

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE HIGH COURT, KIMBERLEY

CASE NO: 304/2011

HEARD: 10/03/2011

DELIVERED: 01/04 /2011

In the matter between:

CARROL JESSIE KATHLEEN LOTZ

APPLICANT

and

ROBERT PETRUS JANSEN KNIPE

FIRST RESPONDENT

JAQUELINE MOIRA DEBORAH VIGNE

SECOND RESPONDENT

ANDRE BAZZET JANSEN KNIPE

THIRD RESPONDENT

JOHN DOUGLAS JANSEN KNIPE

FOURTH RESPONDENT

MOIRA ELIZABETH KNIPE NO

FIFTH RESPONDENT

MOIRA ELIZABETH KNIPE NO

SIXTH RESPONDENT

MOIRA ELIZABETH KNIPE

SEVENTH RESPONDENT

THE MASTER OF THE NORTHERN CAPE

HIGH COURT

EIGHTH RESPONDENT

JUDGEMENT

HUGHES-MADONDO AJ

- 1] In these motion proceedings the applicant brought an urgent application for a *mandament van spolie* and an interim interdict. The matter was initially set down for 24 February 2011 but was by consent adjourned to enable the respondents to file their opposing affidavit by 25 February 2011 and the applicant her replying affidavit by 02 March 2011. The matter was scheduled to be heard on 04 March 2011, however by this date the respondents had not had sight of the applicant's heads of argument, which had been filed with the Registrar on 03 March 2011. The matter was yet again adjourned by consent to 10 March 2011 and the issue relating to costs was reserved. An opportunity had been created for both parties to serve and file their heads of argument. On 10 March 2011 the application proceeded.
- 2] It is necessary to outline the events that preceded the current application. The applicant and the first to fourth respondents are siblings. The seventh respondent is their mother. Upon the death of their father, the seventh respondent was appointed the executrix of the estate. Of the many assets within the estate were two companies namely, Schaapplaats 978 (Pty) Ltd and Kameelhoek (Pty) Ltd. These companies owned two farms, Langberg and Kameelhoek ("the farms"), respectively. At the time of his death, the deceased was the sole director of these companies. The seventh respondent succeeded him as the sole director of the two companies. This did not last long. On 25 August 2010 the seventh respondent was removed as sole director. The second, third and fourth respondents appointed themselves as directors instead. As a result the seventh respondent instituted

proceedings in this court, in the matter of Knipe NO and 2 Others v Knipe and 10 Others, case number 1968/10, against the applicant and her siblings amongst others. The parties make references in their pleadings to this matter being the main application.

- 3] The applicant submitted that during her father's life time and even after his death she was the manager of the farms and had gaming rights on these farms. On the appointment of the seventh respondent and later the second to fourth respondents as the new directors the applicant retained her position as manager of the farms and her gaming rights on these farms.
- 4] It is common cause that on 09 January 2011, without the knowledge of the applicant, the fourth respondent changed the locks on the gates of the farms. It is further common cause that, during the week of the 14th to 18th February 2011, the fourth respondent shot and slaughtered eight fully matured bulls ("livestock") of the farms.
- 5] On 23 February 2011, in this court, the applicant instituted proceedings in the matter of Lotz versus Knipe and 10 Others, case number 276/11, referred to by the parties as the related application. Both the main application and the related application are pending and are afforded a hearing in due course.

URGENCY

- 6] The applicant argued that the urgency to institute this application arose when she was advised on 18 February 2011 of the fourth respondent's conduct of the week of the 14th to 18th February 2011. The aforesaid conduct together with his conduct of 09 January 2011 necessitated that she institute these proceedings on an urgent basis.
- 7] On the advice of junior counsel, that spoliation relief should not be sought simultaneously with the prohibitory relief on 23 February 2011 (related application), the applicant accordingly dispensed with the relief sought in these proceedings. The applicant argued that under no circumstances did she acquiesce in the respondents conduct of both 09 January 2011 and of the 14th to 18th February 2011. This is evident from her pursuing the related application.
- 8] The applicant contends that the fourth respondent is in the process of moving into the guest house which is used for hunting operations. Further, that the respondent's are unlawfully interfering with the staff that the applicant utilises in the game hunting operations.
- 9] In summary the case of the applicant is that the aforesaid conduct of the respondents has created circumstances upon which the relief she seeks, may be granted on an urgent basis. Mr. Halgryn SC, for the applicant, urged upon this court to consider this matter as urgent, as ultimately the applicant required

restoration of the *status quo*.

