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NOT REPORTABLE

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 04730/2010

DATE: 2010-11-26

In the matter between:

JANE'S HAVEN CHILDREN'S VILLAGE

1st Applicant

ANDREW WILLIAM SIMAAN

2nd Applicant

and

HANNAH KITELE

1st Respondent

PATRICK KITELE

2nd Respondent

MINISTER FOR SOCIAL DEVELOPMENT

3rd Respondent

J U D G M E N T

C.J. CLAASSEN, J:

[1] The applicants are the registered owners of two adjoining

properties, portions 13 and 14 of erf 93 Calvin Township. The first applicant is the trade name of a company registered under Section 21 of the Companies Act known as Micromatica H 60 with registration number 2003/005136/0. The other property is owned by Mr Andrew William Simaan in his private capacity. Mr Simaan was also the deponent to the founding affidavit. It appears that this matter has a very long history.

[2] Mr Simaan made contact with the first and second respondents, Mr and Mrs Kitele, who were interested in establishing a children's haven. Because the property was approved and designed by Mr and Mrs Simaan to be used as such, they allowed the Kitele's to take occupation of the property and conduct thereon a Children's Home.

[3] However, certain problems arose, which ultimately resulted in the withdrawal of the owner's aforesaid consent which allowed the Kitele's occupation of these two properties. There are some disputes of fact on the papers regarding the question whether or not the Kitele's had abused their occupation of this property in regard to taking proper care of the children. Be that as it may, it remains common cause that certain of these children were actually removed from the property and out of the care of the respondents by welfare officers.

[4] Thereafter the Kitele's permitted certain women and children to occupy these premises together with certain other children. They prevented Mr Simaan, both in his personal capacity and as a director of the first applicant, to gain access to the property. It was therefore difficult for the applicants to gauge exactly what was happening to the children housed on the property.

[5] It is further common cause that a young boy by the name of Pierre Maurice disappeared from the property. The police were contacted and it was later established that the child had been taken to Zimbabwe. The manner in which Mr and Mrs Kitele acted in this regard, was most

suspicious. No satisfactory reason was given by them as to why the child had to be removed so suddenly to Zimbabwe. Today in court, Mrs and Mr Kitele handed in an affidavit indicating that the child is indeed in Zimbabwe and alive and well, which is comforting to know.

[6] However, there are other indications of abuse that occurred on the property. In particular there is the report filed by a Mr Pierre Skosana who was ordered by a previous order of this court to investigate the living conditions and the welfare of the persons and children currently residing on the property. This report is somewhat disconcerting. It records that the first respondent agreed that a girl by the name of NT, 13 years old, was physically shaking when she was interviewed by Skosana.

[7] The report further records the fact that a 13 year old girl had not been admitted to any school at all since 2008. The excuse advanced by the respondents was that the girl was not in school on that particular day as she was writing exams to be admitted to another school. Whether or not this is so need not be decided.

[8] It is common cause that the applicants are owners of the property despite a failed attempt by Mr and Mrs Kitele to dispute such ownership. Their version is that the property was donated to them. However, they were not able to produce any agreement of donation signed and completed in writing. As such, any reference to a donation is therefore invalid in law.

[9] The aforesaid alleged donation was the only basis upon which they claimed to have been authorised to occupy the property. I told them while they were addressing me that such explanation is insufficient in law for them to retain occupation of the property once the true owners require the occupation of their own property.

[10] It is common cause that the applicants have complied with all the

provisions of the so-called PIE Act. This is now the third stage of these proceedings during which the court is to decide whether or not to evict the first and second respondents and all who hold occupation through them from the particular properties.

[11] In my view there is substantial reason to be concerned about the welfare of the children even though many of them are living with their mothers on the premises. The fact of the matter is that the mothers were allowed accommodation on these properties by the first and second respondents without the authority or approval or consent of the first and second applicants. That makes their continued occupation of the property tenuous placing them and their children in a vulnerable position.

[12] The final conclusion of Skosana who was an independent official appointed by this court, is a recommendation that this court intervene for the sake of the children. She attaches to her report a letter from the Department of Social Development's Community Planning and Development section written to the Operation Manager of the City of Johannesburg concerning a request to issue a certificate of closure of the St Jane's De Chantelle Childcare Centre situated on the aforesaid properties. It states:

"Based on the recurrence of illegal placement of children and the fact that the owners want to institute an eviction, we request your unit to withdraw the environmental health certificate and issue a certificate of closure."

[13] I have no doubt that such a request would not have been issued by the Social Development Department had there not been substantial reasons for doing so.

[14] Before me appeared counsel on behalf of the third respondent, the Minister for Social Development, who intimated that it was really the Provincial Social Welfare Department who should have been cited as the third respondent in this matter. However, he stated quite categorically that the third respondent was in any event already cooperating with the

Provincial Social Welfare Department and that the welfare worker Tikele Sithole who had investigated the situation on the property, was employed by the Provincial Social Welfare Department. The fact that the incorrect department was cited is therefore neither here nor there.

[15] For all of the aforesaid reasons I am of the view that judicial intervention is called for. The notice of motion seeks not only an eviction order, but specifically include a measures to secure the safety of the children that may still be there in addition to an order that the Department of Social Development should investigate whether or not the Children's Court should be approached for a further investigation in terms of Section 155(2) and (4) of the Children's Act 58 of 2005.

[16] I am of the view that that is the proper order to be made and for the reasons aforesaid I issue an order in terms of prayers 1 and 2 to which I add that the ejectment of the respondents and those occupying through or under them need to take effect by 15 December 2010. I further issue an order in terms of paragraphs 3, 4, 5 and 6 of the notice of motion dated the 16 March 2010.

THUS DONE AND SIGNED AT JOHANNESBURG THIS 27th DAY OF JUNE 2011.



C.J.CLAASSEN
JUDGE OF THE HIGH COURT