

**REPUBLIC OF SOUTH AFRICA**



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

**Case No. 23095/2022**

- (1) REPORTABLE:  
(2) OF INTEREST TO OTHER JUDGES:  
(3) REVISED: YES

18 December 2023 .....

**MOROE, SENGWEGI LAZARUS**

**First Applicant**

**(ID No. 5710275733086)**

**MOROE, MIRIAM MASEKEPI**

**Second Applicant**

**(ID. No 6210070521082)**

**And**

**KHAMBULE, BUSI**

**First Respondent**

**KHAMBULE, THANDO**

**Second Respondent**

**ALL OTHER OCCUPIERS AT ERF 29466, TSAKANE**

**Third Respondent**

**EXTENSION 11, SITUATED AT NUMBER 29466**

**VULINDLELA STREET, TSAKANE, BRAKPAN,**

**GAUTENG**

*This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines/Court Online and by release to SAFLII. The date for hand- down is deemed to be handed down on 18 December 2023.*

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**JUDGMENT**

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**MAHOMED AJ**

This is an application for the eviction of the first to third respondents, the third respondents are a group of persons who occupy through the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The applicants apply for an order for eviction in terms of s 4(8) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the Act") . It is common cause that the applicants are the owners<sup>1</sup> of the property.

The application is opposed as the first and second respondents contend, they inherited the property, and that the property should be transferred to them. It is their contention that the first applicant sold the property to the late Sipho Cornelius Skwambane, ("Skwambane") in terms of an affidavit purported to be the contract/deed of sale ('KB2')<sup>2</sup>. Mr Skwambane was the husband of the first respondent, the second respondent is their daughter. The respondents rely on KB 2 as proof of purchase, and they deny that they occupy the property unlawfully.

**The applicant's version**

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<sup>1</sup> Caselines 01-24, AA 01-54 para 6

<sup>2</sup> Caselines 01-61

1. Advocate Bhabha appeared for the first and second applicants (“the applicants”) and submitted that no agreement of sale of property was ever concluded and therefore no transfer is due.
2. Counsel proffered that the first respondent alleged that she was the customary law wife of the late Skwambane, who gave the property to her, however it was argued, he could not have given her property in which he had no real right. The applicants are the registered owners.<sup>3</sup>
3. Ms Bhabha outlined, that in 2000 the first applicant and the late Skwambane, who was in the transport business, had an arrangement in terms of which Skwambane was permitted to park his taxis on the property no. 29466 Vulindlela Street, Brakpan, in exchange for his caretaking services. They agreed that Skwambane would “use and look after the property and pay for all utility bills” levied on the property. This agreement endured for twenty years, until when in March 2021, the first applicant learnt that the utility bills, payable to the 4<sup>th</sup> respondent were in arrears, whereupon he visited the property and met the first respondent whom he found to be residing on the property.
4. Whilst Skwambane cared for the property, he and the applicant discussed the possible sale of the property, and in 2007 the first applicant accepted a deposit of R30 000 from Skwambane, however three weeks later, when the first applicant realised that it was no longer viable to continue with the sale, he returned<sup>4</sup> the monies in November 2007. It was submitted that no agreements for a sale or a lease was concluded between the first applicant and Skwambane.
5. In October 2021 the applicants, served a notice to vacate<sup>5</sup> the premises which was ignored whereupon the applicants were forced to launch this application.

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<sup>3</sup> Caselines 01-24

<sup>4</sup> Caselines 01-84

<sup>5</sup> Caselines 01-34

6. The applicant's attorney served a financial information document, in which the occupiers were requested to identify themselves and to provide information on their personal circumstances. None of the respondents provided any personal information and therefore, Ms Bhabha submitted, the applicants are forced to refer to the third respondents as "other occupiers."
7. Ms Bhabha submitted that applicants launched this application two years ago and, in that time, they have had no access to and use of their property. However, they are forced to continue to pay for services which the respondents enjoy as a free service. Counsel proffered that the applicants are not wealthy people and have had to save monies over months to pursue this application. They suffer prejudice as they cannot lease out the property to pay for its expenses.
8. Counsel submitted that the first and second respondents have no right to the property and have failed to prove that they hold a real right, a real agreement, nor a transfer in the deeds office which would confirm a right to occupy the property. There is no lease agreement in place and the respondents have never paid over any rentals at any time for a right to occupy the property.
9. Ms Bhabha submitted that the first applicant has no knowledge of "KB2" and denies having signed any document for the sale of the property. Counsel argued that KB2 cannot be relied upon, it bears no stamp of the commissioner, and that the first respondent has failed to place any other reliable evidence to prove any right to the property whereas the applicant's filed their proof of registration of ownership in the deed's office and it is the best evidence, they have also been paying all utility bills in their name, for the property .
10. The court is to weigh the prejudice that the applicants themselves suffer. The respondents can lease adequate housing in the area. They have been aware of the proceedings and a notice in terms of s4(2)<sup>6</sup> of the Act has been properly served, they

