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

CASE NO: 3321/2021
DATE: 16TH AUGUST 2022
REPORTABLE: ***NO***

OF INTEREST TO OTHER JUDGES: ***NO***

REVISED:

In the matter between:

ABSA BANK LIMITED Applicant

And

MAHLABA, FRANS SIPHO First Respondent

ALL PERSONS RESIDING AT THE PROPERTY UNDER THE CONTROL AND AUTHORITY OF THE FIRST RESPONDENT Second Respondent

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY Third Respondent

Coram: Adams J
Heard: 15 August 2022
Delivered: 16 August 2022

Summary: Opposed PIE Act eviction application – factual dispute relating to grounds of opposition – respondent's version rejected as far-fetched – application for the eviction from primary residence granted.

ORDER

(1) The first and second respondents and all other occupiers of the applicant's property, being Erf [....], W [....] Township, Gauteng Province,

situate at [....] A [....] P [....] Road, W [....] ('the applicant's property'), be and are hereby evicted from the said property.

(2) The first and second respondents and all other occupiers of the premises shall vacate the applicant's property on or before the 30th of September 2022.

(3) In the event that the respondents and the other occupiers of the premises not vacating the applicant's property on or before the 30th of September 2022, the Sheriff of this Court or his lawfully appointed deputy be and is hereby authorized and directed to forthwith evict the respondents and all other occupiers from the said property.

(4) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's cost of this application.

JUDGMENT

Adams J:

[1]. In this opposed application, the applicant, who is the owner of Erf [....], W [....] Township, Registration Division JR, Gauteng Province, situate at [....] A [....] P [....] Road, W [....] ('the applicant's property' or 'the property'), applies for an order evicting from the said property the first and second respondents, whom they allege are unlawful occupiers of same.

[2]. The applicant became the registered owner of the property on 31 July 2018, after having purchased same at a sale in execution on 19 September 2017, pursuant to a foreclosure order against the previous owner of the said property in favour of the applicant on 20 February 2017. The applicant was the bondholder over the property and, in effect, purchased the property pursuant to a judgment it obtained against the previous owner. All the same, it is not disputed that, at all relevant times, the applicant owned the property. Prior to the property being registered in the name of the applicant, the previous owner had sold during 2007 the property to the first

respondent, who bizarrely had paid the purchase price before the property had been registered into his name. In the end, it appears that the first respondent had been defrauded in that he parted with the purchase price and never received, in return, ownership of the property.

[3]. The first and second respondents oppose the application on the basis of an agreement allegedly concluded between the first respondent and the applicant during January 2019. In terms of this agreement, so the first respondent alleges, it was 'resolved' and agreed that the applicant would reimburse him for certain improvements he effected to the property after he and his family took occupation during 2007. In terms of this agreement, they were only required, so the respondents aver, to vacate the property two months after they had been compensated for the improvements to the property. This agreement, according to the respondents, was subsequently confirmed at a meeting with the applicant's attorneys during December 2019,

[4]. This agreement is denied by the applicant, who confirms that certain discussions took place between the parties with a view to resolving the issues between them. However, so the applicant contends, those were only discussions, which did not result in any final agreement being concluded.

[5]. The first respondent contends that his version is corroborated by the correspondence exchanged at the relevant time between the legal representatives and the surrounding circumstances. In that regard, the respondents rely heavily of a communiqué addressed on 11 December 2019 to his attorney by the applicant's attorneys, which, according to the first respondent, confirms the terms of the settlement. This is however not born out by the contents of the said communication, which reads as follows: -

> 'Further to our meeting at my office on 11 December 2019, I confirm:
>
> 1. Your client has agreed that my client's valuator can inspect the property to establish the condition of improvements.

2. Once my client is in possession of the valuator's report they will consider paying your client the invoices that are relevant to the improvements for the relevant period.

3. Should there be any dispute regarding the invoices, we will endeavour to resolve this directly and depending on the amount in dispute.

4. Once my client has paid your client, he and everyone who occupies the property under or through him will vacate the property within two months after the payment has been effected to his account.'

[6]. As correctly submitted by Adv Maxwell, who appeared on behalf of the applicant, the contents of this correspondence do not confirm that an agreement had been concluded between the parties, as alleged by the first respondent. Far from it. In fact, if anything, and at best for the respondents, this piece of correspondence confirms nothing more than an unenforceable 'agreement to agree'.

[7]. In any event, the factual dispute between the parties, if indeed there is one, can and should be decided in favour of the applicant on the basis of the principles enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Limited*[1]. If regard is had to the wording of the above communication, it has to be said that the version of the first respondent is untenable – it can and should be rejected on the papers as far-fetched. The question is simply this: why would the applicant enter into an agreement as vague and uncertain as he one alleged by the first respondent with more questions than answers.

[8]. The general rule is that a court will only accept those facts alleged by the applicant which accord with the respondent's version of events. The exceptions to this general rule are that the court may accept the applicant's version of the facts where the respondent's denial of the applicant's factual allegations does not raise a real, genuine, or *bona fide* dispute of fact. Secondly, the court will base its order on the facts alleged by the applicant when the respondent's version is so far-fetched or untenable as to be rejected on the papers.

[1] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Limited* 1984 (3) SA 623 (A).

[9]. It is necessary to adopt a robust, common-sense approach to a dispute on motion. If not, the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. A Court should not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits.

[10]. Applying these principles, I reject the version of the first respondent, as I do the defence by the first respondent based on the alleged lien he enjoyed as a result of the improvements which he effected to the property. The respondents have, in my view, not made out a case based on the lien. No evidence in support of a lien has been presented by the first respondent.

[11]. Accordingly, the relief sought by the applicant should be granted.

Costs

[12]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[2].

[13]. I can think of no reason why I should deviate from this general rule.

[14]. I therefore intend awarding costs against the first and second respondents in favour of the applicant.

Order

[15]. Accordingly, I make the following order: -

> (1) The first and second respondents and all other occupiers of the applicant's property, being Erf [....], W [....] Township, Gauteng Province,

[2] *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

situate at [....] A [....] P [....] Road, W [....] ('the applicant's property'), be and are hereby evicted from the said property.

(2) The first and second respondents and all other occupiers of the premises shall vacate the applicant's property on or before the 30th of September 2022.

(3) In the event that the respondents and the other occupiers of the premises not vacating the applicant's property on or before the 30th of September 2022, the Sheriff of this Court or his lawfully appointed deputy be and is hereby authorized and directed to forthwith evict the respondents and all other occupiers from the said property.

(4) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's cost of this application.

L R ADAMS

Judge of the High Court of South Africa

Gauteng Division, Johannesburg

HEARD ON:	15th August 2022
JUDGMENT DATE:	16th August 2022
FOR THE APPLICANT:	Advocate J K Maxwell
INSTRUCTED BY:	Alan Jacobs Attorneys,
Melrose Arch, Johannesburg	
FOR THE FIRST AND	
SECOND RESPONDENTS:	Adv Maputa
INSTRUCTED BY:	K Montjane Attorneys, Tembisa
FOR THE THIRD RESPONDENT:	No Appearance
INSTRUCTED BY:	No Appearance