

SOUTH AFRICA / JUDGMENT

Mathebula v Moagi and Others (2024-084665) [2025] ZAGPPHC 473 (15 May 2025) [2025] ZAGPPHC 473

COURT

North Gauteng High Court, Pretoria

BEFORE

H F Jacobs

CASE / FILE NUMBER

2024-084665

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE Number: 2024-084665

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO

15 May 2025

In the matter between:-

SPHIWE MABEL MATHEBULA

Applicant

and

DIBETSO ROBERT MOAGI

First

Respondent

DIBETSO PHUTI DORCUS

Second Respondent

THE UNLAWFUL OCCUPANTS

Third Respondent

EKURHULENI METROPOLITAN MUNICIPALITY Fourth

Respondent

JUDGMENT

JACOBS AJ

- [1] This is an application for the eviction of the respondents from immovable property. Judgment was granted against the respondents for their default in payment of their mortgage bond obligations and the applicant purchased the property concerned at a sale of execution. Following the judgment the respondents brought an application for the rescission of the judgment granted against them. The rescission application was dismissed.
- [2] The applicant purchased the property on 8 October 2020 at a sale in execution and the property was registered in her name on 27 June
2024. The title deed is attached to the founding papers. The applicant visited the property on numerous occasions and requested the respondents to vacate the same and alleged that the respondent's occupation is unlawful. The respondents applied for interdictory relief against the applicant and challenged her to take possession of the land.
- [3] Leave was granted to serve notices of these proceedings on the respondents in terms of Act 19 of 1998 and I am satisfied that service and notice have taken place in accordance with that legislation.
- [4] The respondents delivered an opposing affidavit and challenge in general terms the right of the applicant to seek the eviction of the occupiers of the property concerned. The local authority has not responded to the notices and has not participated in the litigation at all.
- [5] The procedural requirements set out in sub-sections 4(2), (3), (4) and (5) of the PIE Act have been complied with and I am satisfied that a case has been made out in that regard. The substantive requirements stated by the PIE Act in sub-sections 4(6), (7), (8) and
- (9) must then be considered. The unlawful occupiers (the respondents) have been in occupation of the property concerned for more than six months and section 4(7) of the PIE Act requires that I may grant an order for the eviction of the respondents if I am of the opinion that it is just and equitable to do so after considering all the relevant circumstances including whether the land has been made available or can reasonably be made available by a municipality or other organ of state. This provision has been excluded by section 4(7) where land is sold at a sale in execution pursuant to a mortgage debt. I am not convinced

that a valid defence has been raised by the respondents that would justify the refusal of the relief sought by the applicant. The answering affidavit states that the respondents challenge the applicant's

ownership and right to claim the relief sought. In my view and considering the evidence presented to me, the applicant's right to claim the eviction of the respondents is unassailable and I find that the applicant is the owner of the land concerned, that the respondents are in unlawful occupation of the land and that it would be just and equitable to grant an eviction order against the respondents. The respondents have acted most unreasonably and were not mindful of the consequences of their conduct following the dismissal of their application for rescission of judgment. In my view the respondents acted in a reckless manner without taking timeous and adequate steps to secure accommodation for themselves elsewhere.

[6] Under the circumstances I grant the following order:

1. The First to the Third Respondents and all those who occupy the premises described as 9[...] C[...] DRIVE, NORDEM PARK EXTENSION 4, KEMPTON PARK, GAUTENG PROVINCE (hereinafter referred to as 'the property') under and by virtue of the First Respondent including her servants and employees,

if any, be and are hereby evicted from the premises within 14 days of service of the Court order.

2. In the event of the First to the Third Respondents and all those who occupy the premises under and by virtue of the First to the Third Respondents occupancy thereof, including her servants and employees, failing and/or refusing to vacate the premises, within the period stipulated by the Honourable Court that the Sheriff of the above Honourable Court with jurisdiction be and is hereby authorised to forthwith enter upon the premises to evict the First Respondent and all those who occupy the premises under and by virtue of her occupancy.
3. That the Sheriff of the above Honourable Court with jurisdiction is hereby authorised to evict the First to the Third Respondents and all those who occupy the premises under her occupancy thereof if need arises, she is authorised to utilise the assistance of the South African Police Services.
4. The Respondents are to pay costs of this application on attorney and own client scale.

H F JACOBS

ACTING Judge of the High Court

GAUTENG DIVISION, PRETORIA

Heard on: 12 May 2025 For the Applicant: Adv FN Munangwa Email: naledimunangwa.nm@gmail.com Instructed by: Serokolo Attorneys Email: litigation@serokoloattorneys.co.za For the Defendants: Instructed by: TP Phalane Attorneys Email: tumishopr@gmail.com Date of Judgment: 15 May 2025

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