IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 028197/2022
DATE: 7 October 2022

REPORTABLE: YES / NO
OF INTEREST TO OTHER JUDGES: YES / NO
REVISED

In the matter between:-

CONSTANCE MUTALE	Applicant
V	
P[....]	First Respondent
MICHAEL BOTHA POTGIETER	Second Respondent
SOUTH AFRICAN HUMAN RIGHTS COMMISISON	Third Respondent

JUDGMENT

KOOVERJIE J

THE URGENT APPLICATION

[1] The applicant, Ms Mutale, instituted this application to stay an eviction application launched by the first respondent, P[....], against the second respondent, Mr Potgieter, the applicant and three other parties under case number 17906/2022 in the magistrate's court of Pretoria. The said application has been set down for hearing on 10 October 2022.

[2] In particular, the applicant seeks relief that such eviction application be stayed pending the determination of the review of the order granted in the magistrate's court under case number 17028/2021 (the Dangalazana order). The review application has been instituted simultaneously with this urgent application.

[3] The further relief she sought was that the conditions of the premises where she is currently residing, namely Cottage [....], P[....], situated at [....] S[....] Avenue, W[....], be investigated by the Ombudsman alternatively the South African Human Rights Commission and that this court imposes a fixed monthly rental in the interim until the said premises are fixed or repaired.

[4] The nub of the applicant's case is that the issues in the review application have to be ventilated first. The issues raised therein have a bearing on the eviction application. It is this issue that I am required to determine. For the purposes of this judgment the first respondent will also be referred to as the "PCC".

URGENCY

[5] On urgency, the PCC argued that the matter is not urgent. In fact, it was self-created urgency. The applicant was already aware of the "Dangalazana order" since 11

April 2022 and in that time she had ample opportunity to institute the review application. Furthermore she was aware of the eviction proceedings which were instituted around June 2022. She had ample time to challenge the "Dangalazana order". By her instituting the review and this application at the last hour, is demonstrative of the abuse of this court's process.

[6] The first respondent also contended that the first respondent had less than 48 hours in which to file opposing papers.

[7] It was argued that self-created urgency does not constitute urgency for the purposes of Rule 6(12) and relied on various authorities. Reference was made to various authorities. In the judgment of ***Wepener***[1] at paragraph 17:

> *"An abuse of the process regarding urgent applications has developed (in all likelihood with the hope that the respondents would not be able to file opposing affidavits in time). This practice must be addressed in order to stop matters being unnecessarily enrolled and to clog a busy urgent court roll. In these matters, sufficient time should be granted to the respondent to file affidavits and they can rarely do so when papers were served less than a week before the matter is to be heard …."*
>
> The judge continued at paragraph 18:
>
> *"Urgency is a matter of degree. See Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 W. Some applicants who abuse a court should be penalized and the matter should simply be struck off the roll with costs for lack of urgency. Those matters that justify a postponement to allow the respondents to file affidavits should, in my view, similarly be removed from the roll so that the parties can set them down*

[1] In several matters on the urgent roll, [2012] ZAGPJHC 165; 2013 (1) SA 549 (GSJ) dated September 2012

on the ordinary opposed roll when they are ripe for hearing, with costs reserved."

[8] The applicant's mere motivation for urgency as set out in paragraph 39 of her affidavit was, *inter alia*, that the matter had become urgent due to the eviction application being heard on 10 October 2022.

[9] The applicant submitted that although this said order was granted on 14 February 2022, she only became aware thereof in April 2022. I have noted further that the eviction application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act) under case number 17906/22 was issued on 19 May 2022. The applicant, in argument, stated that she has in that period attended to the tribunal proceedings and further in August 2022 applied for legal aid assistance.

[10] I had considered both parties' argument and am of the view that although the applicant delayed the institution of the review application she should be afforded a hearing as the eviction application is imminent. Furthermore from the events that played out since July 2022, I have noted that the applicant was involved in various litigation pertaining to her occupation. The court in ***East Rock Trading***[2] held:

"… the delay in instituting proceedings is not on its own a ground for referring to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given."

