

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

Case No.: 3462/2013

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

DATE 22/08/2025

MNGQIBISA-THUSI J

In the matter between:

DAVID MNISI

1st Applicant

CITY OF JOHANNESBURG METRO MUNICIPALITY

2nd Applicant

and

RICHARD KEAY POLLOCK N.O

1st Respondent

MICHAEL MMATHOMO MASILO N.O

2nd Respondent

In re:

RICHARD KEAY POLLOCK N.O

1st Applicant

MICHAEL MMATHOMO MASILO N.O

2nd Applicant

and

DAVID MNISI

1st Respondent

JUDGMENT

MNGQIBISA-THUSI J

[1] In its notice of motion the first applicant seeks the following relief:

- 1.1 the stay of a sale in execution, pending a determination of whether the writ for the ejectment of the first applicant has been superannuated.
- 1.2 whether the liquidators have complied with the procedural requirements of section 4(2) of the Prevention of Illegal Evictions Act (the PIE) in so far as the liquidators have failed to serve the first applicant with a section 4 (2) notice;
- 1.3 that the order of ejectment be set aside; and
- 1.4 costs.

[2] The City of Johannesburg Metropolitan Municipality (the Municipality), cited as second applicant, has filed an affidavit in which it disavows giving the first applicant consent to be part of these proceedings. At the hearing of this matter, the second applicant, represented by Mr Matera, addressed the court briefly with regard to the Municipality's status in these proceedings. Mr Matera submitted that the Municipality was not party to these proceedings. He urged the court, when applying its mind with respect to costs, to take into account this issue.

[3] As a result, hereinafter the first applicant will be referred to as 'the applicant'.

[4] Further at the start of the proceedings, counsel for the applicant drew the court's attention to a draft court order uploaded and filed as 'T00'. Counsel for the applicant conceded that the proposed draft order was filed the day

preceding the start of these proceedings. Counsel further conceded that the uploading of the proposed draft order was not brought to the attention of respondents' and the Municipality's legal representatives. More perplexing was the fact that the contents of the proposed draft order¹ were significantly different from the relief sought as set out in the applicant's notice of motion.

- [5] After counsel made submissions on this misnomer, a ruling was made in terms of which the proceedings would proceed on the basis of the relief sought in the notice of motion.
- [6] The first and second respondents are the appointed liquidators of Clockwork Trading 1002 CC (the CC), which is under liquidation and which was the owner of the property situated at Erf 2[...] D[...] Extension 1, Roodepoort, Gauteng (the property) and currently occupied by the applicant and from which it is sought to evict him.
- [7] During 2013 the applicant made an offer to purchase the property. According to the respondents, the sale agreement did not come to fruition. Shortly thereafter the respondents sought the eviction of the applicant from the property and an eviction order was granted on 25 February 2015. In terms of the eviction order, the applicant was ordered to vacate the property within 14 days from the date of the order. Subsequent thereto the applicant sought an order for the rescission of the eviction order of 25 February 2015. On 14 November 2016 the

¹ The proposed draft order provides that: "1. That pursuant to the provision of uniform rule 45A, and pending the filing and reconsideration by this court of the factors referred to in section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, the first and second respondents be interdicted and restrained from evicting the first applicant from the premises ERF 2[...] D[...] EXT1, Roodepoort, Gauteng. 2. That the City of Johannesburg Metropolitan Municipality be and is hereby ordered and directed, within 30 days of this order, to investigate, prepare a report and file same with the court and the parties, in which report they shall address the question of whether homelessness is likely to result from the eviction of the applicant herein and if so, what measures they will take to prevent such homelessness. 3. That upon presentation of the said report by the municipality, and within 10 days of filing thereof, the respondents, if they so wish, be and are hereby granted leave to file any such further submissions as to them are meted addressing the question of whether and if so, under what conditions, the eviction of the applicant may be ordered. 4. That within 10 days of the respondents having filed their supplementary submissions, the applicant be and is hereby granted leave to file any such further submissions as to him are meted addressing the question of whether and if so, and what condition the eviction of the applicant may be ordered. 5. That the costs of these proceedings be postponed for determination at the hearing of the main matter."

application to rescind the eviction order was dismissed and the date of the eviction of the applicant was revised to 30 November 2016. On 29 November 2016 the applicant's application for leave to appeal the dismissal of his rescission application was also dismissed.

