

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 23251/2021

**REPORTABLE: YES/ NO
OF INTEREST TO OTHER JUDGES: YES/ NO
REVISED: NO
DATE: 09/02/2023**

In the matter between:

MICHAEL LEBOGANG MOLOTO N.O	First Applicant
MALEBO RIAN ELIAS MOLOTO N.O.	Second Applicant
MABATHO SHIRLEY MOTIMELE N.O	Third Applicant
and	
BRADLEY BRETT LIEBMAN	First Respondent

ANDREA LIEBMAN

Second Respondent

ALL THE OTHER UNLAWFUL OCCUPIERS

(Of [....] W[....] V[....] L[....])

Third Respondent

EMFULENI LOCAL MUNICIPALITY

Fourth Respondent

JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This is an application for the eviction of the first, to the third respondents from the premises [....] W[....] V[....] L[....] in terms of the provisions of section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1988. The application is opposed by the First and Second Respondents who are husband and wife.

THE FACTS

[2] The applicants are the appointed liquidators of a company called Villa Rivage (Pty) Ltd (in liquidation), the alleged owner of the property concerned. The company itself has, as its directors, the father and sisters of the first respondent who placed it in voluntary liquidation. The first respondent, an erstwhile co -director of the company, has been engaged in several litigations with his father and sisters and had, *inter alia*, unsuccessfully sought to interdict the liquidation of the company and to have the appointment of the applicants as

liquidators set aside. The court had found that the first respondent had no *locus standi* and dismissed his application for an interdict with costs.

[3] While he was still a co-director of the company with his father, the first respondent lived on the property with his wife since 2007 on their return from the United States of America, where they had been living. He was removed as a director of the company, but had continued to date to live on the property.

[4] The applicants have listed primarily the following grounds for the relief sought;

4.1 the first and second and those who reside on the property through and under them, the third respondents, have no legal right to occupy the property;

4.2 despite the company being in the final stages of liquidation and despite having been given notice to vacate the property, the respondents have simply refused to do so;

4.3 there exists no lease agreement or any form of agreement between the respondents and the company entitling the respondents to be in occupation of and reside on the property.

[5] At the initial hearing of this matter in March 2021, the first and the second respondents raised a point in *limine* that the applicants had failed to serve a notice in terms of Rule 41 A - a point that was dismissed by the court. However, the court struck the matter off the roll when the first and second respondents raised a further point in *limine* that the applicants had not given a property notice in terms of the section 4(2) of the PIE Act. There has since been an order granted and the in terms of the said section and thus compliance with the Act.

FIRST AND SECOND RESPONDENTS' POINTS IN *LIM/NE*

[6] The first and second respondents have raised three points in *limine*; the first being that the applicants have proceeded by issuing a notice of motion and served same without a date for the hearing and premised on the basis that the date of hearing will be determined by the Registrar. The respondents contend that this was a fatal defect for non - compliance with the Rules of the court.

[7] In response the applicants state that the notice of motion was issued during the lockdown period and rely on the directives of the Judge President that the issuing of court process be done on caselines. It was not possible to obtain a date of hearing and that as a result a practice was developed to issue and serve the notice without a date of hearing and for the applicants to apply for date of hearing once all papers had been filed or once the dies for entry of opposition had expired without the respondents filling any opposition. There can be no defect, let alone a fatal one where, in response to the state of disaster, a directive is issued causing a deviation to facilitate the continuity of in court processes.

[8] The respondents had challenged the *locus standi* of the first applicant, the director of a company called Bahlanka, but have since abandoned, wisely so, this point in *limine* as the first applicant was appointed as joint liquidator and did not require authorisation of his company to institute these proceedings.

[9] The third point in *limine* raised by the respondents pertains to a disputed ownership of the company and an alleged discrepancy in the description of the property in the title deed and on the applicants' papers. The respondents in this regard appear to suggest that the company is not the owner of the property and /or that the property is not the same as that from which their eviction is sought.

[10] It is correct that there is a typographical error in the Title Deed registration number of the property. The respondents are clearly clutching at straws in their objections and contentions in this regards. Firstly, as an erstwhile director of the company the first respondent has first-hand knowledge that the company is the registered owner of the property. To suggest otherwise or that the property described is not the same as that from which these eviction proceedings relate is simply disingenuous.

