



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG) REPUBLIC OF SOUTH
AFRICA**

CASE NO: 28859/2020

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**

DATE: **20 OCTOBER 2022**

SIGNATURE:

In the matter between: -

ALLIED VALUE INVESTORS (PTY) LTD

Applicant

and

LEBITSE PALESA

First Respondent

PAKKIES LETSEPA PROMISE

Second Respondent

THE CITY OF JOHANNESBURG

Third Respondent

METROPOLITAN MUNICIPALITY

REASONS

SENYATSI J:**INTRODUCTION**

- [1] On the 23 November 2021 I granted an order for eviction of the respondents from the property known as unit 106 55 Augusta (Scheme number 753/2017, Gauteng which is commonly known as Unit 16 Macbeth Road, Fourways, Johannesburg. The eviction was granted following the termination of the lease agreement concluded by the applicant and the second respondent. No relief was sought against the respondent as he had vacated the premises when the application for eviction was issued.
- [2] The reasons for the order are as set out below.

BACKGROUND

- [3] Allied Value Investors (Pty) Ltd (“applicant”) and the second respondent, Mr LP Pakkies (“Mr Pakkies”) concluded a lease agreement on 12 November 2018 and thereafter took occupation of the premises presumably with the first respondent.
- [4] When Mr Pakkies moved out of the property, the first respondent, Ms P Lebitse (Ms Lebitse) remained in occupation. She failed to pay rental and rental arrears went as high as R76 000.00 and as a result of which the lease agreement was terminated. Ms Lebitse was not in attendance at court on the day of the hearing of the application however her heads of argument had been filed by her erstwhile legal representatives which the court had regard to.

- [5] As consequence of the termination, Ms Lebitse became an “unlawful occupier” within the meaning of Prevention of Illegal Evictions from and Unlawful Occupation of Land Act No 19 of 1998 (“the PIE Act”).
- [6] When the eviction proceedings were instituted, Ms Lebitse raised the following defences in opposition thereof:
- (a) Applicant’s lack of *locus standi* to institute the action;
 - (b) Non-joinder of alleged other occupants;
 - (c) Lack of jurisdiction by this court to grant the relief sought;
 - (d) The lease agreement not validly cancelled;
 - (e) That she, Ms Lebitse was the actual tenant in terms of the lease agreement and not the second respondent and;
 - (f) She should not be evicted because she is poor.

Procedural compliance in evictions

- [7] The legal principles applicable in the procedural process of eviction proceedings are trite. In terms of sections 4(7) and 4(8) of the Prevention of Illegal Eviction Act¹ (“the PIE Act”), the court has discretion to exercise in eviction cases and is required to apply the just and equitable requirement.

¹ Act 19 of 1998

[8] The determination of the eviction date and execution of the order are discretionary, however, the application of the PIE Act is not discretionary.²

[9] In *Port Elizabeth Municipality v Various Occupiers*³, the court held as follows:

“The Prevention of Illegal Eviction and from Unlawful Occupation of Land Act 19 of 1998 (PIE) was adopted with the manifest objective of ... ensuring that evictions, in future, took place in a manner consistent with the values of new constitutional dispensation. Its provisions have to be interpreted against this background.”

The applicant, correctly in my view complied with the procedural steps prescribed by the PIE Act before asserting its rights against the Ms Lebitse.

Locus Standi (Legal Standing)

[10] Legal standing is the fundamental requirement when litigation is commenced with. The parties to the proceeding must have an interest in the matter.

[11] Our courts have repeatedly had an opportunity to consider the legal frame work on *locus standi* or legal standing. In *France v Eskom Holdings Soc Ltd and Others*⁴ the court held that where a litigant acts solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities.

² See *Machele and Others v Mailula and Others* 2010 (2) SA 257 (CC) at para 14

³ [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC)

⁴ [2016] ZACC 51; 2017 (6) BCLR 675 (CC); 2017 (6) SA 621 (CC) at para 32

[12] It is trite that a lessor of the property need not be the owner thereof.⁵ In determining whether a person has standing in the matter, a court is required to assume that the allegations made by that person in the case are true and correct.⁶

Non-joinder

[13] The joinder of parties in the proceedings is regulated by Rule 10 (1) of the Uniform Rules of Court which permits parties in the proceedings to be joined as plaintiff or defendants.

