

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA) 29/6/2012

CASE NUMBERS: 7145/2010/ & 7147/2010

In the matter between:

MICHEL SAM LAFORET NO FIRST  
APPLICANT

PATRICIA JULIET LAFORET NO SECOND APPLICANT

And

DEPARTMENT OF ECONOMIC- DEVELOPMENT FIRST RESPONDENT  
ENVIRONMENT AND TOURISM: LIMPOPO

PROVINCE

OBED MOAGI SECOND  
RESPONDENT

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO.

(3) REVISED.

29/6/2012

Signature

In re:

DEPARTMENT OF ECONOMIC- DEVELOPMENT  
ENVIRONMENT AND TOURISM APPLICANT

And

HARMONY TRUST FIRST RESPONDENT

MICHEL SAM LAFORET NO SECOND  
RESPONDENT

PATRICIA JULIET LAFORET NO

THIRD RESPONDENT

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**JUDGMENT**

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**TLHAPI J**

[1] This is an application to set aside an order obtained in an *ex parte* application before Makgoba J on the 12 February 2010. An amended notice of motion was filed seeking the following order:

- "1. That the *ex parte* order granted by His Lordship Mr Justice Makgoba on the 12 February 2010 under case number 7145/20 be set aside.
2. That the respondents be ordered to disclose to the above honourable court the names of all persons that were present on the property of Harmony Trust, IT53221/2000 on the 15 March 2010 including the names of the State Attorney and State Advocate and/or Attorney and or/or Advocate who were present at the farm;
3. That the facts in this matter together with all the affidavits filed under case number 7145/2010 and case number 7147/2010 be presented to the National Director of Public Prosecutions with the view to prosecuting the second respondent for perjury;
4. That the second respondent be found guilty of contempt of court, and be

*sentenced to incarceration of 30 days in any jail in South Africa;*

5. *That the first and second respondent be ordered to take all necessary steps to return the cheetah to the farm property of the Harmony Trust within 14 days from the date of this order, failing which the relevant Sheriff of the area where the cheetah is currently situated, is authorised and ordered to take possession of the said cheetah and return the cheetah to the farm property of the Harmony Trust.*
6. *That the first and second respondents be ordered to pay the costs of this application on an attorney and own client scale jointly and severally, the one paying the other to be absolved."*

This application was opposed.

- [2] The order of Makgoba J in case 7145/2010 which is sought to be set aside reads as follows:

*"1. That pending the finalization of the application under case number 7147/20 an interim order is granted authorising that:*

*1.1 The Sheriff with the assistance of the Environment Compliance officer of the applicant and the members of the SAPS are ordered to remove a cheetah which is kept at farm Harmony, situated at number 140KT324 and forthwith place same at the Kapama Breeding Cheetah Project for safekeeping;*

*2.2 in the event of the cheetah not being found at the above mentioned farm then in that event the second and third respondents are to identify the*

*whereabouts of the cheetah to the Sheriff, failing which the second and third respondent be held in Contempt of Court”;*

The ex parte application was brought on an urgent basis for an order authorising the removal of a cheetah from the Mopaya Lodge ( ‘the property’) pending the finalization of the main application. It was set down for hearing on the 12 February 2010 and a copy of the main application and annexures (which had not as yet been served on the respondents) were annexed to the *ex parte* application for consideration. The main application was to be heard at a later date.

#### THE EX PARTE APPLICATION

Applicant

- [3] The following related to the history of the matter up to the spoliation order and the issue of a permit on the 9 August 2008 and valid up to the 31 October 2009:

- 1 It was averred that the applicants were not aware that the respondents had been in possession of a cheetah without the required licence from the year 2007 until such time that they had been tipped off by an employee of the respondents of the presence of the cheetah on the property. The report was that the cheetah had been illegally kept in a small enclosure. As a result the applicant confiscated the said cheetah.
- 2 The applicants disputed the fact that the cheetah had been found injured and close to death on the property and as then explained by the respondents that it had been kept there for the sole purpose of nursing it back to health.

According to the applicant the respondents had to apply for a permit to possess the cheetah for a specific period until it had recovered to fend for itself as a free roaming wild animal.

- 3 After the confiscation of the cheetah by the applicant, the respondent brought an urgent application for a *manadament van spolie* in the magistrate's court Tzaneen, for the return of the cheetah and the order was granted. A permit was consequently issued to the respondents to allow them to keep the cheetah with the sole purpose of rehabilitating it and the said permit expired on the 31 October 2009.

- [4] The applicant averred that the respondents failed to restore the cheetah to its wild life despite having undertaken to do so. The fact that it was never intended by the respondents to keep the cheetah permanently, there was no reason why it should not be removed from the property and kept at a neutral place pending the determination of the rights of the parties over the animal.

