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**REPUBLIC OF SOUTH AFRICA**



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

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

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DATE

.....

SIGNATURE

**CASE NO.:2018/37942**

In the matter between:

**MASAWI: TAYENGWA**

First Applicant

**MASAWI: IRENE RUMBIDZAI**

Second Applicant

And

**SEKELE: LERATO L.**

First Respondent

**MBOKANE: BAWINILE**

Second Respondent

**MATHABATHE: MOKGADI M.**

Third Respondent

**SEKELE: KEBONE E.**

Fourth Respondent

**SELEKE: MARIA**

Fifth Respondent

**CITY OF JOHANNESBURG**

Sixth Respondent

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## JUDGMENT

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**E DREYER AJ:**

1. The Applicants seeks an order that the First to Fifth Respondents and all those occupying through, or under them, be evicted from the property situate at [...] Street, Booyens, more fully described as Portion 3 of Erf [...], Booyens Township, Registration Division IR, Province of Gauteng (“the property”).
2. The Applicants are the registered co-owners of the property. The property has been improved by the erection of a building comprising 15 separate rooms and communal amenities. The First Applicant, trading as TM Properties (“the First Applicant”), rents out these rooms for residential purposes.

3. The First to Fifth Respondents occupies rooms at the property in terms of a verbal lease agreement (“the lease agreement”) concluded between the First Applicant and the First to Fifth Respondents respectively, as follows:
  - 3.1 First Respondent – Room 4;
  - 3.2 Second Respondent – Room 8;
  - 3.3 Third Respondent – Room 9;
  - 3.4 Fourth Respondent – Room 11; and
  - 3.5 Fifth Respondent – Room 12.
4. A material term of the lease agreement is that the First to Fifth Respondents respectively would pay monthly rental in advance to the Applicants.
5. The First to Fifth Respondents all fell into arrears in respect of payment of their respective monthly rental and on 12 September 2018 the First Respondent addressed a Letter of Demand to each of the First to Fifth Respondents demanding payment their respective arrear rental within 7 (seven) days from the letter. The letter was delivered to the respective rooms of the First to Fifth Respondents.
6. The First to Fifth Respondents, despite demand, failed to make payment of their respective arrear rental and on 26 September 2018 the attorneys of record of the Applicants addressed a Notice of Termination to each of the First to Fifth Respondents whereby terminating the lease agreement concluded between the First Applicant and the First to Fifth Respondents respectively. Each Notice of Termination was served on the First to Fifth Respondents by Sheriff on 26 September 2018.

7. The Notice of Motion, Founding Affidavit and annexures were served on the First to Fifth Respondents by Sheriff on 17 October 2018. The First to Fifth Respondents thereafter proceeded to serve an Intention to Oppose on the attorneys of record of the Applicants on 1 November 2018.
8. The First to Fifth Respondents however failed to deliver an Answering Affidavit subsequent to serving the Intention to Oppose and on 3 December 2018 Vally J authorised the Notice in terms of Section 4(2) ("the notice") of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the Act"), notifying the First to Fifth Respondents that the eviction application will be heard on 8 January 2019. The notice was served on the First to Fifth Respondents by Sheriff on 11 December 2018.
9. At the hearing of the matter on 8 January 2019 the First to Fifth Respondents appeared in person and the matter was postponed to 5 February 2019 by Twala J.
10. On 5 February 2019 Unterhalter J again postponed the matter to 11 March 2019 in order to afford the First to Fifth Respondents, who again appeared in person, to deliver an Answering Affidavit.
11. At the hearing of the matter on 11 March 2019 Wright J ordered the First to Fifth Respondents to file an Answering Affidavit by 18 March 2019 at 17:00.
12. On 14 March 2019 the attorneys of record of the First to Fifth Respondents served an Answering Affidavit on the attorneys of record of the Applicant.
13. In the Answering Affidavit the First to Fifth Respondents avers that they complained about the condition of the property and invited the Applicants to address the problems but the Applicants failed to address the problems and instead instituted eviction proceedings.

