

SOUTH AFRICA / JUDGMENT

Sewprasad and Others v Naude N.O and Others (48339/2019) [2021] ZAGPPHC 701 (14 October 2021)

[2021] ZAGPPHC 701

COURT

North Gauteng High Court, Pretoria

BEFORE

Janse Van Nieuwenhuizen

CASE / FILE NUMBER

48339/2019

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IN

THE HIGH COURT OF SOUTH AFRICA(GAUTENG DIVISION, PRETORIA)
REPUBLIC
OF SOUTH AFRICA

Case Number:

48339/2019

In

the matter between:

SUNIL

DUTT SEWPERSAD

First

Applicant

VINODTHA

SEWPERSAD

Second

Applicant

THE

OCCUPIERS

Third

Applicant

And

LEON

	NAUDE N.O.
	First
	Respondent
	MARC
	BRADLEY BEGINSEL N.O.
	Second
	Respondent
	THE
CITY OF TSHWANE:	METROPOLITAN
	MUNICIPALITY
	Third
	Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J

- [1] This application for the rescission of a default judgment granted on 14 August 2020, has been preceded by an application for the rescission of a default judgment granted against the applicants on 3 October 2019.
- [2] It is, therefore, apposite to first of all have regard to the history of the matter.

Background

- [3] The first and second applicants (“the applicants”) are the owners of immovable property known as [...], Gauteng (“the property”).
- [4] The estate of the applicants was sequestrated on 9 February 2018 and the first and second respondents (“the respondents”) were appointed as trustees of the insolvent estate on 27 September 2019.
- [5] The respondents in the winding-up of the estate of the applicants obtained an order on 3 October 2019 to evict the applicants from the property.
- [6] On 24 October 2019 the applicants launched an application for the rescission of the order (“the first rescission application”). The respondents duly filed an opposing affidavit. The applicants failed to file a replying affidavit and furthermore failed to take any steps to finalise the application.
- [7] In the result, the respondents set the matter down on the opposed roll for 11 August 2020.

- [8] The applicants were not present on the date of the hearing of the matter and the matter proceeded by default. Notwithstanding the applicants' absence, Rabie J considered the application and delivered a judgment on 14 August 2020 in respect of the merits of the application. In terms of the judgment the applicants' first application for rescission was dismissed.
- [9] The aforesaid judgment prompted the present or second application for the rescission of the judgment delivered by Rabie J on 14 August 2014.

Hearing

- [10] The second applicant, Mrs Sewpersad, appeared in person at the hearing of the matter. Although the respondents raised several points in limine, the hearing proceeded on the bona fide defence raised by the applicants.
- [11] Mrs Sewpersad stated that the property has always been their family home and the place where they raised their children. As such they do not want to vacate the property and she requested the court to order the respondents to enter into a lease agreement with them.
- [12] Mrs Sewpersad indicated that some members of the family have obtained employment and that they would be in a position to pay rent in respect of the property.
- [13] The court explained to Mrs Sewpersad that it may not interfere in private agreements between individuals. The order requested by Mrs Sewpersad was therefore legally untenable.
- [14] Mrs Sewpersad expressed her concern that the family will end up on the street without a roof over their heads. The court pointed out that it is possible for the family to rent another property with the money they have available to pay rent.
- [15] Mrs Sewpersad stated that she understood the legal difficulties and accept that the family will need to vacate the property.
- [16] The matter was heard on 1 September 2021 and at the date of the handing down of this judgment, the applicants would have had sufficient time to find alternative accommodation.
- [17] In the premises, it is clear that the applicants do not have a bona fide defence to the relief claimed by the respondents and their application for the rescission of the judgment by Rabie J dated 14 August 2020 stands to be dismissed, costs to follow the cause.

ORDER

- [18] In the premises, I grant the following order:

The application is dismissed with costs.

N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES: 1 September 2021

(Virtual hearing.)

DATE DELIVERED PER COVID19 DIRECTIVES: 14 October 2021

APPEARANCES

For the Applicants:

Ms Vinodtha Sewpersad (in person)

Counsel for the Respondents:

Advocate M. Jacobs

Instructed by:

Vezi & De Beer Incorporated

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