

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

Case No:20758/2022

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
.....	30 January 2025
SIGNATURE	DATE

In the matter between :

ORANGE CLOVE (PTY) LIMITED

Applicant

and

WAYNE LOWENSTEIN

First Respondent

**THE UNLAWFUL OCCUPIERS OF UNIT 3[...]
M[...] B[...] H[...]**

Second Respondent

**RUI MIGUEL DE FIGUEIREDO N.O. THE
TRUSTEE FOR THE TIME BEING OF THE
LWWS HOLDING TRUST WITH
REGISTRATION NUMBER IT3059/04(T)**

Third Respondent

TANYA ROCHA N.O. THE TRUSTEE FOR

THE TIME BEING OF THE LWWS HOLDING TRUST WITH REGISTRATION NUMBER IT3059/04(T)	Fourth Respondent
MARIA DA CONCICAO DE FREITAS VASCONCELOS N.O. THE TRUSTEE FOR THE TIME BEING OF THE LWWS HOLDING TRUST WITH REGISTRATION NUMBER IT3059/04(T)	Fifth Respondent
REDLEX 297 (PTY) LTD	Sixth Respondent
REVENUE ASSET PROTECTION SERVICES (PTY) LTD	Seventh Respondent
MARIO ALEXANDRE DE FIGUERIEDO ROSHA	Eighth Respondent
THE MINISTER OF POLICE	Ninth Respondent
EKURHULENI METROPOLITAN MUNICIPALITY	Tenth Respondent

JUDGMENT

WANLESS J

Introduction

[1] This application is but one of a number of identical applications for the eviction of the same respondents from various units in a Sectional Title Scheme known as M[...] B[...] (*“the scheme”*). Whilst the applicant in each application is different the material facts and principles of law arising in relation to those facts, are the same. In addition thereto, this Court has pronounced judgment in respect of (*at least*) three other applications in terms of which the Respondents in those applications were evicted from units within the scheme. The respondents in all of those matters are the same respondents in the present matter.

[2] All of the other judgments handed down in this Division are by a single judge. This Court is aware of three (3) such judgments. The first judgment was handed down on the 21st of November 2023 by De Beer AJ (*“the De Beer judgment”*) under case number 2022/23317, This application was in respect of unit [...] in the scheme. The applicant in that matter was the registered owner of unit [...]. The unlawful occupants were evicted from unit [...] in the scheme. Further, they were interdicted and restrained from entering and occupying unit [...] once they had vacated the unit.

[3] Thereafter, on the 24th of July 2024, Wright J (*“the Wright judgment”*) handed down judgment under case number 2022/21239. This application was in respect of unit 7 in the scheme. The applicant in that matter was the registered owner of unit 7. The unlawful occupants were evicted from unit 7 in the scheme. They were *not* interdicted and restrained from entering and occupying unit [...] once they had vacated the unit.

[4] On the 7th of August 2024, Van Aswegen AJ handed down judgment under case number 2023/014169 (*“the Van Aswegen judgment”*). This application was in respect of units 9 and 60 in the scheme. The applicant in that matter was the registered owner of both of those units. The unlawful occupants were evicted from units 9 and 60 in the scheme. As was the case in the Wright judgment, they were *not* interdicted and restrained from entering and occupying either of these units once they had vacated them.

The principle of *stare decisis*

[5] *Stare decisis*, meaning in Latin “*to stand by things decided*,” is a legal principle that directs courts to adhere to previous judgments or judgments of the same court, or judgments of higher courts. This is on the basis that these earlier judgments have persuasive and binding authority whilst resolving a case with allegedly comparable facts.

[6] In *Bloemfontein Town Council v Richter* the erstwhile Appellate Division said the following about *stare decisis* (“*to stand by things decided*”):

"The ordinary rule is that this Court is bound by its own decisions and unless a decision has been arrived at on some manifest oversight or misunderstanding, that is there has been something in the nature of a palpable mistake, a subsequently constituted Court has no right to prefer its own reasoning to that of its predecessors - such preference, if allowed, would produce endless uncertainty and confusion. The maxim 'stare decisis' should, therefore, be more rigidly applied in this the Highest Court in the land, than in all others".¹

[7] In the present matter, it has been noted above that not only are the three (3) earlier judgments by three (3) single Judges but they were all decided in this Division. In the premises, it is fairly trite that this Court should, insofar as possible, follow the aforesaid judgments. This is so, since the facts of the present application are allegedly comparable to those in the previous applications. Arising therefrom, in terms of *stare decisis*, this Court should only deviate from the De Beer judgment; the Wright judgment and the Van Aswegen judgment, in the event of this Court holding that the facts of the application before this Court and those in the previous judgments are not comparable, *alternatively*, all three (3) of those judgments are wrong.

