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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Appeal Case No: CA 65/2024

Case No. (Court A *quo*): 330/2022

Date Heard: 06 September 2024

Date Delivered: 01 October 2024

In the matter between:

SHELLY-ANN COETZEE

FIRST APPELLANT

CATHARINA COETZEE

SECOND APPELLANT

**ANY PERSON OCCUPYING THE IMMOVABLE
PROPERTY ERF 2[...], JEFFREYS BAY, SITUATED
AT 3[...] K[...] STREET JEFFREYS BAY
THROUGH THE FIRST RESPONDENT**

THIRD APPELLANT

and

POPEYE TRUST (IT9522/2004)

RESPONDENT

JUDGMENT

MULLINS AJ:

[1] This is an appeal against a judgment of the Regional Court sitting in Humansdorp, Eastern Cape Province, in terms of which the Appellants were ordered in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (“PIE Act”) to vacate a property registered in the name of the Respondent, a trust.

[2] The matter has a long and unfortunate history, which it is necessary to briefly set out:

(a) Due to a commercial dispute the First Appellant and one Christo Coetzee (“Coetzee”), who are married to each other, were sued in the (then) Port Elizabeth Regional Court by Coetzee’s erstwhile business associate. Although no details of this dispute have been disclosed (nor is it necessary to go there), in 2019 a default judgment was granted against them, which they failed to satisfy, as a result of which the judgment creditor initiated execution proceedings against them;

(b) In due course an immovable property owned by Coetzee was sold in execution, the Respondent being the purchaser thereof;

(c) The property in question, being Erf 2[...] Jeffreys Bay, Division of Kouga, Province of the Eastern Cape, which is situated at 3[...] K[...] Street, Jeffreys Bay (“the Property”), was registered in the Respondent’s name on 10 November 2021;

(d) At the time the Property was still occupied by Coetzee, his wife and his mother, who are the First and Second Appellants. All attempts to get them to vacate proved fruitless, as a result of which the Respondent was eventually obliged to resort to the PIE Act, the statutory notice being served on 15 June 2022 and the application being launched on 7 September 2022;

(e) For reason which are unclear the application cited Coetzee’s wife and mother as the unlawful occupiers, but not him. However, as the Third Respondent was cited as “Any Person Occupying the Immovable Property ...” in question, and as it is not in dispute that Coetzee is also in occupation thereof, describing himself as “*the primary occupier*”, nothing turns on this issue;

(f) Through Coetzee the Appellants have tried every stratagem to avoid their eviction. They took numerous spurious technical points and adopted delaying tactics worthy of the epithet “Stalingrad”. Fortunately, it is not necessary to list the tactics adopted by the Appellants to avoid the inevitable, but the Court’s displeasure at their conduct will be reflected in the costs order we intend to make.

[3] So much for the background. The only cogent argument raised by the Appellants in the court *a quo*, and before us, is based on the decision of **Campbell v Botha and Others**¹ which is dealt with below.

[4] Section 70 of the Magistrates’ Court Act, 32 of 1944 states:

“70 **Sale in execution gives good title**

A sale in execution by the messenger shall not, in the case of movable property after delivery thereof or in the case of immovable property after registration of transfer, be liable to be impeached as against a purchaser in good faith and without notice of any defect.”

[5] In **Campbell** a municipality² was granted a default judgment against the registered owner of an immovable property, who was a minor at the time, for failing to pay rates and taxes. In due course the property was sold in execution to satisfy the judgment. For reasons which are not relevant the action never came to the owner’s attention. And although in dispute, it was accepted by the court that the notice of attachment, as required by what was then rule 43(2)(a) and (b) of the Magistrates’ Court Rules,³ had not been served on him, nor had it been published.

[6] An application by the original owner for the rescission of the default judgment was successful.

¹ 2009 (1) SA 238 (SCA)

² Ironically, the same local authority in which the Property in question is situated.

