

SOUTH AFRICA / JUDGMENT

Mabotja N.O v Moabelo (4638/2021) [2024] ZALMPPHC 158 (30 October 2024)

[2024] ZALMPPHC 158

COURT

Limpopo High Court, Polokwane

BEFORE

KL Pillay

CASE / FILE NUMBER

4638/2021

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 4638/2021

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED Y-ES/NO

30/10/2024

In

the matter between: LUDWICK
 MOLOGADI MABOTJA N.O
 APPLICANT
 And
 MAMOLOKO
 ELSIE MOABELO
 FIRST
 RESPONDENT
 MOGALAKWENA
 MUNICIPALITY
 SECOND
 RESPONDENT
 Heard
 16
 October 2024
 Delivered
 :
 30
 October 2024 by circulating to the parties'
 legal
 representatives

JUDGEMENT

PILLAY AJ

INTRODUCTION

- [1] The Applicant in this matter seeks an order of eviction of the First Respondent and all those who occupy the property through her, from the Erf 1[...] Mahwelereng- B Township. Direction in regards to service of the Section 4(2) notice in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (hereafter referred to as the PIE Act) was sought and granted on the 20 July 2021.
- [2] The application is opposed by the First Respondent. The Second Respondent is joined to the proceedings in compliance of the PIE Act concerning being made aware of the application and for the purpose of considering accommodation being made available to the First Respondent if necessary.

BRIEF

BACKGROUND

- [3] The Applicant was appointed as receiver and liquidator, to divide the joint estate of Mr Madimetja Jacob Maobela and the First Respondent.

This was as per the Court Order dated the 16 October 2015, in respect of the application for the appointment of a Liquidator which was sought by the First Respondent.

- [4] According to the order of Court, the Applicant duly appointed as liquidator, "shall have full powers and responsibilities to receive, liquidate and distribute all assets in the joint estate."
- [5] The property in issue is an asset of the joint estate registered in the names of the First Respondent and Mr Madimetja Jacob Maobela. The Applicant in executing his duties was obliged to sell the property, whether by private treaty or public auction, whichever was most beneficial to the estate. Both the First Respondent and Mr Madimetja Jacob Maobela had the opportunity to bid for and buy the said property. The Applicant's duty is to pay the liabilities of the joint estate, prepare a final account between the parties and distribute the net proceeds of the joint estate in accordance with the account.
- [6] To date this has not materialised due to various factors including the conduct of the First Respondent, who refused to vacate the property for the purpose of the said sale. There was an initial purchase of the property by a third person, who ultimately vacated the property on account of the threat of violence and damage to the property. The application sought is in terms of Section 4 of the "PIE Act".
- [7] The application was served on the First Respondent informing her of the impending eviction application, being sought by the Applicant and affording her an opportunity to respond to same. The First Respondent filed a Notice to oppose and her answering affidavit to the allegations. Briefly she highlights the following as grounds for why the application should be dismissed;
 - [7.1] The Applicant had no basis for the eviction as the property is currently registered in her former husband and her name, as such she is a co-owner of the property until the division of the joint estate.
 - [7.2] That the provisions of "the PIE Act" states "owner" which means registered owner and as such she is excluded as being "an unlawful occupier" in terms of the said Act.
 - [7.3] That the application is premature as the property can be sold on auction and she would have every right to bid for the purchase of the property and until the property is sold she cannot be considered, as not being the registered owner.
 - [7.4] That the Applicant failed to comprehend that the act, provides that the person in charge is not the only one empowered, to give consent for occupation of the land and or property, and as the owner, she does not require consent to occupy the property.
 - [7.5] That the Applicant has failed to make out a case for the eviction of the First Respondent and the application should be dismissed with costs.

[8] The Applicant's locus standi was not disputed by the First Respondent nor his authority as per the Court Order dated the 16 October 2015 to liquidate the joint estate. The only issue was the authority of the Applicant to seek an eviction order

against the First Respondent, which was breaching and undermining her lawful right to occupy.

THE APPLICABLE LAW

[9] Section 26 of the Constitution provides:

"(1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant

circumstances. No legislation may permit arbitrary evictions."

[10] Section 4(1) of the "PIE ACT" states;

"Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier."

Section 4(7) states;

"If an unlawful occupier has occupied the land in question for more 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, 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.

Section 4(8) states;

"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).

- [11] From the accepted facts the First Respondent does not dispute being in occupation of the said property. The unlawfulness of her occupation is in dispute. The First Respondent argued that this Court is not competent to grant the application sought in light of the fact that the property has not been sold and therefore according to the registration documents, she is the lawful owner.
- [12] The First Respondent argued that the test for an order to be just and equitable demands for the balancing of the interests of the owner of the property and that of the occupier. In light of the fact that the owner is the occupier it would not be just and equitable for the infringement of the owner's right of occupation.
- [13] In response the Applicant highlighted that the First Respondent failed to comply with the Rule 41A(2)(b) Notice which was to accompany the Notice to oppose, which was an irregular process, resulting in the First Respondent's opposition being defective and improper and begs for it to be dismissed with costs. The Applicant further argued that the division of the joint estate was long overdue, and being hindered, solely by the reprehensible conduct, of the First Respondent who, has always benefited alone since she is occupying the property, to the exclusion of Mr Madimetja Jacob Maobela, the other registered owner, who has had no benefit, of her occupying this property, to his prejudice. That despite the allegation of being a co-owner of the property, she is still in unlawful occupation, as she continues to occupy the property without his consent, tacit, express, or otherwise, especially as he is the person in charge of the property. He sought the Court to grant the order as prayed for in the notice of motion.

