THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2020/19611

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

15 August 2023
DATE

SIGNATURE

In the matter between:

DIANA RAMAKONE	**FIRST APPLICANT**
THE FURTHER UNLAWFUL OCCUPIERS OF THE FARM RIETFONTEIN 61 I.R, ALSO KNOWN AS THE FAIRMOUNT SPORTS CLUB LISTED IN ANNEXURE "DR2" TO THE FOUNDING AFFIDAVIT	**SECOND APPLICANT**

and

THE CITY OF JOHANNESBURG	**FIRST RESPONDENT**
SHERIFF JOHANNESBURG EAST	**SECOND RESPONDENT**

JUDGMENT

PG LOUW, AJ

Rescission of Judgment – eviction order was erroneously sought or erroneously granted and falls to be rescinded in terms of rule 42(1)(a) – in addition good cause shown – bona fide defence based on non-compliance with s 4(6) and (7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

Introduction

[1] This is an application for rescission and setting aside of an eviction order granted by this court against the applicants on 21 July 2021 (the eviction order).

[2] In the alternative, the applicants seek that the eviction order be varied in terms of s 4(12) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) in the following terms:

[2.1] Stay the execution of the eviction pending the finalisation of a process of provision of temporary alternative accommodation to the applicants.

[2.2] Link the date of eviction in terms of the eviction order to the date on which alternative accommodation is to be provided by the first respondent (the City).

[2.3] Direct the City to constructively and meaningfully engage on a solution to address the applicants' right to housing on or before a date to be determined by this court.

[3] In addition, the applicants seek an order that the City deliver all property confiscated from them following their eviction on 17 January 2022. Initially this part of the relief was sought against the Johannesburg Metropolitan Police Department (JMPD) together with leave to join the JMPD as third respondent in this matter. However, during argument I was informed that the applicants are no longer persisting with seeking this part of the relief against the JMPD, but rather against the City because the confiscated property is under the City's control.

[4] The City opposes the relief sought by the applicants and initially it also sought leave to join the City of Joburg Property Company SOC Ltd, a wholly owned subsidiary of the City as fourth respondent in this matter. However, this entity was not afforded notice of the relief sought and during argument I was informed that the City does not persist with this joinder application.

Background

[5] This application concerns Portion 89 of the Farm Rietfontein 61 I.R., also known as the Fairmont Sports Club situated at 29 George Avenue, Fairmont Extension 2, Johannesburg (the property). The property is owned by the City. Although the property is described as a farm, it has not been used for agricultural purposes for some time. It is not in dispute that the provisions of the PIE Act apply to the property in question.

[6] The City instituted an application for the eviction of the first applicant (Ms Ramakone) and others during August 2020 (the eviction application).

[7] The eviction application was served on Ms Ramakone. It is common cause that the applicants were served with the eviction application and were granted an opportunity to deliver an answering affidavit, but no answering affidavit was delivered.

[8] On 17 June 2021 the form and contents of a notice in terms of s 4(2) of the PIE Act was authorised by this court. The notice in terms of s 4(2) of the PIE Act, indicating that the eviction application would be heard in court on 21 July 2021 was served on Mr Lucky Tshandu (Mr Tshandu).

[9] The eviction application was heard on the unopposed motion roll on 21 July 2021 and, as already stated, the eviction order was then granted. In terms of the eviction order, Ms Ramakone and the other respondents in the eviction application were ordered to vacate the property by 31 July 2021.

[10] The eviction order was not served on the applicants and it only came to their attention when the eviction order was executed on 17 January 2022.

[11] The applicants in this application consisting of Ms Ramakone and other unlawful occupiers of the property listed in annexure "DR2" to the founding affidavit were evicted from the property, together with their belongings, on 17 January 2022. I pause to mention that of the four respondents cited by name in the eviction application, it is only Ms Ramakone who remains to be an occupant of the property. From annexure "DR2" to the founding affidavit in this application it appears that at least another 21 people occupy the property.

[12] The applicants approached the court on an urgent basis on 20 January 2022 and Makume J granted an order in terms of which the City was directed to restore the applicants' possession and occupation of the property pending the final determination of this application (the restoration order).

[13] According to the applicants, while the matter was being heard on 20 January 2022, members of the JMPD informed the applicants that their belongings which had been dumped on the street when they were evicted, were situated in a manner which is in contravention of the City's by-laws. The JMPD confiscated the applicants' belongings.

