Reportable:	**NO**
Circulate to Judges:	**NO**
Circulate to Magistrates:	**NO**
Circulate to Regional Magistrates	**NO**

IN THE HIGH COURT OF SOUTH AFRICA
NORTHWEST DIVISION, MAHIKENG

CASE NUMBER: UM07/2023

In the matter between: -

JANAWI (PTY) LTD Applicant

and

ALL UNLAWFUL OCCUPIERS OF PORTION 114 OF THE FARM STILFONTEIN REGISTRATION DIVISION IP, NORTH WEST 1st Respondent

STATION COMMANDER SOUTH AFRICAN POLICE SERVICE, STILFONTEIN 2nd Respondent

MINISTER OF POLICE 3rd Respondent

CITY OF MATLOSANA 4th Respondent

CORAM: MFENYANA J

This judgment was handed down electronically by circulation to the parties' representatives *via* email. The date for hand-down is deemed to be 10h00 on **28 March 2024.**

ORDER

The application is dismissed with costs.

JUDGMENT

MFENYANA J

[1] This is an application in which the applicant, Janawi (Pty) Ltd seeks an order interdicting and mandating the second and third respondents to remove the first respondent from a property known as Portion 114 of the Farm Stilfontein 408, Registration Division IP, North West (the property).

[2] In the alternative, and in the event of the second and third

respondents' failure to remove the first respondent, the applicant seeks an order that the Sheriff of this Court be authorised to remove the first respondent from the property.

[3] The applicant further seeks an order that the first respondent be interdicted from entering the property.

[4] The first respondent is the only party that opposes the application.

[5] The origin of the dispute between the parties lies in an agreement of sale in terms of which the applicant purchased the property from Buffelsfontein Gold Mines (Pty) Ltd (previous owner). While this is not specified in the sale agreement, it is understood from the versions of the applicant and first respondent that the property consists of fifteen or sixteen residential units. The property was subsequently registered in the name of the applicant on 6 December 2022.

[6] The applicant approached this Court on an urgent basis. When the application was heard on 26 January 2023, there was representation on behalf of the first, second and third respondents. A draft order was handed up by agreement

between the parties, to have the matter postponed to 23 March 2023 with a view for the parties to engage in settlement negotiations.

[7] In terms of the draft order, the individuals who are part of the first respondent were to enter into lease agreements with the applicant within a period of thirty days and provide the applicant with a formal offer to purchase the property. Further agreement related to the future conduct of the first respondent, with the parties further agreeing that the applicant would not be harassed or denied access to the property by the first respondent coupled with an acknowledgement that this had never been the case.

[8] It appears from the papers that at the time of purchasing the property, all the units were occupied. The applicant commenced with renovations on the property, in order to lease out the units and generate income, as the property was in a state of disrepair. According to the applicant, it simultaneously approached the occupiers of all the units individually, advising them of the change of ownership and handed out new lease agreements. Only a few of the units

concluded lease agreements with the applicant and the occupants of the remaining units refused to do so.

[9] The deponent to the founding affidavit, Mr Fredrick William Peterson (Peterson) asserts that while attending at the premises on 12 January 2023 in order to install a gate motor, one of the unlawful occupiers threatened him with violence and ordered him to leave. He obliged. He further states that over the next couple of days through to 16 January 2023, a series of events ensued, where members of the community attended at the property, stripped the property, assaulted employees of the applicant who were residing on the property and forced them out, effectively taking over all the units on the property.

[10] According to Peterson, despite seeking assistance from the police, they have flatly refused to assist, despite being provided with proof of ownership of the property as they demanded.

[11] When the activities continued to the next day, Peterson demanded that a case docket be opened, which was ultimately done. He contends that the police however refused

to take any further steps to remove the occupiers.

