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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: HCA30/2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED: YES/NO

SIGNATURE: Naude-Odendaal J

DATE: 15/05/2025

In the matter between: -

RACHIDI MABOE

APPELLANT

And

ZION CHRISTIAN CHURCH

FIRST RESPONDENT

JUDGMENT

NAUDE-ODENDAAL J:

[1] This is an appeal against the Judgment and Order by Magistrate Ngobeni sitting as the court *a quo*, handed down on 22 March 2024 in terms whereof the court *a quo* ordered that the Appellant and all those occupying Erf 3[...], Portion 13 Farm Klipbank, Masakaneng ("the property"), vacate the aforesaid property on or before 31 May 2024, failing which, the sheriff is authorised to evict them on or after the 3rd of June 2024. Further, that the Appellant and all those occupying the property through the Appellant, be interdicted from taking occupation of the property after being evicted.

[2] The Respondent applied in the court *a quo* for the eviction of and an interdict against the Appellant and all those occupying the property through him. It was submitted by the Respondent that the property in question belongs to the Elias Motsoaledi Local Municipality ("the Municipality"). However, on the 16th of July 2017, the Municipality allocated the property by virtue of a council resolution as a place of worship to the Respondent.

[3] The Respondent further submitted that despite the property having been allocated to them, the Appellant and others occupying through him, enter the property on a daily basis for purposes of building a lodge for the Appellant.

[4] Despite numerous meetings having been held between several branch members of the Respondent and the Appellant in Groblersdal, the Appellant persisted that the property belonged to him. During 2019, the Appellant proceeded to insert poles on the property as proof of ownership of the property.

[5] The Respondent submitted that it has a clear right in that the premises in question was allocated to it and it had control over the premises since 2017 by virtue of the Municipal resolution. Further that an injury is actually being committed against the Respondent by the continuous entering at the property by the Appellant and others, as well as the continued building operations without the consent of the Respondent and further that the Respondent does not have any other alternative remedy but to approach the court as an amicable solution could not be reached.

[6] The Respondent's first permission to occupy the property expired on about 4 October 2022, whereafter another resolution was adopted which extended the permission to occupy the property.

[7] The Municipality's letter dated 28 September 2022 read as follows:-

"Dear Sir/Madam,

PERMISSION TO OCCUPY (PTO) TO USE PART OF ERF 4[...] LOCATED ON PORTION 13 OF FARM KLIPBANK 26 JS (MASAKANENG).

The above bears reference.

Kindly note that Council approved in favor of issuing Permission to Occupy to the Zion Christian Church (ZCC) to use erf 4[...] located on portion 13 of farm Klipbank 26 JS (Masakaneng) as a place of worship by virtue of Council sitting dated 23 September 2022, item DP22/23-23 with the following conditions attached:

- 1. That Council approved in favour of permanent occupation the ZCC to use erf 4[...] as a place of worship.*
- 2. That ZCC be liable fencing of the allocated parcel of land and its safeguarding upon receipt of this notice.*
- 3. That this approval is not transferable.*
- 4. That building and related activities be done in terms of the National Building Regulation and Building Standards Act (103;1977).*
- 5. That this approval does not exempt the applicant from complying with any related regulation(s).*
- 6. That the Municipality reserves the right to amend partly or wholly the conditions towards awarding this PTO as and when it deems convenient.*

Hop[e] and you will find the above in order."

[8] The Appellant in opposition to the Respondent's application submitted that the Respondent had no *locus standi* to bring the application in that the Respondent alleged that the aforesaid property was allocated to the Respondent by the Municipality, however the Municipality is not the owner of the property, but the National Government of the Republic of South Africa. It was therefore submitted that the Municipality was not the owner of the property and further had no authority to

allocated or lease out to the Applicant and on such basis the application stood to be dismissed.

[9] The Appellant further submitted that the subject matter falls under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998, which the Respondent clearly sought to ignore by bringing this application for an interdict.

[10] The Appellant submitted that he has been allocated the property in the year 2010 already by the Masakaneng Development Forum and has been occupying the property freely and voluntarily without any disturbances since the allocation to him. The Appellant further submitted that he fenced the property and planted trees thereon. According to the Appellant, the property was dually allocated to him and the Respondent, which came as a surprise to him.

[11] The Appellant's grounds of appeal are fully set out in the Notice of Appeal, which grounds will not be repeated herein. However, of importance is the fact that the Appellant submits that the court *a quo* erred and misdirected itself in finding that the local authority (Municipality) has powers to alienate land belonging to the National Government, which land can only be alienated by the registered owner, the National Government of South Africa and that the Magistrate erred in finding that the Respondent has complied with the administrative and procedural aspects of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE Act).

[12] I pause here to state that the state in which the record was provided to the Appeal Court, leaves much to be desired. The record was incomplete and supplementary affidavits and records were filed. Despite the filing of the supplementary record, some documents for example the Section 4(2) notices and sheriff's returns were still not before the appeal court.

[13] It is clear from the grounds of appeal, as well as the submissions made during argument in court that the Appellant relies on the Section 4(2) of the PIE Act Notices,

or rather the incompleteness alternatively the procedural and administrative lacking aspects thereof as a ground of their appeal.

[14] From a reading of the transcribed record and the Court a quo's reasons, it is clear that according to the court a quo, there were Section 4(2) of PIE Notices served and filed. The following was stated in the transcribed record:-

"The applicant[s] is before Court in terms of and in accordance with the provision of Prevention of Illegal Eviction from Unlawful Occupation Act 19 of 1998 PIE. The notice in terms of Section 4(2) of PIE was duly served on the first, second, and third responde[nts] respectively. The applicant applied to this Court for the following orders:-..."