[11] On the facts before me, I am therefore of the view that the urgent attention of this court is warranted.

MERITS

[2] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others 11/33767 [2011] ZAGPJHC 196 (23 September 2011)

[12] It was the PCC's view that the "Dangalazana order" has no bearing on the eviction application. The applicant is therefore under the misapprehension that the eviction proceedings pending against her was premised on the "Dangalazana order". It was further argued that the applicant failed to make out a case for the stay of the eviction proceedings. She has failed to demonstrate that she will suffer irreparable harm.

[13] The PCC argued that the eviction application is sought in terms of Section 4(1) and Section 6(1) of the PIE Act and not on the "Dangalazana order".

[14] It was also argued that even if the applicant is entitled to have the court order reviewed, the issues for determination in the review application has no bearing on the eviction proceedings.

[15] It was pointed out that the eviction application is premised on the expiry of the lease agreement, the applicant and second respondent's unlawful occupation of the premises.

[16] The PCC also contended that the applicant was not a party to the litigation in respect of the "Dangalazana" proceedings and neither was such order enforced against her. Consequently she has no *locus standi* in these proceedings.

[17] It is common cause that various legal proceedings were initiated between the PCC, Mr Potgieter and/or the applicant. Initially summons was instituted due to Mr Potgieter falling into arrears with his rental obligations. Thereafter eviction proceedings followed in April 2022. After two postponements the matter has eventually been set down for hearing on 10 October 2022.

[18] It is also noted that the applicant filed an interpleader summons on 6 May 2022 which was not followed through. She also instituted summons in respect of alleged damages due to the removal of her belongings and furniture from the premises.

[19] Mr Potgieter in August 2022 further filed a complaint with the Gauteng Rental Housing Tribunal (the Tribunal) concerning the conditions of the cottage. The Tribunal dismissed the complaint.

[20] The applicant insists that her review of the "Dangalazana order" has merit and affects her constitutional right to housing. She has been residing on the property since 2017. The outcome of the review will influence her right of occupation on the premises.

[21] Part of the issues on review is whether or not the second respondent was in arrears. The applicant claims that only R8,271.46 was owed in February 2022 as the bulk of the settlement was already made on 9 October 2021. Furthermore, she alleged that the full amount was settled on 16 March 2022.

[22] For the purposes of this judgment I find it necessary to quote the "Dangalazana order" which states the following:

> *"By agreement between the parties the following order is made:*
>
> *1. The respondent consents thereto, together with all other people occupying Unit [....], P[....], [....] S[....] Street, W[....], Pretoria, vacate the said premises on or before 31 March 2022.*
>
> *2. The respondent will pay the outstanding amount with regard to the lease of the premises, calculated up to 31 January 2022, in the amount of R154,477.43 in six equal installments of at least R25,000.00 a month. The first payment will be made on or before the 7th day of March 2022 and thereafter on the 7th day of each and every of the five months thereafter.*
>
> *3. After 31 March 2022 the applicant will provide the respondent with the outstanding rent and electricity accounts of February 2022 and March 2022 which amounts will be paid by the respondent within the six month period.*

4. Interest on the outstanding amount will be payable at the rate of 7.25% from 21 June 2021, being the date that the summons was served until the full amount has been paid.

5. The respondent will pay the taxed party and party costs of the applicant including the postponement of [....] January 2022 which amounts will include the costs of counsel."

[23] The order was issued based on an agreement entered into between the PCC and Mr Potgieter. Due to non-compliance with the said order, an eviction application was instituted. As the date for the hearing of the eviction application was nearing and set down for 7 September 2022, Mr Potgieter again negotiated with the lessor, the PCC, that he will be vacating the cottage on 9 September 2022 and that judgment against him should not be taken on 7 September 2022 in respect of the eviction.

