

SOUTH AFRICA / JUDGMENT

Highpoint Hotels (Pty) Ltd v May and Others (94285/2015) [2016] ZAGPPHC 918 (25 October 2016) [2016] ZAGPPHC 918

COURT

North Gauteng High Court, Pretoria

BEFORE

AC Basson

CASE / FILE NUMBER

94285/2015

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REPUBLIC

OF SOUTH AFRICA

IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

DATE:

25/10/2016

CASE

NO: 94285/2015

Reportable: No
Of
interest to other judges: No
Revised.
HIGHPOINT
HOTELS (PTY)
LTD Applicant
(Registration
number: 1969/017054/07)
and
BARCY
MLUNGISI
MAY First
Respondent
(Identity
number: ...)
DELPINE
NYAMEKA
MAY Second
Respondent
ALL
OCCUPIERS OF ERF [...],
YEOVILLE Third
Respondent
CITY
OF JOHANNESBURG, GAUTENG
CITY
OF JOHANNESBURG
METROPOLITAN Fourth
Respondent
MUNICIPALITY

JUDGMENT

AC BASSON, J

- [1] The applicant (Highpoint Hotels (Pty) Ltd) seeks an order for the eviction of the first and second respondents (Mr and Mrs May) and/or anyone else that may be claiming the right to occupation through them of the property known as Erf [...], Yeoville, Johannesburg (“the property”). I will refer to the first and second respondents jointly as “the respondents”.
- [2] It is common cause that on 10 September 2013 the applicant and the respondents have entered into a written offer to purchase. The
property was registered in the applicant’s name on 15 July 2015.

- [3] Notwithstanding the transfer of the property, the respondents are still in occupation of the property and have refused to vacate the property. It is not in dispute that the applicant has never granted the respondents any permission to occupy the property.
- [4] A letter of demand informing the respondents of their illegal occupation was served on them on 12 August 2015. The applicant also demanded that the respondents vacate failing which the applicant will commence eviction proceedings. In this letter the respondents are informed of the applicant's intention to demolish the premises for further development.
- [5] On 27 October 2015 the attorneys acting on behalf of the respondents confirmed in writing that the respondents have no intention to vacate the property.
- [6] On 9 February 2016 the applicants obtained an order in this court in terms of which it was authorised to serve a section 4(2) notice in terms of the PIE Act marked Annexure "X" on the various respondents. The said section 4(2) notice was personally served on all the respondents on 3 December 2015.
- [7] The applicant has therefore complied with the procedural requirements as set out in the PIE Act.
- [8] The applicant is approaching this court on the basis of its ownership of the property and the fact that the respondents are in unlawful occupation of the property. The applicant further approaches this court pursuant to compliance with the procedural requirements set out in the PIE Act.
- [9] The respondents do not dispute that the applicant is the registered owner of the property. What is in dispute is the transfer of ownership from the respondents to the applicant.
- [10] The respondents state that they have instituted proceedings in the High Court in the South Gauteng High Court claiming that the property be transferred back to the respondents. They are also now asking this court to stay the eviction proceedings pending the outcome of the High Court proceedings. The respondents also allege that the applicant has failed to comply with the requirements as set out in section 4(7) of the PIE Act. I will return to this issue hereinbelow.
- [11] The first point to be considered is whether the Prevention of Illegal Eviction for and Unlawful Occupation of Land Act[1] ("the PIE Act") is applicable in circumstances where the respondents have before the transfer of ownership consequent to a sale of the property been in lawful occupation. After the transfer they have become in unlawful occupation when they refused to vacate the property. The Supreme Court of Appeals in *Ndlovu v Ngcobo; Bekker and another v Jika*[2] clarified the legal position and held that the PIE Act is applicable to persons who at one stage had lawful possession but subsequently became unlawful. The court in *Ndlovu* further made it clear that an owner is entitled, provided that the procedural requirements have been met, to approach the court on the basis of ownership and on the basis that the respondent are in unlawful occupation. Unless the (unlawful) occupier is able

to disclose some circumstances relevant to the eviction, the owner is in principle entitled to an order for the eviction of the unlawful occupiers:

“[19] Another material consideration is that of the evidential onus. Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and the respondent's unlawful occupation. Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties. Whether the ultimate onus will be on the owner or the occupier we need not now decide.”

