IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case Number: 6635 / 2022
and
Case Number: 6633 / 2022
Case Number: 6699 / 2022
Case Number: 6700 / 2022
Case Number: 6701 / 2022
Case Number: 6766 / 2022
Case Number: 6768 / 2022
Case Number: 6810 / 2022
Case Number: 6811 / 2022

In the matter between:

GOODFIND PROPERTIES (PTY) LTD	**Applicant**
and	
DOROHA ADRIAANSE	**First Respondent**
NAWAAL ADRIAANSE	**Second Respondent**
MOEGAMAT FAIZEL ROMAN	**Third Respondent**
MOEGAMAT TARIQ ROMAN	**Fourth Respondent**
(and all the occupants holding through the respondents at the property)	
CITY OF CAPE TOWN MUNICIPALITY	**Fifth Respondent**

Coram: *Wille, J*

Heard: 16 November 2022

Delivered: 28 November 2022

JUDGMENT

WILLE, J:

[1] Before me for determination were several opposed applications for the eviction of different respondents from certain apartments within an apartment complex in the Western Cape.[1] The applications were heard together by the direction of the Judge President as the factual issues were all very similar in nature, while the legal issues were all identical.

[2] These are all applications under section 4 (1) of the Act.[2] The relief sought is for the eviction of the various respondents and any other occupiers from the property. Accordingly, I am enjoined to determine firstly, whether a case is made out for these evictions and, secondly, if so, on what date the evictions should be ordered to be carried out, having regard, among other things, to the personal circumstances of the respondents. None of the respondents put forward any personal circumstances that may have found application for their continued occupancy of the property. The applicant also contends for a punitive costs order against the respondents' attorney for certain specified reasons.

---

[1] The apartment complex known as *"Sakabula"* in an area of Western Cape is called '*Ruyterwacht' ("the property").*
[2] The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 ("*PIE*")

Overview

[3] In opposition to the applications, several technical points are raised in the answering affidavits. In summary, the core technical points are the following, namely: (a) that it is advanced that these eviction applications should not be entertained, pending the finalisation of a similar matter in another court; (b) that it is advanced that the applicant is an organ of the state; (c) that a challenge is made as to the ownership of the property; (d) that there is an alleged disparity in the description of the property; (e) that the applicant has no authority to institute the applications; (f) that the respondents are said not to have been in any arrears; (g) that no meaningful engagement has taken place with the respondents and; (h) that the applicant must provide housing to the respondents.

The case for the applicant

[4] Some years ago, the applicant purchased the property from another entity.[3] It is alleged that the applicant is, accordingly, the lawful and registered owner of the property. This factual allegation is supported by a copy of the title deed to the property, a conveyancer's certificate and an electronic property print-out report.

[5] At various times, the respondents in each matter entered into lease agreements concerning the apartments on the property with the previous property owner at the time. The leases were in writing in roughly the same terms. The respondents took occupation of these apartments on the property and they have breached their leases and have failed to make payment of the monthly rentals due to the applicant for a long time. The total amount outstanding by the respondents is more than R1.6 million. The average amount due by each respondent amounts to about R178000,00.

---

[3] The applicant purchased the property from its holding company *'Communicare'*.

[6] The applicant placed the respondents on terms to bring their rental arrears up to date. The respondents in each matter failed to respond to these demand letters, and the amounts remain outstanding. This prompted the applicant to formally cancel the leases in writing by delivering cancellation notices. Regarding the cancellation notices, the respondents were required to vacate the properties by no later than the end of last year.

[7] Despite the leases being cancelled and the respondents having been called upon to vacate the property, they have failed to do so and remain in unlawful occupation. The respondents have been in unlawful occupation for less than six (6) months. Accordingly, the respondents are categorised as a certain species of unlawful occupiers as defined in the Act.[4] The applicant argues that as the landowner, it has complied with the applicable legislative provisions and that, failing any valid right in law to continue to hold against the applicant being established by the respondents, the applicant is entitled to the relief it seeks.

The case for the respondents

[8] The entire opposition by the respondents is predicated upon certain specified legal, and technical arguments alluded to earlier in this judgment. The respondents have put up no primary facts in support of their legal and technical arguments. This is despite the respondents having been invited on several occasions to detail their respective personal circumstances and engage with and complete the relevant prescribed questionnaires for processing by the fifth respondent. They all declined to do so. Accordingly the court is left with no information pertaining to the personal circumstances' of the various respondents.

