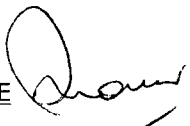


REPUBLIC OF SOUTH AFRICA



IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

DELETE WHICH IS NOT APPLICANTICABLE	
[1] REPORTABLE: YES / NO	
[2] OF INTEREST TO OTHER JUDGES: YES / NO	
[3] REVISED	
DATE 4/5/15	SIGNATURE 

40777 / 2014
CASE NO: 34447/2013

DATE HEARD: 04/05/2015

In the matter between:

BRYCE BLUM N.O.
Applicant

and

DORAH MAPITSO SESHOKA
Respondent

First

ALL THE OTHER UNLAWFUL OCCUPIERS
Respondent

Second

CITY OF JOHANNESBURG MUNICIPALITY
Respondent

Third

JUDGMENT

J W LOUW, J

[1] This is an application in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 (PIE). The applicant, who is the appointed executor in the estate of the late Michael Tremayne Benjamin ("the deceased"), applies for the eviction of the first respondent and other allegedly unlawful occupiers (cited as the 2nd respondent) from the property known as erf 68 President Park Agricultural Holdings, also known as 118 Modderfontein Rd, President Park Agricultural Holdings, Gauteng. The deceased was the registered owner of the property at the time of his death.

[2] The application is opposed by the first respondent, to whom I shall refer as the respondent. The respondent alleges that she has continuously resided on the property since 1995 with the express consent of the previous owner, a Mr Pienaar, as well as that of the deceased. She states that the property is agricultural land and disputes that PIE is applicable. She alleges that she is an occupier of the property as envisaged by the Extension of Security of Tenure Act, 62 of 1997 (ESTA). In this regard, she alleges that she works the land herself and that she feeds herself, her 3 children, her boyfriend, her younger sister and the younger sister's children by growing vegetables and by "killing livestock" on the property.

[3] Before issuing the application, the applicant's attorneys addressed a letter to the respondent in which the respondent was notified by the applicant that her right to reside on the property has been terminated.

The letter summarises the respondent's rights in terms of ESTA and advises her to approach an attorney, the Department of Land affairs, the local municipality or the Legal Aid Board to explain her rights to her more fully. The letter further states that should the respondent claim that ESTA applies to her, it is incumbent upon her to supply the owner with information supporting that claim to enable him to place that information before the court. The letter further refers the respondent to the provisions of PIE and advises her that if she does not claim that ESTA applies to her, the provisions of PIE will be complied with before application is made for her eviction.

[4] The respondent did not respond to the letter and the applicant accordingly served an application for the eviction of the respondent from the property and, with the leave of the court, a notice in terms of s 4(2) of PIE. As already indicated, the respondent's defence is that she is entitled to occupy the property by virtue of the provisions of ESTA.

[5] Sec 1 of ESTA defines an occupier as:

".... a person residing on land which belongs to another person, and who has or on 4 February 1997 had consent or another right in law to do so, but excluding –

- (a)*
- (b) A person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and*
- (c) A person who has an income in excess of the prescribed amount."*

(The amount which has been prescribed i.t.o par (c) is R5 000.00 pm.)

[6] It was held in *Skhosana and others v Roos t/a Roos se Oord and others*, 2000 (4) SA 561 (LCC) at par. [26] that a person who claims to be an occupier in terms of ESTA, must prove that he or she complies with all components of the definition. The onus in this regard therefore rests on such the respondent.

[7] I have referred above to the respondent's evidence in this regard. This evidence is disputed by the applicant in his replying affidavit. The applicant states that the respondent is using the land mainly for commercial purposes and that she is definitely not working the land herself. The applicant attaches photographs to the replying affidavit which show that no farming activity takes place on the property, but that it is used for commercial activities like a tuck shop and a tow-in service. The photographs do not depict any tow-in service being conducted on the property, but they do show the outside of what can be described as a tuck shop which displays a sign which reads "Fruit & Veg" with a picture of fruit and vegetables below the sign. On the left of the sign one sees a menu with prices of hamburgers, Russian sausages, etc. The photographs of open areas on the property do not indicate any agricultural activity.

