

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 2022/43051

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

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SIGNATURE

...30/08/2024...
DATE

In the matter between:

**THE UNLAWFUL OCCUPIERS OF PORTION 2 OF
ERF 813 ROSETTENVILLE SITUATED AT
18 HAIG STREET, ROSETTENVILLE**

First Applicant

**THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 757 ROSETTENVILLE SITUATED AT
79 MABEL STREET, ROSETTENVILLE**

Second Applicant

**THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 758 ROSETTENVILLE SITUATED AT
81 MABEL STREET, ROSETTENVILLE**

Third Applicant

**THE UNLAWFUL OCCUPIERS OF REMAINING EXTENT OF
ERF 813 ROSETTENVILLE SITUATED AT**

54 GEORGE STREET, ROSETTENVILLE

Fourth Applicant

THE UNLAWFUL OCCUPIERS OF ERF 814

ROSETTENVILLE SITUATED AT

52 GEORGE STREET, ROSETTENVILLE

Fifth Applicant

UNLAWFUL OCCUPIERS “ANNEXURE A”

Sixth Applicant

and

OKOYE, SIMON

First Respondent

OKOYE, SILINDILE IRENE IMMACULATE

Second Respondent

THE CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

Third Respondent

GAUTENG DEPARTMENT OF SOCIAL

DEVELOPMENT

Fourth Respondent

IAN BRUCE LOCKYER

(AND ALL OTHER UNLAWFUL OCCUPANTS)

Fifth Respondent

LEAVE TO APPEAL - JUDGMENT

Manoim J,

[1] This is an application for leave to appeal. It is brought by five groups of applicants who make common cause with one another. The subject matter of their leave to appeal is an eviction order I granted on 31 May 2024. The reason

they make common cause is that the five properties are owned by the same owners and are adjacent to one another on a street corner in the Johannesburg suburb of Rosettenville. There is one group for each of the five properties.

- [2] It is common cause that all the applicants are in unlawful occupation of the properties owned jointly by the first and second respondents, a husband and wife, who I shall refer to as the Okoyes.
- [3] The applicants seek leave to appeal against my order on the basis that prior to the order being granted, the City, which is the third respondent, should have been ordered to provide them with alternative accommodation.
- [4] The criticism of the order is that no provision was made for alternative accommodation to be provided to the applicants prior to the date of eviction and further that the court had no evidence before it that they would have alternative accommodation by that date.
- [5] That says the applicants flies in the face of a long line of precedent requiring a court to be satisfied that the occupants would not be rendered homeless if the eviction was carried out. Instead, the applicants say the order should have provided that the eviction only take place two months after the applicants had been provided with reasonable accommodation.
- [6] The applicants are correct that the order is one for eviction and the City has not yet provided them with alternative accommodation.

- [7] But the applicants in seeking to rely on the precedents they have chosen, mischaracterise the terms of the order and the litigation history of this case. The order which is the subject of the appeal was granted on 31 May 2024 and the eviction date is 31 January 2025. There is thus a period of eight months between the date of the order and date of the eviction.
- [8] The order was granted by consent between two of the parties, the City and the Okoyes. The applicants agreed on certain of the provisions of the order and hence they have not appealed against these.¹
- [9] What the order does is to create a process that must be implemented by the City prior to the date of eviction. What had happened at the hearing, as explained in the main judgment, is that the City had indicated that it had no temporary emergency accommodation (“TEA”) available in the City at that moment in time but that it expected the situation might well change in eight months. For this reason, the eviction date was set as eight months after the date of the order. In addition, the City said the policy to find TEA was limited to persons who fell within the guidelines set out in the policy. Since it was not clear how many of those occupants CALS claims it represents fell within the guidelines, a process was set up for the City to establish this by going to the property and interviewing and verifying which of the occupiers were entitled to TEA.
- [10] CALS argues that the applicants would be left homeless and without a remedy on the eviction date. They argue that they do not trust the City to find alternative

¹ The leave to appeal is in respect of paragraphs 1, 4, 7, 9, 10 and 11 of the order.

accommodation for them prior to that date and hence the default position is that they should be entitled to continue occupying the property until then. This makes the eviction date not a final date but a conditional date. By contrast without an effective and unconditional eviction date the Okoye's would be left where they have been for the past eight years – owners of properties to which they have no access and for which they incur expenses and receive no income and whose entitlement to an eviction order would then be contingent - subject to some arrangement being reached between the applicants and the City.

[11] First, and this is the reason I say the order has been mischaracterised, it is necessary to point out that in terms of the order those who are still occupiers and were assessed as qualifying for TEA in terms of a report by the City dated 17 May 2021, must be given a place of occupation by the City by no later than the eviction date. (See paragraph 4 of the order). CALS appeals against this paragraph of the order, and it is by no means clear why it should do so if it represents these persons.

[12] The next class of persons are those who did not for whatever reason qualify in terms of the May report for the relief in paragraph 4. Here the order sets out a process of verification. They had to be notified of it on 7 June 2024 and the exercise was to be carried out at the properties on a weekend, the 22nd and 23rd June 2024. In terms of paragraph 7 of the order this class of persons, if verified as qualifying for TEA, is also given protection, as the City must provide them with a place for accommodation on or before the eviction date.

