

SOUTH AFRICA / JUDGMENT

First Rand Bank Ltd v Ndamase and Another (024968/24) [2024] ZAGPPHC 1133 (12 November 2024)

[2024] ZAGPPHC 1133

COURT

North Gauteng High Court, Pretoria

BEFORE

BM Lesufi

CASE / FILE NUMBER

024968/24

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Policy

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

Case

Number: 024968/24

(1) REPORTABLE:

YES/NO

(2) OF INTEREST TO

OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE:

12/11/2024

SIGNATURE

In

the matter between: FIRST
RAND BANK
LTD
APPLICANT
and
MANDLAKAYISE
PRINCE NDAMASE
FIRST RESPONDENT
CITY
OF JOHANNESBURG
METROPOLITAN
MUNICIPALITY
SECOND RESPONDENT

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parties' legal representatives by email, and by uploading it
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November 2024.

JUDGMENT

LESUFI AJ

- [1] This is an opposed eviction application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act). The notice required in terms of section 4(2) of the PIE Act was duly served. The applicant seeks the eviction of the First Respondent from a residential property situated at 4[...] A[...] Crescent Kyalami Estate, Kyalami (The property). The property was previously owned by Mr Frank Paul van Den Berg. The First Respondent signed a lease agreement with Mr van Den Berg on 1 December 2021. The lease agreement was supposed to expire on 30 November 2022 however it was extended up to 30 July 2023.
- [2] The court must first determine whether the occupier has any existing right in law to occupy the property and whether such occupation is lawful.
- [3] A warrant of execution for the attachment of the property was executed on 23 October 2022. The Applicant bought the property from the Sherriff on 28 February 2023.
- [4] Against the application in question, the First Respondent filed a notice to oppose followed by an answering affidavit. The Second Respondent did not oppose the application. The Second Respondent was cited because the property is situated within their area of jurisdiction.
- [5] After the expiring of the lease agreement between the First Respondent and the previous owner Mr van Den Berg, the First Respondent made two offers to purchase the property from the Applicant. The two offers to purchase were not accepted by the Applicant. The First Respondent does not dispute that the lease agreement concluded between him and Mr van

Den Berg expired on 28 February 2023. As of now there is no existing lease agreement between the First Respondent and the owner of the property. Counsel for the First Respondent also conceded that the two offers to purchase made by the First Respondent were rejected by the Applicant. However, Counsel for the First Respondent still contended that the First Respondent is in lawful occupation of the property because the Applicant demanded rental payment from him.

- [6] According to Counsel for the First Respondent, the demand for rental payment by the Applicant from the First Respondent amounted to a conclusion of a lease agreement.
- [7] One of the requirements for a valid lease agreement relating to an immovable property is that such an agreement must be in writing. A mere demand for payment and compliance with such demand does not constitute a valid contract of lease of a fixed or immovable property.
- [8] Counsel for the First Respondent, in his submissions from the bar, relied heavily on the document marked Annexure FA3 bearing the title “Sale Subject to Existing Rights”. The document relates to the sale agreement between the Sheriff and the Applicant at the auction. That document does not constitute a lease contract between the Applicant and the First Respondent.
- [9] Clause 7.2 of the document referred to in paragraph 7 above reads as follows:
- “Notwithstanding any of these provisions, the purchaser shall be solely responsible for ejecting any person or other occupiers claiming occupation, including a tenant, at the purchaser’s costs. No obligation to do so shall vest in the Sheriff and or the execution creditor.”*
- [10] On Clause 10 (bearing the heading “Confirmation of the Purchaser”) of the FA3 Annexure referred to above, the Sheriff did not indicate whether the property is sold with lease or without any lease agreement. It is not in dispute that the lease agreement between Mr Van Den Berg and the First Respondent expired on 28 February 2023 and that the First Respondent is still occupying the property even though he is not in lawful occupation in terms of a valid contract of lease.
- [11] I should state that the Sheriff was not asked by any of the parties to file any affidavit in support of the application by the Applicant or supporting the First Respondent. What is clear is the fact that at the time when the Sheriff sold the property, there was no lease agreement between the Applicant and the First Respondent.
- [12] On 1 February 2024, the Applicant served the notice in terms of section 4(1) of the PIE Act on the First Respondent. The Applicant also sent the notice in terms of section 4(1) by way of email to the First Respondent’s legal representative. In terms of the notice, the First Respondent was asked to vacate the premises by 29 February 2024.

- [13] The PIE Act prohibits unlawful evictions and regulates the procedures to be followed for the eviction of unlawful occupiers of property. In *Ndlovu v Ngcobo; Bekker and Another v Jika*[1] the Supreme Court of Appeal observed that:

“PIE has its roots, inter alia, in s 26(3) of the Bill of Rights, which provides that ‘no one may be evicted from their home without an order of court made after consideration of all the relevant circumstances’. ... It invests in the courts the right and duty to make the order, which, in the circumstances of the case, would be just and equitable and it prescribes some circumstances that must be taken into account in determining the terms of the eviction.”

