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

Case No: 053812/2022

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

In the application between:

MOJALEFA MOTAUNG

APPLICANT

and

PHAHLANE P. MOLEBOGENG PULENG

FIRST RESPONDENT

MASTER OF HIGH COURT JOHANNESBURG

SECOND RESPONDENT

EMFULENI LOCAL MUNICIPALITY.

THIRD RESPONDENT

**DIRECTOR GENERAL DEPARTMENT OF HUMAN
SETTLEMENT GAUTENG PROVINCE**

FOURTH RESPONDENT

REGISTRAR OF DEEDS PRETORIA

FIFTH RESPONDENT

JUDGMENT

NHARMURAVATE AJ

INTRODUCTION

[1] The Applicant is an adult male, residing at house number 2[...] he Zone 1[...] S[...]. He has instituted an application wherein he seeks an order cancelling the title deed of house number 2[...] Zone 1[...], S[...] which he alleges was registered under the names of Philipp Malefetsane and Dimakatso Patricia Motaung. Secondly, he seeks an order directing that after cancellation of the title deed, the granting of the ownership of house number 2[...] Zone 1[...] be referred to the Director General of the Department of Human Settlement, Gauteng Province for an inquiry to be held in terms of Section 2 of the Conversion of Certain Rights to Leasehold Act 8.

[2] This application is opposed only by the First Respondent namely Pearl Molebogeng Puleng Phahlane an adult female appointed as the executrix of the deceased estate (Phillip Malefetsane and Dimakatso Patricia Motaung) in terms of the letters of authority issued by the Second Respondent on the 5th of March 2020. She is currently residing at 8[...] S[...] Street S[...].

[3] The First Respondent's answer was filed in this regard wherein a point *in limine* was raised that the Applicant is not before court with clean hands as she had brought an application which was successful, evicting the Applicant from the said property in 2022.

[4] It is imperative that this court examines the point of law raised by the First Respondent before considering the merits of the matter. That is so because if the First Respondent is successful with the point *in limine* raised there will be no need to venture into the merits .

THE POINT IN LIMINE

[5] Mr Jacobs for the First Respondent argued that the Applicant was before court with dirty hands in that the very property that is in issue in this application, he was lawfully evicted there from, by the Sebokeng Magistrate Court. He argued that the Applicant was served with a court order in terms of section 4 (2) of Act 19 of 1998¹ which notified him of the pending eviction and the fact that he had to make himself available for court on the 17th of January 2022.

[6] On the 17th of January 2022 the Applicant did make an appearance wherein he sought a postponement which was granted to the 24th of January 2022 so that he could obtain legal representation. However, on the 24th of January in the Applicant's absence the order evicting him was granted. The Applicant was thereafter lawfully removed by the Sheriff on the 12th of October 2022. Despite the lawful removal he forced his way back to the property in issue by causing damage and he is currently still residing there unlawfully and intentionally.

[7] Mr Hlatshwayo for the Applicant did not deny that the Applicant was residing in the property unlawfully in fact his explanation was that it is the members of the public who forced him back into the property. Mr Hlatshwayo further argued that there was a pending rescission application before the Sebokeng Magistrate Court against the eviction order. He argued that the Applicant was not before the court with dirty hands as there was nothing prohibiting him or this court from making its decision as the other was a decision from a lower court which bears no relevance to the application at hand.

[8] He implored the court to ignore the eviction court order and to only consider the application at hand.

ANALYSIS OF THE ARGUMENT

[9] In my view, the Applicant is indeed not before this court *bona fide* in fact he has no *locus standi* to bring forth such an application. In every application the

¹ Prevention of illegal eviction from and Unlawful Occupation of Land Act

applicant must establish his or her standing before delving to the merits of the matter. That is a premise of every litigation as the Applicant must demonstrate a direct or substantial interest in the matter the interest must be actual and current which has not been established by the Applicant.

[10] The Applicant was and still is knowledgeable of the existence of the Magistrate Court order which evicted him as far back as 3 years ago. In terms of the constitution of the Republic of South Africa, which is the highest law in the land, judicial authority of the Republic is vested in the courts and no person or organ of state may interfere with the functioning of the courts².

[11] In terms of the constitution, an order or decision issued by a court binds all persons to whom it applies³ and the definition of the courts in terms of section 166(d) of the constitution includes the Magistrate courts. The Magistrate court inclusive of its orders are not given a lower status by the constitution. Therefore, one cannot disregard an order from the Magistrate Court simply because one is of the view that it is a lower court as argued by the Applicant. That argument is flawed.

