

Short notes on:

THE ENTITLEMENT OF AN OWNER TO AN EVICTION, ONLY IF ITS JUST AND EQUITABLE

Introduction

Recently there has been a rise in immovable property disputes and more so regarding evictions. With the economic issues that have surfaced since the COVID 19 pandemic, more conflicts have arisen between tenants and landlords, occupiers and landowners. However, it is clear that many are unaware of their rights in terms of immovable property or the remedies and legislation that is available to protect their rights and interests.

Grobler v Phillips and Others (446/20) [2021] ZASCA 100 (14 July 2021) was a case in which an appeal was brought against the decision of the Western Cape Division of the High Court, setting aside an eviction order that was granted.

The Facts of The Case

The appellant purchased the property at a public auction, subsequent to which it was registered in his name. The appellant was aware that the first respondent had lived on the property since 1947 and that the previous owners had granted her a lifelong right of occupation of this property. As a result, the appellant requested a copy of the agreement between the first respondent and the previous owners. Subsequently, it was not furnished and gave the first respondent notice to vacate the property. After the first respondent failed to vacate the property, the appellant launched an application in the Magistrates Court for an eviction of the first respondent in terms of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ("PIE"), and it was referred for the hearing of oral evidence. The court had to determine whether an 84-year-old widow and her disabled son should be evicted since she has been living on that property since she was 11 years old; or whether the property owner's rights are to be justified by an eviction order.

The court a quo found the occupant to be an unlawful occupier in terms of PIE, and the magistrate granted an order for an eviction against the first respondent. Second, the lodged an appeal raising an issue that the first respondent was an occupier as defined in the Extension of Security of Tenure Act 62 of 1997 ("ESTA"). In addition, relying on the right of *habitatio* or *usus* that was conferred orally and its impact on the entitlement of an owner to an eviction order in terms of either PIE or

ESTA. The third issue is whether it would be just and equitable to grant an eviction order aside from the unlawful occupation.

The High Court upheld the appeal and set aside the eviction order on the basis that:

1. the appellant did not establish the first respondent as an unlawful occupier in terms of PIE,
2. that the appellant did not discharge the onus to conclude that ESTA was not applicable to this matter, and
3. Considering the age of the first respondent and the fact that she was living with her disabled son as to whether or not an eviction order was just and equitable.

The matter was again appealed to the Supreme Court of Appeal, which concluded that:

1. although the property started off as farmland, it became urban land over time, and therefore ESTA was previously applicable but no longer is and,
2. the appellant failed to prove that the occupant was an unlawful occupier under PIE.

In regards to the issue of the *habitatio* or *usus*. The notice to vacate is seen as a withdrawal of the express and tacit consents to occupy, making the first respondent an unlawful occupant. The court further concluded that, in relation to the circumstances of the first respondent and her son, the Constitution provides protection against arbitrary evictions and for evictions to only be granted when it was just and equitable to do so. Therefore, considering all the facts before it, the court was of the opinion that it was not just and equitable to grant an eviction and made the order to dismiss the appeal against the High Court decision.

Conclusion

In conclusion, although legislation provides for clearly set out requirements for the eviction of an unlawful occupant, it has to be just and equitable to do so. For any of your legal needs, contact our experts at SchoemanLaw today.