

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

CASE NO: 48138/17

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED: NO
08 November 2024	
DATE	SIGNATURE

In the matter between:

KELO KARABO MOLOKO

Applicant

and

MATLADI SILAH SEDUMEDI N.O

First Respondent

ALL OCCUPANTS OF 8[...]

Second Respondent

P[...] ROAD, B[...]

CITY OF JOHANNESBURG

Third Respondent

MTREPOLITAN MUNICIPALITY

JUDGMENT

KEKANA AJ

Introduction

[1] This is an application for eviction against Matladi Silah Sedumedi (*Ms Sedumedi*) from 8[...] P[...] Road, B[...] (*Property*) in terms of the Prevention of Illegal Eviction and Unlawful Occupation Act 1998 (*PIE Act*). The first respondent is opposing the application. She does not have legal representation and she is self-represented.

[2] The first respondent was not in attendance at the hearing on Tuesday 22 October 2024. The directive notifying of the date of enrolment was circulated to all parties timeously and after numerous attempts the first respondent could still not be located. It was placed before me that the respondent came to court on 21 October 2024 and was advised that the matter is enrolled for 22 October 2024, with this knowledge the respondent failed to attend the hearing hence the matter had to proceed in her absence.

Background

[3] The property in question belonged to Justinus Moseki Sedumedi cited in the initial founding affidavit as the first respondent. The property was repossessed by the bond holder Nedbank Limited (Reg No: 1951/000009/06) due to the failure by Justinus Moseki Sedumedi to make payments and immediately thereafter on or about 29 September 2017 transferred into the name of the Applicant. According to the responding affidavit filed by Ms Silah Sedumedi now the first respondent, she states that Justinus Moseki Sedumedi is her late son who passed away on 21 August 2014 due to injuries sustained by him in a motor vehicle collision.¹ That she (Silah Sedumedi) was appointed by the Master of the High Court (Johannesburg) as the Executrix of the deceased estate under reference 038852/2014.

¹ See para 4 of the Answering Affidavit.

[4] After the property was transferred into the Applicant's name, she immediately on or about 12 October 2017 through her attorneys of record caused a notice to vacate letter. The letter was hand delivered to the first respondent. The notice to vacate was giving the first and second respondents until 15 November 2017 to vacate the property, failing which, an application for their eviction from the property would be instituted.² According to the notice to vacate letter, the Applicant offered an amount of R7000 00 (seven thousand rands) to the first and second respondent to assist with the relocation costs. The Applicant then launched the eviction proceedings under the above case number on 8 December 2017 as the respondents failed to heed the vacation notice.

Issues

[5] Issues for determination are whether the Applicants have made out a case for eviction in terms of the PIE Act and whether the respondent has a valid defence.

Submissions and contentions by the parties

[6] Counsel for the Applicant submitted that the Applicant took ownership of the property and having not given any consent to the first and second respondents to occupy the property, their continued occupation is unlawful. The Applicant having complied with the provisions of the PIE Act therefore entitles her of the relief sought as set out in the notice of motion. The counsel further submitted that before the Applicant purchased the property, she notified the first respondent of the offer to purchase she has made to Nedbank Limited. It was during these discussions with the first respondent that she was informed by the first respondent of her family in Northwest, where she could relocate to in case the Applicant acquires the property.

[7] The Applicant's counsel further submitted that the Applicant went to greater lengths in accommodating the respondent including offering to incur the

² See para 6.2 of the Applicant's Founding Affidavit.

relocation costs. That the Applicant stand to be prejudiced if the eviction order is not granted as she is the one paying for all municipal services. Further that any delay may amount to denial of justice to the applicant.

[8] In her answering affidavit the first respondent states that at all material times she occupied the property as it belonged to her late son, Justinus Moseki Sedumedi. That she instructed Moloto Weiss Attorneys from Rustenburg to assist with the winding-up of the deceased estate, but they did nothing and hence she terminated their mandate. Again, she sourced the services of Pule Kodibang Attorneys in Johannesburg to wind up the deceased estate and to assist with the transfer of the two immovable properties of the deceased. An amount of R 365 000 00 (three hundred and sixty-five thousand rands) was deposited into the bank account of Pule Kodibang Attorneys, and nothing was done, and it is alleged this money paid was embezzled.³ A complaint has since been lodged with the Law Society of the Northern Province.

Legal principle and analysis.

[9] The evictions application regime has received specific attention of the parliament as a result of the precarious land tenure of the general populace at the hands of landowners who were often unscrupulous. Compliance with the PIE Act is important bearing in mind that the court need to consider, first, whether is PIE Act upon which this application is brought applicable.

[10] The starting point is to establish whether the appellant is an unlawful occupier under PIE. The key question is whether the appellant enjoyed a right of occupation? The applicant needs to satisfy the requirements of the PIE Act including that the first respondent is an unlawful occupier, and this can be demonstrated by showing that the right to occupy was terminated.

