



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

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

Date: **9th July 2020** Signature: _____

CASE NO: 13750/2020

DATE: 9TH JULY 2020

In the matter between:

MPELA, RAMOKONE DORIS

First Applicant

MPELA, MANGALISO ISAAC

Second Applicant

and

MKHIZE, ADV SENZO WISEMAN

Respondent

Coram: Adams J

Heard: 23 and 25 June 2020

Delivered: 9 July 2020 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 15h30 on 9 July 2020.

Summary: Urgent application – interdictory relief – factual dispute – respondent's version rejected as far-fetched – application granted –

ORDER

- (1) The matter is urgent.
- (2) The respondent is interdicted and restrained forthwith from committing, continuing and/or persisting with the following conduct:
 - a) disturbing and/or interfering with the applicants' ownership and possession of their property, being Section 1, as shown and more fully described on Sectional Plan Number SS 17/2016 in the Scheme known as Courtney Court in respect of the land and building or buildings situated at Alberton Township, Local Authority: City of Ekurhuleni Metropolitan Municipality, of which Section the floor area according to the said Sectional Plan is 77 (seventy seven) square metres in extent; and their undivided share in and to the common property in the Scheme apportioned to the said Section in accordance with the participation quota as endorsed on the said Sectional Plan, held by Deed of Transfer ST50026/2016 (hereinafter 'the property'), which property is situated at apartment/door no 2, Section 1, Courtney Court, 6 Piet Retief Street, Alberton North, Johannesburg, Gauteng Province;
 - b) damaging and/or vandalising the property and/or any assets of the applicants inside the property with *inter alia* graffiti, paint and/or similar inscriptions or markings;
 - c) damaging and/or breaking any locks on the property in an attempt to gain entry thereto;
 - d) installing new locks on the property in an attempt to prevent the applicants' access to and exit from the property;
 - e) intimidating, threatening and/or harassing the applicants in relation to their use, enjoyment and/or possession of the property; and

- f) being near, approaching and/or presenting himself within a radius of 500 metres from the property.
- (3) The respondent is interdicted and restrained forthwith from calling for or convening meetings at or near the Sectional Title Scheme known as Courtney Court situated at No 6 Piet Retief Street, Alberton North, Johannesburg, Gauteng Province, and/or encouraging or in any way instigating or persuading tenants at the Sectional Title Scheme against honouring their contractual obligations in terms of the lease agreements concluded with the applicants and other Sectional Title owners, particularly the contractual obligation to pay rent in accordance with the said lease agreements.
- (4) The service of this Order is to be affected on the respondent by electronic mail using email address: MkhizeSenzo6@gmail.com.
- (5) The respondent shall pay the applicants' costs of this urgent application.
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JUDGMENT

Adams J:

[1]. This is an opposed urgent application by the first and second applicants for interdictory relief against the respondent, an Advocate of the High Court, whom the applicants accuse of serious misconduct and unlawful actions. The respondent opposes the urgent application and denies that he behaved in the manner alleged by the applicants. All he did, so the respondent avers, was to protect his right to occupy immovable property, which he presently lawfully occupies and in respect of which the applicants unlawfully attempted, by self-help, to have him evicted.

[2]. At the outset it is necessary for me to make the comment that the conduct complained of by the applicants as being conduct on the part of the respondent is not the type of behaviour that one would expect of any law-abiding citizen of this country. Such conduct is a disgrace. It demonstrates a

total disregard for the laws of our country and evidences a despicable and an appalling attitude towards the rule of law and the rights of other persons. As I have indicated, the behaviour complained of is not to be expected on any South African, let alone a person who has been admitted as an Advocate of this Court.

[3]. The applicants are the owners of a Sectional Title Unit in Alberton ('the property'). Their version is that on the 2nd of June 2020, under threat of being lawfully evicted, the respondent and his partner vacated the property, but locked the doors and retained the keys. The applicants thereupon changed the locks and started making plans to claim damages from the respondent. On Wednesday, the 10th of June 2020, the respondent returned to the property, broke the newly fitted locks and indicated to other tenants in the complex that he intended installing his own tenant in the property. The applicants thereupon attempted to lay a charge of trespassing with the local police, who were singularly disinterested in assisting. On the 12th of June the applicants' attorneys addressed a communication to the respondent requesting him to give an undertaking that he would desist from his unlawful conduct.

[4]. The respondent did not provide the requested undertaking. Instead, in the early hours of Saturday, the 13th of June 2020, the respondent returned to the property, broke the locks (for the second time) and forcefully entered the premises. In the process he damaged the door. After gaining entry to the property, the respondent vandalised the interior by inscribing graffiti on the walls and on the doors. Again the applicants attempted to lay charges with the local police, but to no avail. On Monday, the 15th of June 2020, the respondent returned to the property. The applicants summoned the police, but on their arrival at the premises the respondent was nowhere to be found. At this point the applicants decided that enough was enough and they thereupon gave instructions to their legal representatives to launch this urgent application.

