

SOUTH AFRICA / JUDGMENT

Magaiza and Another v Manzana and Others (2022-18440) [2023]

ZAGPJHC 1239 (16 October 2023)

[2023] ZAGPJHC 1239

COURT

South Gauteng High Court, Johannesburg

BEFORE

GC Wright

CASE / FILE NUMBER

2022-18440

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION,

JOHANNESBURG

CASE

NO: 2022-18440

NOT REPORTABLE

NOT OF INTEREST TO

OTHER JUDGES

REVISED

16/10/23

In the matter between:

MAGAIZA,
CHARLES
1ST
APPLICANT
MAGAIZA,
JULIANA IPAISHE
2ND
APPLICANT
And
MANZANA,
BUSISIWE
1ST
RESPONDENT
ALL
OTHER OCCUPIERS OF 30 INYANGA,

2
SIMBA ROAD, SUNNINGHILL
2ND
RESPONDENT
THE
CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY
3RD
RESPONDENT

JUDGMENT

WRIGHT J

1. The applicants own an immovable residential property. The 1st respondent woman, who has an eight year old son, rented the property. The applicants cancelled the lease for want of payment of rent. They seek the eviction of the respondent and any other unlawful occupiers.
2. The application was launched within a month of the respondent being required, post cancellation of the lease, to vacate. Hence, section 4(6) of PIE applies. The Municipality has been cited and served with the application.
3. The respondent admits falling behind with rent. She says that her business suffered because of covid and its lockdown. She says that she is currently unemployed. In court, before me, Ms Manzana said that she is an admitted attorney. She sought a postponement on the basis that her advocate was not available until next year. Ms Manzana told me from the Bar that she last paid rent in 2021.
4. She says that the applicants are illegal foreigners and that for this reason they have no legal standing to evict her. This defence is not readily understood. The applicants deny these allegations.
5. Ms Manzana says that because the applicants were illegal foreigners the agreement under which they bought the property is illegal and that the bondholder, Nedbank should have been joined in the present application. Ms Manzana confirmed in open court that there is a bond over the property and that the applicants are the owners.
6. Ms Manzana submitted repeatedly in argument that her lease was null and void.
7. I asked Ms Manzana how she could stay on the property if her lease was invalid. She quite understandably had no answer. She said that she has a claim against the applicants for money paid to them as rent. Ms Manzana suggested that she can't be evicted if Nedbank has not been joined. I disagree. It is difficult to see how Nedbank has a legal interest in an eviction. It may be that Nedbank had an interest in the lease in the first place, if Ms Manzana is correct.

8. The respondent says that strange men harassed her, apparently in an attempt to evict her. The applicants deny knowledge of this.
9. The applicants bought the property some years ago as an investment and they claim financial loss caused by the respondent's continued occupation and non-payment of rent.
10. The respondent does not say, in her two answering affidavits, that she or her son will be rendered homeless by an eviction. The rent that the respondent was paying was, at one stage, R9 975 per month. This is by no means at the bottom end of the market. It would appear that the respondent, if evicted can afford other accommodation. Ms Manzana stated from the Bar that she and her

son will be homeless if an eviction is ordered. This allegation is not found in either answering affidavit, including a supplementary

affidavit filed a month ago. In my view, Ms Manzana will not be rendered homeless by the order sought.

11. The City has not done a report on alternative accommodation as section 4(6) of PIE applies, rather than section 4(7).
12. There is no defence to the application and it is just and equitable that those in occupation be evicted. To postpone the matter now would be unfair to the applicants.

ORDER

1. X –

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 16 October 2023

DELIVERED : 16 October 2023

APPEARANCES :

APPLICANTS

Adv Baheeyah Bhabha

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Instructed by Bruno Simao Attorneys

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RESPONDENTS

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Prepared on 9 October 2026 · Esheria