REPUBLIC OF SOUTH AFRICA

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

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

7/6/2017
DATE

SIGNATURE

CASE NO: **19602/16**

In the matter between:

WHITE ROCK PROPERTY TRADING (PTY) LIMITED Applicant

and

KHAKA; THEMBEKA BRENDA First Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Second Respondent

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JUDGMENT

OPPERMAN J

INTRODUCTION

[1] This application involves the eviction based on the provisions of the

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('*the PIE Act*'), of a former mortgagor, from her formerly mortgaged property. The property, Erf […] Riverclub Extension 38 Township, Registration Division I.R., Province of Gauteng physically situated at […] Road, Riverclub, Sandton ('*the property*'), is situated in the affluent suburb of River Club, and even in execution, fetched R 3 800 000.

[2] This is the second eviction application instituted by the applicant against the first respondent ('*the second eviction application*'). The first eviction application (under case number 25098/2014) *('the first eviction application')* resulted in an eviction order *('the first eviction order')*, but was set aside on appeal on 7 December 2016 *('the appeal')*, as the applicant was not the registered owner at the time that the first eviction application was instituted, thus the appeal had succeeded on the basis that the applicant then lacked *locus standi*.

[3] On 24 October 2014 (Pretoria, case number 77832/14) and by agreement between the parties, an order was sought and obtained granting the applicant access to the property with specific directions as to how this was to occur. The alleged non-compliance with this order forms the subject matter of a contempt application, which also falls for determination by this court *('the contempt application')*.

APPLICATION FOR POSTPONEMENT

[4] The matter was enrolled for hearing during the week of 22 May 2017. It was allocated for hearing on 23 May 2017. By agreement between applicant's representative, Mr van der Merwe, and Mr Omar, the first respondent's representative, this court permitted the matter to stand down until 14h00 on 25 May 2017.

[5] The first respondent's representative was required to file heads of argument on 28 March 2017. No heads of argument were filed by her representative and no application for condonation was brought.

[6] At 14h00 on 25 May 2017, Mr Hayward and not Mr Omar appeared on first respondent's behalf, seeking a postponement and tendering the costs of the postponement. The affidavit deposed to by the first respondent on 25 May 2017 and handed up by Mr Hayward recorded that:

> 'On the 23 May 2017, my attorney of record travelled to Virginia in the Free State to attend to a matter at the Virginia High Court. While in Virginia, Mr Omar became ill. Mr Omar returned to Gauteng late yesterday evening and was very ill. Mr Omar indicated that he will visit a doctor today.
>
> ……..Ms Yasmin Omar, of the same firm as my attorney, is also unable to

> argue this matter today as she is seized in trial preparation in another matter that is set down for trial tomorrow at the Springs Magistrates Court.'

[7] Mr Hayward also sought leave to file a supplementary affidavit consisting of some 60 paragraphs.

[8] After hearing argument and after Mr Hayward had obtained instructions in this regard, the court permitted the matter to stand until 11h30 on 26 May 2017 for argument on whether the supplementary affidavit should be admitted and the merits of the second eviction application. The applicant consented to the contempt application being postponed and accepted the tender of costs in respect thereof.

[9] The matter proceeded on 26 May 2017. Having heard argument, this court admitted paragraph 50 of the supplementary affidavit, and disallowed the balance of such affidavit. It then heard argument in respect of the second eviction application. The reasons for only allowing the content of paragraph 50 of the supplementary affidavit are provided herein as well as the judgment in respect of the second eviction application.

APPLICATION TO SUPPLEMENT

[10] The test for the admission of further affidavits is set out in Erasmus[1] as follows:

[1] *Superior Court Practice*, (2016 edition) D1-68

'It is essentially a question of fairness to both sides as to whether or not further sets of affidavits should be permitted. **There should in each case be a proper and satisfactory explanation, which negatives *mala fides* or culpable remissness, as to why the facts or information had not been put before the court at an earlier stage,** and the court must be satisfied that no prejudice is caused by the filing of the additional affidavits which cannot be remedied by an appropriate order as to costs. The tactic of holding back on evidence in the hope that the other side will first commit itself to an untruthful version which can be resoundingly demolished in further affidavits has attracted the opprobrium of the court in *Nick's Fishmonger Holdings (Pty) Ltd v Fish Diner In Bryanston CC*.

The factors that the court will consider are the following:

(a) The reason why the evidence was not produced timeously.

(b) The degree of materiality of the evidence.

(c) The possibility that it may have been shaped to 'relieve the pinch of the shoe'.

