

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

DATE: 29TH FEBRUARY 2024

(1) CASE NO: 2023-052191

In the matter between:

SASOL OIL (PTY) LIMITED

Applicant

And

BITLINE SA 951 CC t/a SASOL ROODEPOORT WEST

First Respondent

JASSAT, BASHIR

Second Respondent

AMRICH 58 PROPERTIES (PTY) LIMITED

Third Respondent

(2) CASE NO: 2023-052612

In the matter between:

SASOL OIL (PTY) LIMITED

First Applicant

AMRICH 58 PROPERTIES (PTY) LIMITED

Second Applicant

And

BITLINE SA 951 CC t/a SASOL ROODEPOORT WEST

Respondent

Neutral Citation: *Sasol Oil v Bitline SA 951 and Other (2023-052191); Sasol Oil and Another v Bitline SA 951 (2023-052612) [2024] ZAGPJHC ----* (29 February 2024)

Coram: Adams J

Heard: 23 February 2024

Delivered: 29 February 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 29 February 2024.

Summary: Application – for the implementation of an order pending an appeal – the requirements for the granting of an order in terms of s 18 of the Superior Courts Act 10 of 2013 considered – applicant bears the onus to prove the existence of 'exceptional circumstances' and should discharge the onus imposed by s 18(3) to show irreparable harm – application granted.

ORDER

- (1) In the matter under case number: **2023-052191**, the following order is granted: -
 - (a) In terms of section 18(1), read with section 18(3), of the Superior Courts Act, Act 10 of 2013, it is ordered that the operation and execution of the Judgment and the Order of this Court under case number 2023-052191, dated 11 December 2023, shall not be suspended pending the decision of the first and the second respondents' appeal and the outcome of such appeal.
 - (b) The first and the second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this application.
- (2) In the matter under case number: **2023-052612**, the following order is granted: -

- (a) In terms of section 18(1), read with section 18(3), of the Superior Courts Act, Act 10 of 2013, it is ordered that the operation and execution of the Judgment and the Order of this Court under case number 2023-052612, dated 11 December 2023, shall not be suspended pending the decision of the respondent's appeal and the outcome of such appeal.
- (b) The respondent shall pay the applicants' costs of this application, including the costs consequent upon the employment of two Counsel, one being a Senior Counsel, where so employed.

JUDGMENT [APPLICATION ITO SECTION 18 (1) AND (3) OF THE SCA]

Adams J:

[1]. I shall refer to the parties as referred to in the original two opposed applications under the above two separate case numbers, in respect of which I had, on 11 December 2023, handed down one judgment.

[2]. In 'the first matter' under case number 2023-052191, I had granted interdictory relief against the respondents in favour of the applicant (Sasol Oil) in relation to a franchise agreement which was entered into between Sasol Oil and the first respondent (Bitline SA) and which agreement had been cancelled by Sasol Oil. The respondents were *inter alia* interdicted from carrying on the business of a Sasol service and a filling station as contemplated in terms of the franchise agreement. Sasol Oil was also granted leave to gain access to the business premises and the site in order to affect an onsite disablement of the Sasol's systems.

[3]. In 'the second matter' under case number 2023-052612, I had granted an eviction order against Bitline SA in favour of Sasol Oil and the second applicant (Amrich 58), which is the owner of the immovable property on which the Sasol business premises are located.

[4]. In these applications, the applicants apply for orders directing that the operation and execution of the judgment and orders of 11 December 2023 shall

not be suspended pending appeals by the respondents of the said judgment. As was the case in the main applications, I am of the view that it is convenient to deal with both of the applications for leave to appeal in one judgment.

[5]. The applications are premised on the facts mentioned in the judgment, notably that the applicants urgently need to take back the business premises and the business, as Bitline SA is presently occupying the premises and running the business when it has no lawful right to do so. Additionally, so the case on behalf of the applicants goes, the respondents are not paying rental or royalties and has not done so since November 2022.

[6]. The applicants allege that the orders sought in these applications ought to be granted, because, if not, they would suffer irreparable harm in addition to the harm they have suffered to date as a result of the unlawful occupation of the premises by Bitline SA since 2022. Conversely, so the applicants contend, there is no irreparable harm to be suffered by the first and the second respondents, who are occupying the property rent-free.

[7]. The first and the second respondents oppose the application and contend that, in the event of the court order being implemented, they and their business would suffer irreparable harm in that the business would in all likelihood fold. On the other hand, there are no harm to be suffered by the applicants if the orders are not immediately implemented.

