

SOUTH AFRICA / JUDGMENT

Nkombi v Naidoo and Another (Leave to Appeal) (3947/2025) [2025] ZAGPJHC 287 (12 March 2025) [2025] ZAGPJHC 287

COURT

South Gauteng High Court, Johannesburg

BEFORE

Wilson

CASE / FILE NUMBER

3947/2025

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG
CASE
NO: 3947/2025

DATE:

2025-03-12
(1)
REPORTABLE: NO
(2)
OF INTREST TO OTHER JUDGES: NO
(3)
REVISED
12
March 2025
In
the matter between
KHOLEKA
NKOMBI
Applicant
and
KOOSHEN
NAIDOO
First Respondent
VANESSA
LEE NAIDOO
Second Respondent

JUDGMENT**LEAVE TO APPEAL**

WILSON, J: On 30 January 2025, I gave judgment evicting the applicant, Ms Nkombi, from property at Erf 2733 Northcliff, Johannesburg.

Ms Nkombi was in occupation of the property together with the respondents, Mr and Ms Naidoo. Mr and Ms Naidoo had purchased the property from Ms Nkombi, but Ms Nkombi had refused to vacate until a difficulty she had with Standard Bank, which held the bond over the property until the Naidoos purchased it, had been sorted out.

In my judgment a quo I found that there was no rational connection between the dispute that Ms Nkombi had with Standard Bank and the Naidoos' right to exclusive possession of the property. I also found that it was not just and equitable to allow Ms Nkombi to remain in occupation pending the resolution of her dispute with Standard Bank. I remarked that the situation on the property is untenable, given that Ms Nkombi remains in occupation in one part of the house, while the Naidoos occupy the other part of the house with their family. I made an eviction order which will become executable on 31 March 2025.

Ms. Nkombi now seeks leave to appeal against the eviction order. She filed her application for leave to appeal late, but, given the slightness of the delay, and the fact that Ms. Nkombi is a lay litigant, I intend to condone that oversight.

I set the application down and notified the parties of my intention to hear it today. Ms Nkombi wrote to my registrar and expressed the opinion that I was not empowered to set the application down today because that is a power that only the registrar has.

That is, of course, misguided because the registrar acts on the instruction of the Judge seized with the matter. I instructed my registrar to set the matter down for today and there can be no difficulty with the steps that I took to do so.

Ms Nkombi was informed in writing over a week ago that the matter would proceed today. She has apparently taken no further interest in prosecuting the application for leave to appeal. In correspondence with my registrar, Ms. Nkombi has made clear that she does not intend to appear before me, because she regards my decision to set the matter down for today as illegitimate.

Ms. Nkombi's wilful default notwithstanding, it is in my view appropriate to deal with the application for leave to appeal on its merits.

There is no merit in the application for leave to appeal. I have set out in my judgment a quo why it is neither fair nor lawful to permit Ms Nkombi to remain in occupation of the property pending the resolution of her dispute with Standard Bank, which has in any event already been dealt with by the Banking Ombudsman. In my view, there is no prospect of an appeal court finding otherwise.

Given the unusual facts of this case, it seems to me to be in the interests of justice, and indeed in the interests of everyone living at the property, that the eviction order be executed on the timetable that I originally set.

For all those reasons -

[1] The late filing of the application for leave to appeal is condoned.

[2] The application for leave to appeal is dismissed with costs.

WILSON, J

JUDGE OF THE HIGH COURT

12 March 2025

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Prepared on 12 October 2026 · Esheria