

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 26988/2020

CASE NO: 339272/202

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

31/12/2020  
DATE

.....  
SIGNATURE

In the matter

**TSATSA VERONICA**

**FIRST APPLICANT**

**KHUMALO KHAYELIHLE**

**SECOND APPLICANT**

**ALL THE OCCUPIERS OF RENNITE  
MANSION 52 PLEIN STREET**

**THIRD APPLICANT**

And

**RETQUE 400 CC (2010/027890/23)**

**FIRST RESPONDENT**

**THE CITY OF JOHANNESBURG  
METROPOLITAN**

**SECOND RESPONDENT**

---

**JUDGMENT**

---

**MAKUME J:**

- [1] On the 09<sup>th</sup> September 2020 my brother Molahlehi J granted an order  
in favour of the first Respondent authorising the sheriff to evict the

Applicants from certain premises known as Rennite Mansion situated at 52 Plein Street, Johannesburg.

- [2] On the 22<sup>nd</sup> September 2020 De Villiers AJ granted Applicants an order staying the eviction order granted by Molahlehi J pending adjudication of the rescission application set down in the urgent court for Monday, 16 November 2020.
- [3] The Applicant seeks rescission of the order of Molahlehi J in terms of Uniform Rules 42(1) on the basis that same was erroneously sought and granted in their absence in that they were not legally represented.
- [4] When De Villiers AJ granted an order staying the eviction he also issued an order directing the Applicant to deliver "an application to supplement their founding affidavit in the rescission application."
- [5] I must hasten to observe that the papers in this matter are rather confusing because the stay application was brought under a different case number as is the rescission application as it is this matter resorts under the following case numbers
- 22332/2020 -The Eviction order by Molahlehi J
  - 26988/2020 -The Stay Application by De Villiers AJ
  - 33972/2020 – The Rescission Application

- [6] It is trite law that the order by Molahlehi J can only be varied under Rule 42 and on appeal or on Common Law grounds (See: **Bezuidenhout v Patensie Sitrus Beherrend BPK 2001(2) SA 224 (E)at 229 D-E**). For the applicants to succeed it is required of them to meet the requirements as set out in Rule 42(1) or the Common Law.
- [7] The order by Molahlehi J was not granted in the absence of the Applicants they were present in court and only raised the issue of the deposit they had paid at the inception of the lease. That is why when Molahlehi J issued the eviction order it included the repayment of the amount of R3 500.0 to each of the Applicants.
- [8] It is accordingly not competent to rely on Rule 42(1) as that order by Molahlehi J was not granted in error nor was it in the absence of the Applicants. There is also no evidence that the judgment is in any manner ambiguous or there is a patent error or omission.
- [9] What then remains is whether the Applicants can be afforded relief in terms of the Common Law. At Common Law a judgment can be set aside on the following grounds:
- a) Fraud (See **Moraitis International vs Montic Paury 2017 (5) SA 508 (SCA) at 514 – 515 B**).
  - b) Justus error.

c) In certain circumstances when new documents have been discovered.

d) Where judgment had been granted by default (**Chetty v Law Society Transvaal 1985 (2) SA 756 (A) at 765 B-C**).

e) In the absence between the parties of a valid agreement to support the judgment on the grounds of Justus causa (See: **MEC for Economic Affairs, Environment and Tourism vs Kruisenga 2008 (6) A 264 (CKHC at 283 B-284B)**)

[10] The Applicants submit that because their attorney was not present in court this means that they were not afforded an opportunity to challenge the order that was sought and because of them being lay persons they should be treated in the same manner as was concluded by the Constitutional Court in **Berea v De Wet N.O. and Another 2017 (5) SA 346**.

[11] The facts in Berea (supra) differ materially from the facts in the present matter. In Berea the 180 Applicants against whom an eviction had been granted on the strength of a consent to judgment at the instance of a few other residents approached the Constitutional Court. In their submission to the Constitutional Court they maintained that there was



no actual consent between them and their landlord when the order was granted.

