

SOUTH AFRICA / JUDGMENT

Mampuru v Matsimela and Others (49982/12) [2017] ZAGPPHC 649 (24 February 2017) [2017] ZAGPPHC 649

COURT

North Gauteng High Court, Pretoria

BEFORE

Barnes AJ

CASE / FILE NUMBER

49982/12

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IN

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, PRETORIA)

Case

No: 49982112

Not

reportable

Not

of interest to other judges

Revised.

In

the matter between:

SELBY
SEGOPOTSE
MAMPURU Plaintiff
and
REFEDILE
TURNER
MATSIMELA First
Defendant
ALL·UNLAWFUL
OCCUPIERS
OF Second
Defendant
ERF
[...] MAHUBE VALLET EXT 3
MAMELODI
EAST
TSHWANE
LOCAL
MUNICIPALITY Third
Defendant
Dates
of Hearing: 25 August 2016, 26 August 2016, 3 October 2016, 24
October 2016 ·
Date
of Judgment: 24 February 2017

JUDGMENT

BARNES AJ

Introduction

1. In this action, the plaintiff and the first defendant both claim title to erf [...], Mahube Valley, Ext 3, Mamelodi East ("the property"). The property has been registered In the plaintiff's name since May 2008. Priorto that it was registered in the name of the first defendant who still occupies it.
2. The plaintiff seeks the eviction of the first defendant from the property In terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Acf") and damages. The first defendant contends that the property was transferred into the plaintiff's name fraudulently. He opposes the eviction action and counterclaims for the transfer of the property back into his name.

The Evidence

3. The plaintiff, Mr Mampuru, is a practising attorney. He gave evidence and called Mr Collins Serepong, an estate agent, to testify on his behalf. The first defendant, Mr Matsimela, is a police officer. He testified on his own behalf.

The Plaintiffs Case

The Evidence of the Plaintiff: Mr Mampuru

4. The story begins in May 2005. Mr Mampuru was looking to purchase a home In Mamelodi and engaged the services of Mr Collins Serepong, an estate agent operating under the name and style of Timcol Properties In Mamelodi.
5. In June 2005, Mr Serepong identified the property as one which met Mr Mampuru's requirements. It was owned by the first defendant In late June 2005, Mr Serepong took Mr Mampuru to view the property. The first defendant was present during the viewing and showed the two around.
6. Mr Mampuru was keen to purchase the property and communicated this to Mr Serepong. On 28 June 2005, a day or two after the viewing, the two met in order to prepare a written offer to purchase. The meeting was held at Mr Mampuru's home. Mr Serepong arrived with an agreement of sale printed on a Timcol Properties letterhead. The agreement was a standard form one which made provision for the insertion of the specific details of each sale such as the property description, the purchase price, the personal details of the buyer and seller and so forth. Mr Serepong had inserted the proposed purchase price of the property In the agreement by hand. This was R185 000.00
7. At the meeting on 28 June 2005, Mr Serepong took Mr Mampuru through the agreement and, in his presence, inserted the other applicable details of the proposed sale by hand. This included Mr Mampuru's personal details, but excluded the personal details of the first defendant. Mr Mampuru then, in Mr Serepong's presence, initialled every page of the sale agreement and signed and dated the last page thereof.
8. A few days later, Mr Serepong informed Mr Mampuru that the first defendant had accepted his offer to purchase and delivered a copy of the sale agreement signed by the first defendant to Mr Mampuru at his home.
9. The signed agreement contained the first defendant's personal details, inserted in Mr Serepong's handwriting. These recorded, Inter alia, that the first defendant was unmarried. The signed agreement bore the first defendant's initials and his signature on the last page. The signed agreement had however not been properly dated by the first defendant In that while the day "2911 had been inserted on the signature page, the month and year had been left blank.

