

SOUTH AFRICA / JUDGMENT

Abrahams and Others v De Wet (Appeal) (A249/2024) [2025] ZAWCHC 187 (30 April 2025) [2025] ZAWCHC 187

COURT

Western Cape High Court, Cape Town

BEFORE

P. S. Van Zyl, R. Allie

CASE / FILE NUMBER

A249/2024

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Appeal case number: A249/2024

Case number: 8199/2023

In the matter between:

NADIA ABRAHAMS First appellant RALPH RICHARDS Second appellant ALL OTHER OCCUPIERS OF 6[...] P[...] A[...] AVENUE, YSTERPLAAT, BROOKLYN, 7405 (ERF 1[...] CAPE TOWN) HOLDING OCCUPATION UNDER THE FIRST AND SECOND APPELLANTS Third appellant and HAROLD MORNÉ DE WET First respondent ALANA VIVIAN DE WET Second respondent

JUDGMENT DELIVERED ON 30 APRIL 2025

VAN ZYL AJ:

Introduction

1. This is an appeal against the grant of an eviction order.
2. On 28 May 2024 the Cape Town Magistrates' Court evicted the appellants from the immovable property situated at 6[...] P[...]

A[...] Avenue, Ysterplaat, Brooklyn.[1] The first respondent is the registered owner of the property. [2] The appellants were ordered to vacate the property by 31 August 2024. The eviction order was granted pursuant to the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").[3]

The points in limine

3. The respondents, apart from resisting the appeal on the merits, raised two points in limine in their heads of argument. I deal with them briefly. While there is merit in both, I am of the view that the interests of justice and finality are better served by determining the appeal on its merits rather than delaying the process on the basis of procedural

issues.

4. The first point in limine was that the appellants had failed timeously to note their appeal, and thus that they had failed to comply with the timelines prescribed by the rules governing appeals from the Magistrates' Court to the High Court, in particular Rule 51(3) of the Magistrates' Court Rules. It appeared from a consideration of the papers as well as from the appellant's attorney's submissions at the hearing of the appeal that the appellants' attorney laboured under a misconception as to when the time period for the noting of an appeal commenced. This is regrettable, as it resulted in a substantial delay in the set-down of the appeal. The Court was nevertheless of the view that the merits of the appeal had to be dealt with, and was willing to proceed with the hearing despite the non-compliance with the relevant rules.
5. The second point in limine was that the appellants' attorney had not demonstrated that he had been mandated to note and conduct the appeal on behalf of the second and third appellants. All the notices delivered on the appellants' behalf lists the three appellants, with Dlova Attorneys Incorporated consistently indicated as representing all three. From the record it appears that only the first appellant has however formally mandated Dlova Attorneys to act on her behalf in the appeal. This seems to me to be the result of shoddy file administration rather than the absence of a mandate. It is common cause that the first and second appellants are married. They make common cause in relation to all of the facts and arguments upon which their appeal relies. It is clearly their household as a unit that is the subject of the eviction order. In the circumstances, the Court did not regard the absence of written proof of mandate in relation to the second and third appellants as standing in the way of considering the appeal on its merits.

