

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 15723/19

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO
11-03-2019 P.D. PHAHLANE
DATE SIGNATURE

In the matter between:

RYNO JACOBUS STRAUSS

PLAINTIFF

and

ANNA SOPHIA KRUGER

FIRST RESPONDENT

**ALL THE UNKNOWN OCCUPIERS OF THE REMAINING
EXTENT OF PORTION 101 (a PORTION OF PORTION 84)
OF THE FARM TWEEFONTEIN 413, REGISTRATION DIVISION
J.R. PROVINCE OF GAUTENG, ALSO KNOWN AS PLOT 101
TWEEFONTEIN, BAPSFONTEIN**

SECOND RESPONDENT

TSHWANE METROPOLITAN MUNICIPALITY

THIRD RESPONDENT

EKHURULENI METROPOLITAN MUNICIPALITY

FOURTH RESPONDENT

JUDGMENT

PHAHLANE, AJ

- [1] This is an application for the eviction of the First respondents from Plot 101 Tweefontein, Bapsfontein. The applicant alleges that the first respondent is occupying the said property unlawfully for the following reasons:
1. That the applicant is the registered owner of the property.
 2. That the letter dated 13 December 2018 sent to the respondent by the applicant's attorney cancelled any purported contract or lease agreement, whether verbal or written between the parties.
 3. That the applicant has applied and complied with section 4 of the Prevention of Illegal Eviction from unlawful Occupation of Land Act 19 of 1998 (The PIE Act).
- [2] The applicant is the registered owner of the immovable property known as Portion 101 (A Portion of Portion 84) of the Farm Tweefontein 413, Registration Division J.R., Gauteng, also known as Plot 101 Tweefontein, Bapsfontein. He took transfer of the property on 27th June 2017 upon registration of the property into his name and a Deed of Transfer was issued.
- [3] The applicant and his wife Hannellie Strauss took up residency in an empty part of a sub-divided house on the property at Plot 101 Tweefontein, Bapsfontein, while the first respondent and her then partner (boyfriend) Mr Hendrick Kok, stayed on the other part of the house. It had appeared that in August 2013 Mr Jasper van Rensburg signed a Lease Agreement (as a lessee) with a business known as Waenhuiskraal Boerdery CC which he later bought.
- [4] Waenhuiskraal Boerdery CC has its principal place of business on Plot 101, Tweefontein, Bapsfontein. On 6 January 2014 the applicant signed a Lease Agreement (as a lessor) with Smooth Seas Trading (Pty) Ltd represented by Mr Hendrick Kok as the landlord. When the relationship between the first respondent and Mr Kok ended, Mr Kok moved out of the property and subsequent to that, an agreement was entered into that between Mr Kok and Waenhuiskraal Boerdery CC that all the monies Mr Kok had invested in building the

property had to be paid back by Waenhuiskraal Boerdery. In 2015 the applicant and his wife became business partners with the first respondent in Waenhuiskraal Boerdery CC.

[5] The applicant and his wife, each owned 25% as shareholders while the first respondent was a 50% shareholder. In 2017 the applicant bought the property from Mr Jasper van Rensburg and on 27th June 2017, the Deed of Transfer was issued to the applicant wherein he took transfer of the property, and the property was registered into his name. Subsequent to the property being registered in the name of the applicant, a five-year Lease Agreement was signed between the applicant, as the owner of the property ("the lessor") and Waenhuiskraal Boerdery CC ("the lessee") represented by the first respondent, A. Kruger and the applicant's wife H. Strauss. In terms of the agreement, rental amount of R20 000.00 per month was payable with a yearly escalation rate of 5%. This Lease Agreement [appears in paginated page 128 of volume 2] was concluded on 1 August 2017 in respect of the "Premises" which is identified and referred to in the lease agreement as the "wedding venue".

[6] The first respondent contends that she is entitled by her employment contract to stay in the property and as a shareholder of Waenhuiskraal Boerdery CC, and also in terms of the "Samewerkingsooreenkoms" concluded between herself, the applicant and his wife Hanellie. On the other hand, the applicant argues that the Samewerkingsooreenkoms on which the first respondent rely, is contrary to the provisions of section 3(a) and (c) of the Subdivision of Agricultural Land Act 70 of 1970 which relates to the prohibition of certain actions regarding agricultural land. The applicant further argues that he has complied with the provisions of section 4 of the PIE Act, and as such, it will be just and equitable to grant an eviction order against the first respondent.

