

IN THE CONSITUTIONAL OF SOUTH AFRICA

CASE NUMBER: 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

Third Respondent

MUNICIPALITY

**HEADS OF ARGUMENT ON BEHALF OF FIRST AND SECOND
RESPONDENTS**

INTRODUCTION:

1.

On the 13th of November 2015, this Honourable Court directed the parties to file written submissions, of not more than 10 pages, on whether the High

Court properly considered all relevant factors in terms of section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, before granting the eviction order against the applicant.

2.

Section 4(7) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (hereinafter referred to as the PIE Act) stipulates that:

“If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.”

ARGUMENT:

3.

The High Court adjudicating upon this matter considered all the factors as set out by the parties in their respective affidavits filed in the court *a quo*.

4.

The First and Second Respondents (First and Second Applicants in the eviction application) placed factors before the High Court pertaining to their right to Erf 4157 Mamelodi Township, Registration Division JR, Province of Gauteng (hereinafter referred to as the property) and specifically stated that they are the registered owners of the property, which is unlawfully occupied by the Applicant (First Respondent in the Eviction application).¹ The deeds office printout attached to the founding affidavit confirms that the First and Second Respondents purchased the property on the 1st of December 2009 and that it was registered in their names as co-owners thereof, on the 7th of July 2010.²

5.

Applicant had an obligation to put before the High Court information pertaining to his personal circumstances, where it relates to the factors set out in Section 4(7) as above, but the Applicant chose to place limited information before the court *a quo*. The Applicant disclosed the following factors and these factors were considered by the High Court:

¹ Paragraph 4 of the Founding Affidavit in the Eviction application.

² Annexure "A" to the Founding Affidavit in the Eviction application.

- 5.1. From the deed of sale, dated the 3rd of September 2001, the age of the Applicant can be determined as the document purports to contain his identity number as being 390128 5279 085.³ The Applicant confirmed that he is 75 years old in paragraph 1.1 of his Answering Affidavit to the Eviction application;
- 5.2. That the Applicant is a pensioner;⁴
- 5.3. That the Applicant's brother, Mr M.H. Pitje sold and transferred the property to the First and Second Respondents;⁵
- 5.4. That the fact that Mr M.H. Pitje sold and transferred the property into the names of the First and Second Respondents came to the knowledge of the Applicant on or about the 16th of August 2010;⁶
- 5.5. That Mr M.H. Pitje allegedly ceded all his rights in respect of the property to the Applicant in 2001;⁷ This is denied by Mr M.H. Pitje in

³ Annexure "IR" to the Applicant's Answering Affidavit to the Eviction application.

⁴ Paragraph 1.1 of the Applicant's Answering Affidavit to the Eviction application.

⁵ Paragraph 5.1 of the Applicant's Answering Affidavit to the Eviction application;

⁶ Paragraph 5.1 and 8.1 of the Applicant's Answering Affidavit to the Eviction application;

a Confirmatory Affidavit attached to the Replying Affidavit in the Eviction application;

5.6 That the deed of sale between Mr M.H. Pitje and the First and Second Respondents were concluded on the 1st of December 2009;⁸

5.7 That the Applicant is in occupation of the property by lawful means as Mr M.H. Pitje duly ceded all his rights of ownership to the property to the Applicant in terms of a Deed of Sale dated 3 September 2001;⁹ This is denied by Mr M.H. Pitje in a Confirmatory Affidavit attached to the Replying Affidavit in the Eviction application;

5.8 That Mr M.H. Pitje had no right to sell the property to the First and Second Respondents;¹⁰ This is denied by Mr M.H. Pitje in a Confirmatory Affidavit attached to the Replying Affidavit in the Eviction application;

⁷ Paragraph 5.1 of Applicant's Answering Affidavit to the Eviction application;

⁸ Paragraph 8.1 of Applicant's Answering Affidavit to the Eviction application;

⁹ Paragraph 12.2 of Applicant's Answering Affidavit to the Eviction application;

¹⁰ Paragraph 12.5 of the Applicant's Answering Affidavit to the Eviction application;

- 5.9 That the First and Second Respondents known, or ought to have known of the Applicant's "*claim to the right to own*" the property;¹¹
This is denied by the First and Second Respondents in their Replying Affidavit and by Mr M.H. Pitje in a Confirmatory Affidavit attached to the Replying Affidavit in the Eviction application;
- 5.10 The Applicant was already requested to vacate the property on 22 July 2010, to give occupation thereof to the First and Second Respondents;¹²
- 5.11 That the Applicant effected substantial improvements and renovations to the property after saving same from a sale in execution that was scheduled to take place during 2001;¹³

6.

The Applicant did not disclose any information under oath, in respect of the following factors and therefor the High Court could not consider same:

¹¹ Paragraph 12.6 of the Applicant's Answering Affidavit to the Eviction application;

¹² Paragraph 12.9 of the Applicant's Answering Affidavit to the Eviction application;

¹³ Paragraph 12.34 of the Applicant's Answering Affidavit to the Eviction application;

- 6.1. Whether or not the Applicant possesses alternative accommodation. The First and Second Respondents disclosed in paragraph 14.6 of the Replying affidavit that the Applicant has been granted approval in his application for a government house in March 2008 and that one of the requirements for such approval is that the Applicant may not be the owner of a house;
- 6.2 The health and/or disability of the Applicant;
- 6.3 The other occupants, if any, of the property, their health, disability, ages or any relevant information in this regard;

7.

The Applicant did not consider this information relevant for purposes of the application and disclosed none of the factors as mentioned in Section 4(7) of the PIE Act. The High Court could not consider factors in respect of the Applicant's personal circumstances and those of any other occupiers of the property, if such information were not considered relevant by the Applicant himself and not contained in the Applicant's Answering Affidavit.

8.

The High Court gave due consideration to all the information placed before it by the parties and granted the eviction order against the Applicant for the reasons contained in the judgement of His Honourable Justice Legodi J.

9.

The Applicant's alleged claim against Mr M.H. Pitje, based on the allegation that Mr. M.H. Pitje ceded his rights to the property to the Applicant in 2001 and any claim he might have in respect of the alleged improvements to the property will not be affected by the Eviction Order and Applicant will be in a position to pursue these claims.

10.

The Applicant's heads of argument to this Honourable Court contains certain allegations that need to be addressed:

10.1 The High Court considered the Applicant's claim to occupation and/or some right to habitation and found that the First and Second Respondents are *bona fide* purchasers of the immovable property and that, because the immovable property was transferred to their names first, their right is unassailable. The High Court made reference to **Harley v Upwards Spiral CC and another** 2006 (4) SA

597 (D) and **Bowring N.O. v Vrededorp Property CC and another**
2007 (5) SA 391 (SCA);

- 10.2 The High Court found that the First and Second Respondents were *bona fide* purchasers with no knowledge of the Applicant's alleged claim and therefor Mr M.H. Pitje's conduct and/or any alleged agreement between the Applicant and Mr M.H. Pitje are irrelevant for purposes of determining the rights of the *bona fide* purchasers;
- 10.3 The allegations contained in paragraphs 7.1 (save for the Applicant's age and the fact that he is a pensioner), 7.2, 7.3, 7.4, 7.5, 7.7, 7.8, 7.9, 7.11, 7.12, and 7.14 were not contained in the Answering Affidavit of the Applicant in the Eviction application and therefor the High Court could not consider same;
- 10.4 The Applicant has had ample opportunity to obtain alternative accommodation. He has had knowledge of the fact that the property was sold and transferred to the First and Second Respondents since August 2010.

Dated at Pretoria on this the 30th November 2015.

Natasha van Niekerk
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