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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: 2025-074447

(1) **REPORTABLE: NO**
(2) **OF INTEREST TO OTHER JUDGES: NO**
(3) **REVISED.**
DATE 2025-06-09
SIGNATURE

In the matter between:

DRAGON CHROME BF (PTY) LTD
[REG. NR.: 2024/774409/07]

1st Applicant

JOOST SMUTS
[ID 7[...]]

2nd Applicant

GINTER SMUTS
[ID 9[...]]

3rd Applicant

FERGUS DERWIN
[ID 6[...]]

4th Applicant

and

PAUL KIETZMANN

Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 9 June 2025.

JUDGMENT

POTTERILL J

Background

[1] Dragon Chrome BF (Pty) Ltd's [Dragon Chrome] sole business is the beneficiation of chrome tailings through washing and processing to extract chrome concentrate for sale to third parties. It is common cause that Dragon Chrome's business is solely conducted from Portion 1[...] of the Farm B[...] 4[...] J2 North West Province [the site]. It is further common cause that the site is registered in the name of Chrome Capital. Furthermore it is not disputed that for Dragon Chrome to perform its duties it had employees, utilised the services of a sub-contractor and a security firm. Dragon Chrome is a vehicle for a partnership in the form of a joint venture between three shareholders, F12 and Liminico. The respondent in this matter, of which Mr Kietzmann [Kietzmann] is the sole director of Chrome Capital (Pty) Ltd [Chrome Capital] is the third shareholder holding 40% shareholding in Dragon Chrome.

[2] The relationship between the parties is regulated by a contract and *inter alia* provides that possession and control of the site was given to Dragon Chrome to run the plant on site. It is common cause that it conducted operations on site six days a week for 24 hours per day.

[3] On 25 April 2025 Chrome Capital brought an urgent application before the Johannesburg High Court interdicting Dragon Chrome and the other respondents in the application from:

- 3.1 Interfering with or denying access to Chrome Capital, its directors, employees and/or contractors;
- 3.2 Selling, disposing of or alienating and/or encumbering any of the chrome ore, tailings, plant equipment, infrastructure and/or movable assets;
- 3.3 Conducting any business operations on the site;

3.4 Excluding an/or removing Sentinal Security (Pty) Ltd from the site.

In addition an order was sought against the four applicants *in casu* in the following terms:

- (1) Immediately restoring Chrome Capital's physical possession of the site;
- (2) Providing full and complete accounting to Chrome Capital;
- (3) Declaring that any chrome sales, asset removals and/or operational decisions without the consent of Chrome Capital or without a unanimous written resolution, are lawful and of no force or effect;
- (4) To restore Chrome Capital's possession of certain assets.

[4] By agreement the urgent application was referred to arbitration before retired Judge Harms scheduled to be heard on 20 June 2025.

[5] On 22 May 2025 Kietzmann arrived on site with interim protection orders. These orders were issued against Joost Smuts, Ginter Smuts and Fergus Derwin of Dragon Chrome in terms of the Harassment Act 17 of 2011 [the Act]. This resulted in Mr Derwin to be removed from the site, as well as the Fidelity Services, and all the employees of Dragon Chrome. Moreover, Dragon Chrome's sub-contractor was removed from the site. On behalf of the applicants it was surmised that due to this action Dragon Chrome's possession of the site was completely terminated.

[6] On behalf of the applicant it was argued that despite the restricted content of the Harassment Orders issued by the Magistrate Dragon Chrome's possession of the site was completely terminated. These orders were given without notice to the three individuals and no reasons in the application to the Magistrate set out why the giving of notice would impede the application. The applicants are vindicating their right to be heard by seeking the suspension of the orders. An application to anticipate was placed on the roll, but was postponed because the Magistrate would not attend to Court due to a personal crisis. On that date the matter will again be postponed, if opposed, not affording them substantial redress. The matter is thus urgent as Dragon Chrome cannot conduct business. If the matter is heard in the ordinary Court then it would lead to the demise of Dragon Chrome.

