

(Inlexso Innovative Legal Services)

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 49234/2020

DATE: 2021.06.24

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES /
NO
(3) REVISED ✓

10 In the matter between

Chris Vlok Property Services Tshwane CC

and

Ms T Gerber

J U D G M E N T

VORSTER, AJ:

Before me is an application for leave to appeal. On the 21st of
20 May I granted an eviction order against the respondent. I will
refer to the parties as in the main application. A commercial
entity, the applicant, is the owner of a property, and based on
the *rei vindicatio*, reclaimed possession of the property. It is
not in dispute that there is no legal basis, a contractual
agreement between the parties which entitles the respondent

to remain in occupation of the property. The only basis upon which he resists the eviction application, the respondent, is based on a purported enrichment claim.

I have dealt in my judgment with why I was not of the view that the enrichment defence can succeed. And it is basically because the expenses which were incurred, rendered the use of the property illegal. It basically rendered the owner of the property, the applicant, susceptible to criminal prosecution, and also to substantial civil liability.

The basis of the application for leave to appeal is that these improvements, although it is common cause on the papers, and it is also stated in the application for leave to appeal, that it was effected in order to convert the residence to a restaurant, may also, and it is pleaded in very ambiguous terms, could also be useful from a residential perspective.

Now, there is a complete lack of particularity, a dearth of any evidence of any sort in the papers itself, which would give the Court any indication which of the expenses would have been useful also from a residential perspective, and to extricate those expenses, I mean, it is not only an exercise which support cannot embark on, it is simply not set out in the papers.

Ms Stroebel has now asked me to grant punitive costs against the sole member, Mr Vlok, *de bonis propriis*, and she has alluded to the circumstances under which a person in a representative capacity might be held personally liable for costs. I have also made reference to the Constitutional Court case where those requirements were discussed in my main judgment when I dealt with costs. But I do not, as I have indicated to Ms Stroebel, I do not believe I can make a cost order against Mr Vlok himself, the only member, even if I was
10 inclined to do so, because he was not given prior warning that such an order would be sought against him in his representative capacity, or personally against him.

I might just also mention that this application is decided in default of appearance by the respondent, Mr, or Mr Vlok, his representative, although he had proper knowledge of these proceedings, and to that effect, I have already alluded to the fact that I have asked the applicants attorney to upload a service affidavit onto CaseLines indicating that the respondent
20 had notice of these proceedings.

I take a dim view of the fact that the application for leave to appeal is brought, which has delayed execution of the order, which I granted by almost a month now. And then the respondent, or his representative, simply does not show up.

So, Ms Stroebel requested me to reserve the issue of costs, so that they can bring an application to hold Mr Vlok, the only member, personally liable for the costs of this application for leave to appeal.

So, having said that, the application for leave to appeal is dismissed, and the costs of the application is reserved.

I hand down judgment.

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VORSTER, AJ

ACTING JUDGE OF THE HIGH COURT

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DATE: 24/6/21
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