

REPORTABLE

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: 33194/11

DATE:23/09/2011

In the matter between:

SOUTH AFRICAN NATIONAL

TUBERCULOSES ASSOCIATION

Applicant

and

SATEESH ISSERI

First Respondent

DECAWIZ INVESTMENTS (PTY) LTD

Second Respondent

SURVEY PLEX 24 CC

Third Respondent

FIRST NATIONAL BANK

Fourth Respondent

PRIMI SUB-ACUTE MEDICAL CC

Fifth Respondent

NORWAMY READY

Sixth Respondent

ELIZABETH CHETTY

Seventh Respondent

JUDGMENT

NOTSHE AJ:

- [1] In this matter the Applicant, a non-profit benefit organization sought an order against the Applicant for the following relief:

- “6. *That it is directed that the matter be heard as one of urgency and that the usual time periods for the service and filing of documents are dispensed with and the failure to comply with the usual methods of service are condoned.*
7. *That the arbitration award made by His Lordship Mr. Justice Streicher on the 18 day of August 2011 is made an order of this Court.*
8. *Tat Respondents, save for the 4th Respondent, are ordered to restore possession of the premises situated at 33 – 35 Hingham Field Office Park, Boeing Road, Bedfordview.*
9. *That the Respondents, save for the Fourth Respondent, are interdicted and restrained from:*

 - a. *In any manner dealing with the assets or business affairs of the Applicant;*
 - b. *Transferring or causing to be transferred to the Respondents or any Third party any of the movable or immovable assets of the Applicant.*
 - c. *Issuing any instructions to the Applicant’s bankers or signing any cheques on the Applicant’s bank account*

and/or accessing the bank account of the Applicant.

d. Representing to any person/s that the Respondents in any way act for and on behalf of the Applicant in any manner.

10. That the Fourth Respondent is interdicted and restrained from permitting the First to Third and Fifth Respondents from operating or transacting in respect of any of the Applicant's accounts held at the Fourth Respondent.

11. Costs of the application on an attorney and scale."

[2] The application was brought in two parts. Part A was disposed of and an order to that effect was made. The dispute before me is in relation to the Part B of the relief sought.

[3] The relief sought in relation to the arbitration award arises from the arbitration proceedings that were commenced by the parties by agreement. It is common cause that after the Applicant had led its first witness the First, Second and Third Respondents agreed that the matter should be settled by agreement between the parties. They concluded an agreement which was made an arbitration award. It is the aforesaid arbitration award that the Applicant seeks to have it made an order of Court. The arbitration award reads as follows:

- “1. *The Respondents will restore occupation and possession of the building situated at 33-38 Hingham Field Office Park to the Claimant by no later than 26th of August 2011.*

2. *Pending restoration of the building as aforesaid the Respondents shall allow the Claimant to monitor and control the management by the Respondents of the Claimant's affairs in accordance with the order of Court issued out by the South Gauteng High Court in the urgent application.*

3. *The Respondents shall cause the properties already transferred to Second Respondent or any other legal entity under the control of the First Respondent, save for the Fort Grey property, to be restored to the Claimant at the Respondents' expense. In the event of the Respondents failing to do so within thirty days from date of this award, the Sheriff is hereby duly authorized to sign such documents necessary to give effect to such transfers.*

4. *The Respondents shall in addition be liable to pay on request any other costs relating to the transfer of the said properties inter alia arrear rates and taxes, electricity accounts, water accounts, as may be necessary to effect transfer of the properties to the Claimant.*

5. *The conveyancers who shall attend to the transfer of the properties aforesaid shall be nominated by the Claimant. The*

Respondents record that the conveyancing attorneys attending to the transfer are Carol Coetzee.

- 6. The conveyancers' fees shall be paid by the Respondents who shall pay such expenses and the transfer costs as referred to supra upon presentation of an invoice from the conveyancing attorneys.*
- 7. The Respondents shall as at date that this agreement is made an award issue instructions to the bank/s at which the Claimant holds any banking account in terms of which they shall terminate any signing powers that any of the Respondents and/or their employees may have on such banking account/s.*
- 8. The Respondents further undertake that as from the date that this agreement is made an award they will not transfer or cause to be transferred out of the bank account/s of the Claimant any funds.*
- 9. The Respondents shall within 5(five) days of the date of this agreement being made an award return to the possession of the Claimant the motor vehicles transferred to the Respondents and/or any other legal entity under the control of the First Respondent.*
- 10. The Respondents undertake to sign all the necessary documents to cause the aforesaid vehicles to be transferred*

back into the name of the Claimant upon request.

