



**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, DURBAN**

Case no: **3792/22**

In the matter between:

**KATIBA 2012 GENERAL TRADING (PTY) LTD**

**APPLICANT**

and

**ASWELASH HADGU GEBRU**

**FIRST**

**RESPONDENT**

**OTHER UNLAWFUL OCCUPIERS OF PRTION 1**

**OF**

**ERF**

**10880**

**SECOND RESPONDENT OTHER UNLAWFUL OCCUPIERS OF  
REMAIDER**

**OF ERF 10880**

**THIRD**

**RESPONDENT**

**OTHER UNLAWFUL OCCUPIERS OF REMAIDER**

**OF ERF 10881**

**FORTH**

**RESPONDENT**

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**Coram:** Hlatshwayo AJ

**Heard:** 3 October 2023

**Delivered:** 3 October 2023

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**ORDER**

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The following order is granted:

The First Respondents and all other unknown persons occupying under or through them are hereby evicted and ordered to vacate the Applicant's property.

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## JUDGMENT

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### **Hlatshwayo AJ:**

[1] In this matter the Applicant seeks an eviction of the First Respondents and all other unknown persons occupying through him the properties situated at 120, 122 Maud Mafusi Street and 67 College lane in Durban. The history of this matter reveal that the first respondent had entered into a lease agreement with a company known as Double Stars Trading (PTY) Ltd which I shall refer to as Double stars in July 2016. The property leased out is situated at Maud Mafusi Street. Sometime in November 2020 Double stars and the Applicant entered into a purchase and sale of the above mentioned properties which culminated to the transfer of these properties.

[2] Pursuant to the sale the Applicant sought to take vacant occupation but was frustrated by the continued occupation of the property by the respondents and it appeared that there were more people in occupation of the property who were utilising it for both business and residential purposes. He then sought the assistance of Double Stars and it will suffice to state that Double Stars cancelled the lease agreement with First Respondent and also relied on the order of this court effectively ordering the evection the First Respondent. That did not end the Applicants' frustrations and eventually the latter served via the Sheriff a notice to the Respondent and all other occupiers to vacate the premises on the 24<sup>Th</sup> February 2022.

[3] In line with the provisions of Section 4 of PIE<sup>1</sup> the Applicant subsequently commenced these proceedings. This application was resisted by the First Respondent on numerous grounds. It bears mentioning that there is no opposition by the Second to Fourth Respondents or anyone occupying the property through the Respondents. Before this court the First Respondent took issue with the Applicants' misjoinder of EThekweni municipality who bears a constitutional obligation to provide housing.

[4] It must be stated that the Applicant subsequently filed an application to join EThekweni Municipality as a respondent.

[5] The main opposition by the First Respondent is that he is in lawful occupation of the property after having renewed the lease agreement with the previous owners of the property. He submitted the renewal letter as part of his answering affidavit as annexure "MPL3". The said renewal is however at odds with the order of this court dated 22 October 2018 which was granted pursuant the allegations that he did not only breached the lease agreement but also the conditions of the title deeds by conducting a panel beating and spray painting business contrary to the zoning wand without consent from the municipality.

[6] It does not end there, from the documentary evidence presented to this court his lease was further cancelled on the 25<sup>Th</sup> January 2021 prior to his purported letter of renewal dated March 2021. Above all the veracity of his renewal letter is highly questionable taking into account that no person acknowledged receipt thereof. Clearly there is no substance that that the lease agreement in question was renewed and the first respondent had no right to occupy the property in question at least when these proceedings were instituted. This court must thus find that he is in unlawful occupation.

[7] With no other opposition to the relief sought this court must find in favour of the Applicant that all other the respondents are in unlawful occupation of the premises. The Applicant has indeed complied with the requirements as set out in

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<sup>1</sup> Prevention of illegal eviction from an unlawful occupation of land Act 19 of 1998

section 4 of Pie. In particular he has complied with the procedural injunction as set out in *Ubunye*<sup>2</sup> and further elucidated in *Ompad*<sup>3</sup> by causing the Section 4 (2) notice to be served on all the Respondents and those occupy the premises through them. I am satisfied that the Applicant is entitled to the relief sought.

[8] It must be mentioned that the Respondents' legal representative at the eleventh hour has filed a notice of withdrawal of his opposition. The reason cited is that the First Respondent is reportedly deceased. This court has not been favoured with a death certificate and the said withdrawal was very late. Mr Houston however submitted that the Applicant seeks no cost order as the First Respondent is deceased.

In the result the following order is made:

- 1.The First Respondents and all other unknown persons occupying under or through them are hereby evicted and ordered to vacate the property situated at 120 Maud Mafusi Street, Durban.
2. The First Respondents and all other unknown persons occupying under or through them are hereby evicted and ordered to vacate the property more fully described as the Remainder of Erf 10880,120 Maud Mafusi Street, Durban.
3. The First Respondents and all other unknown persons occupying under or through them are hereby evicted and ordered to vacate the property more fully described as the Remainder of Erf 10881 120 Maud Mafusi Street, Durban.
- 4.The Respondents are ordered to vacate the above mentioned premises on or before the 8<sup>th</sup> October 2023 failing which the Sheriff shall evict them after the 13<sup>th</sup> October 2023.
- 5.There is no order as to costs.

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<sup>2</sup> *Ubunye Co-operative Housing (Association Incorporated under Section 21) v Mbele and Others* 2005 JDR 1055 (N) R

<sup>3</sup> *Occupiers of Ompad Farm v Green Horizon Farm(Pty)Ltd (AR468/2013) [2014]*

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**Hlatshwayo A J**

**APPEARANCES**

Counsel for the appellant : BC Houston  
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For the First Respondent : Dawood Patel  
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Date of argument: : 3 October 2023

Date of Judgment : 3 October 2023