- [5] The ex parte application was based on the following grounds :

- 1 The applicant was the custodian in law of all protected animals and that its Environmental Compliance officer was entitled under certain circumstances to keep and or release in a suitable environment an animal removed from the custody of any person. The applicant averred that a permit was required in order to possess a cheetah because it was an endangered species and was classified as 'Protected Wild Animals' under the Limpopo Environmental Act 7 of 2003.

- 2 The applicant averred that there was a well grounded apprehension of irreparable harm to be suffered by it in that even if it succeeded in the final relief that applicant would suffer prejudice because the respondent may dispose of the animal. The respondents were not aware of the status and or condition of the cheetah despite the fact that the respondent were legally obliged to make reports to the applicant. Furthermore that the facilities where the cheetah were kept were not approved by the environmental compliance officers which may place the life of the cheetah itself or lives of anyone in such surrounding area in danger.
- 3 There would be no prejudice to the respondents to the grant of the interim order.

MAIN APPLICATION (DEPARTMENT OF ECONOMIC DEVELOPMENT-  
ENVIRONMENT AND TOURISM)

- [6] The order sought in this application was for the possession of the cheetah to be restored to the applicant to be kept at its facilities for purposes of rehabilitation with the purpose of restoring it to its normal wild life. The applicant conceded that the order restoring possession of the cheetah to the respondents by the magistrate during 2008 was proper. The applicant averred that since the permit for the possession of the cheetah had expired on the 31 October 2009, the respondents were obliged to voluntarily return the cheetah and since they had failed to do so, the applicant was entitled to approach the court for a mandatory interdict.

THIS APPLICATION: MS LAFORET N.O AND P J LAFORET N.O

- [7] Mr CHM Steyn an attorney for the applicants was mandated to depose to the founding affidavit because the applicants had been out of the country. He averred that the applicants had been harassed by the respondents, in particular the second respondent. The cheetah had been kept by the applicants on the property and possession thereof was legitimized by the issue of a permit the 9 August 2008 and valid until the 31 October 2009. The respondents initiated criminal charges against the first applicant because of the illegal possession of the cheetah before the spoliation order and these charges were later withdrawn.

According to Mr Steyn the first applicant had intended to start a cheetah breeding project. Efforts to acquire this permit were thwarted by the respondents after the first applicant had won his spoliation and criminal cases.

- [8] Mr Steyn averred that subsequent to this incident and out of the blue, the lodge was raided on the 16 February 2010 at five o'clock in the morning. During such raid the first respondent was represented by the second respondent, a veterinary surgeon, other officers from the nature conservation and, police officers. The second respondent served an *ex parte* order mentioned above. The respondents were looking for a cheetah kept in an enclosure. According to Mr Steyn no cheetah had been kept in an enclosure. Furthermore, that it was common knowledge on the property that when it was realized that the validity of the permit was to expire, the applicants had released the cheetah on the 17 October 2009 and that the event had been recorded on video. Since the applicants had released the cheetah after its rehabilitation and into the wild, it was no longer necessary for them to apply for a

permit. The cheetah was free roaming on the three hundred and forty hectares and was still on the property alternatively, as cheetahs were known to roam free in the area between the property and neighbouring farms, as far as the applicants were concerned the cheetah could also have been roaming in a much larger area than just the property of the applicants when the *ex parte* application was launched.

- [9] As a result of the raids on the property on the 16 February 2010, 2 March 2010 and 15 March 2010, several letters were addressed to the State Attorney regarding the *ex parte* and main applications and in particular that the *ex parte* application had been launched in bad faith. The other issue raised by the applicants was that the second respondent had been in contempt of the court order of the magistrate in the spoliation application. The State Attorneys Office did not respond to these letters.
- [10] It was averred by Mr Steyn that the raids on the property were a harassment of the first applicant and his employees and constituted a disruption of first applicant's business. The respondents conducted their search of the cheetah on the property using the vehicles of the applicants. There were threats of arrest of the first applicant's staff and the threat to review all permits relating to other game on the farm. During the last raid the second respondent added a State Attorney, and Advocate to his entourage.
- [11] According to Mr Steyn the *ex parte* application referred to a cheetah kept in a small enclosure on the property and which was held without a permit and, that the Court Order clearly authorised the removal of a cheetah kept in a small enclosure and not the search of a wild cheetah on a large property. The first applicant had been cleared of all wrongdoing in the civil and criminal proceedings before the magistrate and that the *ex parte* order was obtained without disclosing all the relevant factors to the court. It was averred that the order had been incorrectly granted against the Trust,

as a Trust cannot be cited as a separate party and that for these reasons the order should be set aside.

