REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 27040/2021

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO

2.OF INTEREST TO OTHER JUDGES: NO

3.REVISED: NO

Judge Dippenaar

In the matter between:

KAMOGELO MAKHELE N.O	**APPLICANT**
And	
SABELO REGINALD MHLOMI	**FIRST RESPONDENT**
RAND WEST CITY LOCAL MUNICIPALITY	**SECOND RESPONDENT**

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 5th of FEBRUARY 2025.

DIPPENAAR J:

[1] The applicant, by way of motion proceedings launched during June 2021, sought an order for the eviction of the first respondent and all those occupying the property through him from premises situated at 3[…] V[…] Street (corner of Lembede Street), Mohlakeng, Randfontein ('the property'), with ancillary relief. In addition, an order was sought directing the first respondent to pay arrear rental in an amount of R 1 024 000 and costs.

[2] The applicant launched the application in her capacity as the duly appointed executrix of the estate of her mother, the late Johannah Masibitlo Mingo Makhele ('Mrs Makhele') '*who was the daughter and the appointed executor of the deceased estate of my late grandmother – Mmadibe Cathrine Makhele, who was the registered owner of the said property (the deceased)'*.

[3] The first respondent is a medical practitioner who conducts his practice from the property. The second respondent is the Rand West Local Municipality within whose jurisdiction the property is situated. It was cited as an interested party and did not participate in the proceedings.

[4] In sum, the applicant's case was that the first respondent is unlawfully occupying the property as the oral lease concluded between Mrs Makhele and the first respondent was cancelled on 31 July 2017 and he was put on terms to vacate the property on various occasions, including on 27 August 2020. She averred that the first respondent had made unauthorised improvements to the property and had sublet portions of it to various other medical practitioners without consent, from whom he is collecting rental without accounting therefor to the applicant. She further contended that the first

respondent has not paid rental from October 2017 and claims an amount based on what she contended was the agreement between the parties.

[5] The first respondent opposed the application on various grounds. First, he challenged the applicant's *locus standi*. Second, as defence to the eviction application, the first respondent raised an improvement lien of some R1 033 380 based on certain improvements to the property. Third, he sought dismissal of the application on the basis that there were various irresoluble disputes on the papers which were known to the applicant prior to the launching of the application, which justified the dismissal of the application. I deal with these grounds in turn.

[6] It is trite that in motion proceedings, the affidavits constitute both the pleadings and the evidence. It was thus incumbent on the applicant to present all available evidence in support of her averments. It is also incumbent on the applicant to establish her *locus standi* [1]and illustrate an entitlement to the relief sought. The applicant must illustrate that she has an enforceable right to the relief sought and a mere interest is not sufficient.[2]

[7] In the founding affidavit, the applicant averred that she was duly appointed under the Administration of Estates Act[3] to take control of the estate of the late Mrs Makhele, who passed away on 18 June 2018. In support of that averment, she attached letters of executorship and a letter of authority. The property is not referred to as an asset in Mrs Makhele's estate in the letter of authority.

[8] The applicant provided no documentary proof in support of the contentions that Mrs Makhele was the daughter and appointed executor of her late grandmother, the deceased, or that Mrs Makhele was the owner of the property. The documentary evidence reflected that the deceased was the owner of the property under

[1] Scott v Hanekom 1980 (3) SA 1182 (C) at 1188H.
[2] Vandenhende v Minister of Agriculture, Planning and Tourism, Western Cape 2000 (4) SA 681 (C) at 686B-691B.
[3] 66 of 1965.

T11896/2014. No evidence was presented that the property fell into the estate of Mrs Makhele or how it came about that the applicant had acquired any *locus standi* to claim the relief sought. The mere say so of the applicant that she has authority, is insufficient, more so in the face of the first respondent's challenge.

