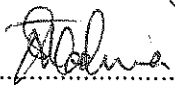


REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 2012/31313

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED.
5/8/13..... DATE	
 SIGNATURE	

In the matter between

MALEKA MACKAY MACHAKA

First Plaintiff

JOSEPH LETSIE MOSHESH

Second Applicant

and

YUNUS RUBIDGE

First Respondent

ANTHEA CASTELIA RUBIDGE

Second Defendant

JUDGMENT

MADIMA, AJ

Introduction

- [1]. The Applicants are joint owners of a property described as Erf number 350 Ormonde Extension 3 Township, Johannesburg ("the property"). They purchased

the property from Standard Bank in September 2011 for an amount of R477 000.00. They are the holders of a valid Title Deed in their names. The Respondents are husband and wife, since divorced. The First Respondent has vacated the property. Only Second Respondent remains in unlawful occupation of the property and refuses to move out despite several demands to do so. The Applicants were represented at the hearing by an attorney. The Second Respondent was not represented.

- [2]. The requisites of section 4(2) of the Prevention of Illegal Eviction from the Unlawful Occupation of Land Act, Act No.19 of 1998, as amended, were complied with.
- [3]. The Applicants' attorney made submissions to the Court. He stated that the property was purchased by the Applicants from Standard Bank on auction. The Applicants were the owners of the said property and were thus deprived of the right to enjoy their property because the Second Respondent refuses to vacate the property.
- [4]. They claim through their attorney that the Second Respondent is not a child or a lady too old to find alternative accommodation. The Second Respondent has had enough time to seek accommodation elsewhere. She has not done so.
- [5]. I called the Second Respondent to make submissions to me regarding what she had heard from the Applicant's legal representative.
- [6]. The Second Respondent claimed that she did not understand what was going on regarding "her" house. She stated that all decisions regarding the property were taken by the First Respondent when they were still together. She submitted further that she and First Respondent divorced some eight years previously.

- [7]. In his answering affidavit, First Respondent alleges that he and Second Respondent have a right in law to occupy the premises as "*we still owe the property and the Applicants have taken transfer unlawfully*". He concedes however that Standard Bank put placed the property for sale by way of a Sheriff's auction. He further states that he to bring an application in terms of Rule 46(11) of the rules of Court and in terms of the common law, ordering that the sale in execution and any agreement of sale entered into thereafter between any of the parties be set aside. Importantly Second Respondent states further in his affidavit that "*Same has been prepared and signed but not brought as material new facts have come to my attention only in September this year*"
- [7]. I must state that there have been several postponements of this matter. The Second Respondent stated that she needed more time to look into the matter. She did not present to me sufficient reasons for a further postponement of the matter. She confirmed that the house had been sold in execution.
- [8]. Whilst I sympathise with Second Respondent's plight in this regard, I must also take into account the plight of the Applicants who continue to pay for a property that they do not occupy, but should be occupying, or take possession of. A property occupied by an occupant who should not be in occupation. An occupier who does not pay them occupational rent. The concept of fairness does not and should not go only in one direction. A Court must weigh the interests of both parties and come to a just conclusion that might not necessarily be acceptable to the "losing" party.
- [9]. It is hardly fair that the Applicants are not able to take possession of their property.
- [10]. What seems to escape First Respondent is that until he has launched his application for the setting aside of the sale in execution, the sale remains valid. It does not seem to matter that the Respondents are of the view that the sale, the

registration and the transfer of the property to the Applicants was the result of fraud. The Respondents have legal options that they can pursue. They indeed might be in the right path in their quest for a review. Respondents need to be reminded that mine is neither a court of appeal nor of review. I cannot set aside the sale in execution or the registration and transfer. This is even in the event the Respondents' allegations pertaining to fraud are true. I shall however not know since I have not been called upon to decide those issues.

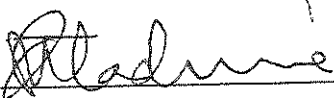
[11]. The leading authority in the above regard is (Oudekraal Estates (Pty) Ltd v City of Cape Town & Others (2004) 6 SA 222 at 242A-C) where Howie P et Nugent JA (delivering the judgment for the Court) held that *"until the administrator's approval, and thus also consequences of the approval, is set aside by a Court in proceedings for judicial review, it exists in fact and it has legal consequences that cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question"*.

[12]. The Court went further and held that *"No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set aside."*

[13]. I am satisfied that all the requisites for the eviction of First and Second and Respondent have been satisfied and accordingly I make the following order:

1. The Respondents and all persons occupying through them or under their control to vacate the respective premises as described as Erf 350 Ormonde Extension Township;

2. Failing compliance with the order, the Sheriff or his deputy is authorized and directed to evict the First and Second Respondent all persons occupying through them in the aforesaid premises;
3. The Sheriff is authorized to approach the South African Police Services for such assistance.
4. The Respondents and all persons occupying through them are to vacate the premises by 8 June 2013.
5. The costs of this application are to be costs in the cause of the main application, Respondent to pay the costs of the application.



TS MADIMA: AJ

ACTING JUDGE OF THE HIGH COURT

On behalf of the Applicants:	Mr X Ngwadla
Instructed by:	Ngwadla Attorneys
	011 333-0595
On behalf of the Respondent:	Anthea Rubidge
Instructed by:	
Dates of Hearing:	08 May 2013
Date of Order	08 May 2013
Date of Judgment:	5 August 2013