

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

CASE NO: 38755/2013

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

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DATE

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SIGNATURE

In the matter between

INGELOSİ HOUSE (PTY) LTD

APPLICANT

And

NLENYA HOWARD AND 28 OTHERS

RESPONDENTS

J U D G M E N T

VICTOR J:

[1] This is an eviction application. The applicant in this matter seeks an order in terms of Part B of the notice of motion that Ingelosi House Ltd with the registration number 2011/129776/07, hereinafter

referred to as the property, belongs to the applicant and that the respondents be evicted from the property. An answering affidavit was filed in terms of which two issues were challenged viz. ownership of this property, as well as the non- joinder of the City of Johannesburg. No basis for the mediatory role of the City Council was suggested. At the hearing the authority of the applicant's deponents to bring such an application for their eviction was raised as well as the authority of the person who deposed to the answering affidavit on behalf of the respondents.

[2] On 25 October 2013 leave was given by this court in terms of section 4(2) of PIE to serve the application for eviction.

[3] There are five respondents before Court, they are the 5th, 6th, 13th, 23rd and 29th respondents save that the 6th respondent, Ms Lewile Sekhakane is not before Court but is assisted by her brother.

Challenge to ownership

[4] The applicant has demonstrated unequivocally both in the founding affidavit and in reply that it is indeed the owner of the property. The applicant purchased the property on public auction on 5 August 2011. The sale agreement was attached. On 1 October 2013 the property was transferred into the applicant's name. A Deeds Office report together with an affidavit confirming the registration was

attached. I am satisfied that the applicant is the owner of the property.

[5] The right of occupation was terminated in writing on 30 November 2011. The respondents did not vacate and further demands were made and in particular 20 July 2013.

[6] The respondents contend that the family of an unidentified person is in charge of the property. The erstwhile owner is a company and is in final liquidation according to the records of CIPIC.

Challenge to the applicant's authority

[7] The respondents have challenged the applicant's authority to bring the application. The challenge was raised at the hearing. It was general in nature. Rule 7(1) requires the challenge to be specific. It is not stated whether it is to the deponent of the affidavit or to the attorney representing the applicant. No challenge was filed within 10 days of the respondents becoming aware of the purported lack of authority nor was leave sought on good cause for their failure to do so.

[8] The respondents before Court today state that they do not know the first respondent who deposes to the affidavit on their behalf. The deponent to the answering affidavit is Mr Howard Nlenya who deposes to the fact that he speaks on behalf of the 29 respondents.

In fact he attaches at page 61 a list referred to as LO1 of the present respondents that are cited in this application. Therefore, the submission by the parties before Court today that they do not know Mr Howard Nleya lacks credibility.

[9] There has been a submission that the parties do not have money to appoint an attorney, but it is clear to me that any defence which the respondents would have proffered is contained in their answering affidavit to these papers. They were represented at the time of filing the answering affidavit.

[10] This application was launched in October of 2013, we are almost in the middle of 2014 and the respondents have clearly had more than enough time to deal with this matter. In addition, the respondents are not paying any rent, those respondents who made submissions to me stated that they do not pay rent and I accept that they are not paying rent. They could have used the rental money that they withheld to brief an attorney.

[11] In addition, there are pro bono facilities such as the WITS Law Clinic, the Legal Resources Centre and other public bodies, such as the Legal Aid Board where they could have obtained legal advice in the light of their attorney withdrawing from the matter or not taking their cause any further. No such attempt has been made.

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In the result, I make the following order:

1. The relief sought in the B Part of the notice of motion, prayers 1, 2 is granted.

2. The respondents are ordered to vacate the property on or before 30 June 2014 and grant prayers 3, 4, and 5.

M.VICTOR

JUDGE OF THE SOUTH GAUTENG LOCAL DIVISION

Appearances:

Case Nr: **38755/13**

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Date of hearing: 2014-05-28

Date of judgment: 2014-05-28