

REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT JOHANNESBURG

CASE NO: 42349/13

DATE: 16 JANUARY 2015

In the matter between:

ALL BUILDING AND CLEANING SERVICES CC

Applicant

(REG. NO. 2000/014545/23)

And

LESIBA JOHANNES MATLAILA

First Respondent

(ID NO. 4.....)

SOPHIE KHUMALO

Second Respondent

CONNIE KHUMALO

Third Respondent

ALL OTHER OCCUPANTS OF 236 WILSON

Fourth Respondent

STREET, FAIRLANDS

THE CITY OF JOHANNESBURG

Fifth Respondent

METROPOLITAN MUNICIPALITY

## JUDGEMENT

### CARSTENSEN AJ:

1. In this instance, the Applicant seeks to evict the First, Second, Third and Fourth Respondents from erf 881 in the township of Fairlands, situated at 236 Wilson Street, Fairlands, Johannesburg.
2. The basis of the Applicant's argument is that the First to Third Respondents are the only occupiers of the property and the Applicant is the lawful owner of the property, an aspect which is not placed in dispute.
3. Many of the facts of this matter are in common cause as one would expect from application proceedings. The First Respondent is a 71 year old man who has lived on the property for in excess of 40 years, probably 44 years. He was initially employed by Mr Twaalfhoven who used the property as a small holding on which he cultivated fruit and raised livestock.
4. The First Respondent commenced employment on the property in 1970 and until 2008, resided on the property with the consent of Twaalfhoven. The Second and Third Respondents have lived on the property their entire lives. Both the First and Second Respondents are now pensioners and the Third Respondent is the Second Respondent's daughter. The First Respondent is also a widower who does gardening work in the area to supplement his income totaling about R3 700.00 per month.
5. On being employed by Twaalfhoven in 1970, he cared for the livestock and packed fruit. He also maintained the farm and initially earned R2.00 per week. Twaalfhoven allocated them a piece of land where they could plant food and flowers for their own use.
6. In 1988, Twaalfhoven sold his livestock and was no longer interested in selling fruit,

but the First Respondent continued to tend to the farm. Twaalfhoven reduced the hours of work of the Second Respondent, but not her salary.

7. In 1994 when Twaalfhoven's health started to fail after he suffered a stroke, the First and Second Respondents took care of him and the farm. In 1998, Twaalfhoven started renovating the house and told the First and Second Respondents that he would transfer ownership of the house to them as they were his only family. Shortly thereafter, he became ill and was also cared for by Rita Swanepoel who lived on the farm opposite the property.
8. On his death, it transpired that Twaalfhoven had bequeathed the property to Swanepoel and since then, ownership of the property has been transferred three times. Through all of this, the First, Second and Third Respondents remained in occupation of the property.
9. During 2008, the people who allegedly purchased the property from Swanepoel placed a board advertising that the property would be sold on auction. The Respondents were not informed of what happened at the auction.
10. On the 27<sup>th</sup> of April 2013, a truck arrived with young men who began dismantling the Respondents' home. A person introduced himself as Mzwandile claimed to be the owner of the property, but their neighbours intervened and the men left.
11. Two days later the same men, as far as the Respondents were concerned, arrived with a caterpillar earthmoving machine and started removing the vegetation on the property. The police were called and the First Respondent obtained a letter restraining these people from intimidating the Respondents any further.
12. Thereafter, a Mr Linde approached the First Respondent and advised him that the Applicant was the owner and offered to pay a month's rental for a flat if he vacated.

The First Respondent explained to Mr Linde that he couldn't pay the second months rental, or any rental thereafter.

13. There are three dwellings on the property. The main house, the front house and the servants quarters.

14. There is one water pipe / stand pipe on the property where the Respondents obtain their water. They used to have access to

internal plumbing, but this was destroyed by the men described above.

15. Since 2008, there has been no electricity on the property.

16. The First Respondent originates from Dipoding but then settled in Ga Matune in 1958.

The First Respondent then moved to Johannesburg and commenced employed with Twaalfhoven.

