IN THE HIGH COURT OF SOUTH AFRICA
NORTH GAUTENG HIGH COURT, PRETORIA

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

29.05.09
DATE
SIGNATURE

CASE NUMBER: 28494/09
DATE: Friday, 29 May 2009

IOANNIS SPYRIDIS T/A TWINZ BURGER & RIBS
APPLICANT

V

SASOL PENSION FUND
RESPONDENT

JUDGMENT

SAPIRE, AJ

The respondent is the owner of a shopping mall, called the Kolonnade Retail Park. The applicant was at one time a tenant of one of the shops in the centre. He was unable however, to make his business pay, he fell in arrears with his rent and he was eventually evicted in terms of a order of court and a judgment for the outstanding rental was made against him. The respondent was evicted from the premises and an attachment was made of the movable property therein. An agreement was reached between the parties in terms of which the applicant agreed to pay R50 000.00 on account of the judgment debt in return for which the respondent agreed to release the goods under attachment. The agreement further provided that the applicant will have access to the premises, where the goods were, in order to remove them. This right terminated on the 12th of August 2008. Subsequent thereto the applicant, on a number of occasions visited the premises, on each occasion with the knowledge and consent of the respondent or its representatives and removed a portion of the goods under attachment. By the 12th of August 2008 there were still goods belonging to the applicant on the premises. Subsequent to that date the respondent was allowed to remove goods from the premises but on the 9th of May 2009 the respondent refused the applicant access to remove the remainder of the goods and in effect refused to release the goods until the balance of the writ was paid. The balance of the writ is in the vicinity of R17 400.00.

The applicant claims that the action of barring him from the premises amounts to a spoliation and has come as a matter of urgency to be given access to the goods and to be allowed to remove them.

I was informed that the writ has been re-issued and that an attachment of the goods, still on the premises, has been made. The applicant has saught to amend its claim by adding one for the setting aside of this attachment. This is irregular as the attachment had not taken place at the time the application was initiated and the merits of the dispute raised by the applicant, arising from the ownership of the goods attached may not be dealt with in this application.

The court is concerned only with the application for what has been said is a spoliation order. The applicant would have to overcome a number of difficulties before such an order, as is saught by him, could be granted. Firstly I cannot see that any urgency attaches to the matter for whatsoever. The goods have been on the respondent's premises for a long time and the applicant's right of access, if any, terminated by agreement on the 12th of August 2008. Any urgency which there may be is self created by the applicant who has had ample opportunity to remove all his goods.

The second difficulty that he faces is that he has not been unlawfully deprived of possession. The mere denial of access to the premises is not in itself a spoliation and authority for this is to be found in *DE BEER VS ZIMBALI ESTATE MANAGEMENT ASSOCIATION (PTY) LTD 2007 (3) SA 254* and *TELKOM SA LTD VS XSINET 2003 (3) SA 309, (SCA).*

The applicant's claim to the goods, still on the premises, cannot be enforced by a possessory remedy such as the mandament van spolie. The application is therefore misconceived and must fail. In regard to costs I will make no order, relating to the wasted costs incurred last week, when the matter had to be postponed, because the respondent's affidavits were not filed timously.

The order made by this court is that the application is dismissed with costs.

SAPIRE, ACTING JUDGE
OF THE HIGH COURT