacate the property and building within the time aforesaid, then the Sheriff of this Court or his Deputy together with the assistance of members of the South African Police Services, if necessary, be authorized to evict the first respondent and any other person claiming any right, title or interest.
- 20.3 The applicant is authorized to take such steps as may be necessary to preserve the structural integrity of the property and to remove all hazardous materials from the land or building.
- 20.4 The first respondent is ordered to pay the costs of the application which costs are to include the costs of the application to strike out.



A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:

7 MARCH 2018

JUDGMENT DELIVERED ON:

8 MARCH 2018

COUNSEL FOR THE APPLICANT:

ADV. H MODISE

INSTRUCTED BY:

STATE ATTORNEY PRETORIA

REFERENCE:

MS D MOLEPO

THE FIRST RESPONDENT:

IN PERSON

THE SECOND RESPONDENT:

NO APPEARANCE

THE THIRD RESPONDENT:

NO APPEARANCE