



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

CASE NO: 2022/012294

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

19/4/2022
DATE

J Moorcroft
SIGNATURE

In the matter between:

VERSTER, JACQUES

First Applicant

ERASMUS, WILLIAM

Second Applicant

and

MAFADI MANAGEMENT LETTING SALES

Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] This application was heard on 18 April 2022 and I handed down the following order:

- “1. *The Respondent be ordered and directed to forthwith restore full beneficial possession of the residential property situated at 57A 2nd Avenue, Westdene, Johannesburg (hereinafter referred to as “the property”) to the Applicants;*
2. *That the Respondent be ordered and directed to forthwith take all necessary steps to ensure that:*
 - 3.1 *the locks its employees or sub-contractors had placed on one of the garage doors and on the outside gate at the property, are removed immediately;*
 - 3.2 *the First Applicant’s house keys are returned to him immediately;*
 - 3.3 *the electricity to the property is restored immediately;*
3. *The Respondent and any person acting on its behalf or on its instructions are interdicted and restrained from interfering with or hindering the Applicants’ occupation of the property, other than by means of a Court sanctioned process;*
4. *The Respondent is ordered to pay the costs of this application on the scale as between attorney and client.”*

[2] The reasons for the order follow below.

Introduction:

[3] The present application was preceded by an earlier one that was dismissed. It was held that the applicant had failed to make out a case on the papers on the basis disclosed in the founding affidavit. A new application was then drafted relying on different points of law and served on 16 April 2022.

[4] In the compliance affidavit it is confirmed that the applicant had received a telephone call from the respondent’s attorney to inform him that the respondent was a client of his firm. The application was then forwarded by email to the respondent’s attorney.

[5] Under the circumstances I was satisfied that the application had been duly served.

[6] The applicants were evicted from leased residential premises on 11 April 2022. At the time they lived at the premises and they were in peaceful occupation of the property. They were evicted without a Court order and without compliance with the provisions of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 ("the PIE Act"). In the eviction the applicants' rights against arbitrary eviction in terms of Section 23(3) of the Constitution were also infringed.

[7] The respondent's actions in carrying out the eviction¹ quite obviously acted on the premise that the respondents were in unlawful occupation, which begs the question why the PIE Act was not complied with.

[8] If the PIE Act were not to be applicable the question still remained why the respondent did not obtain a court order. An applicant for an eviction order at the end of a lease must allege and prove that the right of the occupier had been terminated. He cannot resort to self-help.²

[9] The respondent did an about turn and alleged in an email on 14 April 2022 that the applicants *"has access to the unit and all the keys are with the tenant."* The respondent however chose not to oppose the application and the only evidence of the eviction remains that of the applicant. This email was written when the respondent already was in possession of the first application and knew that the applicants alleged a forceful eviction.

¹ Paragraphs 11 to 26 of the founding affidavit (Caselines 0006-7 to 0006-11)

² *Boshoff v Union Government* 1932 TPD 345; *Myaka v Havemann* 1948 (3) SA 457 (A); *Matador Buildings (Pty) Ltd v Harman* 1971 (2) SA 21 (G); *Schneehage v Bezuidenhout* 1977 (1) SA 362 (O).

[10] The applicants also enjoyed water and electricity services that form an integral and incidental element of their occupation and enjoyment of the property. They state in the founding affidavit that the respondent was contractually obliged to invoice them in arrears for the services but has never done so despite many requests. They therefore paid an estimated amount. It stands to reason that they would expect the respondent to inform them accordingly should this amount be too low and they are in any event entitled to receive invoices or statements of account.

[11] In the aforementioned email of 14 April 2022 the respondent denied that any municipal services were disconnected by the respondent. The inference to be drawn from the email of 14 April 2022 is that the respondent does not dispute the applicants' entitlement to the relief sought but does not go further and dispute that the eviction occurred.

[12] I am satisfied that a case has been made out that the matter is urgent, that the applicants have been unlawfully deprived from their possession and occupation of their home, that were evicted without a court order, and that the provisions of section 4 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 18 of 1998 were not complied with.

[13] I am also of the view that the respondent's actions in carrying out the eviction as described in the affidavit merit a punitive cost order. The applicants were dealt with forcibly; they were evicted without a court order; they were deprived of their keys; and they were frogmarched out of the home they occupied.

[14] I therefore granted the order quoted above.



J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **19 April 2022**

APPEARANCE FOR APPLICANTS:

M VERSTER

INSTRUCTED BY:

BMV ATTORNEYS

NO APPEARANCE FOR RESPONDENT

DATE OF THE HEARING:

18 April 2022

DATE OF ORDER:

18 April 2022

DATE OF JUDGMENT:

19 April 2022