[8] The respondent did not deal with her monthly income in her answering affidavit. The applicant states in his replying affidavit that it is impossible that the Respondent earns less than R5 000.00 per month as she is a director of two companies and a member of three close corporations, proof of which is attached to the replying affidavit.

[9] The respondent filed a supplementary affidavit for which no leave was sought from the court. She deals in the affidavit with her medical records

which had not been dealt with in her answering affidavit. I was informed by Mr. Fehler, the respondent's attorney, that that was the reason why a postponement was sought on the previous occasion when the matter came before court.

[10] The respondent did not, however, respond in her supplementary affidavit to the applicant's evidence that she was conducting commercial activities on the property or that her income must be more than R5 000,00 per month. Mr Fehler submitted that she was not entitled to do so. Nothing, however, prevented her from seeking the leave of the court to file a supplementary affidavit in that regard which, undoubtedly, would have been granted since the issue of the respondent's use of the property and her monthly income was raised in the applicant's replying affidavit which she had not had an opportunity to deal with before. The respondent was also not entitled to file a supplementary affidavit in respect of her medical records without the leave of the court, but that did not deter her from filing such supplementary affidavit. If she did have an answer to the applicant's evidence regarding her use of the property and her monthly income, I have little doubt that she would have dealt with such evidence in her supplementary affidavit, with or without the leave of the court being sought.

[11] I therefore conclude that the respondent has failed to show that she is an occupier of the property as contemplated by the definition of that term in s 1 of ESTA. It follows that ESTA does not apply to the respondent and that, in view of the applicant's termination of her right to occupy the property, she and the other occupiers are in unlawful occupation of the property.

[12] I accordingly grant an order in terms of the draft order prepared on behalf of the applicant, subject thereto that I have inserted a period of ninety days in par 1 of the order.

Counsel for the applicant: Adv. H.W. Botes

Instructed by: Rorich Wolmarans & Luderitz Inc

For the First Respondent: Mr. M. Fehler

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

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In the application between:

Case No. : 40777/2014
APPLICANT

BRYCE BLUM N.O
ID NO: 601102 5027 088
(Duly appointed executor in the deceased
Estate of late MT BENJAMIN under Masters
Ref No: 16852/2012)

and

DORAH MAPITSO SESHOKA
ID NO: 741208 0440 084

FIRST RESPONDENT

ALL THE OTHER UNLAWFUL OCCUPIERS
RESIDING ON and/or OCCUPYING –
ERF 68 PRESIDENT PARK AGRICULTURAL HOLDINGS
Also known as 118 MODDERFONTEIN ROAD
PRESIDENT PARK AGRICULTURAL HOLDINGS
GAUTENG

SECOND RESPONDENT

CITY OF JOHANNESBURG MUNICIPALITY

THIRD RESPONDENT

DRAFT ORDER

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AFTER HAVING heard counsel on behalf of the Applicant, the Court makes the following order:

1. The First and Second Respondents (hereinafter "the Respondents") are ordered to vacate the property known as ERF 68 PRESIDENT PARK AGRICULTURAL HOLDINGS, also known as 118 MODDERFONTEIN ROAD, PRESIDENT PARK AGRICULTURAL HOLDINGS, GAUTENG (hereinafter "the property") within 90 days hereof;

2. Should the Respondents fail to comply with the order referred to in paragraph 1 above, the Sheriff of this Court is authorized and/or mandated to take all necessary steps to execute this order and to evict the Respondents from the property and, if necessary, to obtain the assistance of the South African Police Services to assist him/her in this regard;

2. The Respondents are ordered to pay the costs of this application jointly and severally, the one to pay the others to be absolved.

By order, the Court

Registrar

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