

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: NO/YES	/
(2)	OF INTEREST TO OTHER JUDGES: NO/YES	/
6-12-2016		<i>[Signature]</i>
DATE		SIGNATURE

CASE NO: A640/2015

6/12/2016

In the matter between:

SIMON MOLEFE PITJE

FIRST APPELLANT

NELLY PITJE

SECOND APPELLANT

and

JEAN EWALD JOUBERT

FIRST RESPONDENT

THE METROPOLITAN MUNICIPALITY OF THE CITY

OF TSHWANE

SECOND RESPONDENT

J U D G M E N T

YACOUB, AJ:

1. This is an appeal against an order evicting the first and second appellants and their family from residential property owned by the first respondent.

2. I set out the relevant facts before dealing with the relevant issues.

FACTUAL BACKGROUND

3. The appellants took occupation of the property on 1 October 2014 in terms of a lease agreement, which provided for a lease term of one year.
4. The appellants offered a trust cheque as payment of the deposit and first month's rental. There is a dispute about whether the respondent accepted this when it was offered. Nevertheless he permitted the appellants to move in.
5. On 2 October 2014, the respondent informed the appellants that he did not accept the trust cheque "as it is not a legal tender". For purposes of this judgment I refrain from commenting on the correctness of that contention. The respondent then requested payment by other means, and when this was not forthcoming, spoliated the appellants from the property. The appellants regained possession by obtaining a court order.
6. The first respondent then sent a letter of demand through his attorneys, for payment of the deposit and first month's rental, in response to which appellants' attorneys offered new terms for payment of the amount. This was apparently not accepted. It is common cause, though, that the appellants did pay one month's rent to the first respondent.
7. An application for eviction was launched on 20 November 2014, which the appellant only received on 8 December 2014. The first respondent obtained an order evicting the appellants on 26 May 2015, in the Tshwane Magistrate's Court. The appellants duly noted an appeal.
8. The first respondent then brought an application in terms of section 78 of the Magistrate's Court Act 32, in the magistrate's court, for leave to execute the eviction order notwithstanding the pending appeal. This application was granted on 14 October 2015, after the term of the lease had expired. The appellants were evicted the very next day, while they were attempting to take steps in this court to prevent the eviction.

9. It has been confirmed in this court that the applicants are no longer in occupation of the property, and have no desire or intention to return to it.
10. I pause to note that the first appellant is an unrehabilitated insolvent, and that he has been declared a vexatious litigant. The first respondent sought to make these facts relevant to the issues before this court, but they are not. In particular, the first appellant obtained leave to defend the eviction proceedings, and this must include proceedings ancillary to the eviction proceedings, including the counter application and the appeal. There is therefore no basis on which to conclude that the first appellant is not properly before this court.

ISSUES

11. The appellants raised the following points in *limine* in the court below:

- 11.1. that they had not received the application in time to respond to it on the date required on the notice of motion, and that the date on which the notice of motion stated that the matter would be heard if not opposed was in the past;
- 11.2. that a summons had been issued on 17 December 2014 claiming confirmation that the written lease was cancelled and claiming payment of R22 439, and that the application should be stayed pending the action proceedings;
- 11.3. that there were irresolvable disputes of fact between the parties and that the application was therefore an abuse of process.

12. The following disputes were raised:

- 12.1. whether the appellants were given full occupation in terms of their lease;
- 12.2. what the condition of the property was and whether the appellants were entitled to withhold rent pending repair of the alleged defects in the property, and
- 12.3. whether the appellants paid their deposit and first month's rent.

13. The appellants also made a counter-application, for an order that:

- 13.1. the first respondent be held in contempt of the spoliation order;
- 13.2. the first respondent be directed to remove his belongings from the double garage at the property;
- 13.3. the rental amount be reduced to R6000 per month, pending the first respondent's compliance with the alleged obligations in terms of the lease agreement, and
- 13.4. this application be stayed pending the determination of the action proceedings.

14. The appellant also made an application for the Magistrate's recusal, which was dismissed.

15. The parties were invited by this court to make submissions on whether any order made by this Court on appeal would have any practical effect (other than with regard to costs), taking into account that the appellants had no desire to return to the property, and that the lease term had expired.

16. Mr Snyman for the appellants submitted that the appellants' counter-application had not been considered by the magistrate and therefore that there was still a live issue to be determined.

17. The magistrate states in the written reasons that, despite the fact that she considered the counter-application not to be properly before her because it had been signed by a stamp and not by hand, she considered the counter-application and it does not raise a valid defence to the application for eviction.

18. An examination of the counter-application reveals that, save for the contempt prayer, none of the relief claimed is of any relevance to the parties any longer.

19. It is clear that a spoliation order does not prevent a landlord from applying properly for eviction of the occupier. The prayer for contempt, therefore, has no merit.

20. The removal of the first respondent's belongings is irrelevant when the applicants do not wish to return to the property, as is the reduction of the rental amount. As far as the action proceedings are concerned, the first

respondent stated in his answering affidavit to the counter-application that he had withdrawn them.

21. There is therefore no live issue emerging from the counter-application.
22. Mr Snyman also submitted that there is a legal issue of importance to be determined, that is, whether an occupier may be evicted for not paying his or her rent while he or she is withholding that rent because the premises are allegedly not in a habitable condition. However, Mr Snyman did not point to any uncertainty in the law regarding the question, particularly in circumstances such as the present, which include a provision in the contract that rent may not be withheld.
23. There is no appeal of the magistrate's dismissal of the recusal application.
24. The only issue between the parties in this particular matter, then, is costs. Any claims for damages or other issues between the parties are not before this court.
25. It is well established that, save where a matter of principle is involved, an appeal will not be heard simply on the issue of costs.
26. The Superior Courts Act, 10 of 2013, provides in section 16(2)(a) that:
 - (i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.
 - (ii) Save under exceptional circumstances, the question whether the decision would have no practical effect or result is to be determined without reference to any consideration of costs.
27. I am satisfied that the decision sought from this court will have no practical effect or result. I am satisfied too that no exceptional circumstances exist which require this court to consider costs in deciding this question.

28. Taking into account that neither party is successful, as no substantive decision is being made by this court, it is appropriate that no order be made as to costs, which will have the effect that each party will pay its own costs.

ORDER

29. For the reasons set out above I order as follows:

1. The appeal is dismissed.
2. Each party is to pay its own costs pertaining to the appeal.



S.YACOUB

ACTING JUDGE OF THE HIGH

COURT

I concur and it is so ordered



R.G TOLMAY

JUDGE OF THE HIGH

COURT

Appearances:

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