

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

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

Date: **3rd August 2023** Signature:

CASE NO: 871/2018

DATE: 3RD AUGUST 2023

In the matter between:

EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

SIHADI, PASTOR MASHUDU ELISAH

First Respondent

THE LIVING GOSPEL WORLD MISSION

Second Respondent

Neutral Citation: *Ekurhuleni Metropolitan Municipality v Sihadi and Another*
(871/2018) [2023] ZAGPJHC --- (03 August 2023)

Coram: Adams J

Heard: 31 July 2023

Delivered: 03 August 2023 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 14:30 on 03 August 2023.

Summary: Opposed eviction application – unlawful occupation of municipal land – occupied, according to the respondents, in terms of an arrangement with

the City – defence not sustainable – Alienation of Land Act – factual dispute relating to grounds of opposition – respondent's version rejected – application for the eviction from non-residential premises granted.

ORDER

- (1) The occupation by the first and the second respondents ('the respondents') of Erf 9179, Tokoza Township, Registration Division IR, Gauteng Province, held by Deed of Transfer number: T41846/2003, situate at 9179 Khumalo Street, Tokoza ('the applicant's property') be and is hereby declared to be unlawful;
- (2) The respondents' erection of a structure and/or buildings on the applicant's property for purposes of worship be and is hereby declared to be unlawful;
- (3) The respondents' use of the applicant's property and the improvements and building structures thereon as a place of religious worship, be and is hereby declared to be unlawful;
- (4) The respondents and all other occupiers of the applicant's property be and are hereby evicted from the said property, and they are ordered and directed to vacate the applicant's property within sixty days from the date of service of this order on them at the said property;
- (5) In the event that the respondents and the other occupiers of the applicant's property not vacating the applicant's property within sixty days from date of service of this order, the Sheriff of this Court or his lawfully appointed deputy be and is hereby authorized and directed to forthwith evict the respondents and all other occupiers from the said property.
- (6) The respondents be and are hereby ordered to dismantle, remove and demolish any structures erected on the applicant's property for the purpose of worship or any other religious purpose;

- (7) Should the respondents fail to comply with the orders above, in particular prayers 4 and 6 above, within sixty days after service of the order at the property;
- (a) The sheriff or his deputy of this Court be and is hereby authorised to give effect to and to enforce the above orders, in particular order numbers 4 and 5;
- (b) The respondents shall be liable for payment of the sheriff's reasonable taxed fees and disbursements, incurred for purposes of enforcing this order, in particular order numbers 4 and 5 above, which amounts shall become due, owing and payable within ten days after presentation to the respondents of a taxed account in respect of the sheriff's said fees and disbursements;
- (8) The respondents be and are hereby interdicted and restrained from using the applicant's property as a place of worship in contravention of the applicant's Town Planning Scheme and the related regulations;
- (9) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this application.

JUDGMENT

Adams J:

[1]. The first respondent is the leader and the Pastor of the second respondent, which is a church organisation and which occupies and conducts its church services and other religious activities from Erf 9179, Tokoza Township, Registration Division IR, Gauteng Province, held by Deed of Transfer number: T41846/2003, situate at 9179 Khumalo Street, Tokoza ('the applicant's property'). The said property is owned by the applicant, a metropolitan municipality, and same has been occupied by the first and the second respondents ('the respondents') from about 2013. The applicant alleges that the respondents' occupation of the said property is unlawful.

[2]. The respondents deny that they are in unlawful occupation of the applicant's property and they explain that their occupation of the said property resulted from a prior agreement in terms of which they had purchased from the applicant immovable property in the area. They were however prevented by the community from occupying that piece of land, in respect of which they had paid to the applicant the agreed purchase price of R25 000, and the applicant, by way of a compromise, confirmed with the respondents that they could proceed to occupy the applicant's property and in due course acquire ownership thereof. All of this happened, so the case on behalf of the respondents goes, during 2013. The said property was a vacant piece of land and the respondents, on the understanding that they would in due course acquire ownership of same, started to develop it by firstly building a perimeter brick wall at a cost of about R100 000.

[3]. The foregoing, so the respondents aver, is confirmed by an agreement which they concluded with one of the Ward Councillor of the applicant, in terms of which the municipality, through its functionaries, had allotted the land to the first and the second respondents.

