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2022 -03- 23

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**IN THE MAGISTRATES' COURT FOR THE DISTRICT
OF MADIBENG HELD AT BRITS**

Case no:3046/2020

In the matter between:

MADIBENG LOCAL MUNICIPALITY

APPLICANT

AND

LETSWALO FAMILY OF STAND NO 2455

LETLHABILE BLOCK B

RESPONDENT

PRESIDING OFFICER Mr. R M ROSENBERG

ON BEHALF OF APPLICANT Mr MABOTJA

ON BEHALF OF RESPONDENT MS. D RADUBA

DATE OF HEARING 02 FEBRUARY 2022

DATE OF JUDGEMENT 23 MARCH 2022

1.

This is an application in terms of the provisions of Prevention of the Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 (PIE) in terms of which the applicant seeks an order evicting the Respondent from the property described as Erf 2455, Block B Letlhabile.

2.

The Applicant is the Madibeng Local Municipality a local authority, a Municipality established in terms of section 12 of the Local Government Municipality Structures Act of the geographical area in which the property in question is situated.

3.

The Respondent are known as the Letswalo family of stand no.2455 Letlhabile block B, extension 2, Madibeng.

4.

It is common cause that the Municipality is the owner of the property and that the Respondent is in unlawful possession of the property in question and is therefore an unlawful occupier.

5.

The 1st notice of eviction was served on the occupants/respondents on the 13th October 2020 to inform them that they should remove the structure.

The 2nd notice were served on them on them on the 27th October 2020 because they did not remove the structure and moved from the property in question.

6.

The issue in dispute is whether it is just and equitable for the Respondent to be evicted and if so a date to be determined for the eviction.

7.

On 10th of November 2020 there were a site inspection and it was established that the shack was still not removed as a result this application were moved to apply for an eviction order.

8.

The Applicant avers that it has a constitutional duty to ensure the health and safety of the community however, the complaints that the Applicant received could not be addressed the Respondent failed or refused to move from the said property. The property was rezoned as a Park and the applicant were supposed to dig a trench to allow for the movement of water which is a problem for other stand owners on rainy days.

9.

The question that the Court needs to determine is whether it is just and equitable to evict the Respondents from the said property.

10.

In terms of section 4 (7) of PIE an eviction order may only be granted if it is just and equitable to do so, after the Court has had regard to all relevant circumstances, including 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 section 4 are satisfied and no valid defence to an eviction order has been raised the court must, in terms of section 4 (8) (a) of PIE Act to determine a just and equitable date on which the unlawful occupier or occupiers must vacate the premises. The Court is empowered in terms section 4 (12) to attach reasonable conditions to an eviction order.

11.

Section 4 (6) provides that if the unlawful occupier has occupied the land in question for less than six (6) 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 the rights and needs of the elderly, children, disabled persons and household headed by women. It is not in dispute that the respondents were occupying the property less than six months at the stage proceedings were initiated.

12.

In terms of section 26 of the constitution, the state is obliged to take legislative and other measures within its available resources, to achieve the progressive realisation of the right which everyone has a right to have access to adequate housing [Baartman and Others v Port Elizabeth Municipality 2004 (1) 560 (SCA) AT para 18.

13.

This duty on the state translates to organs of the state such as municipalities. In circumstances such as these faced by the Respondent the state is duty bound to provide accommodation to the effective party even if it is done temporarily, moreso because an organ of the state being a Municipality is the applicant in this eviction application.

14.

Our courts has held that where an eviction order brings the risk that the effected persons may be rendered homeless if the eviction order were to succeed, then the state has a duty to provide the effected parties with alternative accommodation and provide emergency accommodation in order to starve off the possibility of the parties being rendered homeless. In this application the applicant failed to provide alternative accommodation or emergency accommodation.

15.

After considering all the circumstances placed before it will not be just and equitable to evict the Respondent because it is awomen headed household which is vulnerable and there a child with special needs residing on property in question.

The Application for Eviction is dismissed with costs.

Mr. R M ROSENBERG

CIVIL MAGISTRATE BRITS