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<sup>6</sup> Caselines 01-116

refused to complete the financial information document served<sup>7</sup> on them in March 2022. There is no evidence that they approached the fourth respondent for alternate housing.

11. It was submitted that the applicants have met the two requirements set out in the Act for the order sought, no proper defence is raised and that in terms of s 4(8) of “the Act”, the court must order their eviction.

### **The respondent’s version**

12. Advocate L Matshidza submitted that “KB2”<sup>8</sup> is drafted in simple terms, it must be read in a context and the court must take note of the language employed in that document. It is a recordal of the sale of the property and that a signature that appears on KB2, is the same as that which appears in the first applicant’s replying affidavit. Therefore, the first applicant cannot deny he signed it. Mr Matshidza conceded that the respondents do not place any evidence of a handwriting expert before the court.

13. It was further submitted that if one has regard to the language employed, the affidavit, reads, “*I sold*”, and not “*I intend to sell.*” This is a clear demonstration that the first applicant disposed of his rights to the property in 2007, and moreover, the sale price of R50 000 is recorded as paid.

14. It was proffered that the first respondent inherited the home from her late husband, she has been living there for 17 years and she considers it to be her home. Counsel argued that the first applicant did nothing in that period to reclaim the property, he is opportunistic and acts now only because the value of the property has increased over the years and the other signatory to KB2 is no longer available to give his evidence and to verify the sale.

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<sup>7</sup> Caselines 01-31

<sup>8</sup> Ibid 6

15. It was submitted that the first applicant misled the court when he referred to the “use of the property” whilst the document confirms “a sale of the property,” and one can only conclude that the applicants are looking to evict the respondents. The respondents did not claim transfer to themselves in the past years because the transfer was subject to a resolution of a dispute with Khayaletu housing project.
16. It was argued the fact that no rentals were charged or paid over confirms the respondent’s version that the property was sold to Skwambane. Counsel persisted with the argument that the property belongs to the first and second respondent and submitted that it must be transferred to the first respondent or to the estate of the late Skwambane. It was submitted that the respondents would suffer prejudice as it is “*not easy to acquire alternate accommodation*”<sup>9</sup>, if the property were not transferred to them.
17. In reply, Ms Bhabha argued that “KB2” lacks credibility in number of respects, in that, it is not properly commissioned, the allegation of a sale is subject to resolution of a dispute with Khayaletu housing project, and the respondents failed to provide any evidence to the court about that dispute. Furthermore, the sale of immovable property does not comply with the requirements of the Alienation of Land Act, as no proper underlying agreement is placed before the court. Counsel reminded the court that it is not disputed that R30 000 was returned to Skwambane.
18. It was proffered that the first applicant acts now only because he learnt that Skwambane had passed, that the utility expenses in relation to the property are in arrears and outstanding to the fourth respondent. It was argued if their version was to be believed, it makes no sense, that the respondents have never approached the applicants any earlier for transfer of the property to themselves. The applicants have been owners since 1992 and are entitled to the use and enjoyment of their property.

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<sup>9</sup> AA para 21 caselines 01-57

19. The respondents fail to show that they have sought alternate accommodation and must not be permitted to further frustrate the applicants' efforts to enjoy their Constitutional Rights to ownership of property.<sup>10</sup> The applicants who themselves lack the financial means are prejudiced in that they are forced to pay municipal bills for services which the respondents consume, the applicants are not responsible for the respondents keep. Furthermore, they are constrained as they cannot generate income from their property whilst the respondents continue to remain on the property.
20. Counsel submitted the respondents have failed to raise a valid defence and that it is just and equitable to grant the order. The applicants proposed that 30 March 2024 is a reasonable time to allow the respondents to find other suitable accommodation.

