

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: 2203/2024

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
	
	
DATE: 18 November 2024 SIGNATURE.....	

In the matter between:

GARETH ANDREW BLAKE

FIRST APPLICANT

SONJA BLAKE

SECOND APPLICANT

-and-

MSI SYSTEMS AND TECHNOLOGIES (PTY) LTD

FIRST RESPONDENT

RIAAN MOORCROFT

SECOND RESPONDENT

MAROPENG FRANS CHAUKE

THIRD RESPONDENT

SEBAWA JOHANNES MOSHOANA

FOURTH RESPONDENT

MAUREEN MOORCROFT

FIFTH RESPONDENT

BEN BOTHA

SIXTH RESPONDENT

ABRAHAM ROESTOF

SEVENTH RESPONDENT

KATE CHAUKE

EIGHTH RESPONDENT

ALL UNLAWFUL OCCUPANTS OF PORTION 57
OF THE FARM BASKOPPIE 997, L.S. LIMPOPO

NINTH RESPONDENT

POLOKWANE LOCAL MUNICIPALITY

TENTH RESPONDENT

JUDGMENT

BRESLER AJ:

Introduction:

[1] On the 7th of August 2024, this Court granted an order in the following terms:

*'1. The First to Ninth Respondents, as well as all persons occupying through the First to Ninth Respondents, are evicted from the immovable property commonly known as **PORTION 57 OF THE FARM BASKOPPIE 997, L.S. LIMPOPO** ("the property").*

2. *The First to Ninth Respondents, as well as all persons occupying the property through the First to Ninth Respondents are ordered to vacate the property on or before the 31st of December 2024.*
3. *Should the First to Ninth Respondents, as well as all persons occupying the property through the First to Ninth Respondents, fail to vacate the property on expiry of the period referred to in paragraph 2 supra, the Sheriff of the area in which the property is situated is herewith authorized and mandated to carry out the Court order with the assistance of the South African Police Services and evict the First to Ninth Respondents, as well as all persons occupying through them, from the property.*
4. *Judgment is reserved in respect of costs.*
5. *The Respondents have an opportunity to file supplementary heads on / before 21 August 2024, and the Applicants to respond thereto on / before 28 August 2024.'*

[2] What follows is thus this Court's decision with regards to the issue of costs.

[3] It should be noted that during the hearing of the matter, the Respondent's counsel conceded that their opposition only deals with the lawfulness of their tenure up to and including December 2023. On the papers before the Court, there is no reason

for them to have remained in occupation after this date. On this basis, the order of eviction was granted.

- [4] As the Respondents persisted in their view that the Applicants have not made out a case on the papers before court, the issue of costs remained contentious and was consequently argued. The Respondents persisted in their view that, should the matter have been determined prior to December 2023, they would have succeeded with their opposition.
- [5] The Respondents' counsel submitted in argument that it would be just and equitable under the circumstances if each party is ordered to pay its own costs. The Applicants in return directed the Court's attention to the consent to costs contained in the lease agreement. In terms of Clause 22 of the lease agreement provides for costs to be recovered in the event of the institution of legal proceedings on a scale as between attorney and client. The Applicants furthermore submitted that they were substantially successful and are thus entitled to their costs.
- [6] In the case of ***D & DH Fraser Ltd v Waller***¹ the Court concluded that a stipulation in a mortgage bond that the debtor on failure of payment of his debt, shall pay collection costs, should be treated as a penalty and the creditor is therefore entitled to recover only the actual loss which he has sustained through the debtor's breach of contract.

¹ 1916 AD 494

- [7] In ***Ebrahim (Pty) Ltd v Mahomed and Others***² the learned Milne JP stated the following:

'It was rightly conceded by Mr. Mahomed that, if the undertaking in annexure A to pay costs on an attorney and client basis including collection charges, was enforceable, as we hold it was, the learned Judge was correct in holding that the indebtedness, acknowledged in annexure A, was more onerous than the indebtedness acknowledged in either ohe 1 or ohe 2.'

- [8] In the unreported case of ***Vuselela Security SPV (RF) v Lizoxola Properties (Leave to Appeal)***³ the learned Judge states the following:

'The only aspect of my order that was not granted by consent was a direction that the applicant for leave to appeal pay the costs of the application on the attorney-and-client scale.

The reasons I gave for that order were that, first of all, costs on the attorney-client scale were provided for in the agreement upon which the respondent in the application for leave to appeal sued in the court a quo. Second, there were no facts under oath before me that would have justified a departure from that contractual undertaking, even though I accepted it in my judgment that such a departure is possible and the courts are not bound by contractual undertakings to pay costs on a particular scale.'

² 1962 (2) SA 183 (N)

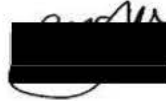
³ 2023 JDR 3794 (GJ) at 2

- [9] It is thus evident that an agreement to pay costs on an attorney and client scale is enforceable on a contractual basis unless a basis has been set out in the papers before court why the contractual term should not be enforced.
- [10] *In casu* no such case has been made out. If the Court accepts the version of the Respondents hypothetically, then they remained in unlawful occupation after the end of December 2023, being the date on which, according to their version, their lawful occupation seized. They had no basis in law to remain in occupation.
- [11] In this Court's view, if the opposition of the proceedings were *bona fide*, the Respondents would have vacated the premises, as per their version, by the end of 2023 and would not have unlawfully remained in occupation.
- [12] On this basis, the Court finds that the Applicants were obliged to institute legal proceedings as contemplated in Clause 22 of the lease agreement. As a consequence, they are contractually entitled to the payment of their attorney and clients scale fees.

Order:

- [13] **In the result the following cost order is made:**

13.1 The First to Ninth Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the costs of the Applicants on a scale as between Attorney and Client.



M BRESLER
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

APPEARANCES:

FOR THE APPLICANTS : **Adv. J Stroebe**

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FOR THE RESPONDENTS : **Adv. V Sako**
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DATE OF HEARING : **7 August 2024**

DATE OF JUDGMENT : **18 November 2024**