10]Mr. Loubsher, counsel for the second, third and fourth respondents, argued that no case had been made out by the applicant for the relief sought on an urgent basis. That she has not shown that any urgency exists for this court to entertain this application in the normal cause.. In support of his argument, he submitted that the applicant brought the related application on 23 February 2011, in due course, and not on an urgent basis. In the related application, the relief sought is similar to that which appears in this application. Mr. Loubsher also submitted that the events of the week of the 14th to 18th February 2011 have no bearing on the spoliation application and therefore cannot suddenly render urgency.

11]It is trite that Rule 6 (12) (b) of the Uniform Rules of Court sets out two requirements, (i) the circumstances which render a matter urgent must be set out explicitly and, (ii) why the applicant could not be afforded a hearing in due cause. Non – compliance the aforesaid requirements will result in the dismissal of an applicant’s application. **See *Shelton v Commissioner For The SARS* 2000 (2) SA 106 ECD at 113E- I.**

12]The circumstances set out in the applicant’s founding affidavit as regards the conduct of the fourth respondent of 09 January 2011 and the week of the 14th to 18th February 2011, in my view, constitutes sufficient compliance with Rule 6 (12) (b). Further, the relief sought relating to the restoration of the status quo, by its very nature, renders the application urgent. I am therefore satisfied that the

circumstances that the applicant has set out above are sufficient to render this application being dealt with on an urgent basis.

SPOLIATION

13]Mr. Halgryn SC, on behalf of the applicant, submitted that by virtue of the fact that the applicant was manager of the farms and that she owned the gaming rights on the farms, she had been in their peaceful and undisturbed possession. The applicant was dispossessed of the farms when the fourth respondent acted in the manner that he did on 09 January 2011 and the week of the 14th to 18th February 2011, coupled with the fact that he was moving into the guest house which was used for hunting and the fact that the respondents were unlawfully interfering with the staff whose service the applicant utilised for the hunting operation. The aforesaid conduct of the respondents necessitated the applicant initiating proceeding for a spoliation order. He stressed that she had had factual control over the farms when she was dispossessed. Further that at this stage the merits of her possession were of no consequence.

14]It emerged from the application papers that on 22November 2010 the fourth respondent obtained a family violence interdict against the applicant. This interdict prohibited her from “*enter [ing] the complainant’s [fourth respondents] place of employment at Kameelhoek Farm and Langberg Farm [the farms]*”.Mr. Halgryn SC argued that this interdict did not strip the applicant of her position as manager of the farms neither did it take away her gaming rights.

15]Mr. Loubsher, who represents the second to fourth respondent, submitted that there was no basis for the spoliation application. According to him the applicant had filed the related application a few weeks before launching this application and in both applications the relief sought was similar. He went on to state that the events of the week of the 14th February 2011 to 18th February 2011 did not have any bearing on the spoliation, as the alleged spoliation had taken place on 09 January 2011and that those events had a bearing on the second relief (interim interdict) sought by the applicant in her papers.

16]Counsel contended furthermore that it could not be said that the applicant was in peaceful and undisturbed possession of the farms as at 09 January 2011 as the fourth respondent had been armed with his interdict, as far back as 22 November 2010. Therefore the alleged spoliation of 09 January 2011 could not have taken place as the interdict had effectively removed the farms from the applicant's alleged undisturbed possession, he maintained.

17]Mr. Loubsher argued that the changing of locks by the fourth respondent on 09 January 2011 did not constitute an unlawful act as there was an interdict prohibiting the applicant from entering the farms and that the question that he took the law into his own hands does not arise. The fourth respondent was therefore entitled to change the locks. Mr. Loubsher also submitted that the applicant was no longer manager of the farms, that her gaming rights had been revoked and that she does not own any cattle or game on the farms. Mr. Halgryn SC countered these allegations aside stating that these did not amount to valid defences in law

that could be raised in spoliation proceedings.

