

SOUTH AFRICA / JUDGMENT

Ngwenya and Others v Ngomane Property Trust and Others (2022/11313) [2022] ZAGPJHC 1049 (25 March 2022) [2022] ZAGPJHC 1049

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2022/11313

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IN

THE HIGH COURT OF SOUTH AFRICA,
GAUTENG

DIVISION, JOHANNESBURG

CASE

NO: 2022/11313

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

DATE:

25/03/2022

In

the matter between:

SAMUEL
NGWENYA First
Applicant
PHUMULANI
MKHWANAZI Second
Applicant
LINDANI
BUTHELEZI Third
Applicant
EMMANUEL
MKHIZE Fourth
Applicant
KHETHUKUTHULA
MHLUNGU Fifth
Applicant

SINETHEMBA
MYEZA Sixth
Applicant
WELILE
MYEZA Seventh
Applicant
KHULEKANI
ZIKALALA Eighth
Applicant
ZANELE
MYEZA Ninth
Applicant
NKOSIKHONA
NKABINDE Tenth
Applicant
NONHLE
BHENGU Eleventh
Applicant
TEBEGO
KHUMALO Twelfth
Applicant
NONTOBeko
NGCOBO Thirteenth
Applicant
NKOSINGIPHILE
MASUKU Fourteenth
Applicant
ZINHLE
MLAMBO Fifteenth
Applicant
SITHEMBILE
VILAKAZI Sixteenth
Applicant
NOKUTHULA
LUNGA Seventeenth
Applicant
THEMBA
MTSHALI Eighteenth
Applicant
JEFRY
MYEZA Nineteenth
Applicant
SBUSISO
ZULU Twentieth
Applicant
LUNGILE
KHUMALO Twenty
First Applicant
and
NGOMANE
PROPERTY TRUST First

Respondent
SHERIFF
JOHANNESBURG EAST Second
Respondent
CITY
OF JOHANNESBURG
METROPOLITAN
MUNICIPALITY Third
Respondent

JUDGMENT

MOORCROFT AJ:

Order:

[1] In this matter I granted the following order after hearing the application as an urgent application on 24 March 2022:

“1. Pending the return day of the application on 29 March 2022 –

1.1. The first respondent is interdicted from evicting the applicants in the premises described as ERF 462 Denver situated at no 8 and 10 Morice Street, Malvern, Gauteng province;

1.2. The first respondent is ordered to return to all the applicants the keys to the premises insofar as same are in the possession of the first respondent;

1.3. The first Respondent is ordered to restore occupation of the premises to the applicants;

2. The respondents may file their answering affidavit on or before 12h00 on 28 March 2022;

3. The applicants may file replying affidavits by 18h00 on 28 March 2022;

4. The application is postponed to the urgent court on 29 March 2022;

5. The attention of the respondents are directed to Uniform Rule 6(12) in terms of which the respondents or any of them may set the matter down for reconsideration of the order;

6. The costs are reserved.”

[2] The reasons for the order follow below.

[3] The application was argued in the absence of the respondents and no answering affidavits are to hand. I rely solely on the applicant’s affidavits.

The pending appeal:

[4] The first respondent brought an application as applicant in the Johannesburg Magistrates’ Court for the eviction of the present first applicant (then the first respondent) and others.

- [5] On 21 October 2021 the Learned Magistrate granted an order that the present first applicant and his immediate family be ordered to vacate premises situated at Erf 462 Denver, Melvern, Johannesburg on or before 5 January 2022, and dismissed the application against the remaining respondents.
- [6] The present first respondent was not satisfied with the order and noted an appeal to the Gauteng Division of the High Court in Johannesburg “against the whole of the judgment and order delivered by the Honourable Magistrate Rooy on 21st October 2021 in the above matter”. This was done on 27 October 2021.
- [7] The present first respondent rather surprisingly therefore also appealed against the part of the order in which it was successful.
- [8] The present applicants were evicted from the premises on 22 March 2022.
- [9] The present applicants then launched the application in the Urgent Court in Johannesburg that the present first respondent be interdicted from evicting the applicants, that the eviction be declared unlawful, that the first respondent be ordered to return the applicants’ keys in respect of the premises, that the respondents be ordered to file answering affidavits on or before noon on 28 March 2022, and that the matter be postponed by way of a rule nisi to 29 March 2022.
- [10] The application was set down for the 23rd at 14h00 and then stood down to the 24th at 10h00. On the basis of the allegations in the founding affidavit I ruled that the application was urgent.
- [11] The application was served on 23 March 2022 by hand delivery to the wife of a trustee of the first respondent and by sending an electronic mail copy to the first respondent on the same day. The application was also served on the same day on the second and third respondents.
- [12] In the founding affidavit it is alleged that the applicants were evicted on 22 March 2022 despite the fact that the appeal lodged on 27 October 2021 was never finalised or withdrawn.
- [13] A decision by a Court that the subject of an appeal is suspended pending the decision of the appeal, unless the Court orders otherwise and under exceptional circumstances. This principle now entrenched in section 18 of the Superior Courts Act, 10 of 2013, has its origins in the common law.
- [14] No order was granted against the second to twenty first applicants. The position as regards the first applicant is more complicated. An eviction order was indeed granted against him but the present first respondent chose to also appeal that part of the order as well and for that reason I find that the notice of appeal also suspended the decision in respect of the first applicant.
- [15] The respondents were therefore not entitled to evict the applicants. I therefore granted the order quoted above.

J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 24 March 2022

COUNSEL FOR THE APPLICANTS: A Khoza

INSTRUCTED BY: Mafenya

Attorneys

DATE OF THE HEARING: 24

March 2022

DATE OF ORDER: 24

March 2022

DATE OF JUDGMENT: 25

March 2022

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