

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case Number: 77334/14

14/2/2017

DELETE WHICHEVER IS NOT APPLICABLE

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

DATE

SIGNATURE

In the matter between:

JORDAAN J N.O.

APPLICANT

and

TUNG'ANDE HR
TUNG'ANDE E
TUMG'ANDE J
TUNG'ANDE E
EKURHULENI METROPOLATAN MUNICIPALITY

1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT
4th RESPONDENT
5th RESPONDENT

Coram: HUGHES J

JUDGMENT

HUGHES J

[1] In this application the applicants seek condonation and setting aside of the judgment granted on 24 April 2015. The respondents are thus the applicants and the applicant is the respondent.

[2] Briefly, the respondent moved an application to have the applicants evicted in terms of section 4(2) of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, Act 19 of 1998, from the residential premises situated at 12A Central Avenue, Eastleigh, Edenvale. This residential property was one of the assets in the deceased estate of the father of the applicants.

[3] After the father's death the applicants moved into these premises with their stepmother, the executrix. As the deceased estate had a substantial shortfall the stepmother together with the respondent opted to sell the premises. Offers were received for the premises but none was forthcoming from the applicants even though they were called upon to make an offer for the property. The executrix and the respondent also alleged that the applicants had caused the municipal account to reach excessive arrears.

[4] On 22 August 2014 the respondent had a letter sent to the applicants demanding their vacation from the property by no later than 20 September 2014. This was served personally on the second applicant by the sheriff. After the eviction order was granted the respondent caused same to be served on the applicant's and yet again the sheriff served same personally on the first applicant. During the service by the sheriff, he was advised by the first applicant that on his attorney instructions, he was not to accept any processes. The applicant's had to be forcibly removed from the property by the sheriff and the police.

[5] The applicants in their application for condonation state that after receipt of the application papers to evict even though they had opposed the application they did not receive notification as regards when the application was to be heard. They only became aware of the judgment when the sheriff came to evict them on 15 May 2015. They contend that as they had opposed the application and there had been communications between their attorney and the respondent, the respondent was not

proceeding further with the application. They state that they were under the impression that they would be advised of the court date if a need arose.

[6] The applicants argue that they were not in wilful default as they were not aware that the case was being heard when the order of 24 April 2015 was granted. Further, that they have bone fide defence as they were heirs to the deceased's estate and as such they had a stake in the house and had indicated their willingness to purchase the property.

[7] On the other hand the respondent asserts that at all times the applicants were aware of every step or process in the application as on all occasions serve of the processes in the case were served on the applicants personally by the sheriff. As regards their defence, the respondent states that the applicants were indeed given the right of first purchase of the property however they failed to exercise this right. In fact they were purposely dragging things along and in doing so the estate was not being finalised whilst they lived on the premise without paying the municipal expenses.

[8] The respondent contends that it is correct that the applicant's filed their intention to defend on 19 November 2014 after the section 4 (2) application was served on them on 12 November 2014. It is further correct that the parties attorneys were liaising with each other, however communications broke down and on 20 February 2015 the respondent placed the applicant's on term for an offer to be produced within seven day and failure to do the respondent advised that that they would be continuing with the application. None was forth coming and as the executrix received a section 129 demand from the bank who had a bond over the property the respondent instructed its attorney to proceed with the matter. The applicant's own attorneys sent correspondence to the effect that he had warned the applicants that they could not be delaying the matter any further but even in the face of that warning an offer was not made. On 9 April 2015 the notice of set down was served by the sheriff personally on the first applicant advising of the date being 24 April 2015. Further to this notice, the respondent's attorney by letter, advised the applicant's attorneys of the date of the case on 17 April 2015. No opposing papers were filed and thus the order was granted. In addition, a copy of the order was transmitted by letter to the applicant's attorneys on the afternoon of the day that the

order was granted, demanding that they vacate by 4 May 2015. The warrant of ejectment was issued on 6 May 2015 and served on 13 May 2015 on the first applicant. The applicants were forcefully removed on 15 May 2015. This is the argument presented by the respondent.

[9] It is trite that discretion I have to grant condonation is wide and should be exercised after proper consideration of all the relevant circumstances and facts. The plaintiff ought to provide a reasonable explanation which bears out the plaintiff's *bone fides* and indicates that it has a *prime facie* claim with prospects of success. See *Chetty v Law Society, Transvaal* 1985 (2) SA 756 (A) at 764I-765F; *Colyn v Tiger Food Industries LTD t/a Meadow Feed Mills (Cape)* 2003 (6) SA 1 at 9E-10B.

[10] In this instances the applicant's fail to jump the first hurdle as they do not provide a reasonable explanation which bears out their *bone fides*. They say they were not aware and yet they were personally served with the processes in this matter. They were even advised not to delay the matter any further by their own attorney, a clear indication that they were staling the finalisation of the deceased estate for their own benefits. Just because they our heirs to the estate is not sufficient reason to say they have any prospects of success as regards these eviction proceedings.

[11] In the premises I find that the applicants have not made out a case for condonation and their application is dismissed with costs.

[12] Consequently the following order is made:

1. The application for condonation brought by the applicant's is dismissed with costs.

W. Hughes

Judge of the High Court Gauteng, Pretoria

Appearances:

For the Applicant: I M Lindeque

Instructed by: Mamba Attorneys

For the Respondent: J J Greeff

Instructed by: Kemp De Beer & Goosen

Date heard: 31 January 2017

Date delivered: 14 February 2017