
SOUTH AFRICA / JUDGMENT

Hlatswayo and Another v Mathabathe and Others (29569/2015) [2015] ZAGPPHC 669 (17 September 2015) [2015] ZAGPPHC 669

COURT

North Gauteng High Court, Pretoria

BEFORE

Mali

CASE / FILE NUMBER

29569/2015

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 29569/2015

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

REVISED

In

the matter between:

DATE: 17/9/2015
FRANK
ALBERT HLATSHWAYO
First Applicant
MARYJANE
NTOMBIZODWA
HLATSHWAYO
Second
Applicant
and
GILBERT
KLEINBOY MATHABATHE
First Respondent
ALL
UNLAWFUL OCCUPIERS
OF
ERF 1967
BLOCK
H,
SOSHANGUVE
Second Respondent
THE
CITY OF TSHWANE MUNICIPALITY
Third
Respondent

JUDGMENT

MALI AJ

- [1] This is an application in terms of the provisions of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (“the PIE Act”). The applicants seek eviction of the respondents from Erf 1967 Block H, Soshanguve, Pretoria (“the property”).
- [2] It is common cause that the applicants bought the property from one Levy Ngomane (“Ngomane”), a duly appointed executor of the estate of the late Bie Paulinah Mathabathe (“Paulinah”). Ngomane and the first respondent are the children of the late Paulinah.
- [3] The issue to be determined is whether respondents are in unlawful occupation of the property and must therefore be evicted.
- [4] It is trite law that no one may be evicted from their home without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary eviction^[1] and it is in this regard that the PIE Act was enacted to regulate the eviction of unlawful occupiers from land in a fair manner whilst recognizing the rights of land owners.

- [5] In terms of s 4(1), 4(2), 4(3), 4(4) and 4(5) of the PIE Act, certain procedural and formal requirements have to be complied with before the court will consider granting an eviction order. In

this matter the application is brought on the basis that the applicants are the owners of the property.

- [6] Section 4(7) of the PIE Act provides:

“if an unlawful occupier has occupied the land in question for more than six months from 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, except where the land is sold in a sale of execution pursuant to a mortgage, whether 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, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”

- [7] Section 4 (8) of the PIE Act provides:

“if the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
- (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

- [8] The respondents refuse the applicants to take occupation of the property. The respondents' argument is that Ngomane was

fraudulently appointed as an executor. They further stated that the first respondent is the co-heir with Ngomane in the estate of the late Paulinah. He is therefore entitled to a share in the property because of the Law of Succession.

- [9] The respondent's contention that the sale, transfer and registration of the property to the applicant was done fraudulently and illegally is not a factor that must be considered by this court when considering whether or not to grant the eviction order.[2] The only consideration is that the court must if it is satisfied that all the requirement of S4 (8) of the “PIE ACT” have been complied with and that no valid defence has been raised by the unlawful occupier, grant an order for the eviction of the unlawful occupier.

- [10] The respondent/s must approach the appropriate forum in order to have the decision of the Master or the sale of the property set aside. Until then; the letters of executorship is valid and the sale of the property is effective. In *Oudekraal Estates (Pty) Ltd v City of Cape Town & Others* 2004 (6) SA 222 SCA, at 242 A-C the Honourable Howie P et Nugent JA held that “until

the administrator's approval, (and thus also consequence for the approval) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern State would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."

- [11] In *Davids and Others v Van Straaten and Others* [2005] ZAWCHC 16; 2005 (4) SA 468 (C) the following was stated:

"that the magistrate had had before him all the relevant circumstances to make a proper finding, including the fact that the respondents were the owners of the premises, that the leases had been terminated in compliance with the provisions of the Rental Housing Act and of PIE and that the tenants were holding over. He furthermore had had before him information as the personal circumstances of the applicants. [484 F-G] The respondents had been indirectly expropriated of their land by the conduct of the applicants, and that this was an example of the serious abuse which PIE could give rise. That it was upon consideration of all the relevant circumstances, just and equitable

that the parasitic occupation by the applicants of the respondent's property had to be terminated and the applicants evicted from the premises".

- [12] Having regard to the above I find that all the requisites for the eviction of the respondents has been satisfied. The respondent/s has failed to raise a valid cause entitling him to remain in occupation of the property as against the applicants, the owners of the property.
- [13] I am satisfied that the first respondent is in unlawful occupation of the property and has raised no valid defence against his eviction.

ORDER

1. The first respondent and all other occupants, if any, who occupy the property situated at 1967 BLOCK H, SOSHANGUVE GAUTENG PROVINCE ("the property") by virtue of the first respondent's occupation thereof, are ordered to vacate the property on or before 15 October 2015, further that the sheriff is authorised to remove the structures from the property.
2. In the event of the first respondent and all those who occupy the property as referred to in 1 above, under and by virtue of the respondent's occupancy, failing and/or refusing to vacate the property on the date so ordered in 1 above, the Sheriff or his Deputy is authorised to enter upon the property as from 8h00 on 16 October 2015, or any time thereafter, to evict the first respondent and all those who occupy the premises under or by virtue of the first respondent's

occupancy.

3. The first respondent is ordered to pay the costs of this application.

MALI AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

Counsel for the Applicant:

Adv J C C Nkosi

Instructed by:

MWIM ATTORNEYS

Counsel for the second Respondent: Adv N P Maswanganye

Instructed by:

MTIMKULU-KWINANA ATTORNEYS

Date of Hearing:

8 September 2015

Date of Judgment:

17 September 2015

[1] *ibid*

[2] S4

(8) of the “PIE Act”

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