18] An apt passage as regards the nature of a mandament van spolie was quoted from

Wille *Principles of South African Law* 7th edition at page 198 in *Willowvale Estates CC and Another v Bryanmore Estates Ltd* **1990 (3) SA 954 W at 956 D-I**:

“Possession is regarded by the law with such significance that a person who is in possession of a movable thing is presumed to be the owner of it. As a consequence of this importance, the law affords a possessor every possible protection and assistance; not only in retaining his physical control, but also in regaining it when he has been unlawfully dispossessed. The result is that a possessor may resist anyone who attempts to deprive him of possession; he may remain in undisturbed possession until another person has legally established a better title than his to own or possess the property in question; and if he is despoiled of possession he may then and there (ie before the disposition is complete) eject his adversary or he may by summary legal process, known as a mandament van spolie, obtain immediate restitution of possession without regard to his want of title. These remedies are available to any possessor, whether civil or natural or bona or mala fide; to a possessor of moveable or immovable property, or of an incorporeal right, such as a right to have a nameplate affixed to a wall, or a servitudinal right even to a possessor of property which he has stolen.

If a possessor has been deprived of possession by violence, fraud, stealth or some other illicit method, he may obtain from the court a mandament van spolie, or spoliation order, commanding the dispossessor to restore the possession to himself, the applicant. It is a fundamental principle that no man is allowed to take

the law into his own hands. *Consequently if a person without being authorised by a judicial decree, dispossesses another person, the court, without inquiring into the merits of the dispute, will summarily grant an order for restoration of possession to the applicant, as soon as he has proved two facts; namely, that he was in possession, and that he was despoiled of possession by the respondent.* The policy of law is neatly summed up in the maxim, *spoliatus ante omnia restituendus est.*”

19]In the proceedings before me there exist two instances of dispossession. Firstly, that of 09 January 2011 and secondly that of the week of the 14th February to 18th February 2011. When these took place the fourth respondent was armed with a family violence interdict. Even so the applicant was still manager of the farms and had not been dismissed as such, nor had her gaming rights over the two farms cease to exist as a result of this interdict.

20]The fourth respondent’s conduct in changing the locks was executed without judicial decree and therefore I am of the view that he took the law into his own hands. The interdict clearly sets out the legal and judicial course to be taken if the applicant failed to comply with the interdict, that is, giving effect to the warrant which had been authorised. This would have been the judicial step, which the fourth respondent ought to have engaged. There was a judicial course available to him but he opted to take the law into his own hands.

21]His further conduct of the week of the 14th to 18th February 2011 is also another

instance where he acted without judicial decree. The slaughtering of the livestock whilst they were still under the control of the applicant as manager, and whilst she still had gaming rights over the farms, was precipitate of the fourth respondent. This further constitutes the fourth respondent taking the law into his own hands. It in fact emerged in argument that the livestock does not even belong to the respondents, but rather to the grand children of the seventh respondent.

22]I am in agreement with Halgryn SC that the fourth respondent's ongoing conduct led to the applicant launching these spoliation proceedings and she is entitled to have restoration of the status quo. The fourth respondent seems to be a law unto himself. Though there are aspects relating to the merits of the applicant's possession, the applicant as possessor is protected against being dispossessed without judicial intervention.

The farms are immovable property and as such the applicant could not physically possess them. See *Meyer v Glendinning* 1939 CPD84; *Nienaber v Stuckey* 1946 AD 1049 at 1055 – 6. However her gaming rights over these farms as well as her rights as manager retained her possession over the farms, in spite the family violence interdict.

I therefore find that the applicant was entitled to bring these spoliation proceedings to ensure that the status quo restored.