(d) The balance of prejudice to the applicant if the application is refused and the prejudice to the respondent if it is granted.

(e) The stage which the particular litigation has reached. Where judgment has been reserved after all the evidence has been heard and, before judgment is delivered, an applicant applies for leave to place further evidence before the court, it may well be that he will have a greater burden because of factors such as the increased possibility of prejudice to the respondent, the need for finality, and the undesirability of a reconsideration of the whole case, and perhaps also the convenience of the court.

(f) The 'healing balm' of an appropriate order as to costs.

(g) The general need for finality in judicial proceedings.

(h) The appropriateness, or otherwise, in all the circumstances, of visiting the fault of the attorney upon the head of his client. If the court is satisfied on these points it will generally incline towards allowing the affidavits to be filed. '(emphasis provided)

[11] I would add to these considerations listed by the learned authors, who touch on the convenience to the court in item (e) of their list, the following consideration: the time afforded to the Court to consider the content of the new affidavit. It is generally required of a Court to read the papers in the

Court file before hearing the matter. The heads of argument play an important role in directing the mind of the Court to the issues to be decided. The Court should ideally have had some time after reading the file to reflect on and come to certain preliminary views, formulate questions for clarification by counsel in the hearing and generally approach the hearing with as well prepared a judicial mindset as the nature of the matter and the practices of the division and the individual Judge will allow. New affidavits delivered after the heads of argument have been filed may contain material that not only the opponent has had inadequate time to consider but also the Court itself which needs time to reflect on the new matter. That time may not be available to the Court. It may not be in the interests of justice to permit the matter to be further delayed. Late affidavits disrupt the Court roll, make other litigants awaiting their turn to be heard, have to wait longer and the quality of the judicial concentration is inevitably diminished proportional to the time available. The more just approach to late affidavits may well thus be, for this as well as the other reasons listed by the learned authors, to refuse to receive the late affidavit and decide the matter on the papers timeously filed. This, of course, assumes that the late filing is *bona fide*. Where it is calculated to disrupt, delay and to obtain a strategic advantage, such as prolonging unlawful occupation of premises, the Court's refusal to receive late affidavits is even more likely to serve the interests of justice.

[12] The reason for first respondent wanting to supplement her papers at the eleventh hour was explained, by the first respondent, under oath. She stated

that she had taken the first eviction application on appeal and that she had succeeded. She had accepted that she had won the case and that the second application could not proceed against her. She said:

> 'I stopped communicating with my attorneys and have been travelling in and out of the country doing primarily humanitarian work. **I had no idea** that the Applicant was persisting in further litigation against me. Attempts by my attorneys to contact me were futile as when they phoned me I was away and did not receive their messages.' (emphasis provided)

[13] The section 4(2), of the Pie Act, notice was served on the first respondent personally on 24 April 2017. The sheriff's return of service, which constitutes *prima facie* proof, states this quite clearly. The notice advised the first respondent expressly that the second eviction application would be proceeding on 22 May 2017. In the face of this, I do not accept the first respondent's explanation that '*she had no idea'* that the second application was proceeding. Her explanation can most certainly not be labelled either '*proper*' or '*satisfactory*' in the absence of an explanation relating to the content of the sheriff's return.

[14] The second eviction application was served personally on first respondent on 14 June 2016. The notice of opposition was supposed to have been filed on 22 June 2016. It was not. It was filed on 1 July 2016. The answering affidavit was supposed to have been filed on 22 July 2016. It was not. The matter was enrolled on the unopposed motion court for hearing on 13 September 2017. On 9 September 2017, six weeks later, the first respondent filed an

answering affidavit with a condonation application. The matter was removed from the roll as it was now opposed. The answering affidavit was not deposed to by the first respondent but by Ms Yasmin Omar ('*Ms Omar*') as the first respondent was apparently overseas at the time. The miracles of modern communication methods between countries appear not to have occurred to the first respondent who might, instead of getting her attorney to file an affidavit on her behalf, have given telephonic or emailed instructions, emailed an affidavit duly deposed to overseas and then couriered the original affidavit *via* one of the many international courier companies to her attorney. Her attorney's affidavit was, according to first respondent, inadequate. In respect of such affidavit, the first respondent now says the following:

> 'However that affidavit is insufficient and does not contain all of the grounds I rely upon to oppose the application. At that stage the opposition raised was the fact that there was a pending appeal of the previous eviction order and that the matter was therefore *lis pendens*. If I lost that appeal, it would have meant that another order for eviction was still alive. **In view of the appeal having succeeded and been finalised, there is a need to supplement this case.'** (own emphasis)

[15] What is immediately apparent from the emboldened portion, is that the first respondent was acutely aware of the need to supplement her papers in the event of her being successful in the appeal. She knew of her success on 9 December 2016. Yet she did nothing until 25 May 2017, the day of the hearing of the matter. I cannot accept that she stopped communicating with her attorney as she had accepted that the litigation would not proceed

against her. On her very own say-so, she knew her papers were inadequate if she won the appeal. She did nothing. This omission can only be described as culpable remissness, and I so find.

