



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

CASE NO: 22833/2021

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

12 July 2022

DATE

In the matter between:

MALI THANDUXOLO

First Applicant/Applicant

GUMA UNATHI

Second Applicant/Applicant

ZIYANDA EURACIA MAGIDA

Third Applicant/Applicant

MOIPONE MALI

Fourth Applicant/Applicant

MONA LINDOKUHLE MICHELE

Fifth Applicant/Applicant

and

DUBE EDISON DINGIZULU

First Respondent/Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Second
Respondent/Respondent

JUDGMENT

CRUTCHFIELD J:

[1] This application for the eviction of unlawful occupiers in terms of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 19 of 1998 ('the Act'), came before me on the unopposed motion roll of 23 June 2022.

[2] The applicants are the registered owners of an immovable property described as Erf 1369, Kliepfontein View, Ext 3, Township Registration Division I.R., Province of Gauteng in extent 250 (two hundred and fifty) square metres, situated at 10 Libya Street, Kliepfontein View ('the property').

[3] The first respondent appeared at the hearing, represented by counsel, seeking a postponement of the proceedings. This was despite the first respondent's defence in the main proceedings, a trial action, having been struck out previously by this Court.

[4] The first applicant was Mali Thanduxolo, the second applicant was Guma Unathi, the third applicant was Ziyanda Euracia Magida, the fourth applicant was Moipone Mali and the fifth applicant was Mona Lindokuhle Michele, they being the joint registered owners of the property.

[5] The first respondent was Dube Edison Dingizulu, the alleged unlawful occupier of the property.

[6] The second respondent was the City of Johannesburg Metropolitan Municipality, cited as an interested party and against which no relief was sought.

[7] The application came before me by way of default judgment in terms of Rule 31(5) of the Uniform Rules of Court pursuant to the first respondent's non-compliance with an order compelling him to make discovery.

[8] The application for default judgment was served on the first respondent's attorney of record by way of email on Tuesday, 15 March 2022. The notice of set down was served on the first respondent's attorney by way of email on Monday, 13 June 2022.

[9] The first respondent launched an application for the postponement of the proceedings before me, on the morning of 23 June 2022, by way of service on the applicants of a non-commissioned document described as an affidavit. The first respondent did not explain the reason for the failure to deliver the postponement application timeously and commencing the application on the morning of the hearing.

[10] The applicants opposed the postponement application.

[11] Notwithstanding, I heard counsel for the parties and considered the pleadings, documents and heads of argument submitted on their behalf.

[12] The factual matrix of the matter, briefly stated, is the following:

12.1 The property was sold at the instance of the trustee appointed to the first respondent's insolvent estate, by way of public auction, on 20 June 2020.

12.2 The trustee was appointed by the Master of the Gauteng Division, Pretoria, under certificate of appointment number T2836/17.

12.3 The applicants alleged that the first respondent knew of the auction as he occupied the property, as he still does, at the time. The purchaser of the property, one Geordie-Glenn Randall, transferred the property to the applicants, the current registered owners.

[13] The first respondent alleged that the property was his primary residence and that the property was not sold subject to a reserve price. Rule 46A(9), provides, however, that the court granting the order for execution of residential property is vested with a discretion to order the sale of the property subject to or without a reserve price.

[14] Furthermore, the application for execution in terms of Rule 46A would have been served, either personally or by way of substituted service, on the first respondent.

[15] The first respondent alleged in the postponement application that the sequestration was fraudulent and that he was working on an application to reverse the alleged fraudulent sequestration. The first respondent failed to state, however, since when he had been working on reversing the sequestration or what steps he was taking in that regard. This was in circumstances where the first respondent knew of his sequestration as the application would have been served upon him prior to both the provisional and final orders being granted.

[16] Given that the trustee was appointed under certificate of appointment number T2836/17, it is likely that the sequestration was finalised during 2016 or 2017, prior to the appointment of the trustee under a certificate of appointment issued in 2017.

[17] No explanation was furnished by the first respondent for his failure to take steps since 2016 or 2017 in respect of the alleged fraudulent sequestration.

[18] The first respondent was made aware of the applicants' ownership on 13 February 2021, and requested on numerous occasions thereafter by the applicants to vacate the property. Notwithstanding, the first respondent waited until the morning on which this application was to be heard, to take steps.

[19] Furthermore, the first respondent declined to explain his failure to take any steps in respect of the eviction proceedings under case number 22835/2021, since delivery of his plea on 16 July 2021, a period of approximately one year.

[20] The first respondent complained about his attorney of record not attending to this matter adequately, blaming his failure to comply with the compelling order and the striking out of his defence on his attorney. Notwithstanding, the first respondent's attorney remained the appointed attorney of record.

[21] The extent of the first respondent's failure to take such steps as were reasonably necessary in respect of these eviction proceedings and the preceding proceedings, is of such magnitude that the first respondent cannot lay the blame on his attorney. The first respondent did not state that he had queried what was happening in the eviction proceedings with his attorney or that he made enquiries with his attorney. There is a point where the client, the first respondent, can no longer blame the attorney but must accept responsibility for his matter. In my view this was one such matter.

[22] The first respondent did not set out a defence to the application for default judgment or to his eviction from the property. No facts in support of the alleged fraudulent sequestration were articulated by the first respondent.

[23] In addition, the first respondent did not "furnish a full and satisfactory explanation of the circumstances that gave rise to the application."¹

[24] A postponement of the eviction application would be to the prejudice of the applicants who have tried since 13 February 2021 to assume control and make use of the property, and who are responsible for the municipal account in respect of the

¹ *National Police Service Union and Others v Minister of Safety and Security and Others* 2000 (4) SA 1110 (CC).

property including the first respondent's consumption of water and electricity, which the first respondent was not paying.

[25] Whilst the first respondent tendered the costs of the postponement during the course of the hearing, that tender did not serve to ameliorate the potential prejudice to the applicants of a postponement. Moreover, the first respondent did not show good cause for the postponement and did not make out a case for a postponement of the eviction application. Accordingly, the appropriate order will follow hereunder.

[26] In respect of the application for eviction, the applicants did not comply with the provisions of the Act, particularly s 4 of the Act. S4(2) requires that written and effective notice of the proceedings be served by the court on the first respondent at least fourteen days before the hearing.

[27] The notice of set- down in respect of the proceedings on 23 June 2022, was delivered to the first respondent's attorney by way of email on Monday, 13 June 2022, less than fourteen days prior to the hearing. The notice of set down was not served on the second respondent as it ought to have been.

[28] In the circumstances, notwithstanding that these eviction proceedings commenced by way of action and that the applicants came before me on default judgment, the applicants were obliged to comply with s4(2) of the Act and proceed accordingly, which they failed to do.

[29] In the circumstances I intend to remove the default judgment from the roll.

[30] By reason of the aforementioned, I grant the following order:

1. The application for the eviction of the first respondent is removed from the roll with the wasted costs to be paid by the applicants.
2. The first respondent's application for a postponement is dismissed with costs.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

Electronically submitted therefore unsigned

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **12 July 2022**.

COUNSEL FOR THE APPLICANTS: Mr R V Mudau

INSTRUCTED BY: Khomola Attorneys Inc.

COUNSEL FOR THE FIRST RESPONDENT: Mr Shaw

FIRST RESPONDENT'S ATTORNEY: Gcanga Attorneys

DATE OF THE HEARING: 23 June 2022

DATE OF JUDGMENT: 12 July 2022