

iAfrica Transcriptions (Pty) Limited/hvr

IN THE HIGH COURT OF SOUTH AFRICA

(SOUTH GAUTENG HIGH COURT, JOHANNESBURG)

CASE NO: 11464/2012

DATE: 2012-07-31

In the matter between

REAL PEOPLE HOUSING CC

Applicant

and

**JOYCE PIKI ZAMISA
ALBERT MBUTI ZAMISA**

**1st Respondent
2nd Respondent**

JUDGMENT

WILLIS J:

[1] This is an application for the eviction of the respondents from immoveable property at portion 23 of Erf 1497 Ironside, situate at 23 Elsa Street, Debonaire Park, De Deur, Gauteng.

[2] This matter has been repeatedly postponed in this court by a now fewer than three judges. It was postponed by Tsoka J on 15 May 2012, by Meyer J on 19 June 2012 and by Mabisele J on 24 July 2012.

[3] Numerous points have been taken to resist the order for eviction. One of them is that there was no proper notice in terms of the PIE Act, PIE being an abbreviation for the Prevention of Illegal Eviction and Unlawful Occupation of Land Act No. 19 of 1998. Lest anyone at some future stage say that I have failed to take this into account, I wish to record that I have carefully looked through the record in this matter and it is clear that a notice of eviction was indeed served on the respondents.

10 [4] Furthermore, I fail to see how this point can be taken when the respondents have appeared in court in person and have been represented by counsel several times in this matter, strenuously arguing it. It makes nonsense when people stand up in court and say that the whole application should fail because there has not been proper notice, when in fact it is abundantly clear that the respondents are fully aware of their intended eviction.

[5] Counsel for the applicant has made much of the fact that the version of the respondents is contradictory and inconsistent with a version
20 which they gave in a dispute in the Vereeniging Magistrates Court, relating to the same property under case number 1539/2010. I shall say as little as possible about this because in my experience the more one says in these eviction matters, the more dangerous it becomes. Suffice it to say I think that there is some merit at least in the point that the respondents had been inconsistent and contradictory in their defence in

this matter.

[6] I need not make any finding on that in order to make the order. It is quite clear that the applicant is the registered owner of the property, recorded as such in the office of the Registrar of Deeds. There is no contest about this issue.

[7] It is also quite clear that whatever lease agreement that may have been in existence between the parties, was validly cancelled a long time
10 ago. Furthermore the defendants are justifying their non-payment to the applicant on the basis of misrepresentations made to them concerning the lease agreement. Those misrepresentations, if valid, would not entitle them to stay in the property. The result would simply be the termination of the the lease.

[8] What has been raised is a vague defence that the respondents somehow purchased the property and that it has not been registered properly in their name. Nothing has been done in ,that regard, but furthermore I can see no reason, as a matter of law and I wish to
20 emphasise it, no reason as a matter of law, as to why that would entitle them to remain in occupation of the property.

[9] I have had regard to the following cases:

- *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Limited and Another* 2012 (2) SA 104 (CC).

- *Occupiers of Erf 101, 102, 104 and 112 Shorts Retreat Pietermaritzburg v Daisy D.A. Investments (Pty) Limited and Others* [2009] 4 All SA 410 (SCA)
- *Occupiers of 51 Olyvia Road Bera Township and 197 Main Street., Johannesburg v City of Johannesburg and Others* 2008 (3) SA 208 (CC).
- *Port Elizabeth Municipality and Various occupiers* 2005 (1) SA 217 (CC).
- *Gundwana v Steko Development and Others* 2011 (3) SA 608 (CC).

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I can see no basis upon which the respondents can successfully resist the application for their eviction.

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[10] I may record that that last week I specifically, as an indulgence to the respondents, stood the matter down from the motion court, in order to hear this matter after appeals this week. in order that the point could be fully ventilated as to whether the municipality should have been joined or not. I was advised from the bar this morning that that point has been abandoned wisely it would seem to me. It is quite clear that the City of Johannesburg were given notice of this matter and had decided not to respond.

[11] The *Blue Moonlight Properties* case decided in the Constitutional Court seems clear authority to me that there is NOT an absolute requirement that the municipality should be joined as a party. Having

regard to all the circumstances in this matter and the fact that it is quite clear from salary slips appended to the papers, that the respondents are not desperately poor squatters, that they are not part of some mass housing debacle playing out in the city, that there is nothing that the city could add to put before this court that could assist it to make a proper decision, there is, in my view, there no basis whatsoever upon which the respondents can succeed in resisting this application for their eviction. Counsel for the applicant has prepared a draft order that reflects the intention of the court and I shall for the sake of completeness read this draft order into the record:

ORDER

1. It is ordered that the respondents and all persons occupying through or under them shall be evicted from the immoveable property described as Portion 23 of Erf 1497 Ironside, situate at 23 Elsa Street, Debonair Park, De Deur, Gauteng.
2. The respondents and all persons occupying through or under them shall vacate the property within 30 days of the granting of this order, failing which the sheriff for the area within which the property is situated, is authorised and required to forthwith carry out the eviction order by removing the respondents and all persons occupying through or under them from the property.
3. The respondents shall pay the costs of the application including the wasted costs of the postponement on 19 June 2012.

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Counsel for the applicant : Advocate *C Gordon*.
Attorneys for the applicant : Craig Baillie Attorneys,
Counsel for the respondents : Advocate *B.T. Ngqwangele*.
Attorneys for the respondents : KP Ntila Attorneys.

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a **VERBATIM** transcription of the proceedings as was ordered to be transcribed by iAfrica Transcriptions and which had been recorded by Digital Court Recording Services by means of a digital recorder in the matter of:

REAL PEOPLE HOUSING

Applicant

and

**JOYCE PIKI ZAMISA
ALBERT MBUTI ZAMISA**

**1st Respondent
2nd Respondent**

CASE NO: 11464/2012

RECORDED AT: Court: High Court JHB Court Nr: ? Stenographer: ?

DATE OF HEARING: 31 July 2012

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