

CONSTITUTIONAL COURT OF SOUTH AFRICA

Isaac Rasepitle Pitje v Josiah Oupa Shibambo and Another

CCT 144/15

Decided without hearing Date of judgment: 25 February 2016

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court handed down judgment in a matter concerning an eviction granted by the High Court of South Africa, Gauteng Division, Pretoria (High Court) against the applicant, in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). The applicant, a 76 year old man in ill health, had lived at the property in question his whole life. The property originally belonged to the applicant's father but was transferred into the name of the applicant's brother on 19 June 1992 following the death of his father. In 2001, the brother fell into financial difficulties and to avoid repossession of the property, entered into a sale agreement with the applicant. However, the property was never transferred into the applicant's name.

In 2010, the brother once again sold the property, this time to the respondents, and it was successfully transferred into their names. The respondents brought eviction proceedings against the applicant. The applicant argued that the respondents were not bona fide purchasers and that his brother had acted unlawfully in selling the property to them. He contended that the sale agreement between himself and his brother was enforceable. The respondents denied these contentions and said that the applicant had alternative accommodation in the event he was evicted from the house. The applicant applied to file a further affidavit outlining his personal circumstances (including his ill health), and denying the allegation that he had alternative accommodation.

The High Court found that whilst the respondents had been aware that the applicant lived at the property, they had been unaware of the prior sale to the applicant. The respondents learned of the prior sale after the transfer of title had been affected. Based on established

authorities regarding double-sales of property, the High Court held that the respondents' title to the property was unassailable. It said that the applicant's failure to challenge the respondents' title or the validity of the transfer was dispositive of the issue. As a result, the High Court held that it was unnecessary to consider the applicant's further affidavit and it ordered the applicant's eviction without further reference to PIE.

A petition to the Supreme Court of Appeal was unsuccessful.

Before the Constitutional Court, the applicant challenged his eviction on the basis, among other things, that the High Court failed to consider the requirements of section 4 of PIE before granting the eviction. The application was decided without hearing oral argument.

In a unanimous judgment, written by Nkabinde J, the Constitutional Court held that the High Court's treatment of the double-sale was correct, insofar as it dealt with the question of ownership. However, whilst the respondents, as owners, were entitled to seek the applicant's eviction, their standing was not conclusive in determining an eviction order. PIE requires evictions to be just and equitable. However, the High Court had refused to consider the applicant's further affidavit, wherein his personal circumstances and the likelihood of homelessness were outlined. The Constitutional Court concluded that the requirements of justice and equity were not properly considered by the High Court.

The Constitutional Court upheld the appeal and remitted the matter to the High Court for fresh consideration of whether an eviction was justified under PIE. The applicant was granted the right to file a further affidavit addressing facts relevant to this enquiry.