IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG **CASE NO. 42055/13**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

13 MAY 2014 _____

In the matter between:

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY **1st Applicant**

CITY OF JOHANNESBURG PROPERTY COMPANY (SOC) LD **2nd Applicant**

And

THE ZOO LAKE BOWLING CLUB **Respondent**

JUDGMENT

MONAMA J

[1] The first applicant is the City of Johannesburg Metropolitan Municipality. It is established in accordance with Section 2 of the Local Government:

Municipal Systems Act 32 of 2000. Its principal place of business is at Loveday Street, Johannesburg.

[2] The second applicant is the City of Johannesburg Property Company SOC Limited, a company registered and incorporated in accordance with the laws of South Africa, with its principal place of business situated at Forum II Building, Braampark, Braamfontein.

[3] The respondent is the Zoo Lake Bowling Club, a public, non-profit voluntary association which is conducting a bowling club at the premises situated at Prince of Wales Drive, Parkview, Johannesburg.

[4] The above property forms the subject matter of this eviction application.

[5] The applicants are the owners of the premises. The premises are occupied by the respondent. The respondent conducts a bowling club thereon and has been doing so for a period of excess of 81 years. The premises are not used for residential purposes except that there is a restaurant operating thereon

[6] The applicants seek the following relief, namely:

6.1 that the respondent and all those who are in occupation on arrangement with it, be ejected from the premises situated at Prince of Wales Drive, Parkview, Johannesburg, and

6.2 that the respondent, and all those who are in occupation under it and/or on arrangement with the respondent, should vacate the premises within 14 (fourteen) days from the date of this order.

The application is based on the right of ownership. It is vehemently opposed. The respondent's defence is that there is a pending review application it has launched against the allocation by the applicants.

[7] The respondent has been in occupation of the premises for a period of 82 years. They occupied the premises in terms of two lease agreements. The first agreement governed the relationship from 1932 until 2000.

[8] During the middle of 2000 the parties concluded a new lease agreement. This is the second lease which was for a fixed period. The said lease agreement was terminated during 2013 by effluxion of time.

[9] Upon the termination of the lease agreement, the applicant issued a tender for the new lease. The respondent participated in the process but was unsuccessful. The tender was given to a third party. As a result, the respondent was unhappy and has now launched a review application to set aside the applicants' decision to award the tender to a third.

[10] Since the termination of the lease the applicants have requested the responded to vacate the premises but have been unsuccessful. The respondent has steadfastly refused to vacate the premises. It continues in its unlawful occupation.

[11] The following mentioned facts are common cause and have not been disputed.

11.1 that the respondent's lease has expired and no new lease was granted to it; and

11.2 that the applicants are the owners of the premises in question.

The applicant's case is based on ownership, they contend that the respondent is in unlawful occupation. The respondents has rais as a defence the review application proceedings it has launched against the applicants' decision to award the tender for the property to a third party.

[12] The issue therefore is whether the defence so raised is sustainable in law.

[13] The applicants are the owners of the property or the premises. *Ipso facto,* their rights to this property are absolute. The right entitles them to enforce it against the whole world. This right operates against the respondent as well.

[14] The alleged defence raised is bad in law. The termination of the lease agreement between the parties has, with certain exceptions, terminated the legal relationship between them. The exception may be in respect of arrear rentals or damages to the property. However, in the current matter such exceptions have not as yet surfaced.

[15] The review application and the allegations therein raised do not assist the respondent in the present application. In *National Treasury v Opposition to Urban Tolling Alliance*[1] the Constitutional Court decided on a matter which was a subject of a pending review[2]. Therefore, the purported defence is nothing but red herring. And so is any reliance placed upon the fact that the respondent's bowling club is a brand.

[1] 2012(6) SA 223 CC.
[2] 2012(6) SA 223 CC at 230 F-G and 233 B-C..

[16] During the argument, counsel for the respondent relied on further submissions including interdict and the decisions dealing with liquor licences. The extension of the principles of the interdict proceedings and the rational in the licence decisions [3] to the present facts is misplaced. The liquor licence cases are distinguishable. They dealt with the lapsed liquor licences, which could be extended or surcharge levied on them. Even in those circumstances the court was cautious. It dealt with them on the basis of hardship which could have resulted. *In casu,* we deal purely with commercial arrangements. It will be wrong to grant the relief sought by the respondent. This court cannot create a lease agreement for the parties.

[17] The respondent's counsel further submitted that there is a need to preserve the "greens". This argument is without merit. It loses sight of the legal principle of accession. In *Unimark Distributors (Pty) Ltd v Erf 94 Silvertondale (Pty) Ltd* it was held that:

> *"- The permanent attachment or annexation of structures such as buildings, walls and other fixtures or fittings to land, is denoted by the term* ***inaedificatio,*** *a form of accession. In accordance with common-law rules or principles such as* ***superficies solo cedit*** *and omne quod* ***inaedificatur solo cedit*** *such structures become the property of the owner of the land or premises on which they have been built or erected.*'[4]

[3] Airoadexpress (Pty) Ltd v Chairman, Local Road Transportation Board, Durban and Others 1986 (2) SA 633 (A); Winkelbauer and Winkelbauer t/a Eric's Pizzeria and Another v Minister 1995(2) SA 571 TPD; and Du Plessis N.O. v Voorsitter van Die Drankwinkelraad en Ander 1995(2) SA 486 OPA.
[4] 1990 (2) SA 986 TPD at 997 I-J.

The "greens" constitute property of the applicants by *accesio*. In principle the applicants are at liberty to deal with the property as they wish.[5]

[18] The applicant's counsel submitted that this eviction proceedings are based on straight forward facts. The submission is correctly made. However, such submission has a direct bearing on the question of costs. The applicants have engaged the services of two counsel. In my view that was unnecessary. The matter is not complicated to justify two counsel.

[19] In the circumstances I make the following order:

1. The respondent is ordered to vacate the premises on or before 31 August 2014;
2. Should the respondent fail to vacate the premises as ordered in order 1 above, the sheriff of Johannesburg North is hereby authorised to remove the respondent; and
3. The respondent is ordered to pay the costs of one counsel

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RE MONAMA
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION

[5] Glen v Glen 1979 (2) SA 1113 TPD at 1129 E-F.

Appearances

Counsel for the applicant:	Adv. N.H Maenetja SC Adv. PG Seleka
Instructed by:	Mkhabela Huntley Adeyeke Inc, Sandton
Counsel for the respondent:	Adv. M Oppenheimer
Instructed by:	Schindlers attorneys, Melrose Arch, Johannesburg
Date of hearing:	9 May 2014
Date of judgment:	13 May 2014