

SOUTH AFRICA / JUDGMENT

Final Housing Solutions (Pty) Ltd v Lukhanya (40262/21) [2024] ZAGPJHC 340 (11 April 2024) [2024] ZAGPJHC 340

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

40262/21

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
LOCAL DIVISION, JOHANNESBURG)

(1)

REPORTABLE: No

(2)

OF INTEREST TO OTHER JUDGES: No

(3)

REVISED

SIGNATURE

DATE: 11 April 2024
Case
No. 40262/21
In the matter between
FINAL
HOUSING SOLUTIONS (PTY) LTD
Applicant
and
LUVALO
LUKHANYA
First Respondent
FURTHER UNLAWFUL
OCCUPIERS OF
ERF
1[...] VOSLOORUS EXT 14, GAUTENG
Second Respondents
EKURHULENI
MUNICIPALITY
Third Respondent
MEC
FOR HUMAN SETTLEMENTS (GAUTENG)
Fourth Respondent

JUDGMENT

WILSON J:

1 The applicant, FHS, owns Erf 1[...], Vosloorus Extension

14. The first respondent, Mr. Likhanya, lives at the property with his family and a number of tenants.

2 In 2017, FHS agreed to sell the property to Mr. Likhanya for R210 573. The scheme was financed in part by a subsidy guarantee given by the fourth respondent, the MEC. The guarantee was to the value of R160 573. A further R50 000 was to be put in by Mr. Likhanya

himself. It was a condition of the sale agreement concluded between FHS and Mr. Likhanya that, before he took transfer, Mr. Likhanya

would pay the outstanding rates and taxes due to the third respondent, the Municipality. It was a further condition of the agreement that, pending transfer of the property into his name, Mr. Likhanya would pay occupational rent in the sum of R3500 per month.

3 FHS says that Mr. Likhanya paid neither the R50 000 deposit, nor the occupational rent due, nor the outstanding rates and taxes due to the Municipality. By the time this matter was argued before me, the amount due to the Municipality was in excess of R400 000. Evidently, Mr. Likhanya had allowed the amount to accumulate over several years of occupation.

4 The terms of the sale agreement remained unfulfilled for well over two years, but FHS did not terminate the agreement until 24 February

2020. After the termination of the agreement, the parties engaged with each other, but they were unable to agree on new terms for the sale and purchase of the property. On 31 July 2021, the subsidy guarantee, which had been extended in order to finance any new agreement to sell the property, expired.

5 On 10 November 2021, FHS instituted proceedings for Mr. Lukhanya's eviction, and for the eviction of all the other occupiers of the property. Mr. Lukhanya lets backyard rooms on the property to a number of individuals, but their identities and circumstances were not dealt with in FHS' founding papers.

6 When the matter first came before me in my unopposed court on 1 December 2022, it appeared to me that there were a number of indications on the papers that evicting the occupiers may not be just and equitable, as it is required to be by section 4 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act 19 of

1998. I was given no real information about Mr. Lukhanya's

circumstances, or those of the other occupiers of the property. The circumstances surrounding the expiry of the subsidy guarantee were obscure. I was concerned that an eviction order might render Mr. Lukhanya, his family and his tenants homeless. There was nothing on the papers that excluded that result. I was particularly concerned about the absence of any indication that an eviction could fairly take place in light of the parties' original intent: that the property be transferred to Mr. Lukhanya with the assistance of a state housing subsidy.

7 Accordingly, I postponed the application and required the parties to provide further specified information. I directed the Municipality to file a report dealing with Mr. Lukhanya's circumstances, and those of the other occupiers of the property. I joined the MEC, and directed him to file a report dealing with the circumstances surrounding the expiry of the housing subsidy, and to say whether Mr. Lukhanya taking transfer of the property with state assistance remained a realistic possibility. These orders, together

with my reasons for making them, are set out in *Madulammoho Housing Association NPC v Nephawe* [2023] ZAGPJHC 7 (10 January 2023).

8 Although FHS promptly complied with my orders, the Municipality and the MEC did not. The MEC eventually provided a report on 9 June 2023, which he later supplemented with further information. It took over a year for the Municipality to do what it had been ordered to do: visit the property and assess the needs and circumstances of those who live there. But this was not before the Municipality had to be declared in contempt of one of the orders directing it to do so. A great deal could probably be said and done about the Municipality's disregard of its constitutional and statutory obligations, and particularly of its ongoing failure to comply with my order for such a long period. But, given the conclusion to which I have come, I record only my

disappointment in the Municipality's delinquency, and my thanks to Ms. Mutenga, who appeared for the Municipality before me, for doing her best to bring that delinquency to an end.