- [13] An additional remedy was arranged for two elderly persons in terms of paragraphs 9 and 10 of the order. These are two older persons whom the Ninth Respondent, the Gauteng Province's Social Development Department (which was cited in the application but has not opposed the relief) is obliged to accommodate in a place of Safety or Care Centre, prior to the eviction date, if the persons concerned wished to do so. It is by no means clear that these two people are still represented by CALS as the suggestion for these particular arrangements was made at the initiative of the Okoyes' legal team, not CALS.
- [14] The class of persons who might not qualify in terms of paragraphs 4, 7 or 9 or 10 of the order for alternative accommodation after the June audit, are also not without a remedy. Because the verification exercise had to be done by 23 June 2024 and the eviction date is seven months later on 31 January 2025, there is ample time for those who consider they have a right to be provided alternative accommodation by the City to bring a mandamus. This will have the utility of identifying who those people are, how long they have occupied for and their personal circumstances.
- [15] CALS argued that if it brought such an application now it would be met with the City arguing it was premature. But this is speculative and does not constitute a valid basis for the argument they have an alternative remedy.
- [16] CALS also sought to argue that the long period in which the occupants had been on the property should be regarded as a factor in their favour. But there are two problems with this. First because it is not certain who CALS represents it is not clear which people may have been residing on the property for this long.

Second, the Okoyes have not suddenly sought eviction of the occupants after a lengthy hiatus. On the contrary they have sought eviction from the time they got transfer of the properties and served a notice of eviction with the Sheriff in November 2016. Thereafter they got their first eviction order in their favour in March 2017. This was set aside in subsequent litigation, but numerous applications and orders followed. It can hardly be suggested that this present order came as a surprise overnight development. The occupiers have known for years that their presence was being contested by the Okoyes. The lengthy period has to be taken into account as a factor in favour of the Okoyes not the occupiers.

[17] Thus, to characterise this as an order evicting qualifying persons without providing for alternative accommodation is false.

[18] CALS in response to the criticism that it was not clear who it represented now says it relies on a list of names it provided in February 2021. The list will be five years old by the eviction date. It contains a list of 71 names but each of these named persons is said to have some dependants as well – one as much as 10. But this was not what it said at the time of the hearing (the number given was 51 persons and then corrected to 51 families) nor is it the way the leave to appeal has been framed which is on behalf of all the occupiers of all five properties. No court would come to a different conclusion based on the present record. CALS would require an appeal court to decide the case based on a record that is both historic and incomplete.

[19] The mandamus if required would at least create a record where these facts are set out for a court to decide, and it would emerge who was seeking the relief.

[20] Finally, CALS argues that even those protected in terms of the order have the right to know before hand to know where they are to be moved and the nature of that class of accommodation to see if it is reasonable. Whilst there are judgments which refer to reasonable alternative accommodation, the City also has to act within its own 'available resources.' There is thus no absolute right to have prior accommodation determined before an eviction date can be set to test if it meets the test of reasonable.

Conclusion

[21] The application for leave is sought in terms of section 17(1) of the Superior Courts Act which states:

“17(1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that-

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;”

[22] I do not consider the appeal would succeed on either leg. On the present record there is no prospect of success on the facts. On the law there is only a conflict with other judgments if one ignores the various paragraphs of the order which

seek to protect certain classes of the applicants and secondly, the process which is set up to protect the rights of others to bring a mandamus timeously before the eviction date, if they consider they have a basis for a remedy against the City to provide them with alternative accommodation. Who those persons are and what facts they seek to rely on is not presently in the record.

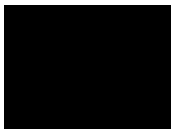
Costs

- [23] The City has expressed scepticism of the genuineness of the homelessness claims of the occupants or at least some of them. Much criticism was levelled against CALS for appealing the case and thus prolonging this lengthy dispute without any clarity over which of the occupants it represents. The City argued that the application for leave to appeal should be dismissed and that CALS should be ordered to pay the costs.
- [24] I consider that would be an extreme remedy. Whilst it is not clear who CALS represents in this matter, and its election to seek leave to appeal based on the present record has not been well considered, I must recognise that they are a socio-economic rights organisation which provides representation to persons who might otherwise not have access to the court. I do not consider that an order for costs against them is at present justified.
- [25] There is little point in making an order for costs against the applicants as we do not know who mandated CALS to bring the application nor who they are. This is unfortunate for both the Okoyes' and the City but that is the reality of this unfortunate saga.

ORDER:-

[26] In the result the following order is made:

1. The application for leave to appeal is dismissed.
2. There is no order as to costs.


N. MANOIM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of hearing: 08 August 2024

Date of Judgment: 30 August 2024

Appearances:

Counsel for the First to Sixth Applicant:

M. Marongo

Instructed by:

Centre for applied legal studies

Counsel for the First and Second Respondent:

C. Dénichaud

Instructed by:

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Inc

Counsel for the Third Respondent:

MC. Makgato

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