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REPUBLIC OF SOUTH AFRICA



**THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NO: 7772/2021

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 18/06/25

SIGNATURE:

In the matter between:

GREATER LETABA MUNICIPALITY

APPLICANT

and

SOLLY BOPAPE

1ST RESPONDENT

MANGANI MTABARIRA

2ND RESPONDENT

**ALL OTHER UNKNOWN PERSONS UNLAWFULLY
OCCUPYING THE PROPERTY DESCRIBED AS**

3RD RESPONDENT

**ERF 1[...], PORTION 8 OF THE FARM MEIDINGEN
398, REGISTRATION DIVISION L.T, LIMPOPO PROVINCE**

JUDGMENT

NKOANA A.J

Introduction

[1] On 22 October 2021, the Applicant issued out of this Court an application in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No 19 of 1998 ("**PIE**").

[2] The Applicant sought the following prayers:

2.1 That the First, Second and Third Respondents be evicted from the property described as Erf 1[...], Portion 8 of the Farm Meidingen, 398, Registration Division L.T, Limpopo Province (hereafter referred to as "the property").

2.2 The Applicant further sought ancillary orders that the Respondents' must vacate the property within fourteen (14) days from the date of the Court Order. Should they fail to vacate the said property, then the Sheriff of the Court or his Deputy should be directed to forthwith evict the Respondents from the property with the assistance of the members of the South African Police Service and or locksmith, should it become necessary.

The Parties

[3] The Applicant is the Greater Letaba Municipality, a local sphere of Government, established in terms of Section 12 of the Local Government: Municipal Structures Act 117 of 1998, as well as Section 155 of the Constitution of the Republic of South Africa.

[4] The First Respondent for the purpose of the application was served at his attorneys' offices.

[5] The First Respondent is described as a major person being in unlawful occupation and control of the property. He is the person at whose instance the other Respondents also occupy the property unlawfully, and without authorization of the Applicant.

[6] The Second Respondent is described as an adult female, Zimbabwean national who unlawfully occupies the property without the Applicant's authority.

[7] The Third Respondent is all other unknown persons, unlawfully occupying the Property.

Applicant's Case

[8] On 14 August 2017, the Department of Public Works, Roads and Infrastructure, which is the custodian of state-owned immovable assets, initiated a process of donating the property from the Limpopo Provincial Government to the Applicant.

[9] On 16 October 2017 the Applicant through its accounting officer accepted the donation. This culminated in the property being transferred and registered in the names of the Applicant on 10 January 2019.

[10] The property is fully described as Portion 8 of the Farm MEIDINGEN 398, Registration Division L.T, Limpopo Province situated in the township of Ga-Kgapane. Portion 8 consists of several erven, including Erf 1[...], which is the subject of this application.

[11] The Applicant avers that the Respondents are currently occupying the property without the necessary permission from it. The Respondents have not sought or received permission from the Applicant or its Council to occupy the Property.

[12] In terms of the Letaba Land Use Management Scheme of 2008, the property is zoned as government property and not a residential area.

[13] The Applicant avers further that the property was previously used as a traffic testing station by the Applicant. It has two old Government Buildings which are now being occupied by the Respondents.

[14] The Applicant's officials and attorney inspected the property and found the Second Respondent, who claimed that the First Respondent had given her permission to occupy it.

[15] The Applicant's attorneys dispatched letters to the Respondents, requesting them to vacate the Property as they were in unlawful occupation.

[16] The Applicant's letters were met by a response from the First Respondent's attorney, who recorded in no uncertain terms that the First Respondent was the rightful owner of the property and will not vacate it.

[17] Faced with no other alternative, the Applicant launched eviction proceedings against the Respondents in this Court. On 15 March 2022, the form and contents of the Notice in terms of Section 4(2) of PIE was authorized and eventually served on the Respondents.

Respondents' Case

[18] On 21 April 2021, a letter was dispatched by the First Respondent's attorneys, who recorded that the First Respondent was the owner of the Property and that he will not vacate it.

[19] On 15 February 2023, the First Respondent filed an Answering Affidavit resisting the eviction order applied for by the Applicant.

