
SOUTH AFRICA / JUDGMENT

Mjikeliso v Onyekwelu (38055/2018) [2021] ZAGPJHC 585 (18 October 2021)

[2021] ZAGPJHC 585

COURT

South Gauteng High Court, Johannesburg

BEFORE

Mtati

CASE / FILE NUMBER

38055/2018

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 38055/2018

REPORTABLE: NO

OF INTEREST TO OTHER JUGES: NO

REVISED: NO

DATE: 18 Oct 2021

In the matter between:

FEZEKA FELICIA MJIKELISO

APPLICANT

and

FRANCIS GODSWILL ONYEKWELU

RESPONDENT

JUDGMENT:

APPLICATION FOR LEAVE TO APPEAL

MTATI AJ

- [1] The application for leave to appeal comes before Court as a result of an ex tempore judgment that was delivered by this Court on 17 April 2019. The Applicant filed a notice to oppose the application for eviction but failed to file an answering affidavit in terms of the Uniform Rules of court. The matter was accordingly enrolled on an unopposed roll. The Applicant was however present at Court during the hearing of the matter and made some representations on why she should

not be evicted from the premises belonging to the Respondent.

- [2] Also present at Court was a certain Mr Mdlalose who appeared to be assisting the Applicant. It appeared from the enquiries made by the Court that Mr Mdlalose was a Paralegal. The Court took an effort to explain to the Applicant that if she feels aggrieved by the application she then should source the services of a legal representative. The Court referred the Applicant to Legal Aid SA where she could obtain such services.
- [3] The advice by the Court to the Applicant to obtain services of a legal practitioner was based on a clear impression that the Applicant did not understand the court processes and especially what she was required to prove to the Court to thwart the application brought against her. For example, the Applicant did not refute the allegations made by the Respondent in his papers that she was

gainfully employed; that she was not staying with children and elderly persons; that she has no alternative accommodation and that

there are any other factors that the Court should have taken into consideration to avoid granting the order of eviction.

- [4] The Court considered all the circumstances raised by the Applicant together with the prejudice suffered by the Respondent and was persuaded that the Respondent made a proper case to be granted an order and the order of eviction was granted. The Court ordered that the Applicant vacate the premises within a period of sixty days.
- [5] The Applicant proceeded to file an application for leave to appeal the decision of this Court alleging, amongst others, that the Respondent did not prove ownership to the property in issue; that she is a vulnerable person; that she is staying with elderly persons and that this Court did not take all her surrounding circumstances before granting the eviction order.
- [6] The Court proceeded to request the parties to provide it with three alternative dates for the hearing of the application for leave to appeal. The Applicant did not comply with the directive of the Court and the Registrar was directed to set the matter down for hearing. On the eve of the hearing, the Applicant through Mr Mdlalose requested a postponement to enable the Applicant to get a legal representative with an undertaking to apprise the Court with the details of the legal representative.
- [7] This Court, in pursuance of providing an opportunity to an unrepresented litigant, acceded to the request for a postponement

lest to mention that the Applicant never came back to the Court with the details of the legal representatives. On the persistence of the Respondent and after a long lull, this matter was again enrolled for 1 October 2021 for the hearing of the application for leave to appeal. On 30 September 2021 the Applicant was called through the Registrar of this Court informing her of the date of hearing. It appears as though the person that was spoken to was Mr Mdlalose who has been assisting the Applicant the whole time. Mr Khan who appeared for the Respondent also confirmed that the Respondent's legal representatives also spoke to Mr Mdlalose informing him of the date of hearing.

- [8] On the 1st October 2021 neither the Applicant nor Mr Mdlalose appeared in Court to pursue their application for leave to appeal. At the time of the hearing of this matter it was almost 2 years 6 months from the date that the Court gave its order. Clearly there has been a lot of prejudice suffered by the Respondent. It is also very evident to me that the Applicant had no intention of pursuing this application but only wanted to play for time and frustrate both the court processes and the Respondent.
- [9] Returning to the grounds of appeal. The Applicant failed to file an answering affidavit indicating the basis of opposing the application for eviction. Even if she had filed an answering affidavit, it remains the discretion of the Court to consider all the factors raised before determining and arriving at an equitable order. The Applicant raises new information on her grounds which were never brought to the attention of the Court during the hearing of the matter. She is indeed ill advised and did not take heed to the advice of the Court to obtain the services of a legal practitioner. If the Applicant had taken care to read the papers filed by the Respondent she would have seen that there is a title deed proving ownership of the property.
- [10] The conduct of the Applicant in delaying prosecution of this application, the postponement application and the non-appearance at Court though informed of the date should be frowned upon. Her conduct is demonstrative of a person who is determined to abuse the court processes.
- [11] Mr Khan abandoned the Respondent's claim for arrears rental. I must mention that this Court never ordered payment of arrears rental in its original order. The order as to costs was also abandoned by the Respondent obviously with the intention of enjoying the usage of his property again. I will not take the matter any further in relation to costs but the Applicant should be warned of her conduct in litigating this matter and her conduct throughout these proceedings.
- [12] I am not persuaded that the application is meritorious. There are no prospects of success in this application. I am also not persuaded that another Court would come to a different decision that that reached by this Court nor that there is any compelling reason to grant this application. At the most the Applicant abandoned her application for leave to appeal.
- [13] As a result it is ordered that:

1. The application for leave to appeal is dismissed.
2. A copy of this judgment should be served to the Applicant through the Sheriff
3. There is no order as to costs.

ACTING JUDGE OF THE HIGH
COURT, GAUTENG DIVISION,
JOHANNESBURG

APPEARANCES

ON BEHALF OF THE APPLICANT: NO APPEARANCE

ON BEHALF OF RESPONDENT: ADV KHAN

INSTRUCTED BY: MANGERA ATTORNEYS

DATE OF HEARING: 1 OCTOBER 2021

DATE OF JUDGMENT: 18 OCTOBER 2021

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Prepared on 12 October 2026 · Esheria