[14] A non-joinder is a failure of a plaintiff to join a particular defendant with another whom he is suing, in circumstances in which the law requires that both should be sued together. The general principles upon which a plea of non-joinder will be upheld by a court are the same whether in respect of plaintiffs or defendants.⁷

[15] The question as to whether all necessary parties were joined does not depend upon the nature of the subject matter of the suit, but upon the manner in which, and the extent to which, the court's order may affect the interests of the third parties.⁸ The test is whether or not a party has a direct and substantial interest in the subject matter of the action, that is a legal interest in the subject matter of

⁵ See *The Salisbury Gold Mining C. v The Kliprivierberg and Gold Mining Co* 1893H 186 at page 190

⁶ See *Zulu and Others v eThekweni Municipality and Others* [2014] ZACC 17; 2014 (4) SA 590 (CC); 2014 (8) BCLR 971 (CC) at para 21 and *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* [2012] ZACC 28; 2013 (3) BCLR 251 (CC) at para 32

⁷ See *Erasmus Superior Court Practice Vol 2, D1 -124 para 3.*

⁸ See *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 657; See also *Collin v Toffie* 1944 AD 456 AT 464; *Segal v Segil* 1992 1992 (3) SA 136 (C) at 141 A -C; *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs* 2005 (4) SA

the litigation which may be affected prejudicially by the judgment of the court.⁹

The party alleging non-joinder of a party with interest bears an onus to prove it.

Lack of Jurisdiction

[16] Ms Lebitse furthermore contends that the court does not have jurisdiction to evict her because clause 87 of the lease agreement provides that the parties to the agreement consent to the Magistrate's Court jurisdiction. The legal frame work on the issue has been settled. In *Standard Bank of SA Ltd and Others v Thobejane and Others; Standard Bank of SA Ltd v Gqirana NO and Another*¹⁰ Sutherland AJA had the following to say on concurrent jurisdiction of the High Court:

“[27] *It is also law of long standing that when a High Court has a matter before it that could have been brought in a Magistrates' Court, it has no power to refuse to hear the matter. In Goldberg v Goldberg, the point was taken that as a Magistrates' Court had jurisdiction (in respect of contempt proceedings concerning the non-payment of maintenance) the Supreme Court should refuse to hear the matter. After referring to a statutory provision that was unique to Natal at the time, that allowed for the transfer of cases where there was concurrent jurisdiction, Schreiner J held:*

⁹ See *Henri Viljoen (Pty) Ltd v Awerbuch Bros* 1953 (2) SA 151 (O) at 168 -70; *City Deep Ltd v Silicosis Board* 1950 (1) SA 696 (A) at 709A; *Standard Bank of South Africa Ltd v Swartland Municipal* 2010 (5) SA 479 (WCC) at 482 F-H; 2011 (5) SCA 257 (SCA) at 259 F -G; *Fluxmans Incorporated v Lithos Corporation of South Africa (Pty) Ltd and Another* (2) 2015 (2) SA 322 (GJ) at 328F-G

¹⁰ [2021] ZASCA 92; [2021] 3 All SA 812 (SCA); 2021 (6) SA 403 (SCA) at para 27

'But apart from such cases and apart from the exercise of the Court's inherent jurisdiction to refuse to entertain proceedings which amount to abuse of its process (and that, in my opinion, is not the case here) I think that there is no power to refuse to hear a matter which is within the Court's jurisdiction. The discretion which the Court has in regard to costs provides a powerful deterrent against the bringing of proceedings in the Supreme Court which might more conveniently have been brought in the Magistrate's Court.'

It follows that the High Court enjoys concurrent jurisdiction with the Magistrates' Court.

Termination of lease

[17] I now deal with the legal framework applicable to the lease cancellation. Ms Lebitse contends that the lease agreement did not continue on a month to month basis, but that it was regulated by the Rental Housing Act 50 of 1999, section 5 (5) thereof which she contends was applicable.

[18] Section 5(5) of the Rental Housing Act ("the RHA") provides as follows:

"If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at

least one month's written notice must be given of the intention by either party to terminate the lease."