[20] The First Respondent raised a Special Plea of Non-Joinder, which related to the Applicant's failure to join three parties namely; the National Minister of

Cooperative Governance, the Provincial MEC of Co-operative Governance, as well as Modjadji Traditional Authority as these parties have a direct and substantial interest in the litigation.

[21] The Special Plea is in the body of the Answering Affidavit and appears on page 11 of the Answering Affidavit. Pages one (1) to the middle of page eleven (11) were dedicated to the historical account regarding the property.

[22] The First Respondent conceded that he took occupation of the property sometime before the year 2012 after he noticed the existence of Erf 1[...] Ga-Kgapane "A".

[23] He records further that he realized that the said Property could present an opportunity for future commercial development and thus he embarked on making enquiries with relevant authorities regarding the possible acquisition of the property.

[24] The First Respondent avers that he approached an official of the Limpopo Government and indicated that he wished to make an offer to buy the Property. He was then directed to the Modjadji Royal Council, the traditional authority in whose area of jurisdiction the property falls.

[25] According to the First Respondent he approached the Headman, one Edican Rapitsi and expressed his wish to buy the Property. He paid an amount of R120,000 for the said property and later took occupation.

[26] The First Respondent submitted documents to the Applicant for the issuance of a Permission to Occupy ("PTO"). The Applicant refused to issue the said PTO but instead initiated a process of evicting him.

[27] It is common cause that the Applicant's application to evict the First Respondent launched in the Magistrate Court of Kgapane was unsuccessful, as at that stage the Applicant was not the registered owner of the property.

[28] The First Respondent then narrates the steps that he took by approaching the Provincial Department of COGHSTA. A report was written which had recommendations favourable to him, however the Applicant failed to implement the set recommendation.

[29] In the meantime, the Applicant became the registered owner of the property on 10 January 2019, as is evidenced by the Title Deed. Later on the Applicant instituted the current eviction proceedings.

[30] The First Respondent was dissatisfied with how the dispute between the Applicant and himself regarding the property was managed. In 2021, he lodged a complaint with the Local Government Support and Improvement Management Unit at the National Department of Cooperative Governance.

[31] The said dispute was investigated, and a report which had recommendations was compiled. In sum it was recommended that the property be sold to the First Respondent by the Applicant. However, for one reason or the other those recommendations were not implemented.

Determination of Issues

[32] I am called upon to first determine whether the Applicant has locus standi to institute this proceeding. Thereafter, I must determine if the Respondents are unlawful occupiers, and if I find that they are, I must then decide if it is just and equitable to grant an eviction order.

[33] If after undergoing this exercise I find that it is just and equitable to grant the eviction order, then I must make further enquiries whether the order for eviction should be granted and if so, I must make a determination of the date on which the order may be executed.

[34] Before I can delve into the requirements of PIE, I must first consider the Special Plea of non-joinder as raised by the First Respondent.

[35] The First Respondent as mentioned contends that the Minister of Cooperative Governance, the MEC of COGHSTA as well as Modjadji Royal Council ought to have been joined in these proceedings.

[36] The question that needs to be answered is whether these Parties are having a direct and substantial interest in the subject matter, warranting them to be joined in the proceedings so that they can safeguard them.

[37] The test of non-joinder was formulated by the Supreme Court of Appeal in the case of **ABSA BANK LTD vs NAUDE N.O. [2015] ZASCA 97** at paragraph 12 as follows.

"The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined."

[38] The crisp issue in this case involves the property that is owned by the Applicant. The said property is occupied by the Respondents. The Order sought pertains to the eviction of the Respondents from the property.

[39] I am unable to see what the Minister of Cooperative Governance , the MEC of COGHSTA and the Modjadji Royal Council's direct and substantial interests in the property are.

[40] I find that the Special Plea of Non Joinder has no merits as these parties do not have a direct and substantial interest that seeks protection, as the order sought does not affect them.

[41] In the result, the Special Plea/Point *in limine* of non-joinder is dismissed with costs.