[4]. In this opposed application, the applicant applies *inter alia* for an order evicting the first and the second respondents from the said property. The respondents, whilst they do not dispute the applicant's ownership of the property, do however oppose the application on the basis that they have an agreement with the municipality to acquire ownership of the property in question. It is on this basis and on the understanding that they have acquired ownership of the said property from the applicant, that the respondents claim to lawfully occupy the said premises.

[5]. At first blush and *ex facie*, the applicant is entitled to the relief claimed in this eviction application. And I say so for the simple reason that the respondents' case falls flat at the very first hurdle, that being the Alienation of Land Act¹, s 2(1) of which provides as follows:

¹ Alienation of Land Act, Act 68 of 1981;

‘2 Formalities in respect of alienation of land

(1) 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’.

[6]. The point is simply that, in the absence of a written Deed of Sale for the purchase of the applicant’s property, there is no valid and enforceable agreement on the basis of which the respondents can claim a right to acquire ownership of the property and consequently a right to lawful occupation. Therefore, in my view, the respondents are in unlawful occupation of the applicant’s property, which means that the applicants are entitled to an eviction order.

[7]. The applicant also claims that the respondents are contravening its Town Planning Scheme and the related regulations in that it uses the property for purposes of religious worship, when same is in fact zoned for Industrial use. The respondents dispute this claim on the basis that they started occupying the property and commenced using same as a church before the Town Planning Scheme 2014 came into operation.

[8]. The respondents’ arguments in that regard are misguided. There are two difficulties with the respondents’ contentions. Firstly, the contravention is occurring presently and the 2014 Town Planning Scheme therefore finds application. Secondly, the Town Planning Scheme, which preceded the 2014 Scheme, contained an identical zoning provision to the present provision in relation to the property in question.

[9]. That ground of opposition therefore falls to be rejected.

[10]. Accordingly, the relief sought by the applicant should be granted.

Costs

[11]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*².

² *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[12]. I can think of no reason why I should deviate from this general rule.

[13]. I therefore intend awarding costs against the first and the second respondents in favour of the applicant.

Order

[14]. Accordingly, I make the following order: -

- (1) The occupation by the first and the second respondents ('the respondents') of Erf 9179, Tokoza Township, Registration Division IR, Gauteng Province, held by Deed of Transfer number: T41846/2003, situate at 9179 Khumalo Street, Tokoza ('the applicant's property') be and is hereby declared to be unlawful;
- (2) The respondents' erection of a structure and/or buildings on the applicant's property for purposes of worship be and is hereby declared to be unlawful;
- (3) The respondents' use of the applicant's property and the improvements and building structures thereon as a place of religious worship, be and is hereby declared to be unlawful;
- (4) The respondents and all other occupiers of the applicant's property be and are hereby evicted from the said property, and they are ordered and directed to vacate the applicant's property within sixty days from the date of service of this order on them at the said property;
- (5) In the event that the respondents and the other occupiers of the applicant's property not vacating the applicant's property within sixty days from date of service of this order, the Sheriff of this Court or his lawfully appointed deputy be and is hereby authorized and directed to forthwith evict the respondents and all other occupiers from the said property.
- (6) The respondents be and are hereby ordered to dismantle, remove and demolish any structures erected on the applicant's property for the purpose of worship or any other religious purpose;

- (7) Should the respondents fail to comply with the orders above, in particular prayers 4 and 6 above, within sixty days after service of the order at the property;
- (a) The sheriff or his deputy of this Court be and is hereby authorised to give effect to and to enforce the above orders, in particular order numbers 4 and 5;
- (b) The respondents shall be liable for payment of the sheriff's reasonable taxed fees and disbursements, incurred for purposes of enforcing this order, in particular order numbers 4 and 5 above, which amounts shall become due, owing and payable within ten days after presentation to the respondents of a taxed account in respect of the sheriff's said fees and disbursements;
- (8) The respondents be and are hereby interdicted and restrained from using the applicant's property as a place of worship in contravention of the applicant's Town Planning Scheme and the related regulations;
- (9) The first and second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this application.

L R ADAMS
Judge of the High Court of South Africa
Gauteng Division, Johannesburg

HEARD ON:	31 st July 2023
JUDGMENT DATE:	3 rd August 2023 – judgment handed down electronically.
FOR THE APPLICANT:	Advocate T Mosikili
INSTRUCTED BY:	Majang Incorporate Attorneys, Fourways, Randburg
FOR THE FIRST AND THE SECOND RESPONDENTS:	Attorney Rambau
INSTRUCTED BY:	Langa Rambau Incorporated, Kempton Park