

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

CASE NO: 2023-042317

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

In the application by

MOMSEN, ALICE AGNES JOYCE

APPLICANT

And

DAVIES, MICHELLE LOUISE

FIRST RESPONDENT

**THE REMAINING FURTHER UNLAWFUL
OCCUPIERS OF UNIT 2[...], J[...] L[...], B[...]
ROAD, E[...], E[...]**

SECOND RESPONDENT

**EKURHULENI METROPOLITAN
MUNICIPALITY**

THIRD RESPONDENT

JUDGMENT

MOORCROFT AJ:

Summary

Eviction – Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – section 4

Lease – relocation at expiry of term – monthly tenancy – section 5 (5) of the Rental Housing Act 50 of 1999

Order

[1] In this matter I made the following order on 16 October 2025:

IT IS ORDERED THAT:

1. *The First and Second Respondents and any person claiming occupation through or under them, are forthwith evicted from the immovable property known as:*

A Unit consisting of:

- (a) *Section No. 26 as shown and more fully described on Sectional Plan No SS 17/1981 in the scheme known as SS J[...] L[...] in respect of the land and building or buildings situated at J[...] L[...], 4[...] B[...] ROAD, E[...], E[...], 1[...], of which section the floor area, according to the said sectional plan is 154 (One Hundred and Fifty-Four) square metres in extent; and*
- (b) *An undivided share in the common property in the scheme apportioned GLD-JHB-006 to the said section in accordance with the participation quota as endorsed on the said sectional plan.*

HELD BY Deed of Transfer S[...]. (Hereinafter referred to as "the Property").

and the First and Second Respondents are ordered to restore vacant possession thereof to the Applicant;

2. *The First and Second Respondents, and any person claiming occupation through or under them, are ordered to vacate the property on or before **30 November 2025**.*
3. *In the event that the First and/or Second Respondents, and any person claiming occupation through or under them, do not vacate the property on the aforesaid*

date, the Sheriff of the Court or his lawfully appointed Deputy is hereby authorized and directed to evict the First and/or Second Respondents and any person claiming occupation through or under them from the property.

- 4. The First and Second Respondents, and any person claiming occupation through or under them, are interdicted and restrained from entering the property at any time after they have vacated the property, or been evicted there from by the Sheriff of the Court or his lawfully appointed deputy;*
- 5. In the event that the First and/or Second Respondents, and any person claiming occupation through or under them contravenes the order contained in paragraph 5 above, the Sheriff of the Court or his lawfully appointed deputy is hereby authorized and directed to remove the First and/or Second Respondents, and any person claiming occupation through or under them, from the property as soon as possible after reoccupation thereof;*
- 6. That the Sheriff of the Court or his lawfully appointed Deputy be authorized to instruct the South African Police Service ("SAPS"), and for the SAPS to accompany and assist the Sheriff or his Deputy in the performance of their duties as set out above;*
- 7. The Registrar is requested to furnish a copy of the application together with this order and the judgment to the Legal Practice Council (LPC), and the National Prosecuting Authority (NPA).*
- 8. That the First and Second Respondents be ordered to pay the cost 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, 1998, as well as the costs of the perusal of the First Respondent's Second Answering affidavit, styled "Respondent's Answering Affidavit", dated 10 October 2023, on the scale as between attorney and client;*

[2] The reasons for the order follow below.

[3] This is an application for the eviction of the 1st respondent and all occupy through her from residential property. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 finds application.

[4] Both parties filed further affidavits after the replying affidavit. The 1st respondent filed a second answering affidavit and the applicant filed a supplementary affidavit to record events that took place after the filing of the replying affidavit. The 1st respondent replied to the applicant's supplementary affidavit. I have decided to allow these affidavits as their admission did not prejudice any party and did not delay the finalisation of the application.