[12] It is at that stage that the applicant enlisted the services of its attorneys. However, during the period between 18 to 23 January 2023, the applicant commenced negotiations with the legal representative of the first respondent, after Peterson was approached by a member of the African National Congress (ANC) who proposed that the applicant should sell the property to the first respondent. The proposed purchase price was an amount of R1 200 000.00. which was to be paid over a period of twelve months. Presumably, this informed the draft order agreed to by the parties on 26 January 2023. This effectively forestalled the urgency of the matter.

[13] On 23 March 2023 the parties agreed to a further postponement of the matter to 23 October 2023 on the same terms, as settlement negotiations had not been finalised. With the second postponement, any suggestion that the matter was urgent cannot be sustained. It had been compromised if not completely evaporated by the parties themselves.

[14] The matter could not proceed on 23 October 2023 as it transpired that the date did not fall on an opposed motion court day. The matter was re- enrolled on 23 November 2023.

[15] Essentially, the basis for the first respondent's opposition is that the dispute between the parties is a rental dispute. In the answering affidavit filed on behalf of the first respondent, the deponent, Mr Thabiso Matlapeng (Matlapeng) states that they (first respondent) "were not convinced that Mr Frederick W. Peterson was the owner of the property or represented the owner of the property as he had been claiming". This, notwithstanding the fact that, by their own admission, the unlawful occupiers were informed by the previous owner that the property had been sold, and that a new owner would take over the running of the property.

[16] According to Matlapeng, their suspicion was fuelled by the fact that Peterson failed to provide proof of ownership when they requested it, and only provided it in January 2023 when the parties held a meeting. He stated that they had been warned by the previous owner to be careful of impostors.

They believed Peterson to be such.

[17] Matlapeng is also one of the occupiers of the property and is therefore part of the first respondent. He contends that it was never their intention to refuse not to pay rent or to deal with the 'true owners' of the property. He further affirms that it is for that reason that after Peterson provided proof of ownership, negotiations commenced, and an agreement was reached for the first respondent to purchase the property. He relies on the Minutes of a meeting held with the applicant at which the parties discussed and seemingly agreed that the first respondent would purchase the property from the applicant. It is further recorded in the Minutes that the legal representatives of the parties would draw up a formal offer.

[18] It is further the contention of the first respondent that as the said meeting and further meetings between the parties' legal representatives took place prior to the hearing of the application, the first respondent had presumed that the dispute was resolved by the parties' agreement to purchase the property. It was only two days before the court date that their attorneys informed them that the applicants were proceeding with the application. It is on that basis that they

seek condonation for the late filing of the answering affidavit.

[19] Without much ado, it seems to me that it would be prudent to condone the late filing of the first respondent's answering affidavit and allow for the full ventilation of the matter. It is so that the delay in itself was not inordinate, and that the first respondent has in this explanation adequately accounted for the period of delay.

[20] In *limine*, the first respondent avers that Peterson lacks *locus standi* and authority to bring the application on behalf of the applicant.

[21] It seems to me that this argument is borne by the first respondent's conflation of the issue of *locus standi* and authority. The principles are simple. In summary, they are that a company has the *locus standi* to institute legal proceedings in its own name. A deponent to an affidavit does not require to be authorised to depose to an affidavit. A party who seeks to challenge the authority of an attorney to institute legal proceedings, must do so in terms of Rule 7 of the Uniform Rules of Court.

[22] Courts have over the years pronounced on these issues. On the issue of authority, more recently, in *Masako v Masako and Another (Masako)*[1], Mabindla-Boqwana JA (with Dambuza and Schippers JJA concurring) stated at paragraph 11:

> "… It stands to reason that a deponent to an affidavit is a witness who states under oath facts that lie within (his) personal knowledge. (He) swears or affirms to the truthfulness of such statements. (He) is no different from a witness who testifies orally, on oath or affirmation, regarding events within (his) knowledge. Thus, when … (Peterson) deposed to the founding affidavit, (he) needed no authorisation... ."