By implication, Ms Lebitse states that she is allowed to continue living on the property. The question is whether there was such consent from the owner of the property and in what form was the consent given.

[19] Our Constitutional Court has had an opportunity to consider the meaning of "express or tacit consent" in relation to the definition of an unlawful occupier of the property¹¹ and stated as follows:

"The term unlawful occupier is defined as

'[A] person who occupies without the express or tacit consent of the owner or person in charge, without any other right in law to occupy such land excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997 and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1998 (Act No.31 of 1996).¹²

The court held that the consent of the land owner must be actual.¹³

¹¹ See *Residents of Joe Slovo Community Western Cape v Thubelisha Homes and Others* [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC) at

¹² See *Ibid* para 48

¹³ See *Ibid* para 49

Underprivilege

[20] Ms Lebitse also pleads that she is a poor woman and the head of family, contends that this should be a defence to her eviction. This defence cannot be sustained and I will deal with the reasons in my application of the legal framework to the facts of this case hereunder.

Application of the legal principles to the facts

[21] Having considered each defence raised by the first respondent, I am of the view that the defences are all without factual and legal basis.

[22] As in regard to the *point in limine* that the applicant lacks the authority to bring the application for eviction, this cannot be sustained. Ms Lebitse concedes that the property is managed by the applicant on behalf of the owner. She has not adduced evidence as to why she contends that the applicant has no authority to act on behalf of the owner. Property managers consistently perform various functions including litigating on behalf of the property owners managing properties and collecting rental from the tenants on behalf of the owners. This is an accepted practice in our economic system. They ordinarily litigate on behalf of the property owners including bringing eviction applications against non-paying tenants. The court takes judicial notice that the applicant states in its papers that as the property manager of the two property owners and it is authorized to act on behalf of the owners. In fact, the lease agreement concluded with the

respondents depicts the applicant as the landlord. To argue that it has no authority to act under those circumstances in my considered view, defies logic.

[23] Ms Lebitse's contention that the applicant's failure to join all the occupants of the premises is fatal is without merit. She has not adduced any evidence as to the identity of the occupants and why she believes they have an interest in the matter. It can only be inferred that any person who may be in occupation of the subject property did so under her. The applicant in its papers further pleads that it seeks no relief against Mr Pakkies as he vacated the premises. It follows therefore that the defence of non-joinder cannot be supported by evidence and is rejected.

[24] I have dealt with the principles applicable to the concurrent jurisdiction of this court, and that of the Magistrate's Court. It is not permissible for this court to refuse to hear the application on the basis of clause 87 of the lease. The eviction of Ms Lebitse is in any event, not one of the matters envisaged under that clause. It follows that the defence must also fail.

[25] The termination of the lease agreement had preceded the month to month lease as contended for by Ms Lebitse. The provisions of the RHA will be applicable if the applicant had given actual consent that Ms Lebitse could continue residing on the property on a month to month basis. In any event the lease was concluded with Mr Pakkies. The contention by Ms Lebitse that she was in fact the tenant had not been supported by any evidence from the papers filed of record. It can also be inferred that she was in occupation of the premises under Mr Pakkies.

Consequently, as she has failed to demonstrate that she had the consent of the applicant, she was liable to be evicted.

[26] Ms Lebitse further contends that she should not be evicted from the property because she is poor. She contends that she is a full time LMM student at Wits University and that the eviction will affect her studies and cause her to be homeless. I find it difficult to understand the basis upon which this point should be considered as a defence in this eviction application. The applicant is entitled to vindicate its rights on behalf of the owners and lease the premises to a tenant who is able to pay rental. Consequently, I hold the view that there is no factual or legal basis in raising the defence that she is an unemployed and indigent LMM student. This cannot be permitted as a defence the court must rely on in opposition of the eviction.

ORDER

[27] It follows therefore that the reasons as set out above are the basis upon which judgment was granted in favour of the applicant.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 23 November 2021

DATE JUDGMENT DELIVERED: 20 October 2022

APPEARANCES

Counsel for the applicant: Adv. CM Laurent

Instructed by: SSLR Inc.

First respondent: Ms. P Lebitse

In Person