The facts and the relevant principles of law arising therefrom

[8] As already mentioned in this judgment, whilst the applicant in each application is different (*as a direct result of who the registered owner of the unit or units are in the scheme*) the material facts and principles of law arising in relation to those facts, are the same. In the premises, little purpose (*if any*) would be served (*and this judgment would simply be burdened unnecessarily*) should this Court merely repeat those facts and the principles to be applied, in both the earlier judgments and the present application before this Court.

¹ Bloemfontein Council v Richter, 1938 AD 195.

[9] It will be far more valuable to spend some time (*as briefly as possible*) dealing with the material findings made in the earlier judgments preceding the judgment of this Court.

Findings of fact and law as set out in the De Beer judgment; the Wright judgment and the Van Aswegen judgment.

[10] What follows hereunder is predicated (*as also set out earlier in this judgment*) on the basis that the facts of all four (4) matters are, in all material respects, similar, if not identical. Once again, at the risk of being repetitive, this should be clear from the fact that the respondents are the same; the subject matter in each application is a unit or units in the same scheme and the only difference between each application is the identity of the applicant (*for the reasons set out above*).

Were the sale of the units to the various applicants subject to any lease?

[11] In the De Beer judgment it was held that the unit was not subject to any lease. This finding was based upon, *inter alia*, subsection 1(2)(b) of the *Formalities in respect of Leases of Land Act, 18 of 1969*. The court concluded that that the Respondents had failed to discharge the onus incumbent upon them of proving the requisite knowledge on behalf of the Applicant in that matter that, at the time of purchase, the unit was subject to a long – term lease as provided for in terms of the said Act.

[12] The learned Acting Judge also found that the long lease was not registered against the title deed of unit [...] as was required by law. Thus the Respondents had failed to discharge the onus that the Applicant had actual knowledge of the long lease. In addition, De Beer AJ held that the Respondents wished to create a dispute of fact where there was none. With regard to the “*information pack*” provided to potential purchasers at the auction where this unit was purchased the court held that the reference therein that the unit was subject to a lease, was overridden by clause 2.6 of the sale agreement which stipulated that that the unit was sold to the Applicant subject to *no* lease. Also, De Beer AJ held that the information pack specifically stated that units sold individually would be sold without any lease attaching thereto.

[13] In his succinct judgment, Wright J, after setting out the material terms of the lease upon which the Respondents relied in order to occupy unit 7 in the scheme, noted that the applicant in that matter submitted that the lease was nothing but a sham. In this regard, the Applicant pointed to the terms of the purported lease and the fact that, in effect, the lease gives the entire building to the LWWS Holding Trust (*“the Trust”*) for a period of eighty (80) years on extremely favourable terms. On the facts of the matter the learned Judge found that the terms of the alleged lease were so far removed from commercial reality that they could not be genuine and underlined the sham nature of the lease in question.

[14] As to the averments by the Respondents pertaining to the knowledge of the Applicant that it was aware of the lease when it purchased the unit, Wright J held that, *inter alia*, the documents before the court did not support that contention and it was fanciful to suggest that any person, including a reasonable person, would buy unit 7 knowing of the lease and thinking, reasonably or at all, that the lease was valid.

[15] With regard to any sub-leases or indeed, any other leases relied upon by certain of the respondents, it was held that the validity of those leases fell to be determined dependent upon the validity of the main lease. Since the main or head lease was invalid, so were any sub-leases or other leases. Finally, the learned Judge examined the facts of the matter and decided that all of the requirements in terms of the *“PIE Act”* had been complied with.

[16] In the Van Aswegen judgment the learned Acting Judge considered the De Beer judgment. It would appear that when the Van Aswegen judgment was delivered the acting judge was unaware of the Wright judgment since no reference was made thereto.

[17] Despite the foregoing and for the reasons set out in the Van Aswegen judgment the court came to precisely the same decision as arrived at in the De Beer judgment and the Wright judgment, namely that any and all of the purported leases were invalid. Thereafter, whilst it appears to this Court that a finding of this nature

should have effectively brought the matter to an end, the learned Acting Judge nevertheless elected to carry out a diligent and thorough examination of all of the remaining “*issues*” that were argued before the court when hearing the application. This Court, as set out above, respectfully declines to do so, other than to note the findings of the acting Judge and the reasons therefor.

