IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

2016.12.02
DATE

SIGNATURE

CASE NUMBER: 82060/15

DATE: 2 December 2016

MA PHENYANE AND 179 OTHERS — Applicants

V

RNS INVESTMENTS PROPRIETARY LIMITED — First Respondent

NAZBRO PROPERTIES PROPRIETARY LIMITED — Second Respondent

SHERIFF PRETORIA WEST — Third Respondent

JUDGMENT

MABUSE J:

[1] This matter came before me as an urgent application brought by Ephraim Mathole ("Mathole") alone despite the fact that the heading showed that there were one, Mr. MA Phenyane and also 179 other applicants. Mathole represented himself and not the other applicants. He had no mandate to represent the rest of the applicants. Alongside Mathole's application was a counter-application brought by the First and Second Respondents against Mathole.

[2] Having listened to the argument by Mathole and counsel for the first and second respondents and after considering the matter I dismissed Mathole's application with costs and granted the counter-application and gave no reasons for such orders. The following order was granted against Mathole:

"1. The forms and service as prescribed by the uniform rules of court are dispensed with and this matter is heard as one of urgency in terms of rule 6(12).

2. The 179th applicant is interdicted and restrained from making any utterances, transmitting any email or in any other way publishing any statements of or pertaining to the first and second respondents or its legal representatives which state or implies that:

2.1 the first and second respondent are engaged in criminal activities;

2.2 the first respondent is not the owner of the immovable property known as RNS House and situate at 125 Madiba Street, Pretoria, Gauteng;

2.3 the first and second respondent's legal representatives are unethical, unprofessional or have conducted themselves in an unlawful manner.

3. The 179th applicant is interdicted and restrained from making any utterances, transmitting any email or in any other way publishing any statement of or pertaining to the judges of the Gauteng Division of the High Court of South Africa which states or implies that they are corrupt, biased or dishonest or in breach of their oath of office.

4. *The registrar is authorised to issue a warrant of ejectment pursuant to Tuchten J's order of 11 December 2015 and the third respondent is directed to execute that order forthwith and with such assistance from the South African Police Services as may be necessary in the circumstances.*

5. *The costs of the application and counter application are to be paid by the 179th applicant on the scale as between attorney and client.*

6. *The 179th applicant should not commence any litigation before he has paid all the taxed costs in respect of the cost orders against him."*

These are therefore the reasons for the above order.

[3] Mathole brought an application on an urgent basis against the respondents. In that application he sought the following order:

"1. Dispensing with the forms and service as prescribed by the uniform rules of court and directing that this application be heard as one of urgency in terms of rule 6(12) of the rules.

2. Pending the determination of the review application enrolled on the 15 March 2016 and the rescission application enrolled on the 17 February 2016, this court order the followings:

2.1 Stay the writ of ejectment dated the 12 January 2016 issued by the 1st and 2nd respondent respectively pending determination by this court the rescission application enrolled on the 17 February 2016 and the review application enrolled on the 15 March 2016.

2.2 Interdicting and restraining the respondent from evicting the applicants from their homes called RNS house situated at 125 Madiba street, Pretoria.

3. *An order staying this matter until arbitration process under the jurisdiction of the Gauteng Rental Housing Tribunal as per the rental housing act 50 of 1999 is completed and that the above honourable had no jurisdiction as per the prevention of unlawful eviction from and unlawful occupation act 19 of 1998 called the pie act 19 of 1998 to determine and hear this matter as jurisdiction of this matter falls to the rental tribunal as per section 13 and 15(1) of the rental housing act 50 of 1999.*

4. *Costs in the above matter*

5. *Further and alternative relief."*

[4] Attached to the notice of motion were a founding affidavit "by Ephraim Mathole" and some annexures to set aside the writ. Annexure 'A' to the notice of motion was a notice of motion, application rescission. According to paragraph 8 of the founding affidavit, Mathole had made reference to Annexure 'B'. According to the index, the document referred to as Annexure 'B' could be found at pages 11-13. In the papers before me there was no such document marked Annexure 'B'. In paragraph 9, Mathole had made reference to Annexure 'C' which was "a copy of the rescission reserved." According to the index the document referred to as Annexure 'C' could be found at pages 14-18. There was no such document marked Annexure 'C' at the aforementioned pages. Finally, in paragraph 16 of the founding affidavit, reference was made to "a copy of the warrant of execution" which was attached as Annexure 'D'. According to the index the said warrant of execution could be found at pages 19-21 of the papers. There was in the whole file no document entitled "warrant of execution" nor was there a document marked Annexure 'D'. Mathole, as the applicant, had a duty to make sure that the file was properly indexed and paginated and the relevant annexures to which reference was made in the founding affidavit properly marked. He failed in this duty.