[8] Initially the applicant had relied on the fact that the writ the respondents sought to execute, was old, having been issued in 2016 and that the writ issued has been superannuated. This point was abandoned during argument.

[9] The respondents have raised three points *in limine*, namely:

- 9.1 that uniform rule 45A does not apply;
- 9.2 that since the application to rescind the eviction order and the appeal of that order were dismissed, the court order is final and binding; and
- 9.3 that even though the applicant is seeking for an interim interdict, his notice of motion does not have a return day and consequently, the order would have final effect.

[10] I will deal with the three points *in limine* raised by the respondents *in seriatim*.

[11] With regard to the first point *in limine*, it was submitted on behalf of the respondents that uniform rule 45A² does not apply in that the eviction of the applicant was based not as a result of the eviction order granted on 25 February 2015, but on a public auction which was not based on the eviction order. Counsel further submitted that even if uniform rule 45A is applicable, the applicant can obtain a stay in execution if he satisfies the requirements of an interim interdict, taking into account that the applicant is not the owner of the property but a mere unlawful occupier. Furthermore, counsel for the respondents submitted that the only way that the eviction order is not the subject of an ongoing dispute as the applicant's attempt to have the order rescinded was dismissed, together with the dismissal of the applicant's

² Rule 45A provides that: "The court may, on application, suspend the operation and execution of any order for such period as it may deem fit: provided that in the case of appeal, such suspension is in compliance with section 18 of the Act."

application for leave to appeal against the order dismissing the first applicant's rescission application.

- [12] The second point *in limine* raised by the respondents is that since the applicant's application to rescind the eviction order and the application for leave to appeal that order were dismissed, the court is *functus officio*. Further, counsel submitted that the applicant did nothing further about the eviction order and that order stands unchallenged and is binding and as a result the court orders are final and binding. Furthermore, counsel for the respondents submitted that the application dismissing the applicant's application for leave to appeal which was dismissed, is not reviewable.
- [13] The third point *in limine* raised by the respondents is that even though the applicant is seeking an interim interdict, his application does not have a return date and as it stands it is for an indefinite period and it is final in its effect. Counsel further submitted that from the evidence before court the applicant has not satisfied the requirements of a final interdict and the relief sought by the applicant is incompetent. It was further submitted that the application does not meet the requirements of an interim interdict as the applicant has not shown that he has a *prima facie* right to remain on the property and that the issues raised in this application do not address any ongoing court cases.
- [14] As alluded to above (in paragraph 11, 12 and 13), the applicant's application for the rescission of the eviction order granted in 2015 was dismissed and the appeal against the dismissal of his rescission application was also dismissed, thereby making the eviction order final and binding. Under the circumstances, and in the absence of the applicant taking any further steps, rule 45A has no application as the eviction order has become final and binding. Further, the application has not met the requirements of an interim interdict in that the applicant has failed to prove that he is the owner of the property or was in lawful occupation, that the balance of convenience favour the granting of the interdict or that he will suffer irreparable harm if the writ of execution is not stayed. Applicant has been staying on the property for more than ten years without paying any rent and is semi-employed. Based on the above, the

respondents' points *in limine* are upheld and on that basis only this application ought to be refused.

[15] In the event that I am wrong with regard to the finding in relation to the points *in limine*, I deal with the merits of the application.

[16] Counsel for the applicant submitted that in relation to evictions, a two pronged approach is adopted by the courts. Counsel submitted that as an eviction order has already been granted, the question this court needs to deal with is whether it would be just and equitable to evict the applicant, taking into account the changed personal circumstances of the applicant. Counsel for the applicant argued that this court has to determine the appropriate date on which the eviction of the applicant should take place and under what conditions. Counsel submitted that in order for the court to determine the date and conditions to be attached to the eviction, the eviction order granted has to be suspended in light of the applicant's changed circumstances and the fact that the respondents failed to comply with the provisions of section 4(2) of the PIE read with the provisions of section 4(7) and (8) of the PIE.

