LOM Business Solutions t/a Set LK Transcribers/LR

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

In the matter between

CASE NO: 4341/08

PHILANI-MA-AFRIKA — Applicant

and

WILLIAM MAROFANE MAILULA — 1st Respondent
TRUST FOR URBAN HOUSING FINANCE — 2nd Respondent
J N BHANA AND ASSOCIATES — 3rd Respondent
REGISTRAR OF DEEDS — 4th Respondent

(FIRST APPLICATION)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE YES/NO
(2) OF INTEREST TO OTHER JUDGES YES/NO
(3) REVISED
DATE 2/12/2008 SIGNATURE

AND

CASE NO: 2008/4453

WILLIAM MAROFANS MAILULA — APPLICANT

and

ANDREW MASHELE — 1ST RESPONDENT
68 OTHER RESPONDENTS
CITY OF JOHANNESBURG — 69th RESPONDENT

(SECOND APPLICATION)

J U D G M E N T

WILLIS J: By reason of the urgency of these matters it is necessary that I give a judgment *ex tempore*. I would have preferred to have reserved judgment in view of the complexity of the issues and also by reason of their importance. It is perhaps sufficient at this stage to emphasise that this case (dealt with in two separate applications which we heard together and in respect of which I deliver this single judgment) involves irreconcilably conflicting interests that are of considerable importance, not only for the parties themselves, but also for the wider society.

The first application, namely the one of *Philani-Ma-Afrika v Mailula* is an application for a seeking aside of a sale of property that, although contested, would appear from the documentation to have been entered into between the applicant and the first respondent.

The second application is an eviction application in terms of which the first respondent in the first application seeks an order evicting certain occupiers of a building known as Angus Mansions.

It is common cause that, consequent upon the purported sale of the property to which I have referred, the Registrar of Deeds, who is the third respondent, has effected transfer from the applicant to the first respondent under deed of transfer T033425/07.

In addition to seeking aside the sale of Erf 4562 Johannesburg (the property known as Angus Mansions), the applicant in the first matter also seeks an order directing the Registrar to cancel this deed of transfer and an order declaring that the property in question is owned by Philani-Ma-Afrika. It perhaps needs to be noted that the applicant in the

first matter has not pertinently sought an order directing the Registrar of deeds to retransfer the property to Philani-Ma-Afrika.

It is common cause that the defence in the application for eviction by Mr Mailula (first respondent in the first application and the applicant in the second application) is dependent upon the findings made by this court in respect of the application by Philani-Ma-Afrika for the relief sought and its notice of motion under case 08/14341. In terms of an order previously given by my brother Gildenhuys J, the application under case 08/14341 is to be argued first and, thereafter, the same court is to entertain the application brought by Mr Mailula for the eviction of the occupiers under case 2008/4453.

Counsel for the occupiers of the property appear to accept that their only defence to the eviction lies in the defence proferred in the application under case 08/14341 in the matter between *Philani-Ma-Afrika v Mailula and Others* for the setting aside of the sale and transfer. In other words, it seems to be accepted and in any event for reasons which will later appear more clearly that if in the Philani-Ma-Afrika case the application is dismissed then the eviction application must be granted.

There would remain of course the relevancy of the period of time which should be granted to the occupiers to vacate the property which is known as Angus Mansions.

Gildenhuys J invited the City of Johannesburg to be a party to these proceedings and to furnish the court with a report. The City of Johannesburg has indeed filed a report and it would appear there from

that there is no reason why, if the first application is unsuccessful, the occupiers should not be evicted.

It is submitted on behalf Mr Mailula that in any event there are only a few occupiers who could survive the eviction process. These people are Clement Masuku, Funuyase Mvelase, Charles Maluleke, Celane James Mkanze and Petrus Techaki.

The argument in this regard rests on the fact that in order to be secure in their occupation it would not be sufficient merely to be a resident of the property, but also to be a member of the company which owned Angus Mansions prior to the transfer of the property.