[5] The urgent application was based on the following facts. The purpose of the urgent application was to set aside the execution of the warrant of execution by the police and the sheriff. It had

seemingly been telephonically communicated to him and also personally when he visited the sheriff's office, that the sheriff was armed with a warrant for the eviction of some tenants at RNS Building.

[6] On 11 December 2015 a consent order was made an order of the Court. For record purposes, the said order was granted by Tuchten J and was granted in favour of the first and second respondents, then as applicants, against MA Phenyane and 179 Others who were all the respondents. Leshire Ephraim Mathole, the current applicant ,was respondent number 179. Among the 179 tenants he was the only one who was said to be an unlawful occupant. He owed a sum of R1960.00 in respect of room 602. The first applicant in that matter was RNS Investments (Pty) Ltd while the second applicant was Nazbro Properties (Pty) Ltd. The said order is just too voluminous to be cited in this judgment.

[7] In paragraph 2.1, the said eviction order stated that:

"2. Pending the final determination of the review application, in this Court, under case number 94600/2015, and if the review application is unsuccessful, pending finalisation of the disputes lodged with the Rental Housing Tribunal, it is ordered that:

2.1 An eviction order is granted against the first to the hundred and seventy ninth respondents (hereinafter collectively referred to as the respondents) and any person/persons holding or claiming occupation, under or through the respondents, from the property being RNS House situated 125 Madiba Street, Pretoria (the property) subject to paragraph 3.3.1, 3.2 and 3.3 below.

3. The respondents are to make payment of their full monthly rentals individually in the amount next to their names, appearing on the schedule annexed hereto, marked annexure 'E' and such payment is to be accompanied by reference number which shall be the flat/room number of each respondent.

3.1 The full rental in respect of December 2015 is to be paid on or before 15 December 2015 by the first to the one hundred and seventy ninth respondents and thereafter the full monthly rental of each respondent is to be paid on or before the first day of each and every consecutive month thereafter into the bank account of Tulo Properties (Pty) Ltd, the details of which are as follows:

....

3.2 In the event of any respondent/s failing to pay their full monthly rentals as per paragraph 3.1 ("the defaulting respondent"), the sheriff of the Court is authorised to carry out the eviction of such defaulting respondent/s after having received two affidavits, the one deposed to by the applicants' attorney and the other, from the applicants' representative, confirming the defaulting respondents' failure to pay rental as specified in paragraph 3.1 above.

3.3 The sheriff is to serve the two affidavits on the defaulting respondents in terms of the Rules of Court, 14 (fourteen) days prior to the eviction being carried out by the sheriff and the sheriff shall only carry out the execution in terms of this order after ten days has lapsed since service of the two affidavits as per paragraph 3.2 of the above, thereby affording the defaulting respondents an opportunity to approach the Court for appropriate relief should such defaulting party dispute the failure to comply with paragraph 3.1 of the order."

[8] The applicant's evidence was that the said order was unconstitutional in several respects because it took away their constitutional rights contained in s 26(3) of the Constitution of the Republic of South Africa Act 108 of 1996 ("the Constitution") read with s 4(8) of Prevention of Unlawful Eviction from and Unlawful Occupation Act No. 19 of 1998 ("the Pie Act") *"to be equated with a Court order made after considering all the relevant circumstances."*

[9] On 17 and 18 December 2015, the first respondent called the sheriff Pretoria. The sheriff served affidavits in accordance with the terms of paragraph 3.2 and 3.3 of the order dated 11 December 2015. On 22 December 2015 and on 6 January 2016 an application in terms of Rule 42 was served. The purpose of the application was to challenge the competency of this Court in terms of s 5(2), s 5(1) and s 15(1) of the Rental Housing Act 50 of 1999 in that the matter was pending before the Gauteng Rental Tribunal under case number RTT0129/15 and RTT0139/15.

[10] The order by agreement was unconstitutional as it took away the protection afforded to the applicant by s 26(3) of the Constitution. It was made by agreement without consulting the tenants.

