

SOUTH AFRICA / JUDGMENT

Moalusi and Another v Kondowe and Another (2023/119996) [2025] ZAGPJHC 693 (16 July 2025)

[2025] ZAGPJHC 693

COURT

South Gauteng High Court, Johannesburg

BEFORE

A J D'Oliveira

CASE / FILE NUMBER

2023/119996

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

LOCAL DIVISION, JOHANNESBURG)

Case No. 2023/119996

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

DATE: 16 July 2025

In the matter between: OBED
 BASHIMANE MOALUSI
 First Applicant
 THAPELO
 KHUMALO
 Second Applicant
 and
 JUSTIN
 KONDOWE
 First Respondent
 THE CITY OF
 JOHANNESBURG METROPOLITAN
 MUNICIPALITY
 Second Respondent

JUDGMENT

D'OLIVEIRA AJ:

1 The first applicant is the registered owner of Erf 2[...], P[...] G[...] Extension 22 Township, with street address 2[...] C[...] Crescent, P[...] G[...], Soweto Park, Roodepoort (the property).

2 The second applicant is the previous registered owner of the property.

3 The first respondent is in occupation of the property. The first respondent will hereafter be referred to as “the respondent”.

4 The applicants apply for the eviction of the respondent. The application was served on the respondent personally on 29 January 2024. The application is opposed.

5 The applicants have complied with the procedural requirements of the Prevention of Illegal Eviction and Unlawful Occupation Act 19 of 1998. Notice in terms of section 4(2) of the Act was served on the respondent on 13 May 2024.

6 The respondent originally occupied the property on 17 March 2015. He did so in terms of a verbal instalment sale agreement with the second applicant, who was the registered owner at the time. In terms of that agreement, the respondent was required to pay a deposit of R150 000.00 and the monthly instalments owing on the second applicant's bond. Once the bond had been fully paid, the respondent would receive transfer of ownership from the second applicant.

7 The respondent ceased paying instalments in November 2018. He has not paid anything towards his occupation of the property since that date. The instalment sale agreement was cancelled.

8 In December 2021, the second applicant met with the first respondent and informed him that the second applicant intended to sell the property. The second applicant afforded the respondent an opportunity to purchase the property and to raise the funds for that purpose by October 2022. When the respondent informed the second applicant that he could not raise the funds to purchase the property, the second applicant informed the respondent that he had no option but to sell the property and requested that the respondent vacate. The respondent failed to do so.

9 On 7 March 2023, the second applicant informed the respondent in writing that the property had been placed on the market and would soon be sold. The respondent was given notice to vacate the property on or before 7 May 2023.

10 On 1 May 2023, the second applicant informed the respondent in writing that the property had been sold, and reminded him that he should vacate by 7 May 2023. The respondent failed to do so.

11 Meanwhile, on 5 April 2023, the first applicant purchased the property from the second applicant. The property was transferred and registered into the name of the first applicant on 1 September 2023.

12 On 30 June 2023, the respondent was given further written notice to vacate the property by 11 July 2023. He again failed to do so.

13 On 19 September 2023, a settlement agreement was concluded with the respondent. In terms of that agreement, the respondent was paid R185 000.00 in lieu of any and all claims that he had in respect of the property. Also in terms of that agreement, the respondent agreed that he would not initiate or pursue any legal administrative actions, complaints or proceedings against the second applicant and the second applicant's sister, Precious Dube, who was the respondent's estranged wife.

14 On 23 October 2023, the first applicant delivered a letter of demand on the respondent. In the letter of demand, the respondent was informed that the first applicant was the registered owner of the property. The respondent was told to vacate the property within seven days from the date of the letter. The respondent ignored the demand.

15 The respondent has since continued to reside in the property despite not making any contribution towards his occupation and use of the property.

16 The respondent is unable to assert any legal right to remain in occupation of the property. The respondent's answering affidavit discloses no defence to the application for his eviction. The high-water mark for the respondent is a vague allegation that he has made contribution towards the improvement of the property for which he should be compensated and thus has a lien. But the respondent gives no particularity about what amount he spent on the property, what improvements were made, or the value of improvements. The purported defence of a lien is too vague to be accepted (see *Roode v De Kock and Another* 2013 (3) SA 123 (SCA)). It is, in addition, contradicted by the settlement agreement concluded on 19 September 2023.

17 Apart from this, the respondent only raises that he has two minor children, ages 16 and 11, who reside with him. He also says that he has two major children, who are at university in other provinces, who return to the property during vacation. The fact that the minor children reside with the respondent is disputed by the applicants. An affidavit from the mother of the minor children stating that they reside with her is attached to the replying affidavit. But even if the respondent's version is accepted, it still discloses no entitlement to remain in the property.

18 It is common cause that the respondent is gainfully employed. It is also common cause that there is ample property available for rent in the area. The applicants have attached evidence of the properties available to the founding affidavit. There is nothing that prevents the respondent from residing elsewhere with the minor children.

19 Finally, at the hearing of the matter, the respondent, who was represented by his attorney and counsel, requested opportunity to file further papers. When the Court requested what purpose this would serve, the Court was told that the respondent wished to place further background in front of the Court regarding his relationship with Precious Dube, the second applicant's sister. The Court was also told that the respondent wanted opportunity to demonstrate that the first applicant was not the valid owner of the property. The Court was not told on what basis the respondent intended to impugn the title of the first applicant, however. Having considered the request, I have decided to decline it. Further background to the matter will not alter the absence of a legal right to remain on the property. And even if the respondent could impugn the title of first applicant, which appears doubtful, the property would then revert to the second applicant, who is a co-applicant in the application who also seeks the eviction of the respondent.

20 The eviction of the respondent is just and equitable. The respondent has no legal right to remain on the property. The respondent is employed and can provide accommodation for himself and any persons that may reside with him elsewhere. His continued occupation of the property since November 2018, without making any payment towards such accommodation, is unacceptable. The Court is satisfied that the rights of minor children will not be affected by the eviction. The same applies to the major children. It is not necessary in the circumstances of this matter to delay the respondent's eviction.

21 The applicants did not seek costs on a punitive scale in the Notice of Motion. Had they done so, I would have been inclined to grant it. The respondent has abused the process of the Court by persisting with his opposition in circumstances where clearly has no right to remain in the property, only to lengthen his stay in the property at the applicants' expense.

22 The following order is made:

22.1 It is just and equitable that the first respondent, and all those who occupy the property under the title and by virtue of the first respondent's occupancy of the property, must vacate the property described as Erf 2[...] P[...] G[...] Extension 22 Township, with street address 2[...] C[...] Crescent, Protea Glen, Soweto, by no later than 15 August 2025.

22.2 Should the first respondent, and all those who occupy the property under the title and by virtue of the first respondent's occupancy of the property fail to vacate the property by 15 August 2025, the Sheriff of the Court may carry out the eviction order from 16 August 2025.

22.3 The Sheriff is authorised to utilise this same order to evict the first respondent, and all those who occupy the property under the title and by virtue of the first respondent's occupancy of the property, should the first respondent or such persons re-enter the property after the Sheriff has given effect to the order above.

22.4 The first respondent is ordered to pay the costs of this application, including the costs of the proceedings in terms of section 4(2) of Act 19 of 1998, on party and party scale A.

A J D'OLIVEIRA

Acting Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to CaseLines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 16 July 2025.

HEARD ON:

4 June 2025

DECIDED ON:

16 July 2025

For the Applicants: PS van Niekerk

Instructed by Louw & Heyl Attorneys

For the Respondent S Lila

Instructed by GJ Maluleke Attorneys

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