[12] The question to be considered by this Court is whether the court should grant eviction.

[13] The Act distinguishes between unlawful occupiers who had occupied land for less than 6 months (section 4(6)) and those who have occupied land for more than 6 months (section 4(9)).

[14] This discretion should be exercised taking into account the factors contained in section 4(6) – (8) of the PIE Act.

[15] In this matter the property was registered in the name of the applicant on 15 July 2015. The applicant instituted proceedings in terms of the PIE Act on 24 November 2015. At the time the respondents have been in unlawful occupation for less than six months. In these circumstances a court is therefore enjoined to consider the following:

“4 Eviction of unlawful occupiers

(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 needs of the elderly, children, disabled persons and households headed by women.”

[16] Save for the fact that the respondents have referred a dispute regarding the transfer of ownership to the South Gauteng High Court, the respondents have not placed any factors (except for their respective ages), as envisaged by section 4(6) of the PIE Act, before this court which could persuade this court that it should not grant the eviction order.

[17] Although I am mindful of the fact that this court is not seized with the merits of the matter before the South Gauteng High Court regarding the dispute, I had nonetheless regard to what has been placed before that court in considering whether this court should grant an eviction order. I am not persuaded that sufficient grounds exist upon which this court should grant an order staying the eviction order pending outcome of the High Court proceedings.

[18] I have already referred to some of the common cause facts before the South Gauteng High Court: The respondents concede that an offer to purchase was entered into on 10 September 2013 between the respective parties. The respondents also concede that they had appointed George Wolfe Attorneys to attend to the transfer of the property. The respondents also do not deny that they have signed the deed of transfer, the merely claim that they cannot remember having signed the documents. This allegation is, however, disputed by the applicant and George Wolfe Attorneys. The respondents also do not deny that the applicant had paid the purchase price. According to them at one stage they had informed their attorney that they no longer wanted to sell the property and instructed him to cancel the property. This allegation however does not take the matter any further for the respondents: The parties have entered into a valid sale agreement, the respondents have signed the transfer documents and they have received the benefit of the purchase price. The contract is therefore perfecta and could therefore not have been cancelled in the absence of a material breach of the contract entitling the respondents to cancel.

[19] Again, although I am mindful of the fact that this court is not seized with the merits of the dispute pending before the South Gauteng High Court, it does appear from a cursory consideration of the merits of that case that the respondents' prospects of success in succeeding with their claim is at best for them tenuous. I am therefore not persuaded that the eviction order should be stayed

pending the outcome of those proceedings.

[20] I have also considered whether there are any other relevant factors as envisaged in the PIE Act that should be taken into account. The only factor placed before the court is the fact that the respondents are 59 and 57 years old respectively and can therefore not be considered as elderly.

[21] I can therefore find no reason not to grant the order for the eviction of the respondents.

[22] In the event the following order is made:

1. The first and second respondents and all persons occupying through the first respondent are evicted from the property situated at Erf [...], Yeoville, Johannesburg (... P. Street, Yeoville) within 14 days from service of this order failing which the Sheriff for the area within which the property is situated is authorized to evict the first and second respondents and all persons occupying through them from the property.
2. The first and second respondents are ordered to pay the costs of this application jointly and severally, the one paying the other to be absolved.

AC BASSON

JUDGE OF THE HIGH COURT

Appearances:

For the applicant : Adv K Fitzroy

Instructed by : Lacante Henn Incorporated

For the respondents: Adv B Metu

Instructed by : Savage Jooste & Adams Inc.

[1] Act 19 of 1998.

[2] 2003 (1) SA 113 (SCA).

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