[14] The applicants' legal representatives contacted the JMPD upon receiving the restoration order and the JMPD returned the applicants' belongings on 21 January 2022.

[15] The applicants were restored to occupation of the property on 21 January 2022. According to the applicants *"various items were* [however] *missing and some of the returned items were damaged"*. A list of the missing items forms part of the papers.[1]

[16] I return to deal with the aspect of the confiscated goods herein below.

The hearing of the eviction application

[17] Of crucial importance in determining this matter, is what transpired at court during the hearing of the eviction application on 21 July 2021. The applicants' version is the following:[2]

> "Once more, we received a notice from the [City's] attorneys in June 2021 that we ought to appear before the Court for a hearing regarding the same matter on 21 July 2021. On arrival, we were informed that due to the COVID-19 concerns only two residents were allowed to enter the court room and attend on the community's behalf. We were forced to designate two residents, 'Lucky' and Yvonne Magala. We were informed by Lucky and Yvonne that they had explained to the Court that we lived in a precarious circumstance and had no legal representation to assist us. They also conveyed that the Court had informed them that a court order would be sent to the City's attorneys, and that the City's attorneys would furnish us with the order and explain its contents. Up to our eviction on 17 January 2022, they did not provide us with a copy of the eviction order or explain its contents."

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1 Supplementary affidavit: annexure "DRS19".
2 Founding affidavit: para 38.

[18] Further, the applicants state that they were without legal representation and did not understand their rights or the legal process at the time.[3] They deny that the eviction order was just and equitable *inter alia* because their *"personal circumstances were not adequately placed before the court"*.[4]

[19] In this regard, the City's version is that the respondents to the eviction application, which includes Ms Ramakone, three others and the *"other unlawful occupiers"* of the property *"were present at the hearing of the matter and they addressed the court"*.[5] Accordingly, the applicants (in this application) *"were in attendance on the date of the hearing and this being the date the court order was granted"*.[6]

[20] The deponent to the City's answering affidavit puts it thus:[7]

> "I emphasize that the order was granted by way of a draft order which was confirmed by the presiding judge, in presence in the court chamber, of the Applicants. The terms of the court order were foreshadowed in the notice of motion as well as in the section 4(2) notice. Accordingly, when the Applicants left this Honourable Court's premises on the hearing date, they already knew that an eviction order had been granted against them."

[21] It is further stated in the answering affidavit that:[8]

> "The Applicants do not deny the knowledge of the [eviction] application nor hearing but merely submit that due to covid restrictions only **Mr Luck[y] Tshandu** and a **Yvonne Magala** ... were allowed in the court gallery to act as their representative or at least to act as their ears." [Underlining added.]

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3 Founding affidavit: para 48.
4 Founding affidavit: para 29.
5 Answering affidavit: para 18.
6 Answering affidavit: para 22.
7 Answering affidavit: para 23.
8 Answering affidavit: para 24.

[22] According to the applicants, Mr Tshandu and Ms Magala are lay persons and were not authorised to represent the remaining applicants at the hearing of the eviction application.[9]

[23] These events bring me to the City's point *in limine*.

[24] The City contends that this rescission application is actually an appeal disguised as a rescission. This contention is premised *inter alia*, but most importantly, on the allegation that the applicants were present in court on 21 July 2021 when the eviction order was granted. Accordingly, so the contention goes, the eviction order was not granted in the applicants' absence. The City contends that rescission of the eviction order is therefore not competent and that the applicants ought to have launched an appeal against the eviction order.[10]

[25] It is trite that judgments or orders may be set aside in terms of the provisions of rule 31(2)(b), rule 42 or the common law.[11]

[26] The provisions of rule 31(2)(b) do not find application in this matter because it deals with the situation where a defendant had been in default of delivery of a notice of intention to defend or a plea. The sub-rule does not apply to judgments obtained on an unopposed basis in motion proceedings.[12]

[27] Rule 42(1)(a) provides for the rescission or variation of an order or judgment erroneously sought or erroneously granted *in the absence* of any party affected thereby.

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9 Replying affidavit: para 38.
10 Answering affidavit: paras 14 to 19.
11 *Hardroad (Pty) Ltd v Oribi Motors (Pty) Ltd* 1977 (2) SA 576 (W) 578.
12 *Eskom Holdings SOC Ltd v Akgwevhu Enterprise (Pty) Ltd* (unreported GJ case no. 4554921 dated 22 November 2022) para 19 to 20; see also *Van Loggerenberg, Erasmus: Superior Court Practice*, Vol 2, Second Edition, D1-364 and D1-365.