³ The current rule is rule 43(3)(a) and (b)

[7] Thereafter, based on his lack of capacity to be sued and the fact that the notice of attachment had neither been served nor published, an application to have the sale in execution set aside was brought. The application was opposed by the purchaser of the property who, it was not in dispute, had purchased in good faith. The application was dismissed by the court *a quo*. On appeal the Supreme Court of Appeal held that, quite apart from the judgment being void because of the owner's lack of legal capacity, in the absence of proper service of the warrant or notice of attachment, i.e., compliance with the then rule 43(2), no attachment had occurred. The court held:

“[18] An attachment is effected by way of a notice by the sheriff served together with a copy of the warrant of execution upon the execution debtor as owner, upon the registrar of deeds, upon all registered holders of bonds registered against the property, if the property is in the occupation of some person other than the execution debtor, also upon such occupier and upon the local authority in whose area the property is situated. Whatever the position may be if service is not effected on any of the other interested persons there can, in my view, never be said to have been an attachment where neither the warrant nor the notice of attachment had been served on or brought to the notice of the owner.

[19] In the present case neither the warrant nor the notice of attachment was served on the appellant and he was unaware of the purported sale in execution. In the circumstances there can be no question of the sheriff having substantially complied with what was required for an attachment. There had been no compliance at all. The fact that it is unlikely that there would have been any reaction from the appellant had the warrant been published in the Cape Argus, as was found by the court *a quo* to have been the case, does not assist the respondents either as such unlikelihood cannot convert a non-attachment into an attachment.

[20] As the property had not been attached in execution of a judgment the sale that was conducted was not a sale in execution of the judgment and was therefore not protected by s 70. It was no more than a purported sale in execution. Not having attached the property, the sheriff had no authority to conduct a sale thereof and to transfer the property to the purchaser. As was said by Maasdorp JA in *Rossouw and Steenkamp v Dawson* 1920 AD 173 at 180:

‘The Sheriff acting without authority is in no different position to any other person acting without authority in selling the property of a person who has not authorised such sale.’

It follows that the appellant remained the owner of the property.”

[8] In the present matter the Appellants rely on what can only be described as a “throw-away line”. In the answering affidavit on behalf of the Appellants Coetzee states:

“22. In short, the Respondents were never notified of the attachment of the property by the execution creditor, and only learnt about the sale in execution less than five days prior to the sale in execution. The same factual situation which arose in *CAMPBELL v BOTHA* 2009 (1) SA 238 (SCA), was prevalent in the case of the sale in execution of my and the Respondents’ property.”

[9] It is not correct that the same factual situation arises, in that:

(a) Coetzee, who was the registered owner of the Property, was not a minor when default judgment was granted against him and the First Appellant;

(b) The Appellants rely on a bald statement that Coetzee was not notified of the attachment of the Property. By contrast, in **Campbell** the original owner of the property went to great lengths to prove that the notice of attachment had not been served on him, nor published as is required by the then rule 43(2) of the rules of that court;⁴

(c) Despite numerous references to pending applications (plural) in various different courts for the rescission of the default judgment granted against the First Appellant and Coetzee, no such application has ever been brought to finality⁵ and the judgment stands. It is odd, to say the least, that although these applications were apparently handed up during the proceedings in the Regional Court the

⁴ **Campbell** *supra*: paras [4] and [5].

⁵ If an application has been finalised, successfully or unsuccessfully, it was not brought to our attention.

Appellants, who are responsible for the preparation of the appeal record, did not see fit to include them in the record before us;

(d) Perhaps most significantly, in **Campbell** the default judgment had been rescinded and what was before the court was the setting aside of the sale in execution. That is not what we are faced with. This is a PIE Act application brought by the current registered owner of the Property and there is no counter-application before us to have the sale in execution set aside.

[10] In conclusion, the Appellants' reliance on the **Campbell** judgment is misguided.

[11] That brings us to the requirements of the PIE Act.