The relevant factual background

6. It is common cause that the first respondent is the registered owner of the property. It is also not seriously in dispute that the appellants, who are occupying the property, are currently indebted to the first respondent in respect of rent and municipal charges. The appellants admit, in fact, that they stopped paying anything to the first respondent in May 2022 when the dispute between them reared its head. They have not since made any payment towards rent in respect of the property
7. The first respondent and first appellant concluded a written lease agreement in respect of the property for a lease period of six months on 27 June 2011. After the expiry of this period and the exercise of the first appellant's option to renew (which added a further six months to the lease period), the lease agreement continued on a month-to-month basis. There is a dispute between the parties as to the intended future duration of the lease. As will appear from what is set out below, the appellants argue that they were, and are, entitled to remain in the premises indefinitely.
8. In 2015 the first respondent granted the appellants permission to make changes to the property. It is common cause that various alterations to the building were subsequently effected, but the nature, extent and value of the work done are in dispute. The appellants say that they did work to the value of about R600 000,00 on the property, and that the first respondent had agreed to reimburse them for the building works they carried out. The respondents deny this. The appellants further say that they intended to purchase the property, and that that was the reason why they proceeded to incur expenses in respect thereof. The respondents deny that there was any agreement between the parties as to the possible sale of the property.
9. The appellants were not diligent rent-payers. It appears that the first respondent attempted to again conclude a written lease agreement with them, with no success. He also demanded increased rental, which did not please the appellants. On 13 December 2022 the first respondent sent the appellants a letter of demand for outstanding rental, a notice of cancellation, and a notice to vacate. The respondents subsequently sought the appellants' eviction from the property by way of application, but the magistrates' court directed that oral evidence be presented on various aspects arising from the papers. The court accordingly heard oral evidence from Gregory Exford from the City of Cape Town, Khosi Mkize from the Department of Social Development, Llewelyn James Louw, a municipal valuator from the City of Cape Town, as well as from the first and second appellants and the first respondent.
10. The appellants continue to occupy the property. They sublet portions thereof, but refuse to disclose the remuneration received from the subletting.
11. In opposing the eviction proceedings the appellants essentially relied on the argument that they intended to buy the property and that they have an enrichment lien over the property, allowing them to remain in occupation of the property until such time as they are reimbursed for the expenses that they incurred in effecting the building works and

alterations. It seems from a reading of the papers and a consideration of the evidence led at the hearing that the appellants claim the rights of a bona fide purchaser based on the decision in *Kommissaris van Binnelandse Inkomste v Anglo American (OFS) Housing Co Ltd*: [4]

“Although the respondent knew that it was building on the land of another, it did so animo domini. In terms of the agreement those houses were erected for the respondent's own use and were to become its property in due course. In those circumstances as soon as its right of occupation was threatened the respondent would be entitled to claim the rights of a bona fide possessor.”

12. They therefore claim to be entitled to recover necessary and useful expenses and to exercise a lien over the property until paid. Their affidavits do not distinguish between the two categories of expenses.
13. This appeal lies against the magistrates' court's refusal to uphold this defence, and I accordingly turn to discuss the merits thereof.

The alleged enrichment lien

14. Did the appellants establish a valid enrichment lien over the first respondent's property, allowing them to remain in occupation until they are reimbursed? There are several aspects that require consideration in this regard.

The appellants' reliance on the Placaeten

15. The magistrates' court held that the appellants, as tenants under an urban lease, have no right of retention unless they meet the requirements for an enrichment lien. The appellants say that they have such a lien arising from the alterations they effected to the property.
16. The appellants submit that the magistrate erred in failing to hold that, as the property is urban land, their alleged improvements entitle them to retain possession until compensated. This, they say, is so because the property does not fall within the category of properties to which the provisions of two Placaeten that were promulgated by the Estates of Holland during the 17th century[5] apply. The Placaeten materially curtailed a lessee's entitlement to compensation for improvements effected to rural properties. For example, although

lessees retained their right to claim compensation for improvements, the claim was limited to improvements effected with the landlord's

consent. Moreover, they lost their right of retention in the form of a lien. At the end of the lease period, they first had to vacate the property before they could institute their claim for compensation.[6]

17. The appellants contend, with reference to Business Aviation Corporation (Pty) Ltd and another v Rand Airport Holdings (Pty) Ltd,[7] that the magistrate erred in failing to appreciate that the Placaeten apply only to rural land and, therefore, they should not have been deprived of the right to raise a lien for necessary and useful improvements made to the property. They emphasise the fact that the first respondent had given them permission to effect alternations to the property.

18. In the present matter, however, the Placaeten are irrelevant, and the appellants' reliance thereon is misplaced. Improvements, even made with the approval of the landlord,

do not automatically create a right of retention. While the SCA in Business Aviation held that the Placaeten do not apply to urban leases, this does not mean that an enrichment lien automatically exists in the case of urban properties. The SCA did not confirm the existence of such a lien but merely ruled that the magistrate's initial dismissal of the defence, based solely on the Placaeten, was incorrect on the particular facts of that case.