[28] The grounds upon which a judgment or order can be set aside under the common law are limited, but includes a judgment granted *by default*.[13]

[29] From the quoted portions of the parties' versions pertaining to what transpired at the hearing of the eviction application, it is clear that Mr Tshandu and Ms Magala were not appearing before court as representatives of the remainder of the applicants. Mr Tshandu and Ms Magala could accordingly only have represented themselves at the hearing. The eviction order was clearly not granted *in the absence* of Mr Tshandu and Ms Magala or *by default* in so far as they are concerned.

[30] As such, the first jurisdictional requirement for a rescission of the eviction order is absent in relation to Mr Tshandu and Ms Magala. There accordingly appears to be merit in the contention that their dissatisfaction with the eviction order ought to have been addressed through the appeal process. It is, however, not necessary to make a finding in this regard because Mr Tshandu and Ms Magala did not depose to confirmatory affidavits in support of the founding affidavit deposed to by Ms Ramakone on behalf of the applicants. Confirmatory affidavits have also not been delivered by some of the other names listed as applicants in annexure "DR1" and "DR2" to the founding affidavit.[14] This does of course not mean that the eviction order cannot be rescinded at the behest of the remaining applicants because the eviction order was in fact granted in their absence or by default in so far as they are concerned.

[31] The point *in limine* is accordingly dismissed.

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13 *De Wet v Western Bank Ltd* 1979 (2) SA 1031 (A) 1042F to 1043A.

14 Compare "DR1" and "DR2" to the confirmatory affidavits at CaseLines: 04-93 – 04-128.

Rescission

[32] In so far as the remaining applicants' case is concerned, in relying on rule 42(1)(a) they need to show that the eviction order was erroneously sought or erroneously granted, in which event they need not show good cause and the eviction order ought to be rescinded without more.[15]

[33] In so far as reliance is placed on the common law for the rescission of the eviction order, the applicants need to show sufficient cause, which means that: (i) there must be a reasonable explanation for the default; (ii) they must show that the rescission application is being made *bona fide*; and (iii) they must show that they have a *bona fide* defence, which *prima facie* carries some prospect of success.[16]

[34] It is the applicants' case that the eviction order was erroneously granted.[17]

[35] According to their heads of argument, the applicants also rely on the provisions of rule 42(1)(a) and 42(1)(b), as well as the common law for the rescission application. The alternative relief for variation of the eviction order is sought in terms of s 4(12) of the PIE Act.

[36] The provisions of rule 42(1)(b) cannot assist the applicants in this matter. The subrule caters for an order or judgment in which there is an ambiguity or a patent error or omission. An ambiguity or a patent error or omission in this context is one as a result of which the judgment granted does not reflect the real intention of the court. In other words, the ambiguous language or the patent error or the omission must be attributable to the court itself.[18]

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15 *Mutebwa v Mutebwa* 2001 (2) SA 193 (TkH) para 13-17.
16 *De Wet v Western Bank Ltd* 1979 (2) SA 1031 (A) 1042. See also: Joffe: *High Court Motion Procedure – A Practical Guide*, Service Issue 15, July 2022, 1-84 to 1-85.
17 Founding affidavit: para 10.
18 *First National Bank of South Africa Ltd v Jurgens* 1993 (1) SA 245 (W) 246E-F.

[37] In my view, the eviction order was erroneously sought or erroneously granted and falls to be rescinded in terms of rule 42(1)(a). The reasons for this finding are discussed herein below, but first I deal with rescission under the common law.

Explanation for default

[38] It is common cause that the eviction application was served on the applicants. The applicants received notice of the hearing date of the eviction application and were present in the court building on the hearing date, but save for Mr Tshandu and Ms Magala, were not allowed to enter the court room where the eviction application was heard.

[39] I am accordingly satisfied that the applicants at least intended to be heard by the court considering the eviction application.

[40] Regarding the applicants' failure to obtain legal representation to oppose the eviction application, they say that after they received notice of the eviction application in October 2020, *"we could not oppose the eviction as we had no means to obtain legal assistance. We then approached several organisations for free legal assistance with no success. Some informed us that they did not have capacity due to the COVID-19 pandemic."* [19]

[41] They do not explain what steps they took to obtain legal representation after they received notice in June 2021 of the hearing date on 21 July 2021.

