



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 5 AUGUST 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Davidan v Polovin N O and Others (167/2020) [2021] ZASCA 109 (5 August 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the Western Cape Division of the High Court, Cape Town (the high court).

The issue before the SCA was whether any right that the appellant may have had to occupy the property had been lawfully terminated.

The respondents are the trustees of the Botany Bay Trust (the Trust), which owns a house in Bantry Bay, Cape Town (the property). The appellant, Ms Petra Davidan, Ms Elizabeth Gunta, the housekeeper, and Ms Helene Schonees, the appellant's 83-year-old mother, occupy the property.

The appellant and the late Mr Mercure Paizee (Mr Paizee) met on 15 March 2002. Mr Paizee was residing at the property at the time. Soon thereafter, the appellant and the deceased started co-habiting at the property. On 31 March 2004, the trust was created and Mr Paizee transferred the property to the Trust. In 2004, a mortgage bond was registered over the property in favour of Absa bank for the standard period of 20 years. It is not disputed that on 12 July 2004, the appellant and the trustees of the trust entered into a one-year lease agreement for the property, which would be subject to one months' notice on either side. The rental payable by the appellant was R20 000 per month. After the expiry of this lease, the appellant alleged that she and the deceased entered into an oral agreement with the trust, represented by one of the trustees, Mr Gamsu. The terms of the oral agreement were to the effect that the appellant and Mr Paizee would be entitled to occupy the property and in return they would pay the bond instalments and the municipal rates for the duration of the bond. On 23 February 2018, the trustees wrote to the appellant requesting payment of R40 000.00 per month towards the bond repayments, in return for a monthly tenancy. The trustees informed the appellant in their letter that if she refused, she would be required to vacate the property by no later than 30 April 2018. The appellant refused to vacate the property and remains in occupation of the property. As a

result of this refusal, the respondents successfully launched an application in the high court for the eviction of the appellant and all those who occupy through her.

The SCA held that the jurisdictional requirement to trigger an eviction under the the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) is that the person sought to be evicted must be an unlawful occupier within the meaning of PIE at the time when the eviction proceedings were launched. The SCA accepted the appellant's version that the appellant was a tenant under an oral lease. Furthermore, the SCA found that there was no suggestion that the oral lease agreement was terminated, nor was it pleaded. The SCA therefore held that the appellant was not an unlawful occupier in terms of PIE and as a result, the eviction order sought against the appellant failed. In a separate dissenting judgment, it was held that the appellant did not have the consent to occupy the property. It was on this basis that the dissenting judge would have dismissed the appeal and upheld the high court's eviction order.

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