

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 5398/2011

In the matter between:-

FIRSTRAND BANK LTD
Reg No 1929/001225/06

Applicant

and

CHRIS SLABBERT

1st Respondent

Identity number

Married in community of property
to the 2nd Respondent

ALETTA JOHANNA SLABBERT

2nd Respondent

Identity number

Married in community of property
to the 1st Respondent

ALL THE OTHER UNLAWFUL OCCUPIERS
RESIDING ON and/or OCCUPYING PORTION
OF ERF 1982 BLOEMFONTEIN, DISTRICT
BLOEMFONTEIN, FREE STATE ALSO KNOWN
AS 22 DEANE STREET, WAVERLEY,
BLOEMFONTEIN, FREE STATE

3rd Respondent

MANGAUNG LOCAL MUNICIPALITY

4th Respondent

HEARD ON:

7 FEBRUARY 2013

JUDGMENT BY:

EBRAHIM, J

DELIVERED ON:

20 MARCH 2013

REASONS IN TERMS OF RULE 49(1)(c)

- [1] On 7 February 2013 I granted an order evicting the 3rd respondent from the residential premises she occupies at 22 Deane Street, Waverley, Bloemfontein, pursuant to leave granted by me in terms of section 4(2) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act No 19 of 1998 (“the Act”) on 19 January 2012. I have been requested to furnish reasons for my decision and these are my reasons.
- [2] The application was opposed by the 3rd respondent primarily on the ground that the deponent to the applicant’s founding and replying affidavits lacked authority to do so. In addition, the 3rd respondent attacked the validity of the notice advertising the Sale in Execution because the incorrect street address of the property was reflected therein. She also challenged the validity of the registration of transfer of the property to the applicant on the grounds that it is irregular because it was finalised after the date on which the trust, which initially rented the property to her, was sequestrated.
- [3] I preface the reasons which follow with the following common cause facts:
- (a) The 3rd respondent assumed occupation of the property under and by virtue of a memorandum of lease which she entered into with an entity called the To Let Trust (“the Trust”) on 15 September 2010 for a monthly rental of R10 000,00 per month.
 - (b) The Trust was never the owner of the property and had no right to lease the property to 3rd respondent.

- (c) The applicant became the registered owner of the property by Deed of Transfer dated 4 March 2011.
- (d) The 3rd respondent has no valid and enforceable right in law to remain in occupation of the property. She has occupied the property for approximately three years and for almost an entire year has not paid rental on the property.

[4] The objection to the authority of Janina Almog, who signed the founding affidavit, is that she alleges that she represented the applicant in the proceedings and that she is duly authorised to bring the proceedings and to sign the founding affidavit. In support of this she relies on a resolution which does not specifically authorise her by name to bring the present application specifically. It is in the form of a general authority to sign affidavits relating to the purchase of property on behalf of the applicant.

[5] The applicant relied on the Full Bench judgment in **ANC UMVOTI COUNCIL CAUCUS AND OTHERS v UMVOTI MUNICIPALITY** 2010 (3) SA 31 (KZP) where the court at p 43 para [28] said:

“The position now is that, absent a specific challenge by way of rule 7(1), ‘the mere signature of the notice of motion by an attorney and the fact that the proceedings purport to be brought in the name of the applicant’ is sufficient. It is further my view that the application papers are not the correct context in which to determine whether an applicant which is an artificial person has authorised the initiation of application proceedings. Rule 7(1) must be used. This means that I disagree with Mr Gajoo's

submission that rule 7(1) provides only one possible procedure and that, if a respondent elects to challenge the matter of authority on the application papers, the applicant is required to prove such authority on the papers.”

and at para [29]

“[29] There was no challenge in terms of rule 7(1) in the application which is the subject of this appeal. The appropriate procedure was therefore not used by the appellants. It was accordingly not necessary for the applicant to prove the authority to initiate the application, nor appropriate to attempt to do so on the papers. It was also not necessary for the court a quo to make a finding relating to authority on the affidavits delivered in the matter. Since there was no challenge in the required manner to the authority of the respondent's attorney who signed the notice of motion and initiated the application in the accepted way, this court does not have to deal with the question of authority. I am therefore of the view that the appeal on this issue must fail.”

[6] I considered there to be no merit in the submission that the proceedings were not duly authorised. In **GANES AND ANOTHER v TELECOM NAMIBIA LTD** 2004 (3) SA 615 (SCA) at 624G, Streicher JA said:

“It is the institution of the proceedings and the prosecution thereof that must be authorised.”

[7] That these proceedings were properly prosecuted by a firm of attorneys representing the applicant, was not challenged and, in fact, was common cause. I therefore accepted that the institution and prosecution of these proceedings were duly authorised and granted the application.

S. EBRAHIM, J

On behalf of applicant: Adv H.W. Botes
Instructed by:
Smit Kruger Inc
Durbanville
c/o Kramer Weihmann Joubert Att
BLOEMFONTEIN

On behalf of respondents: Adv M. Verster
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