



IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

16/02/2015

CASE NUMBER: 10358/2015

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
16 / 2 / 2015	
DATE	SIGNATURE

In the matter between:

COETZE JNV

APPLICANT

And

SUGAR CREEK 261 (PTY) LTD

RESPONDENT

JUDGMENT

MAVUNDLA, J.

- [1] The applicant approached this court seeking an order in terms of which non-compliance with the provisions of rule 6 of the Uniform Rules of Court be condoned; Ordering respondent to forthwith restore the supply of electricity to the applicant on the premises known as plot 236, Bokfontein, Brits, and to hand over to the applicant the key to the lock placed on the structure which houses the equipment receiving

and generating electricity on the premises, and ordering the respondent to pay the costs of the application on attorney and client scale. The application was opposed.

- [2] It is common that the applicant leased from the respondent the property known as plot 236, Bokfontein, Brits on which there is a chrome wash plant and the crushing and screening plant, per annexure A. The applicant is conducting business through the chrome wash plant and crushing and screening plant. He is also conducting a brick making business on the said property. It is common cause that the applicant in his business utilises Eskom-electricity made available by the respondent through the electrical installations on the property. It is common cause that at the end of 2014 the transformer utilized for purposes of providing electricity broke down, on the respondent's version, due to the transformer having been struck by lightning. It is common cause that the respondent subsequently installed at his own cost a 100 Kwt Diesel driven Generator transformer to supply electric power. The applicant averred that this 100 Kwt Diesel Generator was inadequate for purposes of operation of the chrome wash, screening and crushing plant on the property. It is common cause that nonetheless the appellant could still operate his brick making process; (vide paragraph 7 answering affidavit). It is also common cause that the applicant subsequently withheld his monthly electricity supply payment, albeit the fact that he was contractually obliged to pay.
- [3] According to the applicant on 9 February 2014 the respondent's son Jurie on the respondent's instructions, entered an area on the leased premises housing the electrical equipment and switched off such equipment as a result the applicant was deprived of all electricity supplied to the premises. He also attached annexure B which is a copy of the What Sapp chat regarding the discussion between the parties including Jurie on that particular day: (para 14). Jurie also locked the structure housing the electrical equipment, consequently denying the applicant access to such equipment. (15). The applicant further averred in his papers that on 9 February 2014 the respondent's son Jurie on the respondent's instructions, entered an area on the leased premises housing the electrical equipment and switched off such equipment as a result the applicant was deprived of all electricity supplied to the premises.

Jurie also locked the structure housing the electrical equipment, consequently denying the applicant access to such equipment. The applicant further contended in his affidavit that the respondent acted unlawfully and also in breach of the obligation of the highest good faith contemplated in clause 5 of the agreement and that the matter was therefore urgent because all his commercial activities on the leased premises have grounded to a halt, with his monthly obligations to his workers, and his clients who have placed orders for the chrome and bricks, still exist.

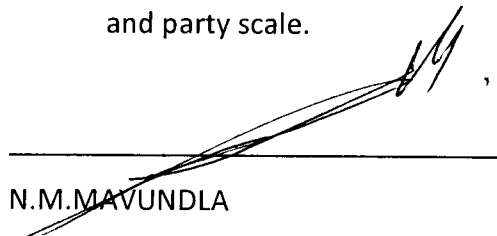
- [4] The respondent denied the averments contained in paragraph 14 and 15 of the applicant's affidavit and placed him to proof thereof. He further stated that the whole matter could be solved just by the applicant paying attention to the electrical problems which was aggravated by his unwillingness to address his financial problems. The discussion of the morning of the 9 February 2014 was about the applicant's deliberate withholding of payments. The respondent stated, *inter alia*, that the applicant is well aware of the fact that the respondent informed the applicant that even should the applicant pay all the money he is an arrears with, the respondent cannot allow him to continue his operations prior to rectifying the illegal electricity connections and other safety hazards. According to the respondent the only electrical connection he cut was an illegal electricity connection.
- [5] On behalf of the respondent it was contended, *inter alia*, that the matter was not urgent. According to the respondent the applicant knew as early as in December 2014 that there was not enough power supply. The applicant is withholding the electricity consumption monthly account. It is not the electricity power which makes the chrome plant dysfunctional but its general deteriorating state, as shown in the photographs attached to the respondent's answering affidavit. There is also no unlawfulness on the part of the respondent having cut the illegally connected electrical wire, because he was protecting any harm done to any person who could have been electrocuted. Besides the applicant is withholding payment of the electricity he is consuming.

- [6] It is trite that in spoliation proceedings, the applicant must prove that he was in undisturbed possession and has been unlawfully or wrongfully deprived. The despoiled is entitled to restoration, without the court having to interrogate any dispute regarding the items forming subject of spoliation;; *Zulu v Minister of Works, KwaZulu, and Others* 1992 (1) SA 181 (D) at 187.
- [7] The respondent admits that the electricity was sufficient to enable the applicant to operate the brick operation. He admits having cut off the electricity supply, although this was for safety reasons and because the applicant had made an illegal connection. Perusal of annexure B is the WhatsApp chat between the applicant and the respondent's son Jurie between since 28 Jan 2014 and 9 February 2015. The major concern of the respondent was the applicant's electricity consumption payment withdrawal: "08: 03, 09 Feb—Jurie Johan"..... elke man oet maar betaal. Vraa jou regs friend hulle sal dit vir jou bevestig" (paginated page 16.... 10:45, 09 Feb—Jurie johan: Hierdie is maklik betaal die krag wat jy gebruik het en maak a reeling oor die huur." (Paginated pages 68 and 69). Although annexure B may be hearsay evidence, in urgent applications the court has discretion to admit hearsay evidence, as I do.
- [8] I am of the view that the reasons advanced by the respondent for cutting the electricity supply, is primarily premised on his withholding his monthly electricity payment. I am further of the view that electricity, in the modern industrial world we live in, just like water, is an important commodity, the supply of which, as *in casu*, the landlord cannot without much ado just be severed. Urgency lies in the inherent nature and use of electricity where it has been unilaterally severed. I am of the view and find that the matter was indeed urgent. The mere fact that the applicant withheld his monthly payment for the electricity consumption, did not justify the action taken by the respondent in unilaterally severing the electricity. I am therefore of the view that the applicant was in peaceful possession of the property with electricity supply thereto and therefore entitled to the restoration of this *status quo*.

[9] With regard to costs, I am of the view that in the exercise of my judicial discretion, I should not grant punitive costs but the ordinary opposed costs, on the generally accepted principle that these follow the event.

[10] In the result the following order is granted:

1. That the matter be heard as one of urgency and that the applicant's failure to have complied with the provisions of rule 6 of the Uniform Rules of Court relating to tie-periods and form, be and is condoned;
2. That the respondent is ordered to forthwith restore the supply of electricity to the applicant on the structure which houses the equipment receiving and generating electricity on the premises.
3. That the respondent is ordered to pay the applicants costs on opposed party and party scale.



N.M. MAVUNDLA

Date heard : 13 / 02 / 2015

Date of Judgment : 16 / 02 / 2015

APPLICANTS' ADVOCATE : ADV S STRAUSS (Ms).

INSTRUCTED BY : MARKROBERT DE VILLIERS INC.

DEFENDANT'S ADVOCATE : ADV. G VAN NIEKERK

INSTRUCTED BY : BERNICE DE BEER ATTORNEYS