IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No. 11316/2022

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: YES/NO
DATE: 24 February 2023

In the matter between:

CENTRAL CITY INVESTMENTS (PTY) LTD — Applicant

and

LALJIT AJODHA T/A AJODHA'S BOTTLE STORE — Respondent

JUDGMENT

HOPKINS AJ

1. The applicant ("Central City") has approached this court seeking the eviction of the respondent ("Mr Ajodha") from commercial premises situated at No. [....] G[....] S[....] in Lenasia ("the premises").

2. Central City owns the premises. It purchased them from the Estate Late Soonpathee Ajodha ("the deceased"). The deceased was Mr Ajodha's mother. It was her desire, recorded in her last will and testament, that the premises be sold upon her death and that the proceeds of the sale be apportioned between her twelve children. The executrix, as part of her functions, sold the premises to Central City after receiving an offer to purchase on 28 October 2020.

3. Ownership of the premises was subsequently transferred to Central City on 23 April 2021. Mr Ajodha, who had been operating a bottle store from the premises for several years, continued to remain in possession of the premises from which he continued to trade, even after Central City acquired ownership. He refused to vacate. On the papers, it is common cause that there is no lease agreement between Central City and Mr Ajodha. It is also common cause that Mr Ajodha has never paid any rent to Central City nor ever offered to do so.

4. Slightly more than a year after Central City became the owner, in May 2021, Mr Ajodha and four of his twelve siblings instituted an application whose primary purpose was to set aside the sale of the premises from the deceased estate late to Central City, ostensibly on

the grounds that the executrix did not have the required consent of all of the beneficiaries to sell the property and that, consequently, the Master erroneously issued the executrix with a certificate in terms of section 4(2) of the Administration of Deceased Estates Act No. 66 of 1965. That application, which was set down as an urgent application on 18 May 2021, was struck from the roll by the urgent court judge on the basis that it was *not* urgent.

5. Nothing further happened until slightly more than a year later when, on 30 May 2022, Mr Ajodha's then attorney, wrote to the executrix and Central City advising them that just because the matter had been struck from the roll on 18 March for a lack of urgency "does not mean that it is the end of road…". The letter went on state that Mr Ajodha intends re-enrolling the matter. As it turns out, the matter was never re-enrolled (despite Mr Ajodha apparently wanting it to be urgently adjudicated as far back as May 2021).

6. Not only was the 2021 application never re-enrolled, but Mr Ajodha took no further steps to actively prosecute it although he does say that he did intend to do so but those intentions did not materialise due to difficulties that he experienced with his erstwhile attorneys, which he explained.

7. Another 10 months passed until, on 23 March 2022, Central City launched these eviction proceedings. By now, of course, some 22 months had elapsed since Central City had become the owner of the premises and it was understandably anxious to obtain the benefit of its ownership. Not only does Mr Ajodha refuse to vacate the

premises, but he also refused to tender to pay anything to Central City despite the fact that he operates a trading business from its premises and earns an income from doing so.

8. *Mr Naidoo*, who represented Central City, urged me to grant the eviction order on the basis that his client is the owner of the premises and that Mr Ajodha has no right to occupy them.

9. *Mr Roos*, who represented Mr Ajodha, urged me to grant a stay of these eviction proceedings so that the 2021 application, which has still not yet been re-enrolled, can be re-enrolled. I find it apposite to first deal with the application for a stay.

10. It is trite that an applicant for a stay of proceedings must make out a clear case for such relief. The court considering an application for a stay has a discretion to either grant the stay or not, see *Caeserstone Sdot-Yam Ltd vs. World of Marble and Granite and Others* 2013 (6) SA 499 (SCA). A court will favourably consider a stay when real and substantial justice requires it or where an injustice would otherwise result. However, a court will not favourably consider a stay if it appears that it has been sought simply to obstruct an eviction. As to the requirements for a stay, our courts have held that the requirements for an interim interdict should be taken into account as guidance in determining whether or not to grant a stay, see *Gois t/a Shakespeare's Pub vs. Van Zyl and Others* 2011 (1) SA 148 (LC) at paras 32-33. Mr Ajodha, however, does not engage with these requirements at all. He based his request for a stay entirely on the existence of the 2021 application. *Mr Naidoo* argued strongly that Mr

Ajodha's failure to so-engage is fatal to his endeavours to get the stay that he wants. I agree.

11. However, aside from Mr Ajodha's non-engagement with the requirements for an interim interdict, which he should have done, there is another reason why I am not persuaded to grant a stay. It is because Mr Ajodha has unreasonably delayed in bringing the 2021 application to finality. He appears only to have sought to revive it in circumstances that appear to be driven principally in an effort to avoid being evicted. I agree with *Mr Naidoo* that Mr Ajodha's actions are a contrivance and an abuse of court. I was referred *Robor (Pty) Ltd (Tube Division) vs. Joubert NO & Others* (2009) 30 ILJ 2779 (LC) where it was held that the interests of justice must be taken into account by courts when considering applications for a stay. One of the reasons that it was deemed not to be in the interests of justice to grant a stay in *Robor* was because of the unexplained delay in prosecuting the "other" application. In this matter, I take the view that Mr Ajodha has not adequately explained his delay in more actively prosecuting the 2021 application, which he claimed was urgent as far back as 22 months ago. *Mr Naidoo* amplified his case against the granting of a stay, against this background of delay, with reference to the maxim *vigilantibus non dormientibus jura subveniunt* (a man whose legal interests are threatened should be vigilant in protecting them) which been received into our law, see *MG Holmes (Pty) Ltd vs. National Transport Commission* 1951 (4) SA 659 (T), *Cape Town Municipality vs. Abdulla* 1974 (4) SA 428 (C) at 438, and *Wolgroeiers Afslaers (Edms) Bpk vs. Muni van Kaapstad* 1978 (1) SA 13 (A). I agree that the maxim finds application in this case too and operates

against Mr Ajodha who appears to have been relatively disinterested in actively protecting his rights until faced with eviction.

12. In the final analysis. I am of the view that it will not be in the interests of justice to grant a stay in these circumstances. I am inclined to grant the eviction. Should Mr Ajodha elect to once again take up the reins in the 2021 application, and diligently pursue it, he will be entitled to seek whatever remedies the law provides to him if he succeeds.

13. In the circumstances, I make the following order:

1. The respondent, and all those who hold occupation under him, are hereby evicted from the premises situated at Erf [....] Lenasia Extension 1 Township, also referred to as No. [....] G[....] S[....] , Lenasia, Extension 1 ("the premises").

2. The respondent, and all those who hold occupation under him, must vacate the premises within 10 days of this order.

3. In the event of the respondent, and all those holding occupation under him, failing to comply with the terms of paragraphs 1 and 2 above, the Sheriff is authorised to compel compliance by evicting them from the premises.

4. The respondent is to pay the costs of the application.

HOPKINS AJ

Date of Hearing	14 February 2023
Date of Judgment	24 February 2023

Appearances

For the applicants:	Adv. Kuvashkir Naidoo
Instructed by:	Sookayee Inc Attorneys.
Johannesburg	

For the respondent:	Adv. JM Roos
Instructed by:	Baoyi Attorneys
Johannesburg	