Philani-Ma-Afrika was incorporated as a section 21 company in terms of the Companies Act in 1996 at the instance of the Gauteng Housing Department. Its primary purpose was to provide security to the tenants of Angus Mansions by enabling them to own and improve the building. In the memorandum of association their main purpose in the objects is described as follows:

> "To acquire hold, develop or improve land and building situated on Erf 4562 Johannesburg [Angus Mansions] with a view to enabling the community or residents to acquire such land and or the right thereto so as to occupy the land and the buildings wholly or mainly for residential purposes".

The finance for the purchase of Angus Mansions was provided to the applicant by the National Housing Board via the Provincial Housing Board for Gauteng. The finance agreement between the

national housing board and the applicant states that: -

1. The project comprises the acquisition and refurbishment of Angus Mansions to provide housing to 67 beneficiaries in accordance with the board's institutional subsidy scheme and
2. That the purpose is to upgrade the property and provide secure tenure to the beneficiaries.

Philani-Ma-Afrika purchased the property Angus Mansions on 24 April 1996 and held ownership under deed of transfer T6569/1997.

It would appear that on 12 April 2006 a resolution was passed by the then directors of Philani-Ma-Afrika in terms of which it was decided that the property should be sold with immediate effect at an agreed price. Estate agents were then instructed to sell the property in question.

On 7 August 2006 Mr Mailula acting through an estate agent, appended his signature to the offer of purchase. This offer of purchase purported to be signed on behalf of the seller. The signature appearing thereon is Adrienne Hersch Properties CC who are described in the document as follows

"On the sellers behalf by virtue of a power of attorney, copy attached."

Looking at the signature itself would appear to have been signed by Adrienne Hersch itself. In the document in terms of which Mr Mailula purported to purchase the property the following clause appears:-

5. "Transfer shall be effected by the seller's conveyancers

and we shall on demand sign all transfer document and pay transfer costs, transfer duties, stamps and all charges incidental thereto." (emphasis added)

The fact that the transfer was to be effected by the seller's conveyancers is a matter of considerable importance as will appear later.

On 9 October 2006 a meeting was held at Angus Mansions. At that meeting it was resolved that

"We tenants give Philani the authority to appoint or sell the property to a company that will run the property in good form of management."

The applicant concedes that the meeting took place, but denies the resolution. On 27 June 2007 the property in question was transferred to Mr Mailula as indicated under transfer T33425/07. The transfer is common cause.

Mr Mailula contends that he is a *bona fide* purchaser who purchased the building in terms of a valid and binding agreement of sale for a purchase price of R3.5 million. These allegations are not disputed by Philani-Ma-Afrika. There is no allegation of fraud or dishonesty on the part of Mr Mailula. The second respondent is the mortgagee, the first respondent Mr Mailula being the mortgagor.

The property is presently mortgaged in the sum of R7.9 million as Mr Mailula requires additional funding to restore the building according to him into a "habitable safe and hygienic environment." This allegation is not disputed by the applicant.

It is important also to note that at the time of Mr Mailula having appended his signature to the offer of purchase which was accepted (which document is dated 7 August 2006) there is nothing to indicate that he was aware of any internal procedural problems that may have prevailed at Philani-Ma-Afrika, the section 21 company.

It is common cause that prior to the sale and indeed the transfer of the property no resolution was passed by Philani, the section 21 company in terms of a section 228 of the Companies Act 61 of 1973 as amended. The relevant portions of this section read as follows:-

"228. Disposal of undertaking or greater parts of assets of company.

1. Notwithstanding anything contained in its memorandum or articles the directors of a company shall not have the powers save by a special resolution of its members to dispose of -

(a) The whole or greater part of the undertaking of a company or

(b) The whole or greater part of the assets of the company."

It is common cause that the property in question constituted quite clearly the greater part of the assets of Philani-Ma-Afrika, the section 21 company.

It may also be that there were other irregularities internally within Philani-Ma-Afrika relating to duly authorised resolutions being passed in order to give effect to the transfer. Indeed if I understood Ms Steinberg who appeared for Philani-Ma-Afrika correctly it is accepted that there

were serious difficulties that permeated Philani-Ma-Afrika insofar as proper management was concerned. She attributes this to the lack of sophistication of the persons who were assisted to occupy the premises in terms of the agreements concluded between the National Housing Board and the applicants. I accept this may be so. I would wish to point out however that this lack of organisational incompetence cuts both ways.