10. In terms of clause 13.1 of the agreement, the sale was conditional upon Mr Mampuru obtaining a bond for the full amount of the purchase price within a month of signature. Mr Serepong assisted Mr Mampuru with the bond application process and, pursuant thereto, made arrangements for Absa Bank and Nedbank to value the property.
11. On 23 August 2005, Mr Mampuru obtained a bond for the full amount of the purchase price from Absa Bank. Thereafter, Mr Mampuru attended at the offices of the transferring attorneys, Stopforth Swanepoel and Kruger Inc, where he signed the transfer documents.
12. Some time passed and the first defendant did not sign the transfer documents. When Mr Mampuru contacted the transferring attorneys and queried the delay, they informed him that the first defendant had refused to sign the transfer documents.
13. At no stage was Mr Mampuru informed by Mr Serepong or anyone else that the first defendant wished to cancel the sale agreement.
14. On 11 November 2005, Mr Mampuru sent a letter to the first defendant by registered post. The letter demanded that the first defendant sign the transfer documents within ten days, failing which Mr Mampuru would approach a court for an order compelling him to do so. No response was received to this letter.
15. On 11 October 2006, Mr Mampuru brought an application in this Court for an order declaring the first defendant to be in breach of the sale agreement and compelling him to sign the transfer documents. The first defendant did not oppose the application. The order was granted on 1 March 2007. The order was served on the first defendant personally by the sheriff on 21 May 2007. The first defendant failed to comply with the order.
16. On 18 September 2007, Mr Mampuru brought an application in this Court for an order authorising the sheriff to sign the transfer documents in the first defendant's stead. The first defendant did not oppose the application. The order was granted on 24 October 2007.
17. Mr Mampuru testified that that court order too was served on the first defendant by the sheriff. The return of service in respect of that court order does however, not form part of the documentation before me.
18. Pursuant to the aforesaid court order, the transfer documents were signed by the sheriff and, on 6 May 2008, the property was transferred into Mr Mampuru's name.
19. On 28 May 2008, the attorneys representing Mr Mampuru sent a letter to the first defendant by registered post. The letter attached the court order of 24 October 2007 and recorded that, pursuant thereto, the sheriff had signed the transfer documents and the property had been transferred into Mr Mampuru's name with effect from 6 May 2008. The letter gave the first defendant 15 days to vacate the property failing which an application for his eviction would be brought.

20. Prior to launching an eviction application, Mr Mampuru had a mutual friend plead with the first defendant to vacate the property. When this was unsuccessful, Mr Mampuru launched an application for the first defendants eviction on 14 July 2008.
21. For reasons that were not explained in evidence, a second application for the first defendant's eviction was launched simultaneously with the first. As a consequence, the first eviction application was withdrawn. The second eviction application was dismissed by Kollapen J for want of compliance with section 4(2) of the PIE Act.
22. Thereafter, on 29 August 2012, the current eviction action was launched.[1]

The Evidence of Mr Serepong

23. In 2005, Mr Serepong ran his own estate agency under the name and style of Timcol Properties in Mamelodi.
24. Mr Serepong was friendly with the first defendant who advised him, in June 2005, that he wished to sell his property. Mr Serepong valued the property and advised the first defendant that It would fetch a market price of R185 000.00. The first defendant was satisfied with this and gave Mr Serepong the go-ahead to market the property.
25. Mr Serepong identified the property as one which met the requirements of one of his clients, Mr Mampuru. In late June 2005 Mr Serepong took Mr Mampuru to view the property. The first defendant was present during the viewing and showed the two around.
26. Immediately after the viewing, Mr Mampuru advised Mr Serepong that he wished to purchase the property. Mr Serepong advised Mr Mampuru, as was his custom, to "sleep on It. On 28 June 2005, a day or two after the viewing Mr Serepong met Mr Mampuru at his home in order to prepare a written offer to purchase. Mr Serepong arrived with his agency's standard form sale agreement in which he had, in advance and by hand, inserted the applicable details of the proposed sale with the exception of the personal details of the buyer and the seller.
27. At the meeting on 28 June 2005, Mr Serepong took Mr Mampuru through the agreement and inserted Mr Mampuru's personal details in the agreement by hand. Mr Mampuru then initialled each page of the agreement and signed and dated the last page in Mr Serepong's presence.
28. Immediately after his meeting with Mr Mampuru, Mr Serepong telephoned the first defendant and told him that he had a signed offer to purchase the property. The two met the following day at the first defendant's home. Mr Serepong took the first defendant through the sale agreement and the first defendant indicated that he wished to accept the offer. Mr Serepong accordingly inserted the first defendant's personal details in the agreement by hand. He did so by reading out each item aloud and inserting, in his handwriting, the answer received from the first defendant When, in the course of this exercise, Mr Serepong read out "marital status", the first defendant laughed and said "you have been to my house

many times, have you ever seen a woman here?” Mr Serepong accordingly inserted "N/A" alongside this item. The first defendant then initialled every page of the agreement and signed the last page thereof. Mr Serepong did not notice that the first defendant had not properly dated the signature page.