[5] It is common cause¹ that the applicant is the owner of the property at Section 26, 4[...] B[...] Rd, E[...], E[...]. The 1st respondent's rights to occupation were created in terms of a lease entered into between the 1st respondent and A T Russell, the applicant's representative.² The lease commenced on 1 September 2016 and was to terminate on 31 August 2017 but it was relocated as a monthly tenancy terminable by either party upon delivery to the other of one calendar month's notice, in writing.³ It is common cause that a monthly tenancy was indeed established.

[6] Disputes arose between the parties and the applicant purportedly cancelled the lease on 10 July 2020.⁴ The applicant however does not rely on this purported cancellation and I do not deal with it.

[7] On 13 October 2022 the applicant's attorneys wrote to the 1st respondent and summarised the terms of the lease. The attorneys then wrote:⁵

"Resulting from the above, please be advised that this letter is to serve as our Client's one month's written notice for you to vacate the Property by no later than 30 November 2022."

[8] The 1st respondent refused to vacate the property. She relied on a number of defences:

¹ See affidavit by the first respondent at paginated page 01-82 in the Caselines bundle.

² Page 01-28.

³ Clause 2 of lease at page 01-28. See also s 5 (5) of the Rental Housing Act 50 of 1999.

⁴ Page 01-39.

⁵ Page 01-40.

- 8.1 The 1st respondent alleges that the written lease agreement had been cancelled and a new lease agreement entered into that was made an order of court on 7 February 2018. As will be shown below this purported court order is a forgery.
- 8.2 The 1st respondent states that she had complied with a demand on 10 February 2020 by paying the rental in arrears at that point in time. This is not a defence to the cancellation of 13 October 2022.
- 8.3 She obtained a court order against the applicant on 16 November 2022 for payment of an amount of R345,000 and therefore had a lien over the property. The court order is a forgery.
- 8.4 An order for the eviction would affect a finding by the community services ombud in terms of which the applicant had been ordered to pay arrear levies, failing which the 1st respondent was ordered and compelled to pay the rental in respect of the property to the body corporate until all the arrears had been paid. This ruling by the ombud does not entitle the 1st respondent to occupation – it merely provided for the garnishing of rental paid by the 1st respondent in respect of the property in order to pay amounts due to the body corporate.

[9] The first defence relied upon is a court order purportedly granted by Tsoka J under case number 2017 – 41882 on 16 November 2020.⁶ The ‘order’ is described by the Chief Registrar of the Court as a forgery and it has the appearance of a forgery. The document should be investigated by the National Prosecuting Authority and by the Legal Practice Council. The applicant no longer relies on this purported order and agrees that it should be admitted to the authorities for investigation.

[10] The attorney acting for the applicant referred me to an affidavit by the Chief

⁶ Page 05-23 and 05-24.

Registrar of the High Court in Johannesburg.⁷

- 10.1 Tsoka J was not sitting in the motion court on 16 November 2020.
- 10.2 There was also no CaseLines file for the case number reflected on the purported order.
- 10.3 There were two versions of a document purporting to be a court order under the case number 2017 – 41882 but neither reflected the signature of a Judge.
- 10.4 The signature of the registrar on the two orders are the same but is not the signature of any registrar employed at the Johannesburg High Court.
- 10.5 The stamp on the one purported order is not a stamp used for court orders but resembles an old stamp used until May 2020. The stamp on the second order is different in size and appearance from an actual court stamp.
- 10.6 The Chief Registrar concluded that the documentation placed before her was not an authentic order and she required investigation by the authorities.

[11] The second 'order' referred to and relied upon by the 1st respondent was purportedly also issued by Tsoka J. The date reflected is 7 February 2018 and it purports to make a settlement agreement an order of court. The 'settlement agreement' is comprised of 4 seemingly unrelated pages⁸ and can at best be described as gibberish.

[12] The applicant informed me that she did not know the orders were forgeries and she agreed that the purported orders be referred to the authorities for investigation. She

⁷ Page 09-13.

⁸ Page 04-25 to 04-28.

told me that the orders were obtained from an attorney known to her as a Mr Fitchett” from a firm by the name of Wolfe Attorneys. She was under the impression that the person she was dealing with was an attorney and he furnished her with the two court orders referred to above. She accepted them in good faith as court orders.