Mr Smit, the counsel for the second respondent who, lest the point be lost, is the present mortgagee with a bond registered in its favour for some R7.9 million has taken the point that proper resolutions have not been passed authorising the applicant to bring the application setting aside the sale and the transfer. This point was raised *in limine*. There may be merit in the point, but I consider it unnecessary to deal with it by reason of what will follow later in this judgment.

If I understood Mr Smit correctly, he was of the view that he agreed with the court that it would be better that the court attempt to dispose of the merits of the application rather than on the more technical aspect of whether Philani-Ma-Afrika was duly authorised to bring it.

Mr Smit also took the point *in limine* that the memorandum and articles of Philani-Ma-Afrika deleted the capacity to sue and be sued on the part of the applicant. Again, for reasons which will appear later in this judgment, it is unnecessary to deal with that particular point.

Mr Smit remarked *en passant* that it was a point with which I did not appear to display much enthusiasm. He correctly read the view of

the court in this regard. Without having had the benefit of full legal arguments, I think I should record that I cannot see how a legal entity such as the applicant undoubtedly is, can deprive itself of the capacity to sue and be sued. In my view it is an essential element of the nature of juristic personality to be able to sue and be sued and I accept the point raised by Ms Steinberg that section 34 of the Constitution confers necessarily a right on a juristic person such as Philani-Ma-Afrika to come to court in order to protect its interests.

By reason of the shortage of time that I have had, I have not been able to deal with this aspect in much detail. Nevertheless, I wish to record that I do not think the point raised by Mr Smit as to the incapacity of the applicant to bring any application to court, has much merit and in any event as I have already indicated for reasons which will appear later it is unnecessary for me to decide the point finally.

The Registrar of Deeds has already filed one report and, consequent upon the order which I made in this matter on 24 October 2008, prepared another. The Registrar of Deeds has placed considerable reliance on section 15 (A) (1) (3) of the Deeds Registry Act 1937 which essentially confers upon the Registrar of Deeds an entitlement to rely on documents prepared by the conveyancer dealing with the particular transaction.

He submits that prior to the amendment created by section 6 of Act 27 of 1982, the Registrar of Deeds was overburdened with checking countless documents and scrutinising thousands of documents such as

articles of associations etc. The provisions of section 15 (A), in his submission, led to a considerable increase in productivity. The fact that the Registrar of Deeds is entitled to rely on documents prepared by the conveyancer has important implications. The implications in this matter are considerable in as much as the conveyancer was the conveyancer acting on behalf of the seller.

The Registrar of Deeds submits that in his opinion if the Deeds Registrar had to police the aspects relating to documentation without being able to rely on the conveyancer it would create considerable difficulties of that office in terms of being able to attend expeditiously to the registration of deeds.

The Registrar of Deeds concedes in his report that documentation relating to the transferor (i.e. the seller, Philani-Ma-Afrika) "incomplete and apparently incorrect." I shall accept in the applicant's favour that this is indeed so. Indeed so at the risk of being unduly pedantic I should emphasise that there is no reason whatsoever not to accept these observations from the Registrar of Deeds, the fourth respondent, whom I wish to commend once again for his very helpful and competent report. It is a pleasure in this court to be able to rely on the competence and diligence with which the Registrar of Deeds, in this part of the world, is well known.

The third respondent J M Bhana and Associates is the firm of conveyancers entrusted with the responsibility of transferring the property from the seller to the purchaser. In my order of 24 October 2008 the third respondent was called upon to give

information which it appeared at the time may have assisted the court in coming to a proper decision in this matter. It would appear that Mr Bhana, who took responsibility for the conveyancing, has been away in India and is not able to file a report.

The question of a postponement for the conveyancing attorney to file a report was mooted in court this morning, but all other parties felt that it would not be necessary and I am content that that be so. Counsel for the third respondent indicated the third respondent would abide the decision of the court.