---

[4] Section 1of 'PIE' (definition of 'unlawful occupier'), read with section 4(6) of PIE.

Consideration

[9] An owner or person in charge of land may apply for the eviction of an unlawful occupier, provided all the procedural legislative requirements have been met. An owner is entitled to approach the court based on ownership and the respondent's unlawful occupation. But more significantly, the current legal position is as follows:

'…Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction…'[5]

[10] The argument about a pending matter in another court has several insurmountable hurdles.[6] The pending application is not connected to the property in this matter. The pending matter is completely unrelated to this application, and there is no basis to stay these matters pending the outcome of the alleged pending matter. The Land Claims Court matter involved a third party who allegedly attempted to pass himself off as the previous owner of the subject property in this matter.

[11] Opposing papers in the alleged pending matter have since been filed, and no replying papers have been forthcoming despite the passage of several years. A party wishing to raise the shield of a pending action bears the onus of both alleging and proving the following: (a) pending litigation; (b) between the same parties or their privies; (c) based on the same cause of action and (d) in respect of the same subject matter. None of these antecedent requirements have been met by the respondents.

[12] In addition, the bald allegation is made that the applicant is an organ of the state. It was also suggested that the applicant's holding company is an organ of the state. I disagree because in terms of our relevant constitutional provisions, an organ of the state

---

[5] *Ndlovu v Ngcobo; Bekker And Another v Jika* 2003 (1) SA 113 (SCA) at [19].
[6] The Land Claims Court.

is defined in the following terms, namely:

'*…(a) any department of state or administration in the national, provincial or local sphere of government; or (b) any other functionary or institution - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer…'*[7]

[13] By way of elaboration, the respondents attempt to seek reliance on certain unspecified provisions in the Social Housing Act.[8] However, the property concerned does not fall within the ambit of the definition of "social housing" as defined because it is not an approved project or a designated restructuring area and has not had the benefit of public funding.

[14] It may well be so that the applicant's holding company controls certain properties subject to certain provisions of the Social Housing Act. Further, the applicant's holding company may be an accredited social housing institution as defined in the Social Housing Act concerning the regulation and control of certain specified properties. However, the respondents still need to demonstrate that the property, in this case, is subject to the control of the social housing regulatory authority or is in any way subject to the provisions and regulations of the Social Housing Act. This has not been established.

[15] An interesting argument is raised in connection with a direct challenge concerning the ownership of the property. The respondents contend that the applicant is not the rightful owner of the property. The argument advanced is that the respondents

---

[7] Section 239 of the Constitution of the Republic of South Africa, 1996.
[8] Act No. 16 of 2008 ("the Social Housing Act").

seem to further contend that the former property owner unlawfully acquired the property from its predecessor in contravention of our company laws and regulations.[9]

[16] The primary facts and documentary evidence put up by the applicant demonstrate the opposite. The facts are that the applicant acquired the property in terms of a lawful "asset-share-swop-transaction", and the property was not donated to the applicant, nor did it inherit it from an organ of state, as alleged by the respondents. The respondents deny that a copy of the title deed, a conveyancer's certificate and the computer-generated printout is sufficient proof of the applicant's ownership of the property. The latter seems to constitute sufficient proof absent any credible evidence to the contrary.[10]

[17] Curiously, the respondents refer to the property as a unit in a sectionalised building and further complain that the erf size as described by the lease does not correspond with the erf size as indicated on the computer-generated printout. The applicant points out in reply that there is a simple explanation for this alleged discrepancy. The building on the property is not a sectionalised building. Accordingly, the size of the erf is different to the square meterage of the apartments leased to the respective respondents.

[18] The respondents also advance as a shield that the various leases were concluded with the immediate previous owner and that all the leases are accordingly void from inception. If this argument was to be upheld by the court, then it would be challenging to discern on what legal basis the respondents occupy these apartments. This would

---

[9] Companies Act No. 46 of 1926 and the Companies Act No. 71 of 2008.
[10] *Van der Westhuizen v Nxiweni and Others* (21145/17) [2018] ZAGPJHC 97 (8 May 2018), para [15].

mean that the respondents would then on their own versions be in unlawful occupation.

