



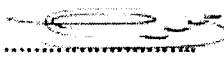
IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

06/02/2015

CASE NUMBER: 26342/2014

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

 04/02/2015

In the matter between:

RANDFONTEIN LOCAL MUNICIPALITY

APPLICANT

and

MARTINUS MOCHEUDI SELEPE

1ST RESPONDENT

JESUS CHRIST FAMILY FELLOWSHIP CENTRE

2ND RESPONDENT

VOICE OF JESUS CHRIST INSTITUTE FOR

SUPERNATURAL MINISTRY

3RD RESPONDENT

JUDGMENT

MOSEAMO AJ

- [1] This is an application for eviction of the first, second and third respondent. Before this matter was dealt with, the respondents brought a substantive application for postponement of the application. However, the application for postponement was dismissed with costs because of a defective resolution, the person purporting to act on behalf of the respondents was not authorised to do so.
 - [2] At the beginning of the main application, counsel for the respondents indicated that the resolution filed in support of the supplementary affidavit and the resolution filed in support of respondents' opposing affidavit were defective.
 - [3] Counsel therefore conceded that on the basis of the ruling already made with regard to the defective resolution in the application for postponement, she will not make any submissions as they would not take the matter any further.
 - [4] The applicant is a holder of a long term lease in respect of a notarial lease registered over the property known as the remaining Extent of Portion 99 of the farm Randfontein, 247, Registration Division IQ, also known as Maugham Road, Randfontein Gauteng ("the Community Hall"). The first respondent leased the Community Hall from the applicant for a period of seven days for purposes of a church conference. After the expiry of the seven days the respondents continued to occupy the Community Hall and were still occupying it as at the date of the application. The respondents continued to occupy the community hall despite the letter from applicant advising them to vacate. The
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applicant is applying for the eviction of first, second, and third respondents from the Community Hall.

- [5] Notice of intention to oppose was filed on behalf of the first, second and third respondents. On the 16th May 2014 respondents filed an answering affidavit signed by the first respondent.
 - [6] For the sake of completeness I wish to address the issue of the defective resolution(s) attached to the opposing affidavit.
 - [7] First Respondent states in his opposing affidavit that he is duly authorised to depose to the affidavit "on behalf of the first Respondent (*sic*)" by virtue of a resolution attached to the opposing affidavit marked "JCFFC 1".
 - [8] There are four documents marked "JCFFC1". The document marked "JCFFC1" on page 122 is a document with the following heading "board resolution of Jesus Christ Family Fellowship Centre amending the signing at the bank". The documents marked "JCFFC1" on page 123, 124 and 125 relate to the bank signing policy of the second respondent. The documents therefore have nothing to do with this application.
 - [9] In *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) 347 (C) it was pointed out that the case of an artificial person differs from that of a natural person since an artificial person can function only through its agents, and can take decisions only by passing of resolutions in the manner prescribed by its constitution. It was further said that it cannot be assumed from the mere fact that proceedings have been brought in its name that those proceedings have in fact been authorised by the artificial person concerned. It was further stated that in such cases some evidence should be placed before court to show that
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the applicant has resolved to institute the proceedings and that the proceedings are instituted at its instance.

- [10] In *Yiba v African Gospel Church* 1999 (2) SA 949 (C) at 957 H, it was also held that 'where an association institutes motion proceedings, it must appear that the person who makes the application on behalf of that association is duly authorised by it to do so'
- [11] It is clear that the documents attached to the opposing affidavit as "JCFFC1" do not provide first respondent with the authority to act on behalf of second and third respondents. There was therefore no resolution authorising the first respondent to act on behalf of the second and third respondents.
- [12] The application is opposed on the following basis: (a) the first respondent does not, in his personal capacity 'hold occupation over the Community Hall in any form . . .' (b) the second respondent remains in occupation of the Community Hall because of an oral lease agreement entered into on behalf of the second respondent by the first respondent (c) the third Respondent is an outreach programme and is not operating from the Community Hall.
- [13] As a result of failure to show that the first respondent is authorised to oppose the application on behalf of the second and third respondents, I will only consider the first ground which relates to the first Respondent.
- [14] I now turn to consider whether the first respondent is in continued occupation of the Community Hall.
- [15] Counsel for the applicant submitted that, by virtue of the fact that first respondent signed the lease agreement in his personal capacity, he is a pastor of the second respondent and a member of the second respondent, it therefore means that he is an unlawful occupier of the Community Hall. It was
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further submitted that he is in control of the second and third respondent and they have occupation through him.

