


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

CASE NO:26028/2021

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
29 April 2022	
DATE	SIGNATURE

In the matter between:

HRW ISLAMIC INSTITUTE NPC

Applicant

and

MEDHAT MAHMOUD ABDALLA

First Respondent

CITY OF JOHANNESBURG

Second Respondent

JUDGMENT

CRUTCHFIELD J:

[1] The applicant is HRW Islamic Institute NPC, a non-profit company, duly registered and situated at 92 Kastaling Street, Weltevreden Park, Roodepoort.

[2] The respondent is Medhat Mahmoud Abdalla, a major male residing at 96 Kastaiing Street, Weltevreden Park, Roodepoort.

[3] The applicant alleges that it concluded a lease agreement in writing with the respondent on 15 August 2018 for a period of three years in respect of the immovable property situated at 96 Kastaiing Street, Weltevreden Park, Roodepoort ('the property'). The applicant is the registered owner of the property.

[4] The terms of the lease agreement allegedly concluded between the applicant and the respondent according to the applicant ('the applicant's lease') included that the effective date of the lease was 1 September 2018, the rental was R10 500.00 per month. The applicant's lease included an automatic annual rent increase and a breach clause *inter alia*.

[5] The applicant alleges that the respondent failed to pay the rental and utilities with effect from January 2019. The applicant called upon the respondent to rectify its breach by letter, which the respondent failed to do and the applicant terminated the applicant's lease by notice on 29 November 2019.

[6] The applicant required the respondent to vacate the property by not later than 31 December 2019, together with all of those residing in the property under the tenancy of the respondent.

[7] The respondent alleges that the applicant placed and relied upon a false lease before this Court, that the true lease signed by him provided that he did not have to pay rent but that his 'rental' would be covered effectively by contributions made to the applicant. The applicant denies as much.

[8] The respondent's version of the lease is undermined in that he himself admits that he signed page 7 of the applicant's lease relied upon by the applicant, (being the signature page of the applicant's lease), as well as that relied upon by the respondent. The respondent did not attach any additional pages of the lease relied upon by him and allegedly signed by him, only the aforementioned page 7 of both the applicant's lease and the respondent's lease.

[9] In addition, however, the respondent paid rental for the property in accordance with the applicant's lease for a period of months, payment not having been made since January 2019.

[10] It is evident from that aforementioned that the respondent signed the lease agreement relied upon by the applicant, the applicant's lease, and took occupation of the property with effect from 1 September 2018. To date, notwithstanding the facts alluded to hereunder, the respondent and his children remain in the property.

[11] In the circumstances¹, I reject the respondent's alleged version of a lease other than the applicant's lease relied upon by the applicant.

[12] In the light of the respondent's non-payment of the rental and utilities, being an amount of R86 838.46 as at 23 July 2019, excluding municipal charges for June and July 2019, this being a material breach of the applicant's lease, the applicant, pursuant to the breach notice date 23 July 2019 and in terms of a notice dated 29 November 2019, terminated the applicant's lease as well as 'any other agreements, verbal or otherwise' in terms of which the respondent and his children resided in the property. Furthermore,

¹ *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* 2008 (3) SA 371 (SCA).

the applicant required that the respondent and all those occupying the property through or under the respondent, vacate the property by 31 December 2019.

[13] The applicant, having complied with the relevant procedures and processes required for the eviction of persons from the property, now approaches this Court for the eviction of the respondent and all those residing in the property with him.

[14] The respondent placed an answering affidavit in the application before this Court and appeared in person. In addition, he furnished heads of argument under an affidavit together with various annexures thereto, to which I shall refer hereunder.

[15] The respondent's affidavit was deposed by him on 10 September 2021. I heard this application during the week of 25 April 2022, some six months thereafter.

[16] The respondent alleged that he is unemployed and reliant on social grants from the state in respect of his upkeep and that of his children. The respondent has five children residing in the property, two of whom are majors.

