

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

Case Number: **2020-2026**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>25 November 2024</u>	
DATE	SIGNATURE

JOHANNESBURG SOCIAL HOUSING COMPANY SOC LTD Applicant

and

MAVIS DLAMINI First Respondent

**FURTHER UNLAWFUL OCCUPIERS OF
KLIPTOWN SQUARE, KLIPTOWN** Second Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY** Third Respondent

JUDGMENT

D MARAIS, AJ

[1] In this application the Johannesburg Social Housing Company SOC Ltd applies for the eviction of the first respondent, Ms Mavis Dlamini, from Unit 1[...], Block 0[...], K[...] Flats, K[...] Road, Kliptown.

[2] A lease agreement was concluded between the applicant and the first respondent on 17 November 2008 in respect of the aforementioned premises, against payment of a monthly rent of R1 895.95. By 2018 / 2019 the rent escalated in terms of the agreement to the amount of R2 617.32 per month. This equates to an escalation of about 3.3% per year.

[3] The lease period was not stipulated in the schedule to the lease and must be assumed to be a month-to-month lease. In any event, the lease entitled the applicant to terminate the lease with 30 days' notice.

[4] In February 2019 the first respondent was in arrears with payments in terms of the lease in the amount of approximately R235 000.00 and on 19 February 2019 the applicant addressed a notice in accordance with the lease agreement calling upon the first respondent to rectify the breach.

[5] It is evident that the applicant had already previously addressed the issue of arrears with the respondent, to not avail. It is common cause that the first respondent was in arrears since 2011.

[6] By 27 February 2019 the first respondent had not paid any of the arrears, and on that date the applicant addressed a further notice to the first respondent calling upon her to make certain payments towards the arrears within 30 days, alternatively to vacate the premises.

[7] This notice constituted a conditional termination of the lease agreement as a result of the first respondent's breach, which became effective upon the failure by the first respondent to make any payment. Alternatively, this also constitutes a termination of the lease agreement with 30 days' notice.

[8] In an answering affidavit the first respondent admitted being in arrears as alleged but complained that she was in arrears because of an alleged exorbitant escalation of rent over the years. In this regard, she suggests that the applicant is failing to comply with its mandate in relation to the provision of affordable social housing.

[9] However, it is significant that the first respondent is not making any payment of rent, whether be it the escalated rent, or the original agreed rent, or any other amount. Furthermore, the first respondent's assertion that the escalations were exorbitant is evidently without foundation, in that the yearly escalations were a fairly modest 3.3% per year.

[10] A further defence raised is that the first respondent was entitled to transfer of the property after four years. It is unclear on what this defence is based and, in any event, in view of the first respondent's default, which started already in 2011, there cannot be any basis for the claim

[11] The first respondent's purported defences fall to be rejected out of hand.

[12] In the premises, the applicant is entitled to an order for the eviction of the first respondent.

[13] The applicant has complied with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998.

[14] The applicant alleges that there are other unknown unlawful occupiers occupying the lease premises, a fact denied by the first respondent. This factual dispute is immaterial. Any occupier on the premises can only occupy through or under the first respondent, and an order should be granted that all persons occupying through or under her be evicted from the premises.

[15] Under the circumstances it is not necessary for an order to be granted against the purported second respondent, and I also find it unnecessary to express any view

regarding the possibility of citing unknown persons as respondents (a phenomenon which despite its shortcomings may have a legitimate function in certain matters).

[16] The applicant seeks certain ancillary orders, which appear to be appropriate under the circumstances, in particular an order interdicting the first respondent and all those occupying through or under her from re-entering the property after having been vacated or evicted and authorising the sheriff to evict the first respondent and all those occupying through or under her, if they re-enter the premises.

[17] The court has a discretion to delay the first respondent's eviction for a period. There was evidently a long delay in the applicant seeking the eviction of the first respondent and the first respondent's eviction does not seem to be urgent. The lease premises is the first respondent's primary residence, and she will need some time to find alternative accommodation. I have been informed from the bar that the first respondent has three minor children who reside with her. The first respondent requested the court during the hearing to afford her at least six months to find other accommodation. I shall afford her a reasonable opportunity to do so. It is evident that the respondent also abused the latitude granted to her by the applicant, as well as the delay occasioned by the finalisation of this matter, to prolong her unlawful occupation of the premises.

[18] Consequently, in the exercise of my discretion, the eviction of the first respondent shall be delayed by a period of 6 (six) months, and the first respondent will be ordered to vacate the lease premises by 31 May 2025.

[19] The first respondent requested an opportunity to make a payment arrangement with the applicant. Under the circumstances, this is not something the court can entertain, the lease having been cancelled. However, nothing prohibits the first respondent to approach the applicant during the next six month and reach an agreement for the continued occupation of the premises on an agreed basis.

[20] The costs shall follow the result, and the first respondent shall be ordered to pay the costs of these proceedings.

[21] In the circumstances, the order marked “DM” dated 25 November 2025 is made an order of court, which provides as follows:

- a. The first respondent, and all persons occupying through or under her, are ordered to vacate the property known as UNIT 1[...] BLOCK 0[...], K[...] SQUARE, K[...] ROAD, KLIPTOWN (hereinafter referred to as "the property") before or on 31 May 2025.
- b. In the event that the first respondent, and all persons occupying through or under her, failing to vacate the property by 31 May 2025 the sheriff of the court is authorized and ordered to evict the first respondent, and all persons occupying through or under her, from the property.
- c. The first respondent, and all persons occupying through or under her, are interdicted from entering the property at any time after they have vacated the property or been evicted therefrom by the sheriff of the court.
- d. In the event that the first respondent, and all persons occupying through or under her, contravene the order contained herein, the sheriff is authorised and ordered to remove them from the property as soon as possible after their reoccupation thereof.
- e. The first respondent is ordered to pay the costs of this application, including the costs of the application in terms of Section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

DAWID MARAIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: BW Slatter
 (Attorney with right of appearance in High Court)
 Nchgupetsang Inc
 (Applicant's Attorneys)

For the First Respondent: In person / No appearance