[23] The learned Judge of Appeal cited with approval, *Ganes and Another v Telecom Namibia Ltd*[2] where the court had previously in similar vein, held that a deponent to an affidavit in motion proceedings does not need authorisation to do so. There the Supreme Court of Appeal (SCA) had the following to say:

> ". . . it is irrelevant whether … had been authorised to depose to the founding affidavit. The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution

[1] (Case No 724/20) [2021] ZASCA 168 (3 December 2021).

[2] 2004 (3) SA 615 (SCA); (2004) 25 ILJ 995 (SCA); [2004] 2 All SA 609 (SCA) para 19.

thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent. In an affidavit filed together with the notice of motion a Mr… stated that he was a director in the firm of attorneys acting on behalf of the respondent and that such firm of attorneys was duly appointed to represent the respondent. That statement has not been challenged by the appellants. It must, therefore, be accepted that the institution of the proceedings was duly authorised. In any event, Rule 7 provides a procedure to be followed by a respondent who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The appellants did not avail themselves of the procedure so provided. (See Eskom v Soweto City Council 1992 (2) SA 703 (W) at 705C - J.)"

[24] I echo the sentiments expressed in *Masako* that this provides a complete answer to the issue raised by the first respondent. I do so fully aware that the authority challenged by the first respondent is that of Peterson, and not the attorney who represented the applicant. I, in any event did not get the sense that this was seriously challenged by the first respondent, which could easily be remedied by the applicant convening a board meeting and ratifying the actions of its sole director, *ex post facto*.

[25] On the merits, the first respondent denies that it is in unlawful occupation of the property. It contends that its occupancy,

and the occupancy of all the individuals residing at the property was acquired through the previous owner who recognised them as lawful occupiers as they had occupied the property for many years. Matlapeng does not specify how many years they have been occupying the property, and further avers that even the applicant knows them as they have been interacting with Peterson since December 2022. The first respondent however admits that they were informed by the previous owner that the property had been sold to a private owner.

[26] Notably, Matlapeng denies that the property is dilapidated or that any of the people forming part of the first respondent threatened Peterson or his employees, or that the property was stripped by the first respondent. In this regard he contends that it is he who has been residing at House No. 2, all along, and not the applicant's employees as alleged by the applicant. He further denies that the applicant's employees were assaulted and evicted from the property by members associated with the first respondent. He further denies the allegations by Peterson that members of the community members moved into the property on 16 January

2023, save for the occupants who had all along been staying on the property.

[27] Pertaining to the granting of access to the applicant, the first respondent avers that the applicant has never been denied access to the property. The veracity of this issue can be gleaned from the draft order agreed to by the parties on 26 January 2023 where the following is recorded:

> *"…5. The 1st Respondent has not harassed the Applicant in the past and the 1st Respondent is not to harass the Applicant, its agents or employees and any tenants at the property in future;*
>
> *6. The 1st Respondent has not denied access in the past and the 1st Respondent is not to deny the Applicant, its agents or employees and any tenants at the property in future… ."*

[28] Given the above understanding between the parties, nothing further need be said in this regard. Lastly, the first respondent avers that the applicant seeks to evict the occupants of the property through the back door.

[29] As regards urgency, the first respondent denies the applicant's assertions that the property has been hijacked and that the applicant has no access to it. The first

respondent further states that the fact that the first respondent entered into negotiations with the applicant to purchase the property, a fact which the first respondent avers the applicant has failed to disclose to this Court, belies this allegation. I have already stated that the applicant stated that negotiations were initiated by the ANC person who convened a meeting between the applicant and the first respondent.

[30] The first respondent thus avers that there is no urgency established and no prejudice to be suffered by the applicant, as opposed to the prejudice families of the first respondent would suffer were the application to be granted in the applicant's favour. I have already found that if urgency were found to have existed, it was obviated by the parties' agreement to postpone the matter to be heard nine months later (in October 2023).

