



IN THE HIGH COURT OF SOUTH AFRICA
(REPUBLIC OF SOUTH AFRICA)
PRETORIA

11/11/2014

CASE NO: 6577/2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED
11.11.2014	
DATE	SIGNATURE

In the matter between:

SURYAKIRAN PROPERTIES (PTY) LTD

AND

MAHOMED, MEMUNA HOSEN aka J MAHOMED

FIRST RESPONDENT

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

SECOND RESPONDENT

JUDGMENT

MSIMEKI J:

INTRODUCTION

[1] The applicant seeks an order as follows:

1. "An order for the eviction of the First Respondent and all who occupy through her from the property known as FLAT 1, 190 JEWEL STREET, LAUDIUM (herein referred to as "the property"), is hereby granted.

2. The First Respondent is ordered to vacate the property by no later than 7 (seven) days after date of service of this order.
3. If the First Respondent has not vacated the property within 7 (seven) days of service of this order, the Sheriff is authorised and required to carry out the eviction order within 7 (seven) days by removing from the property the First Respondent and all persons occupying the property through the First Respondent.
4. The First Respondent is ordered to pay the costs of this application.
5. Further and/or alternative relief.”

BRIEF BACKGROUND FACTS

- [2] The applicant is the registered owner of immovable property known as Flat 190 Jewel Street Ladium in the Gauteng Province. This is evident from Title Deed No. T088541 10, annexure “A2” to the founding Affidavit. The applicant purchased the property which was, at the time, occupied by the respondent who occupied it in terms of a settlement agreed between her and the applicant’s predecessor. The predecessor had attempted to evict the respondent from the property when the respondent had allegedly failed to comply with the terms of their lease agreement. The applicant and the respondent then concluded a lease agreement which would terminate on 31 December 2013. The applicant alleges that its predecessor attempted to evict the respondent from the property because the respondent had been a recalcitrant tenant. The applicant further contends that it was not prepared to have the lease agreement extended once it terminated because of the respondent’s conduct. It is the applicant’s view that the trust that existed between them, as a result, is gone. The applicant, before the lease agreement expired, reminded the respondent that same would expire on 31 December 2013 and that it would not be extended. The respondent, through her lawyers, informed the applicant that the agreement had been extended for a further period of five years and that she was not going to vacate the property. The letter appears contradictory in that it speaks of the

extended lease agreement and an offer by the respondent to have the lease agreement extended for a further 5 year period at the increased monthly rental of R8000.00. This, I shall deal with later. The applicant has brought this application to have the respondent evicted from the property. The application is opposed by the respondent.

THE ISSUE

- [3] The issue to be determined is whether the applicant has made out a proper case for the relief that it seeks.
- [4] The Prevention of illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 is key to this application. The provisions of Section 4 of the Act apply to proceedings where an owner or person in charge of land wants to evict unlawful occupiers. Section 4(2) explains the procedure which must be followed before the actual eviction takes place. The court has to serve written and effective notice of the proceedings on the unlawful occupier and the municipality having Jurisdiction at least 14 days before the hearing of the proceedings. Section 7 provides that the court if it is of the opinion that it is just and equitable to do so, may grant an order for eviction if the unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated. This, of course, happens after a consideration of all the relevant circumstances referred to in the section. Section 8 provides that the court, in the absence of a valid defence by the unlawful occupier, once satisfied that the requirements of the Section have been complied with must grant an order for the eviction of the unlawful occupier and then determine-
- (1) A just and equitable date on which the unlawful occupier must vacate the land, and
 - (2) The date on which an eviction order may be carried out if the unlawful occupier has failed to vacate the land as directed.

The court evicting the unlawful occupier needs to have regard to all the factors relevant to the matter before granting the order.

FACTS OF THIS CASE

- [5] It is common cause that the applicant is the owner of the property. It is also common cause that the respondent is occupying the property of the respondent pursuant to the settlement agreement between her and the applicant's predecessor. It is further common cause that the lease agreement that the applicant and the respondent concluded expired on 31 December 2013. It is also common cause that the respondent has been occupying the property for a long time now.
- [6] The issue cause is whether, after the lease agreement expired, same was extended or replaced by another lease agreement. The applicant is very clear on the issue. It emphatically contends that the lease agreement has expired and that it has never been extended or replaced by another lease agreement.
- [7] The applicant contends that the respondent, without consent, uses the property for commercial purposes in that curries and briyans are sold to the public from the property. This, according to the applicant, poses health, fire and sanitation risks and affects the value of the property. The respondent contends that she has been allowed to continue operating a soup kitchen by a shareholder "of the applicant. The name of the shareholder is, however, not disclosed."
- [8] The respondent further contends that she has effected improvements to the property to the value of approximately R80.000.00 with the permission of the applicant. The

applicant, on the other, hand contends that such improvements, if any, are in any event, now valueless. The respondent has been invited to remove such improvements if the removal will not damage the property.

[9] HAS THE LEASE AGREEMENT BEEN EXTENDED OR REPLACED

The respondent has two versions here. The one is that the lease agreement was extended orally. The second which is not exactly a version is that she has been offering to conclude a lease agreement with the applicant for a further period of five years at a monthly rental of R8.000.00. The question which immediately springs to mind is whether such an offer could be made in the face of an existing lease agreement. The respondent, here, has a problem which has remained inexplicable. Neither the respondent nor her counsel Ms Van der Westhuizen could offer a plausible explanation for the inconsistent versions. The name of the shareholder who has allowed the respondent to trade from the property has never been disclosed. The question why the lease agreement would be extended orally remains unanswered.