19. The key question is not whether the Placaeten apply but whether the appellants have a valid enrichment lien. In principle, a lien holder does not acquire an independent cause of action against the owner of the property over which such lien is asserted. The lien is dependent on the existence of an underlying

enrichment claim.[8]

20. To rely on a lien, the appellants[9] need to prove the following:

20.1. Lawful possession of the property.[10]

20.2. That the expenses incurred were necessary or useful for the improvement of the property.
[11]

20.3. The actual expenses incurred and the extent of the respondents' enrichment.[12]

20.4. That there was no contractual arrangement between the parties in respect of the expenses.
[13]

21. I turn to discuss these requirements in the context of the present matter.

Lawful possession of the property

22. The appellants contend, on this score, that they agreed with the first respondent around 2015 to purchase the property. It was on the basis of this understanding that they effected the alterations to the property over the succeeding years. The respondents deny that there was ever any agreement in relation to the sale of the property to the appellants.

23. The obvious problem with the appellants' contention is that no written agreement of sale exists – that is common cause. A mere interest in acquiring a property does not justify refusing to vacate.

24. As a backstop, the appellants contend that they had orally concluded a long-term lease with the first respondent. The latter denies this contention, and the oral evidence led at the hearing of the application does not support the appellants' assertion.
25. There is, in the circumstances, no evidence supporting the appellants' contention that they are currently in lawful possession of the property.

The necessity and usefulness of the expenses incurred

26. The appellants' answering affidavits (and for that matter, their oral evidence) do not distinguish between necessary expenses, on the one hand, and useful expenses, on the other. Insofar as the claim relates to necessary expenses, the appellants would have a claim for reimbursement for expenditure of money or material on the preservation of the property. They have no claim for their own labour. As regards useful expenses, the amount of compensation is limited to the amount by which the value of the property has been increased or the amount of the expenses incurred by the appellant, whichever is less; and the court has a wide discretion.[14]
27. As indicated, it is common cause that the appellants effected alterations to the property. Whether those improvements were either necessary or useful is, however, seriously disputed. The appellants claim that the respondents approved useful and necessary improvements when they consented to the building work in 2015. The argument seems to be that, since the first respondent had agreed to the changes, they were inevitably of a useful and necessary nature.
28. The argument has no merit, and is in any event contradicted by the oral evidence on record. It is clear that the first respondent only agreed to the alterations after some of the work had already been done. The approved changes were neither necessary nor useful, and they provided no benefit to him. In oral evidence he described the house, as altered, as "a mess". The second appellant admitted that the property as altered is convenient for him, but he did not wish to commit himself to stating that would be suitable for anyone else.
29. The valuer Llewelyn James Louw's evidence showed that the work done deviated from the approved building plan, remained unfinished, and reflected poor craftsmanship. Inferior and second-hand materials were used. The second appellant's evidence supported this. There is no evidence upon which it can be found that the alterations were either useful or necessary so as to support an enrichment lien. The magistrate's finding in this respect was correct.

The actual expenses incurred and the extent of the respondents' enrichment

30. The extent of the expense incurred by the appellants in effecting the alterations remains opaque despite the extensive time spent on the issue in the course of the oral evidence led at the hearing. Having considered the evidence as a whole, the situation reminds one of the SCA's comment in *Rhoo v De Kock*: [15]

“The appellant's case amounts to this: 'I have made alterations and additions to the respondents' property. I have produced no acceptable evidence to establish whether the property has been improved in value, nor have I disclosed what I expended in money or materials. But I wish to resist an application for ejectment until compensated for an amount that I have not begun to quantify.' To enforce a lien in these circumstances would in my view be to allow an abuse of the process of the court.”