[11] Mathole's application was opposed by the first respondent. The affidavit of Shaheer Noormohamed was the basis of such opposition. Firstly, he bemoaned the fact that Mathole had obtained an order before Kubushi J on 3 February 2006 after he had indicated in the notice of motion signed by him that the application would only be heard at 10h00 on 4 February 2016. The said order was obtained without notice of the application been given to the first and second respondents. What is of paramount importance with the order of Kubushi J, though, was that it was served after the writ of eviction had been executed and all the occupiers evicted from the property. This sounded a death knell to Mathole's application, considering that its purpose was to stay the execution of the warrant of eviction. It was therefore not competent for the Court to order the stay of the writ of eviction, let alone, consider an application for granting it, as that would have been otiose and akin to closing the kraal in order to keep the horse inside long after the horse itself had bolted.

[12] The order of Kubushi J, became nugatory in these circumstances rendered so by the very fact that the purpose which it was meant to serve was no more. If all the facts had been placed before her on 3 February 2016, she would most certainly not have granted the order. In my

view, the fact that the writ of eviction had already been executed was within the peculiar knowledge of Mathole on 3 February 2016 was evidently demonstrated by the fact that on 3 February 2016 the first respondent's attorneys wrote him a letter in which they stated in paragraph 3 thereof that:

"Take notice that the Court order was served upon us after the ejectment of the tenants from the property this morning and the property vacated by all the occupants, pursuant to the provisions contained in the Court order which was made an order of Court by agreement between the parties."

Having received such an email it behoved Mathole to verify the information and, having done so, to reconsider his notice of motion and to weigh his options whether it was still competent for the Court under such circumstances to grant a "stay of the warrant of execution". His notice of motion did not include a prayer which required the first respondent to restore possession. The application was doomed even before it was heard. No purpose would therefore have been served by flocking a dead horse.

[13] On 12 October 2015, the first and second respondents brought an application on an urgent basis in which they claimed, among others, eviction of all the occupiers and all the persons, including Mathole, who occupied the property known as RNS House located at 125 Madiba Street, Pretoria. The order of eviction was sought because the occupants had, in unison and behind the leadership of Mathole, embarked on a deliberate rental boycott with, it is so testified, an express an intention to drive the first respondent into liquidation. In the meantime the first respondent was suffering damages on a continuous basis. An extract attached as 'AA3' to the founding affidavit in the application for eviction showed evidently that the first respondent had, as at that stage, suffered damages in the amount of R2,718,726.00. It was contended that at the stage this answering affidavit in this application was delivered the damages had escalated to R4,718,726.00 which amount included an approximate sum of R320,000.00, which was an

amount the first respondent had to pay in order to give effect to the eviction order granted by the Court.

[14] The occupiers, who opposed the first respondent's application for eviction, were all represented by one firm of attorneys and a senior counsel. Mathole had not filed any separate papers to oppose the application, while a comprehensive answering affidavit was filed on behalf of all the other occupiers. Technically Mathole was, by his failure to file his answering affidavit, not before the Court. Despite his vigorous protestations, it is not his case that he had filed his answering affidavit to oppose the first respondent's application for eviction. In the circumstances, nothing would have prevented the first respondent from seeking an order against him and nothing would have prevented the Court from granting it. Be that as it may, despite the undisputed fact that they had referred a dispute to the Rental Housing Tribunal ("the Tribunal"), the occupiers suggested that their taking the law into their own hands by embarking on a rent boycott was legitimate. It is crucial to point out that the said Tribunal had ordered them to continue paying rent while it embarked on the investigation of their dispute.

[15] Between the commencement of the proceedings of the Tribunal and the commencement of the eviction proceedings, all the occupiers' lease agreements were terminated. That act of termination of the agreements of lease took away the Tribunal's powers to deal with the dispute except in so far as it related to the occupiers' claim, if any, for a reduction in the rental they would have paid. The Tribunal was not competent to deal with the issue that related to the lawfulness of the occupiers of the property. Accordingly it would not have been vested with the necessary authority to make an order that could render an occupier's lawful occupiers of the first respondent's property. The Tribunal did not have the powers to decide on the validity or invalidity of the termination of the lease agreements because, it was so testified, the dispute had already been referred to Court. Moreover the first respondent was not a party before the

Tribunal. The first respondent would consequently not have been bound by the decision of the Tribunal.

