

IN THE HIGH COURT OF SOUTH AFRICA (SOUTH GAUTENG)**JOHANNESBURG****CASE NO:** 35589/11**DATE:** 2012-10-16

10 In the matter between

MATSELA, ZACHARIA & OTHERS

Applicant

and

MOLOTO, MICHAEL & OTHERS

Respondent

J U D G M E N T

WILLIS, J:

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[1] Earlier this morning I gave a judgment which dismissed an application for a postponement with costs.

[2] We are now dealing with the substantive application, which relates to the application for the removal of Mr Moloto as the appointed liquidator

of Newtown Housing Co-operative Limited and another.

[3] I repeat, by way of completeness, that an application was made to liquidate Newtown Housing Co-operative in 2008. The liquidation order was granted on 7 August 2009. In November 2009, members of the co-operative received notice that the property was advertised for sale by way of public auction. The public auction took place on 26 November 2009, and transfer of the property took place sometime during the course of 2011.

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[4] The application has been opposed by the first respondent, being Mr Moloto, the liquidator, and by the fourth respondent, being the Johannesburg Housing Company.

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[5] The first point that has been taken by the respondents is that the application is fatally defective inasmuch as the applicants have no *locus standi*. In response thereto the applicants rely, *inter alia*, purportedly on the fact that they were appointed as directors. Their certificates of appointment as directors, however, date sometime between 3 November 2010 and 26 March 2011, when, as I have already indicated, Newtown Housing Co-operative had been put into liquidation in 2009. They simply could not have been directors at the critically relevant time.

[6] The other ground upon which the applicants claim *locus standi* is that they were creditors. There is no merit in this particular ground, as they

have failed utterly to comply with the requirements of the Co-operatives Act, 14 of 2005, insofar as proving any claim as creditors is concerned. They have, in particular, failed to allege or even prove compliance with section 74 of the Co-operatives Act.

[7] A further ground upon which the applicants claim *locus standi* is that they were members of the co-operative. This is a baldly asserted allegation. If they were members, it would not be difficult, in terms of the Co-operatives Act, to annex some kind of certificate indicating that
10 they had been appointed.

[8] A further fatal difficulty for the applicants, with which I fully agree with counsel for the respondents, is that the applicants have failed to join the primary liquidation creditor to the application, being the National Housing Finance Corporation. This is a major creditor who has a substantial interest in this matter.

[9] The relief sought also seeks orders against the Master of the High Court. The Master does not feature in the Co-operatives Act. The
20 property was sold in execution in terms of the Co-operatives Act, and not as a result of a liquidation of a company. Furthermore, the allegation is incorrectly made that the property was sold in execution. It was not sold in execution, it was sold on a public auction.

[10] Another allegation has been are made, namely that there is

something suspicious in the fact that the property was transferred despite there being an amount alleged of R1.5-million due to the City of Johannesburg. The fact of the matter is that the evidence suggests that the amount that was owed to the City of Johannesburg was of the order of several hundred thousand Rand rather than R1.5-million, and that this was paid, and that the City of Johannesburg issued a rates clearance certificate.

[11] It has also been alleged that an inadequate purchase price was
10 obtained at the public auction. The fact of the matter is that the property was sold in question for an amount of almost R28-million, which was very close to the sworn valuation of an estimated market value of R30 500 000, which was approved by the third respondent, who is the Registrar of Co-operatives.

[12] In all the circumstances of the matter, it seems to me that there is no merit whatsoever in the application. Clearly this a contentious matter, involving vast sums of money, and unbelievable stress. The huge stress of trying to seek evictions in the city certainly warrants the
20 employment of two counsel. Mr van der Merwe has asked for the costs to be on a punitive scale. I am not inclined to go so far. I shall simply dismiss the application with costs, including the costs of two counsel.

[13] The following is the order of the court:

The application for the removal of Mr Michael Moloto as

liquidator of Newtown Housing Corporation is dismissed with costs, which costs are to include the costs of two counsel.

WILLIS J

JUDGE OF THE HIGH COURT