



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division, Kimberley)**

Saakno / Case number: **478/2014**
Datum verhoor/Date heard: **05 / 06 / 2015**
Datum gelewer/Date delivered **24 / 07 / 2015**

In the matter between:

PETRUS JACOBUS CORNÉ VAN STADEN N.O.

Applicant

and

PETRUS JORDAAN OPPERMAN

First Respondent

SYLVIA OPPERMAN

Second Respondent

SOL PLAATJE MUNICIPALITY

Third Respondent

Coram: Erasmus, AJ

JUDGMENT

ERASMUS, AJ

[1] The applicant successfully applied for an order authorizing the form and the content of a draft notice in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998

and the manner of service thereof and further incidental relief.

[2] Application for the relief set out in Part B of the Notice of Motion was to be made on 16 May 2014. Part B thereof reads as follows:-

"PART B:-

1. *the First and Second Respondents and all persons occupying the property under then, be ordered to vacate the property known as Unit 7, Klinka Korna, Rensleshan Street, Belgravia, Kimberley, Northern Cape Province ("the property") with immediate effect, alternatively to vacate the property at a date determined by this Court;*
2. *in the event of the First and Second Respondents failing to adhere to this order, the Sheriff for the district of Kimberley or his Deputy be authorised and ordered to give effect to this order in a manner that he deems practical and necessary and in the event that he deems it necessary, to obtain the assistance of the South African Police Services for the sake of giving proper effect to this order;*
3. *the First and Second Respondents be ordered to pay the costs of this application, jointly and severally; and*
4. *such further and/or alternative relief be awarded to the Applicant as this Court deems fit."*

[3] The first and second respondent opposed the application and the matter was subsequently postponed to the

opposed motion roll of 18 September 2014. The second respondent has since passed away.

[4] Lacock, J granted an order on the abovementioned date in the following terms:

“1. The application is postponed sine die pending the finalisation of the following actions/applications:

1.1 The first respondent is to institute legal proceedings against Reverse Mortgage Co. (Pty) Ltd and/or Jacobus Frederik van Niekerk and/or Elizabeth Catharina Wilhelmina van Niekerk and/or Lomina 124 (Pty) Ltd (in liquidation) and/or ABSA Bank for the cancellation of the Agreement of Purchase and Sale entered into between the first and second respondents and Lomina 124 (Pty) Ltd in terms whereof the first and second respondents sold the immovable property, 7 Klinka Korna, Rendlesham Avenue, Belgravia, Kimberley, to Lomina 124 (Pty) Ltd as well as the subsequent registration of transfer of the property to Lomina 124 (Pty) Ltd; and for the cancellation of any bonds registered against the aforesaid property and any ancillary relief.

1.2 That the court proceedings of today be transcribed in order to allow the first respondent to apply for legal aid assistance by the Legal Aid Board within 10 (TEN) days from date of availability of the transcribed record.

1.3 The aforesaid legal proceedings shall be instituted within 20 (TWENTY) days of the date after receipt of the decision of the Legal Aid Board for legal assistance.

1.4 Should the first respondent fail to apply for legal aid assistance within the period as aforesaid and/or fail to institute legal proceedings within the period as aforesaid, this application shall be immediately re-enrolled on the opposed roll.

1.5 The aforesaid legal proceedings are then to be finalised without undue delay.

2. The costs of the application shall stand over for later determination.

[5] The applicant then proceeded to enrol the application again and on 27 February 2015 it was postponed, by agreement, to 5 June 2015.

[6] Adv. Stanton for the Applicant and Adv. Schreuder for the first respondent confirmed during argument that the first respondent had instituted legal proceedings, as envisaged in the order of Lacock J, in this Court under case number 2033/2014. As the said court file had not been placed before me and both counsel were in agreement that the contents thereof were relevant to the application before, judgement was reserved in order for me to peruse the contents thereof.

[7] On perusal of the court file under case number 2033/2014, it appeared that the first respondent instituted an action reclaiming the immovable property from the aforesaid parties, as envisaged in paragraph 1.1 of the order granted by Lacock J on 18 September 2014. The applicant herein had already filed a plea in the said action, before this application was enrolled again. This

application cannot proceed until such time as the action under case nume 2033/2014 has been finalised.

[8] In the light of the aforementioned, the following order is made:

1. **THE APPLICATION IS STRUCK FROM THE ROLL.**
2. **THE COSTS IN RESPECT OF THE PROCEEDINGS OF 5 JUNE 2015 ARE RESERVED.**

S L ERASMUS, AJ
ACTING JUDGE

<u>On behalf of Applicant:</u>	Adv. A. Stanton (oio Engelsman, Magabane Inc.)
<u>On behalf of Respondents:</u>	Adv. J.J. Schreuder (oio Hugo Mathewson & Oosthuizen)