[12] It is not in dispute that the formal requirements were duly complied with. Having rejected the Appellant's only potentially valid argument, their continued occupation of the Property is unlawful.

[13] There are three persons living on the Property: Coetzee, his wife and his mother. They do not allege that they will not have a roof over their heads if they are evicted. In fact, on the contrary, it is alleged that Coetzee owns another property in Gqeberha, which is not denied on the papers. Counsel for the Appellants very properly confirmed that this is correct.

[14] The only defence to the eviction is Coetzee's allegation that his mother is 81 years of age and "... *She is on numerous types of medication and not of good health*". Not only is this a bald statement, in her confirmatory affidavit, which is all of four lines long, Mrs Coetzee senior fails to elaborate on the status of her health. A litigant who seeks the sympathy of the court is obliged to do more than make a bald, unsupported statement. If Mrs Coetzee senior really has health problems which militate against her eviction it would have been the easiest thing to specify what they are and why it would not be just and equitable to order her to vacate the Property.

[15] As the Appellants have been in occupation of the Property for more than six months section 4(7) of the PIE Act is applicable. We are satisfied that it would be just and equitable to order their eviction.

[16] Section 4(8) of the PIE Act provides that where a court is satisfied that the requirements of the section have been complied with it must grant an eviction order, having regard to:

- (a) A just and equitable date on which the unlawful occupier must vacate the land and in what circumstances;
- (b) A date upon which the eviction order is to be carried out if the unlawful occupier of the land fails to vacate.

[17] Section 4(9) of the PIE Act provides that in determining a just and equitable date on which an unlawful occupier is to vacate, the court must have regard to the length of time he/she and his/her family have resided on the land in question. In the present matter one does not know how long the Appellants have lived on the Property. However, the unlawful occupation has endured for three years, but given the history of the matter this is an aggravating factor rather than a mitigating one. They have abused the system to frustrate every attempt by the Respondent to get vacant occupation.

[18] It is also relevant that the Property was purchased by the Respondent for R755,920.90 as the retirement home of its trustees, Mr and Mrs Viljoen. To date they have been unable to take up occupation. Furthermore, apart from paying the municipal account, the Appellants have been living on the Property rent free for three years. The Respondent estimates that the Property would fetch between R9,000.00 to R10,000.00 rental per month, which is not disputed.

[19] In the circumstances we are of the view that the Appellants should be afforded 30 calendar days from the date of this order to vacate the Property, failing which the Sheriff be authorized to evict them forthwith.

[20] Insofar as costs are concerned, we have already alluded to the fact that the Appellants have employed numerous stratagems to delay the matter, which they succeeded in doing for years. Their opposition in the Regional Court was without merit, as is their appeal in this court. In the circumstances a punitive costs order is merited.

[21] The following order shall issue:

1. The appeal is dismissed.
2. The Appellants, which includes Christo Coetzee, Shelly-Ann Coetzee and Catharina Coetzee (the “Appellants”), and any person occupying the immovable property described as erf 2[...] Jeffreys Bay, held under title deed T20304/2021, situated at 3[...] K[...] Street, Jeffreys Bay (“the Property”) are hereby evicted from the Property.
3. The Appellants are ordered to vacate the Property within 30 calendar days of the date of this order.
4. In the event of the Appellants, and all who occupy through them, failing to comply with prayer 3 above, the Sheriff of this Honourable Court is authorized, duly assisted by the South African Police Service, if necessary, to forthwith take all steps necessary to evict the Appellants.
5. Any costs occasioned by the Sheriff in giving effect to paragraph 4 above shall be paid by the Appellants.
6. The Appellants are ordered to pay the costs of the appeal on an attorney and client scale.

NJ MULLINS
(ACTING JUDGE OF THE HIGH COURT)

I Agree

R W N BROOKS
(JUDGE OF THE HIGH COURT)

REPRESENTATION:

Obo the Appellants:

Instructed by:

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Obo the Respondent:

Instructed by:

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