INTERIM INTERDICT

23]In the case of *Knox D'Arcy Ltd v Jamieson* 1996 (3) SA 348 (A) at 372E-C, the requirements necessary for the granting of an interim interdict were set out. They are (a) that the right which is the subject matter of the main application and which the applicant seeks to protect by means of interim relief is clear or, if not clear, is *prima facie* established, though open to some doubt; (b) if such a case is only *prima facie* established, there is a well grounded apprehension of irreparable harm to the applicant if the interim interdict is not granted and the applicant ultimately succeeds in establishing his or her right; (c) there is no other satisfactory remedy ; (d) the balance of convenience favours the granting of interim relief.

24]The parties have demonstrated that the applicant has a *prima facie* right (gaming right over the farms); even though such maybe open to some doubt. The applicant has also demonstrated that, there is an apprehension of harm. This is in the form of the conduct of the fourth respondent slaughtering the livestock and that there is no other remedy available to protect her *prima facie* right. Lastly, the balance of convenience in granting the interim relief favours the applicant as the main and related application mentioned above needs to be determined before the respondents deplete and destroy what is left of the estate.

I therefore conclude that there exist sufficient facts before me to grant the interim relief sought by the applicant.

COSTS

25]The first respondent from the outset (2 March 2011) agreed to abide the court's decision as long as no cost order was sought against him. The applicant does not seek any costs against the first respondent. No cost order is sought against the fifth to seventh respondents, the applicant's mother. The seventh respondent, who represents the fifth to the seventh respondents, supports this application.

26]As regards the second, third and fourth respondents the applicant submits that the fourth respondent did not act on a frolic of his own and his actions were supported by the second and third respondents. In any event, at no stage have they distanced themselves from the actions of the fourth respondent. The applicant seeks a cost order against the three of them. I conclude that under the circumstance a case has been made out by the applicant in respect of costs against the second, third and fourth respondents.

ORDER

The order that I make is in terms of the amended order prayed, as set out below:

1. Pending the outcome of the application issued out of this court, (including all appeals), in the matters of **Lotz v Knipe and 10 Others Case Number 276/11 and Knipe NO and 2 Others v Knipe and 10 Others Case Number 1968/10 :-**

- 1.1 The first to fourth respondents (the respondents) are ordered to return

undisturbed possession to the applicant of the farms known as Kameelhoek and Langberg, registered in terms of names of Schaapplaats 978 (Pty) Ltd and Kameelhoek (Pty) Ltd including all movable and immovable property thereon, situated outside Kimberley (“the farms”) to the applicant, by close of business on the date of this order; alternatively authorising the Deputy Sheriff to remove all the locks of the gates of the aforesaid farms and replace them with locks provided by the applicant;

1.2 The respondents are ordered to return undisturbed possession of all the game and cattle, including their accrual (“the stock”) located on the farms, to the applicant, by close of business on the date of this order;

2. The respondents are hereby interdicted from unlawfully interfering with the farming and /or gaming operations of the applicant on or at the farms;

3. The respondents are hereby interdicted from interfering with the applicant’s employees and/or the employees of Schaapplaats (Pty) Ltd or the employees of Kameelhoek (Pty) Ltd, located at the farms, either personally or utilising a third party, in any manner or form, including but not limited to:-

3.1 threatening, or taking steps, to have them evicted from the farms;

3.2 threatening to, or in fact, terminating their services;

3.3 harassing and intimidating such employees;

3.4 controlling, or attempting to, control the employees in order to act in any

unlawful manner.

4. The respondents are hereby interdicted from any slaughtering, hunting or removal of stock, (cattle or game), situated at the farms;
5. The second, third and fourth respondents are ordered to pay the costs of this application.

HUGHES-MADONDO

ACTING JUDGE

NORTHERN CAPE DIVISION

(i) costs of such proceedings

APPEARANCES:

Counsel for the applicant: **Adv. L. HALGRYN SC**

Attorneys for applicant: **PAGEL SCHULENBURG INC. c/o FLETCHER'S
ATTORNEYS**

Counsel for the second, third and fourth respondents: **Adv. P. J. LOUBSHER**

Attorney for second, third and fourth respondents: **BOTHA & DE JAGER INC. c/o
ENGELSMAN MAGABANE INC.**