[18] In the Van Aswegen judgment the court also spent some considerable time dealing with the “*doctrine of actual knowledge of a long lease*”. This Court is grateful therefor. The principles as set out therein, together with the facts as correctly relied upon, support the finding that the head or main lease relied upon by the Respondents in all of the applications (*including the present application before this Court*) is invalid.

Did the Respondents have any right at all to occupy the units?

[19] In this regard the learned Acting Judge (*correctly in the opinion of this Court*) in the Van Aswegen judgment held that the application for the eviction of the Respondents was one based squarely on the *rei vindicatio*. Arising therefrom the onus fell upon the Respondents to prove, on a balance of probabilities, the right to continue to occupy the various units despite the applicants’ ownership thereof. The court also considered the principles applicable to eviction generally. Moreover, based once again on the correct acceptance of relevant facts the acting judge concluded that the lease was also invalid on the basis that one Tanya Rocha did not have the requisite authority to enter into the lease on behalf of the Trust or any other person. Of course, this finding (*that the main or head lease was invalid*) had already been made when finding that the Respondents had not discharged the onus to show that the Applicant had actual knowledge of the lease when the units were purchased at auction. Finally, in light of these findings the court found that the Respondents did not have any right to occupy the units and that it was just and equitable, in terms of the PIE Act, to grant the Applicant the relief sought.

Conclusion

[20] On the basis that, *inter alia*, the facts of the present matter are remarkably similar (*if not identical*) in all material respects to those dealt with in the De Beer; Wright and Van Aswegen judgments and this Court is entirely in agreement with not only the principles applied in respect thereof and the findings made therein, this Court finds that the relief sought by the Applicant in the present matter should be granted.

[21] With regard thereto, it should be noted that, in terms of paragraph 4 of the Applicant's Notice of Motion, the Applicant seeks an order that, in the event of any of the evicted persons, after having been evicted from the unit returning thereto, the Sheriff is entitled, without the Applicant approaching this Court for relief, to once again evict these persons. A similar order was granted in the De Beer judgment but not in the Wright or Van Aswegen judgments. With regard to the latter two (2) judgments, this Court has no knowledge as to whether such relief was ever sought by the Applicant in those applications. Neither of the judgments deal specifically therewith.

[22] This Court declines to grant an order on those terms. The basis therefor is that, *inter alia*, this Court is not satisfied that the Applicant has set out sufficient grounds therefor in the application papers.

Costs

[23] This Court is unaware of any unusual circumstances that would cause it to deviate from the normal practice that costs should follow the result. In the premises, the relevant Respondents should be ordered to pay the costs of this application, jointly and severally, the one paying the others to be absolved. As to the scale of those costs the Applicant does not seek a punitive costs order. In the general discretion vested in this Court in respect of costs, the costs payable will be on the scale of party and party.

Order

[24] The following order is made:

1. That The First to Eighth Respondents and any persons claiming right and/or all those that occupy the properties, including their family, servants and/or employees, are ordered to vacate from the immovable property being **UNIT 3[...], M[...] B[...] H[...],** physically situated at **2[...] S[...] STREET, B[...] G[...], G[...]** (“the property”) within 14 (fourteen) court days after the date upon which this order is granted failing which they are to be evicted forthwith.
2. Should the First to Eighth Respondents fail to vacate the property within the aforesaid time period, the eviction order may be carried out, in which event the Sheriff of this Court (“the Sheriff”) and the Ninth Respondent, are hereby authorised and directed to forthwith evict the First to Eighth Respondents and all those that occupy the property by virtue of, through or under their occupation thereof, including their family, servants and/or employees, or short term stay residents from the property.
3. The Sheriff and the Ninth Respondent are authorised and directed to take all legal steps to enforce this order including the use of a locksmith.
4. The First to Eighth Respondents are to pay the costs of this application, jointly and severally, the one paying the other to be absolved.

BC WANLESS
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG

Date of Hearing: 29 April 2024
 Judgment reserved: 7 August 2024
 Date of Judgment: 30 January 2025

APPEARANCES

On behalf of the Applicant: Adv CJC Nel
 Instructed by: Kaveer Guinness Inc

On behalf of the Respondent: Mr T Dunn
Instructed by TJC Dunn Attorneys