## **JUDGMENT**

### **THE LAW**

21. In terms of s 4(1) of the Act, an owner may apply for the eviction of persons who unlawfully occupy his/her property. It is common cause that the applicants are owners and that there is no lease of the property.
22. Sections 4(7), (8) and (9) of the Act, sets out the legal test and the court's approach to the granting of an order for the eviction of unlawful occupiers.

Section 4(7) provides:

*"if an unlawful occupier has occupied the land in question for more than six months at the time that the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale in execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the*

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<sup>10</sup> Section 25 (1) Constitution Act 108 of 1996

*unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.*

Section 4(8) provides:

*“If the court is satisfied that all the requirements of this section have been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-*

*(a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and*

*(b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).*

Section 4(9) provides:

*“in determining a just and equitable date contemplated in paragraph (8), the court must have regard to all relevant factors, including the period the unlawful occupier and his or her family have resided on the land in question.”*

23. It is common cause that the applicants are the owners of the property. Mr Matshidza, relied on “KB 2” as proof of the sale of the property however the document does not comply with the formalities set out in the Alienation of Land Act<sup>11</sup>,

Section 2 of (1) the Act provides:

*“No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.”*

24. The first applicant denied knowledge of KB2 or that he signed a contract of sale of immovable property, and the respondents failed to provide any reliable evidence of

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<sup>11</sup> 68 of 1981



the signatures, to this court. Only counsel's observations of the signature were before the court and Mr Matshidza conceded that an expert report is required regarding proof of signatures to KB2.

25. The Alienation of Land Act provides that a deed of alienation shall be a contract of sale of land in "*more than two instalments*," the respondent submitted that the property was sold in two instalments, R50 000 was paid, as appears in KB2 and R30 000 was outstanding. The document KB2 falls short of what is contemplated to be a deed of alienation in the Act. I am not persuaded that a written sale agreement exists in compliance with section 2 of the Act.

26. Furthermore, KB2 provides that transfer is "conditional on a dispute being resolved with Khayaletu housing project", however the respondents proffer no explanation of the dispute nor if it was ever resolved.

27. The first and second respondents alleged that the home was purchased for R50 000, however there is no proof of payment or that it was received and /or accepted by the first applicant. The first applicant's evidence is that he accepted payment of R30 000 however three weeks later he returned the monies when he realised that it was no longer viable for him to continue with the sale, as appears from the bank statement of 2007<sup>12</sup>.

#### Just and Equitable

28. There is no evidence before this court that the first to third respondents have a right to remain on the property. I noted that the applicants demonstrated their bona fides when they requested details of their personal circumstances, however it was never responded to. The respondent's attorney failed to furnish information of their personal circumstances, even at the hearing of this matter. It is noteworthy that Mr

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<sup>12</sup> Caselines 01-84

Mashidtza appeared on behalf of the third respondent, whereas the first respondent in her answering papers, denied any knowledge of the third respondents.<sup>13</sup>

29. In *Van der Valk NO and Others v Johnson and Others*<sup>14</sup>, the court stated regarding the personal circumstances of the occupiers:

*“the court has to have regard to a number of factors including, but not limited to, whether the occupants include vulnerable categories of person such as the elderly, children and female-headed households, the duration of occupation, and the availability of alternative accommodation by a municipality or other organ of state”*

30. There is no evidence before this court of their personal circumstances or of the respondents' attempts to obtain alternate accommodation, or evidence that they sought assistance from the fourth respondent. It is not disputed that they have been aware of these proceedings after service of the notice to vacate and s4(2) notice were served by sheriff. In their answering papers<sup>15</sup> the respondents simply state, *“it will not be easy to find alternate accommodation.”*

31. In ***City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others***<sup>16</sup>, the court stated”

*“the enquiry into what is just and equitable requires the court to make a value judgment on the basis of the relevant facts...After all what is being sought from the court is an order that can be granted only if the court is satisfied that it is just and equitable that such an order be made.”*

32. Section 4(8) enjoins a court to order an eviction of persons who have failed to raise a valid defence to the applicants' claim. In ***Changing Tides*** supra, the court stated,

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<sup>13</sup> AA para 6 caselines 01-54

<sup>14</sup> 2023 JDR 0375 (WCC)