[17] The court was referred to various cases, including decisions made by the Constitutional Court which dealt with the processes to be followed where an eviction order is sought. Counsel conceded that an eviction has been granted. Counsel submitted that submitted that the applicant was elderly, has no income and that the property is the applicant. This submission is in contradiction to what the applicant alleged in his founding affidavit where the applicant alleges that he is semi -employed.

[18] At the same time counsel for the applicant conceded that it is possible that, before the eviction order in this matter was granted, it is possible that the applicant's circumstances, including the participation of the City of Johannesburg were considered. In this regard the applicant relies on his changed personal circumstances that occurred after the eviction order was granted. It is the applicant's contention that the eviction of the applicant would be offensive to the provisions of the PIE as it affects the socio-economic rights

of accommodation, decency and dignity of the applicant. Counsel submitted that the applicant had reached the age of 65 and as a result was deserving of extra protection in terms of the Elderly Persons Act 13 of 2006.

[19] On behalf of the applicant it was further argued that given the inordinate delay in executing the eviction order and the applicant's changed personal circumstances, this warrants a reconsideration of whether it is just and equitable for the applicant to be evicted.

[20] With regard to the Municipality, counsel for the applicant submitted that should the execution of the writ be stayed, this will give the Municipality the opportunity of preparing a report in which it would deal with whether or not the applicant would be rendered homeless if evicted and a report as to how it will deal with the applicant's homelessness.

[21] It is the respondents' submission that the applicant has been occupying the property since 2012 and has not paid rent. Counsel for the respondents argued that changes to the applicant's personal circumstances that occurred after the granting of the eviction order in 2015 has no bearing on the relief sought by the applicant.

[22] Furthermore counsel for the respondents submitted that it is trite that before a court can grant an eviction order the applicant needs to comply with the provisions of section 4 of the PIE. Counsel argued that it is inconceivable that the court would have granted the 2015 eviction order if there was non-compliance with the provisions of section 4(2) of the PIE. Further counsel argued that before the court granted the order, it must have considered the requirements of section 4(7) with regard to whether it would be just and equitable to grant an eviction order.

[23] It is common cause that the applicant has been staying at the property since around 2013 without paying rent. There was an attempt on his side to buy the property without success. Nowhere in his pleadings does the applicant allege that he had paid the full purchase price for the property. It is also common

cause that the respondents obtained an order for the eviction of the applicant. An application to rescind the eviction order was dismissed and his application for leave to appeal that order was also dismissed. The dismissal of the application for leave to appeal the rescission application effectively rendered and as a result the eviction he came final and binding in view that the applicant did nothing about the eviction.

[24] In the notice of motion the applicant sought an order to stay the execution of the sale however this is not clear or no case has been made in the applicants founding affidavit about a sale in execution. Further, the applicants attempt to propose a different draft order with prayers inconsistent with the relief sought in the notice of motion or the funding affidavit, is ill conceived particularly in light of the fact that no case has been made out in the applicant funding affidavit for the prayers sought in the proposed draft order. Further no warning was given to the respondent to enable them the opportunity to consider the proposed draft order.

[25] Counsel for the applicant, in as much as he is correct that a two-pronged approach which should be adopted by the courts none of the authority quoted by the applicant is applicable in a case where an eviction order had been granted and is final and binding. I am of the view that the applicant has not made out a case for the stay of the writ of execution or for this court to reconsider the eviction of the applicant.

[26] With regard to the manner in which the applicant and/or his legal representatives conducted themselves, particularly with regard to non-compliance with the Practice Directive, counsel for the respondent submitted that this application could have been struck off the roll with costs *de bonis propriis*. However, counsel sought a costs order on an attorney and client scale in the event the respondents are successful.

[27] In the result the following order is made:

1. The application is dismissed.

2. The first applicant is liable for the costs of the application on an attorney and client scale.

NP MNGQIBISA-THUSI
Judge of the High Court

Date of hearing : 28 October 2024

Date of judgment : 22 August 2025

Appearances

For First Applicant: Adv I Mureriwa (instructed by Gary Segal Attorneys)

For the Second Applicant: Mr Mutera

For the First & Second Respondents: Adv P.I Oosthuizen (instructed by Velile Tinto & Associates)