

Editorial note: Certain information has been redacted from this judgment in compliance with the law.

REPUBLIC OF SOUTH AFRICA



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

Case Number: **2023-023753**

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

30 MAY 2024
DATE

ML SENYATSI
SIGNATURE

In the matter between:

MAINEW CC

Applicant

and

MAKGORO CONFIDENCE RAMASHEGO

First Respondent

CITY OF JOHANNESBURG

Second Respondent

JUDGMENT

SENYATSI, J

Introduction

- [1] This is an opposed eviction application. The applicant seeks that the first respondent and all the alleged unlawful occupiers be evicted from Erf [REDACTED] Newlands Township, Registration Division I.R. Gauteng (“the property”) and alleges the property was occupied in terms of a verbal lease agreement concluded with the late Mr Mankonane Milton Thipe (“Thipe”) who passed away on 22 May 2022.

Background

- [2] The application is brought following a letter of demand by the applicant through its attorneys which avers that the first respondent took occupation of the property through Thipe without the knowledge or consent of the applicant.
- [3] The first respondent opposes the application on the ground that she is not in unlawful occupation of the property. She states that the late Thipe who was at time, the sole member of a close corporation known as Centenary Trading 11 Close Corporation (“Centenary”) concluded a verbal sale agreement of two properties known as [REDACTED] and [REDACTED] Newlands Township, Registration Division I.R. Gauteng with the late Mr Abdul Ramat Rasool (“Rasool”) on 29 April 2015 in terms of which the property was sold by Rasool to Centenary for an amount of R720 000 to be paid in 4 monthly instalments. She avers that the property was instead paid off in full in 6 monthly instalments of R104 000 on 29 April 2015; R 200 000 on 15 May 2015; R104 000 on 14 June 2015; R104 000 on 27 July 2015; R104 000 on 23 September 2015 and R104 000 on 17 January 2015. She provides proof of each payment which is acknowledged by Rasool as payment towards 2 properties on each payment made. She moved into the property with Thipe during 2016 after payment in full was made and that the property is used

for commercial and residence with the two minor children conceived between herself and the late Thipe.

- [4] The first respondent furthermore avers that after all the payments were made, Centenary and Rasool reduced the Sale Agreement to writing during July 2016 and attaches the sale agreement to her opposing affidavit. She contends that she became a member of Centenary during 2020 with 60 % interest. Subsequently, it was discovered in 2020 that Rasool had passed away and a claim was lodged against the estate for the transfer of the properties and did not get the feedback on the progress of the transfer until Thipe passed away on 22 May 2022.
- [5] The first respondent states that Ms Rasool who is now the sole member of the applicant and the executrix of the estate of the late Rasool, was aware of the claim and the sale. She states furthermore that when the sale was concluded, the late Rasool was the sole member of the applicant. She contends therefore that she is not in unlawful occupation of the property and that the eviction application should be dismissed with costs.
- [6] In its reply, the applicant denies that the late Rasool had the capacity to sell the property because he had resigned as the member of the applicant in 2004. It contends that there is no proof that reference to 2 properties was in relation to Erfs [REDACTED] and [REDACTED] Newlands Township. Consequently, so contends the applicant, it is entitled to the eviction application as prayed for. As to the claims lodged against the estate, the applicant says those claims cannot succeed because the late Rasool was not the owner of the property.

Issue for determination

- [7] The issue for determination is whether the first respondent is in unlawful occupation entitling the applicant to the relief of eviction sought by it.

The legal principles

- [8] One of the material considerations in the eviction proceedings is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach a court based on their ownership and the respondent's unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, is entitled to an order for eviction.¹ Relevant circumstances are always facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negate in advance, facts not known to him and not in issue between the parties.
- [9] Where the unlawful occupier has occupied the land for more than six months when the proceedings are initiated, a court considering an eviction application must consider a wide range of factors as envisaged in section 4 (7) of the PIE Act in order to determine whether an eviction is just and equitable. These considerations include whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another landowner for the relocation of the unlawful occupier, and the rights and needs of the elderly, children, disabled persons and households headed by women.

¹ See *Ndlovu v Ngcobo* n 32 above at para 19.

[10] Section 4 (7) of the PIE Act must be considered together with section 4 (8) which provides:

“If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine –

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a)”.

[11] What section 4 (8) states is that a court can grant an eviction order once all procedural requirements and all necessary averments have been made. Simply put, a court must order an eviction once all procedural requirements contemplated in sections 4 (2) to 4 (7) of the PIE Act have been met, and the unlawful occupier lacks a defence, and it is just and equitable to do so.