29. A few days later, Mr Serepong met the first defendant at the Shell garage in Mamelodi East and handed him a copy of the signed agreement of sale.
30. Mr Serepong assisted Mr Mampuru with the bond application process and pursuant thereto arranged for Absa Bank and Nedbank to value the property. The first defendant was present at the property when the valuations were conducted.
31. Absa Bank made an offer of a bond for the purchase price of the property which was accepted by Mr Mampuru. Thereafter, Mr Serepong gave the necessary instructions to the conveyancing attorneys: Stopforth, Swanepoel and Kruger Inc to effect transfer.
32. At some stage, the conveyancing attorneys informed Mr Serepong that the first defendant was stalling in relation to the signing of the transfer documents. Mr Serepong went to see the first defendant to enquire what the problem was. The first defendant told Mr Serepong that he had made an appointment to see the conveyancing attorneys and assured him that everything was on track. That marked the end of Mr Serepong's involvement in the matter.
33. At no stage did the first defendant state that he wished to cancel the sale agreement.

The Evidence of the First Defendant: Mr Matsimela

34. Mr Matsimela is a police officer and is studying a bachelor of laws degree through the University of South Africa.
35. Mr Matsimela testified that he married Sonto Lydia Matsimela in community of property on 1 February 2002 and is still so married. Mr Matsimela's marriage certificate has however never been discovered. This despite his marital status being in issue in this action and despite the plaintiff, for this reason, having repeatedly called for its production. I will return to this issue in due course below.
36. Before dealing with Mr Matsimela's evidence-in-chief, it is instructive to consider his version of events as pleaded. This is the following:
 - 36.1. On 29 June 2005, Mr Matsimela met Mr Serepong, who was unknown to him, at the Shell garage in Mamelodi East
 - 36.2. Mr Serepong presented him with a blank agreement of sale.
 - 36.3. Mr Matsimela said that he would consider selling his property but was not certain that he would be able to obtain the consent of his estranged wife. Mr Serepong said that he would obtain the consent of Mr Matsimela's wife.
 - 36.4. No further particulars of the intended sale of the property were discussed or agreed.

36.5. Mr Serepong asked Mr Matismela to sign the blank agreement of sale stating that this would be an indication to his estranged wife that he had agreed to consider selling the property and that it would be used to convince his wife that the property should be sold.

36.6. Mr Matismela initialled and signed the blank agreement of sale.

36.7. A few days later, Mr Matismela instructed Mr Serepong that he no longer wished to continue with the sale of the property because the consent of his wife could not be obtained.

36.8. Mr Serepong accepted this and told Mr Mampuruthat hewould advise the purchaser accordingly.

37. In his evidence-in-chief, Mr Matismela gave the following version:

37.1. In 2005, Mr Matismela told Mr Serepong that he and his wife had separated and that he wished to sell his property. Mr Serepong undertook to look for a buyer.

37.2. Some time later Mr Serepong contacted Mr Matismela and said that he had found a potential buyer. Mr Serepong sent Mr Mampuru to view the property one Saturday morning. Mr Matismela was present Mr Mampuru was accompanied by a woman. Mr Serepong did not attend the viewing.

37.3. After the viewing, Mr Serepong contacted Mr Matismela and said that Mr Mampuru was interested in buying the property.

37.4. On 29 May 2005, Mr Serepong telephoned Mr Matismela and asked to meet him at the Shell garage In Mamelodl East. Mr Matismela obliged. Mr Serepongwas in a hurry and gave him a "blank agreement of sale" which he asked him to sign. Mr Serepong said that he would fill in the details later.

37.5. Mr Matismela initialled and signed the "blank agreement of sale. • Mr Matismela confirmed in his evidence that this was the Timcol Properties standard form agreement of sale. Mr Matismela testified that when he initialled and signed it, it contained no handwiitten Insertions, nor had it been initialled or signed by Mr Mampuru.

37.6. A few days later, Mr Serepong contacted Mr Matismela and asked for his personal particulars, including his identity number. Mr Matismela provide these and thereafter, as he put it: "Mr Serepong carried on with the sale of the house."

37.7. Mr Matismela testified that Mr Serepong said that he would try to speak to his wife because he knew that the couple were separated and not on good terms.

37.8. Mr Matsimela testified that after he had signed the blank agreement of sale and given Mr Serepong his personal particulars, Mr Serepong told him that the market value of the property was R185 000.00. Mr Matsimela was not happy with this, as far as he was concerned the property was worth R300 000.00. He did not know where the figure of R185 000.00 came from as the property had never been valued. He testified that Mr Serepong had told him that certain banks would value the property but that this had never happened.

