



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

CASE NO: 95657/2015

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

20/02/17
DATE

[Signature]
SIGNATURE

8/2/2017

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

MAVIS NOMSA SITHOLE

1st Respondent

CHARLENE MKHONTO

2nd Respondent

THE OCCUPIERS

3rd Respondent

THE EKURHULENI METROPOLITAN MUNICIPALITY 4th Respondent

JUDGMENT

Baqwa J

- [1] This is an application in which the applicant seeks an eviction order against the first to the third respondents.

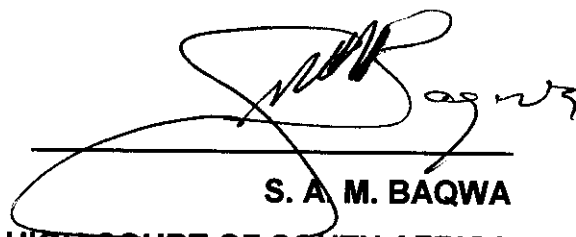
- [2] The first and second respondents have filed an application for condonation together with an opposing affidavit and the applicant has filed a replying affidavit.
- [3] In order for an order to be granted for an eviction in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 (commonly referred to as the PIE Act) an applicant must prove that he is the owner or person in charge of the property in question and that the occupation of the property is unlawful in that the occupier or occupiers have no legal right to occupy the property.
- [4] A court hearing such an application must also consider whether in the circumstances of the case it is just and equitable to evict the occupiers. The Pie Act prescribes certain circumstances to be taken into account in determining the terms of the eviction.
- [5] If an applicant proves the above requirements and that the respondents have no valid defence he becomes entitled to an eviction order.
- [6] **In casu** the respondents have not placed the ownership of the property in dispute but have instead sought in their opposing affidavit to either lease or purchase the property.
- [7] On the other hand the applicant whilst not denying the expressed desire on the part of the respondents has stated that it does not wish to and is under no obligation to enter into such an agreement with the respondents. It states that it is currently in the process of selling the property to a third party.

- [8] The applicant has tendered a deed search as proof of ownership together with the conditions of sale obtained from the sale in execution at which the property was purchased by the applicant.
- [9] What is apparent from the deed search is that neither of the opposing respondents has ever been owner of the property and any allegation by them that they purchased the property cannot hold water.
- [10] From a reading of both the applicant's and respondents' papers, the respondents do not have a legal right to occupy the property as there is no lease agreement between them.
- [11] The respondents do however raise a right to a lien in respect of improvements they claim to have effected on the property and that they can therefore not be evicted until the lien has been fully paid by the applicant.
- [12] A lien can only be enforced in circumstances where the occupation of the immovable property is lawful. As already alluded to the respondents do not have a legal right to possess the property and as such the alleged lien cannot be available to the respondents to resist an eviction application.
- [13] Before granting an eviction order the Court must consider the circumstances of the respondent and determine a just and equitable date on which the unlawful occupier must vacate the property.

- [14] In their opposing affidavit the respondents state that the property is occupied by eight (8) orphans and five (5) grand children together with the first respondent's 79 year old mother.
- [15] The first respondent is employed by an orphanage of which she is director and founder. She is therefore a person of means who can afford to provide for those occupying the property under her. Over and above her employment, she has sponsors from London who are willing to even assist her purchase the property.
- [16] As appears from the conditions of sale the property is quite extensive consisting of six (6) bedrooms, six (6) bathrooms, six (6) garages and two (2) servant's quarters and was purchased by the applicant in a forced sale for R3.5 million.
- [17] Although the Court has to consider the circumstances set out in sections 4 (6) and 4 (7) of the Pie Act it would seem that the balance of convenience follows the eviction of the respondents in terms of section 4 (8) of the Pie Act.
- [18] Counsel for the applicant submits and I accept that the applicant is prevented from dealing with or marketing the property or selling it to prospective buyers. The respondents' cost-free living at the property is to the detriment and expense of the applicant. The applicant is deprived of the use, enjoyment and the occupation of the property and suffers financial loss as a result thereof.

[19] In the circumstances I consider it just and equitable to make the following order:

- 19.1 The respondents and all the persons occupying the property described in the Notice of Motion through or under her are evicted from the premises as set out in prayers 1, 2 and 3 of the Notice of Motion.
- 19.2 It is further ordered that the eviction in terms of prayer 1 shall take place within 90 days from date of service of this order.



S. A. M. BAQWA
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Heard on: 8 February 2017

Delivered on: 8 February 2017

For the Applicant: Advocate L. Keijser
Instructed by: Vezi de Beer Incorporated

For the First Respondent: In person