<sup>15</sup> AA para 21 caselines 01-57

<sup>16</sup> 2012 (6) SA 294 (SCA) para 29

*“once the court decides that there is no defence to the claim for eviction and that it would be just and equitable to grant an eviction order, it is obliged to grant that order. Before doing so, however, it must consider what justice and equity demand in relation to the date of implementation of that order and it must consider what conditions can be attached to that order. In that second enquiry it must consider the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere. The order it grants is as a result of these two discrete enquiries is a single order. Accordingly, it cannot be granted until both enquiries have been undertaken and the conclusion reached that the grant of an eviction order, effective from a specified date, is just and equitable. Nor can the enquiry be concluded until the court is satisfied that it is in possession of all the information necessary to make both findings based on justice and equity.”*

33. The details of personal circumstances were not placed before this court, despite the efforts of the applicants.

34. The procedural and substantive provisions of section 4 of the PIE have been complied with and applicants demonstrated their bona fides when they sought more information on their personal circumstances from the respondents which was not forthcoming.

35. In *Changing Tides 74*, supra,<sup>17</sup>, the SCA stated:

*“the position is otherwise when the party seeking the eviction is a private person or entity bearing no constitutional obligation to provide housing. The constitutional court has said that private entities are not obliged to provide free housing for other members of the community indefinitely, but their rights of occupation may be restricted, and they can be expected to submit to some delay in exercising or some suspension of, their right to possession of their property in order to accommodate the immediate needs of the occupiers.”*

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<sup>17</sup> Para 18

36. The respondents have acted to their detriment, by refusing to cooperate and to furnish their details, particularly the group who reside on the property through the first and second respondents. The applicants themselves are financially constrained as litigation costs are prohibitive. They are forced to pay the cost for the upkeep of the property,<sup>18</sup> whilst the respondents enjoy its use, without any payment. The applicants cannot be burdened with additional expenses, as they themselves are financially constrained and have now to pay for legal costs. The applicants have no obligation to accommodate the respondents.

37. In *Patel NO and Others v Mayekiso and Others*<sup>19</sup>, the court stated:

*“...the Mayekisos have not attempted to show how their eviction would render them homeless save to say that all their assets were tied up in the insolvent estate. This is not sufficient. What they had to show was how they have tried and failed to find alternate accommodation within their available resources.”*

38. There is no evidence of any efforts made to find alternate housing.

39. I note that the respondents have been living on the property for a while now, however the first applicant only learnt of this occupation when they instituted these proceedings. I agree with applicant's counsel that a further four months is reasonable time for respondents to vacate the property.

40. In weighing the prejudice suffered by each of the parties, and on the conspectus of the evidence before the me, I am satisfied that it is just and equitable to order the eviction of the first to third respondents, and it is just and equitable they be ordered to vacate the property by 30 April 2024.

41. The costs should follow the cause.

I make the following order,

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<sup>18</sup> Caselines 01-77

<sup>19</sup> (WCC 3680/16, 23 September 2016) at par 33

1. The first to third respondents, and all those who occupy the property under their occupation thereof, including their family and employees are evicted from **ERF 29466 TSAKANE, EXTENSION 11, situated at NUMBER 29466 VULINDLELA STREET, TSAKANE, BRAKPAN, GAUTENG**, (“the property”).
2. That, should the first to third respondent, and all those that occupy the property under, or through, their occupation thereof, including their family and employees, fail to vacate the property by 30 April 2024, this order may be executed, in which event the Sheriff of this Court, is hereby authorised and directed to forthwith evict, the first to third respondents and all who occupy the property through them, from the property;
3. The sheriff is authorised to take all legal steps to enforce this court order, including enlisting the services of a locksmith and that of the South African Police Services.
4. That in the event the first to third respondents and all who occupy the property through them, attempt to regain access or possession to the property after the eviction order has been executed by the Sheriff and/or his authorised deputy; the applicants do not need to approach the Honourable Court for relief, and the sheriff and his/her authorised deputy is hereby authorised and directed to take all legal steps to enforce this Court order once again, including enlisting the services of the South African Police Services and a locksmith.
5. That the first and second respondents are ordered to pay the costs of this application including costs of the application heard on 13 February 2023, before the Honourable Wepner J on a party and party scale.

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**MAHOMED AJ**

Date of Hearing: 30 October 2023

Date of Judgment: 18 December 2023

Appearances:

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