37.9. At some stage Mr Serepong told Matsimela that he had not seen his wife. Mr Matsimela asked how they could continue with the sale, whereupon Mr Serepong replied not to worry, he would fix it.

37.10. Mr Matsimela was surprised when the conveyancing attorneys called him and asked him to sign the transfer documents. He testified that "I told them that I had told Mr Serepong that I was no longer interested in selling the house."

38. In my view, Mr Matsimela's version that he signed a blank agreement to sell his home - without knowing what the purchase price would be - is inherently implausible. Moreover, with each contradiction that emerged between Mr Matsimela's pleaded version and his version-in-chief the cracks in his story deepened. Thus:

38.1. Mr Matsimela's pleaded that Mr Serepong was unknown to him and for some unexplained reason requested him, at a petrol station, to sign a blank agreement to sell his home. However, In his evidence-in-chief Mr Matsimela testified that he knew Mr Serepong and asked him to find a buyer for his property.

38.2. In his pleaded version, Mr Matsimela stated that he signed the blank agreement of sale on 29 June 2005. That is the day after Mr Mampuru signed the agreement and therefore, to that extent, accords with the version of events presented by Mr Mampuru and Mr Serepong. However, in his evidence-in-chief Mr Matsimela was adamant that he in fact signed the agreement on 29 May 2005. Mr Matsimela could not explain this contradiction. In particular, he could not explain how or when it was that he recalled the correct date of 29 May 2005, how the date of 29 June 2005 had found its way into his pleadings and if this was an error, why his pleadings had not been amended to correct it.

39. There are further fundamental contradictions between Mr Matsimela's pleaded version and his version in chief.

39.1. A central feature of Mr Matsimela's pleaded version was the assertion that Mr Serepong undertook to obtain his wife's consent for the sale of the property. Whether because Mr Serepong failed to fulfil this undertaking or because Mr Matsimela decided that it could not be fulfilled is not clear, but Mr Matsimela pleaded that he instructed Mr Serepong not to proceed with the sale because the consent of his wife could not be obtained.

39.2. That was not Mr Matsimela's version-in-chief. There, his evidence regarding the role that Mr Serepong undertook to play in relation to his wife was far more equivocal. It was that Mr Serepong asaid he would try to speak to his wife because he knew that the couple were separated and not on good terms.”

39.3. In his evidence in chief, Mr Matsimela's main concern regarding the sale appeared to be the purchase price of the property which he claimed not to have been aware of and not to have agreed to sell at. This however, formed no part of his pleaded version.

39.4. Moreover, and importantly, in his evidence-In-chief, in contrast to his pleaded version, Mr Matsimela did not say that he had, at any point, instructed Mr Serepong that he no longer wished to proceed with the sale of the property.

40. The cracks in Mr Matsimela's version were further revealed by what was and wasn't put to the plaintiffs witnesses by his legal representative under cross examination.

40.1. Thus, the Important allegations that the property had not been valued and that Mr Serepong had not, prior to signature of the sale agreement, Informed Mr Matsimela, that the market value of the property was R185 000.00 were never put to Mr Serepong.

40.2. On the other hand, some of what was put to the plaintiff's witnesses under cross examination did not materialise in Mr Matsimela's testimony. Thus It was put to the plaintiffs' witnesses that Mr Matmisela would say that he Instructed Mr Serepong not to proceed with the sale of the property because he could not obtain the consent of his wife. While this was Mr Matslmela's pleaded version, he did not give this evidence in the witness box.

41. The aspects of Mr Matsimela's version that were put to the plaintiff's witnesses were clearly and convincingly denied.

41.1. Both Mr Serepong and Mr Mampuru were adamant that they had not known that Mr Matsimela was married,if indeed he was.

41.2. Mr Serepong was equally adamant that he had not requested Mr Matsimela to sign a blank agreement of sale. He testified that such action would have been unlawful and unethical and that he would have been expected not only to have been reported to the Board of Estate Agents but to have been criminally charged had he done such a thing. Mr Serepong was consistent and convincing in his

testimony that he met Mr Matslmela at the Shell garage in Mamelodi East In order to hand him a copy of the signed agreement of sale.

42. Mr Matsimela's credibility only becomes worse when one has regard to his version of events post 2005.

42.1. Mr Matsimela testified that he only became aware that the property had been transferred Into Mr Mampuru's name when he received the first eviction application launched by Mr Mampuru on 14 July 2008.

42.2. There had however, in the intervening period, been two registered letters addressed to him and two court orders granted against him. Mr Matsimela flatly denied having received any of these.