In summary then the following facts appear to be relevant:

1. Philani-Ma-Afrika was the registered owner of the property in question prior to the transfer thereof to Mr Mailula.
2. Mr Mailula, a *bona fide* purchaser in respect of whom no allegations of fraud or dishonesty have been made, purchased the property for the sum of R3,5 million from persons who appeared to act on behalf of the seller and transfer of the property was effected to him.
3. The second respondent, the Trust for Urban Housing Finance lent money to the purchaser Mr Mailula in order to enable him to perform in terms of the contract and has had a bond registered in its favour in an amount of R7.9 million.
4. The provisions of section 228 of the Companies Act 61 of 1973 as amended were not complied with.
5. There may be other procedural irregularities internally regarding the sale and transfer of the property from Philani-Ma-Afrika to

Mr Mailula.

6. There has been no tender to the purchaser to return the purchase price.

I have been referred by counsel for the parties to much case law, none of which, interestingly enough, appears to be directly relevant. Ms Steinberg relied particularly on the following cases:

Sookdeyi and others v Sahadeo and others 1952 (4) SA 568 (A),

Preller and others v Jordaan 1956 (1) SA 483 (A),

Brits and another v Eaton NO and others 1984 (4) SA 728 (W),

Klerck NO v Van Zyl and Maritz NO and Others and related cases 1989 (4) SA 263 (SECLD),

Mvusi v Mvusi NO and others 1995 (4) SA 994 (TKSC),

Farren v Sun Service SA Photoclip Management (Pty) Ltd 2004 (2) SA 146 (C).

Prophitius and another v Campbell and others 2008 (3) SA 552 (D&CLD),

Menqa and another v Markham and others 2008 (2) SA 120 (SCA),

Counsel for the respondents also relied on the Prophitius case and the Sookdeye case upon which Ms Steinberg relied as well as the case of *Gibson NO v Iscor Housing Utility Company Ltd and Others* 1963 (3) SA 783 (T) at 786 - 787 A and in particular on the provisions of section 28 (2) of Alienation of Land Act 68 of 1981 which provides that an alienation in terms of an invalid deed of alienation will in all respects be valid *ab initio* if both parties had performed in full and the land in question had been transferred to the transferee.

Ms Steinberg also relied on the cases of *Gounder v Sunders*

1935 NPD 219 at 224 - 227 and the point in *Silberberg and Schoeman's* Law of Property, 5th edition at p 224 to emphasise that our system of transfer is not a wholly abstract one. She also emphasised the point in *Silberberg and Schoeman's* Law of Property at p 223 that the act of registration of transfer is not the only effective element of the act of transfer and that transfer of an ownership is a process culminating in the act of registration at which point the transfer is completed.

Ms Steinberg emphasised with considerable force that the thrust of the cases relating to transfer of immovable property was that if there was an absence of a real agreement (which she contended meant a lack of intention on the part of the seller to give effect of the transfer), this vitiated it and the transaction could be set aside.

Counsel for both the first and second respondent submitted that in the absence of fraud, the transaction could not be set aside and that the applicant's remedy was one of damages against the initial seller.

Counsel for both the first and second respondent submitted that if the court were not only to set aside the sale, but to set aside the transfer, not only would the first respondent lose his title, but there would be a sum of some R3.5 million which would have vanished into thin air, and also that the second respondent, the mortgagee, who was entirely innocent in this whole transaction, would have parted with a considerable sum of money having no security whatsoever and no effective recourse.

