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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No: 2024/019458

Reportable: No

Of interest to other Judges: No Revised: No

SIGNATURE

Date: 18/11/2024

In the matter between:

CONRAD ALEXANDER STARBUCK N.O

1st Applicant

MATLOOANE JOHN MOPHETHE N.O.

2nd Applicant

and

MOYA CANDLISH NAPE N.O.

1st Respondent

MMAMOCHABO PERTUNIA KGOHLOANE N.O.

2nd Respondent

MOYA CANDLISH NAPE

3rd Respondent

MMAMOCHABO PERTUNIA KGOHLOANE

4th Respondent

THE OCCUPANTS OF ERF 7[...] IRENE EXT 10
TOWNSHIP

5th Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

6th Respondent

JUDGEMENT – APPLICATION FOR LEAVE TO APPEAL

MOOKI J

- 1 The court granted an eviction order in favour of the applicants (whom I refer to as “the trustees”). This is an application for leave to appeal.
- 2 The notice of the application is in the hand of the third respondent. That is so notwithstanding the notice being signed as concerning “THE APPLICANTS.” He signed the notice and indicated his e-mail address. The notice was not made by a firm of attorneys. There is no indication whether the other respondents are aware of the application.
- 3 The grounds of appeal are that the court refused a postponement to allow “the applicants” to obtain legal representation. The other basis is that the court “erred in fact and in law by granting the entire Order, inter alia, under circumstances where the Applicants were unrepresented at the hearing and were not afforded an opportunity to deliver their Answering Affidavit.”
- 4 The trustees sought an order evicting the respondents. The trustees complied with the formal requirements, including giving notice in terms of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (“the PIE Act”).

5 The grounds for eviction include that:

5.1 The Nape Family Trust, the registered owner of the property, was sequestrated on 1 March 2023.

5.2 The applicants are provisional trustees and are, in law, entitled to possession and occupation of the property.

5.3 The applicants are obliged by the law to, among others, liquidate the assets of the insolvent estate and to distribute the proceeds to the general body of creditors of the trust.

5.4 The applicants are to give occupation to the purchaser of the property.

6 The section 4(2) notice called on the respondents to appear before court on 10 October, to state grounds why an order for their eviction should not be made. The order in relation to the notice was served on the first to fifth respondents on 26 September 2024 and 27 September 2024. The municipality was served on 1 October 2024.

7 The first to fourth respondent filed a notice of intention to oppose. Their affidavits were due on 4 October 2024. They did not file affidavits. Their attorneys of record withdrew on 9 October 2024, with the hearing scheduled for 10 October 2024.

8 There was appearance only for the trustees when the matter was called.

The representatives for the trustees informed the court that no contact was made with them regarding this application. The parties were notified that the application would be heard on 13 November 2024.

9 Mr. Van Staden, counsel for the trustees, submitted to the court that the non-appearance was typical conduct by the first to fourth respondents, who have

frustrated finalisation of the matter over an extended period.

10 The withdrawal of attorneys of record on the eve of a hearing of a matter is an old chestnut. The answering affidavit was due long before the withdrawal. A litigant who has shown a basis for the relief sought should not be frustrated by stratagems in obtaining such relief.

11 Leave to appeal is not for the asking. The requirements are stringent. There is no merit to the application.

12 I order as follows:

(1) The application for leave to appeal is dismissed.

(2) The third respondent is ordered to pay costs.

O MOOKI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Counsel for the applicants:

H P Van Staden

Instructed by:

Lowndes Dlamini Inc.

No appearance for the respondents

Heard:

13 November 2024

Decided:

18 November 2024