[16] The first respondent's application to evict all the occupiers of its property and all those who claimed through such occupiers came before Tuchten J, for the first time, on 10 November 2015. The occupiers took a point that notwithstanding service of a Court order on them, the relevant Court order had not been preceded by service of a notice in terms of s 4(2) of the Pie Act. The application was, upon such contention, postponed to 8 December 2015 to enable the first respondent to serve afresh the said notice in terms of s 4(2) on the occupiers' attorneys. After this requirement by the Court had been satisfied, the matter came again before the said Judge on 8, 10 and 11 December 2015. On each of those days all the occupiers, save for Mathole, were all represented by one firm of attorneys and a senior counsel. Once again it needs to be emphasised that Mathole has not set his role out at this stage and has not alleged that he had delivered his answering affidavit.

[17] There were some negotiations conducted in an effort to find an amicable solution. These negotiations resulted in a consent order made on 11 December 2015 referred to in paragraph 5 supra. According to the evidence of Noormohamed, the proceedings in the first respondent's application for eviction of all the occupiers from its property lasted for two days, namely the 8th and 10th of December 2015. During all these material times, Mathole was present despite his vigorous protestations in paragraph 7.4 of his founding affidavit that:

"The order by agreement dated 11 December 2015 was made without consulting the tenants and it was made in my absence."

No one of the other occupiers supported him on this statement.

[18] Even if this Court were to accept his testimony that he was not present when the consent order was made, the Court must still find that in his founding affidavit Mathole has inexplicably failed to

explain his absence when he was supposed to be at Court on 8, 10 and 11 December 2015. He had failed to inform the Court why he was not at Court if he knew that the matter would be heard on those dates and had filed his answering affidavit, if any. There is, in my view, lack of essential details in his founding affidavit about his participation in the proceedings and his absence and his answering affidavit. To crown it all, nowhere in his founding affidavit did he allege that he had also opposed the granting of the relief that the first respondent sought in the application for eviction. Again the first respondent would have been entitled to seek the order of eviction against Mathole irrespective of whether or not he was present because the application for his eviction would have been unopposed and the Court then would have been entitled to grant the relief sought because there were no opposing papers by Mathole before it.

[19] It was the testimony of the said Noormohamed that during the said proceedings, in other words from their inception to their conclusion, Mathole identified and aligned himself with the whole occupiers and consented to being treated in the same manner as the rest of the occupiers. This evidence is true for the following reasons:

19.1 he has not denied it;

19.2 he has not alleged that he had filed his separate answering affidavit;

19.3 he had not arranged for his separate legal team to prepare his papers and represent his case;

19.4 he had not alleged that he represented himself at the proceedings;

19.5 he had not disputed senior counsel's assertion to the Court at the said application that he represented all the occupiers. If that were not true he would have stated it in his founding affidavit in this matter;

19.6 he would have complained that service of the prescribed notice in terms of s 4(2) of the Pie Act on the attorneys of the rest of the occupiers was not served upon him. He certainly should have taken this point.

19.7 On February 2016 Mr. Mokgara, the attorney for the occupiers, confirmed that he, acted also for Mathole and that his mandate for the occupants and him had not been terminated. Quite evidently and to the demise of his own case, if indeed he had any, Mathole was content that his interest would be taken care of by all the occupiers' attorneys and counsel.

He made capital out of the legal services rendered to the rest of the occupiers by the attorney and counsel. In my view, on the basis of the aforegoing, Mathole did not have a *casus belli* with the fact that he was duly represented by Adv. Rautenbach when he so told the Court that he was acting for all the occupiers.

[20] Nowhere in his founding affidavit did Mathole claim any right of occupation to the property. The uncontested evidence tendered by Noormohamed on this aspect was that with regard to the rest of the occupiers, they were, before embarking on the rent boycott, the first respondent's tenants. Mathole's position was entirely different. According to the unchallenged testimony of Noormohamed, Mathole was an outright unlawful occupant who had never obtained the necessary consent by either the first or the second respondent's to take occupation of the property. He simply moved in. He had never paid any rental nor did he claim in his founding affidavit that he had paid any such rental. He never raised a defence in his founding affidavit that he could not lawfully be evicted from the premises of the first respondent because he did not owe any rental. He just had no *locus standi* to launch his application, not even for himself.