In *Henochsberg* on the Companies Act in the commentary on section 228 the following appears at p 442 [Issue 27]:

"There is controversy as to whether a third party to whom the invalid disposal was made is entitled to enforce it against the company by means of the application of the rule in the *Turquand* case since the invalidity does not entail that the contract between the company and a third party is, as between them, void or unenforceable. For the view that this is the case see e.g. the *Leaby* case *supra* at 446 - 487, see F D S Ribbens 1976 *THRHR* 162 at 164; M J Oosthuizen 1979 *TSAR* 169 at 173-7, P E J Brooks 1987 *THRHR* 226 at 228 - 229; Michelle Von Willich 1988 *MBL* 7 at 12 - 15 and Basil Wunsh 1992 *TSAR* 545. For the contrary view see, *inter alia* L Hodes 1978 *SACLJ* F6 at F12 - 13; J S A Fourie 1992 *TSAR* 1. The counterargument is that the intention of the legislature is to preclude the very existence of a lawful disposal without the requisite approval and this intention can be frustrated by the application of the *Turquand* rule or by estoppel. For an informative analysis of the controversy see the *Farren* case *supra* in which the court relying on the judgment of E M Grosskopf JA in *Bevary Investments Edms Bpk v Boland Bank Bpk* 1993 (3) SA 597 (A) at 622 - 623, held (at 415) that the *Turquand* rule could not be applied, if to do so would negate the clear intention of the Legislature in relation to the provisions of section 228 and that a contract concluded in

contravention of the section had no legal effect and, hence, cannot be enforced until it is ratified by the shareholders. The court held further (at 415) that the relevant contract is not enforceable on the basis of estoppel, since to do so would be to allow a result contrary to the Legislature's intention".

Unsurprisingly Ms Steinberg vigorously argued along the lines that clearly the *Turquand* rule should not be applied, that the doctrine of estoppel could not apply and also that a transaction concluded without section 228 of the Companies Act having been complied with was invalid. She is in good company in as much as she was supported, in my view, to quite a large extent by the judgment of Cleaver J in the *Farren* case to which reference was made in the *Henochsberg*.

In my respectful opinion, her arguments would have considerable force when applied to a situation prior to transfer having taken place. In other words, it seems to me, without finally deciding the matter, that if application was made to court to the basis that section 228 has not been complied with prior to transfer of the property in the Registry of Deeds, then indeed a person who had a legitimate interest in the matter could bring an application for the setting aside of the sale and preventing the transfer from going ahead.

It hardly needs be emphasised that if the application brought is successful at this stage (i.e. before the transfer has taken place) the prejudice to the innocent purchaser and to a party in the position of the second respondent in this case would be minimal if it existed at all. All

that would happen would be that the sale would be set aside, no money other than perhaps a deposit (which should be recoverable), would have passed hands and little real prejudice would result to a person in the position of first respondent or second respondent.

Certainly, when weighed against the scales of the possible prejudice to persons who had an interest in the company in respect of which a 228 resolution had not been passed, the prejudice, it would seem to me, would ordinarily be far greater for those who were entitled to the section 228 resolution being passed.

Insofar as the fact of this case are concerned, it is important to note that the Registrar of Deeds insists that he is entitled to rely on the assurances of a conveyancer (in this case acting on behalf of the seller Philani-Ma-Afrika) that all necessary documentation has been properly prepared and all necessary resolutions be passed.

In the case of *Houtpoort Mining and Estate Syndicate Ltd v Jacobs* 1904 TS 105 at 108, Wessels J (as he then was) said the following about our system of registration of immovable property:-

> "In Roman law we find nothing about registration and the transfer of land. In Western Europe, however, a custom sprang out in many places which required the seller and purchaser to appear before some official and to state in the presence of witnesses that a sale of land had taken place. The transaction was then noted in a book kept especially for this purpose. The custom prevailed throughout the greater part of the Netherlands and was in

the time of Grotius regarded as an inveterate custom. In many parts of the Netherlands, in addition to the registration, the sale had to be publically proclaimed on three Saturdays or on three church days".

There can therefore be but little doubt that the registration *coram judice loci rei sitae* was for the purpose of publicity, partly that land should not be sold twice over to different purchasers and partly so that persons who had any claim upon the land might assert these claims before the purchaser took possession. In Holland the registration took place before the *Schepenen* of the district where the land was situated. The system of registration was afterwards by various *Placaats* extended to hypothecation, servitudes and other burdens. When the Dutch settled in the Cape Colony they brought over from Holland this system of registration and the titles to land granted by the Governors were registered before the Commissioners of Court of Justice. No sales of this land and no servitudes imposed thereon were recognised unless these were registered against the title before the Commissioners. Later on in the Cape Colony the office of the Registrar of Deeds was created and he continued the functions of the Commissioners as regards the registration of sales and burdens on land. The Registrar of Deeds therefore took the place of the Commissioners

as these had taken the place of the *Schepenen*. The only register kept by them which affected land was the register of titles or Land Register, as it is frequently called. The same system in vogue at the Cape was imported into the Transvaal by the immigrant Boers..."

