



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

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

.....  
DATE                      SIGNATURE

**Case No: 43757/2020**

In the matter between:

**NANGA IVYN MAWELA**

First Applicant

**FHUMULANI DORAH MAWELA**

Second Applicant

and

**SEGOGOBBANE NAPHTALI JOHN LETLHAKA**

First Respondent

**CITY OF TSHWANE METROPOLITAN  
MUNICIPALITY**

Second Respondent

Date of Hearing: 25 November 2021

Date of Judgment: 6 April 2022

---

## JUDGMENT

---

### **BARNES AJ**

---

#### Introduction

1. This is an application for the eviction of the First Respondent from the immovable residential property known as [...] (“the property”). The Applicants are the lawful owners of the property. They seek the eviction of the First Respondent who was the prior owner of the property, remains in occupation thereof and refuses to vacate. The application is brought in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“the PIE Act”).

#### The Relevant Facts

2. The property was previously owned by the First Respondent. He fell into arrears in respect of his mortgage bond and on 23 January 2003, Standard Bank obtained judgment against the First Respondent in terms of which the property was declared executable.
3. Standard Bank’s attorneys of record, pursuant to a writ of execution issued on 29 October 2018, instructed the Sheriff of the High Court for the district of Soshanguve to attach and sell the property in execution by way of a public

auction.

4. On 28 March 2019 the property was sold to the Applicants at public auction for the purchase price of R365 000.00.
5. On 30 October 2019, the property was registered in the names of the Applicants.
6. The First Respondent remains in occupation of the property and refuses to vacate. The First Respondent is a qualified attorney and represented himself in the application. The First Respondent contends that he is entitled to remain in occupation of the property on two bases. I shall consider each of these in turn below.

The Bases on which the First Respondent contends that he is entitled to remain in occupation of the Property

7. The first basis on which the First Respondent contends that he is entitled to remain in occupation of the property is that he is still the legal owner of the property. The First Respondent contends that the judgment obtained against him by Standard Bank on 23 January 2003 was unlawful in terms of the Computer Evidence Act 57 of 1983. The First Respondent contends that the sale of the property to the Applicants therefore arose from criminal conduct and consequently constituted unjustified enrichment and a breach of his constitutional right to property. The First Respondent contends, for these

reasons, that the sale of the property to the Applicants constituted a nullity and that he accordingly remains the owner of the property.

8. The basis on which the First Respondent contends that the judgment obtained against him by Standard Bank was unlawful in terms of the Computer Evidence Act is unclear. The connection between that alleged unlawfulness and the alleged consequential unlawfulness of the sale in execution is also not clearly explained by the First Respondent. These contentions appear to me to lack legal merit. Even however if I am wrong in this regard and the First Respondent's contentions in this regard were arguably found to have some legal merit, they ought properly to have been raised in an application to rescind the judgment obtained by Standard Bank in 2003. Absent such an application having been brought and determined in the First Respondent's favour, the judgment obtained by Standard Bank stands, and it does not avail the First Respondent to now contend that that judgment was unlawfully obtained, still less that that the sale that flowed therefrom is a nullity. For all these reasons, the First Respondent's contention that he is entitled to remain in occupation of the property because he is still the owner of the property, is without legal foundation.
9. The second basis on which the First Respondent contends that he is entitled to remain in occupation of the property relates to certain litigation that the First Respondent instituted against the Gauteng Legal Practice Council in 2019. This was an application in terms of the Protected Disclosures Act 2 of 2017, in terms of which the First Respondent sought certain declaratory

relief against the Gauteng Legal Practice Council as well as damages, including constitutional damages. The application came before Francis J on 4 September 2019 and was dismissed. The First Respondent contends there is an appeal pending in respect of this application and submits that the eviction application ought to be stayed pending the outcome of that appeal. The Applicants, however, dispute that there is any pending appeal and there is no evidence on the papers before me of any pending appeal in respect of the First Respondent's application in terms of the Protected Disclosures Act.

10. In any event, even if there was an appeal pending in respect of that matter, this would not assist the First Respondent as his application against the Gauteng Legal Practice Council in terms of the Protected Disclosures Act has absolutely no connection with or bearing on the present application. There is accordingly no basis on which the present application falls to be stayed.
11. In the circumstances, the Applicants have made out a case for the relief that they seek and the First Respondent has not advanced any legal basis on which he is entitled to remain in occupation of the property. The First Respondent did not contend that his eviction from the property would be unjust or inequitable for any reason. In the circumstances of the present case, I consider that a period of two months would be fair and reasonable in order to enable the First Respondent to find alternative accommodation.
12. I accordingly make the following order:

Order

1. The First Respondent is evicted from the immovable property situated at [...] ("the property").
2. In the event that the First Respondent fails to vacate the property within 60 calendar days of the date of this order, the Sheriff or his Deputy Sheriff for the area within which the property is situated, is authorised to evict the First Respondent from the property.
3. The First Respondent is ordered to pay the costs of this application.

---

BARNES AJ

Appearances:

For the Applicants: Adv B Lee instructed by Van Hulsteyns Attorneys

For the First Respondent: Mr Letlhaka in person