[7] In terms of section 3 of Act 70 of 1970, agricultural land cannot be subdivided without the consent of the Minister of Agriculture. The section provides:

3 Prohibition of certain actions regarding agricultural land

Subject to the provisions of section 2 -

(a) agricultural land shall not be subdivided

(b)

(c) no part of any undivided share in agricultural land shall vest in any person,
if such part is not already held by any person.

- [8] In my view, the provisions of Act 70 of 1970 finds no application in this matter as the first respondent is not challenging the division of the farmland, nor is she asking the court to subdivide the property (ie. Plot 101, Tweefontein, Bapsfontein) in which she is an occupant.
- [9] In her heads of argument, the first respondent stated that she is challenging the application for her eviction from Plot 101, Tweefontein, Bapsfontein ("the property") in which property, she is the occupant in terms of her employment contract, shareholder of Waenhuiskraal Boerdery CC and a Samewerkingsooreenkoms. In her answering affidavit, she stated that she is "currently residing on Plot 101, Tweefontein, Bapsfontein, also known as Remaining Extent of Portion 101, a portion of portion 84, Registration Division J.R. Province of Gauteng and consider this to be her primary residence since 2013".
- [10] This judgment will therefore focus on the pertinent issue which is the basis for this application and the defence by the first respondent.
- [11] The issue for determination by this court is whether the applicant is entitled to evict the first respondent from plot 101, Tweefontein, Bapsfontein.
- [12] The applicant had through a letter dated 13 December 2018 sent by his attorney to the first respondents [through her attorney, Paul Friedman & Associates Incorporated], requested her to vacate the property and offered to pay for the lease/rental at the place which the first respondent would move to. According to the applicant, the first

respondent did not respond to this letter. Neither did her counsel dispute the fact that a letter has been sent to the respondent or make any comments thereto. Paragraph 3 of the letter states that:

'It is our instruction to cancel any purported lease agreement between our clients and your client (whether in writing and/or verbal) with immediate effect and hereby afford your client 30 (thirty) calendar days to vacate the premises, failing which will result in a formal Eviction Application to be lodged against your client'.

Paragraph 4 states that:

"Mr R.J Strauss is the lawful owner of the property and his rights to enjoy undisturbed and unfettered right therein is being prejudiced. In order to settle the lease situation on an amicable basis, we propose that client vacate the property with immediate effect and Waenhuis kraal Boerdery CC to contribute to her reasonable lease expenses to enable her to obtain alternative accommodation".

Paragraph 5: *"It is common cause that both parties can not reside on the same premises pending the outcome of the legal proceedings and the above proposal will be the only sensible solution to protect all parties' rights herein. We trust you find the above in order and await your urgent feedback by 16h00 today, 13 December 2013".*

[13] As stated earlier, the first respondent challenges the eviction and avers that she is an occupant in terms of her employment contract which is annexure AK 7B on paginated page 199 of Bundle 3; as well as the "Samewerkingsooreenkoms" which is annexure AK 4A on paginated page 145 of Bundle 2 as it reflects that Anna Sophia Kruger is a 50% shareholder; Mr Strauss has 25% and Mrs Hannelle Strauss has 25% in the business.

[14] It is common cause that the first respondent is not only a shareholder at Waenhuis kraal Boerdery CC, but she is also an employee of the business. On 2 December 2015 she concluded the Employment contract with the business. She is now relying on a clause

15 titled: 'BEHUISING' which reads: *"Die werknemer sal van huisvesting verskof word....."*.

"Inwonende persone sal huur betaal soos van tyd tot tyd bepaal".

- [15] Counsel argued and submitted on behalf of the first respondent that the respondent is fulfilling her duties as per the employment agreement and is as such, entitled to accommodation in terms of the agreement. Clause 15 is not peremptory. The word *"sal"* [not *"moet"*] was used, and it left room for the applicant to make a choice of whether to allow the first respondent to reside in his property or not.
- [16] In my view, the applicant exercised this choice in his letter dated 13 December 2018 when he 'cancelled any purported contract whether verbal or written'.
- [17] Counsel on behalf of the first respondent argued in the heads of argument that the first respondent's case should be considered under 'special considerations given to the elderly; children; disabled persons; and households headed by women', as referred to in the PIE Act, and further that she should not be evicted from her home as provided for in section 26(3) of the Constitution (Act 108 of 1996).
- [18] It is trite that an applicant who can show that he is the owner of an immovable property and that the respondent is in occupation of his property, is as a matter of principle, entitled to an order of an eviction, unless the respondent can show that his/her occupation is lawful¹. However, the requirements in terms of section 4 of the PIE Act which includes the fact that a Notice must be given to the respondent authorizing service as contemplated in section 4(2) of the Act, must still be complied with. Section 4(1) of the Act provides that:

¹ Graham v Ridley 1931 TPD 476

"Notwithstanding anything to the contrary contained in any law or the common law, the provisions of this section apply to proceedings by an owner or person in charge of the land for the eviction of an unlawful occupier".