[42] I now turn to the merits of the application. It is settled law that no one can be arbitrarily deprived of his/her property without due process. Section 26(3) of the Constitution provides that "no one may be evicted from their home, or have their

home demolished, without an Order of Court made after considering all the relevant circumstances". See *RESIDENTS OF JOE SLOVO COMMUNITY, WESTERN CAPE V THUBELISHA HOMES CENTRE ON HOUSING RIGHTS AND EVICTION AND ANOTHER*, *Amici Curiae* 2010 (3) SA 454 (CC) at 527E - 528G).

[43] In the case of *MACHELE V MAILULA* 2010 (2) SA 257 (CC) at 262 C-D the

Constitutional Court stated as follows:

"The Application of PIE is not discretionary. Courts must consider PIE in eviction cases. PIE was enacted by Parliament to ensure fairness in the legitimacy of eviction proceedings and to set out factors to be taken into account by a Court when considering the grant of an eviction order. Given that evictions naturally entail conflicting constitutional rights, these factors are of great assistance to Courts in reaching constitutionally appropriate decisions."

[44] It is common cause that the Applicant is the owner of the property and that the best evidence to prove ownership of an immovable property is the Title Deed. See *GAUDIN CHROME (PTY) LIMITED V MCC CONTRACTS (PTY) LTD* 1993(1) SA 77 A at 82.

[45] On 10 January 2019 the property was transferred to the Applicant and is held under Title Deed No. T000000051/2019.

[46] I find that the Applicant has established its *locus standi* as it is the owner of the Property as envisaged by the PIE Act in particular Section 1(ix).

[47] The next question to be determined is whether the Respondents are in unlawful occupation. The Respondents have not been granted consent to occupy the Property by the Applicant.

[48] Irrespective of whether the Respondents possession of the property was lawful at an earlier stage. See *NDLOVU V NGCOBO; BEKKER V JIKA* 2003 (1) SA 113(SCA) AT 122D

[49] The Respondents defence of a prior agreement, vesting a personal right to transfer of immovable property can never supersede and prevail over a real right of ownership. See *MIYA V MATLEKO-SEIFERT 2023(1) SA 208(GJ) AT 214A-D*

[50] It is apposite to address the following, section 40 of the Constitution of the Republic of South Africa provides as follows:

"[40] Government of the Republic

(1) In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.

(2) All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter provides.

[51] Section 41 of the Constitution states as follows;

[41] Principles of co-operative government and intergovernmental relations

(1) All spheres of government and all organs of state within each sphere must:

(a) preserve the peace, national unity and the indivisibility of the Republic;

(b) secure the well-being of the people of the Republic;

(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;

(d) be loyal to the Constitution, the Republic and its people;

(e) respect the constitutional status, institutions, powers and functions of government in the other sphere

(f) not assume any power or function except those conferred on them in terms of the Constitution;

- (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
- (h) *co-operate with one another in mutual trust and good faith by*
- (i) *fostering friendly relations*
- (ii) *assisting and supporting one another;*
- (iii) *informing one another of, and consulting one another on, matters of common interest;*
- (iv) *co-ordinating their actions and legislation with one another;*
- (v) *adhering to agreed procedures; and*
- (vi) *avoiding legal proceedings against one another."*

[52] My interpretation of these Constitutional provisions is that there are distinct, interdependent, and interconnected spheres of Government. Each sphere must respect the Constitutional status, institutions, and functions of the other spheres.

[53] The different spheres may only exercise the powers and functions explicitly granted to them by the Constitution. Additionally, they must not infringe upon the roles and responsibilities of other spheres.

[54] The reports generated by the National and Provincial Department of COGHSTA, contained recommendations. Recommendations by their nature are not binding. The Applicant, which is run through its Council, is at liberty to take its own decisions without being dictated by another sphere of government.

[55] The First Respondent recorded his intentions to approach Court to seek relief, as the property was transferred from Limpopo Government to the Applicant during the period of their dispute. As at the hearing of this matter no such legal challenge had ensued. I find then that the Respondents have no justifiable right to occupy the Property and are unlawful occupiers .

[56] The next question then that must be answered is whether it is just and equitable to evict the Respondents. The First Respondent in his Answering Affidavit (at paragraph 2.12) put it bluntly as follows:

"I realised that the subject property could present an opportunity for future commercial development, and I decided to make enquiries, from relevant authorities, with regard to the possible acquisition of the Erf."

