REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 19616/2022

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

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DATE SIGNATURE

In the matter between:

RIAZ AMOD VAJETH First Applicant

SIBUSISIWE JOY VAJETH Second Applicant

and

NDYEBO TREASURE JONGWANA First Respondent

ALL UNLAWFUL OCCUPIERS Second Respondent

CITY OF JOHANNESBURG Third Respondent

Neutral citation: *Riaz Amod Vajeth and Another v Ndyebo Treasure Jongwana, and Others* (Case No. 19616/2022) [2023] ZAGPJHC 393 (28 April 2023)

JUDGMENT

MAKUME J:

[1] In this matter the Applicants seeks an order evicting the Respondents from occupation of certain premises situated at 34B Rietfontein Road Edenburg, Rivonia Sandton (the Property).

[2] The Applicants are the owners of the property mentioned above and concluded a lease agreement with the first Respondent in terms of which they leased a portion of the property to the first Respondent on 20 May 2020.

[3] As a result of the first Respondent failing to comply with the terms and condition of the lease same was cancelled during 2022 thereafter Applicant launched this application.

[4] On the 28th June 2022 the Respondent filed a Notice of Intention to Oppose the application. On the 15th July 2022 the Applicants filed their Notice in terms of Section 4(2) of the PIE Act. This notice was later withdrawn as it was premature.

[5] The Respondent then filed a Notice in terms of Rule 35 (12). On the 11th August 2022 the Applicant's attorneys addressed a letter to the first Respondent informing him that the Notice in terms of rule 35(3) was irregular. It was later withdrawn by the Respondent.

[6] In the Answering Affidavit the Respondent whilst admitting that he fell in arrears with the payments in terms of the lease agreement he nevertheless says that the Applicant failed to comply with the requirements of clause 14.2 which requires that the lessor should first have given him 7 days' notice to enable him to remedy the situation.

[7] In the result the Respondent argues that the application is premature and falls to be dismissed.

[8] The Respondent further pleads that a new lease agreement kicked in on the 1st June 2022 in terms of the Rental Housing Act 50 of 1999 which prescribes that he should have been given one-month notice to terminate the agreement this he says did not happen.

[9] In the further submission the Respondent disputes the proper description of the leased property and also says that the property is not jointly owned.

[10] On the 3rd January 2023 the Applicant filed his Replying Affidavit dealing effectively with all the technical issues raised by the Respondent. In particular, it was pointed out that since cancellation of the lease in May 2022 the Respondent had not made any payment.

[11] On the 13th January 2023 the first Respondent without leave of the Court filed and served a "Supplementary Answering Affidavit." He does so as he says because Applicant raised new matter in reply.

[12] In that last affidavit the Respondent now takes issue with the description of the property and says that the outbuildings and developments were not approved by the local authority and therefore the lease agreement is based on an illegality and cannot be enforced by the Court. The interesting allegation of illegality is set out in paragraph 15 which read as follows:

> "In any event the Applicants have not made out a case for such enforcement. I submit that the Honourable Court cannot enforce the illegal contract because it is against public policy and it would be setting a bad precedent, that owners of land that are not compliant with municipal laws, by among others not paying applicable municipal rates (as is the case here) can approach the Court in perpetuance if an illegality. This is unconstitutional."

[13] He goes on to submit at paragraph 19.1 that the lease agreement is invalid and not binding due to the misrepresentation by the Applicants. He says that if he had been aware of this he would not have concluded a lease with the Applicant.

[14] On the 3rd March 2023 the first Respondent filed what he calls a counter application in which he cites the Applicants as first and second

Respondents and includes one Bernadine Jonathan as 4th Respondent and Sheina Rucy as the fifth Respondent. In the counter application he seeks the following relief:

i) Declaring the three dwelling Units in the property 34B Rietfontein Road Edenburg, Rivonia Sandton as having been erected illegally and in contravention of the Sandton Town Plan Scheme.

ii) Declaring that the use of the units is in contravention of the current zoning scheme.

iii) Declaring the lease agreement unlawful.

iv) Interdicting the “Applicant” from conducting business of lease on the property.

[15] On the 28 March 2023 the Applicant filed a notice in terms of Rule 30 (b) of the Uniform Rules seeking an order to declare the counter application an irregular step as envisaged in Rule 30. This has not been responded to.

[16] I have proceeded to set out the contents of the Respondent’s Supplementary Answering Affidavit as well as the contents of his counter application not with the purpose of relying on the averments

therein but to demonstrate the extent to which the first Respondent who is an admitted advocate of the High Court went to abuse the Court process.

[17] This application was postponed and set down for hearing during January 2023 to be heard on the 17th April 2023 with the knowledge of the Respondent.

[18] When this matter was called for hearing on the 17th April 2023 it is the Respondent who addressed the Court telling the Court that this matter was not ripe for hearing and that he had been expecting the Applicant to remove it from the roll.

[19] The basis for that submission he says is because the Applicants have not answered to his counter application also that he himself still has to respond to the Rule 30 (b) irregular step proceedings served by the Applicant.

[20] After hearing further submissions from both Counsel I made a ruling that first Respondent Supplementary Affidavit was filed without leave of the Court and as to be excluded. I secondly ruled that the Respondent's Counter application is a separate application and can be dealt with on its own more so that the two other tenants of the property were not properly joined and were not before Court. My ruling meant also that the Rule 30 (b) notice fell by the wayside. I directed the

parties to proceed and address the Court on the main application for eviction.

[21] It is common cause that since the Respondent was served with the Eviction application on the 21st June 2022 he has filed all sorts of processes aimed at not bringing this matter to finality but to delay same in the meantime not only had the lease been properly cancelled it had also come to an end by effluxion of time. During all that time the Respondent has not been paying anything for his occupation of the property save for a payment in December 2021 which was the last time he made such payment.

