

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 43143/2013

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

.....
SIGNATURE

.....
DATE

In the matter between:

HERBET MAGADLA

First Applicant

MAUD LINDELWA MAGADLA

Second Applicant

And

THE MAGISTRATE: MS DANISO

First Respondent

FAWZIA CHOONARA

Second Respondent

THE CITY OF JOHANNESBURG

Third Respondent

METROPOLITAN MUNICIPALITY

J U D G M E N T

MALI AJ

[1] The applicants brought an application for an order reviewing and setting aside the judgment of the first respondent (the Magistrate). On 17 October 2013 in the Vereeniging Magistrate Court the first respondent ordered the eviction of the applicants.

[2] The eviction order was granted in terms of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (“the PIE Act”). The applicants were evicted from Erf [2.....], [Z.....] Park Extension 1, situated at [3.....] [A.....], [Z.....] Park (“the property”).

[3] The applicants’ grounds of review are the following;

- (i) the first respondent lacks jurisdiction as the location of the property ([Z.....] Park) does not fall within the magisterial district of Vereeniging;
- (ii) that the property has since been paid up by the applicants and
- (iii) that the second respondent is not the owner of the property.

[4] Section 24 of the Supreme Court Act no 59 of 1959 provides as follows:

“(1) The grounds upon which the proceedings of any inferior court may be brought under review before a provincial division, or before a local division having review jurisdiction, are-

(a) absence of jurisdiction on the part of the court;

(b) interest in the cause, bias, malice or the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the presiding judicial officer;

(c) gross irregularity in the proceedings;

(d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.”

LACK OF JURISDICTION

- [5] Section 1 of the PIE Act provides that a Magistrate’s court or a High Court in whose area of jurisdiction the immovable property is situated has jurisdiction to hear proceedings instituted in terms of the PIE Act. Sections 26, 28 and 29 of the Magistrate’s Court Act 32 of 1944 (“the Act”) provide that the civil jurisdiction of the Magistrate is determined by the reference to its area of jurisdiction, the persons of whom the court has jurisdiction and the causes of action in respect of which it has jurisdiction.

- [6] Mr Ngqwangele, Counsel for the applicant argued that [Z.....] Park does not fall under the jurisdiction of the Vereening Magistrate's court. The unsubstantiated argument advanced by the Counsel is that the court's jurisdiction is determined by the municipal boundaries. The applicant's case is that the Johannesburg Magistrates Court or the South Gauteng High Court had the requisite jurisdiction. This is because the applicants' municipality bills are issued by the City of Johannesburg. No reference was made to any authority to support this submission. Accordingly this contention is unfounded.
- [7] The first respondent relied on document submitted by the second respondent. The said document contained a list of localities and their respective magisterial jurisdictions. According to the document marked annexure "E", which the respondent contented that it is an issue of the Department of Justice, [Z.....] Park falls within the magisterial area of Meyerton or Vereeniging Noord. The undisputed submission by the respondent is that the magisterial area referred to as Vereeniging Noord in the document is the same as Vereeniging Magistrate's Court. Meyerton and Vereeniging have concurrent jurisdiction.
- [8] I find that the first respondent considered all evidence before her and have correctly founded on the issue of jurisdiction. Accordingly the first ground of review falls away.

PROPERTY SINCE PAID UP

- [9] It is common cause that the applicants were financed by Eskom to acquire the property as the first applicant was employed by Eskom. The first respondent had regard to the applicant's contradicting submissions. The first submission is that the property was paid up. On the other hand the applicant submitted that after he paid R100 000.00 as a final settlement a dispute between him and his then employer Eskom arose.
- [10] The dispute was as a result of a sum of R55 124.61 outstanding balance despite the already made payment of R100 000.00. The applicants stated that their property was sold fraudulently and illegal since it was paid up. However three months later when the matter was heard by the first respondent they still had not launched the rescission application.
- [11] The respondent must approach the appropriate forum in order to have the order set aside, until then; the order is valid and effective. In **Oudekraal Estates (Pty) Ltd v City of Cape Town & Others (2004) 6 SA 222 at 242 A-C** the Honourable Howie P et Nugent JA held that *“until the administrator’s approval, and thus also consequence for the approval, is set aside by a Court in the proceedings for judicial review, it cannot simply be overlooked. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to be ignored depending upon the view the subject takes of the validity of the act in question... 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..”.

- [12] In **Dauids and Others v Van Straaten and Others 2005 (4) SA 468 (C)** the following was stated:

“that the magistrate had had before him all the relevant circumstances to make a proper finding, including the fact that the respondents were the owners of the premises, that the leases had been terminated in compliance with the provisions of the Rental Housing Act and of PIE and that the tenants were holding over. He furthermore had had before him information as the personal circumstances of the applicants. [484 F-G] The respondents had been indirectly expropriated of their land by the conduct of the applicants, and that this was an example of the serious abuse which PIE could give rise. That it was upon consideration of all the relevant circumstances, just and equitable that the parasitic occupation by the applicants of the respondent’s property had to be terminated and the applicants evicted from the premises”.

- [13] Having regard to the above I find that the first respondent appropriately considered the evidence before her. It was not the first respondent’s function to set aside the transfer and registration of property because of the allegations of fraud. What was required for the first respondent was to satisfy herself whether the requirements of

the PIE Act were met. Consequently the complaint that the magistrate failed to consider that the property is paid up falls away.

SECOND RESPONDENT IS NOT THE OWNER OF THE PROPERTY

[14] The applicants alleged that the second respondent was not the owner of the property. They challenged the fact that the conditions of sale were not signed by the second respondent. They contended that the second respondent acquired the property fraudulently.

[15] The first respondent considered the second respondent's confirmatory affidavit and the answering affidavit duly deposed to by her former brother in law Anver Choonara ("Anver"). The affidavits state that the second respondent appointed Anver through a general power of attorney. Anver was mandated to manage the second respondent's property and sign the conditions of sale. He was also authorised to duly depose to the affidavits in the Vereeniging's Magistrate's court. The first respondent also had regard to the title deed which is in the name of the second respondent which clearly shows when she acquired the property.

[16] Having regard to the above this ground of appeal also falls away. I find that the learned magistrate did not commit gross irregularity in the proceedings. She appositely found that the applicants were in

unlawful occupation, and that the Second respondent has the right to occupation of her property.

[17] In the circumstances I accordingly make the following order:

1. The application is dismissed with costs.

MALI AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Counsel for the Applicant	:	Adv Ngqwangele
Instructed by	:	Malangeni Attorneys
 Counsel for the second Respondent	 :	 Adv WJ Scholtz
Instructed by	:	De Wet Lyell Nel & Maeyane
 Date of Hearing	 :	 29 April 2015
Date of Judgment	:	11 June 2015