

**THE REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG HIGH COURT DIVISION, PRETORIA**

Case no: 066390/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

DATE: 11 JULY 2024

SIGNATURE

In the matter between:

ZAHEER CASSIM N.O.

Applicant

And

**GROUP OF PERSONS CURRENTLY ON AND/OR OCCUPYING
THE PREMISES SITUATED AT 4[...] S[...] AVENUE,
BRYANSTON, JOHANNESBURG**

Respondent

J U D G M E N T

MAKHOBHA, J

- [1] The applicant is an attorney and insolvency practitioner. The applicant was appointed a *curator bonis* by the Special Tribunal in terms of a judgment handed down on 7 June 2022.
- [2] The applicant was appointed to take control of and liquidate certain movable and immovable assets, including an immovable property situated a 4[...] S[...]

Avenue, Bryanston, Johannesburg. This property has been declared forfeited to the SIU.

- [3] It is now common cause that a group of individuals, cited as respondents included in the group is one Nokuthula Mokoena. Who according to the submissions by his counsel in court is a director of Zaisan Kaihatsu (Pty) Ltd. Mr Mokoena says in his answering affidavit that the company (Zaisan) is the owner of the property forming the subject of this application. It must be borne in mind that neither Mr N Mokoena nor Zaisan Kaihatsu (Pty) Ltd are cited in the papers.
- [4] The applicant placed security guards on the property, he removed all the movable property and changed the locks at the property. The applicant submits that he had free and undisturbed possession of the property.
- [5] It is common cause that the property was previously owned by Zaisan Kaihatsu (Pty) Ltd and was ordered to be forfeited to the Special Investigation Unit by the Special Tribunal.
- [6] On 13 September 2023 the applicant sold the property to Simbithi Holdings Pty Ltd and the property is currently in the process of being transferred to Simbithi.
- [7] It is common cause that on 12 June 2024 a group of men arrived at the property and occupied the property and changed the all the locks on the property.
- [8] Counsel for the respondents argued that the matter is not urgent, does not meet the requirements of a final interdict and the applicant does not have *locus standi*.
- [9] The court asked the parties to first address it on urgency and thereafter on the merits.

- [10] Counsel for the respondent argued that the applicant cannot substantiate the substantial redress in due course requirement as set of in Rule 6(12) (b) of the Uniform Rules.
- [11] Counsel for the Respondents submits further that since the subject property has already been sold to Simbithi, it is Simbithi, not the Applicant, that has a direct and substantial interest in respect of the subject property in question. It is further contended by the respondents counsel that the Applicant's interest in the subject property is a too remote, abstract, academic and hypothetical one.
- [12] However the applicant in paragraph 10 of his founding affidavit says the property is currently in the process of being transferred to Simbithi and that transfer is imminent.
- [13] It is on this basis that I am of the view that the applicant will not be afforded substantial redress in due course.¹ Hence, this court found that the matter is urgent.
- [14] In my view the applicant assumed his *locus standi* from the court order of the Special Tribunal. The respondents submission in this regard cannot succeed.
- [15] The historical principle underlying the *mandament van spolie* were laid down in the judgment of Innes CJ in *Nino v De Lange*².
- [16] In order to obtain redress under and evoke the remedy of the *Mandament van Spolie* the applicant is required to allege and prove that he was in peaceful

¹ East Rock Trading 7 (Pty) Ltd Another v Eagle Valley Granite (Pty) Ltd and others (11/33767) [2011] ZAGPJHC 196 (September 2011 JDR 1832 (GSJ)).

² 1906 TS 120 par 122 where the court held that "It is a fundamental principle that no man is allowed take the law into his own hands; no one is permitted to dispose another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the court will summarily restore the status quo ante and will do that as a preliminary to any enquiry or investigation into the merits of their dispute.

and undisturbed possession of property or a right³ and that he was unlawfully deprived of possession of the property or the right by another.⁴

[17] The true purpose of the *mandament van spolie* is not the protection and vindication of rights in general, but rather the restoration of the *status quo ante*.

[18] An applicant must not only allege peaceful and undisturbed possession, but he must prove it.⁵

[19] Possession is an important jurisdictional fact because it has legal consequences, one of which is that the party dispossessed is afforded the remedy of the *Mandament van Spolie*.⁶

[20] In discharging the onus of proving possession, an applicant is required to establish the nature of its possession and as pointed out by Addleson J in *Bennett Pringle*⁷ where the court held that the remedy is available to any person who has control of a thing and exercises such control in his own interest or as agent for another.

[21] Ultimately, as was held in *Bennet Pringle*, the question of possession is one of degree and that the enquiry is whether the conduct of the possessor shows that he did exercise rights or carry out activities consistent with the transfer to him of control of the premises and that he did so with the intention of securing some benefits to himself.⁸

[22] The possession which must be proved is not possession in the juridical sense it may be enough if the holding by the applicant was with intention of securing

³ Impala Water Users Association v Lourens NO 2008 (2) SA 495 (SCA).

⁴ George Municipality v Vena 1989 (2) SA 263 (A); Ntai v Vereeniging Town Council 1953 (4) SA 579 (A).

⁵ Impala Water users.

⁶ Shoprite Checkers Ltd v Pangaborne Properties 1994 (1) SA 616 (W).

⁷ Bennett Pringle (Pty) Ltd v Adelaide Municipality 1977 (1) SA 230 (E) at 232H-233H.

⁸ Strawberry Worx Pop Ltd v Adelaide Municipality 39 (Pty) Ltd and Another (18810/2016) ZAGPPHC547 (17 June 2016).

some benefit for himself accompanied by the physical element of *corpus dententio*.⁹

[23] In my view the property in this matter before me was still in the hands of the applicant when the respondents dispossessed her. The property is in the process of being transferred to a buyer, namely Simbithi. The applicant must be urgently restored to her possession.

[24] The respondents are cited as group of persons without any names being mentioned. The court cannot award costs to a group of unnamed individuals.

[25] I make the following order:

25.1 The Respondents (Group of Persons Currently on and / or occupying the premises Situated at 4[...] S[...] Avenue, Bryanston, Johannesburg) are ordered to restore to Applicant's full peaceful and undisturbed possession and access to the property situated at Portion 1 Ert 1[...], Bryanston, Johannesburg, Gauteng more commonly known as 4[...] S[...] Avenue, Bryanston, Johannesburg, Gauteng.

25.2 That the Respondents refrain from spoliating, dispossessing or otherwise interfering with the Applicant's possession of the property.

25.3 That should the Respondents fail to comply with this Court Order within a period of 5 (five) working days after this Court Order is brought to their attention by service by the sheriff, the sheriff with assistance of the South African Police Service is authorized and ordered to take all necessary and reasonable steps to implement this Court Order.

MAKHOB A J
JUDGE OF THE HIGH COURT

⁹ Reck v Mills 1990 (1) SA 751 (A) 759.

GAUTENG DIVISION, PRETORIA

HEARD AND RESERVED JUDGMENT: 26 JUNE 2024

JUDGMENT HANDED DOWN ON: 11 JULY 2024

Appearances:

For the Applicant: Adv R.Raubenheimer (instructed by) Mothle Jooma Sabdia Inc.

For the Respondent: Mr D. Molepo from Edward Nathan Sonnenbergs Inc.