



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: A262 /2024

(1)	REPORTABLE:
(2)	OF INTEREST TO OTHER JUDGES:
(3)	REVISED.
<u>7 August 2025</u>	
DATE	SIGNATURE

In the matter between:

SUZAN NTUSENI

Appellant

and

ADRIANA CORBA N.O.

First Respondent

PETRUS ZEELIE N.O.

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent

JUDGMENT

MBONGWE J:

INTRODUCTION

- [1] This is an appeal against the judgment and eviction order issued by the Magistrate Court, Pretoria Central, purportedly in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the 'PIE Act'). The appellant is an erstwhile employee of and lived on the property owned by her employers since 2012. The appellant was found to be in unlawful occupation of that property, notwithstanding the failure by the administrator of the estate of the deceased registered owner to prove, at the least, that she had terminated a belatedly admitted verbal agreement she had concluded with the appellant in terms of which the latter was given the right to remain in occupation of the house subsequent to the death of the owner.

THE PARTIES

- [2] The appellant is an adult female Zimbabwean citizen who had for a number of years been employed by an elderly couple, Mr and Mrs Orsingher. Owing to the ill-health of Mr Orsingher, the registered owner of the residential property, it was agreed that the appellant would live on the property so as to look after Mr Orsingher – a situation that obtained from 2012.
- [3] Mrs Orsingher herself did not enjoy a healthy life and had a mental infirmity of age resulting in her being committed to live in a special facility / home to receive specialised treatment.
- [4] Mr Orsingher passed on during 2018. He had appointed his wife as the *executrix* of his estate.

- [5] The first respondent was appointed the Administrator to manage the affairs of Mrs Orsingher. Her appointment intrinsically involved her in the administration and winding up of the estate of the deceased Mr Orsingher. As she does not live in South Africa, the first respondent appointed the second respondent as a trustee of the estate of Mr Orsingher to assist in its winding up.
- [6] The first respondent had been aware that the appellant had been residing on the property before and after the passing of Mr Orsingher. According to the appellant, she has continued to reside on and ostensibly looked after the deceased's property consequent to the conclusion of a verbal agreement between her and the first respondent. The oral agreement was never mentioned in the first respondent's founding affidavit. In fact, the first respondent denied not only that she had ever concluded the alleged oral agreement with the appellant, but also that Mr Orsingher had an agreement with the appellant for her to reside on the property.
- [7] The first respondent, however, subsequently admitted the oral agreement with the appellant in her replying affidavit.
- [8] It further appeared in the first respondent's papers that the appellant had at some stage made an offer to purchase the property for R300 000,00 (three hundred thousand Rand), – an allegation the appellant denied. The first respondent also averred that the reason for the eviction of the appellant was for the property to be sold for the proceeds of the sale to be used to cater for the needs and wellbeing of Mrs Orsingher at the special home.

GROUND FOR THE APPEAL

IRREGULAR PROCEEDINGS

[9] The eviction order of the appellant was made on 16 July 2024 by the District Court Magistrate amid controversies in the procedure followed leading to the eventual granting of the order. The procedural irregularities concerned form one of the grounds for this appeal against the judgment and eviction order.

[10] In short, the irregularities occurred after the initial trial Magistrate had found at the hearing that there had been no compliance with the provisions of the PIE Act with regard to the service of the notice in terms of section 4(2) of the Act on the appellant. In an attempt to cure the defect, the parties were improperly and directed to enter into an agreement in terms of which service of the section 4(2) notice would be 'normalised' and that parties could file a new answering and replying affidavits and such agreement was purportedly made an order of the court.

NON-COMPLIANCE WITH RULE 51

[11] When granting the eviction order on 16 July 2024, the court *a quo* simultaneously *mero motu* undertook to hand down a full judgment with reasons for the order on 12 August 2024. The court's undertaking, according to the Appellant, rendered it unnecessary to request written reasons for the order as provided for in section 51 of the Magistrate's Court Act 32 of 1944.

[12] The magistrate failed to deliver the written judgment on the promised date of 12 August 2024. The judgment dated 13 September 2024 was only made

available to the appellant on 16 September 2024 – the date from which the appellant calculated the period of 20 days within which to file a notice of appeal in terms of section 51. The respondents rely on this confusion to challenge the validity of this appeal and arguing that the appeal had lapsed and that there has been no application for condonation. In my view, the fact that the magistrate did provide the written reasons, albeit late, confirms her undertaking to do so. It is the prescript of the Magistrate's Court Act and the rules that a notice to appeal be filed thereafter within twenty days of receipt of written reasons from the magistrate who presided over the matter. The respondents' contention is accordingly rejected.