[57] The First Respondent further concedes that the Second Respondent is his employee who is occupying the property through him. The Applicant stated that the Property is an old testing station which comprises of two Government Buildings.

[58] The First Respondent did not present any substantive relevant facts to the Court demonstrating that their eviction would be unjust and inequitable. Their submission predominantly consisted of a historical narrative, which is not pertinent to the considerations under PIE.

[59] The Applicant is entitled to possession of its property and to an ejectment order against any person who is unlawfully occupying the said property. See *WORMALD N.O AND OTHERS V KAMBULE 2006 (3) SA 563 (SCA)* para 11. I find that it is just and equitable that the Respondents must be evicted.

[60] The discretion that this Court exercises is wide and an eviction can only be granted if it is just and equitable to do so after all the relevant circumstances have been considered.

[61] Relevant circumstances are nearly without fail, falls within the exclusive knowledge of the occupiers and it cannot be expected of an owner to negate and advance facts not known to him.

[62] In this regard, see *CITY OF JOHANNESBURG V CHANGING TIDES 74(PTY) LTD AND OTHERS 2012(6) SA 294 (SCA)* paras 28 to 34.

[63] No evidence has been placed before this Court which seeks to suggest that the Respondents will be rendered homeless by the eviction. As stated, an inference can be drawn from the fact that the First Respondent concedes that he is the one

who placed the Second Respondent in the property which is earmarked for commercial interest.

[64] This shows that the First Respondent resides elsewhere, and the Second Respondent has taken physical occupation of the property through the First Respondent.

[65] I cannot fault the submissions made by the Applicant that the First Respondent appears to be a man of means. There is nothing in the Answering Affidavit of the First Respondent which contradicts this view. I find that it is just and equitable to grant an eviction order against the Respondents.

[66] What is left then is the terms and conditions of such an eviction and the date thereto.

[67] The Applicant submitted that a period of fourteen (14) days from the granting of the order would be equitable for the Respondents to be evicted. I, however, do not agree with this submission because the Respondents' occupation of the property has been for a considerable number of years.

[68] I am of the view that a period of thirty (30) 30 days from the granting of this order will be sufficient for the Respondents to vacate the property.

[69] I am satisfied that that the Applicant has made out a proper case for the eviction of the Respondents.

Costs

[70] I see no reason why costs should not follow the result. The Applicant submitted that the First Respondent should pay the costs on an attorney and client scale. I disagree. The Applicant has not made out the case as to why the Court must grant punitive costs.

[71] In the result I make the following order:

72.1 That the First, Second and Third Respondents be evicted from the Property described as Erf 1[...], Portion 8 of the Farm Meidingen 398, Registration Division L.T, Ga-Kgapane Township Limpopo Province (hereinafter referred to as "**the Property**")

72.2 That the First, Second and Third Respondents be ordered to vacate the Property within thirty (30) days from the date of this order.

72.3 That should the First, Second and Third Respondents fail to vacate the Property within the stipulated thirty (30) days, the Sheriff of the Court and/or his Deputy are authorized and directed to forthwith evict the First, Second and Third Respondents from the Property.

72.4 That the Sheriff and/or his Deputy be authorized and directed to take all legal steps to carry out the order as per prayer 3 above, for which purpose the Sheriff and/or his Deputy may enlist the Services of the South African Police Services and/or a locksmith to effect the above, should it be necessary.

72.5 The First Respondent is ordered to pay the costs on a party and party scale, such cost to include costs of Counsel on Scale "B".

L.A NKOANA A.J
ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

Heard on 21 Novemebr 2024

Judgment delivered on:

18 June 2025

This Judgment was handed down electronically by circulation to the Parties' representatives by e-mail, the date and time for hand down of the Judgment is deemed to be 18 June 2025 at **10:00**.

For the Applicant

Adv. PM Ramoshaba

Instructed by Modjadji Raphesu Inc Attorneys

Polokwane

For the First Respondent

Adv. G.J Diamond

Instructed by Diamond Incorporated.

Polokwane