

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

CASE NO 2008/21105

In the matter between:

Date Heard: 16 September 2009

PH No: 342

Judgment on: 30 September 2009

In the matter between:

**JOHANNESBURG SOCIAL HOUSING COMPANY
(PTY) LTD**

Applicant

And

TSHOMELA FRANK

First Respondent

MAPHOSA BUHLE

Second Respondent

JUDGMENT

GILDENHUYS J.:

[1] This is an application by the first and second respondents for leave to appeal against and eviction order which I gave under the Prevention of Illegal Eviction from a Unlawful Occupation of Land Act, 1998 [PIE] on 24 October 2008. The order reads as follows:

- 1. The first and second respondent is evicted from the property known as:*

Block 16, Unit 22

Kliptown

Johannesburg

(hereinafter referred to as “the property”)

2. *The applicant is ordered and directed to make available for rental to the respondents at an initial rental of R660.00 per month, a unit in the Pennyville Development with effect from the 1st December 2008, that the Sheriff of the Court or his lawfully appointed Deputy is authorized and directed to evict the Respondents from the property on or after the 3rd December 2008.*
3. *In the event that the respondents do not vacate the property by the 1st December 2008, that the Sheriff of the Court or his lawfully appointed Deputy is authorized and directed to evict the respondents from the property on or after the 3rd December 2008.*
4. *The respondents are directed to pay the costs of this application.*

I did not give a reasoned judgment at the time, nor was I requested to do so.

[2] It is common cause that, with effect from 1 July 2006, the applicant let to the respondents (as joint tenants) Flat No 202, Block 16, Kliptown, and Johannesburg. The monthly rental payable by the respondents was the sum of R1840, 00. The respondents have fallen into arrears with the payment of rental. They admit having received a letter calling upon them to rectify the said breach. They failed to remedy the breach. The first respondent stated that, at all material times he acknowledge his arrears and tried to settle them. He made some payments on account. He further stated that his is still willing to settle the arrears, but cannot do so for financial reasons. His wife lost her employment and the family’s income was substantially reduced.

[3] On or about 9 May 2008, the applicant cancelled the agreement of lease, as it was entitled to do. The respondent admitted that their agreement of lease was so terminated. Despite the (admitted) termination, the respondents remained in occupation of the flat. He said an eviction would be prejudice to himself, his two children and his wife, who at that stage was five months pregnant.

[4] The following two paragraphs from part of the respondent’s answering affidavit:

“At the time when the units were advertised the leaflets distributed provided that Johannesburg Social Housing Company’s (JOSHCO) sole purpose is to provide affordable and quality housing to citizens of Johannesburg through provincial subsidies, grant funding as well as loan funding. JOSHCO caters for individuals earning a household income between R1500-R1700 a month. When we applied for this Unit we were therefore inform by Cheryl [from JOSHCO that we do not qualify for a subsidy as my total income together with the second respondent (herein after referred to as my wife) makes R14284.00 and therefore can not be considered for subsidy.

Nothing much was made of these paragraphs when the matter was argued before me on 24 October 2008, the do, however, feature in the application for leave to appeal.

[5] The grounds for appeal as contained in the application for leave to appeal are as follows:

1. His lordship erred in not having regard to the report of the City of Johannesburg detailing its position with respect to alternative accommodation referred to in the letter of the City of Johannesburg to the applicant’s attorneys dated 7 August 2008 which letter is filed of record at page 46 of the paginated record, having regard to the provisions of section 4(7) if the Prevention of Illegal Eviction from and Occupation of Land Act, no 19 of 1998.

JUDGE OF THE HIGH COURT

APPEARNCES:

For the plaintiff

Mr S J van Niekerk

instructed by

Smith Sewgoolan Inc

For the defendant

Mr H C van Zyl

instructed by

Mabuli & Molele Inc