

SOUTH AFRICA / JUDGMENT

Herman Steyn Erfgename CC and Another v Mdau N.O and Others (2687/23) [2023] ZAMPMHC 25 (31 July 2023)

[2023] ZAMPMHC 25

COURT

Middelburg High Court, Mpumalanga

BEFORE

Z Gumede

CASE / FILE NUMBER

2687/23

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

(MPUMALANGA DIVISION,
MIDDLEBURG)

1)

REPORTABLE:NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED: YES

DATE

31/07/2023

.....

SIGNATURE

CASE NO: 2687/23

In the matter between:

HERMAN
STEYN ERFGENAME CC
1ST APPLICANT
RIETVLEI
FOREST INVESTMENTS (PTY) LTD
2ND APPLICANT
and
BOY
DIMON MDAU N.O.
1ST RESPONDENT
KHETHIWE
ELIZABETH MDAU N.O.
2ND RESPONDENT
BOY
SIMON MDAU N.O.
3RD RESPONDENT

JUDGMENT

GUMEDE AJ

1. This is an urgent application in which the applicants seek to interdict the respondents from entering the properties situated at Portions 7 and 17 of the Farm Elandspruit 291, and/or renting out any portion thereof. They also seek to interdict verbal abuse and threats by the respondents on any of their employees, directors or any person lawfully visiting the premises of the applicants, pending the finalization of an application or action confirming the cancellation of the agreements of sale and damages to be instituted by the applicants against the respondents.
2. I permitted the matter to be enrolled and heard as a matter of urgency.
3. On 19 January 2023, the applicants and respondents entered into sale agreement in respect of two immovable properties, being Portion 7 and Portion 17 of the Farm Elandspruit, in the amount of R1.5 million for each property, totaling R3 million. In terms of amended clause 4.2 of the sale agreement, the purchase price was payable on or before 28 February 2023.
4. Clause 8 of both sale agreements provides that occupation of the property shall be given to the purchaser on the date of registration of transfer whereas clause 16.2 provides that in the event of cancellation for whatever reason, the seller shall immediately be entitled to resume possession of the property and to eject from the property the purchaser and/or persons occupying through him.
5. Applicant alleges that the respondent breached the sale agreement by requesting an extension for payment of purchase prices from 28 February 2023 to 31 March 2023, however, applicant acquiesced to the respondent request and agreed to grant the extension on the following basis:

- a. Occupational rent be paid for months of February and March 2023 at a rate of R12 5000-00 per month;
- b. The house of top would not be open for renovations or any other work until the purchase price had been paid;
- c. When the purchase price of R3million is paid, then occupational rent shall reduce to R5000 per month and the Trust (Respondents) would be responsible for the Eskom account.
6. The respondents agreed to the above terms but did not comply with them. The applicants sent reminders to the respondents in respect of outstanding occupational rent and on 21 February 2023, applicants communicated a “final notice”, which inter alia stated that nonpayment of outstanding agreed amounts means the contract is not honoured. This final notice further stated that the privilege to occupy the house on the hill is then nullified and will be rented out.
7. On 3 March 2023, the attorneys for the applicant sent a notice to the respondent, invoking clause 16.1 of the sale agreement in respect of Portion 7. Clause 16.1 provides that should purchaser fail to comply with the provisions of the agreement and remain in default 10 days after a written notice, the seller shall be entitled to cancel the agreement.
8. At the expiry of 10 days and on 14 March 2023, the attorneys for the respondent wrote a letter to the applicant confirming that the sale agreement in respect of Portion 7, was formally cancelled.
9. On 14 March 2023, the applicant’s attorney gave a similar 10-day notice in terms of clause 16.1 of the sale agreement, putting the respondents on terms in respect of Portion 17 of the Farm. On 24 March 2023, the applicant sent a notice of cancellation of the sale agreement in respect of Portion 17.
10. It appears that despite the confirmation of cancellation of the sale agreements in terms of clause 16.1, the parties continued to hold meetings and to negotiate, as it is alleged in a letter that was sent by the respondents to the applicants on 22 April 2023, that following a meeting the previous day, the respondent offered the applicants shares in a company called Sonani Green Energy

Solutions. According to the applicant, this offer was never taken up and no sale of shares agreement was entered into.