9 The Municipality's report reveals that there are six backyard rooms on the property. One is rented out for business purposes. One is vacant. A further two are not occupied as primary residences. The tenants of those rooms live there for at most a few days each month, and otherwise live and work elsewhere. The other two rooms are occupied by a panel beater who earns R5000 per month, and a nurse, who earns R14500 per month. Neither suggested that they would struggle to find another room to rent if they had to leave.

10 That leaves only Mr. Lukhanya and his family. Mr. Lukhanya and his wife are unemployed, and are dependent upon the rental income

from the backyard rooms and on social grants received in respect of their two children, aged 7 and 2. In my view, Mr. Lukhanya and his family would face a real risk of homelessness if they were evicted without any further assistance.

11 A further factor relevant to the justice and equity of Mr. Lukhanya's eviction is the fate of the subsidy guarantee. In his report, the MEC makes clear that a guarantee, up to the value of R160 573, can still be made available to fund the purchase of the

property. However, FHS is no longer interested in selling the property for anything like this amount (the current market value of the property is said to be in the region of R600 000), and in any event, Mr. Manda, who appeared for FHS, raised the difficulty of the utilities, rates and taxes outstanding on the property. These presently dwarf the value of the guarantee. They would either have to be paid or waived, at least in part, in order for the property to be transferred to Mr. Lukhanya. Mr. Lukhanya is not realistically in a position to contribute significantly to the purchase of the property himself, or to meaningfully reduce the utilities, rates and taxes outstanding on the property.

12 These difficulties notwithstanding, I would still have been reluctant to grant an eviction order were it not for FHS' unconditional tender to pay Mr. Lukhanya R80 000 to leave the property. Mr. Lukhanya has rejected that tender, but Mr. Manda made clear that the offer still stands, and that FHS is prepared to have an order to pay the amount incorporated into any eviction order I make.

13 It seems to me that the payment FHS offers tips the scales of fairness in its favour. It extinguishes any real possibility that Mr.

Lukhanya or his family would be left homeless on eviction. The Municipality says that the amount is equal to two years' worth

of rental. The Municipality does not set out any primary facts to support this conclusion, but the size of the tender is such that I am satisfied that, if they are paid the amount tendered, Mr. Lukhanya and his family will be under no meaningful threat of homelessness for the foreseeable future.

14 For all these reasons, I am satisfied that it would be just and equitable to make an eviction order. On the papers, Mr. Lukhanya's tenants face no real risk of homelessness on eviction. There is no realistic prospect of Mr. Lukhanya being able to take transfer of the property, even with the assistance the MEC says is still available. FHS' tender secures Mr. Lukhanya and his family against homelessness on eviction.

15 It remains to consider the terms on which the eviction order should be granted. Mr. Manda proposed that Mr. Lukhanya be paid R15

000 upfront, with the remaining R65 000 to be held in trust by the sheriff, and paid over to Mr. Lukhanya once the property has been vacated. This seems to me to strike a reasonable balance between the parties' interests, and to ensure the effectiveness of the eviction order. Mr. Manda also proposed that the respondents be placed on terms to vacate the property within two months. Given the length of time Mr. Lukhanya has lived at the property, it seems to me that three and a half months is more appropriate.

16 For all these reasons, I make the following order –

16.1 The first and second respondents ("the occupiers") are

evicted from the property situated at ERF 1[...] VOSLOORUS EXT 14, GAUTENG.

16.2 The occupiers are ordered to vacate the property by no later than 31 July 2024, failing which the sheriff may evict them.

16.3 The applicant is directed to pay the sum of R15 000 to the first respondent by no later than 30 April 2024.

16.4 The applicant is directed to pay the sum of R65 000 to the sheriff, to be held in trust for the benefit of the first respondent, by no later than 30 April 2024.

16.5 The sheriff is directed to pay the sum of R65 000 to the first respondent within seven days of the applicant's attorney confirming in writing that the occupiers have vacated the property, or, failing such confirmation being provided, by no later than 8 August 2024.

16.6 The amount is to be paid into a bank account nominated by the first respondent, or, failing the first respondent nominating such an account within seven days of being called upon to do so, in cash.

16.7 The applicant's attorney is directed to serve a copy of this judgment on the first respondent, and on each of the second respondents, by no later than 19 April 2024.

16.8 Each party is to pay their own costs.

S D J WILSON

Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 11 April 2024.

HEARD ON:

28 March 2024

DECIDED ON:

11 April 2024

For the Applicant:

T Manda

Instructed by M Ngomane Attorneys

For the First Respondent: In person

For the Third Respondent: H Mutenga

Instructed by KM Mmuoe Attorneys

For the Fourth Respondent: M Motimele

Instructed by the State Attorney

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Prepared on 14 October 2026 · Esheria