

SOUTH AFRICA / JUDGMENT

Matsepe and Another v Lungisa and Others (3466/2013) [2014] ZAECPEHC 31 (27 May 2014)

[2014] ZAECPEHC 31

COURT

Eastern Cape High Court, Port Elizabeth

BEFORE

J W Eksteen

CASE / FILE NUMBER

3466/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE LOCAL DIVISION, PORT ELIZABETH

Case No.:

3466/2013

Date Heard: 20

May 2014

Date Delivered:

27 May 2014

In

the matter between:

TSIU
VINCENT MATSEPE
NO First
Applicant
SHIRISHKUMAR
JIVAN KALIANJEE
Second
Applicant
in
their official capacities a joint trustees of the
insolvent
estate of THEUNIS CHRISTIAAN
DE
KLERK CROUS
OTTLIE
ANTON
NOORDMAN Third
Applicant
and
ANDILE
WEAH
LUNGISA
First
Respondent
ALL
THE OTHER UNLAWFUL OCCUPIERS RESIDING
ON
AND/OR OCCUPYING ERF [.] , ALSO KNOWN AS [....]
Second
Respondent
NELSON
MANDELA BAY METROPOLITAN MUNICIPALITY Third
Respondent

JUDGMENT

EKSTEEN J:

- [1] The applicants seek the eviction of the first respondent, together with all other persons occupying through the first respondent (herein referred to jointly as “the second respondent”) from the premises known as [.....] which is situated at [.....] (herein referred to as the property). The application is brought in terms of the provisions of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (herein referred to as PIE). The first respondent entered an appearance to defend the application, however, he failed to file any opposing papers and when the matter was called there was no appearance on behalf of the first respondent. The second and third respondents have not entered an appearance.

The history

[2] Theunis Christiaan De Klerk Crous (herein referred to as Theunis Crous) was [.....] to Duduzile Primrose Crous (herein referred to as Duduzile Crous) and on [.....] they purchased the property together. The property was

registered in both their names as joint owners in equal undivided shares. A mortgage bond was duly registered over the property

in favour of Standard Bank in an amount of R3 500 000,00.

[3] Theunis Crous was subsequently sequestrated and a final order of sequestration was granted in the North Gauteng High Court on 25 June 2012. The first and second applicants were appointed as joint trustees of the insolvent estate of Theunis Crous. By virtue of the provisions of section 20 of the Insolvency Act, No. 24 of 1936 (the Insolvency Act) the property vested in the applicants in their capacities as joint trustees of the insolvent estate. In terms of the provisions of section 80 (bis) of the Insolvency Act the applicants applied to the Master of the North Gauteng High Court for his consent to sell the insolvent's share in the immovable property. The consent of the Master was duly granted on 25 September 2013. Their intended sale of the property carried the approval of Duduzile Crous and on 24 July 2012 she duly executed a special power of attorney in favour of the third applicant to sign a deed of sale and all necessary transfer documents in regard to her undivided half share in the property.

[4] Pursuant to the consent granted by the Master of the North Gauteng High Court the first and second applicants proceeded to enter into a deed of sale with the first respondent in terms of which the property was sold to the first respondent. While the third respondent did not himself sign the deed of sale it is not in dispute that the first and second applicants were properly authorised to sell the property. The first respondent failed to comply with his obligations in terms of the agreement and the deed of sale was duly cancelled on 11 December

2012. This cancellation is not contentious and there has not been any dispute relating thereto.

[5] On 1 February 2013 a fresh deed of sale (the second agreement) was concluded between the applicants and the first respondent in respect of the property.

[6] The material terms, for purposes of the present application, of the second agreement were:

6.1 The first respondent would purchase the property for an amount of R1 800 000 (one million eight hundred thousand rand).

6.2 The first respondent undertook to make payment of a minimum deposit amounting to 10% of the purchase price, being R180 000,00 (one hundred and eighty thousand rand), upon signature of the second agreement.

6.3 The first respondent undertook to secure the balance of the purchase price within thirty days from the date of the acceptance of the offer.

6.4 In the event that the first respondent would take up occupation of the property prior to transfer the first respondent undertook to pay occupational interest, calculated at a rate of 10% per annum on the purchase price outstanding and capitalised monthly from the date that the offer was provisionally accepted until the date of registration of transfer.

6.5 In the event that the first respondent should fail to comply with any of his obligations, and in the event that he should persist in his failure to comply for a period of seven days after the “delivery” by the applicants of “a written reminder on the jurisdiction and domicilia” of the first respondent as indicated in clause 13 claiming due compliance, then the applicants would be entitled to cancel the agreement and immediately repossess the property. (Clause 8.1.)

6.6 In clause 13 the first respondent chose as his domicilium citandi et executandi the address at [.....] Clause 13 of the agreement bears the heading “JURISDICTION AND DOMICILIA”.

[7] The applicants duly accepted the written offer and the second agreement became binding on 1 February 2013. By virtue of the conclusion of the second agreement the first respondent was permitted to occupy the property and he became liable for payment of the occupational interest as set out earlier herein. He failed to make payment of the occupational interest. He failed to pay the full deposit on signature and made payment of an amount of R100 000,00. Later, a further R60 000,00 was deposited in this regard leaving a shortfall of some R20 000,00. The first respondent furthermore failed to secure the balance of the purchase price within thirty days.