[16] The contempt application and the second eviction application are separate and distinct from one another. The contempt application relates to the non-compliance of an order granted in Pretoria and the second eviction application relates to a fresh application launched during June of 2016. The order forming the subject matter of the contempt application was never subject to an appeal. There was no pending hearing in respect of such application thus no '*lis*' '*pending*' anywhere else in respect thereof. There was no reason whatsoever not to have filed an answering affidavit in respect of the contempt application. The first respondent was once again, in respect of the contempt application, culpably remiss in not filing an answer to such a weighty matter.

[17] The issues in the first and second eviction applications were not the same. In the first eviction application Tsoka J, speaking on behalf of a full court[2] commented:

'[10] In the present matter, White Rock had not taken delivery of the property at the launching of the application. As at that time, it had no *locus standi* to have instituted the application against Khaka as it was not yet the owner……

[2] Khaka v White Rock Property Trading (Pty) Ltd, case no A5003/2016 (GLD)

> [12]…….The fact that at the time of the filing of the replying affidavit, the property was registered in its name is irrelevant. The point is, at the time of the launching of the application, which is the relevant period, it has no *locus standi*…'

[18] At the time of the launching of the second eviction application the property had been registered into the name of the first respondent. So much was, and remains, common cause. The defence of *lis pendens* as at September 2016 (as raised in the answering affidavit) was thus not good as the property had by then, and prior to, the launching of the second application, been registered into the name of the applicant. This court could thus also on this basis conclude that the first respondent was culpably remiss in not filing an answering affidavit dealing with the merits of the second eviction application.

[19] Having regard to all of the aforegoing, I conclude that the first respondent has failed to provide a proper and satisfactory explanation sufficient to negative *mala fide*s or culpable remissness, as to why the facts contained in the supplementary affidavit had not been put before the court at an earlier stage.

[20] Despite the aforegoing finding, I will nonetheless consider the other relevant factors in order to decide whether the supplementary affidavit should not be received.

[21] The first respondent seeks to introduce new defences never raised before. They include that:

21.1. the first respondent had paid to Firstrand Bank ('*FNB*') the entire arrears and administration costs prior to the sale in execution; and

21.2. the first respondent and FNB had agreed that the sale in execution would be cancelled ('*the compromise agreement*').

[22] The aforegoing, so the argument ran, would bring the applicant's *locus standi* into question, as the acceptance of such evidence would undermine applicant's claim to ownership of the property, a pre-requisite in terms of section 4(1) of the Pie Act.

[23] On the first respondent's papers it appears that she deliberately withheld this evidence. She made an election to withhold the evidence. The introduction of evidence under such circumstances has been frowned upon by this court.[3] This is a factor this court has regard to in determining whether the explanation is proper and satisfactory and does not stand the first respondent in good stead.

[24] Be that as it may, the compromise agreement was allegedly concluded between the first respondent and FNB. There is no allegation that the applicant knew of the conclusion of such compromise agreement. Moreover, the compromise agreement must have been concluded before the sale in execution, which occurred on 25 September 2013. The compromise

[3] Nick's Fishmonger Holdings (Pty) Ltd v Fish Diner In Bryanston CC, 2009 (5) SA 629 (W) at 641G – 642D

agreement afforded the first respondent a personal right only. The alleged cause of action ('debt' – to use the terminology of the Prescription Act) which arose upon FNB allegedly breaching the compromise agreement by selling the property in execution on 25 September 2013, prescribed during September 2016.

[25] The first respondent now seeks to introduce this prescribed 'defence' against the applicant, who was not a party to the compromise agreement, and who is a *bona fide* purchaser.[4] Such evidence seems doomed to fail. It can most certainly not be concluded that such evidence is material and I do not so conclude. In my view such evidence has very little prospects of success.

