

SOUTH AFRICA / JUDGMENT

Ndlovu v Unlawful Occupiers

Erf 3200 (1739/2011) [2011]

ZAGPJHC 60 (30 March 2011)

[2011] ZAGPJHC 60

COURT

South Gauteng High Court, Johannesburg

BEFORE

Willis

CASE / FILE NUMBER

1739/2011

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IN THE SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 1739/2011

DATE: 2011-03-30

In the matter between

JUSTICE NDLOVU AND CATHERINE NDLOVU.....Applicants

And

UNLAWFUL OCCUPIERS ERF 3200.....Respondents

J U D G M E N T

WILLIS, J:

- [1] This is an application for the eviction of unlawful occupiers of premises at 41 Edith Caville Street in Hillbrow, Johannesburg. These premises are a block of flats. It has not been clear to me what exactly the relief is which the respondents, represented in court today, seek in this matter.
- [2] The respondents have been given a more than adequate opportunity to file answering affidavits prior to this hearing. They have failed to take advantage of this opportunity. Nothing has been filed on their behalf. It is clear from then correspondence between Moodie and Robertson, acting for the applicants and Engelbrecht-Madlanga acting for 25 of

the 31 unlawful occupiers that it was accepted that the answering affidavit in this matter should have been filed on 11 March 2011, and that a further indulgence was agreed to by Moodie and Robertson. Again, the extended deadline has not been met.

- [3] Mr Pheto, who appears for 25 of the 31 respondents, today submitted that the return of service indicated that there had not been proper compliance with the order of this court authorising service of the notice of the intended eviction. In this regard, the answer is to be found in the unanimous decision of the Supreme Court of Appeal in the recent case of *Theart v Minnaar* 2010 (3) SA 327 (SCA) especially at paragraphs [13] and [14]. In these paragraphs, the court makes what, in my respectful opinion, is an utterly unanswerable proposition of law. It is this: it is no good for the respondents represented by counsel in court to complain that they did not receive perfect notice of the application. Quite clearly, by virtue of the fact that there is an advocate in court instructed by an attorney, they were indeed made aware of these proceedings. That, at the end of the day, is what court

orders

related to service are all about. They are designed precisely to ensure that a court can be reasonably comfortable with the fact that those who may be affected by the orders have been made aware of the proceedings and can put before the court facts and reasons why a court order adverse to them should not be made.

- [4] There is, of course, the interesting question of the six occupiers who have not instructed attorneys to represent them in these proceedings. Mr Pullinger, who appears for the applicants, is nevertheless prepared to take his chances in this regard. That is the right of the applicants. In other words, these six may later raise a defence to an order granted in their absence that they were unaware of these proceedings and present a bona fide defence. Prima facie, they have received adequate notice. They too have failed to file any affidavit indicating why they should not be evicted.
- [5] Accordingly, it seems to me that the applicants must succeed and an order is granted in terms of prayers 1, 2, 3, 4, 5 and 6 of part B of the notice of motion dated 18 January 2011. The date of the eviction, the date upon which the respondents are to vacate the property and which is to be determined by the court is 30 April 2011.

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Counsel for the applicants: Advocate A. W. Pullinger

Counsel for 25 of the respondents: Advocate A. M. Pheto

Attorneys for the applicants: Moodie and Robertson

Attorneys for 25 of the respondents: Ngcebetsha-Madlanga

Date of Hearing: 30 March 2011

Date of Judgment: 30 March 2011

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