As Wessels J was then sitting as a judge of the Transvaal court I can only assume that he referred to "immigrant Boers" without in any way intending to be derogatory.

In the case of E*x parte Mensies et Uxor* 1993 (3) SA 799 (C) King J (as he then was) referred to this case as well as the case of *Frye's (Pty) Ltd v Ries* 1957 (3) SA 575 (A) at 582 E which in turn referred to a passage from *Newall,* Law and Practice of Deeds Registration at p 2-3. King J, as he then was, then went on to say the following at 804 D:-

"The judgments and passages cited above have, in my view, established *inter alia* that:

- Publicity in regard to the title of the two owners and the holders of other real right in immovable property has been a primary purpose in the development of the whole deeds registry system.
- The system has developed historically in close connection with the functions of the courts, and has involved the development of procedures <u>for establishing certainty in relation to title in the public interest</u> and to assist the Courts in the determination of disputes." (emphases added)

I indicated at the commencement of this judgment that there are obviously competing interests in this matter. These interests go way beyond the immediate interests of the parties in this particular case. Depending perhaps on one's ideological view, one may shed many tears for persons in the position of the first respondent who would stand to lose some R3.5 million if the transfer were to be set aside and the second respondent who stands to lose at least this sum of money and perhaps more.

Others may shed even greater tears for the persons who consequent upon a failure by the court to set aside the transfer may be evicted. As I already indicated, in the earlier part of this judgment, it would appear that a number of persons directly affected is not as great as may first appear and in fact numbers a mere five. It also needs to be emphasised that it would appear from the documentation that the occupiers are not indigent people.

It would also appear that all existing members of the applicant including Xhosa, Chauke and Dladla resolved to sell the building together with the remaining members and received their pro-rata share of the sale of the building on the applicant's dissolution.

The prejudice to the occupiers of the building who were originally persons who had an interest in the section 21 company that acquired the building may not be as great as may first appear.

Nevertheless in my opinion, especially as there seems to be no case law directly in point, one must attempt to balance various interests that prevail. Counsel for the first and second respondent argued convincingly in my view that it would be astonishing in the circumstances if innocent persons such as the first and second respondent could stand to lose so much money

and be prejudiced to an extent that they would be.

Ms Steinberg submitted that there would be an obligation on a purchaser in the position of the first respondent to satisfy himself that resolution such as a 228 resolution and perhaps other necessary resolutions were duly passed by a company in the position of the applicant. I cannot agree. In the circumstances in my respectful view the purchaser is entitled to rely on a person such as the conveyancer acting on behalf of the seller to ensure that all necessary documentation required to give proper effect to the transaction would be obtained.

It cannot be a viable situation in this country if purchasers of immovable property were to be burdened with the enormous obligation that Ms Steinberg seems to suggest appropriately would rest upon them. Can one imagine how commerce would be seriously frustrated in our society if every time a person signed a offer to purchase immovable property, that person was under an obligation to make sure that all necessary documentation had been prepared and indeed reflected the truth namely that the purchaser is put to the inconvenience having the almost impossible inconvenience of having to satisfy itself or himself or herself that only are the necessary resolutions prepared, but they are in fact in order?

As against this there is of course the position of the persons who stand to be evicted. I accept that there may well be hardship for innocent persons who had an interest in the section 21 company which owned the property. As I have already indicated that hardship may not be quite as

severe as would at first blush appear.

How does one balance the issues out? In my view, what needs to be emphasised by the courts is that when people act collectively, whether it is in situations such as a section 21 company or a private company or a public company or whether they act in some kind of civic association or community organisation or a political party, or any of the myriad of other voluntary juristic persons that operate in this country, that they have an obligation to make sure that they elect reliable, honest competent people to represent their interests.