[15] The court a quo in its written reasons also stated as follows:-

"This is an Application for the eviction brought by the Applicant against the First, Second and Third Respondent of property situated at Erf 4[...] Portion 13 Farm KlipBank, Masakaneng. The Application is before court in terms of and in accordance with the provisions of the Prevention of illegal eviction from unlawful occupation Act 19 of 1998 (PIE). The notice in terms of section 4(2) of the PIE was duly served on the First, Second and Third Respondents respectively [See page 29 to 31.]

These notices were however not before the Appeal Court.

[16] From a reading of the transcribed record, it is clear that throughout the argument of the application, the Appellant relied on the ground that this eviction application falls within the ambit of the PIE Act and throughout has it been the Respondent's argument that this property is not utilized for residential purposes and therefore the PIE Act is not applicable. It was submitted by the Respondent that the Appellant has an alternative residential address.

[17] I find it therefore difficult without the Section 4(2) notices as referred to by the Court a quo which according to the court a quo appeared on page 29 to 31 to

determine whether there was compliance with the administrative and procedural requirements of the PIE Act. However, as already stated, I find it also very surprising that a finding is made that there was compliance with the requirements of the PIE Act, whilst throughout it was the argument and submissions of the Respondent that the application is not brought in terms of the PIE Act. There has also not been any reference to the Section 4(2) of the PIE Act Notices by the Respondent during its argument.

[18] This court is therefore left in a position to be compelled to draw an inference. The only reasonable inference that can be drawn is that the court *a quo* misdirected itself in finding that there was compliance with the Section 4(2) requirements of PIE as there was no evidence to this effect before this court.

[19] This then brings this court to the next question to be determined - whether the PIE Act is indeed applicable to the present application for eviction and interdict. In paragraph 2 and further at paragraph 6.3 of the Respondent's founding affidavit in the court a qua, the following was stated:-

"The First Respondent is Mr. Rachidi Maboe, an adult businessman residing at 4[...] S[...] Street, Groblersdal, Limpopo."

And at para 6.3:-

"6.3 Erf 4[...] of farm Klipbank, Groblersdal is a vacant site and the First and Second Respondents enter the aforesaid premises daily for the purpose of building a lodge for the First Respondent. "

[20] In response to the aforesaid paragraphs, the Appellant confirmed that he resided at 4[...] S[...] Street, Groblersdal, Limpopo Province and further did not deny that the property is entered on a daily basis for purpose of building a lodge for the Appellant. By a lodge being built, it is this court's understanding that the Appellant intends on using the property for business purposes and the Appellant himself does not reside at the property but at a different address at 4[...] S[...] Street, Groblersdal.

[21] The preamble of the PIE Act states as follows:-

"PREAMBLE

WHEREAS no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property;

AND WHEREAS no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances;

AND WHEREAS it is desirable that the law should regulate the eviction of unlawful occupiers from land in a fair manner, while recognising the right of land owners to apply to a court for an eviction order in appropriate circumstances;

AND WHEREAS special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered;"

[22] In **Section 1 of the PIE Act** the following words are defined as follows:-

"1. In this Act, unless the context indicates otherwise-

(i) "building or structure" includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter;

(ii) "consent" means the express or tacit consent, whether in writing or otherwise, of the owner or person in charge to the occupation by the occupier of the land in question;

(iii) "court" means any division of the High Court or the magistrate's court in whose area of jurisdiction the land in question is situated;

(iv) "evict" means to deprive a person of occupation of a building or structure, or the land on which such building or structure is erected, against his or her will, and "eviction" has a corresponding meaning;

(v) "land" includes a portion of land;

(vi) "Minister" means the Minister designated by the State President;

(vii) "municipality" means a municipality in terms of section 108 of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

- (viii) *"organ of state" means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);*
- (ix) *"owner" means the registered owner of land, including an organ of state;*
- (x) *"person in charge" means a person who has or at the relevant time had legal authority to give permission to a person to enter or reside upon the land in question;*
- (xi) *"unlawful occupier" means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)."*

[23] It is clear from a reading of the PIE Act's preamble and the definitions that the PIE Act is applicable to buildings utilized for residential purposes and not business purposes. The PIE Act does not apply to eviction of juristic persons or persons not using the property as a form of dwelling or shelter, in other words, residential occupants. In the present matter, the property is not occupied for residential purposes and therefore the PIE Act is not applicable. It then does not matter whether there was indeed compliance with Section 4(2) of the PIE Act or not and whether the court a quo erred in its reasoning in this regard by stating that there was indeed compliance. The eviction therefore falls under the ambit of the common law.

[24] The next question arising is then whether the Respondent had the necessary *locus standi* to bring the application for eviction. It is not in dispute that the Respondent is not the registered owner of the property, but merely a holder of a permission to occupy issued by the Municipality. It is however clear that the Respondent has a right to possess the property and is the person in charge of the property, therefore the court a quo correctly found that the Respondent has the necessary *locus standi* to bring the application for eviction.

[25] Other than the two points *in limine* raised by the Appellant, the Appellant did not present any other opposition or defence to the Respondent's application except to state that he has been awarded the property by the Masakaneng Development Forum. The Appellant only attached a confirmatory affidavit by one Amos Majamorwa Monate, but failed to attach any proof of title or permission to occupy the said property. In the result, the court a quo correctly found in favour of the Respondent by granting the application as prayed for in the Notice of Motion. The appeal therefore stands to fail.

[26] In the result, the following order is made:-

1. The appeal is dismissed with costs.

M. NAUDE-ODENDAAL
JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

I AGREE:

L. NKOANA
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

HEARD ON : 28 FEBRUARY 2025
JUDGMENT DELIVERED ON : 15 MAY 2025.

: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be **15 MAY 2025 at 10h00**

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