

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 6674/2021

- (1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

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.....
SIGNATURE

5 March 2021

.....
DATE

In the matter between:

STAR ENERGY RESOURCES (PTY) LTD

Applicant

and

SIBUSISO ALFRED MANONGA

1st Respondent

CHILDREN OF THE LATE ELIAS ALFRED MANONGA

2nd Respondent

ELIAS FILLING STATION (PTY) LTD

3rd Respondent

MANOKA FAMILY TRUST

4th Respondent

JUDGMENT

MNGQIBISA-THUSI, J

[1] The applicant seeks the following relief:

- 1.1 “That this application be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of the High Court, condoning non-compliance with the rules relating to service of process and papers as well as time frames set out therein;
- 1.2 That the first and second respondents and any other person acting on the instruction of the First Respondent be compelled to leave the business site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province;
- 1.3 That the Respondents and any other person acting on the instruction of the Respondents be prohibited from entering the business site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province;
- 1.4 That the Respondents and any other person acting on the instruction of the Respondents be prohibited from disrupting the business operations of the Applicant at the business site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province;
- 1.5 That the Respondents and any other person acting on the instruction of the Respondents be prohibited from threatening and/or intimidating the employees of the Applicant and any other person present at the business site situated at Corner van Deventer Street and Long Street Road,

Mamogaleskraal, Brits, North West Province physically, verbally or any other means of threats;

- 1.6 That the Respondents and any other person acting on the instruction of the Respondents be prohibited from entering the business site of the Applicant situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province until the Commercial dispute between the Applicant and the third Respondent is finalised;
- 1.7 That the first and second Respondents be compelled to return the equipment and any other items he (sic) unlawfully removed on the 5th of February 2021 from the Applicant's business site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province;
- 1.8 That the Prayers as per prayers 2 to 7 above be granted on an interim basis, and that the Respondents be called upon a date as determined by the above Honourable Court to show cause as to why the interim order should not be made final;
- 1.9 That the Representatives of the Applicant and the Third Respondent convene a meeting within 5 days of granting of Prayers 1.2 to 1.7 at the Offices of the Applicant to discuss the way forward in the business of the Applicant at the business site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province;

1.10 That the respondents be ordered to pay costs of this application on an attorney and client scale jointly and severally the one paying the others to be absolved;

1.11 Any further and/or alternative relief”.

[2] It is apposite to indicate that at the hearing of this matter, the applicant appears to have abandoned prayer 1.9 above as no submission or argument was made in this regard.

[3] In its founding affidavit the applicant alleges the following. On 1 November 2011 in Pretoria, the applicant and third respondent, represented by the late Elias Alfred Manonga, the father of the first respondent, entered into a written lease agreement in terms of which the applicant leased the fourth respondent's vacant site situated at Corner van Deventer Street and Long Street Road, Mamogaleskraal, Brits, North West Province (“the business site”). The applicant developed the business site by building a petrol filling station. According to the first respondent, at the time of the signing of the lease agreement, there was already petrol pumps on site. It is common cause that the parties received a grant from BP Southern Africa (“BP”) in the amount of R8,000,000.00. However, there is a dispute as to whether the applicant was entitled to share in the BP grant. Further, that from the BP grant, the applicant was paid an amount of R1,8000,000.00. The applicant alleges that he and the late Dr Manoga had agreed that Dr Manoga will not compensate him for the shortfall of his share of the BP grant but that the applicant would set-off the

monthly rental against the shortfall until his share was in line with each party's entitlement.

[4] According to the applicant, the filling station started to operate on 23 June 2019.

[5] The applicant alleges that on 5 February 2021 he was called by one of his employees at the filling station who informed him that the first respondent and his brother, one Silas, together with a group of unknown people came to the filling station on the instructions of the first respondent and intimidated and threatened the employees and chased them away from the site. Furthermore, the applicant alleges that the first respondent demanded the keys to the filling station thereby preventing any further operations at the filling station. Applicant further alleges that his employees' lives are also being threatened and the applicant is prevented from continuing with its business operations.