17. The Applicant's attitude is that, despite the fact that the Respondents state that they will be left homeless, this is not so. The Applicant states the First Respondent has not elaborated on this aspect, neither have the Respondents elaborated on the shortage of housing in their income bracket, neither have they stated why they cannot live with the First Respondent's daughter in Limpopo.

18. It is common cause that I must apply the factors set out in Section 4(6) and 4(7) of the PIE Act and that the formal requirements thereof must be met.

19. I must, in essence, decide whether on the facts before me an eviction order would be just and equitable. Ekurhuleni Metropolitan Municipality and Another v Various Occupiers. Eden Park Extension (51, 2014 (3) SA23 (SCA)).

20. Although the owners' common law right to exclusive possession of the property is not disputed in this matter, it is only one of the aspects which I must take into account. Port Elizabeth Municipality v Various

Occupiers. 2005 (1) SA 217 (CC)

21. The Applicant intends to develop the property for residential purposes, of course the Respondents' would only require occupation of a small part of it. However, the Applicant, during argument and as appears from the papers, clearly does not intend to offer the Respondents a residential home as part of the development.

22. I don't agree with the Applicant that the onus is on the Respondent to show reasons why they must remain on the property. In fact, the onus is on the Applicant to show that the Respondents' eviction would be just and equitable. City of Johannesburg v Changing Tides Properties. 2012 (6) SA 294 (SCA)

23. The Applicant has not made any serious attempt to satisfy the onus, but have simply stated that the Applicant is the owner of the property and the Respondents are in unlawful occupation. This, to all extents and purposes, is common cause but does not lead to the Applicant's entitlement to the order which it seeks.

24. On the question on whether there has been a meaningful engagement, in fact, apart from intimidatory tactics, which are vaguely disputed as to dates and times, but not as to the fact thereof, there has been "no engagement" at all. Rather, there has been an attempt to forcefully evict and remove the Respondents. Although this is denied that it was affected by the Applicant, one cannot imagine who would attempt such removal except the owner or the owner's agents.

25. On the question of whether there is alternative accommodation, the Applicant has not attempted to satisfy the court in this regard at all. The only real information which I have is from the Respondents themselves which indicates that there is accommodation in the surrounding property available at R2 500.00 per person, or R4 000.00 for a family apartment. A Wits University professor, Marie Huchzermeyer, paints a clear,

desperate and disturbing picture of what the Respondents would face should they move into the informal housing sector.

26. The Respondents, clearly, will be left homeless on the evidence before me.

27. Consequently, taking into account the circumstances and factors set out in Section 4(7) of PIE Act, including the length of time which the First Respondent has occupied the premises, the circumstances under which he moved on to the premises, the fact that he is an old age pensioner, has a lack of alternative accommodation, these all clearly tilt the scales of justice in favour of the Respondents.

28. These are not the only facts which I need to consider. There is also the manner in which the Applicant has sought to remove the Respondents and indeed the Applicant's attitude, as evident from the papers, towards the Constitutional Rights of the Respondents.

29. There indeed would, in my view, be very little prejudice if, as part of the development, the Applicant had offered to build the Respondents a suitable home. This they have refused to do and, in my view, also is a factor which I would consider in deciding whether or not to grant an eviction order. Indeed, if they had offered to do so, this application would probably not have been necessary.

30. As to the question of the costs, I am of the view that the Applicant has made no attempt at all to satisfy the requirements of PIE and indeed, the attitude and conduct of the Applicant evidences a disregard for the Constitution and the Respondents' statutory rights. Consequently, I am of the view that attorney client costs are appropriate.

31. In the result, I am satisfied that the Applicant is not entitled to an order and consequently, the application is dismissed with costs on the scale as between attorney and client.

ACTING JUDGE OF THE HIGH COURT

HEARD: 13<sup>th</sup> OCTOBER 2014

DELIVERED: 16<sup>TH</sup> JANUARY 2015

COUNSEL FOR APPLICANT: ADV. L KEIJSER

INSTRUCTED BY: STEYN STEYN & PARTNERS

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AND THIRD RESPONDENTS: ATTORNEY T. MOSIKILI

INSTRUCTED BY: SERI LAW CLINIC

(jmt.12.1.15)