

SOUTH AFRICA / JUDGMENT

Dewald v Brown (A199/2011) [2011] ZAWCHC 411 (24 October 2011)

[2011] ZAWCHC 411

COURT

Western Cape High Court, Cape Town

BEFORE

Traverso, Ndita

CASE / FILE NUMBER

A199/2011

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IN

THE HIGH COURT OF SOUTH AFRICA

(WESTERN

CAPE HIGH COURT, CAPE TOWN)

CASE

NUMBER:

A199/2011

DATE:

24
OCTOBER 2011
In

the matter between:

DEWALD
RYAN

.....Appellant

and

JOY

MAUREEN BROWN

.....Respondent

JUDGMENT

TRAVERSO, DJP:

This is an appeal against the judgment of Magistrate Ralarala handed down on 22 March 2011 in terms whereof the appellant was evicted from the premises situated at 43 New Frost Crescent, Table View, with effect from 31 May 2011. Although this appeal suffers from a number of procedural defects, the legal representatives for the respondent wisely decided not to pursue these issues, but rather to get on with the merits of the matter.

The facts which gave rise to this matter are briefly the following. Ms Joy Brown is the owner of the premises in question. On 24 August 2010, a lease agreement was entered into between Ms Brown and the company Yoctopath (Pty) Limited ("Yoctopath"). In the court a quo, Yoctopath was cited as the first respondent and the appellant as the second respondent. The lease agreement commenced on 1 September 2010 and it was recorded that the premises in question would be occupied by the appellant, Mr Dewald Ryan, for the full extent of the lease.

It is common cause that the rental was not paid and that as at 1 February 2011, Yoctopath was in arrears with the rental in an amount

of approximately R21 000,00. Ms Brown accordingly sent a notice to both Yoctopath and the appellant, informing them that she intends

cancelling the lease and in fact subsequently she did cancel the lease. It is common cause that the appellant is still in occupation

of the premises and that no rental is being paid.

The defence of the appellant in the court a quo was in essence that he had paid the full amount of the rental for the duration of the lease to Yoctopath, who, in turn, would pay it over to the respondent. That apparently did not happen. His grounds of appeal casts the net much wider than his defence in the court a quo. These are often repetitive and at times difficult to understand. I will, however, deal with those grounds which, in my view they warrant discussion.

The appellant contends that he had insufficient time to obtain legal representation. This ground of appeal is, however, not supported by the information that appears ex facie the record of the proceedings. The matter first came before court on 8 March 2011, upon which occasion the magistrate indicated that the appellant would have the opportunity to apply for legal aid. She postponed the matter for two weeks. On the resumed date, namely 22 March, the appellant arrived at court without legal representation, and indicated that he wanted to represent himself and that he wanted the matter to proceed, even though he did not have legal representation. He filed opposing affidavits, which he had drafted himself. In my view, this ground of appeal is without substance and not supported by the facts.

Secondly, it is contended by the appellant that the magistrate erred in finding that there was no lease agreement in place. Once again this ground of appeal has no factual basis. Although there was a dispute as to the exact amount that was outstanding in respect of the arrear rentals, this is irrelevant for purposes of deciding this matter. It is common cause that the rental was in arrears and still remains in arrears and this was not disputed by the appellant. It is common cause that the respondent was entitled in terms of clause 15 of the lease agreement, to cancel it and that in

fact she did. The magistrate's finding, therefore, that there was no lease in place at the time, was correct.

The next ground of appeal is that the appellant paid all rentals due for the year in advance to Yoctopath. I have mentioned this defence hereinabove and although one has a lot of sympathy with the appellant, if in fact he had paid the money over to Yoctopath and they had failed to pay the money over to the respondent, this will at best give the appellant a claim against Yoctopath. It cannot constitute a defence against the respondent in her claim for eviction. If Yoctopath, who is the lessee, does not pay the money over to the respondent, she's entitled to cancel the lease. It is common cause that the rentals were not paid over to her and that she was accordingly entitled to do so.

Furthermore, the appellant contends that the application would lead to homelessness. It is trite that the prevention of illegal eviction from Unlawful Occupation of Land Act 19 of 1989 does not seek to prevent homelessness, but rather the arbitrary deprivation of property. The harsh reality is that the scheme of the PIE Act itself envisages that at times it will lead to homelessness. That in itself is, therefore, not a defence.

The only other ground of appeal which warrants mentioning is that the appellant contends that his constitutional rights have been violated by virtue of the six month clause in the PIE Act. One can only assume that the appellant is referring to the provisions of section 4(7) of the PIE Act as opposed to the provisions of section 4(6), which enjoins a court to consider more factors in deciding whether to grant an eviction order when the occupant has occupied the land for more than six months than in the case where it has been occupied for less than six months. The two provisions provide:

"Section 4(6): If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction, if it is of the opinion that it is just and equitable to do so after considering all the relevant circumstances, including the rights and the needs of the elderly, children, disabled persona and households headed by women.

Section 4(7): If an unlawful occupier has occupied the land in question for more than six months at a time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so after considering all the relevant circumstances, including, except where the land is sold and the sale in execution pursuant to a mortgage where the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, including the rights and the needs of the elderly, children, disabled person and households headed by women."

From the papers it appears, self-evidently, that it is section 4(6) which will have application to the present case, as the respondent makes the undisputed statement in her founding affidavit that the appellant took occupation on 1 September

2010. This is supported by the terms of the lease. It is further common cause that this application was lodged on 16 February 2011, less than six months after the appellant had taken occupation of the premises. There are other grounds of appeal, but they are vague and they are difficult to understand and in my view, they do not warrant any further mention in this judgment.

In my view the magistrate was quite correct in making the finding which she did and in my view the appeal should, therefore, be dismissed and the order of the court a quo confirmed. From this it follows that the appeal is dismissed with costs and the order of the court a quo confirmed. I concur:

NDITA, J

It is so ordered:

TRAVERSO, DJP

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