[8]. Section 18 of the Superior Courts Act provides as follows: -

- '(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2)
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.
- (4) If a court orders otherwise, as contemplated in subsection (1) –
 - (i) the court must immediately record its reasons for doing so;

- (ii) the aggrieved party has an automatic right of appeal to the next highest court;
- (iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and
- (iv) such order will be automatically suspended, pending the outcome of such appeal.'

[9]. Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the Court must decide accordingly.

[10]. I have found in the main Judgment that the applicants are entitled to take back the business premises and the business. This then means that the first respondent's occupation of the property is unlawful. That, in my view, cannot be countenanced. What is more is that that position has endured for a period in excess on one year.

[11]. The foregoing, in my view, constitute exceptional circumstances. The point is that, if the order is not put into operation, then the applicants will suffer irreparable harm as they are deprived of the property to which they are fully entitled. The applicants also submit that when considering the question of exceptional circumstances, regard should be had to the fact that the first respondent has no right to be in occupation of the property. It is therefore an unlawful occupant.

[12]. I find myself in agreement with these submissions. Exceptional circumstances exist which entitle the applicants to an order that the operation of the previous court order shall not be suspended.

[13]. Moreover, if the respondents are permitted to continue occupying the premises, the applicants will suffer damages in that they are deprived of the benefits of the ownership of such property, which damages they are unlikely to ever recover. Conversely, if the order is granted, and whilst it is so that it is self-evident that the first respondent would suffer harm, such harm cannot be said to be irreparable. The first respondent always has open to it a damages claim against the applicants.

[14]. I am therefore satisfied that on a balance of probabilities the applicants would suffer irreparable harm if the relief sought in this application is not granted. On the other hand, and if regard is had to the fact that the first respondent is in unlawful occupation of the premises in question, it is unlikely that it will not be able to recover damages from the applicants in the event of this finding being wrong. It is therefore unlikely that the respondents will suffer irreparable harm.

[15]. Having regard to the facts in this matter, I am satisfied that the applicants have demonstrated exceptional circumstances entitling them to an order implementing the previous order pending the appeal. In addition, the applicants have, in my judgment, shown, on a balance of probabilities, that the respondents will not suffer irreparable harm.

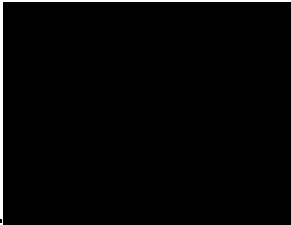
[16]. The applications must therefore succeed.

Order

[17]. In the circumstances, the following orders are made in respect of the two applications in terms of s 18 of the Superior Courts Act: -

- (1) In the matter under case number: **2023-052191**, the following order is granted: -
 - (a) In terms of section 18(1), read with section 18(3), of the Superior Courts Act, Act 10 of 2013, it is ordered that the operation and execution of the Judgment and the Order of this Court under case number 2023-052191, dated 11 December 2023, shall not be suspended pending the decision of the first and the second respondents' appeal and the outcome of such appeal.
 - (b) The first and the second respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's costs of this application.
- (2) In the matter under case number: **2023-052612**, the following order is granted: -

- (a) In terms of section 18(1), read with section 18(3), of the Superior Courts Act, Act 10 of 2013, it is ordered that the operation and execution of the Judgment and the Order of this Court under case number 2023-052612, dated 11 December 2023, shall not be suspended pending the decision of the respondent's appeal and the outcome of such appeal.
- (b) The respondent shall pay the applicants' costs of this application, including the costs consequent upon the employment of two Counsel, one being a Senior Counsel, where so employed.



L R ADAMS

*Judge of the High Court of South Africa
Gauteng Division, Johannesburg*

HEARD ON:	23 rd February 2024
JUDGMENT DATE:	29 th February 2024 – judgment handed down electronically.
FOR SASOL OIL (APPLICANT IN THE FIRST MATTER):	Advocate Schalk Aucamp
INSTRUCTED BY:	DM5 Incorporated, Illovo, Johannesburg
FOR THE AMRICH 58 PROPERTIES (SECOND APPLICANT IN SECOND MATTER):	Adv J J Brett SC, together with Adv J L Kaplan
INSTRUCTED BY:	Hirschowitz Flionis Attorneys, Rosebank, Johannesburg
FOR THE BITLINE SA 951 (FIRST RESPONDENT IN THE FIRST MATTER) AND THE SECOND RESPONDENT:	Advocate J A Venter
INSTRUCTED BY:	Des Naidoo & Associates, Parkmore, Sandton