

SOUTH AFRICA / JUDGMENT

Moodley and Another v Dira and Others (9780/2022) [2023] ZAGPJHC 721 (22 June 2023)

[2023] ZAGPJHC 721

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

9780/2022

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IN THE HIGH
COURT OF SOUTH AFRICA
(GAUTENG
DIVISION, JOHANNESBURG)
Case
No. 9780/2022
NOT
REPORTABLE
NOT
OF INTEREST TO OTHER JUDGES
REVISED
22.06.23

In the matter between:

DELVIN
MOODLEY
First
Applicant
HEIDI
LORETTE MOODLEY
Second
Applicant
And
TSHIRILETSO
HAROLD DIRA
First
Respondent
THE

FURTHER OCCUPIERS OF ERF 1313
GREENSTONE
HILL EXT 15
Second
Respondent
CITY
OF JOHANNESBURG METROPOLITAN
MUNICIPALITY
Third
Respondent

JUDGMENT

WILSON J:

1 The applicants, the Moodleys, purchased property in Greenstone Hill. That property was once owned by a company called Morula Resources SA (Pty) Ltd (“Morula”). The first respondent, Mr. Dira, is Morula’s sole director. It appears that, insofar as its ownership of the property was concerned, Morula was no more than Mr. Dira’s alter ego. Mr. Dira says that he resides at the property with a Ms. Thembi Makhoba and her children, who are some or all of the occupiers cited as the second respondents.

2 The Moodleys, having terminated any rights the occupiers of the property might have held from Morula, and having issued a notice to vacate, now seek Mr. Dira’s eviction from the property, together with that of anyone else who might be living on the property with him.

3 Morula is in liquidation. Its affairs have not been finally wound up. The property was sold to the Moodleys at the behest of Morula’s liquidators. Both Mr. Dira and Ms. Makhoba are pursuing as yet unapproved preferent claims against Morula, which together amount to over R15 million. Ms. Makhoba’s claim appears to be based on improvements to the property carried out by her company, Bold Images Enterprises (Pty) Ltd.

4 Although Mr. Dira’s opposing papers are not a model of clarity, his answer to the Moodleys’ eviction application seems

to be that, because Ms. Makhoba is the director of Bold Images, she may retain possession of the property, pursuant to an enrichment

lien, unless and until Bold Images is paid for the improvements it has made to the property. It is further contended that, even if there is no enrichment lien, it would not be just and equitable to evict either Mr. Dira or Ms. Makhoba until their claims against Morula are satisfied.

5 Plainly, a right to retain property pursuant to an enrichment lien can only be exercised by someone who possesses that property with the intention to hold on to it as security for the amount by which they say the owner of the property has been enriched. But even if Bold Images has done work on the property that could give rise to such a right of retention, there is no meaningful sense – at least none disclosed on the papers – in which Bold Images possesses the

property. Ms. Makhoba has not deposed to an affidavit confirming that she or Bold Images are in fact in possession of the property or that they wish to exercise their rights under a lien of any sort. Nor has anyone authorised Mr. Dira to oppose the application on Ms. Makhoba's or on Bold Images' behalf. Bold Images, which is the only party that could conceivably have the right of retention to which Mr Dira refers in his papers, is not even a party to the proceedings in its own right, and has taken no steps to intervene in them. In these circumstances, neither Ms. Makhoba nor Bold Images can realistically claim a right of retention. Still less can Mr. Dira expect to ride the coattails of such a claim.

6 Moreover, I am not convinced that it would be just and equitable to stay the ejection of either Ms. Makhoba or Mr. Dira from the property until their claims against Morula are satisfied. Any equitable interest that Mr. Dira or Ms. Makhoba might have in remaining at the property until then must be weighed against the Moodleys' interests in taking possession of property for which they have paid, and in which they wish to live together. There is no information on the papers about the strength of Mr. Dira's or Ms. Makhoba's claims against Morula, or when they will be determined, or when and to what extent they will be paid out. Given that the Moodleys have no control over the process of determining Mr. Dira's and Ms. Makhoba's claims, and absolutely nothing to do with any disputes that may arise about them, it would be grossly unfair to hold them hostage, for an indefinite period, to the various delays and controversies that might ensue.

7 That leaves only the residual question of whether there is any other reason to refuse an eviction order or to delay its execution on equitable grounds. In an opposed application, I would ordinarily expect any such grounds to be disclosed on the respondents'

papers. However, given the broad equitable discretion that I exercise in eviction proceedings of this nature, I must scrutinise the papers as a whole for any indication that an eviction would be unjust or inequitable. Where facts that bear on the equity of an eviction are contested or obscure, I am under a duty to mature them, by calling for further information from the parties, or from a local authority to the extent necessary.

8 It is suggested in the answering affidavits that the occupiers of the property might be left homeless if Mr. Dira or Ms. Makhoba are evicted without their claims against Morula being honoured. However, the answering papers set out no primary facts from which an inference of possible homelessness can be drawn, and there are no other features of this case that might indicate that homelessness is even a remote possibility.

9 The property is a luxurious home in an upmarket suburb. Mr. Dira and Ms. Makhoba both appear to be businesspeople of some substance. Mr. Dira is a director of two going concerns, one of which appears to be a restaurant. He has in the past been a director of six

other businesses from which he has resigned, or which have been deregistered. He owns four vehicles. His children go to private

school. Although Mr. Dira seeks to explain this away in his answering affidavit (by suggesting that three of his cars no longer work, and that he is financially reliant solely on his claims against Morula) he addresses the Moodleys' allegations about his wealth in a laconic manner. His papers lack the candour and level of disclosure I would expect from an apparently rich man seeking to make out a homelessness defence.

10 As I have already pointed out, Ms. Makhoba says nothing under oath, and there is nothing on the papers to suggest that she falls

into the category of people that the rule against evictions leading to homelessness was meant to protect.

11 The application must therefore succeed. I am satisfied that the first and second respondents are in unlawful occupation of the property, and that it would be just and equitable to evict them. Given that Mr. Dira says that there are children living on the property, and that Mr. Dira and Ms. Makhoba appear to have been living there for some time, I will, in the interests of fairness, give the first and second respondents just over two months to vacate before they can be removed.

12 For all these reasons, it is ordered that –

12.1 The first and second respondents and all those who reside with them (“the occupiers”) are ordered to vacate the property situated at ERF 1313, Greenstone Hill Extension 15, also known as 15 Sagewood Drive, Thorn Valley Estate, Stoneridge Drive, Greenstone Hill, Edenvale (“the property”).

12.2 The occupiers must vacate the property on or before Thursday 31 August 2023, failing which the sheriff of this court may evict them, assisted if necessary by the South African Police Service or a private security company contracted by the sheriff and acting under the sheriff's control.

12.3 The occupiers are interdicted and restrained from re-entering the property after they have vacated it or been evicted from it in terms of this order. If the occupiers do re-enter the property, the sheriff is authorised to remove them without further warrant.

12.4 The first respondent is directed pay the costs of this application.

S D J WILSON

Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 22 June 2023.

HEARD ON: 2 June 2023

DECIDED ON: 22 June 2023

For the Applicant: C Lourent Instructed by SSLR Inc For the First and Second Respondents: G Mncube Instructed by Mncube Attorneys Inc

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Prepared on 11 October 2026 · Esheria