[42] It was only on 18 January 2022, pursuant to the execution of the eviction order, that the applicants approached the Social-Economic Rights Institute of South

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19 Founding affidavit: para 37.

Africa (SERI) to seek *pro bono* legal assistance. SERI immediately attended to the matter.[20] It is not explained why SERI was not approached earlier.

[43] The applicants' explanation for not obtaining legal representation earlier is not entirely satisfactory, but it is evident that they did intend to oppose the eviction application and did attempt to participate in the hearing of the eviction application.

[44] I find that the applicants' explanation for their default is reasonable in the circumstances of this matter.

[45] In any event, a good defence may compensate for a poor explanation for default.[21]

Bona fides of the application and the defence

[46] Three grounds are relied upon by the applicants for constituting good cause why the eviction order should be rescinded.[22] Firstly, the City failed to meaningfully engage with the applicants or to report to the court on the availability of alternative accommodation. Secondly, the personal circumstances, especially the risk of homelessness, were not taken into account by the court. Mr Brickhill submitted on behalf of the applicants that the eviction order was not made after considering all the relevant circumstances as required in terms of s 26(3) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the PIE Act. Thirdly, the date of eviction was not linked to the provision of temporary alternative accommodation by the City.

[47] In *Occupiers of 51 Olivia Road, Berea Township, and 197 Main Street, Johannesburg v City of Johannesburg and Others*[23] the Constitutional Court

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20 Founding affidavit: para 24.
21 *Colyn v Tiger Food Industries Ltd t/a Meadow Food Mills (Cape)* 2003 (6) SA 1 (SCA) para 12.
22 Founding affidavit: para 51 onwards.
23 2008 (3) SA 208 (CC) para 14.

explained that meaningful engagement is not an arbitrary requirement nor is it a box ticking exercise and described the process as follows:

> *"14* Engagement is a two-way process in which the city and those about to become homeless would talk to each other meaningfully in order to achieve certain objectives. There is no closed list of the objectives of engagement. Some of the objectives of engagement in the context of a city wishing to evict people who might be rendered homeless consequent upon the eviction would be to determine:
>
> *(a)* what the consequences of the eviction might be;
>
> *(b)* whether the city could help in alleviating those dire consequences;
>
> *(c)* whether it was possible to render the buildings concerned relatively safe and conducive to health for an interim period;
>
> *(d)* whether the city had any obligations to the occupiers in the prevailing circumstances; and
>
> *(e)* when and how the city could or would fulfil these obligations."

[48] A court considering an eviction application has to consider whether there had been meaningful engagements between a city and a resident about to be rendered homeless.[24]

[49] In *The Occupiers of Shorts Retreat v Daisy Dear Investments*[25] the Supreme Court of Appeal stated that a municipality's position in eviction proceedings under the PIE Act differs from that of a third party in ordinary litigation because it has constitutional obligations it must discharge in favour of people facing eviction.

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24 *Occupiers of 51 Olivia Road* para 22.
25 (245/2008) [2009] ZASCA 80 (3 July 2009) para 14.

[50] According to the City, at the time when the eviction application was issued, and the eviction order was granted, there were no vulnerable persons or occupiers on the property. This was *"ascertained through the various meetings held at the property as part of* ***meaningful engagement*** *with the occupiers"*.[26]

[51] The City says that various meetings were held at the property with a view to identify the nature of the occupation, the number of the occupants and their respective personal circumstances. In all these meetings, the occupants were *"seemingly represented by Mr Lucky Tshandu"*.[27]

[52] In the eviction application the City deals in one paragraph with this aspect. The deponent states that he is: [28]

> "... advised that it would be important in the consideration of this matter for the court to take into account how many vulnerable persons there are on the site. I have specifically for that purpose inspected the property myself on a number of occasions, including when the photographs ... were taken. There was never any evidence or indication that the property was inhabited by any children under 18, any older persons, any household headed by a female or by a young person. The second respondent is a female, but she does not seem to reside on the property."

[53] Mr Brickhill submitted that it is clear on the City's own version that these discussions did not constitute meaningful engagement as the discussions: (i) did not involve all the residents; and (ii) did not address the risk of homeless or the availability of alternative accommodation at all. There is merit in this submission.