[21] According to the evidence in the record, he told Tuchten J, that he had paid rental in order to stay on the property. He failed to show the Court any proof that he had paid rental. Furthermore in this current application he still failed to allege that he paid rental. Of crucial importance he failed to produce proof to support the statement he made to Tuchten J that he had paid the rental in order to stay in the property. He also failed to submit proof that he was a tenant at the first respondent's property. He failed to explain to this Court why he failed to pay his rental or to comply with the order the Tribunal had made that the occupiers should pay rental. He failed to

explain why he failed to comply with the Court order of Tuchten J that they should pay. Accordingly, in the absence of any proof of the aforegoing, his occupation of the first respondent's property was illegal.

[22] According to the consent order, all occupiers, including Mathole, were obliged to pay at the pain of being ejected, if they failed to do so. All that the Court required to be done in the event of default by the occupiers and Mathole, in order to comply with the Court order, was that certain affidavits should be filed. The occupiers, including Mathole, failed to comply with the Court Order to pay; they failed to comply with the order of the Tribunal that they should pay. The relevant affidavits were filed and the first respondent accordingly became entitled to enforce the warrant of eviction by having it executed. This evidence was not challenged. Accordingly, Mathole's contention that the warrant of eviction was unconstitutional and therefore unlawful, was unmeritorious.

[23] Mathole had not filed any replying affidavit. Accordingly his application is still to be decided in tems of the law as set out in the Plascon Evans Paints v. Van Riebeeck Paints 1984(3) SA 623 A.D.

[24] The Court was satisfied that Mathole had not made a good case for the relief that he sought and furthermore, that his application amounted to an abuse of the processes of the Court. Such an abuse, in my view, deserved to be met with a punitive order of costs. Mathole was an avid and prolific litigant. He seemed to enjoy launching Court applications against other people despite the fact that such applications lacked merits. This is proved by the launching of the current application, while he should have been aware that it lacked merits and his application for rescission of the order granted by Tuchten J. It was only proper that he be prevented from doing so by an order of costs. He was present at Court on 11 February 2016 when the interim order granted by Kubushi J, on 3 January 2016 was discharged or set aside and when he was

personally ordered to pay the costs. In terms of the authorities the conduct which is vexatious and an abuse of the process of the Court may form the basis for an order of costs that such costs be paid on an attorney and client scale. See in this regard **Sabena v Beligian World Airlines v Ver Elst and Another 1980(2) SA 238 (W)**, where the court quoted with approval the following passage from **Nel v Waterberg Landbouers Kooperatiewe Vereniging 1946 AD 547** where Tindell JA, as he then was, stated at page 607:

"That, by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party, the Court in a particular case may consider it just, by means of such an order, to ensure effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of expense cause to him."

In my view, these proceedings were vexatious. The application itself was unfortunately ill-advised and misconceived. Accordingly, it was only proper to dismiss the application with costs to be paid by the applicant on the scale of attorney and client.

[25] Mathole had also embarked on making spurious, disparaging and unfounded remarks or allegations about the sheriff, the respondents, the respondents' attorney and about members of the Bench of this Division. He seemed to do it with some measure of impunity. The following are extracts from the emails sent to a number of people, for instance:

25.1 *"MY MEETING WITH THE HAWKS ON FRIDAY THE 29-JANUARY-2016 REGARDING FRAUD AND SERIOUS MISREPRESENTATION ON THE 08,10 AND 11 DECEMBER 2015 IN THE HIGH COURT UNDER CASE NO:82060/15 BY TWO ADVOCATE AND TWO ATTORNEYS.*

I meet the Hawks in Pretoria regarding the above mentioned serious misrepresentation and fraud in the above matter case no: 82060/15 on the 08, 10 and 11 December 2015 and I was advised by the Hawks to make full statement under oath in the commercial

crime police so that the two advocates and two attorneys can be charged of serious misrepresentation which resulted in my prejudice.

Advise me when can I come to take full statement under oath of what happened on the 08, 10 and 11 December 2015 so that the perpetrators of this crime can be brought to book irrespective of their status and knowledge in that there is no person who is above the law in the country. I had been fully advised as well as by the Hawks that what happened on the 08, 10 and 11 December 2015 constitutes serious misrepresentation and fraud by this two advocate and two attorney and the law should take its cause.

Yours Faithfully

Ephraim Mathole

Cell:082-697-6901/084-787-0341.

Fax:086-603-8215.

