

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 13/03451

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

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DATE

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SIGNATURE

In the matter between:

BUSINESS PARTNERS LIMITED

Applicant

And

THE OCCUPANTS OF ERF 134, RANDPARKRIF

First Respondent

KHOABANE, PINKY JULIA

Second Respondent

MABUZA, HERBERT THULANI

Third Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Fourth Respondent

J U D G M E N T

MAKUME, J:

[1] In this matter the applicant seeks an order evicting first, second and third respondents from certain residential property described as Erf 134, Randparkrif situate at 3 Kokkewiet Road, Randparkridge, Randburg (*“the property”*).

[2] It is not in dispute that the applicants are the owners of the property. They acquired ownership when the title to the property was registered in their favour on the 12th October 2012.

[3] Prior to launching this application the applicant complied with the statutory requirements in terms of Act 19 of 1998 (*“the PIE Act”*) in that:

3.1 An *ex parte* application for the authorisation of and direction regarding service of a section 4(2) notice in terms of the PIE Act was launched.

3.2 An order authorising the notice and directing the manner in which the notice was to be served on the respondents.

3.3 The authorised notices as well as the court order authorising same were served on the respondents.

3.4 Fourteen calendar days elapsed from the date of service of the notice as well as the court order authorising same on the respondents.

[4] On the 15th October 2012 the applicant's attorneys addressed a letter to the respondents requesting them to vacate the property within 30 days from date of the letter in view of the fact that no agreement was in existence between the applicant and the respondents enabling them to continue residing on the property. In response to this letter the respondents' attorneys wrote as follows:

"As our client does not have alternative accommodation, our client undertakes to vacate the property by 31 December 2012 and undertakes on a strictly without prejudice basis not to proceed with legal action to recover the damages suffered."

[5] The respondents did not vacate the property as promised in their letter referred to above and instead on the 4th March 2013 they filed an opposing affidavit to the application for eviction. In an answering affidavit second respondent who does not profess to be acting on behalf of the other respondents raises two points *in limine* firstly challenging the authority of Mrs Dorothea Regina van Heerden to depose to the applicant's affidavit and

secondly that she Van Heerden as the Assistant General Manager does not state how the allegations in her affidavit fall within her personal knowledge.

[6] There is nowhere in the answering affidavit where the second respondent deposes to reasons why she should remain on the property. She does not say that she has a valid lease agreement to stay on the property nor does she attack the applicant's right to ownership of the property.

[7] The first point *in limine* raised by the second respondent is without merit as it was said by Streicher JA in the matter of *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 at page 624 paragraph [19]:

"In my view, it is irrelevant whether Hanke had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised."

[8] It is trite law that a party who challenges the authority of any party in the legal proceedings must utilise the provisions of the Uniform Rules of Court. The respondents' failure to serve a Rule 7 notice on the applicant renders the point *in limine* useless and of no assistance to the respondents (see *Unlawful Occupiers School Site v City of Johannesburg* 2005 (4) SA 199 (SCA)).

[9] In the replying affidavit the applicant has annexed a document marked "BP13" dated the 16th August 2012 which document clearly indicates that the

deponent Dorothea van Heerden Assistant General Manager at Business Partners Limited has been duly authorised by the applicant's Board to deal with legal matters including this application.

[10] The second point *in limine* raised by the second respondent is that she has never had any personal dealings with Van Heerden and therefore that Van Heerden can never claim to possess personal knowledge of the facts in this matter.

[11] This second point *in limine* is likewise without merit. Van Heerden deposed to the affidavit when applicant applied for default judgment as well as to declare the property specially executable. There was no opposition to that application. If that was the case the respondent should by now be applying for rescission of judgment.

[12] The other defences raised by the second respondent is to be found in paragraph 31 of her answering affidavit wherein the second respondent says that the applicant vandalised and rendered inhabitable the second respondent's residential property situate at 19 Monkor Road, Randpark Ridge and therefore because of that she cannot vacate the property.

[13] In a letter dated the 22nd October 2012 addressed to applicant's attorneys the respondent does not say that the applicant vandalised and rendered her property situate at 19 Monkor Road uninhabitable. In that letter all that the respondent says is that:

“Subsequent to a judgment being obtained against our client and a warrant of execution being issued and served, our client was unlawfully denied access to the property at 19 Monkor Road, Randpark Ridge ... that for the period during which access was unlawfully denied the property was vandalised.”

[14] The version in the letter of the 22nd October 2012 and the version that she deposed to in the answering affidavit are contradictory. In any case if the respondent was unlawfully spoliated of her property why did she not take legal action and seek appropriate relief. The applicant disputes ever having denied the second respondent access to her own property and further denies that the property is vandalised. In the absence of any proof this allegation is spurious and stands to be dismissed.

[15] The conclusion in answer to the question whether it is fair and equitable to evict the second respondent and the other respondents from the property is that the second respondent has at all times retained possession of and exercised control over her property situate at 19 Monker Road, Randpark Ridge. She accordingly has alternative accommodation for herself and her children.

[16] In the result I make the following order:

1. The first, second and third respondents and all those who occupied the premises described as Erf 134 Randpark Ridge situate at 3 Kokkewiet Road, Randpark Ridge (*“the premises”*) under and by virtue of the first, second and/or third respondents

occupancy of the property be and are hereby evicted from the property by not later than the 28th April 2014.

2. In the event of the first, second and/or third respondents and all those who occupy the property under and by virtue of the first, second and/or third respondents occupancy of the property failing and/or refusing to vacate the property within the period stipulated above:

- 2.1 That the Sheriff of the Honourable Court be and is hereby authorised to forthwith enter upon the property and evicts the first, second and/or third respondents and all those who occupy the premises under and by virtue of the first, second and/or third respondents' occupancy of the property.

3. The second and third respondent are ordered to pay the costs of this application jointly and severally the one paying the other to be absolved.

M A MAKUME
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

ATTORNEYS FOR THE APPLICANT

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DATE OF HEARING

3 MARCH 2014

DATE OF JUDGMENT

14 MARCH 2014