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

**CASE NO:11161/2022  
REPORTABLE: NO  
Of Interest to Other Judges: NO  
REVISED: YES  
30 January 2023**

**In the matter between:**

**THOMAS NTSOANE**

**FIRST APPLICANT**

**THONTS PROPERTIES**

**SECOND APPLICANT**

**And**

**HLEKANI DUDU MUKANSI**

**FIRST RESPONDENT**

**RHULANI YVONNE MUKANSI**

**SECOND RESPONDENT**

**HLEKANI MUKANSI N.O.**

**THIRD RESPONDENT**

**RHULANI MUKANSI N.O.**

**FOURTH RESPONDENT**

**CITY OF JOHANNESBURG METROPOLITAN  
MUNICIPALITY**

**FIFTH RESPONDENT**

**JUDGMENT**

**ALLYAJ**

**INTRODUCTION**

[1] This is an opposed application for the eviction of the First and Second Respondents and any person holding or occupying through them, from the property described as [....] H [....] D [....] D [....] 1 Golf Estate, Extension [....] , Randburg, hereinafter referred to as ‘the property’.

[2] The Applicants purchased ‘the property’ at an auction which was arranged by the Sheriff of this Court in accordance with a Court Order<sup>1</sup> dated 11 May 2020.

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<sup>1</sup> Caselines: 001-47 – 001-48; Annexure “TN 1.1”

[3] Subsequent to the said purchase, 'the property' was registered in the name of the Second Applicant<sup>2</sup>.

[4] The First Applicant alleges that he then tried negotiating with the First and Second Respondent to vacate 'the property' without success. He alleges that he even went further and offered them alternative accommodation to move into whilst they searched for a place of their own.

[5] He alleges that they are being prejudiced by the unlawful occupation of 'the property' by the First and Second Respondents. He alleges that they are in unlawful occupation for the reason that the Second Applicant is the owner 'the property' as evidenced by the title deed<sup>3</sup> and that accordingly, the First to the Fourth Respondents should be evicted.

[6] The Applicants allege that a condition of the sale was that the Applicants are to take measures at their own cost to evict any person occupying 'the property' and vacant occupation has not been guaranteed.

[7] The prejudice mentioned above lies in the fact, as alleged by the Applicants, that the Applicants have been issued with invoices in respect of the levies to be paid although they have not occupied 'the property'.

[8] The First to Fourth Respondents on the other hand allege that they are in the process of applying for a rescission of judgment in the case wherein the Court granted the Orders that resulted in the Applicants obtaining ownership of 'the property'.

[9] The Applicants' response to the above allegation is that the Court should not take these allegations into consideration, firstly, because the First to Fourth Respondents have not apprised this Court of the rescission application date nor have they shown or requested from the Court to file supplementary papers to deal with the rescission application and thereby placing such issue before the Court.

[10] It should be noted that the parties have been litigating against each other for some time and whilst the First and Respondent have obtained spoliation orders against the Applicants such Orders have merely confirmed the status quo until such time this eviction application has been finalised.

[11] The important question remains, however, as to whether taking into account the allegations in relation to impropriety regarding the sale of 'the property' this Court is enjoined to consider this as a defence to the eviction application?

[12] In my view, the principles of the interests of justice which inculcate the principle of 'just and equitable', would justify this Court granting interim relief to the Applicant whilst allowing for the First to Fourth Respondent a prescribed time to file

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<sup>2</sup> Caselines: 001-65 – 001-71; Annexure "TN3"

<sup>3</sup> supra

the necessary papers dealing with rescission failing which the interim order would be made final. The interests of justice, in this context refer to the ventilation of justiciable disputes before a Court of law as well as applying the test of just and equitable relief in the circumstances of eviction from ones primary residence.

[13] A Court, however, in circumstances such as the present must weigh up and balance the interests of both parties. In my view, the Order which I propose hereunder, takes into account this principle.

[14] This Court takes this position, the granting of an interim order rather than a final order, for the reason further that 'the property' is the primary residence of the First and Second Respondent.

[15] Any prejudice suffered by the Applicants in granting an interim order is mitigated by placing the First to Fourth Respondents on terms with regard to the rescission application.

[16] The First to Fourth Respondents went to great lengths to explain that the relief sought by the Applicants has been sought on an urgent basis and on that ground alone should be dismissed. It is important for this Court, whilst granting interim relief, to deal with this point.

[17] In response to this point, the Applicants have submitted that the application has actually been brought in terms of Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.<sup>4</sup>

[18] In my view, the point raised by the First to Fourth Respondents can be dismissed outright for the reason that the First to Fourth Respondents were given sufficient time to deal with application and the raising of this issue, in my view, is a red herring and falls to be dismissed.

[19] Relief, whether interim or not in circumstances of an eviction application cannot be granted without the Court finding that the First to Fourth Respondents are in unlawful occupation, albeit in the circumstances of this particular case, on a *prima facie* basis.

[20] In respect of costs, the Applicants have been granted interim relief and have therefore, in my view, been successful. As a result, I see no reason why the norm should not be applied, that is that the successful party is entitled to their costs.

[21] Accordingly and for the reasons set out above, the following Order will issue;

- a). The First to the Fourth Respondents are hereby evicted from the property described as [...], H [...], D [...], D [...], 1 Golf Estate, Extension [...], Randburg;

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<sup>4</sup> 19 of 1998

b). The Order in paragraph (a) is suspended for a period of 30 [thirty] days from the date of this order pending the filing of a rescission application by the First to Fourth Respondents in Case No 25860/2019;

**G.ALLY**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION OF THE HIGH COURT, PRETORIA**  
*Electronically submitted therefore unsigned*

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **30 January 2023**.

Date of virtual hearing: 27 October 2022

Date of judgment: 23 January 2023

**Appearances:**

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