- [13] The main ground raised by the appellant for the appeal is that she is not in unlawful occupation of the property. She relies poignantly on an agreement she alleges was concluded when she was requested to reside on the property so as to look after Mr Orsingher when he became sick in 2012. The appellant also relies on the similar oral agreement entered into by and between her and the first respondent subsequent the death of Mr Orsingher. The latter agreement being for the appellant to look after the property. Neither agreement has ever been terminated according to the appellant.

NOTICE TO VACATE / COMPLIANCE WITH THE PIE ACT

- [14] The first respondent has annexed and referred the court to correspondence her attorneys had, on her instructions, addressed to the appellant demanding that she vacates the property, failing which an eviction order will be sought against her.

[15] The demands and accompanying threats of eviction referred to above do not, in terms of the PIE Act, constitute a valid termination of the agreement for the appellant to be in occupation of the deceased's property. A valid termination of an agreement to vacate a property is one that affords the appellant not only a reasonable time to vacate of the property, but also provides sound reasons for the termination of the agreement. The applicable principle was aptly laid down in *Davidan v Polovin N.O. and others*¹ in the following words:

"[12] The starting point is to establish whether the appellant is an unlawful occupier under PIE. The key question is whether the appellant enjoyed a right of occupation? PIE applies only to occupants who occupied land without the initial consent of the owner or person in charge, it also applies to occupants who had consent to occupy but such consent was subsequently terminated. In both instances the occupants would be unlawful occupiers within the meaning of PIE. Consent in eviction applications is a valid defence."

The court continued at para [23] to say the following;

"[23] The entitlement of the appellant to reside on the property stems from agreement. Once that agreement is terminated her contractual right to reside terminates.....There is no suggestion that this oral agreement was terminated or pleaded. An owner must legally terminate a lease agreement or, as in this case, terminate the oral agreement between the parties. The underlying basis for the termination must be for example the expiration of lease or a material breach of the terms of the agreement."

¹ (167/2020) [2021] ZASCA 109 (5 August 2021)

- [16] There is no proof that the agreement the appellant had with the deceased and subsequently with the first respondent, respectively, was ever terminated in line with the principle in the judgment cited above. The sought eviction of the appellant on the nature of the notices to vacate addressed to her falls foul of the provisions of the PIE Act on which the respondents purportedly rely.
- [17] It is apparent from the papers that the appellant is a single mother of two children who live with her. In this regard the appellant has alleged that despite this fact having been brought to the attention of the magistrate, the latter wrote in the judgment that there was no information provided regarding the circumstances of the appellant. The appellant submits that the magistrate failed to comply with the provisions of the PIE Act and laid down principles of the law in this regard.

FURTHER DISPUTED FACTS

- [18] Furthermore, the first respondent has alleged to have made an offer for payment of R100,000.00 in full and final settlement of the appellant's claim in exchange for the latter's vacation of the property. The offer was rejected by the appellant as being insufficient. This suggest that there may be a claim the appellant is entitled to and is acknowledged by the first respondent. The only issue in that regard would have been in respect of quantum. The situation points to a dispute that requires evidence to be adduced in a trial for the determination of the quantum. Furthermore, in this regard, in her judgment, the magistrate appears to have accepted the averments by the first respondent that the appellant had made an offer to purchase the property for R300 000,00, notwithstanding the denial by the appellant and the absence of proof by the first respondent. These

determinations would not be possible to make in motion proceedings. This matter was plainly not capable of finalisation in light of all the issues pointed out.

ANALYSIS AND CONCLUSION

[19] With the irregularities and other shortcomings pointed out in this judgment, this matter was incapable of finalisation, let alone in motion proceedings. The court *a quo*, appears to have been unduly hasty to dispose of the matter at any cost. I propose in these circumstances that the appeal be upheld with costs.

ORDER

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

1. The appeal is upheld.
2. The orders of the court *a quo* are set aside.
3. The first respondent in this appeal, is ordered to pay the costs.


MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I agree


MJ TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Appellant:

Adv E. Seleka

Instructed by:

Mahlakoane Attorneys

For the 1st and 2nd Respondent:

Adv A. Kotzé

Instructed by:

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