

In the matter between:

MENZI KWAME NKRUMAH MCUNU

Applicant

and

ANNA MALATJI

Respondent

SUMMARY

KGOMO, J:

Eviction-This is an application for eviction launched by the applicant on 1 March 2012 for an order in the following terms:

1. That the respondent and/or any person/s unlawfully occupying the premises through them be evicted from the premises situated at Erf 254 Moletsane township Soweto, also known as 254 Mokhatla Street, Moletsane;
2. That the respondent and any person/s occupying the premises through her be ordered and directed to vacate the property within 30(thirty) calendar days from date of service of this order;
3. In the event of the respondent and/or any person/s unlawfully occupying the premises through her failing to vacate the abovementioned premises in accordance with prayer 1 above, that the sheriff or his lawful deputy, of this court, be authorised to evict the respondent and/or any person/s occupying same through her. In such an event the applicant should be entitled to recover the costs of the eviction from the respondent when so evicted;
4. That the sheriff or his lawful deputy be authorised to elicit the assistance of the south African police Services in order to give effect to this order, if such assistance is required by the sheriff or his lawful deputy;
5. Costs of this application on a scale as between attorney and client; and
6. Such further and/or alternative relief as this court may deem necessary.

The applicant is the lawful owner of the property in which the respondent and/or any person(s) unlawfully occupying it through the respondent is/are refusing to vacate despite several notices by applicant to do so. The applicant has purchased the property at a legal or lawful sale in execution and the property is already registered in his names.

The respondent alleges that her brother, one Ben Malatji had unbeknown to the family sold the property to Sipho Mlotshwa and that he had no right or mandate from the family to do so. It is Mlotshwa who lost the property in a sale in execution after foreclosure by the bank and due process.

In its answering affidavit the respondent raised two points *in limine*, namely:

1. That this matter is still pending in this Court under Case Number 12/22068 in which or wherein the respondent has launched an application for the setting aside of the sale of the property (same Erf 254 Moletsane) to one Sipho Eldinfolds Mlotshwa by his (Respondent's), one ben Malaji; and
2. That this application does not comply with the Prevention of Illegal Evictions from an Unlawful Occupation of land Act, 1998 (Act 19 of 1998) as amended ("PIE Act").

The court found the first point *in limine* as not only misplaced but also an abuse of the process of the court which have had the effect of wasting time and also causing an unnecessary escalation of the costs of the hearing. It stands to be dismissed "pronto" and it must be accompanied by a punitive costs order.

The second point *in limine* also was found to be an ill-thought, capricious and wasteful exercise on the part of the respondent. The respondent merely made mention of an alleged non-compliance with the PIE Act by the applicant but did not come up with anything to substantiate this contention. As such, there was no point *in limine* to deal with on this point. It also must be dismissed with costs, which costs also qualify to be on a punitive scale.

An order was therefore, granted in favour of the applicant as prayed for herein above.