[26] In respect of the payment defence, not a shred of documentary proof has been annexed to the papers to substantiate it. If this contention were *bona fide* and true, I would have expected some documentary proof but more importantly, I would have expected the first respondent to raise it at the first opportunity. She did not do so. What inference does one draw from her failure to have annexed documentary proof of the alleged payments to FNB to her supplementary affidavit? Under circumstances where the first respondent is answering to contempt allegations and where her liberty is at stake, one can safely assume it is because she cannot and that such

[4] Knox N.O. v Mofakeng, 2013 (4) SA 46 (GSJ)

allegations are exactly only that, empty assertions.[5]

[27] This court permitted the receipt of the content of paragraph 50, the salient parts of which read as follows:

> '……The house in question is my home. I have no other suitable alternative accommodation. I was married to Edward Khaka. After my husband divorced me, he left me without any substantial assets and the house with a bond on it. I am the head of the household occupied by my children and myself. My children are dependent on me to provide them with food and shelter and to care for them.'

[28] In my view, the first respondent is, as of right, entitled to place these facts before the court. This is so as the section 4(2) notice, invites the first respondent to do so. I allowed the receipt of such evidence contained in paragraph 50 despite the first respondent's denial of the fact that she had knowledge that the matter was proceeding on 22 May 2017. More about the reliability of the facts contained in paragraph 50, later.

[29] I turn then to deal with the second eviction application without regard to the content of the supplementary affidavit save for paragraph 50.

LOCUS STANDI

[30] On 25 September 2013, the applicant purchased the property on a sale in execution. On 12 August 2014, the applicant took registration and transfer of

[5] Krishna v Pillay, 1946 AD 946.

the property. On 10 June 2016, this, the second eviction application was launched. Thus, at the time that the current eviction application was instituted, the applicant was the registered owner of the property vesting it with the requisite *locus standi* to institute the current application.

WHETHER THE RESPONDENT IS AN UNLAWFUL OCCUPIER

[31] Unlawful occupier is defined in the PIE Act as follows:

> '**'unlawful occupier'** means a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act 31 of 1996).

[32] The first respondent is the former registered owner of the property. The applicant did not give the first respondent consent to reside on the property.

[33] The first respondent's occupation became unlawful, upon the property being registered in the name of the applicant as her right to occupy, terminated on that date, being 12 August 2014.

[34] I thus find that the applicant has shown that the first respondent is an unlawful occupier.

WHETHER THE REQUIREMENTS FOR S 4, OF THE PIE ACT HAVE BEEN MET

[35] The first respondent has been in unlawful occupation since 12 August 2014.

[36] On 24 April 2017, the applicant served a section 4(2) notice on the first respondent personally and on the second respondent.

[37] It would appear that the additional considerations, normally applicable to evictions of this kind, as codified in Section 4(7) of the PIE Act, do not find application as the first respondent is a former mortgagor. It provides:

> 'Section 4(7) "If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

[38] In *Ndlovu v Ngcobo; Bekker and another v Jika,* 2003 (1) SA 113 (SCA) at par 9 the following was held

> "… 'If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, *except where the land is sold in a sale of execution pursuant to a mortgage*, whether land has been made available or can reasonably be made available by a municipality or other organ of State or another

land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.'

… The words italicised mean that, if land is sold in a sale of execution, the court, in determining the relevant circumstances, does not take into account the factors listed after the exception. It has nothing to do with the question of holding over by a mortgagor…..."

[39] In *Ives v Rajah*, 2012 (2) SA 167 (WCC) paras [15] and [16] Rogers AJ (as he then was), commented as follows:

> ‘[15] In paragraph 10 of the majority judgment in Ndlovu v Ngcobo; Bekker and Another v Jika 2003 (1) SA 113 (SCA) there is an obiter assumption that the effect of s 4(7) is that where land has been sold in execution pursuant to a mortgage both the question of alternative land and the rights of the elderly and so forth are rendered irrelevant. It was observed that this appeared, when read in the light of s 4(6), to give rise to an inexplicable anomaly, because it put persons who have been in unlawful occupation for longer than six months in a worse position than persons who have been in unlawful occupation for less than six months.
>
> [16] In my respectful view, the said assumption in *Ndlovu* is unsound. The repetition of the word *"including"* and the placing of a comma before each of them leads to the conclusion that on the natural and grammatical meaning of s 4(7) the *"except"* clause applies only to the first *"including"* phrase. In other words, where there is the sale of mortgaged property in execution the question of alternative land is excluded as a relevant consideration but the rights of the elderly and so forth must still be taken into account. This removes the anomaly that was thought to exist between s 4(6) and 4(7).’

