

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 40764 /2019

DATE: 25 May 2021

DELETE WHICHEVER IS NOT APPLICABLE

1. Reportable: ~~Yes~~/ No
 2. Of Interest to Other Judges: ~~Yes~~/ No
 3. Revised Yes

DATE: 25 May 2021 SIGNATURE:

In the matter between:

LEHETI INVESTMENTS CC

Applicant

and

RICHARD MASHIANE

First Respondent

**ALLILLEGAL OCCUPIERS OF ERF 2697
CHLOORKOP EXT. 52 Township**

Second Respondent

**EKURHULENI
MUNICIPALITY**

METROPOLITAN

Third Respondent

JUDGMENT

Johann Gautschi AJ

1. This is an application in terms of the Prevention Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998 (the Act). The applicant, a Close Corporation, as the registered owner of the property situated at 2697 Mississippi St, Chloorkop extension 52 Tembisa (“the property”) applies for the eviction of the first and second respondents from the property and for ancillary relief.
2. Following an order granted pursuant to an ex parte application in terms of section 4 (2) of the Act, answering affidavits dated 24 July 2020 were filed by the Tembisa Local Office of Legal Aid South Africa (Legal Aid) on behalf of the first and second respondents. Applicant’s replying was filed on 12 August 2020.
3. Thereafter, on 8 October 2020 the applicant filed its heads of argument and on 12 October 2020 applicant filed its practice note and an affidavit in accordance with paragraph 6 of the Judge President’s Consolidated Directive dated 18 September 2020.
4. On 12 February 2021 the respondents’ heads of argument and practice note were filed on their behalf by Legal Aid.
5. Notice of set down dated 8 April 2021 was served by email on Legal Aid in terms of which this matter was set down on the opposed motion roll for hearing on 4 May 2021.
6. By email dated 22 April 2021 Legal Aid sent a notice to the applicant’s attorneys advising of their withdrawal as attorneys of record for the first and second respondents. The notice provided the last known address of the first and second respondents at the address of the property from which the applicant seeks to evict the respondents.
7. Attorney Cronje appeared before me via Microsoft Teams videoconferencing at 2 PM on 4 May 2021, being the timeslot which I allocated for the hearing of this matter.

8. Mr Cronje advised that there was no evidence that the respondents were aware of the withdrawal of their attorneys or that the matter would be heard in the absence of their attorneys on that day. I indicated that I had in mind granting an order in accordance with the draft order prepared and that I intended preparing a short judgment based on having read the affidavits and heads of arguments filed by both parties.
9. However, on further reflection when preparing this judgment it seemed to me that it would be inappropriate in an eviction application to grant an order without being satisfied that the respondents were aware that their attorneys had withdrawn and that the matter was to be heard on the date allocated.
10. In the circumstances I grant the order set out below.

ORDER:

1. The application is postponed sine die.
2. The applicant is directed to serve a fresh notice of set down on the respondents via the Sheriff in accordance with the provisions of Rule 4, and if not possible, by fixing same to the principal door of the property situated at 2697 Mississippi St, Chloorkop extension 52 Tembisa.
3. The costs of the hearing on 4 May 2021 are reserved.

Johann Gautschi AJ

25 May 2021