- [14] Section 4 of the PIE Act regulates the eviction of unlawful occupiers of land at the request of the owner or the person in charge of the unlawfully occupied property. Section 4(1) of the PIE Act provides that: “... the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier”. It also overrides any other law, including the common law.
- [15] Section 4(2) requires that at least 14 days before the hearing of an application in terms of the PIE Act: “the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction”. The City of Johannesburg was cited in these proceedings in compliance with section 4(2) of the PIE Act.
- [16] Section 4(5) prescribes what the notice referred to in section 4(2) must contain. Once the notice has been given and the matter is heard, the court is required to decide whether it is just and equitable to evict the unlawful occupier.
- [17] A court dealing with an application for eviction in terms of the PIE Act in which the occupation has been found to be unlawful, must determine whether it will be just and equitable to grant an order of eviction, regardless of whether or not a case has been made in terms of section 4(6) or section 4(7) of the PIE Act.[2]
- [18] The Constitutional Court outlined the interpretation of the PIE Act in *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another*. [3] The Constitutional Court pointed out that as a starting point, it is settled law that the application of the PIE Act is not discretionary.[4] Courts must consider the PIE Act in eviction cases.[5] Courts are not permitted to passively apply PIE Act, and must probe and investigate the relevant surrounding circumstances particularly where the occupiers are vulnerable.[6]
- [19] There are two separate enquires that must be undertaken by a court in proceedings brought in terms of the PIE Act.
- [20] First, the court must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors.[7] Those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner’s protected rights in terms of section 25 of the Constitution, and on the footing that a limitation of those rights in favour of the unlawful occupiers will ordinarily be limited in duration.[8] Once the court decides that there is no defence to the claim for

eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant an eviction order.[9] Considerations of fairness and justice must also be taken into account by the court.

- [21] The second enquiry is that before granting an eviction order, the court must undertake to consider what justice and equity demand in relation to the date of implementation of that order, and the court must consider what conditions must be attached to the order.[10] In that second enquiry, the court must consider the impact of an eviction order on the unlawful occupiers and whether they may be

rendered homeless by the eviction, as well as whether the unlawful occupiers would need emergency assistance to relocate to another place.[11]

- [22] The order that the court grants as a result of these two separate enquiries is a single order. The two requirements are inextricable, interlinked and essential. The enquiry has nothing to do with the unlawfulness of the occupation. One of the factors to consider is whether the granting of an eviction order would pose the threat of homelessness to the unlawful occupiers. If so, then the relevant municipality's emergency housing obligations are activated, and the municipality in question must respond reasonably. In the present case it was not argued by the First Respondent that granting an eviction order will render the First Respondent homeless.

- [23] In the case of *Lochner N.O v Gardner and Others*, [12] Adhikari AJ observes as follows:

*"While an applicant seeking an eviction order in terms of PIE bears the onus to place sufficient information before the court to justify the eviction order that it seeks,[13] there is also an obligation on the respondents in such proceedings to place sufficient information before the court to enable the court to discharge its duty to enquire into all the relevant circumstances for the purposes of the enquiry required by PIE. The Supreme Court of Appeal in *Changing Tides* qualified the onus that rests on an applicant in PIE proceedings by stating that applicants for evictions are obviously not required to go beyond what they know or what is reasonably ascertainable."*

- [24] I find that the First Respondent has no defence in law to remain in the property. There is no evidence that suggests that granting an eviction order will render the First Respondent homeless. The First Respondent is not a person who cannot afford to rent accommodation anywhere else. The First Respondent is in unlawful occupation of the property that belongs to the Applicant.
- [25] I am satisfied that the First Respondent does not have a bona fide defence and that considerations of fairness and justice favour the granting of an eviction order.
- [26] I am alive to the general rule that costs follow the successful party. I do not intend to deviate from that rule.

[27] I therefore make the following order:

1. The Respondent, his successor in the title, and anybody holding occupation under or through him, is ordered to vacate the premises situated at 4[...] A[...] Crescent Kyalami Estate, Kyalami, within 30 days from the date of this order.
2. Failure to vacate the premises 30 days after this order, the Sheriff of the Jurisdiction is authorised to evict the Respondent.
3. The Respondent is to pay the costs on attorney client scale.

BM LESUFI

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant: Adv. Peterson Instructed by: Glover Kannierppan Attorneys For the Respondent: Adv. Sepheka Instructed by: Mahlakoane Attorneys Date of the hearing: 23/October/2024 Date of judgment: 12 /November/2024

- [1] Ndlovu v Ngcobo; Bekker and Another v Jika 2003 (1) SA 113 (SCA); [2002] 4 All SA 384 (SCA) at para 3.
- [2] Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v Golden Thread Ltd and Others [2011] ZACC 35; 2012 (2) SA 337 (CC); 2012 (4) BCLR 372 (CC) at para 15 and 16.
- [3] Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC).
- [4] Id at para 43. See also Machele v Mailula [2009] ZACC 7; 2010 (2) SA 257 (CC) at para 26.
- [5] Machele at para 14.
- [6] Above n 3 at paras 43 and 44.
- [7] Id at para 44.
- [8] City of Johannesburg v Changing Tides 74 (Pty) Ltd [2012] ZASCA 116; 2012 (6) SA 294 (SCA); [2013] 1 All SA 8 (SCA) at paras 11-24.
- [9] Id.
- [10] Id.
- [11] Id.
- [12] Lochner N.O v Gardner and Others [2024] ZAWCHC 39 at para 18.

[13] Above n 8 at paras 30 and 34.

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Prepared on 11 October 2026 · Esheria