[19] The lessees concluded the leases in each case with the previous owner of the property at the time. When the applicant became the property owner, the respondents were protected by operation of the law, and this would not have any effect on the respondents' obligations under the various lease agreements.

[20] Another technical point piloted was that the applicant was not properly authorised to institute these proceedings against the respondents. The simple answer to this is that as a matter of law, the deponent to an affidavit is not required to be authorised to sign an affidavit.[11] Nevertheless, the deponent in this application was authorised in terms of the delegation of the authority squarely referenced in the papers, albeit in reply.

[21] The respondents aver that there has been no meaningful engagement with them, and these eviction proceedings may only be resorted to as a last resort. The papers show meaningful engagement by the applicant even though it may not have been an out-and-out obligation upon them to do so.

[22] I say this because, the applicant caused letters to be sent to the respondents in terms of which the respondents were first allowed to bring their arrears up to date before the applicant proceeded to cancel the leases and institute these proceedings. Furthermore, there is no basis upon which the applicant can be said to have a duty or obligation to provide the respondents with housing. I say this because an individual's right to housing does not fall to be shouldered by the public.[12] No state or government can guarantee to any person unqualified permanence in his or her residence.[13]

---

[11] *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at [19].
[12] *Theewaterskloof Holdings (Edms) Bpk, Glaser Afdeling v Jacobs en Andere* 2002 (3) SA 401 (LCC) at 411E.
[13] *Johannnesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers Newton Urban Village* 2013 (1) SA 583 (GSJ).

Equity

[23] In determining whether or not to grant an order or to determine the date on which the property has to be vacated, I am enjoined to exercise discretion based on what is just and equitable.[14] This requirement relates to both the applicant and the respondents.[15] The applicant provides low-income housing to disadvantaged public members who need shelter. The applicant is only able to do so if tenants pay the small rental amounts required from them for the accommodation so provided.

[24] The respondents have not been paying any rent in respect of the property for many years, and they are unlawfully occupying the property, thereby prohibiting the applicant from being able to secure alternative paying tenants. The applicant is prejudiced by the respondents' unlawful occupation in that it cannot generate income from the property for the applicant's continued existence.

[25] In the circumstances, the court can decide whether an unlawful occupier should be evicted. The test is whether it is equitable to do so. In giving this power to the court, the legislature has expanded upon the applicable constitutional requirements in terms of which no one may be evicted from their home:

'...without an order of court made after considering all the relevant circumstances...'[16]

[26] It must be so that this responsibility bestowed upon the court must be viewed through a constitutional lens and the courts are enjoined to decide on unique cases, not only on the principles of the law of property, but also on principles of fairness and equity.

---

[14] *Ndlovu v Ngcobo; Bekker And Another v Jika* 2003 (1) SA 113 (SCA) at [18]
[15] *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at par [35] & [36]
[16] Section 26 (3) of the Constitution of the Republic of South Africa, 1996.

[27] *Wallis JA,* in *Changing Tides*[17], made the following penchant remarks in this connection, namely:

'*…an eviction order may only be granted if it is just and equitable to do so…'*

[28] The respondents still need to place relevant facts and information about their circumstances before this court, despite having more than sufficient opportunity to do so, and even after having been invited to file further supplementary affidavits following their answering affidavits. Most of these facts and information are in the exclusive knowledge of the respondents, and it cannot be expected of the court to have to speculate about this aspect. The fifth respondent furnished a report in which it was confirmed that it needed to be provided with more information in this regard.

[29] The final stage of an eviction enquiry is the form that the eviction order must take, bearing in mind all relevant circumstances and the principles of justice and equity. In these circumstances, I believe that despite having scant information before me, nevertheless a liberal equity consideration favours the respondents. In my view, it would be just and equitable to grant the respondents a further period of two (2) months to vacate the property.

Costs

[30] It is trite that the question of costs is a matter in the court's discretion. It is equally trite that, as a general rule, costs follow the result, and successful parties should be awarded their costs. The applicant seeks an order that the author of the answering affidavits pay the costs of the answering and replying affidavits in his personal capacity.

