

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

- (1) NOT REPORTABLE**
- (2) NOT OF INTEREST TO OTHER JUDGES**
- (3) REVISED.**

**CASE NO: 65596/17  
4/5/2018**

In the matter between:

**FIRST RAND BANK LIMITED**

(Reg No. 1929/001225/06)

**Applicant**

and

**ADRIAAN RUDOLPH FONDSE**

(ID. [...])

**1<sup>ST</sup> Respondent**

**CECILIA GERTRUIDA FONDSE**

(ID. [...])

**2<sup>ND</sup> Respondent**

**ALL THE OTHER UNLAWFUL OCCUPIERS RESIDING  
ON and/or OCCUPYING - ERF 743, MUCKLENEUK  
EXTENSION 3 TOWNSHIP, also known as 336  
BOURKE STREET, PRETORIA, GAUTENG**

**3<sup>RD</sup> Respondent**

**THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**4<sup>TH</sup> Respondent**

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**JUDGMENT**

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1. The applicant has approached this Court for the following orders:
  - (1) *That the first, second and third respondents (hereinafter referred to as "the respondents"? be ordered to vacate the property known as ERF 743 MUCKLENEUK EXT 3, TOWNSHIP, also known as 336 BOURKE STREET, MUCKLENEUK EXT 3, PRIETORIA, GAUTENG, (hereinafter referred to as "the property"? within 30 days from date hereof,·*
  - (2) *That should the respondents fail to comply with the order referred to in paragraph 1 above, the Sheriff of this Court be authorised and/or mandated to take all necessary steps to execute this order and to evict the respondents from the property and, if necessary, to obtain the assistance of the South African Police Service to assist him/her in this regard;*
  - (3) *That the respondents be ordered to pay the costs of this application jointly and severally, the one to pay the others to be absolved.*
2. The respondents are opposing the application and they have filed an answering affidavit. The respondents have raised 2 points *in limine* in the answering affidavit. The first point is that, the applicant does not have a locus standi to institute these proceedings and the second point raised is that the applicant has failed to comply with section 4(2) of Prevention of Illegal Eviction Act and Unlawful Occupation of Land Act 19 of 1998 ("PIE Act").
3. At the commencement of the hearing of the matter, the parties were in agreement that the points in *limine* be dealt with first. With regard to non-compliance with section 4(2) of the PIE, the respondents abandoned that point as they were satisfied that service in terms of this section was indeed effected.
4. The only point in *limine* which require a determination is whether or not the applicant possess the requisite locus standi to launch the current application. The basis this point emanates from is the common cause fact

that at the time when the application was launched the applicant was not the registered owner of the property. The registered owner was at the relevant time Rosaru Trust.

5. On or about 15 of August 2017 the property was sold in execution to Firststrand Finance Company Limited ("FFC Co"). On 23 November 2017 the property was registered in the name of the applicant. It is therefore common cause that until 23 November 2017 the applicant was not the registered owner of the property.
6. The applicant launched this application on 21 August 2017 six days after the sale in execution of the property on the basis that the first, second and third respondents are unlawful occupiers of the property and as such they should be evicted from the property.
7. For purposes of determining this point *in limine* the alleged unlawful occupation of the property by the respondents must be considered with regard to whether or not the applicant was the registered owner of the property when the application was launched or person in charge as contemplated in section 1 of PIE Act.
8. In argument the applicant sought to demonstrate by reference to correspondence and conditions of sale that the applicant was in charge of the property. In my view neither the conditions of sale nor the correspondence are of assistance to the applicant. The letter of 21 August 2017 properly construed was a letter of demand to the respondents to vacate the property. There is nothing in this letter and the conditions of sale which demonstrates that the applicant was in charge of the property at the relevant time. In fact on the papers as they stand the persons who have been in occupation and in charge of the property are the respondents. With regard to the conditions of the sale I should mention that on the papers it appears that the conditions of sale were concluded with the FFC Co and not with the applicant.
9. It seems to me that the Supreme Court of Appeal ("SCA") has authoritatively resolved the issue of when the previous owner of immovable property who remains in occupation becomes an unlawful

occupier in ***Ndlovu v Ngcobo 2003(1) SA 113 (SCA), para 8.*** In essence what the SCA found was that the previous owner becomes an unlawful occupier upon transfer of the property to a purchaser. In the present matter the applicant was neither the owner nor a person in charge of the property at the relevant time.

10. Confronted with an objective fact of the applicant not being the owner at the relevant time it attached to its replying affidavit proof of registration of the property in the name of the applicant which occurred on 23 November 2017, almost three months since the application was launched. Whilst it is ordinarily not permissible to make out a case in reply what compound the applicant's problem in this instance is that the registration took place long after the application was launched. Such a defect is one that is not capable of being cured in reply. The effect of this is that the applicant lacked the requisite legal standing to launch this application.
11. It follows that the point in *limine* raised is a good one, and should be upheld. In the result, I make the following order:
  - 11.1 The applicant lacked the requisite locus standi to launch this application at the relevant time;
  - 11.2 The application is dismissed;
  - 11.3 The applicant is ordered to pay the respondents' costs.

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**MMP MOALANA- MAYISELA**  
**ACTING JUDGE OF THE HIGH COURT**  
**NORTH GAUTENG DIVISION, PRETORIA**

Date of hearing: 30 April 2018

Date of Judgement: 4 May 2018

Appearances:

Counsel for the Applicant: Adv HW Botes

Attorney for the Applicant: Rorich, Walmarans & Luderitz Inc.

Counsel for the Respondents: Adv JA Van Wyk

Attorney for the Respondents: Walter Neidinger & Associates