

RIAZ AMOD VAJETH AND ANOTHER V NDYEBO TREASURE JONGWANA AND OTHERS

SUMMARY

MAKUME J:

Eviction Order — Right of Occupation — Lease Agreement — Just and Equitable

This matter concerns an application for an eviction order to be granted against the respondents from occupying a property as result of the failure to comply with the terms and conditions of the lease agreement.

The court demonstrated how the first respondent had abused the court process after filling a supplementary answering affidavit without leave of the court and making a counter application. The court held that the supplementary answering affidavit was to be excluded as it was made without the leave of the court and that the counter application was not part of the main application for eviction.

The court found that the first respondent's averments in respect of the applicants not being the joint owners of the property, the lease agreement not being cancelled in valid manner and the commencement of a new lease agreement, were not supported by any evidence nor valid defences and were to be dismissed. The court held that the applicants were the joint owners of the property, that the lease agreement was cancelled in a valid manner and that the first respondent failed to prove his right of occupation.

The court held that given the situation, it was not fair or just to grant the applicants' prayer in the draft order to involve the Legal Practice Council to investigate the conduct of the first respondent as he was not given the opportunity to defend himself.

Consequently, the court made an order that the first respondent is evicted and must vacate the property along with everyone who claims a right of occupation under him.