[6] It was contended on behalf of the applicant that it was unlawfully disposed of its possession of the business site when the first respondent and his cohorts invaded the site, intimidating and threatening its employees and chasing them away from the business site.

[7] In the answering affidavit, deposed to by the first respondent, he does not deny that he was at the filling station during the alleged incident in order to take back the operations at the business sites as the lease agreement had been cancelled

in September 2019, a fact disputed by the applicant. However, he denies that the applicant's employees were either threatened, intimidated or chased away. He alleges that the applicant's employees willingly handed over the keys and thereafter left the site. Inasmuch as the first respondent does not deny that equipment and other items were removed from the site, he admits that the removed items were later delivered at the applicant's place.

[8] Further, the first respondent has, barring disputing that the matter is urgent, raised several points in limine, in particular, that the applicant has not shown cause why an interdict against the respondent should be granted and that the application is defective in that the children of the late Dr Manoga and his wives; and the trustees of the fourth respondent were not cited. With regard to the prayer for an interdict, it was submitted on behalf of the applicant that the applicant has not made out a clear case that he has a clear right in that the lease agreement had been terminated and it had no right to the property. Secondly, that there is no reasonable apprehension of irreparable harm and that the balance of convenience favours the respondents.

[9] In order to succeed in an application for an interdict, the applicant has to prove that:

9.1 it has a prima facie right though open to some doubt;

9.2 there is a reasonable apprehension of harm if the interdict is not granted;
and

9.3 the balance of convenience favours the granting of the interdict.

[10] It is not in dispute that the applicant and the third and fourth respondents had concluded a lease agreement which was to endure for a period of 10 years. What is in dispute is whether the lease agreement was cancelled which cannot be resolved on the papers. It is further common cause at the time the first respondent and his cohorts came to the site and took the keys to the site from the employees of the applicant, the applicant was for all intents and purposes in possession of the site. The dispossession of the applicant of the site is further confirmed by the first respondent's admission that they took items which they claim to belong to the applicant, to the applicant's residence. In this regard the first respondent relies on the fact that the lease agreement was terminated and the applicant had no right to be still on the property. As indicated above in paragraph 7 above, the termination of the lease is in dispute. Even if the first respondent had correctly terminated the lease agreement, it was not open to him if he wanted to regain control of the site to take the law into his hands. The proper thing the first respondent should have done is to obtain an eviction order.

[11] Prima facie and in terms of the lease agreement, the applicant does have a right to occupy the premises.

[12] By preventing the applicant access to the business site in order to continue with the business it was carrying, the first respondent unlawfully deprived the applicant of its possession of the business site. As a result there is a reasonable

apprehension of harm since the applicant's business has stopped operating due to the conduct of the first respondent. Taking into consideration the fact that at the time the alleged unlawful conduct of the first respondent took place, the applicant was peacefully carrying on business on the site, I am of the view that the balance of convenience favours the applicant, by being prevented from operation his business at the site, continues to suffer damage. being caused.

[13] I am satisfied that the applicant has shown sufficient cause for an interim interdict to be granted. Further, under prayer 1.11 above, I am satisfied that the applicant has shown cause that his possession of the business site has been unlawfully spoliated by the first respondent and the people he as with at the business site on 5 February 2021.

[14] The fact that the first respondent committed an act of spoliation against the applicant on 5 February 2021, the non-joinder of the other respondents is not pertinent in these proceedings. Further, as the status of the lease agreement is in dispute, the fact that the fourth respondent is the owner of the property is not relevant to these proceedings.

[15] In the result, an order is granted:

1. in terms of prayers 2 – 7 of the Notice of Motion dated 9 February 2021.
November 2019.

2. The interim order is returnable on 25 May 2021.

3. Costs reserved.



NP MNGQIBISA-THUSI

Judge of the High Court

Date of hearing: 23 February 2021

Date of Judgement: 05 March 2021

Appearances

For Applicant: Adv Madira (instructed by Gwebu Inc Attorneys)

For Respondents: Adv Woodrow (instructed by DPH Attorneys)