[8] Two letters of demand were addressed to the first respondent on 11 February 2013 and 18 February 2013 respectively in purported compliance with clause 8.1 of the second agreement. Neither of these letters, however, were sent to the chosen domicilium and there is no indication in the papers that the first respondent in fact received either of these letters. In these circumstances

it clearly did not constitute delivery of a valid notice of the alleged breach as required by section 8.1 of the second agreement. These letters are accordingly of no consequence.

[9] On 20 February 2013 a further letter was addressed to the first respondent purporting to cancel the second agreement with immediate effect. This letter too was not sent to the domicilium citandi et executandi chosen in the contract and again there is no indication in the papers from which I can be satisfied that the first respondent received the letter. For present purposes it too is of no consequence.

[10] Realising the error the applicants instructed their attorney of record to address a further letter to the first respondent on 13 August 2013 bringing the breaches of contract to the attention of the first respondent. I pause to mention that there are various references to the earlier letters contained in the body of this letter. By virtue of what I have set out earlier herein I do not think that there is any relevance in such references.

[11] The letter dated 13 August 2013 sets out the material terms of the second agreement and proceeds to record as follows:

“You are in breach of the agreement due to the fact that you made payment of the amount of R100 000.00 in respect of the deposit.

The deposit which became payable amounted to R180 000.00.

Furthermore, you failed to secure the balance of the purchase price within 30 days.

We hereby demand that the full purchase price be paid by yourself within 7 days from date hereof and confirm that should you fail to comply herewith, we will have no alternative but to proceed to cancel the agreement of sale dated 1 February 2013 as per Clause 8 of the Conditions of Sale.

Please also be advised that you have failed to make payment of the Occupational interest as per clause 4.3 of the aforementioned agreement, for the months of February 2013 to August 2013, amounting to R105 000.00.

...

In the event that the balance of the purchase price, deposit and the outstanding occupational interest is not paid within 7 days, we confirm that the contract will be cancelled and legal steps will be taken against you for damages suffered as well as eviction proceedings.”

[12] This letter was served by the sheriff on the chosen domicilium citandi et executandi on 21 August 2013.

[13] The breaches of contract were not remedied but it would appear from subsequent correspondence that a response was received from the first respondent’s attorneys, Kwinana & Partners on 28 August 2013 in which they undertook to revert to the applicant’s attorneys by 3 September 2013, once they had obtained full instructions from the first respondent. They failed to do so and accordingly on 12 September 2013 the applicant’s attorneys addressed a further letter to Attorneys Kwinana & Partners in which they recorded that the second agreement was now cancelled.

[14] Notwithstanding the cancellation the first respondent remained in occupation and possession of the property and a number of other persons (the second respondent), believed to be members of his family, occupy the property. The applicants accordingly commenced eviction proceedings. They contend that the first respondent obtained occupation and

possession of the property by virtue of the initial deed of sale and subsequently the second agreement. Upon cancellation of the second agreement the first respondent had no further right of occupation. The provisions of section 4 of PIE were duly complied with and effective notice was given by this court of the eviction proceedings.

- [15] When the matter was called before me I requested the legal representative on behalf of the applicants to address me on whether the second agreement had been validly cancelled. In particular, the second agreement required of the first respondent to secure the balance of the purchase price whereas the letter of demand, purportedly in pursuance of clause 8.1 of the second agreement, demanded the immediate payment of the full purchase price. The legal representative on behalf of the applicants was unprepared to address me on this aspect and I accordingly reserved my

judgment.

- [16] On reflection I am satisfied that the first respondent was in breach of a number of provisions of the second agreement. Albeit that the letter of demand called upon him to pay the full purchase price within seven days, which the applicants were not entitled to, the letter of demand further required of him to remedy his breach in respect of his failure to pay the full deposit and to pay the occupational interest which was due. First respondent failed to remedy any of his breaches within the seven days stipulated in clause 8.1 of the second agreement and therefore, by virtue of the express provisions of section 8.1, the applicants were entitled to cancel the agreement on the basis of these breaches.
- [17] The letter of cancellation does not expressly stipulate upon which breach reliance is placed for purposes of the cancellation. Even if the applicants had relied on their erroneous demand that first respondent pay the full purchase price in the time stipulated, they would, however, still have been entitled in law to rely in subsequent litigation on any valid ground for cancellation (see *Matador Buildings (Pty) Ltd v Harman* 1971 (2) SA 21 (C) at 28A). The remaining breaches are valid grounds for cancellation. I accordingly conclude that the cancellation of the second agreement was indeed effective and the applicants persist therein.
- [18] In these circumstances the first respondent's right of occupation, and also those of the second respondent, were terminated. The respondents have not filed any opposing papers and I am satisfied that the applicants have shown that the respondents have no legal right to occupation.
- [19] In the result, I make the following order:
1. The first and second respondents are hereby ordered to vacate the property situated at [.....], also known as [.....] within thirty (30) days of the date hereof.

2. In the event that the respondents, or any of them, fail to comply with this order the Sheriff of this Court is authorised and mandated to take all necessary steps to execute this order and to evict the respondents from the property and, if necessary, to obtain the assistance of the South African Police Services.
3. The first respondent is ordered to pay the costs of the application.

J W EKSTEEN

JUDGE OF THE HIGH COURT

Appearances:

For Applicant: Mr Vlok instructed by Brown Braude & Vlok Inc, Port Elizabeth

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Prepared on 10 October 2026 · Esheria