31. There are various unsatisfactory aspects to the appellants' evidence in this regard. In their heads of argument, the appellants contend that the improvements were completed in 2022 and that, despite the property still being incomplete in 2021, the municipality valued it at R1,285 million at that stage, allegedly correlating with the costs of the necessary improvements. They rely on a municipal valuation of R600 000.00 done in 2019, before the alleged necessary improvements were effected, to suggest a significant increase in the property's value. This argument contradicts the answering papers, which state that the work was completed in 2021.
32. In oral evidence, the first appellant initially testified that the building works were completed in 2023 but, after being corrected by her legal representative, changed her evidence to 2021. The second appellant stated that construction began in 2019, and was completed late in 2022. Valuer Louw's evidence contradicted both appellants' evidence, citing municipal records showing that construction started on 19 August 2015 and was completed on 14 November 2019. The building inspector recorded the commencement and completion dates, as well as the subsequent valuation dates.
33. The first appellant could not explain what the building works entailed. The second appellant relied solely on three invoices attached to the answering papers, with vague descriptions such as "new boundary", "new store", and "new maid's bedroom", and simply listing the alleged total square metre measurements and costs. These invoices lack essential details, including materials used, labour costs, timelines, and structural specifications. No confirmatory affidavit or evidence from the contractor was provided to confirm and clarify the work done, and the invoices accordingly constitute inadmissible hearsay evidence.
34. To compound the uncertainty, the appellants claimed to have paid for the building works in cash, but provided no supporting evidence, such as bank statements, beyond the invoices. The onus of proving the amount of the lien is on the appellants. The facts are peculiarly within their knowledge.[16]
35. The appellants rely on municipal valuations, respectively dated 27 February 2019 and 27 June 2021, in support of their claim that the building works increased the property's value. As indicated, however, their justification for the scope of the works rests solely on three invoices, two of which post-date the June 2021 valuation.[17] The second appellant conceded that an invoice dated 13 November 2021 should be excluded from consideration, as it did not correspond with the approved building plans. The appellants nevertheless persisted in the argument that the increase in the property's value occurred despite the incomplete state of the building works, and that such increase was equal to the expenses incurred in effecting

the alterations.

36. Louw, however, testified that his desktop review of the property, based on municipal records and aerial photographs, showed no correlation between the building works and an increase in property value. While the approval of the building plan triggered a desktop revaluation, municipal valuations occur every three years and are based on market value and comparable sales, not on building costs. The property's market value rose to R1.3 million after the building plan approval, but decreased to R1.2 million upon a further municipal valuation in 2022. He emphasised that the estimated construction costs of R915 160,00 provided to the municipality did not automatically equate to an equivalent property value increase.
37. Louw identified discrepancies, noting that the anticipated works as indicated on the building plan were costed at R12,500.00 per square metre, far exceeding the quantity surveyor's 2018 building cost rate of R6,300.00 per square metre for a standard dwelling in Cape Town. Based on the appellants' own photographs, he deemed the claimed replacement cost unjustified, citing the use of second-hand materials and poor craftsmanship. In his view, the increase in the 2021 municipal valuation did not justify the claimed costs of the building works. This further weakens the appellants' assertion that the works improved the property's value.
38. Louw stressed that municipal valuations lack the detail required to determine whether the building works improved the value of the property. A proper assessment would have to be undertaken by an independent valuer or quantity surveyor. The appellants provided no such evidence.
39. In short, the appellants failed to prove that the building works increased the property's value. Their reliance on municipal valuations is misplaced, as these are based on market trends and comparable sales of properties based on approved building plans. Louw's evidence exposed significant discrepancies in what has in fact been built and the claimed costs, and indicated the use of second-hand materials, and poor craftsmanship.
40. In the circumstances, the appellants failed to show to what extent the first respondent was enriched by the alterations. The evidence suggests that the works neither enhanced the property's value nor benefited the first respondent. Without proof of actual enrichment, the appellants' reliance on an enrichment lien is unfounded. Their failure to call an independent valuer or quantity surveyor left the claim unsubstantiated.
41. These discrepancies cast serious doubt on the reliability of the appellants' version, and undermine their claim. The SCA has commented

as follows in similar circumstances:[18]