Email:matholeephraim@webmail.co.za/matholeephraim@gmail.com"

25.2 *"Attached is my complaints in a form of affidavit against the attorney called NM Aboo and Sheriff Pretoria West for collusion to commit unprofessional conduct and improper conduct as per the attorney act and sheriff act in attempting to evict with a warrant of execution issued while rescission application and notice of intention to oppose was filed. Sheriff Pretoria West using South African Police without complying with section 4(11) of the Prevention of unlawful eviction from and unlawful occupation of land act 19 of 1998 called the pie act 19 of 1998 in order to run away of criminality by the attorney client of collecting rent in the building without ownership and stealing electricity from the City of Tshwane Municipality while charging tenants huge moneys for electricity.*

Attorney unprofessional conduct has been reported to the law society of the northern provinces under reference number: 199/2016, make sure attorney and sheriff respond the allegation in a form affidavit under oath as I did.

Your Faithfully

Ephraim Mathole

Cell:082-697-6901/084-787-0341.

Fax:086-603-8215.

Email:matholeephraim@gmail.com/matholeephraim@webmail.co.za"

25.3 *"Attached is my statement under oath dated the 04-February-2016 laying a criminal case againt the two attorneys called Louisa of NM Aboo attorney and Mokgara of Mokgara attorneys for incorporating my name in the settlement agreement dated the 11-December-2015 despite myself not represented by the two attorneys and not having agreed to the terms of the settlement agreement dated the 11-December-2015 made an order of court on the 11-Decembe-2015 in my absence and without consulting an order of court on the 11-December-2015 in my absence and without consulting myself. I suffered serious prejudice as a result of misrepresentation contained in the settlement agreement dated 11-December-2015 in that I lost all my properties including moneys, clothes, furnitures as a result of illegal eviction conducted on the 03-February-2016 in RNS building situated in Madiba street which was stopped by the court on the reasons of illegality because the real intention of illegal eviction of the 03-February-2016 was to run away from the two unopposed application enrolled on the 04-February-2016 and the other 17-February-2016 in the high court Pretoria.*

Therefore this is a clear criminal offence fraud with serious misrepresentation.

Yours Faithfully

EphraimMathole

Cell:082-697-6901/084-787-0341.

Fax:086-603-8215."

25.4

25.4.1 *"(a). order granted by judge louw on the 11-February-2016 in the high court. Judge louw granted order on the 11-February-2016 in default discharging and setting aside order granted by judge Kubushi on the 03-February-2016. We have a right to file rescission application to re-consider the matter either on urgent or normal cause. We were so shocked of the misleading statements made in court and the conducte of the judge in handling the matter that shows that corruption, abuses of position of authority and racism is rife in our country and the judiciary. We have been advised to as to the deputy judge president called Ledwaba dna judge president Mlambo."*

25.4.2 *"(b). order granted on the 03-february-2016 at 22h30 by judge Kubushi. After judge Kubushi granted a stay of illegal eviction of the 03-February-2016, you immediately approached the high court on urgent basis of the night of 03-February-2015 of reconsideration, representation and interdict that the tenants must not be allowed to enter the premises on the basis that the illegal eviction was already completed by the sheriffs on the morning of the 03-Febrary-2016, this order granted on the night of the 03-Febrary-2016 still stands in that the urgent application can be finalized either in the high court, supreme of appeal in Bloemfontein and or in the constitutional court in braamfonein, Johannesburg."*

25.4.3 *"(c). order granted by judge Kubushi in the morning of the 03-Febrary-2016. Honestly speaking there is racism and abuse of position of authority in judicial*

system in this country in that judge Kubushi considered all the relevant circumstances in logical manner when she arrives that the eviction conducted on the 03-Febrary02016 by the sheriffs and red ants was illegal in that there is no eviction order granted and that both the rescission application by the tenants and the review application by the landlord were enrolled on the 04 and 17 February 2016 in the high court. The most important factor considered by judge Kubushi was whether did we serve both the sheriff and the respondents on the 26-January-2016 about the urgent application enrolled on the 04-Febrary-2016 and proof of service by way of fax transmission and notice in terms of rule 6(5)(d)(iii) satisfied the judge on the 03-Febrary-2016, that has been read into the record when the judge granted her order on the morning of the 03-February-2016. There was no any misleading of the judge on the 03-Febrary-2016, that lady was professional and competent enough to deter some of the untold facts in the case no:82060/2016 as we saw in the night hearing."

