


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

CASE NO: 18674/2019

DELETE WHICH IS NOT APPLICABLE	
(1)	REPORTABLE YES /NO
(2)	OF INTEREST TO OTHER JUDGES YES/NO
(3)	REVISED
19/10/2020	
Date	Signature

In the matter between:

SAMUEL S NYIRENDA
ANNAH C NYIRENDA
RADHA C RAMANLAL
FRANCOIS J LUBBE

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT

And

RICHARD NJENJEMA
THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

FIRST RESPONDENT
SECOND RESPONDENT

JUDGMENT

Introduction and background

1. The first and second applicants apply for the eviction of the first respondent and all who reside under his name on the property mentioned hereunder in terms of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (hereinafter referred to as PIE). The City of Johannesburg Metropolitan Municipality has been joined as the second respondent in this matter. The property is situated at Erf 84, Bezuidenhout Valley and it is also known as 76 5th Avenue, Bezuidenhout Valley Johannesburg. Ms T Mkhize appeared for the applicants and Mr TG Nkosi represented the first respondent.
2. The first applicant indicates that he cited the third and fourth applicants as they still appear as registered co-owners of the property at the Deeds Office. They have since been bought out by the first and second applicants and are no longer involved in issues that are a bone of contention in the current application. The second applicant is the first applicant's wife and for the sake of convenience, whenever I refer to 'the applicant' in this judgment, it is also inclusive of the second applicant if it is relevant to her.
3. It is common cause that the first respondent was the applicants' employee, he worked as a caretaker and handyman in five of the applicants' properties and by virtue of the verbal employment contract the respondent was provided with accommodation at the aforementioned property. When the employment ceased for reasons placed in dispute by the applicants, the applicants caused a Notice to Vacate to be delivered to the first respondent for him to vacate the premises on or before 30 September 2018.
4. It is also common cause that the first and second applicants are the owners of the property and that the property which is a bone of contention here is a single room within the premises of the abovementioned property.

5. The first respondent started living in the applicants' property on 23 January 2016. When his contract of employment was terminated in April 2018, he had to vacate the property. The applicants initiated the proceedings to have him evicted on the 27 May 2019; he refused to vacate the property and has opposed an application to have him evicted in terms of the PIE Act. The respondent had been in occupation of the property for longer than six (6) months at the time when the proceedings were initiated, and therefore Section 4 (7) of the PIE Act is applicable.
6. The applicants allege that the first respondent and any other person occupying with him or under him do not have the right to reside in the property because the first respondent was allowed to occupy the room while he was in the employ of the applicants. As his employment contract with the applicants has been terminated, his right to occupy has also been terminated and he currently occupies the property unlawfully, as alleged by the applicants.
7. In the respondent's opposing affidavit he relies on his contract of employment and states that he derives his right of occupation from his employment. This defence was abandoned by the respondent's counsel during the hearing of the application. Counsel submitted that the respondent's defence would only be that it will not be just and equitable to evict the respondent because he will be left homeless as a result of the eviction.
8. It was submitted that the respondent is a partially disabled person who is getting a disability grant and therefore it will not be easy to secure alternative accommodation because it will be unaffordable to him. The applicant argued that the respondent can actually afford alternative accommodation for himself because he supplements his disability grant with money he receives from his cell phone and computer repair shop and it is unlikely that people come to him for assistance at the shop at no charge.
9. The applicants further submitted that the continued occupation of the property by the respondent causes prejudice to them because when they bought the property their purpose was to use it as an investment tool however that bore

no fruits and has turned out null and void because of the respondent. According to the applicants, while the respondent stays there freely without paying rent, he runs the water bill wastefully and it is costing them financially. They hired a new caretaker and have had to find accommodation for him while the respondent occupies the room rent-free.

Issues for determination

10. As already indicated earlier, ownership of the property has not been placed in dispute by the respondent and it is also common cause that the respondent occupies the property as a result of a contract of employment which existed between the first applicant and the first respondent. The contract of employment has since been terminated and the respondent has been asked to vacate the property, he refuses and states that he will be left homeless and that it is not just and equitable that he be evicted. The respondent has abandoned his defence that he is entitled to remain in the property by virtue of his employment. The only issues left for determination are therefore whether an eviction order, if granted, will render the respondent homeless in case there is no alternative accommodation available and whether it will be just and equitable to grant the order under these circumstances.