[24] It appears that Mr Potgieter had eventually vacated from the premises. This left the applicant to fend for herself. It was only around 21 September 2022 that the applicant, on her own accord, approached the PCC informing them that she has been residing with Mr Potgieter since 2017[3]. She made an offer to continue residing at the premises and offered to pay a certain rental amount of R500.00 on the basis that the premises need to be repaired. Therein she also requested the parties to abandon the settlement agreement on the basis that she was not consulted with. Furthermore, Mr Potgieter had no mandate to act on her behalf when settling with the PCC. On this basis she claimed that her rights are affected in terms of the PIE Act.

[25] I have noted that this was the first time that mention was made of the settlement order (Dangalazana order). Prior thereto, she had raised no issue therewith.

[26] In response, the PCC on 21 September 2022, advised her that her rental offer is not accepted and she should vacate the premises since she is illegally occupying the

[3] Annexure 'CM23'

premises. She was further advised that there will be damages claim against her, specifically, for illegally residing on the premises on her own accord.

[27] The applicant further argued that the second respondent, Mr Potgieter, entered into the settlement under duress. No doubt this point will have to be ventilated at the hearing of the review application. This appears to be a farfetched argument if one takes into consideration that Mr Potgieter, as a senior legal practitioner understood the consequences of a settlement agreement and moreso an order confirming the settlement between the parties.

[28] As alluded to above, the only issue for determination before me is whether the outcome of the review application would have a bearing on the eviction application.

[29] The applicant submitted that her contentions primarily in the review application are, *inter alia*, whether the settlement was *bona fide*, the issue of the lack of maintenance on the premises, the fact that she as a tenant was not consulted with when the settlement negotiations took place and that the rentals were in fact all paid. The applicant is entitled to have ventilate these issues at the hearing of the review application.

[30] However, in the Dangalazana proceedings, the summons instituted was premised on the lease agreement between PCC and the second respondent. It is not disputed that the second respondent was responsible for the rental payments.

[31] The applicant further argued that the termination of the lease did not take into consideration her constitutional right to basic housing.

[32] Once again, the applicant is at liberty to raise this in the eviction application. From the submissions and the reading of the “Dangalazana order”, it is evident that the issues in those action proceedings dealt with the lease agreement and the failure to pay the outstanding rentals.

[33] I am of the view that the issues on review in the Dangalazana matter has no bearing on the eviction issue. The eviction proceedings initiated after the said settlement order, on 19 May 2022, can be independently dealt with in terms of the PIE Act. The court therein, based on the facts before it, is required to determine if the applicant is a lawful occupier and further whether she has made out a case to remain on the property. I reiterate that the negotiations were with Mr Potgieter who not only was a party to the lease agreement but also the person responsible for the rental payments. The applicant was residing on the premises at the behest of Mr Potgieter who throughout negotiated the occupation of the premises on their behalf. It was only in September 2022, when Mr Potgieter vacated the premises, that the applicant was then fored to approach the PCC directly regarding her occupation on the premises.

[34] Insofar as the relief sought to direct the SAHRC to intervene, this issue has already been resolved. The SAHRC had in fact directed the applicant to ventilate the matter before the Tribunal.

[35] On the third relief sought, this court is not the appropriate form to make a determination on the rental amount.

COSTS

[36] The determination of costs is always in this court's discretion. The general rule is that costs should follow the result. Since the applicant has not been successful, she is liable for the costs of this application.

ORDER

[37] In the premises I make the following order:

This application is dismissed with costs, which costs are to be taxed.

H KOOVERJIE
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the applicant:	The applicant appeared in person
Instructed by:	
Counsel for the first respondent:	Adv J Mouton
Instructed by:	E.D. Ras, Burger & Partners Attorneys c/o Hartzenberg Inc
Date heard:	4 October 2022
Date of Judgment:	7 October 2022