REPUBLIC OF SOUTH AFRICA

NORTH GAUTENG HIGH COURT

PRETORIA

(REPUBLIC OF SOUTH AFRICA)

16/01/2014

CASE NO: 54759/2011

In the matter between:

THABA CHWEU LOCAL MUNICIPALITY — APPLICANT

AND

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED.

05/02/2014

[redacted]

MIKE MASHILE — FIRST RESPONDENT

THE UNIDENTIFIED INTENDED OCCUPIERS RESPONDENT — SECOND RESPONDENT

THE MINISTER OF POLICE — THIRD RESPONDENT

JUDGMENT

BAQWA J

[1] This is the return day of an interim order which was granted by this court on 31 December 2013.

[2] The order was an injunction upon the third respondent to show cause why they should not be compelled to act on the annual changes laid by the applicant and to take all steps reasonably necessary to prevent the invasion of land taking place on applicants property known as "remaining extent portion 39 of Farm 31, Townlands of Leydenburg, Mpumalanga (the property).

[3] It was further, an injunction upon the first respondent from allocating and or demarcating land to any person on the properties and from receiving payment in that regard.

[4] The interim order prohibited anyone but the lawful owner from demarcating land for occupation or from entering the property.

[5] According to applicant the application was brought subsequent to an invasion of the property by first and second respondents which took place during the month of December 2013.

[6] The respondents do not deny that the property belongs to the applicant which by necessary inference makes the occupation unlawful.

[7] The respondents however claim that the occupation of the property took place during April 2013 and not in December of that year. On that basis they submit that the application is not urgent.

[8] In support of this allegation respondents have annexed correspondence between themselves and the applicant and minutes of a meeting which first and second respondent belong.

[9] Regarding urgency applicant submits that it cannot seek redress in due course without suffering irreparable harm.

Applicant further submits that:

9.1. All attempts to salvage the situation has proved fruitless including an attempt to lay a charge for trespass with members of SAPS.

9.2. Stands are being allocated to members of the community by individuals who have no authority, permission, or legal basis to do so.

9.3. Applicant further submits that should the occupation be allowed, it will have a detrimental impact on the applicant as it is not in accordance with the approved spatial development framework and Town Planning Scheme.

[10] In resolving the contradictory statements between the parties regarding urgency and more particularly the period when occupation took place, I have had to make inference to detail including annexures to the papers before me.

[11] Annexure MM3 attached to respondent's papers is a letter from the respondents dated 8 July 2013 requesting a response on or before 10 July 2013 at 13h00 "or else the community is going to take the place themselves."

[12] A logical inference from the sentence quoted is that respondents could not threaten to take a property they were already in occupation of.

[14] Annexure MM5 is a copy of minutes of a meeting by respondent's association held on 14 October 2013 wherein it is recorded that the community resolved to stop invading the area and to request alternative land.

Similarly respondents could not resolve to stop invading the property if they were already in occupation thereof.

[15] Upon weighing these contradictions I come to the conclusion that the credibility of respondent's version is put in serious doubt.

[15] Moreover, respondents do not dispute that applicant laid a charge with the SAPS Lydenburg on 27 December 2013. This action by applicant objectively corroborates applicant's version.

The law

[16] A similar matter was considered in the case of **Port Elizabeth Municipality v Various Occupiers 2005(1) SA 217(CC).** In that case the law was enunciated as follows:

"In terms of s6 of the Prevention of Illegal Eviction from Unlawful Occupation of Land Act 19 of 1998 (PIE), the applicant municipality secured an order for the eviction of the respondents some 68 unlawful occupiers of land within its area of jurisdiction in the High Court. That order was set aside on appeal to the Supreme Court of Appeal. The land in question was vacant land and the occupiers had been on the land for periods ranging between two and eight years. Prior to the grant of the order, they indicated to the municipality that they were prepared to vacate the land if it provided them with suitable alternative accommodation. They had not applied for housing under the municipality's housing development programme. In the present application, the municipality sought leave to appeal against the decision of the SCA and have the eviction order restored. It also sought a ruling from the Court to the effect that, in seeking an eviction order, it was not constitutionally obliged to provide the occupiers with alternative accommodation or land.

Held, that under s 6 of PIE the Court exercised a discretion to grant an eviction order if it were just equitable to do so. In making that decision the Court had to take into account 'all relevant circumstances.' (Paragraph[25] at 232D.)

Held, further, that the requirement in s 6(3) that the Court had to take into consideration the availability of suitable alternative accommodation was not an inflexible requirement. There was no unqualified constitutional duty on local authorities to ensure that an eviction was not executed unless alternative accommodation or land was made available. Courts should generally be reluctant, however, to grant an eviction order against relatively settled occupiers unless a reasonable alternative was available, even if only as an interim measure pending ultimate access to housing in the local authority's formal housing programme. (Paragraph [28] at 233G-H.)

Held, further, that the existence of a formal housing programme was one of the considerations favouring a determination that the proposed eviction would be just and equitable. (Paragraph [29] at 234D-E.)

[17] In **casu** applicant's counsel submitted that respondents' cannot be said to be "settled occupiers" having invaded the property in December 2013 (thereby being occupiers for a period less than two months). I accept the said submission.

[18] In the result:

I have come to the conclusion that the rule nisi granted on 31 December 2013 be made final.

It is so ordered.

S.A.M BAQWA

(JUDGE OF THE HIGH COURT)