THE RESPONDENTS' DEFENCES

[11] The first and second respondent deny that they are in unlawful occupation of the property. In particular, the first respondent alleges that he has been living on the property since 2007 and that payment of municipality rates and taxes and other expenses were made by the company as part of his benefits. He contends that he is employed by the company, despite it being in liquidation. He has attached no proof of this allegation. While not disputing that the applicant's allegation that the respondents do not have a lease agreement with the company entitling them to be in occupation of the property, in their heads of arguments the respondents contend that they have a month to month rental agreement - an allegation they have not substantiated, but merely meant to dispute the applicants' allegation that they (respondents) are not maintaining the property, nor paying for municipal services. The applicants have attached proof in the form of photos of the property depicting its poor state of neglect as well as a municipality account showing an outstanding amount in the order of R134 000 -00 owing to the municipality.

[12] The respondents have filed a thirty-six-page affidavit a great part whereof purports to establish that his removal by his father and sisters as a director of the company was fraudulent and unlawful. These allegations were dealt with in previous hearings of the matters between him and his father and were dismissed by the courts which also found that he had no legal standing to

interdict the voluntary liquidation of the company.

[13] Of relevance and has to be considered in the present proceedings is the respondents' allegation that they would be left homeless were the eviction order be granted. The respondents allege ill-health and the Covid 19 pandemic, *inter alia*, and lack of alternative accommodation as reasons why the eviction order should not be granted. A further allegation is made of a man who is elderly and has lives on the property for many years. The latter allegation has been refuted by the applicants who have attached an affidavit of the same man denying that he still resides on the property.

[14] The respondents have not attached any proof of their ill-health, which the first applicant has denied. The State of disaster has come and gone and offers no refuge for the respondents.

[15] The respondents' allegation that they will not be able to find alternative accommodation is contradicted by the first respondent who describes himself as a businessman. Furthermore, the applicants have referred this court to pending proceedings for the sequestration of the estate of the first respondent. The court was specifically referred to an averment by the first respondent that his estate is not insolvent and that he has sufficient movable assets he can sell to settle the debt giving rise to his sought sequestration. The first respondent seemingly has those assets over and above his alleged movable assets costing hundreds of thousands of rands that were removed from the property by the Sheriff at the instance of the applicants. The movables were removed by the applicant in the process of the liquidation of the company. Despite their protest, the respondents had not been able to produce proof of ownership of those assets concerned, including a motor vehicle.

PURPOSE OF THE INQUIRY IN EVICTION PROCEEDINGS

[16] The enquiry the court is enjoined to make in eviction proceedings is whether it will in the end be just to grant the sought eviction order. It is incumbent on the respondents to bring all the facts in support of their resistance of the application for their eviction. The respondents' alleged inability to obtain alternative accommodation is hard to believe on the foregoing facts. In fact, the evidence, including that of the respondents, demonstrates the opposite of the destitution they allege. The respondents cannot seek to invoke the provisions of section 26 of the Constitution in the circumstances.

[17] In its inquiry, the court ought to consider the circumstances of the applicants either. In the present matter the applicants have a duty to discharge their mandate as liquidators of the company. Whatever their reason is/was for the voluntary sequestration of the company, the directors would be looking forward to the completion of the process. Instead, they have for years had to engage in endless litigation brought by the first respondent who has, in any event, been repeatedly unsuccessful.

CONCLUSION

[18] I am satisfied by the evidence that the company is the owner of the property concerned in these proceedings; that the respondents have not demonstrated any entitlement or right to continue to reside or occupy the property. The first respondent's efforts to assert his co -ownership of the company have previously been determined by two courts to be without merit. The directors of the company are entitled to liquidate their company without undue and unwarranted hindrance by the first respondent. The applicants, the first of whom has already passed on, are obliged to finalise the liquidation procedure and the first respondent has once again been obstructive. On the evidence before me, the application ought to succeed.

COSTS

[19] It is the general principle that costs follow the outcome of the proceedings.

ORDER

[20] Consequent upon the findings in this judgment, the following order is made:

1. That the first, second, and third respondents, and all other unlawful occupiers holding title through or under them, at the property situated at Portion 17, portion of portion 31 of the Farm K[....] , [....] , Emfuleni Local Municipality, held under Deed Number [....] , also known as [....] W[....] V[....] L[....] ("*the property*") be hereby ordered to vacate the property by no later than 31 March 2023.
2. In the event that the first, second and third respondent fail to comply with prayer (1) above, that the Sheriff of this court or his lawful deputy be authorized to evict the first, second and third respondents.
3. Should the first, second and third respondents regain access or take possession of the property after having vacated same and/or after being evicted from the property by the Sheriff as per prayer (2) hereof, the order for eviction granted herein may be executed and carried out again and for such purpose, the Sheriff of this court and his lawfully appointed deputy are authorised and directed to gain forthwith evict the first, second and third respondents and all other unlawful occupants.
4. The first and second Respondent are ordered to pay the cost.

M P N MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

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JUDGMENT ELECTRONICALLY TRANSMITTED TO THE PARTIES ON 09
FEBRUARY 2023.