14. The First to Fifth Respondents however fail to set out any detail in the Answering Affidavit with regards to their complaint to the Applicants such as the date of their complaint, whether it is was done in writing and what their complaints were in respect of the condition of the property i.e. what needed to be corrected.
15. It is evident from the Lease Statement of each the First to Fifth Respondent that:
  - 15.1 The First Respondent last made payment towards rental on 8 August 2018;
  - 15.2 The Second Respondent last made payment towards rental on 3 July 2018 and made a payment of R100.00 (One Hundred Rand) on 20 October 2018;
  - 15.3 The Third Respondent last made payment towards rental on 1 October 2018;
  - 15.4 The Fourth Respondent last made payment towards rental on 13 July 2018; and
  - 15.5 The Fifth Respondent last made payment towards rental on 6 August 2018.
16. It appears that the First to Fifth Respondents appeared to have implemented a rent boycott based on the poor condition of the property. However, there is not a single fact or evidence advanced as to the alleged poor condition of the property.

17. Section 4(6) of the Act provides if an unlawful occupier has occupied the land in question for less 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 the rights and needs of the elderly, children, disabled persons and households headed by woman.
18. In determining whether it is just and equitable to evict the First to Fifth Respondents I must have regard to all the relevant circumstances as set out in the parties' affidavits.
19. In *Occupiers, Berea v De Wet NO and Another* 2017 (5) SA 346 (CC) at par. 47 the Court held that the obligation to provide the relevant information is first and foremost on the parties to the proceedings. As officers of the Court, attorneys and advocates must furnish the Court with all relevant information that is in their possession in order for the Court to properly interrogate the justice and equity of ordering an eviction.
20. At the hearing of the matter the Court was informed by Counsel for the First to Fifth Respondents, Mr. S Sukwana ("Mr. Sukwana"), that the First to Fifth Respondents would be rendered homeless if they are evicted. This is a concern, but it is not supported by evidence and is not raised in the Answering Affidavit. Although the Court was not specifically told where they can rent alternative accommodation, the First to Fifth Respondents have not said that they won't be able to find any. The Lease Statement of each of the First to Fifth Respondents reflects various payments made towards rental. The First to Fifth Respondents are therefore able to pay for occupation.
21. The First Applicant's expressed position is that he relies on the rental income generated from the property in order to meet various obligations, including maintenance, and further attaches a municipal statement from the City of

Johannesburg reflecting the arrear municipal charges in respect of the property.

22. Mr. Sukwana, relying on *Mpange, Zithulele and 20 Others v Sithole, Mthokozisi*, Case No: 07/7063, argued that the Court should grant an order for specific performance that the Applicants address the complaints of the First to Fifth Respondents coupled with an order that the rental payable by the First to Fifth Respondents to the Applicants are reduced. There is however not a single fact or evidence before the Court as to the alleged poor condition of the property nor is there information before the Court on which the Court can determine a reduction in the rental. In the circumstances a case has not been made out for such relief.
23. In the circumstances I consider it just and equitable to evict the First to Fifth Respondents from the property.
24. Counsel for the Applicants, Adv. C Shahim, submitted that a just and equitable date for the implementation of the eviction order would be end November 2019, which proposed date I am in agreement with.
25. I make the following order:
  - 25.1 An order for the eviction of the First to Fifth Respondents from the property situate at [...] Street, Booyens, more fully described as Portion 3 of Erf [...], Booyens Township, Registration Division IR, Province of Gauteng ("the property") is hereby granted.
  - 25.2 The First to Fifth Respondents is ordered to vacate the property by no later than 29 November 2019.
  - 25.3 If the First to Fifth Respondents have not vacated the property by 29 November 2019, the Sheriff is hereby authorised and required to carry out the eviction order by removing from the property the First to Fifth

Respondents and all persons who occupy the premises through or under them.

25.4 The First to Fifth Respondents are ordered to pay the costs of the application jointly and severally, the on paying the other to be absolved, including the costs of the application authorising the notice in terms of Section 4(2) granted on 3 December 2018.

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**E DREYER**

**ACTING JUDGE OF THE HIGH COURT**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Appearance for Applicant: Adv. C Shahim  
Instructed by: Vermaak & Partners Inc.

Appearance for Respondent: Mr. S Sukwana  
Kekana Hlatshwayo Radebe Inc.

Date of hearing: 27 August 2019

Date of Judgment: 6 September 2019