



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 11258/2021

**DELETE WHICHEVER IS NOT
APPLICABLE**
(1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGE:
(3) REVISED:

CHRISTOPHER MOKONE

Applicant

And

**NDIVHUWO PORTIA KONE
CITY OF JOHANNESBURG**

First Respondent

Second Respondent

JUDGMENT

YACOOB J:

1. The applicant, Mr Mokone, and the first respondent, Ms Kone were romantic partners from about May 2008 until May 2020. They have a child born in 2009 and Mr Mokone also took responsibility for Ms Kone's child from a previous relationship. The applicant left their common home in May 2020 and now seeks

the eviction of the first respondent in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("PIE").

2. Mr Mokone and Ms Kone have occupied the property since 2011. Mr Mokone contends that he has purchased the property, but that in the meantime he leases the property from the owner. He annexes a lease agreement dated September 2019.
3. According to Ms Kone was under the impression that she and Mr Mokone purchased the property in 2015. She and he certainly signed an offer to purchase. However the copy she annexes to the answering affidavit is not signed by the seller, and Mr Mokone contends that it was never signed by the seller. He then maintains that the sale agreement he concluded only in September 2020 is the valid sale agreement.
4. According to Mr Mokone, when he left the home he told Ms Kone that he would allow her and the children to remain there until the end of September 2020, whereafter he would take occupation and operate his business from the garage of the property. He contends that she has been in unlawful occupation since 1 October 2020.
5. Ms Kone, on the other hand, contends that she and Mr Mokone were married in terms of customary law. Lobola negotiations were concluded and lobola paid. Her elder child was registered at school using Mr Mokone's surname. She and Mr Mokone signed the first lease agreement for the property together. She considers herself to be a joint owner of the property by virtue of the marriage. She and Mr Mokone have established a Trust. They were in business together but Mr Mokone has taken that over and is excluding her. She does not have proof of

many of her allegations because Mr Mokone took care of things and kept documents.

6. Ms Kone also annexes to the papers an email from Mr Mokone relating to payment to the landlord/ seller of the property. According to her this payment was towards the purchase price. Whether it was or not, Mr Mokone says to her in the email that she needs to sign off on the payment, implying that they had some kind of mutual financial arrangement.
7. Ms Kone also annexes a document dated 30 November 2020 inviting her as a trustee to a meeting to discuss the purchase of the same property by the Trust.
8. Ms Kone also obtained a protection order against Mr Mokone when he became violent towards her and her children.
9. Mr Mokone did not file a replying affidavit. These being motion proceedings, it is the respondent's version that prevails. In fact, her version is undisputed since there is no replying affidavit.
10. It is clear that Mr Mokone has not fully taken the court into his confidence. There is doubt about who the purchaser of the property and about whether the parties entered into a customary marriage.
11. It was submitted in argument that because Ms Kone referred to Mr Mokone as her ex-husband in the application for a protection order, she cannot now speak of being married to him. This is not the case. What she said in that application is not relevant. Also, while she may consider their relationship to be over on a personal level, and therefore describe him as her ex-husband, that does not determine the legal ramifications of the end of their marriage.
12. I am not satisfied that Mr Mokone has made out a case for eviction in terms of PIE. It is not clear that he is the person who has the right to evict Ms Kone. It is

also not clear that eviction in terms of PIE is appropriate in circumstances where there appears to be a dissolution of a marriage at stake.

13. Mr Mokone elected to bring motion proceedings, when in my view a dispute of fact was obviously foreseeable. He appears not to have been fully candid with the court. And he failed to file any replying affidavit to deal with Ms Kone's version.

14. For these reasons, I make the following order:

The application is dismissed with costs.

S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances

Counsel for the Applicant: N Rambachan-Naidoo
Instructed by: Robin Twaddle & Associates

Counsel for the Respondent: M Hlungwane
Instructed by: Legal Aid South Africa

Date of hearing: 11 April 2022
Date of judgment: 7 October 2022