42.3. Yet there is a sheriff's return which records that the court order dated 1 March 2007 was served personally on Mr Matsimela on 21 May 2007. Mr Matsimela could not explain this. When asked under cross examination whether the sheriff must have taken to printing false returns, Mr Matsimela answered yes.

42.4. Mr Matsimela's testimony that he only became aware of the transfer when he received the eviction application on 14 July 2008 is also directly contradicted by an affidavit filed in one of the earlier eviction applications in which he admitted having received Mr Mampuru's registered letter of 28 May 2008.

43. A further feature of this matter which strains at one's credulity is Mr Matsimela's failure to take steps in relation to what he contends was the fraudulent transfer of his property to a third party.

43.1. He took no action of any kind against Mr Serepong whom he alleges to have masterminded the fraud by having him sign a blank agreement of sale.

43.2. He laid no criminal charges against Mr Serepong or Mr Mampuru.

43.3. He did not oppose the applications brought to enforce the sale agreement nor, if, as was belatedly suggested in argument, he contended that the court orders obtained by Mr Mampuru were obtained improperly, did he take any steps to have them rescinded.

43.4. Other than a counterclaim brought on the back of this eviction action, and belatedly at that, he took no civil steps to recover what he contends to be his property.

44. In response to an invitation from the court to explain his failure to take steps in this regard, Mr Matsimela simply stated that he had left the matter in the hands of his attorneys.

45. Finally, a note on demeanour. Mr Matsimela's demeanour in the witness box was unimpressive. He was noticeably tense and uncomfortable during much of his testimony. When faced with difficult questions, he struggled to make eye contact and tended to lapse into long silences.

46. For all of the above reasons, the evidence of Mr Matsimela was wholly unsatisfactory.

47. The evidence of the plaintiff's witnesses was, by contrast, impressive. They gave their evidence in a clear and forthright manner and their demeanour was positive. They corroborated each other in all material respects and their evidence was not impugned under cross examination.

48. During argument, Mr Molele, who appeared for the first defendant, submitted. that the plaintiff's witnesses contradicted each other In relation to the Insertions that appeared in the agreement of sale at the commencement of the meeting between Mr Mampuru and Mr Serepong on 28 June 2005.
49. In this regard, it will be recalled that Mr Mmpuru testified that only the purchase price had been inserted while Mr Serepong testified that all the applicable details of the sale barring the personal details of the buyer and seller had been inserted. In my view, it is unsurprising that after the lapse of 11years, Mr Mampuru and Mr Serepong would have different recollections of some of the finer details. What both witnesses were clear about was that at the commencement of that meeting the personal details of the buyer and seller did not appear in the agreement and the agreement had not been signed.
50. Further, both witnesses gave clear testimony that at the meeting Mr Serepong took Mr Mampuru through the agreement and Inserted Mr Mampuru's personal details by hand and that Mr Mampuru then Initialled and signed the agreement in Mr Serepong's presence.
51. I am therefore of the view that this contradiction (the only one that Mr Molele was able to point to) is not material and does not detract from the quality and credibility of the evidence led on behalf of the plaintiff.
52. I therefore accept the version of events presented on behalf of the plaintiff and consequently find that:
- 52.1. Mr Matsimela requested Mr Serepong to find a buyer for his property having been Informed by him that it would fetch a market value of R185 000.00.
- 52.2. Mr Matsimela accepted Mr Mampuru's· written offer to purchase his property for R185 000.00 by signing the sale agreement at his home on 29 June 2005 in Mr Serepong's presence.
- 52.3. At no stage thereafter did Mr Matsimela cancel or purport to cancel the sale agreement. Nor did Mr Matslmela, at any stage, inform Mr Mampuru or Mr Serepong that he wished to cancel the sale agreement.
53. What remains unclear on the evidence before me is whether Mr Matsimela was married in community of property during 2005. If he was, then his wife's consent was required for the sale of the property. Such consent was, on the evidence before me, not obtained.
54. What remains to be determined are the legal consequences that flow from these facts.

The Law

55. It Is clear, at least since the Supreme Court of Appeal judgment in Legator McKenna and Another v Shea and Others 2010
- (1) SA 35 (SCA), that the abstract theory of transfer applies to immovable as well as movable property in our law.