[5]. The respondent denies this version. As indicated above, he refutes any suggestion that he conducted himself in the manner claimed by the applicants. His version is that the applicants unlawfully spoliated him by locking him out of his rented apartment. He thereupon forced his way back into the property. The

contradiction in term inherent in this version is not lost on the court – the respondent, who complains of unlawfulness in the form of self-help on the part of the applicants, himself takes the law into his own hands.

[6]. It is clear that the main dispute between the parties is a factual one. The question is this: Which one of these two versions is to be accepted. In deciding that question, it should be borne in mind that this is an application and factual disputes are to be decided on the basis of the principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Limited*, 1984 (3) SA 623 (A).

[7]. The applicants submit that the version of the respondent is untenable and that it can and should be rejected on the papers as far-fetched. If regard is had to the evidence before me as a whole, the version of the applicants has a ring of truth to it. Importantly, their story is corroborated in material respects by the evidence of persons who are for all intents and purposes independent from the dispute and detached from the protagonists in the fray. The question is simply this: why would the other tenant go to the trouble of perjuring herself when there appears to be no reason for them to incriminate the respondent in the manner they did. Therefore, I agree – the version of the respondent is far-fetched and stands to be rejected on the papers.

[8]. The general rule is that a court will only accept those facts alleged by the applicant which accord with the respondent's version of events. The exceptions to this general rule are that the court may accept the applicant's version of the facts where the respondent's denial of the applicant's factual allegations does not raise a real, genuine, or *bona fide* dispute of fact. Secondly, the court will base its order on the facts alleged by the applicant when the respondent's version is so far – fetched or untenable as to be rejected on the papers.

[9]. In *Room Hire Co (Pty) Limited v Jeppe Mansions (Pty) Ltd*, 1949 (3) SA 1155 (T0, it was held that:

'A bare denial of applicant's material averments cannot be regarded as sufficient to defeat applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondent to enable the Court to conduct a preliminary investigation ... and to ascertain whether the denials are not fictitious and intended merely to delay the hearing.'

[10]. It is necessary to adopt a robust, common-sense approach to a dispute on motion. If not, the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. A Court should not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over – fastidious approach to a dispute raised in affidavits.

[11]. Applying these principles, I reject the version of the respondent.

[12]. The respondent has also raised a few points *in limine*. So, for example, the respondent contends that there has been a misjoinder in that his partner should have been joined as a respondent. There is no merit in any of the legal points raised by the respondent.

[13]. Accordingly, the relief sought by the applicants should be granted.

Costs

[14]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[15]. I can think of no reason why I should deviate from this general rule.

[16]. I therefore intend awarding cost against the first and second applicants in favour of the first and second respondents.

Order

Accordingly, I make the following order:-

- (1) The matter is urgent.
- (2) The respondent is interdicted and restrained forthwith from committing, continuing and/or persisting with the following conduct:
 - a) disturbing and/or interfering with the applicants' ownership and possession of their property, being Section 1, as shown and more

fully described on Sectional Plan Number SS 17/2016 in the Scheme known as Courtney Court in respect of the land and building or buildings situated at Alberton Township, Local Authority: City of Ekurhuleni Metropolitan Municipality, of which Section the floor area according to the said Sectional Plan is 77 (seventy seven) square metres in extent; and their undivided share in and to the common property in the Scheme apportioned to the said Section in accordance with the participation quota as endorsed on the said Sectional Plan, held by Deed of Transfer ST50026/2016 (hereinafter 'the property'), which property is situated at apartment/door no 2, Section 1, Courtney Court, 6 Piet Retief Street, Alberton North, Johannesburg, Gauteng Province;

- b) damaging and/or vandalising the property and/or any assets of the applicants inside the property with *inter alia* graffiti, paint and/or similar inscriptions or markings;
 - c) damaging and/or breaking any locks on the property in an attempt to gain entry thereto;
 - d) installing new locks on the property in an attempt to prevent the applicants' access to and exit from the property;
 - e) intimidating, threatening and/or harassing the applicants in relation to their use, enjoyment and/or possession of the property; and
 - f) being near, approaching and/or presenting himself within a radius of 500 metres from the property.
- (3) The respondent is interdicted and restrained forthwith from calling for or convening meetings at or near the Sectional Title Scheme known as Courtney Court situated at No 6 Piet Retief Street, Alberton North, Johannesburg, Gauteng Province, and/or encouraging or in any way instigating or persuading tenants at the Sectional Title Scheme against honouring their contractual obligations in terms of the lease agreements concluded with the applicants and other Sectional Title owners, particularly

the contractual obligation to pay rent in accordance with the said lease agreements.

- (4) The service of this Order is to be affected on the respondent by electronic mail using email address: MkhizeSenzo6@gmail.com.
- (5) The respondent shall pay the applicants' costs of this urgent application.

L R ADAMS

*Judge of the High Court
Gauteng Local Division, Johannesburg*

HEARD ON: 23rd and 25th July 2020

JUDGMENT DATE: 9th July 2020

FOR THE FIRST AND SECOND
APPLICANTS: Advocate D Z Kela

INSTRUCTED BY: Ndumiso Voyi Incorporated

FOR THE RESPONDENT: Adv S W Mkhize

INSTRUCTED BY: Adv S W Mkhize