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**IN THE HIGH COURT OF SOUTH-AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE: 2020-035020

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

21/11/2022

IN THE MATTER BETWEEN:

NONCEDO MAPHALALA

APPLICANT

AND

MBUSO MAZIBUKO

RESPONDENT

JUDGMENT

STRIJDOM AJ

1. In this matter the Applicant sought relief by way of the mandament van spolie for restoration of possession ante omnia.
2. The Respondent opposed the application and contended that the relief sought is not urgent and that there is a dispute of facts.
3. I have already ruled that the matter is urgent and granted condonation for non-compliance of the practise directives of this Court.

4. The main issue of substance is whether there is a dispute of facts.
5. The Applicant was in a relationship with the Respondent since November 2018. In November 2019 the Respondent paid lobola for the Applicant with the intention of celebrating the marriage in May 2020, however this never took place.
6. In June 2020, the Applicant purchase a house in Aspen Hills and the property was registered in her name.¹
7. The Respondent always stayed on his own in his house at [...] D [...] Street, Brackenhurst and in 2020 he moved to Meyersdal Nature Estate, Alberton.
8. In April 2021 the relationship between the parties was terminated and they never reconciled. The plans to finalise the Lobola never materialised.
9. The Applicant remained in her new home together with her family.
10. On the 5th of October 2022, the Applicant went to KwaZulu-Natal to fetch her son. Upon her return on 09 October 2022, she noticed that the lights inside the house were switched on and the TV was missing. She asked the security company to accompany her inside the house and found that the items that appear in Annexure "X" to the notice of motion were missing.
11. The Applicant reported the matter to the police under case number Mondeor 146/10/2022. The Respondent confirmed in the presence of the police members that he took the said items as he is entitled to do so as her husband.
12. Respondent left a note in the house stating that he is the one who took the items. The note is attached to the founding affidavit as Annexure "FA2"².

¹ Founding affidavit: p.8 para 5.3 Annexure "FA 1"

² Founding Affidavit p.12 para 6.4

13. It was submitted by the Respondent that there is a dispute of facts based on the following:

13.1. The Respondent denied that he took possession of R600-00 cash listed in the items in Annexure "X";

13.2. The Respondent contended that he was entitled to take possession of the said property as he is the husband of the Applicant.

14. It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it would be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits³.

15. I have perused the affidavits and after considering the nature and extent of the factual disputes I have come to the conclusion that there are no material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard.

16. In spoliation proceedings the causa of the Applicant's possession is irrelevant, and it is also irrelevant whether the Respondent has a stronger right of possession. Actual possession and not the right to possession is protected.

17. In my view the Applicant alleged and proved that she was in peaceful and undisturbed possession of the said property and that she was unlawfully deprived by Respondent of her possession:

18. In the result:

18.1. The Draft Order marked "X" is made an order of Court.

³ Soffiantine V Mould 1956 (4) SA 150 [E]

**STRIJDOM JJ
ACTING JUDGE OF THE HIGH COURT
OF SOUTH-AFRICA
GAUTENG DIVISION
JOHANNESBURG**

Heard on: 26.10.2022

Judgement:21/11/2022

Appearances:

For Applicant: Adv MS Manganye

Instructed by: RNK Attorneys

For Respondent:

Instructed by: