

SOUTH AFRICA / JUDGMENT

Lebone Mpilo Take Aways CC and Another v Maqelepo and Another (14867/2011) [2011] ZAGPJHC 169 (18 August 2011) [2011] ZAGPJHC 169

COURT

South Gauteng High Court, Johannesburg

BEFORE

Willis

CASE / FILE NUMBER

14867/2011

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IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 14867/2011

DATE: 2011-08-18

In the matter between

LEBONE MPILO TAKE AWAYS CCFirst Applicant

NKHI NOMBUYISELO SIGNORASecond Applicant

and

ISAAC MAQELEPO.....First Respondent

OLD FASHIONED FISH & CHIPSSecond Respondent

J U D G M E N T

WILLIS; J:

- [1] This is an application which is balanced by a counter application. There is an application to stay eviction proceedings, pending the institution of an action by the applicants namely Lebone Mpilo Take Aways CC and there is a counter application for their eviction. The case relates to certain commercial premises, in the Motsewa Lijane Shopping at the corner of Hospital and Moseu Street ,Katlehong.

[2] It is common cause that Lebone Mpilo Take Aways are lessees of premises owned by the first respondent. All that is really in dispute is the period for which the relevant lease agreement is to run. The version of the landlord is that the agreement commenced in December 2007 and expired on 30 November 2010.

[3] In this regard the landlord relies upon a written agreement which, it is common cause was unsigned. The lessee, however, says

that there was another agreement entered into in terms of which the lease was extended to 30 September 2012. There is no written

documentation recording this variation. There is as I say an unsigned document which records the lease as having expired in November 2010.

[4] The lessee is applying for rectification of the agreement and wishes to remain in the premises pending a trial action which will resolve the question of the rectification. This simply cannot hold. There is a formidable onus to discharge. It does not seem to me, *prima facie*, that there was such an agreement. At common law the agreement would run on a month to month basis, because that is the basis upon which the lessee has, in the past, been paying rental. In fairness to the lessee must be recorded is paying rental at the moment in the sum of R9 000- a month.

[5] It is common cause that the landlord has given more than one month's notice to the lessee, requiring the lessee to vacate the

premises. Accordingly, it seems to me that the landlord has to succeed in obtaining the eviction order.

[6] I am not entirely without sympathy for the lessee. It has, after all, been paying rental. I do not see why it should be penalised

with a punitive costs order. I consider it only fair, in all the circumstances, that the lessee should be given until 30 September

2011 to vacate the premises. I have asked counsel for the landlord to prepare a draft which will be marked "X", which will reflect my intention, namely that the application to stay eviction be dismissed and that the lessee be evicted, but that the date of eviction is to be 30 September 2011 and that the first applicant only (that is Lebone Mpilo Take Aways CC) which is to pay costs on an ordinary scale.

[7] Later during the course of the afternoon I came to receive a draft marked "X". It has been initialed by me. That is the order of the court.

Counsel for the applicants: Adv K Mnyandu

Attorneys for the applicants: Bongani Khoza.

Counsel for the first respondent: Adv. J G Dobie

Attorneys for the first respondent: Riaan Swanepoel.

No appearance for second respondent.

Date of hearing: 18 August 2011.

Date of judgment: 18 August 2011.

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