25.4.4 *"(d). order granted by judge Matojane on the 22-January-2016 in the court. On the 22-January-2016 judge Matojane struck the matter off the roll on the reasons that we did not cite the interested party called RNS investment (Pty) Ltd and Nazbro Properties (Pty) Ltd in the matter because the sheriff and attorney refused to furnish us with warrant of execution dated the 12-January-2016 and it was given to us as a resultof judge Matojane order."*

25.4.5 *"(e). order by agreement gratned byjudge tuckter on the 11-december-2015. We also made our complaints to the conduct committee of the judicial commission about the conduct of this judge on the 10-November-2015 and 08,10 and 11 December 2015 in the high court in Pretoria. I appeared in*

person on the 10-December-2015 only to alert the judge that the high court had no jurisdiction to entertain this matter as per wrong law called Prevention of unlawful eviction from the unlawful occupation of land act 19 of 1998 called pie act 19 of 1998 in that the matter is pending in the Gauteng Rental Tribunal under case no:RTT-0129-15 and case no:RTT-0139-15 as per section 13 and section 15(1)(f) of the rental housing act 50 of 1999. The judge agrees that he has no jurisdiction but proceeded with the matter in my absence and forced parties to agree to a settlement agreement made an order of court on the 11-December-2015 by incorporating my name into settlement agreement despite myself not agreeing to jurisdiction of court.

CONCLUSION: it is my view and submission that the judiciary must uphold the principle of the constitution and maintain rule of law and justice, corrupt and racists judiciary need not be respected by all and I want to maintain further that the urgent application, the rescission application and the review application under case no:82060/2015 is still under way and can be finalized in the High Court, Supreme Court of Appeal in Bloemfontein and the constitutional court in Braamfontein Johannesburg. Therefore there is no eviction that can be carried until all the above mentioned process is finalized and that on its own will be taking the law into your own hands and will be meet with serious resistance that will end in serious prejudice suffered. Please let respect the law and allow the process of the law to take its own course. We are prepared to face any illegal action in retaliation because we lost our valuable goods as result of a failure illegal eviction of the 03-February-2016.

Yours Faithfully

Ephraim Mathole

Cell:082-697-6901/084-787-0341.

Email:matholeephraim@gmail.com/matholee"

25.5 *"ATTEMPTED PHYSICAL EVICTION IN THE RNS HOUSE SITUATED AT 125 MADIBA BY FIVE BOUNCERS IN ORDER TO RUN AWAY FROM THE UNOPPOSED RESCISSION APPLICATION ENROLLED ON THE 17-FEBRUARY-2016, CASE NO:82060/2016.*

Five well build bouncers approached the building called RNS House situated in 125 Madiba Street to evict the tenants using self help or physical eviction without approaching the high court on urgent basis or normal cause for relief as per section 26(3) of the constitution act 108 of 1996 read with section 4(8) of the Prevention of illegal eviction from and unlawful occupation of land act 19 of 1998 called pie act 19 of 1998 as a result misconduct by judge Louw on the 11-February-2016 discharging the order granted by judge Kubushi on the 03-February-2016 default without hearing the tenants. I want to appeal to the attorney called NM Aboo attorney of the building hijacker called Nazbro Properties (Pty) Ltd to desist from conducting illegal eviction in order to run away from the unopposed rescission application enrolled on the 17-February-2016 and ownership dispute pending in the Gauteng Rental Tribunal under case no:RTT-0129-15 and case no:RTT-0139-15 as per the rental housing act 50 of 1999 because the tenants will fought forcefully against the criminality of taking the law into their own hand in that there is developed and civilized methods laid by our best constitution act 108 of 1996 in which a person can approach court which will grant eviction order stating the time and date in which tenants can leave the building peacefully other than throwing people on the street with any place to sleep. We also surprised by sudden missing of the file in the high court.

Yours Faithfully

Ephraim Mathole

Cell:082-697-6901/084-787-0341"

25.6 *"I am busy preparing affidavit as requested by the judicialy service commission agaisth three judges of the High court of Pretoria called Judge Tuckter, Judge Louw and Judge Kollapen who appeared to have protected a person who is doing criminality in hijacking building charging tenants huge electrictricity but stealing electricity through illegal connection. Realizing that the Gauteng Rental Tribunal is demanding ownership of the building as per section 5(2) read with section 13 and 15(1)(f) of the rental housin act 50 of 1999, he runs away from the jurisdiction of the tribunal and use the wrong law in the high court called pie act 19 of 1998"*

