

IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

NORTH GAUTENG, PRETORIA

Case number 69522/2011

In the matter between

JACOBUS PETRUS JOUBERT

and

SIPHILO SAMUEL MKEBE

NOKUHLE MILDRED MKEBE

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	
(3) REVISED.	
DATE	SIGNATURE
4/2/2013	

6/2/2013
Applicant

First Respondent

Second Respondent

Third Respondent

JUDGMENT

BAM AJ

1. The applicant applies for the eviction of the first and second respondents from a property purchased by the applicant during a sale in execution. The application is opposed by the two respondents.
2. The sequence of events in regards to the history relevant to this application is as follows.
 - (i) First and second applicants were the registered owners of the property in question. A bond was registered in favour of ABSA bank.
 - (ii) ABSA issued summons against the two respondents apparently due to the fact that the two respondents failed to comply with the terms of repayment of the bond repayments.
 - (iii) On 9 March 2009 this court granted a summary judgment against the respondents including an order for the execution of the property.
 - (iv) On 20 May 2009 at the sale in execution, the property was sold to the applicant. The property was registered in the name of the applicant on 2 September 2011.
 - (v) On 1 June 2012 the respondents' application for the rescission of the summary judgement was dismissed. (Following an initial dismissal due to non appearance.)

- (vi) On 15 June 2012 the respondent's application for leave to appeal against dismissal of the application for the rescission of the summary judgment granted on 9 March 2009, was dismissed.
 - (vii) The respondent's petition to the Supreme Court of Appeal praying for leave to appeal against the dismissal of the application for rescission of the summary judgment, was dismissed on 26 October 2012.
 - (viii) On 1st November 2012 the first respondents deposed to an affidavit in support of a draft application to the Constitutional Court for an application for leave to appeal against the judgment on 1 June 2011 dismissing the two applicant's application for rescission of the summary judgment.
3. It was contended on behalf of the two respondents, represented by mr van den Ordel, that an appeal against the dismissal of their application for rescission of the summary judgment in question is pending before the Constitutional Court, and, therefore, in accordance with the provisions of R 49, the summary judgment granted in 2009 should be regarded as suspended until the Constitutional Court has adjudicated the issue. This seems to be the only defence the two respondents are relying on.
4. In principle this argument seems to be correct. However, I have already alluded to the fact that no proof exists that the application in question was indeed filed with the registrar of the Constitutional Court. The last relevant document pertaining to this issue was furnished by the applicant's counsel. This document purports to be a letter from the Registrar of the Constitutional Court dated 17 January 2013, bearing the date stamp of the Constitutional Court with the same date, addressed to the two respondent's attorney of record's Email address, with the following contents.

*"Dear Mr Sizwe Snail ka Mtuze
CCT 107/12: SIHELO SAMUEL MKEBE AND ANOTHER V ABSA BANK*

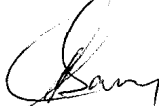
I refer to your letter of 10 January 2013.

You are hereby informed that a request for an extension of time needs to be made by way of a substantive application and not by letter."

5. In my view, as submitted on behalf of the applicant, the contents of that letter conveys that the two respondents' attorneys applied by letter for extension of time for the filing of the two respondents' intended application to the Constitutional Court, which application by letter clearly did not comply with the Rules of that Court. It follows that, at that stage, the intended application of the two respondents was not pending. There is no indication that subsequent to the letter from the Constitutional Court, anything had been done by, or on behalf of, the two respondents.
6. Consequently this Court cannot find that there is in fact an application for leave to appeal the dismissal of the rescission application still pending. The mere intention of the two respondents to approach the Constitutional Court is not sufficient. The history of the matter, including the delay by the two respondents to lodge the relevant applications timeously, as also pointed out by Hiemstra AJ when he dismissed the rescission application, creates the impression that the two respondents were obstructive and that they deliberately delayed the course of the law.
7. Counsel for the applicant also referred me to an unreported decision of South Gauteng, per LJ van der Merwe AJ, case number 2011/33437 dated 30 January 2012; *KNOX NO v MOFOKENG AND OTHERS*, in which the learned judge discussed the issues concerning the rights of *bona fide* purchasers of property at valid sales in execution after the judgment authorizing the execution had been rescinded. Based on the said judgment, counsel for the applicant argued that the setting aside of the summary judgment the two respondents are complaining about, will not automatically result in the setting aside of the sale or registration of the property. This argument seemed persuasive. However, in my opinion, this Court is not, in the circumstances, called upon to consider the nature and extent of the rights of the applicant in this matter.

8. In my view it suffices to say that the applicant clearly has *locus standi* to bring this application, that the applicant has complied with the provisions of section 4 of Prevention of Illegal Eviction Act, No 19 of 1998, and, that the two respondents have no valid defence.
9. Accordingly I make the following order.

ORDER GRANTED IN TERMS OF DRAFT ORDER, "X".



A J BAM ACTING JUDGE OF THE HIGH COURT
1 February 2013

IN THE NORTH GAUTENG HIGH COURT; PRETORIA

(REPUBLIC OF SOUTH AFRICA)

X
4/2/2013

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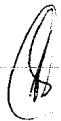
CITY OF TSHWANE METROPOLITAN COUNCIL

Third Respondent

~~DRAFT~~ ORDER

Having read the papers filed in this matter and having heard counsel for the Applicant and counsel for the First and Second Respondents, it is ordered that:

1. the First and Second Respondents and all persons holding occupation through them of the premises, situated at **12 GULFSTREAM BOULEVARD, CENTURION**, being **ERF 2798 HIGHVELD EXT 47 TOWNSHIP, REGISTRATION DIVISION J.R., PROVINCE OF GAUTENG** ("the property") is to vacate the property on or before



25 FEBRUARY

2013;



2. in the event of the First and Second Respondents and those holding occupation under them, failing to vacate the property on or before the above date, the Sheriff or his deputy is authorised to evict such persons from the property on the day following the date referred to above or thereafter;
3. the Sheriff or his deputy is authorised to elicit the assistance of the South-African Police Services in order to give effect to this order, if such assistance is required;
4. The First and Second Respondents, are to pay the costs of the application jointly and severally, the one paying the other to be absolved.

By Court - Registrar