

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: 10661/2011

5 **DATE:** 17 JUNE 2011

In the matter between:

GAMAT HARRIS 1st Applicant

JASMINA HARRIS 2nd Applicant

10 and

G BHAWOODIEN Respondent

J U D G M E N T

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SABA, J:

It is common cause here that the applicant instituted proceedings twice previously in terms of the PIE Act. It is also
20 common cause that those two previous applications were not successful. The applicant instituted the present proceedings as a matter of urgency, seeking an eviction order against the respondent and all others who are in occupation of the property.

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The following facts are common cause here that Gamat and Jasmina Harris are the lawful owners of the property situated at Athlone, or known as erf 35470, Cape Town, and this is evident in the copy of a deed of transfer which forms part of the documents on the file. It is also common cause that the respondent occupies the above-mentioned premises.

Applicant, in support of this application, avers that there was a lease agreement between them and the respondent. This lease agreement was cancelled on 1 March 2007 and that thereafter the parties entered into a settlement agreement dated 20 July 2009, with which the respondent has not complied with.

I will not get into what was argued on behalf of the respondent that the PIE Act is applicable in this case, because the applicant is adamant that the PIE Act is not applicable here and that this application is an application for eviction in terms of the common law. What we do not understand is if a lease agreement between the applicants and the respondent was cancelled on 1 March 2007, why is the respondent still occupying those premises? I also do not understand why these parties entered into a settlement agreement, which does not mention anything about the renewal of the release agreement which had previously been terminated.

There is, therefore, a lacuna here. The settlement agreement determines how the respondents would pay for water and rates upon being given a receipt by the defendant. According to the applicant, the respondent did not comply with the settlement
5 agreement and is, therefore, in contempt of court. This settlement agreement does not stipulate that in the event that the respondent does not comply with what is contained in the agreement, the respondent will be evicted from the property.

10 On the other hand, paragraph 2 and 11 of this settlement agreement, creates some confusion in the mind of this court. In his founding affidavit, applicant set down three requirements for a final interdict, which are clear right, injury actually committed, that is according to the applicant, absence of
15 similar protection, but later in the argument, counsel for the applicant stated that this was an ordinary common law final interdict, which does not require adherence to the three requirements mentioned above.

20 As confusing as all this has shown, I will refer to Christie, which is The Law of Contract book, at page 532, where the following is stated under the heading "interdict as a form of specific performance":

25 "One way of breaching a contract is by doing

something expressly or impliedly forbidden by the contract or inconsistent with the obligations imposed by the contract. A plaintiff, who asks for an interdict to prohibit such a breach, is in reality
5 asking for specific performance in the negative form of non-performance of the forbidden or inconsistent act to ensure performance of the contract.”

Even if this court was to accept that the chief requirements for
10 a final interdict do not apply in this case, as the counsel for applicant suggested, the passage mentioned above also does not apply in this case, because the deed of settlement as I mentioned before does not say in the event of failure to comply with the provisions of the deed, the respondent has to be
15 evicted.

Applicant wants this court to intervene and evict respondent when it has not been stated why the respondent was allowed back in the property, a fact which led to the settlement deed
20 being entered into between the applicants and the respondent. A final interdict is a drastic remedy, which the court should not grant if there is a redress which can be obtained by the appellant in some other form. This court is, therefore, of the view that no case has been made by the applicant for the
25 eviction order or a final interdict against the respondent on the

papers.

If respondent does or did not stick to the settlement agreement, applicant should enforce his rights in terms of the settlement agreement and what is contained therein. The application by the applicant is, therefore, dismissed with costs.

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SABA, J