[40] I will, in this matter assume, without finding, that Rogers AJ is correct and adjudicate this matter accordingly.

WHETHER IT IS JUST AND EQUITABLE THAT THE EVICTION ORDER BE GRANTED

[41] In my view, it is just and equitable that an eviction order is granted as:

41.1. The first respondent has now been in unlawful occupation of the property since 12 August 2014 and has had ample time to seek and obtain alternative accommodation.

41.2. Nothing in the papers suggests that the first respondent cannot afford alternative accommodation, the facts indicate the contrary as:

41.2.1. The first respondent could afford visiting her uncle in Switzerland;

41.2.2. The first respondent is a woman of means, able to qualify for a bond of R 5 300 000, in 2006 in order to acquire the property;

41.2.3. The first respondent has utilised private attorneys extensively.

41.3. The first respondent neglects the property, permitting same to fall into disrepair.

41.4. The longer the first respondent remains in occupation, the more the charges accumulate such as municipal charges, body corporate levies and the like.

41.5. The property currently poses a health risk, as the first respondent permits pests like mosquitoes and rats to infest the property and the swimming pool.

41.6. The property is situated in an affluent area, the first respondent having no Constitutional right to live in the house, and in the suburb of her choosing.

41.7. The applicant tendered reasonable alternative accommodation, should the first respondent have made out a case for an inability to obtain reasonable alternative accommodation. This was not even responded to.

41.8. The property is uninsured.

41.9. The property's current state poses a risk to life and limb as the collapse of the roof is eminent and endangers the lives of those in occupation.

41.10. The respondent appears to purposefully neglect the property.

41.11. The property appears to be at risk of being set alight as a result of faulty electricity connections of electricity connections and an unsafe and uncertified gas installation.

41.12. The applicant has incurred interest costs in excess of R 500 000 and loses rental income daily.

[42] Mr and Ms Yasmin Omar, the legal representatives of the first respondent are no strangers to this court. Mr Omar is a seasoned practitioner with much experience in eviction applications and the provisions of the Pie Act. The only facts before this court are those contained in paragraph 50 quoted hereinbefore. The facts recorded therein do however not tie up with the other facts presented in this application. In *Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers of the Newtown Urban Village,* 2013 (1) SA 583 (GSJ) Willis J held as follows at para [80]:

> "[80] In the context of engaging the City in eviction proceedings there has been much 'homeless' talk. In the following cases: the *Grootboom* case; the *Port Elizabeth Municipality* case; the *Blue Moonlight* case; the *Mooiplaats* case;*The Occupiers of Erf 102, 103, 104 & 122, Shorts Retreat, Pietermaritzburg v Daisy Dear Investments (Pty) Limited & Others*; *Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele*; and the *Changing Tides* case the courts have insisted that where there is a likelihood that the occupiers will be rendered homeless as a result of an eviction the municipality should be engaged with a view to finding alternative accommodation and, in the *Mooiplaats* case, where the question of homelessness was not considered by the High Court, the eviction was set aside…..

Also relevant are paras [68] and [122]

'[68] Counsel for the applicants contend that if the entry level for the occupiers in the original scheme was an income of R 3 500.00 per month, 12 years ago and they were paying R900.0 per month as levies then, which sum, with inflation, would now have risen to R1600.00 per month, the occupiers can hardly be considered indigent. They also pay 'rental' to Mr Masetla in an undisclosed amount. The City, in its affidavit resisting the application for its joinder in this matter, has been scathing about the opportunism of the respondents, pointing out that they have not even attempted to indicate that they are unable to obtain suitable accommodation for the same or a similar amount to what they are paying. It is clear from the City's affidavit that it considers the respondents to be opportunists, who are and have been playing for time…

[122] All counsel who have struggled to resist an application for summary judgment, will be familiar with the case of *Breitenbach v Fiat* in which Colman J made it plain that it would be difficult indeed to show good cause why such judgments should not be granted where the defence had been set out 'baldly, vaguely or laconically'. There is no reason why this principle should not apply to occupiers seeking to resist the application for their eviction. Of course, every move from one dwelling to another carries with it its own traumas and disadvantages. That is not enough to resist an eviction order where an occupier has no right, recognised at common law, to remain in occupation of a particular property. The case for remaining in occupation of the property has been set out by the occupiers laconically.'

[43] The first respondent does not say what her income is, that she will be homeless should the eviction order be granted or what efforts she has made to find alternative accommodation.