[9] When her *locus standi* was challenged in the answering papers, the applicant in reply relied on a residential permit issued in respect of the property in the name of one Sakie Molefe. The document styled 'Municipal Certificate of Occupation, dated 17 February 1967, provides in relevant part, '...*this is to certify that the right of occupation of Municipal dwelling 355A Mohlakeng Location has been sold to SAKIE MOLEFE…and that the said purchaser is permitted to occupy together with the undermentioned members of his/her family the dwelling*. The document does not refer either to the deceased or to Mrs Makhele. The high watermark of the applicant's evidence is a document that evidences that the property was registered in the name of the deceased during 2014. Due to the inherent inconsistencies in the documentation, and the absence of a nexus between the applicant and the property, it cannot be concluded that the applicant has established any right to seek the eviction of the first respondent from the property.

[10] In argument, applicant's counsel attempted to present evidence from the bar in clarification of the issue. That is impermissible and the application must be adjudicated on the papers. There is thus merit in the first respondent's contention that the applicant failed to establish her *locus standi* to claim the relief sought, justifying the dismissal of the application on that ground alone.

[11] There are however other difficulties with the application. The applicant seeks final relief. It is trite that the well-known Plascon Evans[4] test applies and that the matter is essentially determined on the basis of the respondent's version,[5] unless that version can be rejected as false and clearly untenable.

[4] Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634G635C.
[5] Brisley v Drotsky 2002 (4) SA 1 (SCA) para 2.

[12] Despite the applicant's submissions to the contrary at the hearing, I am not persuaded that the first respondent's version can be rejected as false and untenable. In various instances, such as the first respondent's version regarding the agreement pertaining to improvements, the applicant did not meaningfully grapple with the first respondent's version in reply, but contented herself with bald assertions that his version was false.

[13] On the applicant's own version, the first respondent effected certain improvements to the property, albeit that the nature and extent of such improvements are in dispute on the papers. The latter dispute, which forms the basis of the improvement lien, is irresoluble on the papers. The existence of an improvement lien precludes the granting of the eviction relief sought.[6]

[14] There are also irresoluble factual disputes on the papers pertaining to (i) the terms of the oral lease agreement and (ii) the rental amount claimed by the applicant. Those issues were raised in the correspondence which was exchanged between the parties' respective legal representatives since 2017.

[15] The applicant did not seek a referral of the matter to trial or oral evidence. During argument, the applicant expressly rejected any referral of the matter to trial as 'it would cause a delay in the eviction'. On the applicant's own version, the disputes between the parties already arose during June 2017 and the respondent's version and contentions were well documented in the correspondence between the parties. The nature and ambit of the disputes between the parties were thus known to the applicant well before the institution of the present proceedings. The applicant should have appreciated that the disputes between the parties could not be resolved on paper and that motion

[6] United Building Society v Smookler's Trustees and Golombick's Trustees 1906 TS 623 at 626-627; Brooklyn house Furnishers (Pty) Ltd v Knoetze and Sons 1970 (3) SA 264 (A) at 270.

proceedings would be inappropriate. She proceeded at her peril. Considering all the facts, the dismissal of the application in terms of r 6(5)(g) is justified.[7]

[16] For these reasons, the application must fail. There is no reason to deviate from the principle that costs follow the result. The first respondent submitted that costs on Scale B would be appropriate. Other than to seek a punitive costs order in her favour the applicant did not contend that Scale B would not be appropriate. Having considered the matter and the issues raised, I am persuaded that costs should be granted on Scale B.

[17] In the result, the following order is granted:
The application is dismissed with costs on Scale B.

EF DIPPENAAR
JUDGE OF THE HIGH COURT JOHANNESBURG

HEARING

DATE OF HEARING:	4 FEBRUARY 2025
DATE OF JUDGMEN:	5 FEBRUARY 2025

APPEARANCES

APPLICANT'S COUNSEL:	Adv TA Modisane
APPLICANT'S ATTORNEYS:	Kabai Attorneys
FIRST RESPONDENT'S COUNSEL:	Adv. J W Steyn

[7] Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1162 and 1168; Tamarillo (Pty) Ltd v BN Aiken (Pty) Ltd 1982 (1) SA 398 (A).

FIRST RESPONDENT'S ATTORNEYS: Swart Redelinghuys Nel & Partners.