The Law and procedural requirements of the PIE Act

11. Section 4 (1) of PIE provides that: *“Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier”*. This therefore means that the Applicant bears the onus to prove; (1) that he is the owner or the person in charge of the land and; (2) that the respondent has occupied the land unlawfully.
12. Section 4 (7) – (9) which contains the procedural requirements of an eviction where an occupier has occupied the land for longer than six months provides that:

“(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 execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of the 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

(8) If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and

(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

(9) In determining a just and equitable date contemplated in subsection (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or his family have resided on the land question”

13. In terms of subsection 7 the court has the discretion to grant an order for eviction against an occupier who has occupied a residential property for longer than six months when the application is brought. Before the court can find that it is just and equitable to evict an occupier, it must first satisfy itself that he occupies the land illegally and that all the surrounding circumstances of the matter permit it to grant the order. Such circumstances include, amongst others, whether the Municipality can make land available for occupation by the respondent or whether alternative accommodation can be

provided. This is to be in line with the constitutional right to adequate housing. (See *Ndlovu v. Ngcobo*; *Bekker and Another v. Jika* 2004 (1) SA 114 (SCA) para 18)

14. In *City of Johannesburg v Changing Tides 74 Pty Ltd and Others* 2012 (6) SA 294 (SCA) the requisite approach to eviction applications was summarised as follows by Judge Wallis:

“a court hearing an application for eviction at the instance of a private person or body, owing no obligations to provide housing or achieve a gradual realisation of the right of access to housing in terms of section 26 (1) of the Constitution, is faced with two separate inquiries. First it must decide whether it is just and equitable to grant an eviction order having regard to all relevant factors. Under section 4(7) those factors include the availability of alternative land or accommodation. The weight to be attached to that factor must be assessed in the light of the property owner’s protected rights under section 25 of the Constitution, and on the footing that a limitation of those rights in favour of the occupiers will ordinarily be limited in duration. Once the court decides that there is no defence to the claim for eviction and that it will be just and equitable to grant an eviction order, it is obliged to grant the order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions must be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order that he grants as a result of these two discreet inquiries is a single order. Accordingly it cannot be granted until both inquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the inquiry be concluded until the court is satisfied that it is in a position of all the information necessary to make both findings based on justice and equity”

Evaluation

15. What is obvious from the submissions made on behalf of the respondent is that he has no defence to the claim for eviction. He first relied on the contract of employment that existed between him and the appellant to show that he was a lawful occupier of the room. After the contract of employment was terminated the respondent was given a notice of eviction which notice he decided to ignore. Having abandoned his defence the respondent is left with no defence at all to the claim for eviction. It is therefore a well-judged conclusion to make that the respondent has no defence to the claim and that he occupies the property unlawfully.
16. The next leg of the inquiry is whether the respondent will be rendered homeless if an eviction order is granted. After hearing the application I granted an order in which I reserved this judgment to allow the applicant to file a report from the Municipality within 21 days of the order. This report was to allow the Second Respondent (City of Johannesburg Metropolitan Municipality) to provide the court with information relating to whether the respondent will indeed be rendered homeless if evicted and if so, whether alternative accommodation or a temporal emergency accommodation can be provided to the respondent if evicted. The report has been filed.
17. According to the report prepared by Patrick Phophi after a thorough investigation of the respondent's circumstances was done, the respondent is an illegal immigrant from Malawi whose work permit expired in 2016. The provision of temporal emergency accommodation should be dealt with in consultation with the Department of Home Affairs. He explains that if the respondent is handed over to the Department of Home Affairs and if he is detained and ultimately deported the duty to provide him with emergency accommodation falls away.

18. In his affidavit, Mr Phophi concedes that the second respondent has a duty to provide temporal Emergency Accommodation to illegal immigrants but states that such happens in matters of urgency. He indicates that the first respondent's case is not urgent because there is no evidence of urgency and requests the court not to make an order for the provision of a temporal emergency accommodation against the second respondent. He requests the court to limit the applicant's right to occupation of his property until the end of the National Lockdown. Mr Phophi also further states in his affidavit that even if there was no Covid -19 pandemic, the City of Johannesburg does not have any alternative accommodation available to provide because they have a four (4) years backlog for emergency accommodation in cases of evictions. He cites as the reasons for such a backlog budgetary constraints and unexpected emergencies, amongst others.
19. Mr Phophi has indicated that it will take three years from the time an order is made for the second respondent to identify, acquire, refurbish and appoint a manager for such facilities. He prays that if the court is inclined to evict the first respondent, the eviction order be suspended for a period of three years from the last day of the National Lockdown to allow the second respondent to comply with its constitutional duty to provide emergency accommodation to evictees.
20. Evidence in the matter shows that the first respondent is currently unemployed but he is getting a social grant for his disability. This disability came as a result of him getting an injury at work where he cut himself while using a grinder and two of his fingers in the left hand were cut loose. They were reconnected with wires after an operation. It is the respondent's evidence that the doctor declared that he should undertake light work as his hand was permanently injured. He states in his affidavit that he struggles to get employment because his hand cannot open completely nor can it grip or hold things properly. The respondent lives in that room with his girlfriend Phindile Hlongwana who is also unemployed. There are no children; no elderly persons and the first respondent is the head of that family and therefore it is not a woman headed household. The respondent earns a social

grant in the region of R 1 860, 00 per month and he indicated that he also earns R500, 00 per month from SADSAWU. I reasonably believe that he has a total income of R2860, 00 per month and from this amount the respondent has not even offered to pay half of the amount charged for the room or any fraction thereof.