[17] In argument before me, the respondent stated that he was employed prior to moving to the property, as a retailer. However, in his answering affidavit, the respondent alleged that he lost his employment during January 2021. Reliance upon the respondent's last-mentioned allegation made under oath, that he lost his employment during January 2021, raises the question as to why the respondent failed to make payment of the rental and utilities with effect from January 2019, a period of some two years.

[18] In respect of the social grants on which the respondent placed reliance, it emerged during the respondent's address to this Court that he had not collected those grants for the duration of this year. This was allegedly because the bank account into which the

social grants were paid was closed, although no proof thereof was placed before this Court.

[19] Absent the social grants this year, it was not apparent how the respondent and his five children survived other than by way of the income earned by his eldest child, in the sum of between R5 000.00 and R6 000.00 per month.

[20] The respondent alleged that he has no family in South Africa other than his five children. The respondent's ex-wife resides in Allen's Neck, Roodepoort with an aunt of hers.

[21] The respondent alleged that he had nowhere else to live and if evicted from the property together with his five children, effectively would be rendered homeless and on the street.

[22] The respondent alleged that the head of the committee of the HRW Islamic Institute NPC, the applicant, informed the respondent that contributions to the mosque made by people would be used to pay for accommodation for the respondent and his children. Arrangements such as that are between the respondent and the leaders of the applicant and not it is not for this Court to interfere therein.

[23] The respondent attached to his heads of argument, a document reflecting the approval of a social grant dated 1 February 2021. Furthermore, the respondent attached an extract from a court order dated 20 January 2022, that provided that the respondent's children remain with the respondent in his custody and that the mother, the respondent's former wife, has contact with them every alternate weekend and alternate school holiday.

[24] The applicant, as aforementioned, complied with its obligations both in terms of the applicant's lease relied upon by the applicant and the provisions of the relevant legislation being the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998. The respondent placed the relevant facts before this Court and the issue is whether it is just and equitable for an order to be granted for the eviction of the respondent and his children from the property.²

[25] The respondent has been in occupation of the property since termination of the lease on 29 November 2019 and with effect from 31 December 2019. The respondent together with the children are effectively in unlawful occupation of the property.

[26] I am enjoined to consider whether the eviction of the respondent and children will be just and equitable.

[27] There are no elderly or disabled persons residing in the property. Nor is the household headed by women or children.

[28] One of the respondent's major children is employed and able to meet his own needs, including accommodation needs. No reason was furnished as to why the second major child, who completed her schooling, cannot or should not find employment and similarly attend to her own needs.

[29] The minor children are schooling in the area in which the respondent resides in the property. The children's mother is residing in Weltevreden Park. Whilst the respondent contended that the children's mother had 'problems' and that she had allegedly been in rehabilitation, the children's mother lives with her aunt. The respondent contended before

² *City of Johannesburg v Changing Tides 74 (Pty) Ltd* 2012 (6) SA 294 (SCA).

me in addition, that the children cannot stay with their mother as she has her two children from a previous marriage residing with her in the aunt's accommodation.

[30] We know, however, as a fact, that the children's mother's alleged problems do not exclude her from exercising contact over alternate weekends and alternate school holidays, notwithstanding that she has her two children from her previous marriage living with her.

[31] In those circumstances, it appears to me that the mother is in a position to assist with accommodating the three minor children, albeit on a temporary basis, whilst the respondent finds alternate accommodation.

[32] As regards the respondent's ability to find alternate accommodation, the respondent allegedly lost his employment during January 2021. As to the reasons why the respondent has not obtained alternate employment in the interim, he relied upon the Covid pandemic and stated that he had not been able to find employment. The Covid pandemic commenced during March of 2020. It continues to date and notwithstanding, I was not furnished by the respondent with details and particularity of what efforts were made by him to find employment, what employment agencies he utilised in his quest to find employment, what agencies or potential employers he submitted his *curriculum vitae* to and from which prospective employers he attempted to obtain employment.