[12] At page 366 paragraph 69 the court sets the scene as follows:

*"The court was not aware that there were 180 occupants who were absent when it granted the eviction order. The court was further not aware that those who purported to confirm the agreement on the side of the Applicants had no mandate to bind the absent 180 Applicants. The basis for granting the eviction order was that all the parties had consented thereto. The 180 absent Applicants had however not consented thereto and were not bound by anybody present in court. The eviction order was thus erroneously granted in the absence of the 180 Applicants."*

[13] It is also not correct to argue that the Applicants were not made aware of their rights because they had no legal representation. That argument is nullified by the fact that despite numerous notices including the Section 4(2) notices the Applicants decided not to place or disclose their personal circumstances. They in their supplementary affidavit convey that they will only disclose their personal circumstances when the City of Johannesburg assesses the provision of alternative accommodation. In my view the conduct of the Applicants was a ploy to sustain their argument that Molahlehi J did not have sufficient facts to enable him to arrive at an appropriate decision.

- [14] The other difference between the present matter and the facts in Berea is that this matter did not involve a person purporting to represent others whilst lacking the mandate to do so.
- [15] When the Applicants appeared before the Rental Housing Tribunal they reached a settlement and agreed to voluntarily vacate the property by not later than the 1<sup>st</sup> November 2019 subject to the First Respondent repaying them their deposit. They repeated that settlement which was made an order of court by Molahlehi J. It can therefore not be said that they were not informed of their rights.
- [16] Lastly it is not correct that the Applicants will be rendered homeless if the eviction is carried out. They indicated on the 24<sup>th</sup> June 2020 through their representative NICSA that "they are ready to effect monthly rental payments and await new lease agreement. At paragraph 6 of that letter NICSA writes as follows to the first Respondent attorneys:


*" Therefore you re respectfully requested to ascertain from your client whether your client intends to pay our abovementioned members their outstanding deposits thereby allowing them to seek alternative accommodation and or whether your client took a decision not to honour and abide by the Gauteng Rental Housing Tribunal ruling."*

- [17] The Applicants have failed to demonstrate that they have a *bona fide* defence to the eviction application. This is borne out by the fact that they wilfully refused or failed to disclose their personal circumstances. Further there re contradictions in their founding and supplementary affidavits regarding the number of people who live on the property as well as their income.
- [18] In the settlement agreement reached at the Rental Housing Tribunal it was agreed that the first Respondent will write off arear rental of R 12 884.88 provided the Applicants vacate the property on the 1<sup>st</sup> November 2019 and only then will they be paid the R3500.00 after verification that it was paid. The further condition was in the event of the Applicants failing to vacate then the R12 884.88 would become due.
- [19] The Applicants failed to vacate as agreed and instead engaged NICSA who clearly gave them wrong advise. It is clear that the attempt at negotiation by the NICSA was not genuine and in my view not bona fide and was an abuse of the process.
- [20] I am not persuaded that the Applicants have met the requirements of Rule 42(1) and are not entitled to the relief they seek.
- [21] In the result I make the following order:

ORDER

1. The application for rescission of the order/judgment by Molahlehi J dated the 9<sup>th</sup> September 2020 is hereby dismissed.
2. The Applicants are ordered to pay the taxed party and party costs of the application jointly and severally one paying the other to be absolved.

DATED at JOHANNESBURG this the 30<sup>th</sup> day of DECEMBER 2020.



---

**M A MAKUME**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

|                  |   |                           |
|------------------|---|---------------------------|
| DATE OF HEARING  | : | 18 NOVEMBER 2020          |
| DATE OF JUDGMENT | : | 30 DECEMBER 2020          |
| FOR APPLICANT    | : | ADV P MAFU                |
| INSTRUCTED BY    | : | Messrs Ntozakhe Attorneys |
| FIRST RESPONDENT | : | ADV VAN DER MERWE         |
| INSTRUCTED BY    | : | Messrs Vermaak & Partners |