21. The applicant bears the onus of satisfying the court that it is just and equitable to make an order for eviction under s 4(7) of the PIE Act. This however does not place the burden on the applicant to provide free accommodation to the first respondent. It is clear from the pleadings that one of the circumstances the first respondent is faced with is unemployment and he however has a source of income, I have no reason to believe that he will be destitute when evicted. The court will not be in breach of his rights if it affords him a reasonable opportunity to look for an affordable room where he can move in with his girlfriend. From April 2018 to date, the applicant has been unable to use his property and the respondent has been occupying it rent-free, without even making an offer to pay for his water bill.
22. Clearly the applicant suffers prejudice as a result of the respondent wanting to stay there for free when he is no longer employed by the applicant. The first respondent cannot stay there indefinitely without paying; his situation is not the worst kind. In the *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties (Pty) Ltd and Another* 2012 (2) SA 104 (CC) the Constitutional Court confirmed that private entities are not obliged to provide free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising, or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers.
23. It would seem that the first respondent intends to reside at the applicant's property indefinitely. There is no evidence in his answering affidavit to indicate that he intends to vacate the plaintiff's property someday and find alternative accommodation. He has been occupying the property for over 2 years without making a move. This is prejudicial to the applicant who has had to find

accommodation for the new caretaker while the respondent refuses to vacate the room. The question therefore is, what should be done under the circumstances.

24. Having abandoned his defence, the respondent had no valid defence against his claim for eviction. Secondly, the respondent has known since the delivery on him of the notice to vacate that the applicant was not willing to keep him in the property. I am mindful of the fact that the courts have a responsibility to take into consideration the provisions of the PIE Act and the Constitutional rights of the respondent when making a determination of whether it will be just and equitable to evict the respondent.
25. Municipalities have constitutional obligations towards possible evictees who face possible homelessness, I have had insight to the report filed by the City of Johannesburg Metropolitan Municipality and have considered their contribution in this matter. They seem to be struggling with emergency accommodation currently and because of the budgetary constraints and other factors, they are unable to deal with the backlog. In cases where the burden can be lessened the courts should carefully weigh the circumstances of a possible evictee and determine whether if done properly, the burden can be lessened.
26. I mentioned earlier in this judgment that the first respondent's situation is not the worst kind. He still has a source of income; he was not rendered permanently disabled that he cannot work at all. He can look for a job where he can do light work and still be able to earn a living. He was occupying a room at the applicants' place and that makes it a bit easier to find another room where he can pay an affordable amount. Placing a burden on the Municipality to find emergency accommodation for the first respondent or others like him whose situations are not of the worst kind might collapse the system in such a way that those who are in urgent need of emergency accommodation will not enjoy the assistance they may seriously require from the Municipality. I have all information available to make a ruling that the respondent will not be rendered homeless if an eviction order is granted especially if he is given sufficient time to find accommodation he can afford.

27. Having carefully weighed the factors and circumstances relevant to this application I am of the opinion that the respondent will not be rendered homeless if an eviction order is granted and I therefore find that it is just and equitable to grant an eviction order under the circumstances.

Conclusion

28. This brings me to the final leg of the inquiry and that is, what would be just and equitable in determining the date of implementation of an eviction order. Considering the fact that the respondent relies on his disability grant and an extra R500, 00 on the side, it might take time for him to secure alternative accommodation though it is not totally impossible. The court must therefore provide him adequate time to find an affordable room and uproot himself from the applicant's premises. It is only him and his girlfriend who will be affected by the court order because there are no children and elderly people residing with them in the room.

29. Though the applicant may suffer prejudice by the extended occupation of the room by the respondent, it is an interim arrangement to allow the respondent sufficient time to relocate rather than occupying the room permanently without rental payment. The respondent had made the room his home and therefore he will need a reasonable amount of time to relocate. We are also currently under Lockdown Alert Level 1 because of the Corona Virus Pandemic and it is inhumane to remove a person from a place he calls his home for more than four years. In all the circumstances I believe it will be unjust to give the respondents less than three months to vacate the applicant's property and also of the opinion that it will be unfair to do so during the lockdown period.

Order

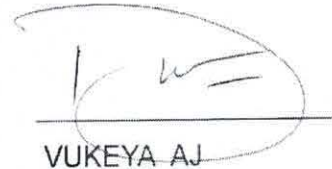
[30] In the result I make the following order:

[30.1] The first respondent and all persons occupying with and through the first respondent are hereby evicted from the immovable property situated at Erf 84, Bezuidenhout Valley also known as 76 5th Avenue, Bezuidenhout Valley Johannesburg.

[30.2] The first respondent and any person occupying the property with him are ordered to vacate the property exactly one hundred and twenty (120) days after the last day of the Lockdown period and not to return thereafter. The calculation of these days shall include weekends and holidays.

[30.3] It is further ordered that in the event that the first respondent does not vacate the property on or before the last day of the 120 days, the sheriff alternatively his duly appointed deputy together with such assistance as he deems appropriate is authorised and directed to evict the first respondent from the property.

[30.4] Each party to pay its own costs.



VUKEYA AJ
Acting Judge of the
High Court: Gauteng
Local Division;
Johannesburg.

Date of hearing:	29/07/2020
Date of delivery:	19/10/2020
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