- [16] It was submitted on behalf of the first respondent that he, the first respondent, cannot be said to be responsible in his personal capacity as he stated in his opposing affidavit that he was acting on behalf of the second respondent. It was contended that the purpose for leasing the Community Hall was for a church conference. It was further contended that the first respondent, is not in occupation of the Community Hall, that it is the second and third respondents who remain in continued occupation of the Community Hall.
- [17] It is common cause that (a) the first respondent leased the Community Hall in his personal capacity for purposes of a church conference; (b) the first respondent is a pastor of the second respondent; (c) the Community Hall is currently being used for purposes of the second respondent's church services; (d) the second and third respondents are in continued occupation of the Community Hall.
- [18] The submission that the first respondent leased the community Hall for purposes of the second respondent's conference and can therefore not be said to be personally in occupation of the Community Hall is without merit as it does not address the fact that he signed the lease his personal capacity.
- [19] In my view, first respondent as the pastor of the second respondent, he is responsible for the church services that continue to be held at the Community Hall despite the fact that his right to occupy (as the lessee) has been legally terminated. Second and third respondent occupy the Community Hall through the first respondent who secured occupation through the initial seven day lease of the Community Hall. I am therefore satisfied that the first respondent is in continued occupation of the Community Hall in his personal capacity.
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- [20] I now turn to consider whether the applicant has made out a case for the eviction of the respondents.
- [21] In order to succeed with an application for eviction the applicant must allege and prove the following: (a) the right of the respondent to possess e.g. lease agreement between the applicant and respondent; (b) a valid termination of the right to possess; (c) the continued occupation by the respondent or someone holding on behalf of or through the respondent; (d) damages suffered as a result of the holding over; (e) where the cause of eviction is not related to a cancelled contract then reliance must be placed on an applicant's superior right. See Amler's Precedent of Pleadings, by LTC Harms at 98.
- [22] In this case, there was a right to possess granted through a lease agreement entered in to by the first respondent, there was a valid termination in the form of a letter from the applicant to the respondents terminating their right to possess and the respondents remain in continued occupation of the Community Hall. It is also stated that the applicant suffered damages in the sum of R1 254 795 (One Million Two Hundred and Fifty Four Thousand Seven Hundred and Ninety Five Rands) as a result of the respondents' continued occupation.
- [23] I am therefore satisfied that the applicant proved that the first, second and third respondents are in unlawful occupation of the Community Hall and therefore the application for eviction stands to be granted.

Costs

- [24] Applicant's counsel argued for costs on an attorney and client scale against the respondents on the basis that the respondents refused to vacate the
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Community Hall despite the fact that applicant had written a letter advising them to vacate. I however, do not find the letter to be sufficient reason for me to order the respondents to pay costs on an attorney and client scale.

In the result, I make the following order:

- (1) Application against the respondents is granted;
- (2) First, second and third respondents and all other persons holding through them are evicted from the Community Hall;
- (3) First, second and third respondents shall vacate the Community Hall on or before the **20th February 2015**, failing which the Sheriff is authorised to evict the first, second and third respondents and all persons holding through them;
- (4) First, second and third respondents to pay the costs on a party and party scale.



P.D MOSEAMO

ACTING JUDGE OF THE HIGH COURT

On behalf of the Applicants:

Naidoo and Associates Inc.

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Garsfontein

Pretoria

Adv.K. Fitzroy

On behalf of the Respondents:

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Adv.