



IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

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

CASE NO: 27591/12

16/5/2013

IN THE MATTER BETWEEN

S O TAYOB N O AND OTHERS

Applicant

and

JOHN MAMABOLO AND OTHERS

Respondent

JUDGMENT

LEDWABA J:

[1] This is an application for eviction which is opposed.

[2] Omtay Property Holding Trust ("the trust"), the trustees thereof being the applicants, is the owner of the property situated at 66 Paul Kruger Street, Polokwane ("the property") in the Limpopo district. It purchased the property from Mr Tzu-Tsung Huang ("Mr Huang") and the property was registered in its name on/or about 13 February 2008 when Mr Jacob Molebatse ("Mr Molebatse") was still in occupation of the property.

[3] In about June 2008 the trust instituted eviction proceedings against Mr Molebatse in the Magistrate Court in Polokwane under case number 3340/2008 and an eviction order was granted in the trust's favour.

[4] In October Mr Molebatse together with one Mr Mogashoa who was joined as a second applicant filed an application for the rescission of the default judgment granted in favour of the trust. In the said application Mr Mogashoa, *inter alia*, alleged that he was the owner, because he concluded a contract of sale with Mr Huang in respect of the property and he further stated that he leased the property to Mr Molebatse.

[5] The eviction order was rescinded and the matter went on trial. After the trial proceedings were finalized, the court granted an eviction order in favour of the trust. Mr Molebatse filed an appeal which lapsed in about November 2011 because no steps were taken to prosecute in to finality.

[6] The trust instructed the sheriff to evict Mr Molebatse and Mr Mogashoa from the property only to find that the property is now occupied by the first respondent herein, Mr John Mamabolo, and the second respondent whose particulars are unknown to the trust.

[7] The trust has now filed this eviction application against the first and second respondents. One of the *points in limine* raised by the respondents is that there is a pending action in the Polokwane Regional Court under case number LP/PLK/RC372/2012 issued by Mogashoa in April 2011 in terms of which Mr Mogashoa, *inter alia*, seeks an order that the transfer of the property from Mr Huang

to the trust be set aside and/or be declared a nullity and that the trust should pass transfer of the property to him, Mr Mogashoa. The action has not yet been finalized.

[8] Even though the applicants' counsel argued that there is no merit in Mogashoa's pending action. I do not wish to express my view in respect of the pending action in the Regional Court and the said court will deal with the matter at the hearing. However, I have been made aware that Mr Mogashoa is presently receiving some rental monies from Mr Mamabolo. I will deal with this aspect later.

[9] It is indeed so that there is a dispute regarding the alleged agreement of sale between Mr Huang and Mr Mogashoa. There is a pending action that relates to the said issue. It is imperative that the said action should reach finality.

[10] What should further be considered is that the delay in the finalization of the said action proceedings is prejudicial to the applicants herein and obviously Mr Mogashoa is benefitting by receiving the rental monies.

[11] Whether the relief sought by the applicant herein should be granted or not depends on the outcome of the pending proceedings.

[12] I think that the trust should have been joined as a party to the action proceedings.

[13] The respondents, further submitted that also the principle of 'Huur Gaat Voor Koop' is applicable and the principle should be applied in favour of the respondents.

[14] As to whether the principle is applicable *in casu* is an issue that can be determined after the validity of the contract of sale between Mr Huang and Mr Mogashoa has been finalized.

[15] What further complicates this application is that Mr Mogashoa is not a party to the proceedings before me. I am concerned that if I do not adopt what I may be regarded as judicial activism, justice may not be seen to be done and prejudice to

the rightful owner of the property may be unduly and unjustifiably perpetuated by delaying tactics in this matter.

[16] I think the order I am going to grant will also accelerate the finalisation of the issue between the parties. In terms of our Constitution, everyone is equal before the law and has the right to equal protection and benefit of the law.

[17] I requested both counsel to address me on the question of how would the respondents be prejudiced if I order that the rental monies be paid into an attorneys trust account. The respondents counsel submitted that the respondents may be evicted by Mr Mogashoa.

[18] The Lease agreement between Mr Mogashoa and the first respondent handed to the court in respect of the property is for a period of ten (10) years and it commenced on 1 December 2007. The first respondent paid a deposit of R7000.00 and the monthly rental is R3500.00. the premises according to the lease are used for the purpose of accommodation.

[19] After carefully considering the background facts of this case and the pending action, furthermore to protect the interests of the respondents I make the under mentioned order keeping in mind that the rental monies would be protected and Mr Mogashoa is not prejudiced.

[20] **I make the following order:**

20.1 The application is postponed sine die pending the finalization of the action proceedings under case number LP/PLK/RC372/2012 in the Regional Court of Polokwane.

20.2 The rental payable in terms of the lease agreement between Mr Mogashoa and the first respondent Mr John Mamabolo is to be paid into the trust interest bearing account of the first respondent's attorney pending the finalization of the above action proceedings. The first

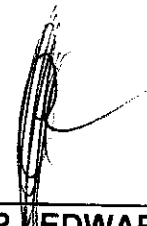
respondent's attorney should not release the rental monies to any party unless so authorized by this court.

20.3 The occupants of the property should not pay any rental to any person except to deposit the rental monies into the first respondent's attorneys trust account.

20.4 The property should not be let to anybody except the present occupiers of the property who cannot be evicted from the property unless there is a valid court order authorising such eviction.

20.5 Should the action proceedings not be finalised within a period of six months from the date of this order and/or the first respondent fail and/or the occupants fail to deposit the rental monies into the first respondent's attorney trust account in terms of the lease agreement the applicant may set this matter down for hearing.

20.6 Costs reserved.



A P LEDWABA
JUDGE OF THE HIGH COURT

HEARD ON: 12 April 2013

FOR THE APPLICANT: Adv D Prinsloo

INSTRUCTED BY: J J J Heunis Attorneys, Pretoria

FOR THE RESPONDENT: Adv K Fitzroy

INSTRUCTED BY: Poela Maake Attorneys , Pretoria