[33] No facts of this nature were placed before me. Furthermore, other than Covid and the respondent's alleged inability to find employment, I was not given any substantial reason as to why the respondent is unable to work and we know that on his own version the respondent worked until January 2021. In those circumstances, it appears to me that the respondent should be in a position to find employment of some sort, albeit that it may not be work that the respondent wishes to do for the balance of his working life.

[34] We know that the respondent prior to taking occupation of the property, was employed and paid rental allegedly for one year prior to taking up such occupation. There is no reason before me as to why the respondent, given adequate effort on his part together with assistance by his two major children, cannot obtain alternate accommodation, even on a temporary basis and with sufficient time in which to do so.

[35] On the other hand, regard being had to the interests of the applicant, the applicant is the owner of the property. The applicant is liable for payment of the utilities account in respect of the property to which no contribution has been made by the respondent from at least January 2019. In addition, the applicant alleges that certain damage had been caused to the property and requires to be fixed.

[36] Furthermore, I have already alluded to the fact that the respondent has not paid rental for the premises since January 2019, not even in an amount lower than that agreed to in the applicant's lease. This is notwithstanding that the respondent lost his employment in January 2021.

[37] Weighing the applicant's interests as well as those of the respondent and having special regard to the rights and interests of the minor children, I am of the view that it is just and equitable that alternate arrangements be made by the respondent in respect of the accommodation of himself and his children, especially his three minor children.

[38] In this regard, the mother is available to exercise contact over alternate school holidays and accordingly, should be in a position to assist in respect of alternate accommodation, even temporary accommodation, in respect of the minor children.

[39] In the circumstances and regard being had to the fact that the interests of the minor children especially can be accommodated, even temporarily, and whilst the respondent

obtains alternate accommodation, I am of the view that the applicant is entitled to an order providing for the eviction of the respondent and the children as well as any other party occupying the property through or under the respondent.

[40] The question arises as to the time period that should be made available to the respondent prior to his having to vacate the property. The applicant tendered a period of three months, meaning that the respondent would vacate the property by not later than 31 July 2022. The respondent sought a period of six months, meaning that he would remain in the property, without payment to the applicant, until October 2022.

[41] The respondent has occupied the property since January of 2019 without paying or contributing to the utilities or the rental. In those circumstances, it would be significantly unfair and unjust to permit the respondent to remain in the property without contributing to the costs for a further six month period. Accordingly, I am of the view that a period of four months, until 30 August 2022, is a reasonable period during which the respondent should be able to obtain alternate accommodation for himself and if necessary, the minor children.

[42] In the circumstances, I grant the following order:

1. The cancellation of the written agreement of lease dated 15 August 2018 between the parties is confirmed.
2. That the respondent and all those occupying the property situated at 96 Kastaiing Street, Weltevreden Park, Roodepoort ('the property') under and by virtue of the respondent's occupancy thereof, be evicted from the property on 30 August 2022;

3. In the event that the respondent and all those who occupy the property under and by virtue of the respondent's occupancy, failing and/or refusing to vacate the property within the period stipulated above, being by 30 August 2022, the Sheriff of this Court is hereby authorised to forthwith enter upon the property and evict the respondent and all those occupying the property under and by virtue of the respondent's occupancy therefrom;

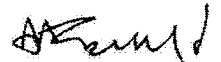
4. The respondent is ordered to pay the applicant:

4.1 The sum of R326 455.00;

4.2 Damages calculated at the rate of R10 500.00 per month reckoned from 1 December 2019 to the date of the respondent and all persons holding the property under him vacating the property (including the actual charges raised for electricity and water consumption and refuse charges during that period); and

4.3 The applicant is ordered to pay the costs of this application.

I hand down the judgment.



CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the 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 29 April 2022.

COUNSEL FOR THE APPLICANTS: Ms Bhabha.

INSTRUCTED BY: Witz Incorporated.

COUNSEL FOR THE RESPONDENT: In person.

INSTRUCTED BY: Not applicable.

DATE OF THE HEARING: 26 April 2022.

DATE OF JUDGMENT: 29 April 2022.