

SOUTH AFRICA / JUDGMENT

J.M.K v W.A.S.B (046725/2023) [2023] ZAGPPHC 1881 (9 November 2023)

[2023] ZAGPPHC 1881**COURT**

North Gauteng High Court, Pretoria

BEFORE

C Marumoagae

CASE / FILE NUMBER

046725/2023

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Policy**REPUBLIC****OF SOUTH AFRICA****THE****HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****CASE****NR: 046725/2023****(1)****REPORTABLE:**

YES/NO

(2)

OF INTEREST TO OTHER JUDGES YES/NO

(3)

REVISED:**DATE:**

09 November 2023

SIGNATURE:

In

the matter between:

J[...]
M[...] K[...]
APPLICANT
and
W[...] A[...] S[...]
B[...]
RESPONDENT

Delivered:

This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 09 November 2023.

JUDGMENT

MARUMOAGAE AJ

A

INTRODUCTION

- [1] In this application, the parties married each other out of community of property with the application of the accrual system in 2019, their marriage still subsists. The Applicant brought this application on an urgent basis seeking an order for the Respondent to be evicted from the immovable property, which for the better part of their short marriage was their matrimonial house. This property is owned by the Applicant.
- [2] The Respondent opposes this application.
- [3] The court is required to determine whether the application is urgent. Should the court find that the application is urgent, it is required to decide whether the Applicant can evict the Respondent from her property without complying with the procedure provided for in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

B URGENCY

- [4] I heard the arguments on behalf of both parties on the question of urgency and the merits together.

- [5] On the one hand, the Applicant alleges that the urgency of this application arises from the imminent registration of the Applicant's house. The new owner should take occupation on the date of registration but will not be able to do so if the Respondent is still occupying the property. The registration was to be effected within 5 or 7 days after the date this application was launched. The Respondent refused to vacate the property despite being requested to do so on several occasions.
- [6] According to the Applicant, the Respondent continuously attempts to frustrate the sale of her house. She is worried that the Respondent will still be occupying the house on the date of transfer, thereby making it difficult for the purchaser to be provided vacant occupation.
- [7] The Applicant alleges that she informed the Respondent that the property was sold at the beginning of September 2023. Further, the transfer was estimated to take place by the end of October 2023. However, the Respondent refused to vacate the house unless the Applicant agreed to his demands. The Applicant alleges that if the matter is not heard on an urgent basis, she will not have substantial redress in due course because the transfer was estimated to take place by 27 October 2023.
- [8] The court was referred to clause 3 of the offer to purchase. This clause reads:
- ‘[p]rovided the Purchaser has paid all costs, signed all necessary bond and transfer documents, delivered such guarantees as may have been called for and is not otherwise in breach of any of the provisions hereof, the right of occupation of the property shall be given to and taken by the Purchaser at Midday on REGISTRATION OF TRANSFER. If the date of occupation does not coincide with date of transfer the party enjoying the right of occupation whilst the property is registered in the name of the other party shall, in consideration thereof, and for the period of such occupation, pay the seller rent of R 30 000.00 monthly in advance from date of occupation’.
- [9] It was submitted that this clause should be interpreted as demanding that the purchaser should be provided vacant occupation within a reasonable time. Further, should the seller not be provided a vacant occupation on the date of transfer, the deal may be called off, thereby prejudicing the Applicant.
- [10] On the other hand, the Respondent alleges that this application is not urgent because the offer to purchase was signed on 30 July 2023. The Applicant delayed in bringing this application and has not provided an account of what caused the delay.
- [11] The Respondent alleges further that it was only on 17 October 2023 that the Applicant's legal representative instructed the transferring attorneys to lodge registration papers on 18 October
2023. It is alleged that the transfer of the property was constructed by the Applicant's legal representative. Thus, the urgency is self-created. Further, the Applicant failed to explain why the transfer was rushed in October while the agreement was signed in July 2023.

- [12] The Respondent alleges further that because the agreement required guarantees made therein to have been delivered 30 days after the agreement was signed, the Applicant failed to demonstrate that the bank guarantees for the purchase price had been received by the Applicant as the seller. The Respondent also alleges that the offer to purchase agreement neither made provision for vacant occupation nor contained any warrantee that upon the date of transfer, the property shall be vacant and that the Respondent should be evicted from the property.
- [13] The Respondent alleges further that the above-quoted clause does not guarantee vacant occupation of the property. There is also no evidence that demonstrates that the purchaser insisted on a vacant occupation. Further, there is no evidence before the court that the Applicant complied with the suspensive conditions contained in the offer to purchase agreement. It was submitted on behalf of the Respondent that these factors demonstrate that some of the terms of the agreement were not complied with to justify this agreement being used to establish urgency.
- [14] Rule 6(12)(b) of the Uniform Rules requires the Applicant to set forth explicitly:
- [14.1] the circumstances that render the matter urgent; and
- [14.2] the reasons she claims that she cannot be afforded substantial redress at a hearing in due course.
- [15] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[1] paras 6, it was stated that:
- ‘... the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.
- [16] The alleged urgency is based on the date of transfer of the Applicant’s house into the name of the purchaser. It is interesting to note that there is nothing provided to the court that seems to suggest that the purchaser is anxious to have the property transferred into their name. There is no evidence placed before the court that suggests that the purchaser exerted pressure on the Applicant to transfer the property within a ‘reasonable time’ as alleged, failing which they will not go through with the sale.