[44] The court posed the following questions to Mr Hayward who had no

submissions/answers to any such questions:

44.1. How much does the first respondent earn per month?

44.2. What does she do for a living?

44.3. How old are her children?

44.4. When was she divorced?

44.5. What attempts has she made to get alternative accommodation?

44.6. Who cares for her children when she travels in and out of the country doing humanitarian work?

44.7. Would her sister be able to provide alternative accommodation for her while she finds alternative accommodation?

[45] In this case the applicant, who has no obligation to do so, offered alternative accommodation. This was not even explored by the first respondent. In my view, this is so as there is, and was, no real threat of homelessness.

WHAT WOULD CONSTITUTE A JUST AND EQUITABLE DATE FOR THE EVICTION

[46] In my view, it would be just and equitable for the property to be vacated by no

later than 16h00 on 7 July 2017.

COSTS

[47] The applicant has claimed attorney client costs. In special cases the court may come to the conclusion that the successful party should not be out of pocket as a result of the litigation and may then award attorney and client costs, see *Nel v Waterberg Landbouwers Ko-operatiewe Vereniging* 1946 AD 597.

[48] An attorney client costs order may issue where the other party has been guilty of dishonesty, fraud or that his motives and conduct may have been vexatious, reckless, malicious or frivolous, or that he has been guilty of some form of misconduct in connection with the matter investigated or in the conduct of the case. The intention to delay the matter and to prolong the first respondent's occupation of the property, is readily discernible in this matter.[6]

[49] I have found the first respondent's conduct in the second eviction application to include culpable remissness and to be *mala fide*. She appears throughout this second eviction application to have conducted herself with scant regard to the rights of the applicant, the convenience of the Court or the rules of Court.

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[6] Van Dyk v Conradie, 1963 (2) SA 413 (C); De Goede v Venter, 1959 (3) SA 959 (O) and Ward v Sulzer, 1973 (3) SA 701 (A).

[50] The contempt application has been separated and postponed but in relation to the second eviction application alone I find the first respondent's conduct of the litigation to fall so far below that of an ordinary litigant that an extraordinary costs order is called for to convey the Court's displeasure and to give the applicant some recompense for what it has had to go through in this second eviction application to obtain access to its property.

ORDER

[51] I accordingly grant the following order:

51.1. The relief claimed in prayers 1 to 3 of the amended notice of motion is postponed *sine die*.

51.2. The first respondent is to pay the wasted costs occasioned by the postponement of prayers 1 to 3 of the amended notice of motion.

51.3. The first respondent and all those occupying Erf […], Riverclub Extension 38 Township, Registration Division I.R., the Province of Gauteng, physically situated at […] Riverclub Country Estates, […] Road, Riverclub, Johannesburg *('the property'*) are evicted from the property.

51.4. The first respondent and all those occupying the property through or under her, including her family and employees are ordered to vacate the property on or before 16h00 on 7 July 2017.

51.5. In the event that the first respondent and those holding occupation under or through her, including her family and employees, failing to

vacate the property by 16h00 on 7 July 2017, the Sheriff or his lawfully appointed Deputy, is authorised to execute and carry out the eviction of the first respondent and those occupying the property under or through her, inclusive of her family and employees, on the first weekday following 7 July 2017.

51.6. The first respondent and those occupying the property through or under her, including her family and employees, are interdicted from regaining access or taking possession of the property subsequent to vacating same alternatively subsequent to being evicted from same by the Sheriff in terms of paragraph 51.5 hereof.

51.7. Should the first respondent and those occupying the property through or under her, including her family and employees, regain access or take possession of the property after having vacated same and/or after being evicted from the property by the Sheriff as per paragraph 51.5 hereof, the order for eviction granted herein, may be executed and carried out again, and for such purpose the Sheriff of this Court and his lawfully appointed Deputy are authorised and directed to again forthwith evict the first respondent and those occupying the property through or under her, including her family and employees.

51.8. The first respondent is to pay the costs of this application on the scale as between attorney and client.

_____

I OPPERMAN
Judge of the High Court
Gauteng Local Division, Johannesburg

Heard: 25 May 2017
Judgment delivered: 8 June 2017
Appearances:
For applicant: Adv C Van der Merwe
Instructed by: Bruno Simão Attorneys Ref: Mr Bouwer
For First Respondent: Adv Hayward
Instructed by: Zehir Omar Attorneys Ref: Mr Omar
For Second Respondent: No appearance