[12] The court order from the Magistrate court is clear and it needs no interpretation nor was there an argument raised by the Applicant that he was confused by the order or that same was not clear. The Applicant understood that he had no right over the property situated at Zone 13 at number 2268 as from the time he was served with the court order granted on the 24th of January 2022. This means he has no *locus standi* to bring about such an application and seeking such declarators at this stage.

[13] This court cannot sit as a court of rescission which is not before it. Alarming, the Applicant did not volunteer this information in his founding papers. The unlawfulness of his occupation was raised by the First Respondent in her answer. The Applicant stands and falls by his founding papers tritely the Applicant cannot

² Sect 165 (1) to (3) of the Constitution as amended Act 108 of 1996

³ Sect 165(5)

make out his case in the replying affidavit⁴ as there was no explanation made why this information was left out of the founding papers.

[14] Additionally, even if the said court order was in error, it remains binding, and the implication thereof is that the Applicant has no locus standi to bring about such an application concerning this property as he was declared an unlawful occupant and evicted. In line with various judgements, it is a crime in this country to unlawfully and intentionally disobey a court order. There is no exception to the rule.

[15] In terms of the Fakie judgement at paragraph 50 the court stated that : *it is important to note that it is a crime to unlawfully and intentionally to disobey a court order*⁵. *The crime of contempt of court is said to be a blunt instrument because of this willful disobedience of an order made in civil proceedings is both contemptuous and a criminal offence*⁶.

[16] In my view, the Applicant is attempting to circumvent the law *mala fide*. Unsubstantiated allegations are made on the replying affidavit which should have been addressed on the founding papers such as the issue around the absence of the Applicant on the 24th of January at Sebokeng Magistrate Court. If indeed there were such circumstances, there is a court which is already ceased with the subject matter of the rescission as that is not what is before me. The fact of the matter is that the Applicant knew that he had to appear in court on the 24th of January and that failure to do so will amount to an order evicting him which he ignored, no attempts were made by him to be in court on the 24th of January 2022 which resulted in a court order he is in defiance of.

⁴ Brayton Carlswald (Pty) Ltd vBrews 2017 (5) SA 498 (SCA) at 507I–J; Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd 2017 (6) SA 223 (GJ) at 227E–228I; Mostert v FirstRand Bank Ltd t/a RMB Private Bank 2018 (4) SA 443 (SCA) at 448D–E; Global Environmental Trust v Tendele Coal Mining (Pty) Ltd [2021] 2 All SA 1 (SCA) at paragraph [96]; Trustees, Bymyam Trust v Butcher Shop & Grill CC 2022 (2) SA 99 (WCC) at paragraph [54].
5 S v Beyers 1968 (3) SA 70 (A)

⁶ Meadow Glen Homeowners Association V City OF Tshwane Metropolitan [2014] ZASCA 209 At Para 15

[17] Constitutionally, parties on the face of an existing court order are called upon to obeyed it, up until such time that it has been lawfully set aside⁷. As long as the court order exist or still subsists it must be obeyed. In my view, as things stand the Applicant has failed to establish a right over this property regard being had to the Sebokeng Magistrate Court order in line with the application brought especially, considering the position of the First Respondent who is the executrix over this property and who has made all lawful attempts to assert her right over this property in issue.

CONCLUSION

[18] In my view, this court cannot move beyond the issues raised in the point *in limine* by the First Respondent. The Applicant was declared an unlawful occupier by a competent court and this decision still subsists. He does not have any *locus standi* to bring about such an application pertaining to this property. There is no probable explanation provided why he is in occupation of the property wherein he was lawfully evicted by a competent court order.

[19] Therefore the Applicant has no right or capacity to bring about such an application on the face of the existing Magistrate court order.

[20] In conclusion, the following order is made :

1. The Application is dismissed with party and party costs with Counsels fees on scale "B"

NHARMURAVATE, AJ
JUDGE OF THE HIGH COURT GAUTENG DIVISION, PRETORIA

For the Applicant : Mr D Hlatshwayo
Instructed by. : Hlatshwayo- Mhayise Inc

⁷ Culverwell v Beira 1992 (4) SA 490 (W) at 494A

For the First Respondent: Adv A Jacobs

Instructed by.: Legal Aid South Africa – Vereeniging Local Office

Date of Hearing : 03 March 2025

Date of Judgment: 09 April 2025