

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 144/15

In the matter between:

ISAAC RASEPITILE PITJE

Applicant

and

JOSIAH OUPA SHIBAMBO

First Respondent

ESTHER VELEMINAH SHIBAMBO

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY Third Respondent

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APPLICANT'S HEADS OF ARGUMENT

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1.

The Honourable High Court failed properly to take into account or consider all relevant factors applicable in this case in terms of section 4(7) PIE before ordering the summary eviction of the Applicant and his family.

2.

In determining whether it is just and equitable to order eviction, the provisions of section 4(7) requiring the court to take into consideration all the relevant circumstances are peremptory. It is

respectfully submitted that this requirement was not satisfied prior to the summary eviction order being granted against the Applicant. Furthermore, it is not only those specific circumstances enumerated in the section such as the rights and needs of the elderly, children, disabled persons, and households headed by women, that must be taken into consideration. This is clear from the wording of the section by stating that the abovementioned rights and needs should be included.

3.

One of the salient factors that needed to be considered was the circumstances surrounding the acquisition of title to the property in question by the evictor. Compare *DLAMINI v LIPHULO AND ANOTHER (A166/2009)[2010] ZAFSHC 54 (27 May 2010)*. That was not done in the present case. Had it been, it is respectfully submitted, the summary eviction order would not have been so readily granted.

4.

The dispute as to whether the Applicant acquired title or some right of habitation or occupation in the property should at least

have been referred to oral evidence to ensure that justice was being done.

5.

In this regard the iniquitous role played by the Applicant's brother, MR M.H. PITJE with regard to the title to the house should have been investigated and taken into account. It was not. His shenanigans in respect of the sale of the property should have been closely examined. It was not.

6.

The fact that this house originally came to be registered in the name of Applicant's brother due to and by virtue of a family arrangement was never considered. Nor were the terms and conditions, express and implicit, of that arrangement ever enquired into; or any of its implications in the familial context and, possibly, having regard to and by virtue of customary law.

7.

Other pertinent considerations that should have been taken into account, but were not, are:

- 7.1 The Applicant is an elderly male born on 28/1/1939 and a very seriously ill pensioner and an invalid.
- 7.2 The Applicant resides together with his family which includes children at the relevant house at 4157 Block M Mamelodi-West, Pretoria, Gauteng Province. This constitutes their primary place of residence and home.
- 7.3 The First and Second Respondents already have a home of their own at 714 Block G, Soshanguve, Pretoria, Gauteng Province.
- 7.4 The fact that the property formed part of the deceased estate of the Applicant's late father HESEKIAH MOTHIBE PITJE.
- 7.5 The circumstance that the Applicant together with his siblings grew up from this property as their home.
- 7.6 The exceptionally long period of occupation by the Applicant of the property as home and his long-established residence.
- 7.7 The specific needs and concerns of the Applicant regarding security of tenure in his twilight years.

- 7.8 The rights to housing, security, interests and well-being of the Applicant's wife JOYCE NOSELEPHI PITJE herself, will be directly and immediately impinged upon by the eviction order. She should have been involved in these proceedings but was not joined or invited to participate.
- 7.9 The true position regarding alternative accommodation for the Applicant and his family was never investigated, including the situation by virtue of the fact that as he had already acquired this residence from his brother he passed on the other immovable property he had to another party.
- 7.10 The suspicious, seemingly inappropriate arrangement and possible connivance of the Applicant's brother and the First and Second Respondents in securing the Applicant's eviction should have been the subject of inquiry. Particularly, their joint attempt and attitude envisaged to conceal the fraudulent conduct of the Applicant's brother instead of complaining about the fact that he did not inform them about my claim and/or provided them with a copy of the sale agreement before they attached their signatures to the subsequent sale agreement they concluded with my

brother. In this regard, the fact that they were all represented by the same Attorneys should have raised a judicial eyebrow, but did not.

7.11 The role played by the professed agent BLUEGLOO ESTATE AGENCY which evidently was never authorized to act as an Estate Agent, at all which on its own constitutes criminality.

7.12 On the whole, the conduct of the First and Second Respondent, Applicant's brother and the bogus Estate Agent involved in the subsequent sale agreement, all ganging up against the Applicant, should have been examined.

7.13 Credit should have been to the Applicant for taking steps aimed at trying to save his residence from a sale in execution, concluding a sale agreement with his brother, binding himself to the bondholders, NEDCOR BANK and more importantly complying with all my obligations and commitments, and this should have been weighed in the Applicant's favour when considering ejection, but was not, to the prejudice of the Applicant.

7.14 The fact that the Applicant has spent huge sums of money to save the property from being sold in execution and the fact that he has also effected substantial improvements to the property in question was not taken into account in his favour as it is respectfully submitted, it should have been. If nothing else, this clearly demonstrates *bona fides* on the part of the Applicant.

## 8.

In addition to the foregoing, should it be determined that eviction was nonetheless appropriate, Applicant should have been granted the opportunity to canvass the aspect of a just and equitable date of eviction which, it is respectfully submitted, is a very integral part of eviction proceedings by virtue of section 47(8) and section 47(9) of PIE and as embodied in *the Constitution of the Republic of South Africa, Act 108 of 1996*. In the circumstances of this case, the summary ejection of the Applicant and his family is inhumane, unjust, unreasonable, unfair and consequently unconstitutional.

9.

Both the PIE Act and the Constitution put emphasis on the process of eviction being just and equitable. That was not done in the present case because the Honourable High Court failed in its duty properly to consider all relevant factors in terms of section 4(7) of PIE before granting the eviction order against the Applicant.

DATED AT PRETORIA ON THIS THE 23<sup>RD</sup> DAY OF NOVEMBER, 2015.

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MTHEMBU SIBIYA ATTORNEYS  
ATTORNEYS FOR APPLICANT  
SUITE 103, 1<sup>ST</sup> FLOOR  
RENTBEL TOWERS  
14 BUREAU LANE  
PRETORIA, 0002  
P.O. BOX 1438  
THE TRAMSHED, 0126  
TEL: (012) 770-4045  
FAX: (012) 323-4008

**C/O LENNON MOLEELE & PARTNERS**

THIRD FLOOR

KLAMSON TOWERS

151 COMMISSIONER ST

JOHANNESBURG

REF: VS/LP/477/10/2014

TO: **REGISTRAR OF THE COURT**

CONSTITUTIONAL COURT OF SOUTH AFRICA

JOHANNESBURG

AND TO: **REGISTRAR OF THE COURT**

HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

AND TO: **MACROBERT INC.**

ATTORNEYS FOR 1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENT

MACROBERT BUILDING

COR. CHARLES & DUNCAN STREET

BROOKLYN

PRETORIA

REF: R. SULIMAN/FC/1012214

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AND TO: **CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

THE 2<sup>ND</sup> RESPONDENT

13<sup>TH</sup> FLOOR

SAAMBOU BUILDING

227 ANDRIES STREET

PRETORIA

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