



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG
JUDGMENT

NOT REPORTABLE
CASE NO: AR509/2015

In the matter between:

PIERRE NICOLAAS COETZEE

APPELLANT

And

PIPET PLACE EIENDOMME CC

RESPONDENT

Coram : Seegobin J et Hemraj AJ

Heard : 06 June 2016

Delivered : 28 June 2016

ORDER

On appeal from the Magistrate's Court, Empangeni (Mr Zaayman, sitting as a court of first instance):

- (a) The appeal is dismissed with costs.
 - (b) The appellant is ordered to vacate the respondent's premises by no later than 31 July 2016.
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JUDGMENT

SEEGOBIN J (Hemraj AJ concurring):

[1] This is an appeal against an eviction order granted by the Magistrate's Court, Empangeni, in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE). The eviction order was granted on 13 February 2015. In terms of the order the appellant was ordered to vacate the premises on or before 31 March 2015.

[2] The appellant's occupation of the respondent's premises occurred in terms of a written lease agreement which commenced on 1 March 2013 and was due to terminate after seventeen (17) months on 31 July 2014. The agreement made no provision for renewal. On termination of the agreement in July 2014, the appellant continued to remain in occupation of the premises. Anticipating that the appellant might not vacate the premises on the termination date, Clause 5.2 of the agreement made provision for the premises to be leased to the appellant on a monthly basis and on the same conditions as contained in the agreement but subject to the condition that the respondent was entitled to give the appellant a calendar months' notice of termination. Such notice had to be given on the first day of the month.

[3] On 22 August 2014 the appellant was duly given a calendar months' notice of termination of the lease agreement. In terms of the notice the termination would have taken effect on 30 September 2014. Notwithstanding the said notice the appellant continued to remain in occupation of the respondent's premises.

[4] The eviction application in terms of PIE was instituted by the respondent on 7 October 2014. In opposing the application the appellant raised three defences, namely: (a) that there was a dispute pending between the parties before the KwaZulu-Natal Rental Housing Tribunal; (b) that the respondent failed to comply with his duties as landlord in respect of maintaining the property and that the appellant has a lien over the property insofar as the improvements to the property are concerned; and (c) that the appellant has no access to alternative accommodation.

[5] While the appellant initially advanced the same defences (a set out above) as grounds of appeal, by the time the matter was argued on 6 June 2016 the first two grounds were effectively abandoned. *Ms Mhlongo* who appeared on behalf of the appellant, on instructions from the Legal Aid Board, confirmed that the appeal was being pursued on one issue only, viz, whether the court *a quo* had misdirected itself in failing to consider the issue of alternative accommodation for the appellant.

[6] In considering an application for eviction under PIE a court is ordinarily required to have regard to all the relevant circumstances placed before it. In terms of s4(7) of PIE an eviction order may only be granted if it is just and equitable to do so after the court had regard to all the relevant circumstances. These include the availability of land for the relocation of the occupiers and the rights and needs of the elderly, children, disabled persons and households headed by women. If the requirements of s4 are satisfied and no valid defence to an eviction order has been raised the court must in terms of s4(8) grant an eviction order. However, when granting such an order the court must, in terms of s4(8)(a) of PIE, determine a just and equitable date on which the unlawful

occupier or occupiers must vacate the premises. The court is empowered in terms of s4(12) to attach reasonable conditions to an eviction order.

[7] In advancing the appeal on behalf of the appellant *Ms Mhlongo* submitted the learned magistrate conducted the inquiry in terms of s4(7) of PIE relating to alternative accommodation only after the eviction order was granted. I disagree. The personal circumstances of the appellant were not only pertinently pleaded by the respondent in sub-para 7.15¹ of the founding affidavit, they were also placed before the court in argument by the respondents attorney, Ms Nortjie².

[8] It would seem to me that the learned magistrate was acutely aware of the appellant's circumstances when he sought clarity from the appellant's attorney about the appellant's financial position³. The following exchange is noted between the learned magistrate and the appellant's attorney at page 151 of the record:

COURT . . . Has he ever sought for alternative accommodation and prices and so forth? Costs . . .

MR McVICAR According to my instructions, he's been in a position, in a financial position, where he wouldn't be able to rent alternatively. I do submit that a rental in Richards Bay of 3 000 is very affordable and that perhaps, if the first respondent is unable to pay that amount, it would be very difficult to find something alternative.

COURT Difficult? Impossible?

MR McVICAR Perhaps not impossible, with respect.

COURT Not impossible.

¹ Sub-para 7.15 reads as follows: "The First Respondent lives alone at the premises. He does not have any dependants who stay with him. The first Respondent is 54 years old and is not suffering any disability. I am aware that the First Respondent is deaf in his one ear, but seeing that the First Respondent works independently as an IT Technician under the name and style of IT Pro at PC Power, his deafness should not impact negatively on his ability to earn a reasonable feasible income."

² Indexed papers, pages 133-134.

³ Indexed papers, pages 147-152.

MR McVICAR But very difficult, Your Worship.

COURT So it's not impossible. So it's possible that he can get alternative accommodation for possibly the same rental. However, it may be difficult.”

[9] The record reveals that issues concerning the appellant's personal circumstances and alternative accommodation became relevant once more when the learned magistrate was determining a just and equitable date by when the appellant should vacate the premises. Having heard the submissions in that regard the learned magistrate ordered that the appellant should vacate the premises by no later than 31 March 2016, thus affording him a further period of about six weeks to remain in occupation until he obtained other suitable accommodation.

[10] Having carefully considered the manner in which the learned magistrate dealt with the application in the court *a quo*, I am not persuaded that there is any merit in the complaints raised by the appellant. If anything, the appellant can consider himself very fortunate to have been able to remain in occupation of the respondent's premises, albeit unlawfully, for such a long time. The evidence established that after the monthly tenancy was validly cancelled, the appellant managed to remain in unlawful occupation and rent-free for a period of about nine months. I further consider that the appellant cannot be said to be disadvantaged in any way, nor is he poverty-stricken. Far from it. He is self-employed and capable of generating an income for himself. I see no reason why he cannot find suitable alternative accommodation. It is time that he did. It follows that the appeal cannot succeed and must be dismissed.

ORDER

[11] In the result, I make the following order:

- (a) The appeal is dismissed with costs.
- (b) The appellant is ordered to vacate the respondent's premises by no later than 31 July 2016.

 I agree

HEMRAJ AJ

Date of Hearing : 6 June 2016
Date of Judgment : 28 June 2016
Counsel for Applicant : Ms P Mhlongo
Instructed by : Justice Centre, Durban
Counsel for Respondent : WJ Pietersen
Instructed by : Duvenhage Attorneys
c/o Tatham Wilkes Inc.