“[19] As to the details regarding exactly which improvements they were, when they were effected and at what cost, the appellant is exceedingly vague. More importantly, the appellant does not presently have the necessary evidence available to establish the enrichment lien on which he wishes to rely; such

evidence must still be found. According to him, it has been 'very difficult . . . to track down the builders' who carried out the improvements in question. He has also experienced difficulty finding 'any records of such transactions and in most instances payment took place in cash transactions the records of which have been disposed of'. This court is therefore quite unable to evaluate the cogency of the evidence that the appellant proposes to place before the High Court, should leave be granted. Such evidence as has been adduced by the appellant, in the form of a report prepared by an architect, Mr John Cornish, has persuasively been refuted on behalf of the respondent. On the basis of information supplied by the appellant, Mr Cornish drew a schedule, illustrated by an aerial photograph, of improvements the appellant claims to have made after 1 August 2001. With reference to building plans obtained from the local authority, however, it was demonstrated by the respondent that most of the improvements claimed by the appellant have in fact been in existence at least since October 1985 and therefore could not have been improvements effected by him after August 2001."

42. In these circumstances the appellants' claim that the magistrate failed to appreciate that they had presented undisputed proof of useful and necessary improvements, and the extent and value of the improvements, is unfounded. Given the contradictions and inconsistencies in the affidavits and the oral evidence, and the lack of credible evidence, the magistrate correctly rejected the appellants' claim.

No contractual arrangement in respect of the expenses

43. The appellants' argument that the first respondent undertook to compensate them for the expenses incurred in effecting the alterations finds no support in the evidence on record. The argument reared its head for the first time after the first respondent pressed the appellants to make payment of their outstanding rental, and demanded a rental increase.
44. The appellants seem to argue that the fact that the first respondent had agreed to their effecting the alterations means that he had agreed to compensate them for the costs of such alterations. This argument is without merit, and is simply unfounded on the evidence.

The appellants' "contributions" towards rental and municipal charges

45. The appellants argue, as a last resort, that the magistrate failed to "appreciate" their "contributions" toward rent and municipal charges. This is clearly not a valid defence against eviction in the present case, and it was sensibly not advanced in oral argument.
46. The common cause facts support the magistrate's finding that the appellants have short-paid the respondents in respect of rental. The appellants themselves admitted ceasing rent payments in May 2022 due to their dissatisfaction with the first respondent's proposed rent increase. They are also in arrears with municipal charges. While some payments had previously been made, their failure to meet ongoing obligations undermines any claim to remain in occupation of the property.
47. It is obvious that in eviction proceedings a tenant cannot rely on partial or past payments to justify possession once the lease has ended and they are in arrears. The magistrate was accordingly correct in finding that the appellants had no lawful basis to resist eviction.

Conclusion

48. It is trite that a court of appeal should not lightly interfere with the judgment of the court of first instance, particularly in the absence of a material misdirection on the facts or law. A trial court's credibility and factual findings should not be disturbed unless the recorded evidence shows them to be clearly wrong.[19]
49. In the present matter the magistrate assessed the evidence and correctly applied the law. His ultimate finding was legally sound. The central issue was whether the appellants had established a valid enrichment lien, and the magistrate found that they had not. This finding cannot be faulted. There is accordingly no basis for this Court to interfere with the magistrates' court's order.
50. It follows that the appellants' claim, relying on sections 4(7) and 4(8) of PIE, that the grant of the eviction order is unjust and inequitable because the appellants have a defence (that is, the existence of a lien) is misplaced. It is of course so that under PIE a court may refuse an eviction order if it would not be just and equitable in the circumstances. In the present matter, however, the magistrate properly exercised his discretion and correctly found the eviction to be just and equitable. The appellants

are not without recourse should they insist that they have a claim against the respondents. They may pursue a separate claim for

compensation related to the building works if warranted. The magistrate considered all relevant circumstances, including alternative accommodation. The magistrates' court heard evidence from Gregory Exford from the City of Cape Town in this respect. It also considered the evidence of Khosi Mkize, a social worker, who assessed the second appellant under the Older Persons Act 13 of 2006. This evidence, specifically requested by the magistrate, did not justify refusing the eviction order.