Section 4(2): "At least 14 days before the hearing of the proceedings contemplated in subsection (1), the court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction".

[19] The applicant has in his founding affidavit indicated that he is the owner of Plot 101, Tweefontein, Bapsfontein and attached a Deed of Transfer in order to prove ownership. With regards to the question whether the first respondent is in lawful occupation of the property of the applicant, a notice in terms of section 4 of the PIE Act has been served on the first respondent. This is reflected on the court order dated 20 June 2019. With this date in mind and the letter served on the first respondent on the 13th December 2013, notifying her about cancellation of any purported agreement which might have existed between her and the applicant, I find that no agreement, be it in writing or verbally, existed between the parties.

[20] In dealing with the question whether unlawful occupiers include persons who once had lawful possession but whose possession subsequently became unlawful, the court in *Ndlovu v Ngcobo*² stated that:

"Provided the procedural requirements have been met, the owner is entitled to approach the court on the basis of ownership and the respondent's unlawful occupation..... The owner in principle, will be entitled to an order for eviction".

[21] Though the letter and the notice has been served, it seems that the first respondent still insists on staying on the property by virtue of being a shareholder and the alleged

² 2003 (1) SA 113 (SCA) at 19

employment contract. The applicant in this regard, complied with the procedural requirements in terms of section 4(2) of the Act.

[22] With regards to the substantive requirements as outlined in s 4(7), the court must consider all the relevant circumstances of the case. In terms of s 4(8), if the court is satisfied that all the requirements of this section had been complied with and that no valid defence has been raised by the unlawful occupier, it must grant an order for the eviction of the unlawful occupier, and determine-

- (a) a just and equitable date on which the unlawful occupier must vacate the land under the circumstances; and
- (b) the date on which an eviction order may be carried out if the unlawful occupier has not vacated the land on the date contemplated in paragraph (a).

[23] In determining a just and equitable³ date contemplated in sub-section (8), the court must have regard to all relevant factors, including the period the unlawful occupier and her family have resided on the property of the applicant. At the same time, I also have to consider and assess the impact of an eviction and whether there is a risk of the first respondent being rendered homeless, should the eviction order be granted⁴

[24] The relevant facts and circumstances placed before me are that, the first respondent is single and has no dependants; that she is still working at Waenhuiskraal Boerdery

³ Ndlovu v. Ngcobo; Bekker and Another v. Jika 2004 (1) SA 114 (SCA) para 18; Media Workers Association of South Africa and Others v. Press Corporation South Africa Ltd ('Perscor') 1992 (4) SA 791 A 800; Knox D'Arcy Ltd and Others v. Gamieson and Others 1996 (4) SA 348 (A) 360 G – 362 G.

⁴ The Occupiers, Berea v De Wet NO and Another, 2017 (5) SA 346 (CC); City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others, 2012 (6) SA 294 (SCA).

CC and earns a reasonable salary; that she can afford to find her own place and accommodation around Bapsfontein area; that she is not disabled and does not fall under the category of the elderly persons. All these factors were argued and submitted on behalf of the applicant and they were never disputed.

- [25] There is nothing in the papers before this court indicating that the first respondent is an indigent and is unable to pay for alternative accommodation in the event that the applicant is granted the relief sought, and no submissions have been placed before court that the first respondent is not in a position to afford her accommodation and maintain herself.
- [26] The applicant argued that the first respondent has never paid any rent or made contributions towards the electricity; water; rates and taxes and that this position prejudices him as he is paying for the Bond in the property where the respondent is staying for free. It was also argued that the applicant was forced to move out of the property because of tension and bad situation between them. This aspect was also never disputed by the first respondent. Instead, counsel for the respondent argued and submitted that the R 20 000.00 paid in terms of the lease agreement of the business was used for paying for the Bond to the property.
- [27] I do not agree with the respondent's counsel. This submission cannot be the basis on which the first respondent would refuse or neglect to pay rental money at the property where she has been housed or given accommodation as also stated in her agreement. The R 20 000.00 was paid in respect of the business and not the property known as Remaining Extent of Portion 101, which is clearly the property belonging to the applicant.
- [28] It is common cause that the first respondent is a 50% shareholder in the business of Waenhuiskraal Boerdery CC, but nothing in the lease agreement between herself; the applicant and his wife says she is entitled to stay in the 'residential property' belonging

to the applicant. She can therefore not rely on either the employment contract; or her title as a shareholder, nor can she rely on the "Samewerkingsooreenkoms"

