

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

CASE NO: A633/13
DATE: 04 AUGUST 2015

In the matter between:

ELIZABETH SISI MDHLOMO

First Appellant

UNLAWFUL OCCUPIERS

Second Appellant

And

VICKY SEESI MANZANA

First Respondent

THOMAS MDHLOMO

Second Respondent

THE CITY OF TSWANE METROPOLITAN

Third Respondent

MUNICIPALITY (SOSHANGUVE)

JUDGMENT

Baqwa J

[1] This is an appeal against the order of the Magistrate, Soshanguve of 15 July 2013

evicting the appellants and all persons claiming right title and interest to occupation of house number [5.....], [B.....], [S.....].

[2] The order was granted subsequent to an application which was brought by the first respondent.

[3] The main ground of appeal is that the Magistrate erred in finding that the appellants were “unlawful occupiers” in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act).

Background

[4] The appellants opposed the application in the court **a quo** and denied that they were illegal occupants. It is common cause that the property in question was originally allocated to the appellant’s parents.

[5] When the parents became older the second respondent who was listed together with the appellant in the house permit as the children of the appellant’s parents, was named as the permit holder being the eldest male descendant.

[6] In 1999 the appellant lodged a dispute with the local municipal office in order to establish the lawful permit holder as the second respondent had by that time moved out of the house and found himself a place at Block K..... S.....

[7] The matter was adjudicated under arbitration case number 13988 on 10 August 1999. The second respondent filed an affidavit which stated that he relinquished all the rights he might have had to the property and gave exclusive usage of the property to the appellant.

[8] An arbitration award is part of the papers before me wherein it is recorded that the second respondent waved his right to the property in favour of the appellant.

[9] During or about 2012 the appellant observed people coming to view House number 503 which according to them was for sale. The appellant tried in vain to obtain clarity from the second respondent in this regard. Whenever she tried to get this clarity, she would find him under the influence of alcohol and he would abuse her by hurling insults at her. She still let him know that the house would not be sold as it was a “family home”. The first respondent was one of the people who came to view the house.

[10] It later transpired that the second respondent had surreptitiously obtained the transfer of House number 503 into his name and that it was in that capacity unbeknown to the appellant, that he had sold the property, House number 503 to the first respondent.

[11] These facts were put before the court **a quo** at least in the appellant’s answering affidavit but it seems the court totally ignored those facts or those facts were not fully

ventilated. In the face of those facts the court **a quo** treated the appellant as an unlawful occupiers in terms of Pie Act. This in my view was a misdirection on the part of the magistrate.

[12] It is therefore, necessary to have these matters canvassed, preferably by way of oral evidence before the Magistrate, Soshanguve.

[13] This would be necessitated by the need not only to establish the factual matrix of the case but also to enable that court to apply the provisions of the following pieces of legislation, namely, the Interim Protection of Land Rights Act 31 of 1996 and the Conversion of Certain Rights in Leasehold or Ownership Act 81 of 1988 if applicable.

[14] The respondent submits that the parties were legally represented when the order in the court **a quo** was made and that the appeal should not be allowed for that reason.

[15] In that situation the correct legal stance in my view is as follows. If parties agree that a case be dealt with in a certain manner which may not be in accordance with the relevant legal prescripts, a presiding officer should not be acquiescent in regard to that agreement, he or she must intervene and raise the issue of the legal prescripts because being acquiescent could lead to a result that is not in accordance with justice.

[16] In **casu**, it would appear that certain information regarding events which took place after the demise of the parents of the appellant and the second respondent were not considered by the court **a quo**. The appellant and the respondent are not **ad idem** regarding these events and that would necessitate the leading of oral evidence.

[17] In the circumstances I propose that the following order be made:

17.1 The appeal is upheld.

17.2 The order of the Magistrate, Soshanguve granted on the 15 July 2013 is set aside.

17.3 The case is remitted to the magistrate's court for hearing of oral evidence on the following specific issues:

17.3.1 The acquisition of the occupation rights regarding House number 503 [Block], [S.....] from inception.

17.3.2 How and when or at what stage the right to occupy the house changed to an ownership right and on what authority.

17.3.3 Who is/are the rightful owner(s) of the property.

17.3.4 Any documents and testimony of witnesses that the parties may call to corroborate their evidence ought to be allowed.

17.3.5 There is no order as to costs.

S. A. M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

J. J. STRIYDOM

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Heard on: 04 August 2015

For the Appellant: Adv. R. Jansen SC

Instructed by: Lawyers for Human Rights

For the Respondent: MrV. Malebye

Instructed by: Malebye Maleho Attorneys