[22] It is clear that the Respondent has sought to argue all sorts of unmeritorious defences not supported by any evidence or logic the most ridiculous being that the Applicants do not own the property jointly when in fact the deeds search document filed with the Founding Affidavit indicate that. He says this without proffering evidence in support of his contention.

[23] The Respondent clearly does not and never had a valid defence this he knows very well. He firstly says that there is no valid agreement concluded between him and the Applicants because of the “wrong” unit and then turns around to say that the lease agreement was not validly cancelled. This last contention is not only bad in law but is once more meant to cloud issues. I say this because clause 14.2 of the lease

agreement provides that the Applicant shall give the Respondent a period of seven days to pay his arrears and on expiration of those seven days if no payment is received eviction proceedings would be instituted.

[24] The Applicant's attorneys addressed such a letter to the Respondent on the 1st April 2022 and only commenced eviction proceedings on 3rd June 2022. The Respondent in my view is being disingenuous when he in paragraph 9 and 10 of his Answering Affidavit says the following:

> "[9] The Applicants have failed to comply with this provision of the lease. The Applicants did not give a 7 calendar days' notice of cancellation and the Applicants commenced the eviction proceedings prematurely.
>
> [10] On the 30th May 2022 the Applicant sent a letter which herewith cancels the agreement. The Applicant did not give a 7 day calendar days' notice as agreed in the lease. If the Applicants had given 7 calendar days' notice the lease would be due to terminate on the 8th June 2022 and therefore can the Applicants launch these proceedings."

[25] I find this assertion hard to believe in the first place he decided to say nothing about the letter dated 1st April 2022 which is the letter calling on him to make payment of arrears in the sum of R44 548.20. In that letter Applicants' attorneys tell him that "our client is also entitled to cancel

the agreement, claim damages or exercise all rights accruing to the owner/landlord in term of the common law."

[26] The Respondent then seeks to rely on the provisions of Section 5(5) of the Rental Housing Act 50 of 1999 which reads that

> "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 expressed lease, except that at least one month's written notice must be given if the intention by either party to terminate the lease."

[27] Once again the Respondent does not know where he stands he blows hot and cold. By seeking reliance on this Act he then concedes that there was a valid lease agreement which aspect he has long placed in dispute. Secondly there has never been an express or tacit consent by the landlord that the Respondent shall remain on the property. Clause 14.1 of the lease agreement is instructive it reads as follows:

> "Should the agreement be cancelled by the lessor due to breach of contract the lessee shall be obliged to forthwith vacate the premises and allow the lessor to take occupation thereof."

[28] The Respondent's contention that when the lease expired a new lease kicked in and was concluded in terms of Section 5(5) of the Rental

Housing Act is nothing but a smoke screen and must be dismissed with the contempt it deserves.

[29] I am satisfied that the Applicants are the owners of the property, secondly that the lease agreement was properly and procedurally cancelled as a result of the continuous breach thereof. The Respondent has not been able to demonstrate any right to remain in occupation of the property for which he is not paying anything.

[30] What remains is whether it is just and equitable to evict the Respondent now that he has decided not to vacate voluntarily. The first Respondent is not a member of a household headed by a woman, secondly there are no handicapped, elderly or vulnerable persons on the property occupied by him. He is a practicing Advocate of the High Court and earns income sufficient to make him afford rental at other premises in Gauteng provided he is prepared to pay.

[31] The Applicant says in his Founding Affidavit that rental income from the units is his only income and that Respondent by insisting to live on the property without paying is prejudicial. He is in fact subsidising the Respondent. In my view justice and equity demands that I grant the Applicant the order as requested which is set out in his draft order handed to me.

[32] In the draft order this Court is asked to refer the judgement and record of proceedings to the Legal Practice Council with instruction to investigate the conduct of the Respondent. This request was made in the notice of irregular step in terms of Rule 30(b) which was not ventilated for reasons that I have already alluded to. In the circumstances I did not think it will be fair and just to accede to this prayer as the Respondent did not have an opportunity to explain himself. This Court hopes that the Respondent will in future devise proper and acceptable steps to deal with litigation whether it refers to him in his personal capacity or for his clients. I agree that the manner in which he chose to deal with this matter leaves much to be desired but is not such as to require investigation by his statutory regulation body.

[33] I am satisfied that the Applicant has made out a case on all fours and is entitled to an order evicting the Applicant and all those who take after him from the property.

[34] In the result I hereby make order as follows:

ORDER

1. The Applicants' Notice of Motion is amended by removing the words "Unit 2" from prayer 1 thereof.

2. The 1st Respondent and any other person claiming a right of occupation through, under or by virtue of him, is hereby evicted from the premises known as 34B Rietfontein Road, Edenburg, Rivonia, SANDTON ("the property");

3. The 1st Respondent and any other person claiming a right of occupation through, under or by virtue of him is ordered to vacate the property by not later than 16h00 on the 30 April 2023, failing which the sheriff for the area within which the property is situated be authorised to evict the 1st Respondent and any other person claiming a right of occupation through, under or by virtue of him.

4. The 1st Respondent is ordered to pay the costs of this application on an attorney-client scale, including all reserved costs and the costs of all interlocutory applications.

DATED at JOHANNESBURG this the day of APRIL 2023.

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M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

APPEARANCES

DATE OF HEARING : 14 APRIL 2023
DATE OF JUDGMENT : APRIL 2023

FOR APPLICANT	:	IN PERSON
FOR RESPONDENT	:	ADV CARVALHEIRA
INSTRUCTED BY	:	BENNET MCNAUGHTON ATTORNEYS