[7] It was further argued by the applicant that the dispute in the arbitration revolves around all these issues and the obtaining of the interim interdict was an abuse of process. The interim interdict did not cater for the employees, the security firm or the sub-contractor and thus they were unlawfully spoliated of their undisturbed possession.

[8] On behalf of the respondent, Mr Paul Kietzmann, an answering affidavit of over 150 pages was filed regurgitating the same facts over and over. This is frowned upon by this Court. Most of it relates to the merits to be decided by the arbitrator.

[9] In a nutshell the respondent's argument is that a mandament of spolie is not inherently urgent, especially where the two requirements of the mandament of spolie has not been proven. The dispossession was in terms of lawful orders and therefore the application must fail. Furthermore, the applicants were not in undisturbed possession because they were the initial spoliators. The applicant as spoliators cannot be heard to shout "spoliation". Furthermore, the applicants have not quantified any averred losses by not being able to proceed with their business. In any event, the applicant have invoked the remedies availed to them by service a notice in terms of section 3(5) of the Act when they anticipated the return date for the interim order on 24 hours' notice. This set-down for 4 June 2025.

Decision on urgency

[10] I am satisfied that the matter is urgent. Despite the urgent application by agreement being referred to arbitration the respondent sought to restrain and effectively dispossess the applicants before this arbitration was heard. This is frowned upon by this Court. Although this Court is not to determine the unlawfulness of the interim order it is clear that at least two of the averments made to the Magistrate were untruths. I also accept that the applicants will not obtain substantial redress in due course because I can accept the submissions from senior counsel that the anticipation order will only be dealt with at the earliest in August 2025. This can be accepted as it was conveyed to him from the Magistrates Court where the matter was postponed to be on the postponed date postponed further.

[11] The fact that the applicants were in *de facto* possession before the spoliation is clear. The possession need not be exclusive possession as the applicants had control of the site.

[12] Pertaining to the second requirement, the deprivation of possession, the orders obtained did not deprive the employees, the sub-contractor or the security firm from entering the premises. The respondent has thus unlawfully despoiled the applicants of control over the site. As to the defence of counter-spoliation, this defence is rejected because the “counter-spoliation” of the respondent was not effected instanter and did not form part of the *res gestae* of that occasion.¹

[13] I am satisfied that the applicants have proved the facts necessary to justify a final order. I am thus satisfied to suspend the interim order pending the final determination thereof. In view thereof all the applicants are successful and the site’s possession must be restored to the applicants. The suspension follows as a natural result of the success of the mandament of spolie.

[14] As for costs I am satisfied that there is no reason to not follow the ordinary rule the costs should follow the result. I am also satisfied that the conduct of the respondent, while agreeing to arbitration, to institute proceedings in the Magistrates Court without notice to the applicants was *mala fide*. The conduct in filing an excessive opposing affidavit further renders a punitive costs order reasonable.

[15] The following order is made:

- 15.1 Kietzmann (the respondent) is ordered to restore the Dragon Chrome’s possession of the site and premises known as Portion 1[...] of the Farm B[...] 4[...] JQ, North West Province, that includes allowing Dragon Chrome to deploy its security company Fidelity Security;
- 15.2 The implementation and execution of the interim protection orders dated 16 May 2025 (under case numbers HA-770/2025, HA-767/2025 and HA-769/2025) is suspended pending the outcome of the hearing,

¹ *Mthimkulu and Another v Mahomed and Others* 2011 (6) SA 147 (GSJ) at 150D

as provided for in section 9(2) of the Protection from Harassment Act,
17 of 2011;

15.3 Kietzmann (the respondent) is ordered to pay the applicants' costs,
including the costs of two counsel, on an attorney and client scale.

S. POTTERILL
JUDGE OF THE HIGH COURT

CASE NO: 2025-074447

HEARD ON: 4 June 2025

FOR THE APPLICANTS: ADV. A.P.J. ELS SC
ADV. D.D. SWART

INSTRUCTED BY: Heymans & Co

FOR THE RESPONDENT: ADV. R. BLUMENTHAL

INSTRUCTED BY: Witz Incorporated

DATE OF JUDGMENT: 9 June 2025