EVALUATION

- [14] The crisp issue to be considered is whether the grounds raised by the First Respondent would entitle her to have this application dismissed based on her alleged lawful occupation through the title deed. It is trite that as an owner of property your right is limited, in circumstances where the authorisation and control over the property, vests in a third person, whose role it is to liquidate this joint estate, amidst the title deed having your name reflected therein.
- [15] The Applicant in his capacity as a receiver and liquidator is allowed a wide equitable discretion to achieve a result which is both fair to the parties and sensible in the circumstances of each case when liquidating and dividing the estate or a partnership practice. (See Van Onselen NO v Kgengwenyane 1997 (2) SA 423 (BSC) at 429 F -H.)
- [16] It is not disputed that the First Respondent sought the Court's intervention, in the appointment of the liquidator. I may mention, that after the appointment of the Applicant to receive, liquidate and distribute the joint estate, the First Respondent and Mr Madimetja Jacob Maobela, were divested of the joint estate and their only interest in the same became pure financial in nature. The said appointment came as a last measure to ensure fair division, after the parties had failed to attain the same on their own.

- [17] Since his appointment in 2015, this process has not been finalized. The Applicant took the Court into his confidence indicating the challenges he faced, trying to dispose of the property, forcing him as a measure of last resort, to approach the Court in terms of the provisions of PIE. He highlighted that the property was auctioned, a buyer, moved into the property, and was forced to vacate same. This was not disputed by the First Respondent. It is important to note that at some point the First Respondent, had vacated the property, to allow for the buyer to occupy. It is not disputed that flowing from the buyer, vacating the property, she had returned to occupy the property.
- [18] The First Respondent, instead of placing before the Court all aspects relevant for the determination of whether it is just and equitable for her to be evicted, she bemoans the locus standi of the Applicant and her right in law to remain in occupation of the property. Her interpretation of owner as identified in PIE is misconstrued, as much as her details are contained on the title deed as co-owner, she relinquished these rights on the appointment of the liquidator.
- [19] The liquidator is in charge of the property by virtue of his appointment as the liquidator, receiver and divider of the joint estate. In terms of PIE, he is in charge of the property for the eviction of an unlawful occupier. The First Respondent is in unlawful occupation due to the fact that she refuses to vacate the property, amidst the various attempts made by the Applicant to execute his mandate.
- [20] I am satisfied that the First Respondent's defence raised is without merit and that the First Respondent and those occupying the property with her are doing so without the consent of the Applicant and their occupation is accordingly unlawful.

COMPLIANCE WITH PIE

- [21] The First Respondent has placed no information before this Court concerning her circumstances and those occupying through her. Her answering affidavit is silent to the provisions of Section 4(7) or 4(8) relying only on the right that she holds in respect of the title deeds. The Court appreciates that this property is to be sold for the role of the Applicant to finalize the liquidation and provide vacua possessio to the purchaser, render the statement of account to the parties, and make the relevant payments to them equally of the net proceeds.
- [22] The arguments raised concerning the application being premature is without merit as clearly from the evidence placed before the Court by the Applicant, the sale of the property was not successful, on account of the resistance posed by the First Respondent, and all those occupying through her. Moreover, the Applicant further alleged that the First Respondent expressed resistance in respect of a future sale of the property by auction which would further hinder the Applicant in finalizing his mandate.

[23] In these circumstances, it is just and equitable for the order of eviction to be granted in favour of the Applicant as prayed for in the Notice of motion. From the accepted

facts

the First Respondent resides in the premises with her family. It is not clear the circumstances in respect of the other occupiers who could be impacted in respect of the timeframe on which the First Respondent is to vacate the property.

RULING

[24] In conclusion, the requirements for an eviction have been met, in the case of a private individual, seeking the eviction of the First Respondent, the Court must grant that eviction. At most, the factors outlined in PIE are to be considered in conjunction with the time period in which the First Respondent is allowed to vacate the property, prior to the authorisation of the Sheriff to evict her.

[25] The Court is satisfied that the Applicant has set forth the requirements for an eviction. The First Respondent is not the lawful owner of the property for the purpose of this application, the Applicant is duly empowered to seek the eviction. The First Respondent is unlawfully in occupation, at the abovementioned property. The Applicant is therefore entitled to the order as prayed for in the Notice of motion.

COSTS

[26] In respect of costs, I took note of the First Respondent's answer to this very serious issue and the manner in which she conducted her opposition of the proceedings. As indicated above she raised a question of law and failed to address the

issues

relevant to justify her continued occupation. It would not be proper to burden the joint estate with a cost order in these circumstances.

ORDER

[27] In the result I make the following order:

[27.1] The First Respondent and all persons claiming any right or interest to occupation under the First Respondent are evicted from the property situated at Erf 1[...], Mahwelereng- B Township.

[27.2] The First Respondent and all those persons who have rights on the property through the First Respondent, are to vacate the property situated at Erf 1[...], Mahwelereng- B Township, within 30 days of service of this order on the First Respondent.

[27.3] The Sheriff of the Court is authorised to evict any person who does not within 30 days after service of this order vacate the property situated at Erf 1[...], Mahwelereng- B Township.

[27.4] The First Respondent is liable to pay the costs of this application including the costs of the ex-parte application.

KL Pillay

ACTING JUDGE OF THE HIGH COURT, POLOKWANE;

LIMPOPO DIVISION

APPEARANCES

FOR THE APPLICANT: INSTRUCTED BY: Mr LM Mabotja Makwela & Mabotja Attorneys FOR THE RESPONDENT : INSTRUCTED BY : Charles Malatjie Oupa Manki Thabethe DATE OF HEARING: DATE OF JUDGEMENT: 16 October 2024 30 October 2024

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