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26 Answering affidavit: para 40.
27 Answering affidavit: para 42
28 Founding affidavit in the rescission application: para 21.

[54] Our courts have repeatedly rescinded eviction orders where courts failed to have regard to the relevant circumstances.[29] In *Occupiers, Berea v De Wet N.O. and Another*[30] the Constitutional Court held that:[31]

> "The court will grant an eviction order only where: (a) it has all the information about the occupiers to enable it to decide whether the eviction is just and equitable; and (b) the court is satisfied that the eviction is just and equitable having regard to the information in (a). The two requirements are inextricable, interlinked and essential. An eviction order granted in the absence of either one of these two requirements will be arbitrary. I reiterate that the enquiry has nothing to do with the unlawfulness of occupation. It assumes and is only due when the occupation is unlawful." [Underlining added.]

[55] The facts of this matter are similar to those in *Berea*. In *Berea*, the Constitutional Court rescinded an eviction order granted by consent on the basis that the single person purporting to represent the residents was not properly authorised to do so and that the residents were not aware of their legal rights.[32]

[56] *In casu*, having regard to the version of both the applicants and the City pertaining to what transpired at court on 21 July 2021, the applicants had not given Mr Tshandu and Ms Magalo a mandate to represent the applicants in the eviction application. The applicants were without legal representation and did not understand their rights or the legal process involved.

[57] In addition, it is common cause that the City did not provide the court hearing the eviction application with a report dealing with the issue of alternative accommodation.[33] This failure is attributed to the City's view that through the

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29 See *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* [2010] 4 All SA 54 (SCA).
30 2017 (5) SA 346 (CC).
31 Para 48.
32 *Occupiers, Berea* para 32-37.
33 Answering affidavit: para 53.

"various meetings and visits"[34] there are no vulnerable persons in occupation of the property.

[58] The City has subsequently filed a report on temporary emergency accommodation dated 22 September 2022. In my view, the report ought to have been presented to the court at the hearing of the eviction application.[35]

[59] The City's report was not before the court when it considered the eviction application. The personal circumstances of the applicants were not placed before the court when it considered the eviction application. If the occupiers had been able to place their personal circumstances before the court hearing the eviction application, the court would have been made aware of *inter alia* the following: the occupiers included at least one minor child as well as elderly persons and households headed by women, whose rights and needs must be given special consideration under s 4(6) and (7) of the PIE Act.[36] These allegations are not genuinely disputed in the City's answering affidavit. In fact the City's report refers to the minor child.[37]

[60] In the circumstances I am satisfied that the personal circumstances of all of the residents were not placed before the court hearing the eviction order. As such, the eviction order was arbitrary.[38] The eviction order was accordingly erroneously sought or erroneously granted and should therefore be rescinded.

[61] Mr Brickhill also referred me to *Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele*[39] where the Supreme Court of Appeal held that the possibility that the residents' eviction might lead to homelessness is a good defence with some prospects of success.

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34 Answering affidavit: para 54.
35 *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) para 34 and *Occupiers, Berea* para 33.
36 Founding affidavit: para 33 to 47.
37 Para 29.
38 *Occupiers, Berea* para 48.
39 [2010] 4 All SA 54 (SCA) para 16.

[62] This is exactly what happened in this instance when the eviction order was executed: the applicants were left homeless. It follows that even if the eviction order was not erroneously sought or erroneously granted, it falls to be rescinded on the basis that, as I have already found, the applicants' explanation for their default is reasonable, and they have disclosed a *bona fide* defence with some prospects of success.

[63] In light of my findings in this regard, it is not necessary to deal with the alternative relief sought by the applicants pertaining to the variation of the eviction order.

Return of confiscated goods

[64] During their eviction on 17 January 2022, the JMPD confiscated many of the applicants' personal belongings. Pursuant to the restoration order granted on 20 January 2022 and the applicants' restoration to their homes, some of the confiscated property was restored.

[65] The applicants, however, allege that certain items, specified in a list attached to their supplementary affidavit[40] were not returned to them. These items include *inter alia* appliances and money.

[66] The City's answering affidavit is silent in respect of these allegations.

[67] Mr Khoza, who appeared on behalf of the City, asked the rhetorical question during argument how the City is supposed to prove that it did not confiscate money. Mr Khoza also argued that the applicants provided no proof of the existence of the confiscated goods. I posed the question to Mr Khoza whether an inventory or similar document reflecting a description of the confiscated good exists. I was informed that there is none.

