



Reportable:	NO	YES
Circulate to Judges:	NO	YES
Circulate to Magistrates:	NO	YES
Circulate to Regional Magistrates:	NO	YES

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

CASE NO: 1900/2018

In the matter between:

COFFEE BELEGGINGS (PTY) LTD

Applicant

and

MICHIEL JACOBUS VAN DER WALT

First Respondent

JACO VAN DER WALT

Second Respondent

JOACHIM VAN DER WALT

Third Respondent

JUDGMENT

O'BRIEN AJ

1. In this application Johannes Adriaan Coffee ("Coffee") in his capacity as director of the applicant seeks an order, on an urgent basis, interdicting the respondents from entering the farm Vaalkop No 262 and the farm Vaalkop No 263 pending the finalisation of an action to rectify rental agreements in respect of both farms.

2. The applicant seeks further relief *pendente lite* requiring from the respondents seven days written notice to inspect the farms, provided that the date for such inspection not interfere with the applicant's farming activities.
3. Lastly, the applicant seeks relief *pendente lite* prohibiting the respondents from hunting on those portions of the farms that are rented by the applicant in terms of the rental agreements.
4. The first respondent is the registered owner of the farms 262 and 263 Vaalkop ("the properties"). The second and third respondents are the sons of the first respondent who attend to the farm on a regular basis on behalf of the first respondent because the latter resides in the Western Cape. I pause to mention that both the second and third respondents reside at 262 Vaalkop.

Background

5. On 20 January 2018, and at the properties, the applicant and the first respondent entered into a written lease agreement.
6. On 09 April 2018, the applicant entered into a written lease agreement with the first respondent in respect of farm 262 Vaalkop.
7. During January 2018, the applicant took occupation of the one farm and are currently farming with cattle and sheep on both sheep.

8. He complains that since the inception of the lease agreements, the second and third respondents attended almost on a daily basis on the properties and acted with total disregard for his rights to privacy.
9. During April 2018 the second and third respondents interfered with the applicant's farming activities by driving up and down the roads with bakkies and quad bikes for no apparent reason.
10. He alleges that it came to his attention that the third respondent inadvertently opened a tap of one of the dams which supply water to his cattle which caused the dam to empty into a field. He claims that this caused him great discomfort and prejudice. It also came to his attention that the second respondent changed taps on one of the other dams on the properties which resulted again in making it impossible for him to provide adequate drinking water for his cattle.
11. During April 2018 a police officer from Kimberly was brought to the properties without his consent, and in contravention of the lease agreements hunted thereon. During this hunt, the particular police officer shot game while the hunting season was not officially open resulting in illegal activity which constitutes a criminal offence.
12. As a result of the above actions, he caused his attorney to write a letter to the respondents of misconduct.

13. On 23 April 2018 the applicant's attorney again addressed a letter to the respondents' attorney indicating that the lease agreements should be supplemented to clarify certain misunderstandings that may result in future. It appears that both the applicant and the respondents were of the view that they were entitled to act in the manner they did.
14. The applicant's case is that his rights in terms of the lease agreements should be respected. It cannot be allowed that the second and third respondents attend to the farm whenever it suits them. The situation is compounded by the fact that the third respondent suffers from a drinking problem which makes any hunt undesirable. He claims that on 22 July 2018 another hunt took place on the properties which are in clear contravention of the lease agreements.
15. On 21 July 2018, he established that the chains to the farm gates were illegally cut which gives them free reign over the property.
16. In the result, he seeks an interdict as stated above.
17. In response to the above allegations, the respondents allege that they in no way interfere with the farming activities of the applicant. The second and third respondents make use of a route which has been used for many years.
18. The dam that the applicant refers to is not for the use of cattle. The second respondent built and watered a new dam as a kind gesture which allows the applicant to make use of the water. The parties never intended the applicant

to have exclusive use of the water at one of the dams which feed the water from a newly built dam. The water feed from one of the dams is for the exclusive use of the second respondent's home and garden. The allegations insofar as the hunting by the police officer is concerned, are denied in a confirmatory affidavit.

19. The respondents argue that the lease agreement places no impediment on any of their hunting rights. Furthermore, they have the right to access to the whole farm at any time as stipulated in the lease agreements.
20. They contend that no hunting camps are near any of the applicant's cattle. The allegation that the third respondent has an alcohol problem is also without foundation.

The lease

21. In respect of the first agreement, the dispute revolves around clause 6.6 which reads as follows:

“Geen jag word op die verhuurde eiendom toegelaat nie. Die huurder moet die verhuurder in kennis stel en toestemming kry as hy enige ongediertes wil uitroei en sal toestemming daarvoor nie onredelik weerhou word nie.”

22. Clause 11.1 of the first least agreement reads as follows:

“Die verhuurder se verteenwoordigers, trustees of begunstigdes mag te enige tyd die plaas besoek en inspekteer met die minste onwrigting daarvan vir die verhuurder.”

23. The second lease agreement which is headed “*Verhuurder se reg van toegang*” is precisely the same as the first lease agreement. However, there is no provision relating to the hunting of game in the second lease agreement.

Discussion

24. The respondents have given an undertaking that no further hunting will be conducted on the properties; accordingly, this issue should not be further entertained. Furthermore, the hunting season ended on 31 August 2018. The only issue for determination is whether the respondents failed to comply with clause 11.1 of the lease agreements.
25. The applicant contends that the first and third respondents in contravention of this clause conducted themselves in the manner described above.
26. A perusal of this clause reflects the ambiguity thereof. Regarding this clause, the first respondent’s representatives may visit and inspect the properties with the minimum disruption to the applicant. Trustees or beneficiaries may also do so. Does this mean that the second and third respondents are the representatives of the first respondent? Are they the beneficiaries of the first respondent? The contract is not clear. What conflates the interpretation is

clause 19 which allows the first respondent's son – it is not stated whether it is the second or third respondent – who lives on the unrented section, may stay every second week on the farm without paying any rent.

27. The applicant's case is not clear and due to the ambiguity in clause 11.1 unsurprisingly led to the applicant applying for the rectification of the lease agreements. Due to this ambiguity, there is doubt as to who, and when, and at what time the second and third respondents are entitled to visit the properties. If they do so, in my view, they would not be in breach of the lease agreements. That is so because there is no clarity whether they are the first respondent's representatives, trustees or beneficiaries who may at any time visit and inspect the properties. In my view, this clause needs to be rectified setting out the exact terms and the persons and the times when these people may visit or inspect the farm. Due to this uncertainty, the applicant has not established a *prima facie* right, and the application should be dismissed on this basis.
28. Secondly, the application is not urgent and should be struck from the roll due to lack of urgency.
29. Moreover, the basis for the applicant's rights to the properties is contained in the rental agreements. Therefore, it cannot obtain an interim order in respect of rights that it just does not have concerning the lease agreement.

30. There are numerous material factual disputes which should have been foreseen by the applicant which is another basis for striking this application from the roll.

31. Insofar as costs are concerned the lease agreement makes provision for cost on the magistrate's court scale on an attorney and client basis, and I shall do likewise.

32. I make the following order:

32.1 The application is struck from the roll for lack of urgency. Costs to be on the magistrate's court scale on an attorney and client basis.

S C O'BRIEN AJ

Date of hearing: 23 August 2018

Date of Judgment: 21 September 2018

Obo Applicant: Adv F.G. Janse Van Resnburg

Instructed by: Engelsman Magabane Inc

Obo Respondent: Mr A.G. Van Tonder

Instructed by: Elliot Maris Wilman and Hay Attorneys