[31] What lies for determination before this Court is whether the applicant is entitled to have the first respondent removed and interdicting them from entering the property. At the outset it needs to be said that the characterization of the application as an interdict does not detract from the fact that the applicant seeks to evict the first applicant. That determination

depends on the nature of the first respondents' occupancy, and whether they are unlawful occupiers as envisaged in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act)[3]. The relevant provision is section 4 which states:

Eviction of unlawful occupiers

4.(1) Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of land for the eviction of an unlawful occupier.

(2) At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.

[32] In addition, the PIE Act defines an unlawful occupier as,

> "a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land, excluding a person who is an occupier in terms of the Extension of Security of Tenure Act, 1997, and excluding a person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996)."

[3] Act 19 of 1998.

[33] What is apparent from the relief sought by the applicant, is that the applicant seeks to remove the first respondent from the property and has solicited the assistance of the second and third respondents, against whom it also seeks an order mandating them to evict the first respondent. A removal of a person from a property is an eviction from the said property. It is generally accepted that an eviction has a potential to injure the dignity of the persons concerned. Sections 4 and 5 set out the procedure to be followed in evictions which fall under the ambit of the PIE Act.

[34] It needs to be said that the applicant's averment that the units were not occupied when it took transfer of the property is not supported by the available evidence and is in contradiction to its earlier assertion. Peterson in his affidavit stated that he went to each of the units and individually handed up new lease agreements, informing the occupants that the property was under new ownership. It does not lie in his mouth to also aver that the units were not occupied. In addition, the very sale agreement relied on by the applicant records *inter alia* under "Disclosures":

"19.1.2 The Property is in an advanced state of disrepair;

19.1.3 Vacant occupation of the property is not guaranteed by the Seller;

19.1.4 More than forty (40) persons are resident on the property at the time of the signing of this Agreement;

(my emphasis).

19.1.5 Seven (7) occupants have valid rental contracts, all of which can be terminated by the owner on 30 days' notice… ."

[35] The above also calls into question the allegation made by the applicant that on 16 January 2023 a group of community members forced their way, assaulted employees, and took over the property.

[36] Amidst all the finger-pointing and disputes between the parties regarding the true state of affairs, what is clear is that the first respondent is in occupation of the property. For an eviction in terms of PIE, it does not matter that the occupants are illegal occupants. It also does not matter that the first respondent's occupation was at some stage lawful and only became lawful later.[4]

[4] See in this regard: *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA).

[37] In *Droomer NO and Another v Snyders and Others*[5] Binns-Ward J (with Cloete and Slingers JJ concurring) noted that:

> "A person, who is not an 'occupier' as defined in ESTA, and who occupies any land without the consent of the owner and remains there unlawfully falls to be evicted in proceedings instituted in terms of the PIE Act." [6]

[38] There can therefore be little doubt that the first respondents are occupying the property unlawfully and fall within the definition of unlawful occupiers as defined. That notwithstanding, it does not exempt the applicant from following the process sanctioned by the PIE Act to remove them from the property. Even in the event that the applicant was, as in the present case, of the view that the application justified the urgent attention of the Court, the applicant is enjoined by Section 5 of the PIE Act to follow the process prescribed therein. The applicant in these proceedings has not availed itself of the procedure prescribed in Sections 4 and 5 of the PIE Act.

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[5] (A336/2019) [2020] ZAWCHC 72 (4 August 2020).
[6] Paragraph 21.

[39] It follows manifestly that the relief sought by the applicant against members of the SAPS is not only incompetent, but inimical to the law. It therefore cannot stand. It is not to say that unlawful occupants cannot be removed from premises they occupy illegally, but that this must as a matter of law, follow the process prescribed in the PIE Act.

ORDER

[40] In the result I make the following order:

i) The application is dismissed with costs.

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S MFENYANA
JUDGE OF THE HIGH COURT
NORTHWEST DIVISION, MAHIKENG

APPEARANCES

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For the 2nd to 4th respondents:	No appearance
Date reserved:	23 November 2023
Date of judgment:	28 March 2024