IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

[Reportable]

CASE NO: 4596/03

In the matter between

GLORIA NDUNA **Applicant**

and

ABSA BANK LTD **1st Respondent**

THE CHIEF MAGISTRATE, MITCHELL'S PLAIN **2nd Respondent**

MRS M XHALLIE, MAGISTRATE, MITCHELL'S PLAIN **3rd Respondent**

THIS JUDGMENT DELIVERED ON THIS 12TH DAY OF DECEMBER 2003

Hlophe JP

[1] This is an application to review and set aside an order made by the magistrate of Mitchell's Plain Court for the eviction of the applicant from a certain property occupied by her. Briefly stated the facts giving rise to the present review application, which are by and large common cause, may be summarised as follows.

[2] Applicant resided at the property known as 59A Zodiac Street, Khayelitsha. On the 5th November 2002 the first respondent,

ABSA BANK LTD, as registered owner of said premises pursuant to purchase thereof in a sale in execution, brought an application in the Mitchell's Plain Magistrate's Court for the eviction of the applicant from the said premises. The application was opposed by the applicant on the basis that the first respondent is an organ of State and that it would not be just and equitable therefore to order the eviction of the applicant from the said premises. On the 3rd June 2003 the Magistrate ordered the applicant to vacate the premises by the 25th June 2003 or be evicted therefrom by no earlier than the 3rd July 2003. On the 9th June 2003 the applicant lodged an application to review and set aside the said order of the magistrate. Mr Totos appeared for the applicant. The respondent was represented in Court by Mr Wilkin.

[3] The case raises an important question of law, namely whether or not the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 (hereinafter referred to as the PIE) endows the magistrate's court with jurisdiction to hear eviction proceedings brought before it by way of an application as opposed to action. This is a novel question of law. Though there have been hundreds of cases dealing with PIE applications in the various Divisions of the High Court, this point has never been raised before as far as I am aware. The PIE Act came into operation on the 5th June 1998.

[4] If the question of law is answered in favour of the applicant, it would mean that it is incompetent for a magistrate to hear applications for eviction in terms of the PIE Act and therefore the court a quo erred in casu. On the other hand, if this Court finds that there is no merit in the legal point taken by Mr Totos on behalf of the applicant, it would follow that the magistrate does in fact have jurisdiction in terms of the PIE Act to entertain applications for eviction.

[5] Mr Totos' starting point was that the magistrate's court has no jurisdiction to make an order for eviction or ejectment upon application as opposed to proceedings instituted by way of summons. Section 29(1)(b) of the Magistrate's Court Act 32 of 1944, so ran the argument, provides that the magistrate's court shall have jurisdiction in "actions of ejectment against the occupier of any premises or land within the district" (Emphasis added). The magistrate's court does not have jurisdiction to entertain applications for ejectment against the occupier of any premises or land. The magistrate's court should only be approached by way of action as opposed to motion proceedings. In the present case, given that the proceedings in the court a quo were initiated on motion as opposed to summons or action, the magistrate erred in entertaining such application and acted ultra vires the provisions of section 29(1)(b) of the Magistrate's Court Act. Thus the order for eviction made by the magistrate on the 30th June 2003 falls to be reviewed and set aside.

[6] In amplification of his argument, Mr Totos submitted that historically, section 29(1)(b) of the Magistrate's Court Act has been interpreted in the courts as limiting the jurisdiction of the magistrate to making an order for ejectment to proceedings initiated by way of summons and not by way of application. Furthermore, he submitted, Rule 55 of the Magistrate's Court Rules sets out the procedure to be followed in the bringing of applications in the magistrate's court. The historical interpretation of the word "action" is founded upon the premise that the magistrate's court is a creature of the statute. It does not have jurisdiction save that afforded to it by the statute as opposed to the jurisdiction of the High Court, which is inherent. Furthermore, he argued, unless if the PIE Act extended the jurisdiction of the magistrate so as to permit the magistrate to make an order for ejectment in proceedings commenced by way of application, the court a quo erred in assuming jurisdiction in proceedings commenced by way of summons/action.