25.7 An undated email that Mathole wrote to the Deputy Judge President "AA27". It stated that:

"RE: UNOPPOSED RESclSSION APPLICATION ENROLLED ON THE ROLL OF THE 17-FEBRUARY-2016 BUT THE COURT DID NOT PLACED ON THE ROLL OF 19-02-16, CASE NO:82060/2016 M.A. PHENYANE AND 179 OTHERS V RNS INVESTMENT

I am respondent one hundred and seventy nine (179) in the above eviction application brought as per ***section 4 of the Prevention of unlawful eviction from and Unlawful Occupation of land Act 19 of 1998 called pie act 19 of 1998*** *to evict myself and other respondent tenants on the basis of non-payment of rentals. The eviction application was heard on the 10-December-2015 before the honourable judge Tuckter were I successfully raised a point in limine that the high court had no jurisdiction to hear the matter in that the arbitration process under the auspices of the Gauteng Rental Tribunal is pending under case no:RTT-1029-15 and case no:RTT-0139 as per section 5(2) read with section 13 and 15(1)(f) of the rental housing act 50 of 1999 but later on surprised by settlement agreement made an order of order in my absence and without consulting.*

The issue before you now is that the matter was enrolled on the 17-February-2016 after the respondents failed to file anwsering affidavit within sixteen days (16) despite notice of intention to oppose dated the 28-December-2015. The matter was not on the roll of the

17-February-2016 and we were advised to enrol in court 2A or 6E of judge Kollapen or Judge Teffo. The matter was heard by judge Kollapen who adjourned the matter by calling myself in chambers and in judge chambers judge told me that he has phoned attorneys of the other party where the attorneys advised the judge that notice in terms of rule 6(5)(d)(iii) has been filed on the 28-January-2016 opposing rescission application. It was my agreement with judge Kollapen that I write an e-mail notifying the other parties to come to court on Friday 19-February-2016 which I did with my email dated the 17-February-2016. On Thursday the 18-February-2016 I received a call from judge Kollapen that I must re-enroll the matter on the roll of march 2016. My worry and concern is that the matter is unopposed in that the respondents failed to file answering affidavit as per rule 6(5)(c) of the uniform court rules and application for rescission should granted without any delay. I want to strengthen that our and justice systems is not consistent in that on the 09-February-2016 the other enrolled the matter in court which was not enrolled by myself on the basis that there was two orders issued on the 03-February-2016, order was taken that I must pay costs by judge Louw despite myself having not heard on the 11-Feb-16

What we need from the court is to grant rescission application by to reverting the matter back the Gauteng Rental Tribunal for completion of arbitration and challenge of ownership of the building as per section 5(2) read with section 13 and 15(1)(f) of the rental housing act 50 of 1999 pending under case no:RTT-0129-15 and case no: RTT-0139-15.

Ephraim Mathole"

25.8 *"Attached is the signed letter dated the 19-February-2016 to the Deputy Judge President AP Ledwaba regarding the default order to be granted in my unopposed rescission application dated the 21-December-2015 and served on the 22-December-2015 under case no:82060/2015.*

We have decided together with other members of the community and other stake holders to stage a march against racists and corrupt justice system in our country because Judge Tuckter, Judge Louw and Judge Kollapen were protecting a criminal person who hijacked buildings, stealing electricity through illegal connection while charging tenants huge bills of electricity and who run away from the jurisdiction of the Gauteng Rental Tribunal empowered by section 5(2) read with section 13 and 15(1)(f) of the rental housing act 50 of 1999 to enquire on ownership of the building called RNS house situated at 125 Madiba pending under case no:RTT-0129-15 and case no:RTT-0139-15 in the Gauteng Rental Tribunal and uses wrong law called the Prevention of illegal eviction from the Unlawful occupation Act 19 of 1998 called pie act 19 of 1998 to run away from his criminal deeds. Judges are not gods of this country, there are accountable as per the supreme law of this country called the constitution act 108 of 1996.

Yours Faithfully

Ephraim Mathole

Cell:082-697-6901"

[26] Following these emails the first and second respondents brought the counter-application. It was the counter-application that led to the order referred to in paragraph 2 supra.

P.M. MABUSE
JUDGE OF THE HIGH COURT

Appearances:

Applicant in person:	*Ephraim Mathole*
Instructed by:	*Attorneys*
Counsel for the respondents:	*Adv. Felgate*
	Adv. Vimbi
Instructed by:	*NM Aboo Attorneys*
Date Heard:	*23 March 2015*
Date of Judgment:	*2 December 2016*