

NOT REPORTABLE

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

Case No: 21167/2011

DATE:13/06/2012

In the matter between:

NEDBANK LTD

Applicant

and

THE UNLAWFUL OCCUPANTS OF PORTION 66 FARM NUMBER 469,

ELANDSKRAAL

1st Respondent

MADIBENG LOCAL MUNICIPALIT

2nd Respondent

JUDGMENT

MNGQIBISA -THUSI, J:

[1] The applicant seeks an eviction order against the first respondent from immovable property situated at Portion 66 Farm Number 469, Elandskraal (the property) and owned by the applicant in terms of section 4(6) of Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 (PIE).

[2] On 06 August 2010 the applicant acquired ownership of the property after purchasing the

property at an auction sale. The property was registered in its name on 6 December 2010.

[3] After the purchase the applicant had written several notices to the occupiers informing them that it was now the owner of the property and requesting them to vacate the property.

[4] When the occupants, who were at that time unknown to the applicant refused to vacate the property, the applicant sought leave from this court to serve them with eviction notices in terms of section 4(2) of the PIE. In the notice the occupiers were informed of the intention of the applicant to apply for an eviction order.

[5] On 04 August 2011 this court granted the applicant leave to serve the section 4(2) notice on the first respondent and the second respondent. The section 4(2) notices were duly served on the first and second respondent on 25 August 2011 and 18 August 2001, respectively, as appears from the sheriff's returns of service.

[6] Mr John Eric Aucamp (Aucamp) is opposing the application on the following grounds:

6.1 that he is a lessee in terms of a lease agreement concluded with the former owner of the property, a Mr Robinson, on 25 April 2010. The lease was for a period of 1 May 2010 to 31 April 2015. It is Aucamp's contention that in accordance with the *yhuur gaat voor koop*' principle, he was lawfully entitled to occupy the property for the duration of the lease, which was determined to terminate on 1 May 2015. At the moment Aucamp has sublet the property to a mining company whose employees are currently occupying the property.

6.2 That this court does not have jurisdiction as the default judgment and the location of the property was in the North West province.

6.3 that the applicant should have foreseen the existence of issues in dispute and should not have used motion proceedings.

[7] From the reading of the papers, I did not find any issues in dispute which cannot be resolved on the papers.

[8] The issue to be determined is whether the Aucamp and all the occupiers occupying the property through him are in lawful occupation of the property.

[9] The applicant did not concede to the existence of the lease agreement. However it is trite that when a person acquires ownership of an immovable property where there is an existing lease, his ownership is subject to the lease. Therefore, Aucamp and all the occupiers occupying the property through him are not unlawful occupiers in terms of PIE.

[10] With regard to jurisdiction, in its founding papers the applicant alleges that this court has jurisdiction as the property is situated within its area of jurisdiction. In the alternative the applicant alleges that the cause of action arose from this court's area of jurisdiction. In his answering affidavit Aucamp did not deal with the issue of jurisdiction nor did he raise it as a point in limine. As correctly pointed out by counsel for the applicant, Aucamp's failure to deal with the issue of jurisdiction amounts to him consenting to this court's jurisdiction.

[11] Aucamp undertook to pay all accrued rental and rent due. He requested the applicant to provide him with the details of an account in which he would deposit the arrear rentals and rent due. Despite his undertaking and having been provided with the relevant bank details of the applicant, Aucamp failed to make the required deposits. As a result the applicant formally cancelled the lease in terms of clause 14 of the lease agreement and gave notice to Aucamp to vacate the property. Aucamp

has refused to vacate the property.

[12] In view of the fact that Aucamp is in breach of the lease agreement which led to the applicant cancelling the agreement, Aucamp and all occupiers through him are in unlawful occupation of the property as the owner of the property has not consented to their occupation.

[13] The applicant has complied with the provisions of section 4(2) of the PIE. I am satisfied that it is just and equitable to grant an order for the eviction of Aucamp and all other unlawful occupiers of the property.

[14] Accordingly an order is granted on the following terms:

1. The occupants of Portion 66, Farm Number 469, Elandskraal, North West Province, situated at Portion 66, Farm 469, Old Pretoria Road, Elandskraal, Brits ("the property"), as well as John Eric Aucamp, identity number 630228 5090b084 ("Aucamp") and all persons occupying the property through Aucamp, vacate the immovable property within 60 days of this order.
2. Should Aucamp and all persons occupying the property through him not vacate the property as set out in 8.1 above, the sheriff is authorised to evict Aucamp and/or all persons occupying the property through him from the property.
3. Aucamp to pay the costs of this application.

NP MNGQIBISA-THUSI

Judge of the High Court