[12] The term “just and equitable” is not defined in the PIE Act. It denotes a qualitative description of a conclusion that the court reaches after examining various factors and considerations. The words “just and equitable” are sufficiently elastic to allow courts the discretion to intervene against inequity. Therefore, what is just and equitable will vary from case to case. Justice and equity are important overriding factors. The relevant factors in section 4 (7) of the PIE Act do not constitute a closed list. An important consideration towards making a finding that an eviction is just and equitable is the availability of alternative accommodation. This is especially crucial in instances where the unlawful occupiers may be rendered homeless.

[13] To determine what is just and equitable, the court has a discretion in the wide sense as opposed to one in the narrow sense.²

[14] It should be remembered that the PIE Act has its roots in the Bill of Rights contained in our Constitution,³ especially section 25 (1) which provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. The section is aimed at curtailing the State's powers to pass laws that can arbitrarily deprive citizens of their property rights except in terms of law of general application.

Analysis and reasons

[15] In the instant case, it has not been denied that there was a sale of property to Centenary and that before the demise of the late Thipe, the first respondent became the 60 % interest holder in Centenary. It has also not been disputed that the first respondent took occupation of the property during 2016 when she and the late Thipe innocently believed that the late Rasool was the lawful owner and seller of the property concerned.

[16] It is also undisputed that a full payment of R720 000 was made by Centenary to the late Rasool and that in any event, the late Rasool was the sole member of the applicant at the time the disputed sale was made. The only basis for disputing the sale agreement is that the property did not belong to the late Rasool but to the applicant.

[17] It is not in dispute that Ms Rasool is the executrix of the estate of the late Rasool and that in fact a claim was made by Centenary against the estate

² See *Media Workers Association of South Africa and Others v Press Corporation of South Africa Ltd* (33/91) [1992] ZASCA 149; 1992 (4) SA 791 (A); see also *Knox D'Arcy Ltd and Others v Jamieson & Others* (283/95) [1996] ZASCA 58; 1996 (4) SA 348 (A) at 360G–362G.

³ Constitution of the Republic of South Africa, 1996.

for the transfer of the property. It is however, concerning to this Court that Ms Rasool in her replying affidavit does not proffer any explanation for lack of progress on the claim that Centenary filed during the late Thipe's life for the transfer of the property.

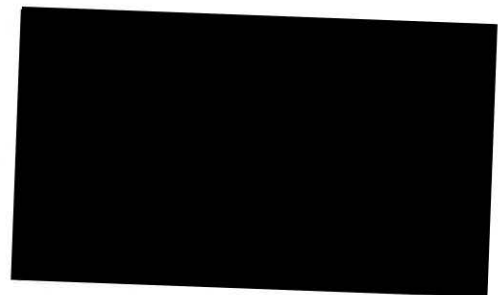
- [18] The clear proof of payment receipts provided by the first respondent towards the payment for the property cannot be disputed. Consequently, the occupation of the property is not unlawful as alleged by the applicant in its papers.
- [19] As regards the alleged lease agreement said to have been concluded by the applicant and Centenary, the applicant has failed to substantiate any evidence to prove it. The first respondent offered an explanation that the sale agreement concluded after full payment was made for the property, provided for R1000 occupational rental which never came into being because when occupation was done, the full purchase price of R720 000 had already been effected.
- [20] I hold the view therefore that Ms Rasool acting on behalf of the applicant did not come out clean in her founding affidavit. This is so because she must have been aware that a claim for the transfer of the property was made as she was the executrix of the estate of the late Rasool. In any event, she failed to communicate what the estate's position was in respect of the claim for all the time. She became the sole member of the applicant in 2023 well after a claim for the transfer of the property had been lodged and did nothing until the applicant brought this eviction application.
- [21] Accordingly, it is not in the interest of justice under the circumstances of this case for the Court to order the eviction of the first respondent from the property.

[22] There is no counter-application brought for any relief by the respondent save to dismiss the eviction application. The Court is of the view that the applicant has failed to prove that the first respondent is in an unlawful occupation of the property.

Order

[23] The following order is made:

(a) The application for eviction is dismissed with costs.



**ML SENYATSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This Judgment was handed down electronically by circulation to the parties/ their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 30 May 2024.

Appearances:

For the applicant: Adv L Peter

Instructed by Vermaak Marshall Wellbeloved

For the first respondent: Mr F Maja

Instructed by Maja Attorneys

Date of Hearing: 12 February 2024
Date of Judgment: 30 May 2024