56. In Legator McKenna, the SCA explained the requirements for the passing of ownership in terms of the abstract theory of transfer as follows:

"In accordance with the abstract theory the requirements for the passing of ownership are twofold, namely delivery - which in the case of Immovable property is effected by registration of transfer in the deeds office - coupled with a so-called real agreement or 'saaklike ooreenkoms.' The essential elements of the real agreement are an intention on the part of the transferor to transfer ownership and an intention on the part of the transferee to become the owner of the property. Broadly stated the principles applicable to agreements In general also apply to real agreements. Although the abstract theory does not require a valid underlying contract, eg sale, ownership will not pass - despite registration of transfer - if there is a defect in the real agreement." [2] (references omitted)

57. In this case, both these requirements are in my view clearly met. There was delivery of the property in the form of registration of transfer in the deeds office on 6 May 2008. There was also, on the evidence before me, an intention on the part of Mr Matsimela to transfer ownership of the property and an intention on the part of Mr Mampuru to become the owner of the property. There was therefore a real agreement between the parties.
58. Ms Nortje, who appeared on behalf of the plaintiff, submitted that the requirements for the passing of ownership in terms of the abstract theory of transfer having been met, ownership of the property transferred to the plaintiff on 6 May 2008 regardless of whether there may have been any defects attaching to the underlying agreement of sale. That submission is well founded. Nevertheless, I will for the purposes of this judgment assume that Mr Matsimela was married in community of property during 2005. In this event, section 15(9) of the Matrimonial Property Act 88 of 1984 becomes relevant. This section provides as follows:

"When a spouse enters into a transaction with a person contrary to the provisions of subsection (2)[3] or (3) of this section or an order under section 16(2) and -

- (a) That person does not know and cannot reasonably know that the transaction is being entered into contrary to those provisions or that order it is deemed that the transaction concerned has been entered into with the consent required in terms of the said subsection (2) or (3) or while the power concerned of the spouse has not been suspended as the case may be."
59. In this case, the evidence clearly demonstrates that neither Mr Mampuru nor Mr Serepong was aware that Mr Matsimela was married at the time that the agreement of sale was concluded, if indeed he was.
60. Therefore, assuming that Mr Matsimela was married in community of property in 2005, this is a case in which the consent of his wife for the sale of the property would be deemed to have been obtained in terms of section 15(9) of the Matrimonial Property Act. I am therefore satisfied that even if Mr Matsimela was married, ownership of the property was validly transferred to Mr Mampuru on 6 May 2008.

61. It follows that the first defendant's counter-claim is without merit. In any event, it has prescribed.[4] The first defendant's claim ought to have been brought within three years of the registration of transfer of the property which took place on 6 May 2008. It was only brought on 6 December 2012, four and a half years thereafter.
62. The first defendant's counter-claim is therefore dismissed.
63. The plaintiff claims damages in the amount of R154 803.68 which comprises the market rental in respect of the property over the period for which it has been unlawfully occupied by the first defendant as well as an amount due in respect of rates and taxes on the property. Mr Mampuru produced documentary proof in support of the latter. In relation to the former, Mr Serepong confirmed that the amount claimed constituted the reasonable market rental in respect of the property over the relevant period. Neither the plaintiff's entitlement to these amounts, nor the figures themselves were seriously disputed by the first defendant.
64. In the circumstances, the plaintiff is entitled to an eviction order and to the damages claimed. As far as the eviction order is concerned, I am required to determine a date for the eviction which will be just and equitable in the circumstances. The first defendant's occupation of the property has been unlawful since 2008 and he has been unjustifiably enriched by occupying the property at no cost. Nevertheless, the first defendant's occupation has been a lengthy one and he will need time to find alternative accommodation for himself, and possibly his dependants. In the circumstances, I am of the view that two months would constitute a fair notice period.
65. I accordingly make the following order:
1. The first and second defendants are ordered to vacate the property being erf [...], Mahube Valley, Ext 3, Mamelodi East, within 60 days from the date of this judgment, failing which the sheriff is authorised to carry out their eviction.
 2. The first defendant is ordered to pay to the plaintiff the amount of R154 803.68 plus interest thereon at 15.5% per annum from the date of this judgment to date-of payment.
 3. The first defendant is ordered to pay the plaintiff's costs.

Appearances:

For the Plaintiff: Adv N Nortje Instructed by Molema Mampuru Inc

For the First Defendant: Mr S Molele of Malefo Attorneys

- [1] In respect of this action there has been compliance with section 4(2) of the PIE Act
- [2] At para 22.
- [3] Subsection (2) provides that consent is required for the alienation of any right in immobile property forming part of the joint estate.

[4] A special plea of prescription was introduced by way of an amendment which was not opposed.

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