[13] One does not know at this point in time whether the person she was dealing with was an attorney, and whether the person was perhaps impersonating someone else. It is also for this reason that a full investigation is merited in order to clear the name of people who may have been falsely implicated. If Fitchett and Wolfe were real people whose names were used by an impersonator. An investigation by the authorities is called for.

[14] The 1st respondent also rejects the letter of cancellation referred to above on the basis that she believes that the rental payable by her had been changed to R8,500 in terms of a new lease entered into and the letter of cancellation referred to above⁹ stated that the rental was R10,500. Therefore, the argument goes, the applicant had not cancelled the correct lease agreement. There is no merit in this argument as there was only ever one lease agreement and any dispute about amounts owing by the 1st respondent to the applicant are not to be determined in this eviction application.

[15] The 1st respondent also relies on an application brought against the applicant by the J[...] L[...] Body Corporate before the community service ombud for the right to terminate or restrict the supply of electricity and water to the property and for a monetary judgement in respect of arrear levies. The 1st respondent attempted to intervene in that application and she relies on the fact that the amount that she had been directed to pay to the body corporate had in fact been duly paid.¹⁰ She was of the

⁹ Page 01-40.

¹⁰ See s 39 (1) (f) of the Community Schemes Ombud Service Act 9 of 2011. The legislation provides for an order requiring a specified tenant in a community scheme to pay to the association (the body corporate) and not to his or her landlord, all or part of the rentals payable under a lease agreement, from a specified date and until a specified amount due by the landlord to the association has been paid

view that payment exonerated her and she did not have to vacate the property. There is no merit in this defence.

[16] The 1st respondent's rights to occupy the property were terminated as from the end of November 2022. The application was served 12 May 2023 and therefore within the period of six months referred to in section 4 (6) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.

[17] The court is enjoined to determine whether it would be just and equitable to grant an eviction order having regard to all relevant circumstances including the rights and needs of the elderly, children, disabled persons and households headed by women. The order must be just and equitable in respect of the 1st respondent and those who occupy through her and also in respect of the applicant.

[18] The 1st respondent resides at the applicant's property with her fiancé¹¹ and her two children the youngest of whom would be about 7 years of age. The 1st respondent is approximately 45 years old and is employed.

[19] The applicant is a private person of advanced years who suffers from serious disease. She does not bear any constitutional obligation to provide housing.¹² She has been attempting to regain control of her property for three years and is entitled to the protection of her property rights.

[20] I find that the applicant is entitled to an eviction order and that the 1st respondent and those occupying through her must vacate the property by the end of November 2025.

[21] The lease agreement in terms of which the 1st respondent occupied the applicant's property provided in clause 18.2 that the lessee (first respondent) -

¹¹ The 1st respondent's fiancé attended court.

¹² Compare *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA) paras 18 and 25 and *Grobler v Phillips and others* 2023 (1) SA 321 (CC) paras 39 and 44.

“shall be liable for, and shall pay to the LESSOR all legal costs and disbursements incurred by the LESSOR on the scale as between Attorney and Client in the event of it being necessary for the LESSOR to instruct legal representatives or to institute proceedings in order to recover any amounts due and payable by the LESSEE in terms hereof or to enforce compliance by the LESSEE with any of the LESSEE’s obligations in terms hereof.”

[22] The applicant is contractually entitled to attorney and client costs and there is no reason to not enforce the contract.

[23] For these reasons I make the order set out above.

MOORCROFT AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **22 OCTOBER 2025**

APPEARANCE FOR THE APPLICANT:	J E MANNERING
INSTRUCTED BY:	BMV ATTORNEYS
APPEARANCE FOR THE FIRST AND SECOND RESPONDENTS	FIRST RESPONDENT IN PERSON
INSTRUCTED BY:	-

DATE OF ARGUMENT:

15 OCTOBER 2025

DATE OF ORDER:

16 OCTOBER 2025

DATE OF JUDGMENT:

22 OCTOBER 2025

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