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

Case Number: **A45/2025**

(1) REPORTABLE: YES / NO

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

(3) REVISED: YES/NO

DATE **5 December 2025**

SIGNATURE

In the matter between:

EUNICE LESEGO PADI

Appellant

and

BETTY MABUSELA

First Respondent

ALL OTHER UNLAWFUL OCCUPANTS

Second

Respondent

THE CITY OF THSWANE MUNICIPALITY

Third Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J (LABUSHAGNE J concurring)

Introduction

[1] The appellant brought an application in the Magistrates Court for the district of Madibeng, held at Ga-Rankuwa ("court a quo) for the eviction of the first

respondent from a property known as Erf 2[...], (Phase 7), Ga-Rankuwa View Township, North West Province (“the property”) on the basis that she is the registered owner of the property and that the first respondent is in unlawful occupation of the property.

- [2] The facts given rise to the first respondents’ alleged unlawful occupation of the property are in dispute between the appellant and the first respondent. According to the appellant she entered into a lease agreement with the first respondent, her aunt, during 2006 and an initial amount of R 18 000, 00 was paid towards rent. The appellant stated that, save for the aforesaid amount she never received any further payments in respect of rent.
- [3] The appellant decided to terminate the lease agreement and instructed the Legal Aid Board to assist her in this regard. In a letter dated 18 August 2022, the first respondent was advised that the appellant cancels any consent to occupy the property and that the first respondent should vacate the property by no later than 30 September 2022.
- [4] The first respondent did not vacate the property and the appellant proceeded with the eviction application in the court *a quo*. The first respondent opposed the application and alleged that she purchased the property from the appellant during 2007. The purchase consideration of R 18 000, 00 was paid on 12 June 2007 and the appellant handed over the original Title Deed to the first respondent.
- [5] Transfer of the property could, for reasons that are not presently relevant, only in law be effected at a later stage.
- [6] The court *a quo* dismissed the application on 27 June 2024, and this appeal lies against the judgment and order of the court *a quo*.

Grounds of appeal

- [7] The appellant, acting in person, raised various grounds of appeal, which can be summarised as follows:

- 4.1 the judgment was unfair and granted on paper and not in an open court hearing;
- 4.2 the first appellant never testified under oath regarding the allegations against her;
- 4.3 the Magistrate failed to conduct due diligence regarding the stolen Title Deed;
- 4.4 the first respondent could not legally purchase the property as it is an RDP house and, furthermore, there exists no proof of purchase.

Judgment and Discussion

- [8] Having summarised the facts, the court *a quo*, prior to considering the merits of the application dealt with the appellant's non-compliance with the provisions of section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE") and held as follows:

"2 In the matter in casu there has not been compliance with Section 4(2) of PIE. On this basis alone the application may be dismissed, however, I am of the respectful view that injustice might result if I do not deal with the merits of the application."

- [9] The court *a quo* proceeded to consider the merits of the application and dismissed the application on the merits.

- [10] Section 4(2) of PIE reads as follows:

"At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction."

- [11] Section 4(1) of PIE provides that the provisions of section 4(2) apply to all proceedings by an owner of land for the eviction of an unlawful occupier. In *Cape Killarney Property Investments (Pty) Ltd v Mahamba and Others* 2001 (4) SA 1222 (SCA) the court held that section 4(1) makes the provisions of section 4(2) peremptory. In the result, a court is bound by the provisions of section 4(2) and may not, in the absence of compliance with section 4(2), grant an order for eviction.

[11] The court *a quo* should, therefore, have dismissed the application for non-compliance with section 4(2) and although the court *a quo* erred in this regard, the order dismissing the application is correct and is upheld.

[12] In the result, the appeal is dismissed.

**JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION**

I concur

**LABUSCHAGNE J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION**

DATE HEARD:

2 December 2025

DATE DELIVERED:

5 December 2025

APPEARANCES

Appellant: In person.

Respondents: No appearance