- [12] In reply the respondents conceded that the property had been raided on various occasions after the *ex parte* order was granted but denied any wrongdoing on their part. It was averred that during the first raid the first applicant advised that the cheetah had been released into the wild. The employees were not cooperative in allowing access to the property. The said cheetah was later seen on the property on the 23 and 24 March 2010 and that it had not been released into the wild as averred by the first applicant. The cheetah was darted and removed to be kept at the Kapama Cheetah Centre at Hoedspruit, Limpopo.
- [13] Regarding the prayers sought in paragraph [1], it is my view that they also to a large extent dealt with the issues in the main application. Prayers 2, 3 and 4 are not relevant to the determination of the matter before me. Prayers 2 and 3 relate to the alleged harassment of the employees on the property and disruption of the eco-tourism business of the applicants by the respondents and entourage during the raids and the alleged perjury by the second respondent. The applicants are within their right to initiate any criminal or civil proceedings against the respondents and the state attorney's office. It was not necessary to approach the court for the grant of the orders concerned. The applicants are in possession of copies of the affidavits of the second respondent and these can be handed over to the police or the National Director of Public Prosecutions, to consider prosecution for perjury. . In as far as prayer 4 is concerned there is nothing that should prevent the applicants from instituting action against the respondents for payment of the taxed bill of costs and for damages incurred in respect of the radio transmitter in accordance with the magistrates order. The second respondent was acting in his capacity as an official of

the first respondent.

#### Prayers 1

- [14] The applicants had a long standing association with the cheetah which began during December 2006. The cheetah was about three years of age when it was found injured and then kept in an enclosure, given treatment and rehabilitated and released into the wild in January 2008. Shortly thereafter it was caught in a snare on the property, it was treated and fitted with a radio transmitter. A hole was made in the fence to the property to allow for the free movement of the cheetah in and out of the property and it was fed by the applicants on advise of Dr Fontbonne. When the applicants were engaged in these activities and prior to the confiscation of the cheetah by the respondents they were not in possession of a permit. The spoliation application before the magistrate was launched because the respondents went onto the property and confiscated the cheetah without a court order. It was only after the said order was granted that the applicants obtained a permit to keep the cheetah. The sole purpose was to rehabilitate it and to return it to its natural habitat. The permit expired on the 31 October 2009.
- [15] It does not appear as if there was any communications between the applicants and the respondents regarding the cheetah during the duration of the validity of the permit. In my view, the respondents assumed that the cheetah was still in possession of the applicants and launched the *ex parte* and main application because it submitted that the applicants had a responsibility to report on the status and condition of the cheetah and that the respondents had a responsibility to ensure that it was kept in an approved environment and or natural habitat after the expiration of the permit.

- [16] The applicants stated that when they realized that the permit was about to expire they released the cheetah into the wild. It was submitted on their behalf that the catching of the cheetah on the property after it had been released into the wild was an unlawful act and outside the authority of the respondents. Having regard to this background, it is my view that, had the respondents been notified of the release of the cheetah into the wild before the expiration of the permit on the 31 October 2009, it would not have laboured under the wrong impression that it was still in the possession of the applicants and kept in an enclosure on the property. The respondents would probably have played a role in the placement of the cheetah as entrusted to them by section 41 of the Limpopo Environmental Act 7 of 2003.
- [17] When the *ex parte* application was considered the court was also asked to have regard to the main application and attachments. The interim order was not confined to a removal from an 'small enclosure'. It authorized the removal from the property pending the finalization of the main application. Even though the applicants were not served with the papers prior to the order being granted, I see no reason to set aside the *ex parte* order because they would have had opportunity to ventilate their case in the main application.

Prayer 5

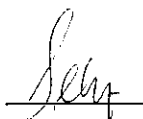
- [18] The cheetah was removed from the property in terms of the interim *ex parte* order. It was averred by the applicants that the cheetah was released into the wild, when it was realized that the permit was about to expire, that therefore it was free roaming on the property and as far as they knew even on the neighbouring farms. It was submitted for the applicants that they were therefore not involved in any restricted activity and did not require a permit because they were not in possession of the

cheetah. If the cheetah was roaming free on the property and the neighbouring farms as stated by the applicants then they would therefore not be entitled to the return of the cheetah to be released specifically on the property of the applicant. It is my view also that that they would not succeed with a *rei vindicatio* because, according to Mr Steyn the said cheetah after its release was not confined to roam in its wild state only on the property of the applicants.

[19] The *ex parte* order was incorrectly granted against the Trust, however, the trustees were also cited as second and third respondents, therefore the order in as far as it affected them as representatives of the trust was correct.

**[20] In the result the following order is granted:**

- 1 The application is dismissed;
- 2 Each party to pay its costs.



TLHAPI V.V

(JUDGE OF THE HIGH COURT)

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|------------------------------|---|------------------------------|
| MATTER HEARD ON              | : | 07 JUNE 2011                 |
| JUDGMENT RESERVED ON         | : | 07 JUNE 2011                 |
| ATTORNEYS FOR THE APPLICANT  | : | TASMOND AYRE ATTORNEYS       |
| COUNSEL FOR THE APPLICANT    | : | ADV. R DU PLESSIS / Z. F KIL |
| ATTORNEYS FOR THE RESPONDENT | : | THE STATE ATTORNEYS          |
| COUNSEL FOR THE RESPONDENT   | : | ADV. T MOTSHWANE             |