[7] Before dealing with Mr Totos' submissions, it is necessary to refer to ***Pedro and others v Greater George Transitional Council 2001 (2) SA 131 (C).*** In the Pedro case an application was brought in the George magistrate's court in terms of section 4 of the PIE Act for the eviction of persons allegedly occupying properties unlawfully. The proceedings were initiated by way of motion as opposed to trial/action. Unlike in the present case, in the Pedro case it was not argued that the magistrate had no

jurisdiction to entertain proceedings initiated by way of motion. However the full Court assumed in favour of the appellant that the magistrate did have jurisdiction to entertain proceedings initiated on motion. Time, in my view, has not invalidated the assumption made by this Court in the Pedro case. Now that I have had an opportunity to apply my mind to the legal question raised in casu, I am more than convinced that this Court was correct in assuming in the Pedro case that the magistrate's court has jurisdiction to entertain applications for ejectment brought under the PIE Act on motion proceedings.

[8] There are many reasons for saying that. The first is to be found in the PIE Act itself, particularly the preamble to the Act read with section 9 thereof. In paragraph 3 to the preamble, it is stated that land owners have a right "to apply to a court for an eviction order in appropriate circumstances". Furthermore, in terms of section 9 of the PIE, "a magistrate's court has jurisdiction to issue any order or instruction or to impose any penalty authorised by the provisions of this Act". I agree with Mr Wilkin who appeared for the respondent that if one has regard to the preamble read with section 9 of the Act, it is clear that the intention of the legislature was to confer jurisdiction on the magistrate's court to entertain applications for eviction proceedings.

[9] It is not uncommon for statutes to confer civil jurisdiction on the magistrate's court. Such examples are to be found in **Jones & Buckle "The Civil Practice of the Magistrate's Courts in South**

Africa" Ninth Edition Volume 1 by Erasmus and Van Loggerenberg at 40. Examples given include the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, and section 6 of the Promotion of Administrative Justice Act 3 of 2000. Erasmus and Van Loggerenberg ***ibid*** at 63 contend that: "the word 'action' in section 29(1) has the narrower meaning of proceedings initiated by summons. Thus an application for the delivery of property or for permanent final ejectment may not be brought in the magistrate's court. The latter limitation, it is submitted, does not apply to proceedings for eviction in terms of the PIE Act and the Extension of Security Tenure Act 62 of 1997". Furthermore, even if I am wrong in relying upon the preamble and section 9 of the PIE, section 4(1) of the PIE stipulates that "notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by any owner or person in charge of land for the eviction of an unlawful occupier".

[10] The word 'proceedings' can be interpreted to include applications. There is no reason in my view why the word 'proceedings' should be given a narrow meaning, that is, limited only to applications. Indeed there is authority for the view that the word 'proceedings' is "a very wide term". See ***Assistant Taxing Master v Shanker & Gross 1953 (4) SA 281 (T) at 284 B.*** See also ***S v Swanepoel 1979 (1) SA 478 (A).*** Furthermore, according to the Concise Oxford English Dictionary 10th Edition, the word

'proceedings' is defined as "an event or a series of activities with a set procedure…Law action taken in a court to settle a dispute…a report of a set of meetings or a conference".

[11] We should also not lose sight of the provisions of section 5 of the PIE. Section 5 deals with urgent proceedings for eviction. It is hard to imagine how one could initiate urgent proceedings by way of action or trial. I agree with Mr Wilkin that section 5 compels the use of application proceedings for the eviction of an unlawful occupier. The contrary is untenable. There is no reason why one section of the PIE would allow the use of application proceedings but not otherwise. In any event I fail to see what benefit could conceivably be derived from denying a magistrate's court jurisdiction to entertain application proceedings for eviction. If anything, such an interpretation could only serve to frustrate the clear object of the statute, namely to regulate informal settlement in an orderly and proper fashion which marks a clear departure from the pre-1994 policies of the past. In my view an interpretation contended for by Mr Totos is not only devoid of substance, but it would, if upheld by this Court, run counter to the spirit and values that underlie the Constitution of the Republic of South Africa Act 108 of 1996.

[12] In all circumstances of the case I am satisfied that Mr Totos' contention is altogether without merit. It follows, therefore, that the application for review should be dismissed with costs.

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Hlophe JP

I agree

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Yekiso J