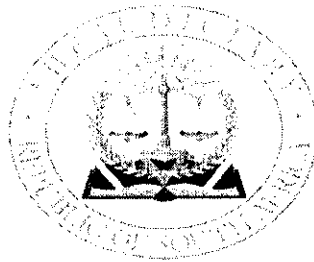



REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 77903/2015

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	<u>17/2/2016</u>
SIGNATURE	DATE

17/2/2016

WESLEY TENDAUPENYU N.O

First Applicant

ROBERTO JORGE MENDONCA VELOSA N.O

Second Applicant

and

SIMON PHETLA

First Respondent

SOPHIE MOGOLA

Second Respondent

**THE UNKNOWN UNLAWFUL OCCUPIERS OF THE
REMAINING EXTENT OF PORTION 28 OF THE
FARM WINDHOEK 222 JS, MPUMALANGA**

Third Respondent

EMAKHAZENI LOCAL MUNICIPALITY

Fourth Respondent

JUDGMENT
(Reasons for order)

AC BASSON, J

- [1] On 1 February 2016 this Court on an unopposed basis granted an order evicting the first to third respondents from the immovable property known as the Remaining Extent of Portion 28 of the Farm Windhoek 222, Mpumalanga. The attorneys representing the respondents have requested reasons for my order.

Background

- [2] On 11 November 2015 Phatudi, J granted an order in terms of which the applicants were directed to serve this order along with the notice in terms of section 4(2) read with section 4(5) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 by Sheriff on the two addresses stipulated in the order, by affixing a copy of the order and notices on the two outer doors of the unlawfully erected structures situated on the property and by serving the order and the notice on every adult person found at or near the unlawfully erected structures on the property in question. The said notice was thereafter served by the sheriff on the son of the first respondent and on the granddaughter of the second respondent. There was also personal service on at least one of the third respondents.

- [3] On 10 December 2015 Ledwaba Mazwai Attorneys came on record as the attorneys of the first, second and third respondents and filed a notice of intention to oppose. Notwithstanding the filing of the notice of intention to oppose, no papers opposing the eviction application were filed.
- [4] On 14 December 2015 Thoba, AJ gave a further order ordering the respondents to file their respective answering affidavits (if any) within 30 court days after the date of this order. The court order further specifically states that –

“In the event that the First, Second or Third Respondents do not file their respective answering affidavits within 30 court days after the date of this order, the Applicants will be entitled to obtain the relief sought against the First, Second and Third Respondents on an opposed basis.”

The court reserved the costs. A copy of the court order granted on 14 December 2015 was sent to the attorneys on behalf of the respondents (Ledwaba Mazwai Attorneys).

- [5] Despite personal service of the order of Phatudi, J and despite the fact that the attorneys on record for the respondents were advised of the court order ordering the respondents to serve their opposing papers, no papers were filed on behalf of the respondent opposing the relief sought by the applicants.

- [6] In the absence of the respondent having filed any opposing papers the applicants were therefore entitled to approach this court on an unopposed basis. I should also point out that I am in no doubt that the respondents have been represented by attorneys since the issuing of the order by Phatudi, J on 11 November 2015. This is evident from the fact that it is the very same attorneys (Ledwaba Mazwai Attorneys) that are now requesting reasons for the order dated 1 February 2016 evicting the respondents.
- [7] In respect of the order granted on 1 February 2016 this court had regard to the founding affidavit filed on behalf of the applicants and the facts set out therein in support of the order sought by the applicants.
- [8] I am satisfied that the applicants have made out a proper case for the relief sought in the Notice of Motion and in the absence of any papers opposing the application the order was granted.

A handwritten signature in black ink, appearing to read 'AC Basson', is written over a horizontal line.

AC BASSON
JUDGE OF THE HIGH COURT