

REPUBLIC OF SOUTH AFRICA



GAUTENG LOCAL DIVISION
JOHANNESBURG

CASE NO: 43700/15

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

In the matter between:

EMFULENI LOCAL MUNICIPALITY

Applicant

and

**ALL UNLAWFUL OCCUPIERS OF ERF 5689
TSHEPISO EXTENSION 3 SHARPVILLE**

Respondent

JUDGEMENT

CARSTENSEN AJ:

1. In this matter the Applicant seeks the eviction of the unlawful occupiers of a residential erf in Tshepiso Extension 3 Sharpville,

namely erf 5689.

2. The founding affidavit contends that unknown persons are currently in occupation of the erf.
3. It appears from the annexures to the founding papers that the erf is of a similar size to the residential erven on its border.
4. The title deeds which are attached as proof of ownership do not refer to the erf in question, but in respect of this matter as well as matters under case numbers 43695/15, 43694/15, 43634/15 and 43624/15 but refer to title deed number 77850/2009 and in particular, to portion 181 of the Farm Vanderbijlpark number 550 Registration Division IQ Province of Gauteng, measuring 163,0300 hectares. This is apparently not the property in question and indeed there is no correlation between the erf number which appears clearly from the aerial photograph at page 44 of the papers and the description on the title deed.
5. In addition, the title deed contains references to various conditions, reservations of rights and servitudes mostly in favour of Eskom, for electric cables and Iscor for railway tracks and roads, electric cables and gas pipelines. Attached to the papers are also drawings which purportedly indicate a gas pipeline by Impala Platinum Hydrogen Gas Pipeline but, it is impossible to correlate these drawings with the property in question or with the aerial photograph.

6. It does appear from these drawings, however, that the pipeline was completed and the as built drawings finalised in July 2004. Consequently, without further information, it seems that the pipelines have existed for 12 years without incident or danger to the surrounding residents.
7. Consequently, I cannot find as is contended for by the Applicant that the gas pipeline running on the property poses a serious danger to life or is a health hazard to the Respondents. If this were to be the case, one would expect it also be a health hazard to the neighbouring stands.
8. The Applicant states that on or about June 2015 it came to the attention of the Applicant that the Respondents had erected structures on the property.
 - 8.1. This evidence is wholly insufficient.
 - 8.2. No details are given when the Respondents took occupation, when they erected the structures or to whose attention, representing the Applicant, was drawn to the occupation.
9. I am also of the view that the Applicant has not satisfied the requirements of Section 4(6) or (7) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 insofar as the Applicant does not set out:

- 9.1. whether the occupiers have been in occupation for a period longer or shorter than 6 months;
 - 9.2. the number of occupiers, neither their age, gender or employment status.
10. The Applicant, the local municipality, despite the obligations on it in terms of the aforementioned Act, does also not state whether land has been available by the Applicant for the occupiers upon any eviction which may ensue.
 11. It is also clear from photographs handed in that the occupiers have built brick and mortar homes on the property.
 12. Consequently, taking into account the matters of City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others, 2012 (6) SA 294 (SCA) at para. 34 and Ekurhuleni Metropolitan Municipality and Another v Various Occupiers, Eden Park Extension 5, 2014 (3) SA 23 (SCA) at para. 19 – 21, I am not satisfied that it would be just and equitable that an order evicting the occupiers of this erf be granted.
 13. In addition, I must point out that had there been a real and imminent danger to the occupiers by virtue of the gas pipeline, I would have expected the Applicant to act immediately whereas these applications were launched in November 2015, some 6 months after it came to the notice of the local authority and was set down for

hearing a year after they became aware of the so-called occupation. This certainly does not confirm the Applicant's belief that there is a real and imminent danger to the occupiers.

14. In the result, the application is dismissed.

**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: 14 JUNE 2016
DELIVERED: 24 JUNE 2016

COUNSEL FOR APPLICANT:
INSTRUCTED BY: MKWANAZI, MELATO INC. ATTORNEYS

COUNSEL FOR RESPONDENT:
INSTRUCTED BY:

(jmt.20.6.16)