



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

CASE NO: 11161/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 30 January 2023

In the matter between:

**THOMAS NTSOANE
THONTS PROPERTIES**

**FIRST APPLICANT
SECOND APPLICANT**

And

**HLEKANI DUDU MUKANSI
RHULANI YVONNE MUKANSI
HLEKANI MUKANSI N.O.
RHULANI MUKANSI N.O.
CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT**

JUDGMENT

ALLY AJ

INTRODUCTION

[1] This is an opposed application for the eviction of the First and Second Respondents and any person holding or occupying through them, from the property described as 1638 Honiton Drive Dainfern Golf Estate, Extension 11, Randburg, hereinafter referred to as 'the property'.

[2] The Applicants purchased 'the property' at an auction which was arranged by the Sheriff of this Court in accordance with a Court Order¹ dated 11 May 2020.

[3] Subsequent to the said purchase, 'the property' was registered in the name of the Second Applicant².

[4] The First Applicant alleges that he then tried negotiating with the First and Second Respondent to vacate 'the property' without success. He alleges that he even went further and offered them alternative accommodation to move into whilst they searched for a place of their own.

[5] He alleges that they are being prejudiced by the unlawful occupation of 'the property' by the First and Second Respondents. He alleges that they are in unlawful

¹ Caselines: 001-47 – 001-48; Annexure "TN 1.1"

² Caselines: 001-65 – 001-71; Annexure "TN3"

occupation for the reason that the Second Applicant is the owner 'the property' as evidenced by the title deed³ and that accordingly, the First to the Fourth Respondents should be evicted.

[6] The Applicants allege that a condition of the sale was that the Applicants are to take measures at their own cost to evict any person occupying 'the property' and vacant occupation has not been guaranteed.

[7] The prejudice mentioned above lies in the fact, as alleged by the Applicants, that the Applicants have been issued with invoices in respect of the levies to be paid although they have not occupied 'the property'.

[8] The First to Fourth Respondents on the other hand allege that they are in the process of applying for a rescission of judgment in the case wherein the Court granted the Orders that resulted in the Applicants obtaining ownership of 'the property'.

[9] The Applicants' response to the above allegation is that the Court should not take these allegations into consideration, firstly, because the First to Fourth Respondents have not apprised this Court of the rescission application date nor

³ supra

have they shown or requested from the Court to file supplementary papers to deal with the rescission application and thereby placing such issue before the Court.

[10] It should be noted that the parties have been litigating against each other for some time and whilst the First and Respondent have obtained spoliation orders against the Applicants such Orders have merely confirmed the status quo until such time this eviction application has been finalised.

[11] The important question remains, however, as to whether taking into account the allegations in relation to impropriety regarding the sale of 'the property' this Court is enjoined to consider this as a defence to the eviction application?

[12] In my view, the principles of the interests of justice which inculcate the principle of 'just and equitable', would justify this Court granting interim relief to the Applicant whilst allowing for the First to Fourth Respondent a prescribed time to file the necessary papers dealing with rescission failing which the interim order would be made final. The interests of justice, in this context refer to the ventilation of justiciable disputes before a Court of law as well as applying the test of just and equitable relief in the circumstances of eviction from ones primary residence.

[13] A Court, however, in circumstances such as the present must weigh up and balance the interests of both parties. In my view, the Order which I propose hereunder, takes into account this principle.

[14] This Court takes this position, the granting of an interim order rather than a final order, for the reason further that 'the property' is the primary residence of the First and Second Respondent.

[15] Any prejudice suffered by the Applicants in granting an interim order is mitigated by placing the First to Fourth Respondents on terms with regard to the rescission application.

[16] The First to Fourth Respondents went to great lengths to explain that the relief sought by the Applicants has been sought on an urgent basis and on that ground alone should be dismissed. It is important for this Court, whilst granting interim relief, to deal with this point.

[17] In response to this point, the Applicants have submitted that the application has actually been brought in terms of Section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.⁴

⁴ 19 of 1998

[18] In my view, the point raised by the First to Fourth Respondents can be dismissed outright for the reason that the First to Fourth Respondents were given sufficient time to deal with application and the raising of this issue, in my view, is a red herring and falls to be dismissed.

[19] Relief, whether interim or not in circumstances of an eviction application cannot be granted without the Court finding that the First to Fourth Respondents are in unlawful occupation, albeit in the circumstances of this particular case, on a *prima facie* basis.

[20] In respect of costs, the Applicants have been granted interim relief and have therefore, in my view, been successful. As a result, I see no reason why the norm should not be applied, that is that the successful party is entitled to their costs.

[21] Accordingly and for the reasons set out above, the following Order will issue;

- a). The First to the Fourth Respondents are hereby evicted from the property described as 1638 Honiton Drive, Dainfern Golf Estate, Extension 11, Randburg;
- b). The Order in paragraph (a) is suspended for a period of 30 [thirty] days from the date of this order pending the filing of a rescission application by the First to Fourth Respondents in Case No 25860/2019;

- c). Should the First to Fourth Respondents fail to comply with the order in paragraph (b), the order in in paragraph (a) shall become final and the First to Fourth Respondents shall vacate the property mentioned in paragraph (a) within 30 days of the expiry of the period mentioned in paragraph (b).
- d). The First to Fourth Respondents shall the pay the costs of this application jointly and severally, the one paying the other to be absolved.



ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **30 January 2023**.

Date of virtual hearing: 27 October 2022

Date of judgment: 23 January 2023

Appearances:

Attorneys for the Applicant:

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