

SOUTH AFRICA / JUDGMENT

Cassim v Munsay and Others (13044/14)

[2015] ZAGPPHC 471 (9 July 2015)

[2015] ZAGPPHC 471**COURT**

North Gauteng High Court, Pretoria

BEFORE

Mavundla

CASE / FILE NUMBER

13044/14

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IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 13044 / 14

n the matter between:

AHMED ARSHAD MOHAMED YUNUS CASSIM

APPLICANT

And

MR. A MUNSAMY

FIRST RESPONDENT

(AND ALL OTHER UNLAWFUL OCCUPANTS OF [.....])

ERASMIA/ ERF [.....], GAUTENG)

MRS. MUNSAMY

SECOND RESPONDENT

THE ILLEGAL OCCUPIERS

THIRD RESPONDENT

OF [.....]

ERASMIA/ ERF [.....], GAUTENG)

CITY OF THSHWANE METROPOLITAN MUNICIPALITY FOURTH RESPONDENT

J U D G M E N T

MAVUNDLA, J.

[1] On the 12 November 2014 this Court granted the following order:

"1. That the first respondent, second respondent, third respondent and all other

illegal occupants who illegally occupy the Property, [.....], Erasmia / ERF [.....]Gauteng (hereinafter referred to as the "the Property") under and by virtue of their title, be hereby ordered to vacate the property within thirty

(30) days from the date upon which this order is granted;

2. That in the event of the first respondent, second respondent, third respondent and all those who illegally occupy the Property under and by virtue of their title, fail and or refuse to vacate the property within the stipulated by the above Court order in prayer 1, then and in that event, the relevant Sheriff, be and is hereby authorised and ordered to forthwith enter upon the property and to evict the first respondent, second respondent, third respondent and all those who illegally occupy the Property under and by virtue of their title.

3. That the first, second, third respondents pay the costs of this application on a party and party scale, jointly and severally, the one paying the to be absolved."

At the time the reasons for this order were not furnished and these are therefore chronicled herein below.

[2] The first respondent in resisting the eviction application, alleged in his papers that a sale and occupation agreement dated 26 June 2013 was concluded between himself and Felstead.

[3] It is not in dispute that Vasanthamalai Felstead was the erstwhile owner of the property. On 16 September 2010 the FirstRand

Bank Limited obtained judgment against Felstead and the property was declared executable. [1] On the 15 November 2010 the property was attached by the Sheriff Pretoria South East[2].

[4] The property was subsequently offered, sold and purchased by the applicant on a public auction on 18 July 2013. The property was subsequently registered in the name of the applicant on 30 I 10/ 2013.

[5] Once judgment was obtained by the First Rand Bank against Felstead, and the relevant property subsequently

attached by the Sheriff, and transferred into the name of the applicant, Felstead was divested of any right to transact over the said property,[3] unless that judgment was rescinded and set aside. Besides, s40 of the Supreme Court Act, No 59 of 1959 criminalises any sale of such attached property, by a person either than the Sheriff. The purpose of this section is to protect the interest of the creditor who has attached the property. But once the property was transferred into the names of the applicant, any subsequent sale, as in casu, by Felstead, is void ab initio.

[6] The applicant is the title holder of the aforesaid immovable property by virtue of the fact that he purchased same in a public

auction from the sheriff Pretoria South West. The immovable property was subsequently registered in his name on the 30th October 2013 in the Deeds Office in Pretoria. In this regard the applicant has attached annexure YC1A which is Windeed showing

that Title Deed T8766/2013 in respect of Property ERF [.....] was purchased on 18 I 07I 2013 and registered on 30 I 10/ 2013 in the name of Cassim Ahmed Arshad Mohamed Yunus for purchase consideration of R795, 000. 00. In his replying affidavit the applicant averred that he purchase the property in a public auction where the First Rand Bank limited was the plaintiff / execution Creditor. The execution creditor was paid an amount of R608 687. 02 which was the amount due and payable by the erstwhile title holder and the execution debtor Mr. Felstead had a credit available in his favour in the amount of R186 312. 98.

[7] The applicant having purchased the property in a public auction, and which was subsequently registered in his name, is the lawful owner thereof. He said that there is no agreement between himself and the respondent to occupy the said property and as such, the occupation is unlawful. The applicant as the title holder, his right supersedes whatever right the first respondent may have had; vide the matter of City of Johannesburg v Changing Tides 74 (Pty) Ltd & others 2012 (6) SA 294 (SCA) at p305.

[8] The first respondent alleged that his father lived on the property f since 1993 and it is their family home. It would seem that he lives together with his wife, daughter and son-in-law. The property represents a home for two generations.

[9] The first respondent is a businessman. He did not take this Court into his confidence as regards the nature of his business and his financial means. It is noted that the property is a home for two generations. It is nonetheless not explained why only in 2013 was there an effort to purchase the property then and the basis of the occupation for the past years since 1993. In my view, a respondent faced with an eviction order, must place sufficient facts before the Court to demonstrate that it would not be just and equitable to grant the eviction order. On the other hand, in casu, from the facts, this Court is satisfied that the applicant has shown that he has a right and title over the property and has not given the respondents any right of occupation.

- [10] The respondents were served with s4(2) notice as far back as in May 2014. The period of thirty days afforded the respondents to vacate the property, is in my view a reasonable period for them to make suitable arrangements for alternative accommodation.
- [11] With regard to costs, it stands to follow that the applicant as the successful party is entitled to costs, as already granted.
- [12] I therefore hand down the reasons for the order granted against the first, second and third respondents.

DATE OF JUDGMENT: 09 JULY 2015

APPLICANT'S ADV: ADV D. J. G. THIART

INSTRUCTED BY BARNARD & PATEL INC

RESPONDENTS' ADV: MR A MUNSAMY

INSTRUCTED BY MR A MUNSAMY

- [1] Annexure "YC3" is a copy of the Order granted by Makgoba J under case number 33018/2010.
- [2] Annexure "YC4" is a copy of the Warrant of attachment of the relevant property.
- [3] Rule 46(10) of the Uniform High Court Rules.

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