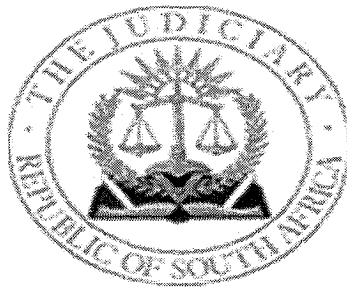


REPUBLIC OF SOUTH AFRICA



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

| | |
|-----------------|--|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3) | REVISED. |
| <i>22/02/19</i> | |
| Date | <i>ML TWALA</i> |

CASE NO: 34985/2018

In the matter between:

**CITIQ RESIDENTIALS (PTY) LTD
(REG. NO: 2011/148502/07)**

APPLICANT

AND

MULUMBA, KAYEMBE MADO

FIRST RESPONDENT

KHUMALO, FLORENCE ZANELE

SECOND RESPONDENT

NXUMALO, TS

THIRD RESPONDENT

SIBANDA, EMMANUEL

FOURTH RESPONDENT

MTHWASI, BUSI BEAUTY

FIFTH RESPONDENT

NCUBE, PATRICIA

SIXTH RESPONDENT

NGWIRA, JOHN

SEVENTH RESPONDENT

MUKADI, FT

EIGHT RESPONDENT

DUBE, K

NINTH RESPONDENT

NMCUBE, ELMON

TENTH RESPONDENT

MOYO, BELINDA L

ELEVENTH RESPONDENT

JIJIMA, MEMORY LULAMA

TWELFTH RESPONDENT

CITY OF JOHANNESBURG

THIRTEENTH RESPONDENT

JUDGMENT

TWALA J

- [1] Before this Court, is an application in terms of section 18(3) of the Superior Courts Act, 10 of 2013(“the Act”) whereby the applicant seeks an order declaring the judgment and order of this Court handed down on the 16th November 2018 effective and enforceable immediately. The applicant brought this application on urgency in terms of Rule 6(12) of the Rules of Court.
- [2] The respondents did not oppose this application although they were served through their attorneys of record.
- [3] On the 29th November 2018 the respondents launched an application for leave to appeal the order of this Court and the application for leave to appeal was denied on the 6th of December 2018. However, the respondents proceeded to petition the Supreme Court of Appeal and the petition is still pending before that Court.

- [4] The genesis of this case stems from a rent boycott by the respondents who are tenants of the applicant based on lease agreements. At the time when the judgment and order was handed down, the arrear rental by the respondents was an amount of more than R200 000.
- [5] Counsel for the applicants submitted that the respondents have failed to make payment of the rental amount since August 2018 to date and the arrear rental amount is now standing at R406 000. The arrear amount keep rising as the respondents continue with rent boycott and the applicant is prejudiced thereby. The harm caused on the applicant is irreparable and there is no satisfactory remedy available to the applicant to recover the damages it will suffer should the respondents remain in occupation of the property until the appeal process is finalised. The respondents continue to cause damage to the property and this will amount to several hundreds of thousands and same with the rental amount should they continue to occupy the property and the order is not made immediately enforceable.
- [6] Section 18(3) of the Act provides as follows:
“A court may only order otherwise as contemplated in subsection (1) and (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.”
- [7] I am unable to disagree with the applicant that it will suffer irreparable harm if the respondents are not immediately evicted from the premises. It is the evidence of the applicant that since August 2018 to date the respondents have never paid their monthly rental and same has escalated to the sum of R406 000. It is my respectful view that, the applicant has no satisfactory

remedy available to it to recover any damages it may suffer from the respondents if they are left in occupation of the premises until the finalisation of their appeal process. The arrear rental amount will run into hundreds of thousands of rand since the appeal may only be heard and determined more than twelve months from now. Worse still, the damage to the building would also run into hundreds of thousands even millions of rand.

[8] It is apparent that the respondents occupied the premises of the applicant based on leave agreements and they were paying rent. The respondents will not be prejudiced or suffer any harm if the order is enforced immediately since they will be able to secure other accommodation which may be cheaper than the one of the applicant. The respondents have failed to apply to the thirteenth respondent for assistance if they were to be rendered homeless by the enforcement of the Court order. The inescapable conclusion is therefore that the respondents will not suffer any prejudice or harm by making the order enforceable immediately.

[9] I had the privilege of perusing the respondents' petition to the Supreme Court of Appeal. I have noted that one of the reasons of the appeal is based on section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 which provides that, if the unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled person and households headed by women.

[10] It is my considered view that there are no reasonable prospects of success on the above ground since the unlawful occupation of the premises only came

into effect in August 2018 when the lease agreements were cancelled and the proceedings were instituted in October 2018. The proceedings were initiated within two months of the respondents' unlawful occupation of the premises and therefore section 4(7) of PIE does not find application in this case.

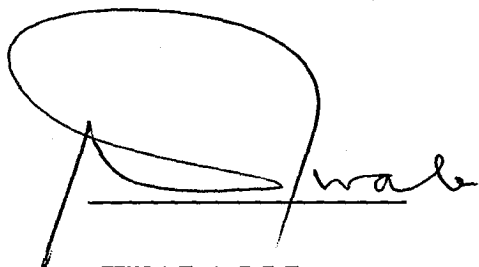
[11] It is noteworthy that I received a letter from the attorneys for the respondents on the 20th February 2019 whilst I was busy with this judgment. In a nutshell the respondents contend that they will suffer prejudice and irreparable harm if the order is made enforceable immediately. However, the respondents fail to establish the kind of prejudice and irreparable harm they will suffer if evicted immediately. As indicated above, the respondents failed to apply for assistance from the thirteenth respondent that, if the order is made enforceable immediately, they will be rendered homeless.

[12] I am of the considered view therefore that, from the conspectus of this case, the applicant is being prejudiced by the continued occupation of the respondents of the premises without paying the rental amount. It is the applicant who will suffer irreparable harm in the end as there is no satisfactory remedy available to it to recover the damages it will suffer. It is my view therefore that the balance of convenience favours the applicant.

[13] In the circumstances, I make the following order:

1. This matter is treated as urgent in terms of Rule 6 (12) of the Rules of Court;
2. The order dated 16th of November 2018 issued under case number 2018/34985 is declared to be effective and enforceable immediately notwithstanding the respondents' petition to the Supreme Court of Appeal or any further appeal process before any Court;

3. The first to twelfth respondents are directed to pay the costs of this application jointly and severally, the one paying the other to be absolved.

A handwritten signature in black ink, appearing to read 'Twala M L', written over a horizontal line.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing: 18th February 2019

Date of Judgment: 22nd February 2019

For the Applicant: Adv. Van der Merwe
Instructed by: Vermaak & Partners Inc
TEL: 011 447 3690

For the Respondents: NO ATTENDANCE
Instructed by: EZENWA Attorneys
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