---

[17] *City of Johannesburg v Changing Tides 74 (Pty) Ltd and others* 2012 (6) SA 294 (SCA).

[31] One of the fundamental costs principles is to indemnify a successful litigant for the expense put through in unjustly having to initiate or defend litigation. The successful party should be awarded costs.[18] The last thing already congested court rolls require is further congestion by an unwarranted proliferation of litigation.[19]

[32] It is so that when awarding costs, a court has a discretion, which it must exercise judiciously and after due consideration of the salient facts of each case at that moment. The decision a court takes is a matter of fairness to both sides.[20] The court is expected to take into consideration the peculiar circumstances of each case, carefully weighing the issues in each case, the conduct of the parties as well as any other circumstances which may have a bearing on the issue of costs and then make such an order as to costs as would be fair in the discretion of the court.

[33] No hard and fast rules have been set for compliance and conformity by the court unless there are special circumstances.[21] Costs follow the event in that the successful party should be awarded costs.[22] This rule should be departed from only where good grounds for doing so exist.[23]

[34] In *Potgieter*[24], a general rule was formulated that a personal order for costs against a litigant occupying a fiduciary capacity is justified where the conduct in connection with the litigation in question has been *mala fide*, negligent or unreasonable. The conduct of the fiduciary must evidence improper conduct which deviates from the standards of conduct to be expected of the fiduciary.[25]

---

[18] *Union Government v Gass* 1959 4 SA 401 (A) 413.
[19] *Socratous v Grindstone Investments* (149/10) [2011] ZASCA 8 (10 March 2011) at [16].
[20] *Intercontinental Exports (Pty) Ltd v Fowles* 1999 (2) SA 1045 (SCA) at 1055F- G
[21] *Fripp v Gibbon & Co* 1913 AD 354 at 364.
[22] *Union Government v Gass* 1959 4 SA 401 (A) 413.
[23] *Gamlan Investments (Pty) Ltd v Trilion Cape (Pty) Ltd* 1996 3 SA 692 (C)
[24] *In re Potgieter's Estate* 908 TS 982
[25] *Vermaak's Estate v Vermaak's Heirs* 1909 TS 679 at 691

[35] The legal representative for the respondents explained his legal position in connection with these matters and a host of other matters in which he represented several persons from poor socio-economic circumstances facing eviction at no charge. He faced time constraints and desperately needed more resources to draft and oppose various applications in different jurisdictions.

[36] In all the circumstances of the matter, I believe that a punitive costs order is not warranted, and I am not persuaded that any costs order should be granted against the respondent's attorney personally. Whilst I may harbour some suspicions about the reasons for some of the highly technical arguments advanced during this litigation, I cannot visit this upon the respondent's legal representative without further evidence.

[37] That having been said, it would serve no purpose to make an order that the respondents pay the costs of these applications taking into account their poor socio-economic circumstances, other than to provide some safeguard to the applicant should any costs order be granted against it in future at the instance of any of the respondents.

[38] Accordingly, the costs order that I make is that the respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the applicant's costs, subject to the following: (a) that the applicant may only tax its costs in the event of either of the respondents at some point in the future obtaining a cost order against it and, (b) that in that case, the registrar may not issue a writ of execution without applying set-off against any costs taxed in the applicant's favour, on the one hand, and the costs taxed in any of the respondents' favour, on the other hand. This would mean that the applicant would be afforded at least some safeguard against any costs being levied against it in the future in relation to these various matters.

Order

[39] I was advised at the inception of the hearing that an agreement had been reached between the applicant and the respondents under case number 6633/2022 and case number 6700/2022. It was agreed that these respondents would vacate the property by no later than the last day of December 2022. This does not favour me as I have found that it would be just and equitable to give the respondents a period of at least two (2) months to vacate the property.

[40] The applications at the instance of the applicant accordingly succeed with the "hybrid" order as to costs as set out above. I attach nine (9) different orders for each case number referenced in the heading to this judgment.

[41] Orders are granted as attached hereto marked "X1" to "X9" inclusive. The respondents are ordered to vacate the property by no later than the last day of January 2023, failing which the court sheriff is authorised to proceed with the necessary legal eviction processes following the provisions of the attached orders.

_____

E.D WILLE
Judge of the High Court
Cape Town