[10] What remains clear is that the applicant, in writing, on 14 June 2013 reminded the respondent that the lease agreement would be expiring on 31 December 2013. Such reminder is a letter dated 14 June 2013 which is annexure A3 to the founding affidavit.

[11] On 20 November 2013, A S Cassim & Co., the respondent's attorneys wrote to the applicant ostensibly responding to the letter of 14 June 2013 addressed to the respondent. The letter once more reveals that the expired lease agreement was renewed for a further period of five years from 1 January 2014 "at a commencing rent of R8.000.00". The letter further states that Mr Roopan Sodha had made the

offer for the renewal to the respondent who accepted the offer. Strangely enough, the letter, towards the end now embodies an offer from the respondent which reveals that the respondent is increasing the monthly rental to R8.000.00 from 1 January 2014. The letter further calls on the applicant to accept the offer, this time, in writing. The offer was said to stand open for acceptance before 7 December 2013. The applicant maintained the stance that there would be no further lease agreement and that the respondent had to vacate the property on 31 December 2013.

- [12] The respondent, according to her, and as a gesture of maintaining good relations with the applicant, avers in her answering affidavit that she is not claiming R19.000.00 which she lost and which represents the value of her utensils that went missing after the applicant's agents negligently removed them from the garage that she had leased from the applicant. It does not appear from the papers that the respondent, at any stage, discussed the loss of the utensils with the applicant. If it indeed happened, the respondent's failure to claim the return of the utensils or their value appears to be the choice she made. There is, in any event, a remedy for that if she, indeed, suffered the loss.
- [13] The applicant, in her answering affidavit, seems to want to rely on mediation by the City of Tshwane Metropolitan Municipality. The respondent approached the Municipality wanting assistance, according to her, in terms of Section 7 of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998. The Section, in my view, does not seem to be helpful to the respondent.
- [14] Mr Moorcroft, for the applicant, submitted that the amendment of the Rental Housing Act 50 of 1999, in 2007, means that the assistance which the respondent

would have received on the strength of the decision of the Supreme Court of Appeal in the matters of *Ndlovu V Ngcobo : Bekker V Jika 2003 (1) SA 113 (SCA)* no longer exists. As Mr Moorcroft further submitted, correctly in my view, mediation is not part of the eviction process.

- [15] The lease agreement expired on 31 December 2013. No evidence, at the disposal of the court, demonstrates that the agreement has been extended, renewed or replaced.
- [16] The applicant has complied with the requirements of Act, 19 of 1998 in that:
1. There is a notice of an ex parte application in terms of Section 4 of the Act;
 2. There is a notice in terms of Section 4(2) of the Act;
 3. The respondent was properly informed of the proceedings;
 4. She defended the proceedings.
- [17] The respondent, other than alleging that she has effected some improvements to the property has failed to demonstrate that she has a valid defence in the proceedings. If the respondent, indeed, has effected some improvements which improved the value of the property, then and in that event a remedy exists for her to invoke.
- [18] Having regard to the evidence at the disposal of the court, the circumstances of the matter and all the factors relevant to the proceedings, it is, in my view, just and equitable that the respondent be evicted from the property. The respondent had adequate notice to arrange to move to alternative accommodation. She was for some time, aware that the applicant's intention was to evict them from the property. See *Absa Bank V Murray and another 2004 (2) SA 15(C) at 17H-J*.

- [19] It remains to be determined by when the respondent should leave or vacate the property. Having regard to all the factors relevant to the matter as well as the period the respondent and her family have resided on the property the just and equitable date will be 31 January 2015.
- [20] Mr Moorcroft provided me with a draft order which I have perused. Apart from inserting the just and the equitable date, the draft order, in my view, is appropriate.
- [21] I, in the result, make the following order:
- The draft order I marked "X" signed and dated as amended is made an order of the court.**



**M.W MSIMEKI
JUDGE OF THE NORTH
GAUTENG HIGH COURT**

COUNSEL FOR THE APPLICANT:

Adv. J. Moorcroft

INSTUCTED BY:

CHUNILAL & TANNA ATTORNEYS

COUNSEL FOR THE RESPONDENT:

Adv. L. Van der Westhuizen

INSTRUCTED BY:

PILLAY THESIGAN INC

DATE OF HEARING: 22/10/2014

DATE OF JUDGMENT: 11/11/2014

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number 14/6577

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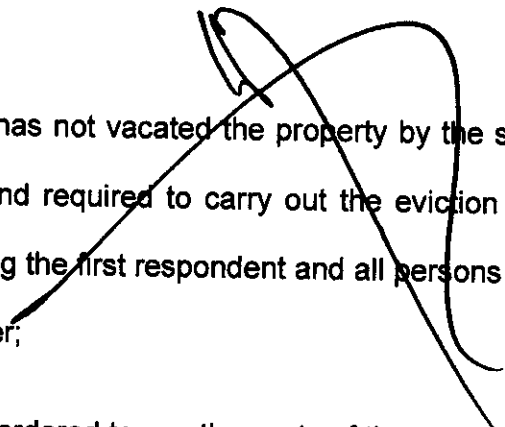
SECOND RESPONDENT

On 11/11/2014 before the Honourable Justice MSIMEKI

DRAFT ORDER

Having read the papers filed of record and having heard counsel the following order is made:

1. An order for the eviction of the first respondent and all who occupy through her from the property known as Flat 1, 190 Jewel Street, Laudium ("the property") is hereby granted;
2. The first respondent is ordered to vacate the property by no later than 31 JANUARY 2015 2014; Mgogo.

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3. If the first respondent has not vacated the property by the said date the Sheriff is authorised and required to carry out the eviction order within seven days by removing the first respondent and all persons who occupy the property through her;
 4. The first respondent is ordered to pay the costs of the application.

By order
The Court