

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 4861/2022

DATE: 2022-11-11

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 26 January 2023

SIGNATURE



In the matter between

10 HAZEL IRENE KNOWLER

APPLICANT

AND

DAYALAN MUNSAMI

1ST RESPONDENT

A PERSON KNOWN AS SHUSHILE

2ND RESPONDENT

ALL OTHER UNLAWFUL OCCUPIERS

ERF 103 LYME PARK, EXT 4, 6 MOUNT

STEPHENS CRESCENT

SAINTS MANOR, LYME PARK,

RANDBURG

3RD RESPONDENT

CITY OF JOHANNESBURG METRO

20 MUNICIPALITY

4TH RESPONDENT

J U D G M E N T

YACOOB J: This is an application for eviction brought by the title holder who bought the property at an auction after

the first and second respondents defaulted on their mortgage.

The matter was set down for the 7th of November and was allocated to be heard virtually on the 8th of November. On the 8th of November Mr Musehani, counsel from Johannesburg appeared on the online hearing although he was not robed. He informed the Court that he had only just been briefed the day before but he had not seen the papers until that morning. He had been briefed only to ask
10 for a two-week postponement on the basis that there had been a death in the family of the attorney of the respondents.

When the Court indicated that a two week postponement was not possible and, and the respondent's counsel indicated that insofar as there was an application for postponement it was opposed, Mr Musehani requested that the matter stand down until the end of the week to allow him to familiarise himself with the file so that the matter could be properly dealt with.

20 When court resumed on the Friday Mr Musehani was not present. Instead Mr Panday appeared for the respondents. Mr Panday is the person who appeared in this matter at the previous hearing. He is also the person whose name is on the practice note.

Mr Panday also represented the respondents in an

application for rescission which the respondents brought against the order in terms of which the property was executed upon and then sold to the applicant. He was therefore fully familiar with all the facts in both matters.

However Mr Panday appeared and informed the Court that he had been briefed by Mr Moodley, the respondents' attorney, simply to address the Court on the contents of a death certificate which had been uploaded. The death certificate that was uploaded was that of an
10 elderly woman who died from to unnatural causes. It was uploaded without a filing sheet and without any explanatory affidavit. There was nothing in it to connect it to any of the parties or representatives in this matter.

Mr Panday suggested that the uploading of the death certificate was sufficient to procure for the respondents a postponement. Unfortunately I disagreed with him. It is clear from the manner in which this matter has been dealt with this week, that the respondents are using any opportunity to try and delay these proceedings.

20 The death certificate shows that the death took place on the 25th of October which is almost three weeks ago. In that time Mr Moodley would have had the time to brief counsel or to pass on the brief but he failed to do so.

In any event there was no indication that Mr Panday, who was the counsel who was involved in the

matter, was in any way concerned with this death or involved with the arrangements that took place to deal with the death. I cannot see any reason why the respondents could not have been properly represented at this hearing either on Tuesday or today. In addition, there was no reason why a substantive application for postponement could have been prepared between Tuesday and the eventual hearing of the matter.

For these reasons I declined the request for a
10 postponement.

It must be noted that the manner in which the first to third respondents' legal representatives have conducted themselves in this matter is unacceptable and shows a complete disregard for the Court.

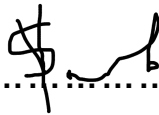
Mr Panday then excused himself from the hearing. That then takes us to the merits. A full set of papers have been filed, as well as heads of argument for both sides, so this decision does not have to be taken without considering the first to third respondents' defence, and those of their
20 circumstances they have chosen to put before court. It is clear from the papers that the applicant has made out a case for eviction. The first respondent's primary defence is that the order in accordance with which the property has been sold is defective. The nature of the order I make takes care of that concern. The first respondent is a businessman.

He does not put forward any undue prejudice that would accrue to him and his family were they required to move to other accommodation. Section 4(7) of the Prevention of Illegal Eviction Act, 19 of 1998, does not require the court to consider whether alternative accommodation is available if the eviction is as a result of a sale of execution pursuant to a mortgage. Nevertheless, the first respondent does not put any facts before the court which show that he would not be able to find alternative accommodation for his family.

- 10 Taking into account all the facts before me I am satisfied that an eviction is just and equitable, save that the pending application for leave to appeal in the rescission application means that the eviction cannot take place immediately.

Mr Mhlanga for the applicant agreed with my proposition that an order for eviction before the rescission is finally determined would be impractical because if the application for rescission which was refused by the Court *a quo* was then successful on appeal there would be a problem if the respondents had already been evicted.

- 20 I have therefore decided to adopt Mr Mhlanga's submission that it would be appropriate to stay the eviction order until the final determination of the rescission application including any appeal or special application for leave to appeal to any higher courts. I therefore grant an order in terms of the draft order.


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YACOOB J

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 11 November 2022

DATE OF WRITTEN REASONS: 26 January 2023

Counsel for the applicant: L Mhlanga

Counsel for the 1st, 2nd and 3rd respondents: S Panday