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REPUBLIC OF SOUTH AFRICA
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 1757/2013

In the matter between -

C E T (previously J V V)

Applicant

And

J V V W M

Respondent

Heard: 27 February 2013

Delivered: 23 April 2013

Summary: Stay of ejectment order. Applicant seeking ejectment order when she did not comply with the order of the Court herself.

JUDGMENT

MOLAHLEHI J

- 1] This is an application in terms of which the applicant seeks an order staying the warrant of the ejectment which was issued by the Registrar of this Court under case number 15475/2010, on 14 January 2013.
- 2] The applicant did not pursue the prayers to have the warrant of ejectment set aside and the alleged contempt of Court order by the

respondent.

Background facts

- 3] The parties in the present matter are former husband and wife whose marriage was dissolved by this Court on 29 August 2011 under case number 15475/2010. The parties were married out of community of property with the inclusion of the accrual system. On the same day that the order of separation was made the parties concluded an agreement, the purpose of which amongst other things was to deal with the division of the accrued estate.
- 4] In terms of the settlement agreement the parties agreed that the applicant and the minor children would be entitled to occupy the matrimonial house until such time that it was sold and the purchaser required occupation thereof or the registration of the property into the name of the purchaser was effected by 31 December 2012, whichever of the date occurs first.
- 5] The agreement further provides under clause 7.9 that:

“Notwithstanding that the registration of the transfer of the property may not have been effected into the name of the purchaser prior to the 31 December 2012 and/or notwithstanding that the purchaser does not require occupation of the property by 31 December 2012, the Defendant (applicant in the present application) shall nevertheless vacate the property unless the Plaintiff agrees to extend her right to occupy the property in writing.”
- 6] The other important clause for the purpose of this judgment is that the respondent was made responsible for the payment of the bond until the property was registered in the name of the purchaser or until 31

December 2012, whichever occurs first. The applicant would only be responsible to contribute 50% towards the cost of the mortgage bond instalments on two conditions being:

- a. if the property was not yet register in the name of the purchaser by 31 December 2012; and
- b. in the event the applicant continue occupying the property from 1 January 2013.

7] Another important term of the agreement for the purposes of this judgment is that the respondent was made responsible for effecting certain repairs on the property which included electrical repairs, waterproofing, plastering and painting. The respondent was in this regard required to cause the repairs to be effected at his own costs and within two months after the granting of the decree of divorce. In this regard clause 7.13 of the agreement provides as follows:

" . . . The Plaintiff will be the sole determinator as to whether or not the repairs have been adequately carried out. Should there be any dispute between the parties regarding the Plaintiff's access to the property or the access of his contractors or any other matter arising from this paragraph, then and in that event the matter shall be expeditiously determined by a Senior Counsel at the Johannesburg Bar on written submissions made by both parties and without evidence."

8] In addition and as appears from the above clause, the agreement made provision for the resolution of disputes that could arise between the parties. In this respect the agreement provides for the appointment of a member of the Johannesburg Bar, as a referee on any dispute that

would arise between the parties.

9] The dispute between the parties in this matter arose from the ejectment order issued by the Registrar. The ejectment order was made following the settlement agreement which had been made an order of the Court.

10] The crisp issue for determination in this matter is whether the ejectment order issued by the Registrar was prematurely made. The applicant contends that the ejectment order was prematurely made for the following reasons:

1. The respondent had not yet repaired the house as required by the Court order.
2. The respondent has not appointed a member of the Johannesburg Bar to resolve the issue of the property in terms of the Court order
3. The respondent made certain proposals on 17 January 2013 and then on the 18 January 2013, threatened her with ejectment.

Evaluation/analysis

11] It is apparent that the key reason for the refusal to evacuate the property by the applicant is because the respondent has, as alleged, not effected the repairs on the property in terms of the Court order. The first point that needs to be made in relation to the applicant's application is that she is seeking the intervention of the Court which order she did not comply with. The applicant does not dispute having failed to pay the 50% of the bond instalment for the matrimonial home. The applicant was ordered by the Court on 5 February 2013 to make the 50% contribution towards the bond payment. In my view the applicant's application should on this basis alone fail.

12] The second reason why the applicant's application stands to fail is

because it is very clear from the Court order that she was to evacuate the property by the end of December 2012. Whilst it is correct that the respondent was ordered to effect repairs to the property within two months from the date of the dissolution of the marriage, it was not a condition precedent for the applicant to evacuate the property.

13] In any case the contention of the respondent in the answering affidavit that the repairs to the property were effected has not been disputed by the applicant. The respondent produced proof of payment for the repairs which has not been disputed by the respondent.

14] In the replying affidavit the applicant contends that the repairs were not properly done. She however, provides no evidence to substantiate this allegation. In any case even if that was the case it would appear from the proper reading of the Court order that the respondent was the one to determine whether or not the repairs were properly done.

15] The question of what was said by the respondent on both the 17 and 18 February 2013, is for the purpose of determining issue before this Court, irrelevant. What is relevant is that the warrant of ejectment was issued in accordance with an enforceable Court order. It has already been pointed out earlier that the applicant had to evacuate the premises by the 31 December 2012. The only person who could authorise the stay beyond 31 December 2012 was the respondent. The contention of the respondent that he did not authorise the applicant to stay in the property beyond 31 December 2012 has not been disputed by the applicant.

16]In my view that applicant has not made out a case justifying interference by this court with the ejectment order issued by the Registrar.

The order

17]In the premises, the applicant's application is dismissed with costs.

E MOLAHLEHI
ACTING JUDGE OF THE SOUTH
GAUTENG JOHANNESBURG

Appearances:

For the Applicant: Adv L Matthysen instructed by Boela Van Der Merwe
Attorneys

For the Respondent: Adv F Bezuidenhout instructed by Shaheed Dollie Inc. _

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