- [29] With regards to the defence of a "Samewerkingsooreenkoms", she relies on the following paragraphs:

NADEMAAL: *"Die party van voorneme is om in samewerking met mekaar te werk onder die naam van Waenhuiskraal Boerdery BK end it wenslik is dat die terme en voorwaardes waaronder hulle met mekaar in aandeelhouding sal wees op skrif gestel sal word.*

15.1 Hiermee onderneem die aandeelhouders om die gesamentlike besluit oor die betrokke grond (plot 101/413 JR) na te kom ten opsigte van verkoop of oordrag na Waenhuiskraal Boerdery BK

- [30] This Memorandum of Agreement is nothing short of an understanding or undertaking that the parties will work together under the name of Waenhuiskraal Boerdery. Be that as it may, *clause 15.1* above cannot be read in isolation, to exclude the Title Deed to the property because nothing in this agreement says the "property" (ie. Remaining Extent of Portion 101) has been sold to the business or that it was transferred to the business, Waenhuiskraal Boerdery, so as to entitle or give a right to the first respondent to rely on her claim in refusing to vacate the property belonging to the applicant.

- [31] It was argued and submitted on behalf of the first respondent that the lease agreement which the first respondent entered into with the applicant, states that the property is part of the residence where the respondent stays, and further that such a lease agreement was never cancelled and can therefore not be *null and void* because the company is still being run according to the lease agreement.

- [32] I do not agree with this submission. Counsel's submission seemed to be misplaced because *clause 2* of this agreement states that *"The lessor lets and the lessee hires the*

'Premises' on the terms of this lease". The word "Premises" in terms of the 'interpretation' of this agreement means – 'the wedding venue' situated on the "Premises", whereas the word "Property" means the 'Remaining extent of portion 101 Farm Tweefontein No 413, JR, Bapsfontein".

[33] The Deed of Transfer issued to the applicant and to which the applicant is the rightful and lawful owner of the property relates to the "REMAINING EXTENT OF PORTION 101 (A PORTION OF PORTION 84) OF THE FARM TWEEFONTEIN 431, REGISTRATION DIVISION J.R. THE PROVINCE OF GAUTENG"

[34] It is therefore clear from the wording of both the lease agreement and the Deed of Transfer that the applicant is the owner of the property in dispute. From the documents before court, it does not appear that the first respondent entered into a lease agreement with the applicant in relation to the "property" (ie. portion/plot 101 Tweefontein, Bapsfontein). She confirms in her answering affidavit she 'resides at Plot 101, Tweefontein, Bapsfontein, also known as Remaining Extent of Portion 101, a portion of portion 84, Registration Division J.R. Province of Gauteng'.

[35] Having said that, the first respondent also rely on the agreement of sale between Mr van Rensburg and the applicant which led to the Deed of Transfer being registered in the name of the applicant. She argued that clause 18 which states that:

"Notwithstanding anything to the contrary the parties agree that the agreement that they entered into on the 14 August 2013 is still in place and that the said agreement (2013) will only be cancelled if this agreement (2016) between the seller and the purchaser is null and void or cancelled"

entitles her to continue being a resident in the property of the applicant. It is also on this basis that her counsel submitted that it will be unfair and prejudicial to the first respondent if she evicted from the property.

- [36] The agreement of 14 August 2014 on which the first respondent seek to rely on, is a contract of sale between Mr van Rensburg ('the seller') and Waenhuiskraal Boerdery CC represented by H.F. Kok and A.S. Kruger as its members.
- [37] It is important to note that both the agreement of the sale of plot 101 and the Deed of Transfer are very specific with regards to what is referred to as the 'property'. Put differently, it is clear that Waenhuiskraal Boerdery CC, though situated in the same compound or plot, is separate from the 'private property' of the applicant. In my view, the applicant, as the rightful and lawful owner of the property, can choose who resides in his property.
- [38] It is also common cause between the parties that Waenhuiskraal Boerdery CC has been placed under liquidation in terms of which the liquidators were to sell the business. It is apparent from a document titled "Resolution Trust Company" which is annexure AK 7G on page 203 that the business was liquidated pursuant to an application launched by the first respondent. It is stated in this document that: *"we are now proceeding with a public auction of the business and on the successful conclusion of a sale, we advise as follow:*
- 1. The contracts entered into with WHK will be transferred to the successful purchaser on the same terms and conditions.*
 - 2.*
 - 3. The successful purchaser will be obliged to assume the responsibility as the employer in respect of the current employees of WHK and accordingly you will, in all likelihood continue to deal with the same staff members of the business.*
- [39] Clause 19 relating to the 'rules of auction' stipulates that *"The sale is subject to the purchaser agreeing to take over the employees of the business and consenting to a transfer in terms of section 197 of the Labour Relations Act of those employees which employees are listed and disclosed in the Auction Park".*

