



IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(THE REPUBLIC OF SOUTH AFRICA)

CASE NUMBER: 45410/13

DATE: 28/2/2014

In the matter between:

GOVAN MBEKI MUNICIPALITY

APPLICANT

and

MMABOTHINI VICTORIA XABA

1st RESPONDENT

(Identity number:)

ALL THE OTHER UNLAWFUL OCCUPIERS RESIDING ON

2nd RESPONDENT

And/or [.....]

Also known as [.....]

SAMUKELISIWE NGEMA

INTERVENING PARTY

Identity number: [.....]

REASONS FOR JUDGMENT

RAULINGA J,

- [1] This matter concerns the eviction of the respondents from the immovable properties of the applicant in compliance with section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land, Act No 19 of 1998("the Act").
- [2] On the 4 October 2013, the applicant brought four urgent applications against several respondents which were heard together. Because of the similarity of the facts and the commonality of the respondents, I will refer the matter as "the application" and the respondents as the "the respondents". The respondents involved in this application are M V Xaba Case No 454101/2013, L R Bosini Case No45411/2013 R Adams Case No 45412/13 and NE Kunene Case No 43413/13.
- [3] On the 4 October 2012 I ruled that the matter is urgent and made an order which I can paraphrase in the following terms:
- (i) That the respondents are ordered to vacate the properties as stated in the notices of motion(herein referred to as ("the properties")) on or before Wednesday 1 January 2014;
 - (ii) Should the respondents fail to comply with the order referred to in paragraph 1 of each of the notice of motion, the Sheriff of this Court and/or his/her Deputy is authorised and/or mandated to take all necessary steps to execute the orders and to evict the respondents from the properties and, if necessary, to obtain the assistance of the South African Police Services to assist him/her in this regard;
 - (iii) These orders should be served on the respondents immediately and or forthwith; and
 - (iv) The respondents are ordered to pay the costs of this application jointly and severally the one paying the others to be absolved.
- [4] After handing down the said orders, I indicated that if any party wished that I furnish my reasons for judgment, such request should be done within ten days of the date of the order having been given. All the respondents made such a request on the 21 October 2013, which was still within the acceptable time.

- [5] In February 2012, the applicant took a resolution to sell certain houses. The respondents were given the first option to purchase the properties and were advised to indicate their intention to buy the properties within a period of three months and in the event that the respondents decide not to purchase the properties, to vacate the properties before the expiry of the next three months. The respondents confirmed same and made offers to purchase the properties at certain purchase prices respectively. The applicant accepted the respondents' offers to purchase the properties within the agreed period. The respondents were each obliged to present a bank guarantee to the conveyancing attorneys within a period of 14 days after acceptance of the aforementioned offers, payable free of exchange on date of registration of the transfers. As a consequence valid and binding agreements of sale came into existence.
- [6] The respondents failed to comply with the suspensive condition that they had to obtain a mortgage loan to finance the purchase prices within a period of 30 days. The respondents were granted extension within which they had to comply with the suspensive condition but to no avail.
- [7] When it became apparent that the respondents were not in a position to comply with their obligations, the applicant sold the properties to potential purchasers who made reasonable offers which could match market related prices. The said purchasers complied with their obligations and the said properties were sold to them.
- [8] The applicant has complied with section 5(2) of the Act in that section 4(2) notices were served on the respondents. Further the section 5(2) notices were accordingly served on the respondents.
- [9] It is indeed true that the respondents have been occupying the properties for a long time. There are children and households headed by women occupying the said properties. The issue to be determined is whether it is just and equitable as contemplated in section 5(8) of the Act whether the respondents

should be evicted from the said properties considering the factors mentioned above.

[10] In the first instance, the respondents concluded valid and binding agreements with the applicant to buy the properties. All the respondents failed to meet their obligations, despite the fact that they were granted extension of time. The rights of children and those of household headed by women will not be affected in that the applicant is providing alternative and suitable accommodation in Secunda/Evander for rental purposes. Further, the respondents are employees of the applicant who receive monthly salaries. It follows therefore that they can afford to meet the rental for the available accommodation.

[11] Section 26 of the Constitution must not be construed to convey an interpretation that obliges the applicant, (as a municipality) to provide accommodation to its employees. The first port of call for the application of section 26 is to provide suitable accommodation to the indigent people. The case for the respondents is plagued further by the fact that the applicant is offering alternative accommodation at reasonable rental. The requirements of section 26 have therefore been met by the applicant. It follows that the application must be granted in favour of the applicant.

[12] In the premises the order I made on 4 October 2013 stands.

TJ RAULINGA
JUDGE OF THE NORTH GAUTENG HIGH COURT