[11] It is common cause that at some point prior to Nedbank repossessing the property, the first respondent was a lawful occupant of the property and as such the termination of the aforesaid lawful occupation is necessary. No payments of

³ See paras 13,14 and 15 of the Answering Affidavit.

outstanding bond repayments were made to Nedbank again the first respondent was not able accede even to the payment arrangement proposed by Nedbank Limited, the repossession by Nedbank Limited is under the circumstances justified.

[12] Carelse AJ in the SCA case of *Davidan v Polovin N O and Others*⁴ held that the jurisdictional requirement to trigger an eviction under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) is that the person sought to be evicted must be an unlawful occupier within the meaning of PIE at the time when the eviction proceedings were launched. It means that if the person was a lawful occupier with some rights, then the need exists for the lawful termination of that right first, it is only then that she becomes an unlawful occupier. If the appellant had no right to occupy the property, then axiomatically there would be no need to terminate that right.⁵

[13] I raised this issue during the address by the applicant's counsel whether the lawful occupation by the first and second respondents was terminated prior to being served with the notice to vacate letter. Counsel for the Applicant argued that lawful occupation came to an end once notice to vacate letter was issued which had 15 November 2017 as the final date to vacate the property, the continued occupation by the first and second respondents after this date was unlawful.

[14] The notice to vacate letter dated 17 October 2017 hand delivered does not terminate the right to lawful occupation, since the first respondent was a lawful occupant of the property, her lawful occupation must first be terminated with the understanding that her continued stay in the property will be unlawful. Once her lawful occupation is terminated any rights held by her to reside in the property also terminates. Unless preceded by the termination of lawful occupation or the termination of the right to occupation, the notice to vacate alone becomes defective as it intent to vacate a lawful occupier and for that reason PIE Act is inapplicable especially as the respondents were lawful

⁴ *Davidan v Polovin N O and Others* (167/2020) [2021] ZASCA 109 (5 August 2021).

⁵ *Davidan* (supra).

occupiers. Based on facts before me there was no termination of the lawful occupation or the rights to lawful occupation held by the respondents.

[15] Since neither Nedbank nor the Applicant terminated the first and second respondents' right of occupation, the respondent's occupation is not unlawful, she is not an unlawful occupier and recourse for a remedy in terms of the PIE Act would be incompetent.

[16] In the case *Changing Tides*⁶ Wallis JA emphasised on the existence of a valid defence that would entitle the occupier to remain in occupation as against the owner of the property. It must be said all attempts by the first respondent does not in any way give rise to a valid defence in law on her part as no transfer with the Deeds Registries was effected. However, while she may lack a valid defence, she occupied the property with the consent of her late son while the son was still alive and again, she was appointed an executrix of the late son's estate. The letter of executorship grants her some right to occupy the property. She therefore was and still is a lawful occupier until the termination of her rights to lawful occupation.

[17] The third Respondent (City of Johannesburg Metropolitan Municipality) was directed by this Court to report on steps taken to provide emergency accommodation for first and second Respondents.⁷ During the hearing counsel for the third Respondent presented a report confirming that the Third Respondent did assess with the aim of determining if there will be a need for a Temporary Emergency Assessment (TEA). Counsel presented a report confirming that an assessment of all affected parties was conducted, and it was able to conclude that TEA is only provided to evictees who are found to have no means to find alternative accommodation.⁸ Furthermore the third Respondent concluded that in light of the information provided by the first and second Respondents, the City submits that the occupiers collectively have sufficient

⁶ *City of Johannesburg v Changing Tides T4 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) at para 12.

⁷ See para 5 of the Court Order by Baloyi AJ dated 16 February 2024.

⁸ See para 19 of the Third Respondent's Report.

money available to find alternative accommodation should an eviction order be granted.

[18] Whilst it is apparent that the first and second respondents are enjoying occupation of the property without paying any rental the Applicants appear to be prejudiced for not receiving the rental. The Applicant are not left without a remedy as she is entitled to pursue a claim for lost rental income including the institution of an action for unjust enrichment.

Conclusion

[19] Having failed to satisfy the court that the right held by the first and second respondents towards the lawful occupation of the property was terminated neither by Nedbank nor the Applicant herself, the relief sought in terms of the PIE Act remains incompetent as the respondents are not unlawful occupants. The respondents are not unlawful occupants as required by PIE. No case has been made out against the respondents therefore, the eviction sought against them must fail.

[20] I grant the following order:

The application for eviction is dismissed.

Each party to pay its own costs.

Kekana ND

Acting Judge of the High Court

Counsel for the applicant:

Adv. R.S Radebe

Instructed by:

Ntsimango Attorneys

Counsel the for respondent:

Self represented

Date of the hearing:

22 October 2024

Date of judgment:

08 November 2024