That is an underlying fundamental principle that can be easily applied. It is a democratic principle. I wish to emphasise it is a democratic principle. To those in court today, I want to say this: When you elect people to look after your interests, make sure you know who they are, make sure that you can trust them and make sure that they will look after your interests as is their duty to do so. Therefore seems to me that when in balancing out these competing interests necessarily and perhaps sadly the sword has to fall so that it lies in favour of the first and second respondents.

Insofar as the question of the eviction is concerned Ms Steinberg referred me to the as yet unreported judgment in this division of *Blue Moonlight Properties 39 (PTY) Ltd v The Occupiers of Sarratoga Avenue and another* (case number 2006/11442) and submitted that the City of Johannesburg had an obligation to provide alternative housing for the occupiers of Angus Mansions and that I should perhaps call for further reports.

It is important to note that the City of Johannesburg has in fact filed two reports and the second report filed at the instance of

Gildenhuys J. It seems to me that in as much as the occupiers are paying reasonable rentals, *albeit* not to Mr Mailula, they cannot be described as the poorest of the poor. I fully accept that the whole question eviction is highly controversial, but frankly I see no purpose in calling on the city to provide further reports and I cannot see that I can reasonably order the city to provide alternative temporary housing for the respondents.

Accordingly in the first application (2008/14341) the following order is made:

The application is dismissed with costs.

Accordingly in the second application, (case 2008/4453) the following order is made.

1. The first to 68 respondents and all those claiming occupation through and under them are evicted from the building known as Angus Mansions being the building situated on Erf 4562, corresponding to 268 Jeppe Street. The occupiers of the building in terms of the aforesaid eviction order are to evocate the building on or before 15 December 2008.
2. The first to 68 respondents and all those respondents opposing the application are ordered to pay the costs thereof jointly and severally the one paying the other to be absolved.
3. In the event that any of the respondents have not vacated the premises by 15 December 2008 the Sheriff assisted by

the South African Police Services if necessary may forcefully eject the respondents from the aforesaid premises.

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LOM Business Solutions t/a Set LK Transcribers/LR

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG CASE NO: 2008/4453 - 14341/08

DATE: 05/11/2008

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO

(3) REVISED

DATE 2/12/2008 SIGNATURE

In the matter between

MAYLULA APPLICANT

and

ANDREW MASHELE 1ST RESPONDENT

68 OTHER RESPONDENTS

CITY OF JOHANNESBURG 69th RESPONDENT

J U D G M E N T

WILLIS J: Immediately after I had given judgment in this matter in terms of which I dismissed Philani-Ma-Afrika's application for the setting aside of a sale and the setting aside of the transfer of the property in question and, related to that, an order evicting the occupiers of the building with effect from 15 December 2008 Ms Steinberg stood up and

made application for leave to appeal.

The matter of an appeal was not seriously resisted by any of the respondents for obvious reasons. Novel points of law have arisen. The matter clearly is complex and, as I have indicated, involves important competing interests. In my view, it goes without saying that there is a reasonable prospect that another court could come to a different conclusion from my own and, accordingly, that there are reasonable prospects of success in an appeal. The matter is clearly one of importance to the parties.

Ms Steinberg submitted that the appropriate forum for the appeal would be the Supreme Court of Appeal. It seems that there is unanimity on the point that, if leave to appeal is to be granted, the appropriate forum is the Supreme Court of Appeal. I am in agreement with that view.

Mr Cohen indicated that if leave to appeal were to be granted he would on behalf of his client bring an application for leave to execute. Clearly, now, that aspect is urgent in view of the whole nature of the matter.

The following order is made.

1. Leave to appeal is granted against the judgment and orders which I gave in cases 14341/2008 and 4453/2008.
2. The appeals are directed to the Supreme Court of Appeal.
3. The costs of the applications for leave to appeal are

costs in the appeals.

4. It is noted that an application will be heard for leave to execute upon the judgment evicting the tenants from the building which application will be heard on Thursday 13 November 2008 at 14:00.
