



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

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

Date: 04/05/2023 Signature:

Case No.48512/ 2021

In the matter between:

STANELY KHUTA KHWELA

1st Applicant/Appellant

MARIA KHWELA

2nd Applicant/Appellant

BUYSILE MAUREEN MASUKU

3rd Applicant/Appellant

and

JULIUS IMALENAI

1st Respondent

THERESA O EGHONOGHON

2nd Respondent

CITY OF JOHANNESBURG

3rd Respondent

Neutral citation: *Stanley Khuta Khwela & Another v Julius Imalenai & Others* (Case No. 48512/2021) [2023] ZAGPJHC 419 (04 May 2023)

JUDGMENT LEAVE TO APPEAL

MAHOMED, AJ

The applicants seek leave to appeal a judgment I handed down on 26 October 2022, in which I found it was just and equitable that they be evicted from the property they unlawfully occupied and within 14 days of the order.

I noted the grounds of appeal and the respondent's notice for security for costs¹. I noted the 1st applicant's and Advocate Muza's submissions for the respondent. I granted an application for condonation for the late filing of this application, it being in the interest of justice that a party be heard, and it was not an inordinate delay. Furthermore, the respondents do not suffer prejudice, in that I noted that the applicants have complied with the order.

1. The applicants vacated the premises as ordered and Advocate Muza confirmed that his client has taken occupation of his home and has in fact effected renovations to the property.
2. Mr Muza alerted the court to his clients notice for the filing of security for costs, where the taxed costs still outstanding and due by the applicants, is in the amount of R245 462.29 under case number 2016/24341.
3. The 1st applicant submitted that he vacated the premises and is leasing a home in the same area, however he struggles to pay the rental.

¹ Caselines 046

4. The first applicant confirmed that he is unable to pay the security for costs as per the notice, which was served on him in April 2023. In response to the court's question, as to whether he could dispute the amount, he proffered that the costs should be in the region of R40 000, despite this being his fifteenth appearance in court in this dispute.

5. Advocate Muza agreed with the court that the dispute is no longer extant before this court.

6. Section 17(1) provides:

Leave to appeal may only be given where the judge or judges concerned are of the opinion that –

(a) ...

(b) the decision sought on appeal does not fall within the ambit of section 16(2) (a)

and

s16(2) (a)(i) of the Superior Courts Act 10 of 2013, provides:

“When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.”

7. The applicants have complied with the order and therefor there is no dispute between the parties on the issue.

8. The applicants will not afford to file security as per the notice and this is a critical requirement for any matter that is taken on appeal.

9. This application for leave fails and is refused.

Accordingly, I make the following order:

1. The application for leave is dismissed.
2. The applicants shall pay the respondents costs, on a party to party scale.

MAHOMED AJ

Date of hearing: 3 May 2023

Date of judgment: 4 May 2023

Appearances:

For Applicant: Mr Stanley Khuta Khwela

Self-represented

For Respondent: Adv Muza

Instructed by Nandi Bulabula Inc

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