11. The founding affidavit discloses that the purchase price of R3 million rand had already been paid to the applicant on 13 April 2023, when applicant was still engaging in meetings and negotiations resulting in share agreement on 21 April 2023, as confirmed by the respondents’ letter of 22 April 2023 which is attached to the applicants’ founding affidavit.

12. Although the papers contain copies of letters which were sent by the applicant to the respondents wherein applicants were protesting to the late payment of the purchase price and confirmed in writing that the sale agreements had been cancelled and even tendered the repayment of R3 million, the fact that as late as 21 April 2023 the parties were still engaged in meetings and negotiations, cannot be ignored.
13. The respondents allege that the deponent to the answering affidavit, his son, Wandile as well as the security guard, reside in the premises since January 2023. They further allege that the deponent to the founding affidavit is the person who gave them the keys to the premises and even assisted them to move a bed to the top house on Portion 7.
14. Despite Clause 8 of both sale agreements which provides that occupation of the property shall be given to the purchaser on the date of registration of transfer, the papers disclose that the respondents were granted permission to occupy the premises, contrary to this clause as shown below.
15. The respondents had been in occupation of the premises as early as February 2023 when the applicant agreed to the extension of payment of the purchase price, subject to payment of occupational rent in February and March.
16. Moreover, the plain reading of clause 16.2 of the sale agreement which provides that in the event of cancellation for whatever reason, the seller shall immediately be entitled to resume possession of the property and to eject from the property the purchaser and/or persons occupying through him, also lends credence to the probabilities that the respondent could already be in occupation of the premises. What other reason would there be for the sale agreement to make provision for the ejectment of the respondents from the property, except if the respondents had been in occupation of the premises.
17. Another factor that fortifies the assertion that the respondents were already in occupation of the premises, is the fact that the applicant had granted the respondent an extension to pay the purchase price on 31 March 2023, subject to the payment of occupational rent of R12 500 per month which amount would be reduced to R5000 per month on payment of the full purchaser price.
18. In his heads of argument, counsel for the applicant referred me to the provisions of the Trespass Act 6 of 1959 and submitted that the respondent's continued access to its property is a criminal offence in terms of the Act and on those basis, I should grant the relief as prayed for by the applicant.
19. As stated above, although the sale agreement may have been cancelled by the applicant, I am satisfied that the applicant had granted permission for the respondents to reside on the property on payment of occupational rent as aforesaid. Continued occupation by the respondents, following this permission which was granted by the applicant, especially in the light of the dispute whether or not the sale agreement has been validly cancelled, cannot amount to trespassing.

20. Should the agreement in respect of occupational rent or any other agreements be breached, and the applicant elects to cancel the agreement in terms of clause 16.1, they (applicant) would be entitled to bring eviction proceedings under clause 16.2 of the sale agreement, which provides for the ejectment of the purchaser and/or all persons occupying through him.
21. Although the applicants have ownership rights to the land in question, I am not satisfied that they have shown any irreparable harm committed by the respondents. After all, the applicants did grant the respondents permission to reside on the land in question.

Should that permission be revoked on cancellation of the sale agreement, applicants are entitled under clause 16.2 of the sale

agreement to evict the respondents but in pursuing such eviction, applicants must comply with the laws that are applicable to the

residential evictions.[1]

22. At the hearing of this matter, counsel for the respondents argued that the applicants failed to show that they have no other remedy and submitted that the applicants may bring a claim for damages especially since they are still in possession of the R3 million paid by the respondent for the two properties. I agree.
23. In the premises, the application is dismissed with costs.

Z GUMEDE

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 31 July 2023 at 10:00.

APPEARANCES

For the applicant : Mr S Stevens

Instructed by : Krugel Heinsen Inc, Witbank

For the Respondent : Mr H Brauckmann

Instructed by : Leon van den Berg Attorneys Inc, Middleburg

Date of hearing : 25 July 2023

Date of judgment : 31 July 2023

[1] Prevention of Illegal Evictions Act

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Prepared on 10 October 2026 · Esheria