


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: <input checked="" type="checkbox"/> YES / NO	
(2) OF INTEREST TO OTHER JUDGES: <input checked="" type="checkbox"/> YES / NO	
(3) REVISED <input checked="" type="checkbox"/>	
	
DATE	SIGNATURE

CASE NO: 25764/20

DATE: JANUARY 2022

In the matter between:-

EBONY TRUST

First Applicant

MOLEMO MOLAI N.O.

Second Applicant

TSHEPO MOLAI N.O.

Third Applicant

LAWRENCE MOLAI N.O.

Fourth Applicant

MUHAMMAD UTHMAN THABANG RICHARD MOLAI N.O.

Fifth Applicant

AND

WILLEM JOHANNES NORTIER

First Respondent

ALL UNLAWFUL OCCUPIERS OF PORTION 84

(A PORTION OF PORTION 9) OF THE FARM

LEEUFONTEIN 299 REGISTRATION DIVISION JR,

GAUTENG PROVINCE

Second Respondent

CITY OF TSHWANE METRO MUNICIPALITY

Third Respondent

JUDGMENT

SKOSANA AJ

- [1] In this matter the applicant sought eviction of the first and second respondent from its property situated at portion 84 (a portion of portion 9) of the farm Leeuwfontein 299 Registration division JR, Gauteng province ("the property"). I have already refused a postponement of this matter and granted the order evicting the first and second respondents (herein after referred to as "the respondents") in the terms as set out in the draft order as provided to me by the applicant¹. What follows hereafter are short reasons for the granting of such court order.
- [2] The applicant is the owner of the property by virtue of the title deed which confirms that the property was transferred into its name on 15 May 2015. The transfer followed a purchase of the property by the applicant from an auction sale which had taken place on 19 September 2014.
- [3] The application for eviction having been instituted in June 2020, the respondents delivered a notice of opposition at the beginning of

¹ The order has been marked 'X'

September 2020 and filed an opposing affidavit on 26 January 2021 through the attorneys, Pasengrouw. The respondents' opposing affidavit was delivered on the day on which the initial part of the application in terms of section 4(2) of the Prevention of Illegal Eviction From and Occupation of Land Act 19 of 1998 ("the Act") had been set down for hearing. There was apparently no application for condonation for the late filing of such opposing affidavit. This aspect is however of no significance.

[4] A replying affidavit was filed on behalf of the applicants as well as a supplementary affidavit mainly to include the trustees as part of the applicants. On 06 December 2021 an order was made by Mokose J in terms of section 4(2) of the Act in terms whereof the applicants were authorized to serve the papers as set out in that court order. The main application was then set down for hearing on 24 January 2022.

[5] The respondents did not file any heads of argument in this matter.

[6] Practically one court day before the hearing of this opposed application, the respondents filed a substantive application for postponement in which they allege of essence that they had to secure the services of new attorneys since their previous attorneys did provided them with sub-standard legal services. These previous attorneys were Pansegrouw attorneys who had filed the notice of opposition on behalf of the

respondents in September 2020. The respondents also allege that certain possible defences to the main application were not included in their answering affidavit. These defences relate to the application for liquidation of the previous owner of the property as well as the sale in execution of the property to the applicants which the respondents claim, was a nullity. The first respondent aver further that he occupies the property by virtue of his right of retention as an agent exercising such right on behalf of a close corporation named Cycad and Nursery Innovation CC. It is not insignificant that such close corporation has only two members, one of whom is the mother in law of the first respondent.

- [7] The applicant demonstrated to me that none of the alleged new defences contained in the application for postponement are actually new and that such defences raised in the main answering affidavit filed on behalf of the respondents and were dealt with in the replying affidavit by the applicants. Further, the issues raised in relation to the irregularity of the liquidation process of the previous owner of the property are far-fetched and cannot sustain a defence against the eviction application. Moreover, the applicants pointed out prejudice that they have been subjected to suffered as a result of the continued occupation of the property by the respondents since the transfer of the property to the applicants in May 2015, i.e. almost 7 years long.

- [8] More specifically, in its founding affidavit to the main application, the applicants set out the prejudice that they are suffering as a result of the continuation of this state of affairs. The respondents have not been paying any rent or the rates and taxes for the property which the rates and taxes amount to R309-94 per month. The applicant could also have been earning a rental amount of approximately R50 000-00 per month from letting the property and the respondents are being unjustifiably enriched at the expense of the applicant in this regard. This is prejudice that cannot be cured through an order of costs in the event of the postponement being granted.
- [9] It is trite law that a postponement is an indulgence and is not there for the taking. A party seeking a postponement must set out facts which entitles it to such postponement and which shows that the postponement is not due to any neglect on its part. The respondents have failed to show this and perceivably irreparable harm is being caused to the applicants.
- [10] In the present case, I was informed by the counsel who appeared on behalf of the respondents in relation to the postponement application, Ms Viljoen, that she was only briefed by a firm of attorneys named Johan Louw Attorneys on the eve of this hearing. There is no indication as to why that is the case and why the respondents could not have secured the services of such attorneys earlier. Moreover, Johan Louw Attorneys have

still not properly placed themselves on record as attorneys of record for the respondents notwithstanding that the applicant's attorney have since 07 January 2021 repeatedly requested them to do so. I am in agreement with counsel for the applicants that formally Pansegrouw Attorneys are still the attorneys of record for the respondents as they have not yet filed a notice of withdrawal to that effect nor have the purportedly new attorneys complied with the rules in this regard. There is no doubt that a further postponement of this matter will lead to further prejudice to the applicant and in all probability the loss that has been suffered by the applicants and which will continue to be suffered should such a postponement be granted, will not be recoverable. It is certainly not in the interest of justice to grant this postponement. It is for this reason that I refused to postpone the matter.

- [11] As to the merits of the main application, the facts laid out above already indicate that the applicant is entitled to the order and I need not give any further reasons for that. In the result, I granted the order as contained in the draft order marked 'X'.



DT SKOSANA

ACTING JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Applicant:

Ms A Ruskowska

Instructed by:

Hefferman Attorneys

Counsel for the First & Second Respondents:

Adv E Viljoen

(only appeared for the
postponement application)

Instructed by:

Louw Attorneys

Date heard:

24 January 2022

Date of Judgment:

January 2022