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REPUBLIC OF SOUTH AFRICA



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

CASE NO: 22770/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

KHAYELIHLE LUCKYBOY MSIBI

Applicant

And

NOMGQIBELO MAVIS BUTHELEZI

First Respondent

SIZILE NGAMLANA

Second Respondent

CITY OF JOHANNESBURG METRO MUNICIPALITY

Third Respondent

J U D G M E N T

MODIBA J

INTRODUCTION

[1] This is an opposed eviction application. The applicant brings it in terms of section 4 (1) of the Prevention of Illegal Eviction from Unlawful Occupation of Land¹ (“the Act”).

[2] He is the registered owner of the property described as Erf [...], Mofolo Central Township, Gauteng, held by Deed of Transfer T027358/2014 with the street address [...] M. Street, Mofolo Village, Soweto (“the property”). This is the property from which he seeks to evict the second respondents and all those who claim occupation through and under her.

[3] The second respondent occupies the property together with her 6 year old son. The first respondent has since passed away. Therefore the application is only considered in respect of the second respondent and those claiming occupation through and under her.

[4] The third respondent is the City of Johannesburg (“the City”). It is cited because it bears the statutory duty to provide temporary emergency assistance (TEA) to persons within the city. It is not opposing the application. On 21 November 2018, Cowen AJ ordered it to consider the second respondent’s eligibility for TEA. It has complied with that order and filed a report on 31 January 2019.

¹ Act 19 of 1998.

CONDONATION APPLICATION

[5] The second respondent filed her answering affidavit late. She seeks condonation for its late filing. The applicant does not oppose this relief. I am satisfied that the second respondent has shown good cause for condonation to be granted. She served her notice of intention to oppose on 13 July 2015 and her answering affidavit on 31 August 2015. It was due on 27 July 2015. The explanation for the delay is that she had to raise funds for legal fees. The delay in filing the answering affidavit is not inordinately long. The reason for the delay is rational. I am satisfied that the second respondent has shown good cause for condonation to be granted.

WHETHER THE APPLICANT MAKES OUT A CASE FOR THE EVICTION OF THE SECOND RESPONDENT

[6] The applicant seeks to evict the second respondent on the basis that she is an unlawful occupant who occupies his property without his permission. She does not deny that the applicant is the registered owner and that she lacks his permission to occupy the property. She seeks to regularise her occupation on the basis of the permission purportedly obtained from the previous owner of the property.

[7] It is common cause that the applicant purchased the property from Nombi Theresa Ngamlana ("the deceased") for an amount of R420, 000.00 pursuant to a written contract concluded on 2 May 2014. On 9 June 2014, the deceased passed away. The property was transferred into the applicant's name on 21 July 2014. He

obtained a mortgage loan in terms of which he registered a mortgage bond over the property. He duly paid the sale price in terms of the contract of sale. It accrued to the deceased's estate. Under these circumstances, the deceased's permission to the respondents, allowing the second respondent to occupy the property, no longer holds. Its validity ceased when the transfer of the property was registered in the applicant's name. It does not place a hurdle on the applicant's efforts to evict the respondents from the property.

[8] The second respondent intends impugning the applicant's ownership of the property by bringing an application to have the agreement of sale that the applicant concluded with the previous owner and the transfer of registration to the applicant, pursuant thereto, set aside. Her intention also does not place a hurdle on the applicant's effort to evict her. The second respondent contends that she has delayed to bring the application because she needs to raise funds for legal fees. She fails to explain why she did not bring the application when she filed the answering affidavit. The transfer of the property was registered in July 2014. More than five years after the registration of transfer and four years after filing her answering affidavit, she has not carried out her intention to bring the predicted application. To date, the second respondent has not brought the envisaged application. In the meantime she continues to occupy the property without any legal basis and without any consideration to the applicant.

[9] The applicant's monthly instalment towards the loan he took out to purchase the property, which he is currently paying, is R4, 500. He is also responsible to the

City for rates, taxes and services towards which he makes monthly payments. Under these circumstances, it is not in the interest of justice to pend this application in order to allow the second respondent to impugn the applicant's ownership of the property.

[10] I find that the applicant is the owner of the property and that the second respondent's occupation of the property is unlawful as envisaged in section 4 (1) of the Act.

IS IT JUST AND EQUITABLE TO EVICT THE SECOND RESPONDENT FROM THE PROPERTY?

[11] The second respondent has been residing on the property with her son for longer than six months. The City has determined that she does not qualify for TEA, as earns in excess of the applicable income threshold. She has not taken the court into her confidence regarding how she spends her income. It is not her case that she is unable to rent alternative accommodation. She has not placed any information before the court that would enable the court to determine this issue in her favour. Under these circumstances, I find that if evicted, she will not be rendered homeless.

[12] Her eviction from the property under these circumstances is further rendered just and equitable by the financial prejudice her continued occupation causes the applicant as described in paragraph 9 above.

[13] She has been aware of the applicant's efforts to evict her since 2015. Due to the length of time since the applicant launched this application, as well as the

financial prejudice he continues to suffer as a result of the second respondent's occupation, it is just and equitable that she is evicted from the property within 30 days of the date of service of the eviction order.

[14] In the premises the application stands to success with costs.

ORDER

1. The application succeeds.
2. The second respondent and any person claiming occupation in the property either through or under her shall vacate [...] M. Street, Mofolo Village, Soweto ("the property"), within 30 days of service of this order on the second respondent. In the event that the second respondent and any person claiming occupation through or under her fails or refuses to voluntarily vacate the property as ordered in paragraph 1 above, the Sheriff of the court and where necessary with the assistance of the members of the South African Police Service is authorized and directed to take all such steps as may be necessary to evict the aforesaid persons from the property and to give vacant possession thereof to the applicant.
3. The second respondent shall pay the costs of the application.

**MADAM JUSTICE L T MODIBA
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG**

APPEARENCES:

Counsel for Applicant:	Advocate T Mosikili
Attorney for Applicant:	Machaba Attorneys
Counsel for the 1 st and 2 nd Respondents:	Advocate C Carelse
Attorney for the 1 st and 2 nd Respondents:	R Masilo Attorneys
Counsel for the 3 rd Respondent:	Attorney GB McMaster
Attorney for the 3 rd Respondent:	Kunene Ramapala INC
Date heard:	19 September 2019
Date of judgment:	10 October 2019