

REPUBLIC OF SOUTH AFRICA



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
9/6/2015 <i>ETM/bush</i>	

CASE NO: 40058/2010

9/6/2015

In the matter between:

URSULA MATLALA KGATITSEWE

APPLICANT

and

EDDIE KGAPOLA

1ST RESPONDENT

OCCUPANTS OF ERF 6529 SAULSVILLE

2ND RESPONDENT

LEHLOGONOLO MORONGWA MASENYA

3RD RESPONDENT

J U D G M E N T

HEARD ON: 27 MAY 2015

JUDGMENT ON: 09 JUNE 2015

KUBUSHI,J

[1] The applicant has approached this court for a spoliation order. The applicant's contention is that she was in peaceful possession of the property when she was despoiled by the 1st respondent.

[2] The 1st respondent is opposing the application and contends that the matter should not be heard in the urgent court. He denies further that the applicant was despoiled of the property and contends that she vacated the property of her free will and he took over the property with the consent of the applicant.

[3] The factual background is that the property was initially owned by the applicant when it was sold on auction through the sheriff on 4 December 2014. The 1st respondent bought the house and subsequently sold it to the 2nd and 3rd respondents who are presently in possession of the property. According to the 1st respondent the property was registered in the name of the 2nd and 3rd respondents on 29 April 2015.

[4] An application for spoliation relief is urgent by nature.

[5] The question at this stage is whether a spoliation order can be granted under the prevailing circumstances in this instance.

[6] It has been held that if a third party had notice of the spoliation when taking possession, there is much to be said for the view that spoliation relief should be granted, not because the third party is a spoliator but because he or she had notice of the spoliation when taking possession.¹

[7] The reasoning is based on the essential nature of a spoliation order, namely the restoration of possession. The spoliator cannot restore possession if he does not have it.²

[8] Not much is said about the 2nd and 3rd respondents in the papers before me. The 2nd and 3rd respondents are not opposing the application. The little of what is said about them is gleaned from the answering affidavit of the 1st respondent. The 1st respondent contends that he sold the property to the 2nd and 3rd respondents and that the property has already been registered in their names. He does not attach proof of such sale or transfer of the property. From the reading of the applicant's papers it appears that the applicant is

¹ See *Jamieson & Another v Loderf (Pty) Ltd & Others* (A595/2011) [2015] ZAWCHC 18 (20 February 2015) para 48.

² See the *Jamieson* judgment para 48.

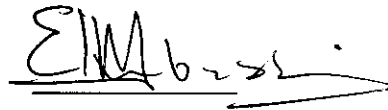
aware that the 2nd and 3rd respondents are occupying the property. She does not, however, specifically deny the 1st respondent's allegations that he (the 1st respondent) sold the property to the 2nd and 3rd respondents or that the property is now registered in their names. I, as a result, have to infer that the applicant admits the averments made by the 1st respondent in respect of the sale of the property.

[9] There is no evidence on the papers that indicate that the 2nd and 3rd respondents had any knowledge about the spoliation or of the pending proceedings when they purchased the property or when they took transfer. As I have said not much is said about them in the papers. I consequently have to infer that they had no such knowledge.

[10] To my mind, even if I would have found in favour of the applicant in regard to the relief she seeks, namely, the spoliation order, such an order, directing the 1st respondent or the 2nd and 3rd respondents (the new owners) to restore possession of the property to the applicant, would have no practical effect. The 1st respondent is not in possession of the property. The 2nd and 3rd respondents have not deprived the applicant of possession – I have already found that they had no knowledge about the spoliation or of pending proceeding when they purchased the property or took transfer.

[11] In the premises I order as follows:

(a) The application is dismissed with costs.



E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

On behalf of the Plaintiff:

N Erasmus

Instructed by:

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PRETORIA

On behalf of the Defendant:

D Prinsloo

Instructed by:

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