



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **YES**,

Date: **5<sup>th</sup> FEBRUARY 2016** Signature: \_\_\_\_\_

**CASE NO:** 2013/24254

**DATE:** 2016-02-05

In the matter between:

**THE OCCUPIERS OF ERVEN 87 & 88 BEREA**

Applicant

and

**DE WET, CHRISTIAAN FREDERICK N.O.**

First Respondent

**PARBHOO, ROYNATH N.O.**

Second Respondent

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**JUDGMENT [APPLICATION FOR LEAVE TO APPEAL]**

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**ADAMS AJ:**

- [1]. This is an application for leave to appeal against the whole order which I granted on the 12<sup>th</sup> of November 2015, in terms of which order I had dismissed the applicant's application for a rescission of the eviction order granted by Khumalo AJ on the 10<sup>th</sup> September 2013. In my order I reiterated the eviction order granted by Khumalo AJ, but had, for obvious reasons, amended the date by which the applicants were required to vacate the property to the 31<sup>st</sup> of January 2016. The applicants were also ordered jointly and severally to pay the costs of the respondents.
- [2]. In essence the application for Leave to Appeal is based on the grounds that the court *a quo* erred in finding that the applicants had consented to the eviction order, after notice of the application for eviction had been brought to their attention. The applicants, so it was argued on their behalf, could not have validly waived their constitutional and statutory rights as they were not aware of those rights.
- [3]. A further ground on which the application for Leave to Appeal is premised, is the fact that, according to the applicants, their right *vis-a-vis* the City of Johannesburg to be provided with emergency accommodation had not been taken into consideration. The court *a quo*, so the arguments go on behalf of the applicants, erred in not rescinding the Order of Khumalo AJ, which would have enabled the applicants to enforce their right to emergency accommodation against the City of Johannesburg.

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- [4]. It is trite that the traditional test in deciding whether leave to appeal should be granted is whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment.
- [5]. The applicants have raised nothing new in this application for leave to appeal. This court has dealt with all the issues raised in this application for leave to appeal in its judgment and it is unnecessary to repeat those in full.
- [6]. Suffice to restate what I said in my judgment, that is that during September 2013 the applicants consulted their present attorneys of record, the Seri – SA Law Clinic, who have represented them in these and other legal proceedings since then. This means that since during September 2013, the applicants would have been made aware of their rights in relation to the eviction proceedings.
- [7]. They would have been advised of their constitutional and statutory right to emergency housing in the event of them being rendered homeless as a result of being evicted from the property. Notwithstanding the foregoing, there was no approach made by the applicants and / or their legal representatives to the City of Johannesburg with a view to placing the Council on terms to provide them with alternative accommodation in the event of them being evicted.

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[8]. I concluded that, having regard to all the circumstance in this matter, including the personal circumstances of the occupiers and in particular the possibility that their eviction could lead to homelessness, they have not established a *bona fide* defence that carries some prospect of success.

[9]. For reasons mentioned in the Judgment of the Court *a quo*, I was not persuaded that the applicants had demonstrated the existence of a *bona fide* defence to of the Respondents' claim.

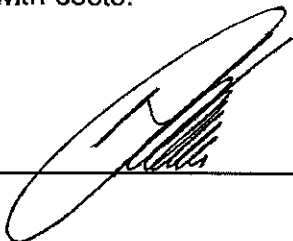
[10]. I am still not persuaded that the applicants had *bona fide* defence.

[11]. Moreover, I do not believe that there is a reasonable prospect that another court may come to a different conclusion to that reached by me. The application for leave to appeal therefore stands to be dismissed.

## ORDER

[12]. In the circumstances the following order is made:

The application for leave to appeal is dismissed with costs.



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**L ADAMS**  
Acting Judge of the High Court  
Gauteng Local Division, Johannesburg

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HEARD ON: 5<sup>th</sup> February 2016  
JUDGMENT DATE: 5<sup>th</sup> February 2016  
FOR THE PLAINTIFF: Adv Wilson, with Adv. Hobden  
INSTRUCTED BY: Seri – SA Law Clinic  
FOR THE DEFENDANT: Adv Van der Merwe  
INSTRUCTED BY: Vermaak & Partners Incorporated

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**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2013/24254  
PH NO: 0

JOHANNESBURG, 05 February 2016  
BEFORE THE HONOURABLE ACTING JUDGE ADAMS

*In the matter between:-*

**THE UNLAWFUL OCCUPIERS OF  
ERVEN 87 AND 88 BEREA**

*Applicants*

*and*

**DE WET CHRISTIAN FREDERICK N.O.  
PARBHOO ROYNATH N.O.**

*1<sup>st</sup> Respondent  
2<sup>nd</sup> Respondent*

**THE SHERIFF OF JOHANNESBURG  
CENTRAL MARKS MANGABA N.O.**

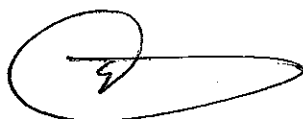
*3<sup>rd</sup> Respondent*

*HAVING read the documents filed of record and having considered the matter :-*

**IT IS ORDERED THAT :-**

1. Application for leave to appeal is dismissed with costs.

**BY THE COURT**



**REGISTRAR**  
*/bbn*

GRIFFIER VAN DIE HOOGGEREGSHOF VAN SUID-AFRIKA, GAUTENG PLAASLIKE AFDELING, JOHANNESBURG		
PRIVAATSAK/PRIVATE BAG X7 JOHANNESBURG 2000		
136	2016 -02- 10	136
SENIOR REGISTRAR		
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISIONS, JOHANNESBURG		

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