

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 18648/2018

DATE: 24-04-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

10 In the matter between

PIXIE DUST TRADING(PTY) LTD

Plaintiff

and

MERCIA AVON LARRY

Defendant

Neutral Citation: *Pixie Dust Trading(Pty) Ltd v Mercia Avon*

Larry (Case No. 18648/2018) [2023] ZAGPJHC 396 (28 April 2023)

J U D G M E N T

20 **STRYDOMJ**: I am just going to give a short judgment in this matter at this stage.

This is an application brought by the applicant in his capacity as a liquidator in the estate of Pixie Dust Trading (Pty) Limited. The first respondent and the third respondent have been in occupation of this property for a long time. This property was bought by Pixie Dust (Pty) Ltd long before

the company went into liquidation to provide housing for one of its directors, the third respondent.

For an applicant to obtain an eviction the applicant must prove two things. Firstly, that the applicant is the lawful owner of the property and secondly that the occupiers of the property, in this instance the first and third respondents, are in unlawful occupation.

Now as far as the ownership is concerned there is no argument about this. This property previously belonged to
10 the company and the company is now in liquidation so the ownership vest in the liquidated estate.

As far as the unlawful occupation is concerned an affidavit was filed and in vague terms it was stated that there was an oral agreement between the company and the director, presented by the same person being an oral agreement between the third respondent wearing two different hats, that she could occupy the property.

Now the oral agreement which was pleaded was so vaguely pleaded that the Court can reject this version as
20 untannable and farfetched on the papers as they stand. Upon rejection of this version there is no lawful ground upon which the respondents can remain in occupation of this property.

For this reason, no case has been made out to prevent the eviction of the respondents. Under those

circumstances the Court has no option other than to order the eviction of the first and third respondents from the property.

In terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, the PIE Act, the Court must consider all circumstances to come to a just and equitable decision pertaining to the period when the vacation of the property should take place.

The Court has considered that the respondents had
10 been in occupation for a long time but also knew for a long time that they are an unlawful occupation. Having regard to the fact that there are children involved the Court will afford the respondents a few extra months to make alternative arrangements and to move out of the property. The Court will make the following order as per the draft order handed to this Court which will be attached to this judgment. I will mark that draft order with an X.

I indicated that I am going to make an order in terms of the draft order which I will mark with an X. Just for the
20 sake of the first and third respondent in court I am going to read the draft order into the record:

“The first respondent Avon Larry Mercia is to vacate 37 Linksfield Township, Johannesburg correlating to number 64 Golding Road Linksfield Johannesburg the property doing

occupy the property either through him or on his behalf on or before 30 June 2023.

The third respondent Michelle Beetsley is to vacate the property including occupying property either through her or on her behalf on or before 30 June 2023.

In the event of the first and third respondent and any other person through them not vacating the property forthwith then and in such event the applicant is authorised to utilise the services of the South African Police in evicting the first and third respondents from the aforesaid property and any other person who occupies the property through them.

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Alternative and in the event that the first and third respondents and any other person through them not vacating the property on or before the date described in orders 1 and 2 then in such even the sheriff of this Court is authorised to utilise the services of the South African Police in evicting the first and third respondents from the aforesaid property and any other person who occupies the property through them.

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5. The first and third respondents are to pay the cost of this application on a scale as between

attorney and client jointly and severally, the one paying the other to be absolved.”

Just for the sake of the respondents no reasons exist why the cost order should not follow the result and the punitive cost order is made as no defence with any merit was advanced in this matter. The opposition in this matter just caused undue delay.

So that is the order. The short judgment will be typed
10 and will be placed on Case Lines for the parties to access but in the meantime the parties can obtain, after it had been stamped, a copy of this order from my registrar.

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STRYDOM, J
JUDGE OF THE HIGH COURT

DATE:

20	Counsel for the Applicant:	Adv. S.J. Martin
	Instructed by:	Anthony Berlowitz Attorneys Inc.
	Counsel for the 1 st and 3 rd Respondents:	Mr. M.A. Larry
	Instructed by:	In Person
30	Date of Hearing:	24 April 2023

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JUDGMENT

Date of Judgment:

24 April 2023