

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 56290/2014**

In the matter between:

26/10/2016

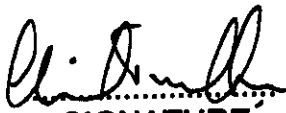
**CONNY KOLOBE MADIBA**

**AND THE RESIDENTS OF BLOCK L, BLOCK FF**

**AND BLOCK GG**

**Applicants**

and

|                       |                                     |                                                                                                  |
|-----------------------|-------------------------------------|--------------------------------------------------------------------------------------------------|
| (1)                   | <u>REPORTABLE:</u>                  | <u>YES / NO</u>                                                                                  |
| (2)                   | <u>OF INTEREST TO OTHER JUDGES:</u> | <u>YES / NO</u>                                                                                  |
| 26/10/16.....<br>DATE |                                     | <br>SIGNATURE |

**FIRST NATIONAL BANK LIMITED**

**First Respondent**

**AND 14 OTHERS**

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**JUDGMENT**

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Tuchten J:

- 1 The applicants, whom I shall call the Madiba applicants (following the surname of the first applicant) sought interim relief pending the hearing of an application for final relief to declare certain of the Madiba applicants to be the owners of certain of the properties described in the notice of motion. No attention need be given to the

prayers for interim relief because the matter is presently before me for adjudication of the prayer for final relief and there is no suggestion that any of the Madiba applicants are presently under threat of eviction or the like pending the final determination of the case by the court. The identities of the Madiba applicants appear from a list at pp118-119 of the papers. I shall call this case the Madiba case.

- 2 The properties are all in Soshanguve. Prior to the advent of the present democratic and constitutional dispensation, these properties and indeed their occupants were treated by the bureaucracy of that era with scant regard for law or human dignity. The properties were in that era all treated as belonging to organs of state. When thereafter, efforts were made by the state to redress the injustices of the past, ownership was passed by, or was purportedly passed by, organs of state to individuals. Disputes arose as to the identities of the persons to whom ownership should be passed and as to rights of occupation..
- 3 Thus, many of the applicants have demonstrated on the papers that they have been in occupation of particular properties for decades without a clear understanding of the legal basis on which they occupy.

- 4     Because such properties are now the subject of private ownership, a market in such properties has arisen. Some of the persons active in this market are unscrupulous and have managed by unlawful means to secure deeds office registration of title in their favour. I make this statement generally and without seeking to make any findings in this regard in favour of or against any party to the present litigation.
  
- 5     Our law places great reliance on deeds office registration; properly so in cases relating to properties where the passing of title to such properties has for decades been recorded in the deeds offices. But in relation to properties such as those in question in this case, the position is sometimes not so clear. In such cases, the facts must in my view carefully be scrutinised. This is all the more so when persons who have been in occupation for a long time have the basis of their occupation challenged.
  
- 6     Section 26 of the Bill of Rights requires that before any person can be evicted from their home, all relevant circumstances must be considered. This principle has informed the orders that I shall make.
  
- 7     There was related litigation. Aluminium Four You Windows and Doors CC claims to be the owner of one of the properties mentioned in the Madiba case, ie erf 1615 Soshanguve GG Township and under case

no.21426/2014 (the Aluminium case) sought the eviction from that property of Ms Fanny Gorobela Ramahuma and other persons described as the unlawful occupants of that property. In addition, it appears from the Madiba case that Alice Legodi claims rights in relation to erf 1615 Soshanguve.

- 8 In another related case, Nare Mosima Manamela claims to be the owner of erf 247 Soshanguve and under case no 65033/2015 (the Manamela case), sought the eviction from the property of Ms Thelma Hlongwane and all other occupants.
- 9 By orders of this court made on 23 February 2015 under case no 21426/2014 (ie the Aluminium case) and on 8 August 2016 under case no 65033/2015 (ie the Manamela case), it was directed that the three cases be heard together. They came before me on that basis.
- 10 The applicants in both the Aluminium case and the Manamela case claim to be the registered owners of the respective properties. I have decided for the reasons I have broadly outlined above to send those cases to trial under rule 6(5)(g). I shall make specific orders in those regards separately from this judgment.

- 11 The remaining Madiba applicants have however not identified any dispute which they have with any named respondent regarding their occupation of the properties. In those circumstances, I decline to exercise my discretion to make any declaration as to their rights. I which however to make it clear that the order for absolution which I shall make is not to prejudice any of the Madiba applicants in any proceedings which may subsequently come before the courts regarding their rights in relation to the properties.
- 12 I make the following order:
  - 1 Subject to the orders which I shall make in case no.21426/2014 (the Aluminium case) and case no. 65033/2015 (the Manamela) case, there will be absolution from the instance against the applicants in case no. 56290/2014 (the Madiba applicants)
  - 2 The Madiba applicants are Conny Kolobe Madiba and the other persons whose names appear on the list at pp118-119 of the papers.
  - 3 This order shall in no way prejudice any of the Madiba applicants in any subsequent proceedings in relation to their rights in relation to the properties in respect of which they claim or may claim rights.

4      There will be no order as to costs.

A handwritten signature in black ink, appearing to read 'NB Tuckten', written over a horizontal line.

NB Tuckten  
Judge of the High Court  
26 October 2016

MadibaFNB88290.14