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40 Annexure "DRS19".

[68] As referred to earlier, the applicants initially sought leave to join the JMPD to these proceedings for purposes of obtaining this part of the relief sought. I accept, to the benefit of the City, that it is for this reason that the answering affidavit does not deal with the allegations pertaining to the confiscated goods. The applicants only indicated in their heads of argument that they will no longer persist with seeking to join the JMPD.

[69] I am therefore inclined to afford the City an opportunity to deliver a supplementary affidavit, if it is so advised, dealing with the issue of the confiscated goods. The provisions of rule 6(5)(g) affords me the discretion to grant such an order. It provides that where an application cannot properly be decided on affidavit, the court may make such order as it deems fit with a view to ensuring a just and expeditious decision. In *Nkwentsha v Minister of Law and Order*[41] Vivier JA stated the following:

> "Our own rule 6(5)(g) ..., is, however, of wide import, and empowers the Court, whenever an application cannot properly be decided on affidavit, to 'make such order as to it seems meet with a view to ensuring a just and expeditious decision' ... It is purely a procedural matter and, in view of the aforegoing, I would hold that such power is in any event authorised under the Court's inherent jurisdiction to regulate its procedure in the interests of the proper administration of justice ...".

[70] The court's power to make such an order as it seems meet with a view to ensuring a just and expeditious decision, is not limited to matters where there are disputes of fact and referral to oral evidence or trial is required. In this regard, the following was held in *Moosa Bros & Sons (Pty) Ltd v Rajah*:[42]

> "However, I go further and can find no justification for restricting as a matter of interpretation the scope of the Rule to 'disputes of fact' .... The opening sentence of the Rule is couched in the widest possible language and applies, inter alia, in the case of an unopposed motion. ... The Rule expressly states

41 1988 (3) SA 99 (A) 117C-E.
42 1975 (4) SA 87 (D) 91A-D.

that the Court may make 'such an order as to it seems meet' whenever an application cannot 'properly' be decided on affidavit. If it had been the intention to restrict the ambit of this Rule to 'disputes of fact' this phrase would, in my view, have been used in this opening sentence. In the one which follows there is a reference to 'any dispute of fact', but it is in express terms stated to be subordinate to the general authority conferred. It merely particularises – perhaps somewhat unnecessarily – the courses open to the Court when a matter cannot be properly decided on affidavit." [Underlining added.]

Costs

[71] That then leaves the issue of costs.

[72] Mr Khoza submitted that if the rescission application is granted, there should be no order as to costs, alternatively costs of the rescission application should be in the cause. He submitted that the City was within its rights to oppose the setting aside of an order granted lawfully in its favour.

[73] Mr Brickhill submitted that the applicants are entitled to costs if the rescission application succeeds.

[74] The relief sought in respect of the issue of the confiscated goods will not be disposed of at this juncture and the issue of costs remains alive in this respect.

[75] Generally, where a rescission application is successful, it is not unusual that costs of the rescission application are to be costs in the cause. There is no reason why I should deviate from this principle.

Order

[76] In the premises, the following order is granted:

1. The eviction order granted in this matter on 21 July 2021 is hereby rescinded and set aside.

2. The applicants are directed to deliver their answering affidavit to the eviction application within fifteen days of the granting of this order.

3. The relief sought in paragraph 4 under part B of the applicants' amended notice of motion dated 8 March 2022 is postponed *sine die*.

4. The first respondent is granted leave to deliver a supplementary answering affidavit dealing with the relief sought in paragraph 4 under part B of the amended notice of motion within fifteen days of this order being granted.

5. The applicants are granted leave to deliver a supplementary replying affidavit dealing with the relief sought in paragraph 4 under part B of the amended notice of motion within ten days of delivery of the first respondent's supplementary answering affidavit.

6. The costs of the rescission application, save for the costs pertaining to the relief sought in paragraph 4 under part B of the amended notice of motion, will be costs in the eviction application.

7. The issue of costs pertaining to the relief sought in paragraph 4 under part B of the amended notice of motion is reserved.

PG LOUW
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Counsel for Applicant: Adv J Brickhill
Instructed by: Socio-Economic Rights Institute of South Africa (SERI)

Counsel for Respondent: Mr T P Khoza
Instructed by: T P Khoza Attorneys Inc

Date of hearing: 16 May 2023

Date of judgment: 15 August 2023