- [17] It is not clear why the Respondent was not told before the offer to purchase agreement was signed that the property would be sold to afford him an opportunity to seek alternative accommodation. There is also no explanation, given the fact that the offer to purchase was signed on 30 July 2023, why the Respondent was not immediately informed that the house has been sold.
- [18] According to the Applicant, the Respondent was only informed in September 2023 that the property was sold. Given the fact that the offer to purchase agreement had already been signed on 30 July 2023, why did the Applicant wait until the end of October 2023 to institute an urgent application when it was clear from September 2023 that the Respondent did not intend to vacate the property?
- [19] I agree with the Respondent that the urgency is self-created. The fact that the Applicant desires the matter to be resolved urgently does not render the matter urgent. Put differently, the fact that the Applicant wants the Respondent to urgently vacate the property so that the property can be sold to allow her to effectively cut ties with the Respondent and relocate to her new undisclosed residence without having to worry about the upkeep of the property does not render the matter urgent.
- [20] The Applicant's sense of urgency to finalise this matter is clearly demonstrated by her general approach. She made it clear that she approached this court because she could not wait for the order of the magistrate's court in the domestic violence case to be issued. Apparently, there is a possibility that the Respondent can be ordered to vacate the Applicant's property by the Magistrate's Court. The Applicant appears to have pressured her legal representatives to find a quick solution to her dilemma. She needs to sell the property because she has relocated to the Western Cape. Unfortunately, this is not the basis upon which cases can be heard on an urgent basis by this court.
- [21] Most importantly, she clearly wants a clean break from the Respondent. Given the parties' ongoing divorce proceedings, the Applicant cannot be faulted for wanting a clean break from the Respondent, but that cannot be done at the expense of this court and its processes given the heavy roll with which the court is confronted. An urgent court is not a court of convenience but a court that is designed specifically to come to the rescue of litigants who cannot, objectively speaking based on a seriously prejudicial or threatening event, wait to be heard in the ordinary course. This is not a court that is designed to come to the rescue of impatient litigants.
- [22] There is nowhere in the offer-to-purchase agreement where the purchaser is guaranteed a vacant occupation. Clause three of the agreement cannot be interpreted as entitling the purchaser to vacant occupation. If this was the intended outcome, the parties should have explicitly stated this in the agreement. It may well be that the Applicant is obliged to provide the purchaser control of the property on the date of registration, but this does not necessarily refer to vacant occupation. The fact that there was no clause in the agreement that explicitly dealt with the issue of vacant occupation makes it difficult for the Applicant to

rely on vacant occupation as a ground to establish urgency.

[23] Considering that there is no evidence suggesting that the purchaser is in a hurry to effect the transfer and to gain occupation, it is not clear why would the Applicant not get substantial redress if this application is heard in due course. I am not convinced that there is an absence of substantial redress in due course. In my view, the Applicant failed to demonstrate that she requires immediate assistance from this court, and that if this application is not heard earlier than it would be in due course, any order that she might be granted at a later stage will be by then no longer be capable of providing her with the legal protection she requires.

C

CONCLUSION

[24] Given the fact that the Applicant failed to satisfy the requirement of urgency, sadly the merits of this application cannot be entertained and decided in this judgment. I am of the view that the relief sought by the Applicant does not necessitate this court's urgent attention.

[25] The rule of practice is that costs follow the results.

D ORDER

[26] In the result, I make the following order:

[26.1] The application is struck from the roll.

[26.2] The applicant is ordered to pay the costs of this application.

C MARUMOAGAE AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

PRETORIA

COUNSEL FOR THE APPLICANT: Adv T Ellerbeck INSTRUCTED BY: Dawie Beyers Attorneys

COUNSEL FOR THE RESPONDENTS: Adv AJ Schoeman INSTRUCTED BY: Shapiro & Haasbroek

Inc DATE OF THE HEARING: 01 November 2023 DATE OF JUDGMENT: 09 November 2023

[1] (11/33767) [2011] ZAGPJHC 196 (23 September 2011) para 6.

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