- [40] It was argued on behalf of the applicant that though the liquidators were in the process of selling Waenhuiskraal Boerdery as a business, they cannot sell the property belonging to the applicant as he is the registered owner. The first respondent on the other hand submitted that in terms of this clause, the lease agreement still applies because it was not cancelled when the business was handed over to the liquidators for final winding up. She alleges that she is entitled in terms of the 'rules of auction' or 'terms and conditions' of the liquidators, as she puts it, to stay in the property as the new purchaser of the property will inherit the property as well as the staff members, on the same terms and conditions. Her counsel submitted that the contract is not *null and void* as argued by the applicant.
- [41] I am inclined to agree with the submission made on behalf of the applicant. The heading of this document reads: Waenhuiskraal Boerdery CC (In Liquidation) "WHK/The Corporation", and it specifically states: *"we are now proceeding with a public auction of the business".* It follows that the lease agreement which the first respondent is relying on is with regards to the Waenhuiskraal Boerdery. I have already found that the lease agreement does not make provision for the first respondent to be given accommodation in the property of the applicant. I have also found that the applicant is the rightful owner of the property and has never entered into a written agreement with the first respondent, which agreement might have specifically entitled her to reside in the property of the applicant.
- [42] The first respondent has in her affidavit stated that she was in occupation of the property by virtue of a general agreement with the applicant that she could remain on the property. She further states that her initial occupation stemmed from the rights granted to her by Mr Kok who had purchased the property on a deed of sale and thereafter her right of occupation stemmed from a member's agreement that she would be entitled to remain in occupation.

[43] There is no proof before court that Mr Kok owns the property at plot 101 and there is also no Title Deed (eg. Deed of Transfer) confirming that he is the owner of the property. The only documentary proof of ownership to the property is that of the applicant. In any event, I have already found that the applicant is the rightful and lawful owner of Plot 101, Tweefontein, Bapsfontein. At the same time, the 'right of occupation from the general agreement with the applicant' which the first respondent is talking about has been terminated by the applicant in his letter to the first respondent on the 13th December 2013.

[44] I have considered the interests of the applicant and the first respondent. The question which now must be answered is whether the first respondent was the unlawful occupier within the meaning of PIE Act and whether it is just and equitable to issue an eviction order. The court must also determine whether the applicant has made out a case for the eviction of the first respondent in terms of the PIE Act, and whether it is reasonable within the meaning of section 26 of the Constitution to evict the first respondent. In balancing the interests of both the applicant and the first respondent, it should be noted that no rights are absolute. In considering the facts of this case, there is no reason in fairness or equity why the relief sought by the applicant should not be granted. Having carefully weighed all the factors and circumstances relevant to this application and finding no compellable reason not to evict, I find it just and equitable to grant an eviction order.

[45] In the circumstance, I make the following order:

1. The first respondents and all those that occupy the property by virtue of the occupation thereof by the first respondent, are evicted from Plot 101, Tweefontein, Bapsfontein, also known as Remaining Extent of Portion 101, a portion of portion 84, Registration Division J.R. Province of Gauteng.

2. The first respondent and all those that occupy the property by virtue of the occupation thereof, are ordered to vacate the property within 15 (fifteen) days from the date of service of this order.
3. Should the first respondent and all those that occupy the property fail to vacate the Property within 15 (fifteen) days after receipt of this order, the eviction order may be carried out, in which event the Sheriff of this Court is hereby authorized and directed to forthwith evict the first respondent and all those that occupy the property by virtue of their occupation thereof, from the property.
4. The first respondent is ordered to pay the cost of this application on an attorney and client scale, including the costs of the application of the 20 June 2019.



P. D PHAHLANE

**Acting Judge of the High Court
Gauteng Division, Pretoria**

For the Plaintiff	: ADV J. THIART
Instructed by	: BARNARD INCORPORATED CNTURION
For the First Respondent	: ADV H.M. VILJOEN
Instructed by	: PAUL FRIEDMAND & ASSOCIATES INC. ARCADIA, PRETORIA
Date of Judgment	: 11 March 2020