51. Given the lapse of time since the grant of the eviction order in the magistrates' court, it is necessary to provide for a new timetable for the vacation of the property by the appellants or, should they fail to vacate, for their eviction therefrom. In my view a period of three months would be reasonable in the circumstances, as that is the period that they were given to vacate under the magistrates' court's order.

Costs

52. There is no reason why costs should not follow the event.[20] Given that the issues raised in the matter were not particularly complex, and in the exercise of my discretion under Rule 67A,[21] I am of the view that the appellants should pay the respondents' costs of the appeal on a party and party scale, with counsel's

fees taxed on Scale A in relation to fees incurred from 12 April 2024 onwards.

Order

53. In the circumstances, I suggest that an order be granted as follows:

1. The appeal be dismissed, with costs, including counsel's fees taxed on Scale A.
2. The appellants are ordered to vacate the immovable property situated 6[...] P[...] A[...] Avenue, Ysterplaat, Brooklyn (Erf 1[...] Cape Town) by no later than Thursday, 31 July 2025.
3. Should the appellants fail to vacate the property by the date set out in paragraph 2 of this order, the Sheriff of this Court or the Sheriff of the Magistrates' Court or their deputies are authorized and directed to evict the appellants by Friday, 1 August 2025.

P. S. VAN ZYL

Acting judge of the High Court

I agree, and it is so ordered.

R. ALLIE

Judge of the High Court

Appearances:

For the appellants:

Mr B. Dlova, Dlova Attorneys Incorporated

For the respondents:

Ms M. Wright, instructed by Jardim Bekker Incorporated

- [1] Also known as Erf 1[...] Cape Town.
- [2] The first and second respondents are married to each other in community of property.
- [3] The first to third appellants were the first to third respondents in the eviction application. The City of Cape Town was the fourth respondent in the application, but was not cited as a party to the appeal.
- [4] 1960
- (3) SA 642 (A) at 657A.
- [5] On 26 September 1658 and 24 February 1696, respectively.
- [6] See the discussion in *Business Aviation Corporation (Pty) Ltd and another v Rand Airport Holdings (Pty) Ltd* 2006 (6) SA 605 (SCA) paras 6-11.
- [7] 2006
- (6) SA 605 (SCA) para 37: “. . . the provisions of the Placaeten relied upon by the plaintiff never applied to urban leases.”

- [8] Crystal Ball Properties 27 (Pty) Ltd and another v Mbalati NO and others 2022 JDR 3516 (GJ) para 32.
- [9] The onus rests upon the appellants to prove that the first respondent has been enriched: see *Rhooe v De Kock and another* 2013 (3) SA 123 (SCA).
- [10] *Roux v Van Rensburg* 1996 (4) SA 271 (SCA).
- [11] See the discussion in *Wynland Construction (Pty) Ltd v Ashley-Smith en andere* 1985 (3) SA 798 (A).
- [12] *Rhooe v De Kock and another* 2013 (3) SA 123 (SCA).
- [13] See *Buzzard Electrical (Pty) Ltd v 158 Jan Smuts Avenue Investments (Pty) Ltd* 1996 (4) SA 19 (SCA).
- [14] *Rhooe v De Kock* supra paras 14-15.
- [15] Supra para 17.
- [16] See *Wynland Construction* supra.
- [17] The invoices relied upon are all dated 2021, despite Louw's evidence that according to the municipality's records the building works were completed in 2019.
- [18] *De Aguiar v Real People Housing (Pty) Ltd* 2011 (1) SA 16 (SCA) para 19 (emphasis supplied).
- [19] *S v Hadebe and others* 1997 (2) SACR 641 (SCA).
- [20] See *Sackville West v Nourse and another* 1925 AD 516.
- [21] See the discussion in *Wanga v Road Accident Fund* (case number 4503/2021, unreported judgment of the Western Cape High Court (per Adams AJ) delivered on 19 November 2024) paras [7]-[11].

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