11. *The Respondents shall on or before the 26th of August 2011 restore to the Claimant all the financial records or other business records of the Claimant.*
12. *The Respondents undertake as from the date of this award not to remove any property of the Claimant from the Claimant's premises. This includes an undertaking not to remove, delete or otherwise interfere with the accounting records of the Claimant.*
13. *The Respondents shall pay the costs of the urgent application and the arbitration proceedings, jointly and severally the one paying the other to be absolved. All other obligations undertaken by the Respondents herein shall also be joint and several.*
14. *The parties agree that this agreement shall be made an award in the aforementioned arbitration. "*

[4] The Respondents' defence to this relief is to the effect that there are proceedings pending wherein the Respondents seek to set aside the award.

[5] In other words their defence is to the effect that I should not make an award because there are proceedings pending regarding the same matter. In this regards the Supreme Court of Appeal held the following:

“Lease _____ is a discretionary remedy...”¹

[6] In the exercise of the discretion the Court should consider the merits of the two actions. If the prospects of success in the other matter are remote it will be inconvenient to delay the other proceedings. In this case the award was made by agreement between the parties. The Respondents seek to rely on some remote event to attack the award. They aver that some money was paid into the account of the main probably to influence her to give false evidence. It is not explained why the evidence of that witness was not attacked. The fact that a witness is bribed to give false evidence does not preclude a party from exposing the untruthfulness of that evidence. In this case the Respondents do not even attempt to attack the evidence of the witness. As stated above after the evidencing chief they capitulated and agree to the award.

[7] In the circumstances I should entertain the application.

[8] Except for the defence that there are proceedings pending there is no other defence raised to the relief sought. In the circumstances the relief sought in paragraph 7 of Part B of the Notice of Motion namely that making the award of His Lordship Mr. Justice Streicher on 18 August 2011 an order Court should be granted.

[9] Insofar as the relief sought in paragraph 8 of the Notice of Motion, namely the restoration of possession of premises situated at 33-38

¹ Janse Van Rensburg and Others NNO v Steenkamp and Another Janse Van Rensburg and Others NNO v Mayberg and Others 2010(1) SA 649 (SCA) at 663

Hingham Field office park, Boeing Road, Bedfordview the Applicants aver that they were spoiled those premises. They aver that after the award was made its employees moved into the premises they took possession of the premises and changed the locks thereof. They brought new security personnel, took control of the remote of the alarm to the premises and instructed the security personnel not to allow the erstwhile employees of the Third Respondents to enter the premises.

[10] It is common cause that on 24 August 2011 the Respondents and their attorney arrived at the premises and took the possession thereof without any Court order.

[11] The Respondents deny that they despoiled the Applicant. Their defence is to the effect that the Applicant was not in possession of the premises.

[12] It is common cause that the employees of the Applicant were at the premises on 24 August 2011 when the Respondents and its attorneys arrived there. It is also common cause that the locks have been changed by the Applicant and they had replaced the security personnel with theirs. It is telling that the Respondents attorneys wrote to the Applicant's attorneys to say *inter alia* that his client, the Respondents had taken back possession of the premises.

[13] On these facts I am satisfied that the Applicant had taken possession of the premises. The Respondents took possession of the premises without any process. In the circumstances its act amounts to spoliation.

The Applicants are entitled to the relief that they seek in this regard namely the restoration of possession of the premises.

[14] The relief sought in paragraphs 9 and 10 of the Notice of Motion is a final interdict. The Applicant avers that it has cancelled the management agreement it had concluded with the Respondents. The relief against the Fourth Respondent is a consequential relief that will emanate if the relief sought in paragraph 9 is granted.

[15] The Applicant further relies on the award that was made by agreement.

[16] The Applicant avers that on 22 June 2011 it terminated the mandate of the Third Respondent to manage its affairs. In this regard it attached a copy of the resolution to that effect. The Respondents merely make a bold denial in that regard.

[17] It is trite law that the principal is entitled to terminate the mandate of the agent. Whether the termination is justified or not does not come into the picture. If the termination was done wrongfully the agent is left with an action for damages. In the absence of a mandate the Respondents have no justification in insisting to manage the Applicant. I am satisfied that the Applicant has satisfied the requirements for the granting of the final interdict they have every right not to be managed by the Respondent. The Respondents are insisting to manage them thereby threatening to interfere with the Applicant's right. The Applicant has no other adequate remedy except an interdict.

[18] In the circumstances I make the following:

1. The arbitration award made by Mr. Justice Streicher on 18 August 2011 is made an order of Court.
2. The First, Second, Third, Fifth, Sixth and Seventh Respondents are directed to restore possession of premises situated at 33- 38 Hingham Field Office Park, Bowing Road, Bedford to the Applicant forthwith.
3. The First, Second, Third, Fifth, Sixth and Seventh Respondents are interdicted and restrained from:
 - 3.1 Dealing in any manner with the assets of business affairs of the Applicant; and
 - 3.2 Transferring or cause to be transferred to them or any third party any immovable or movable assets of the Applicant;
 - 3.3 Issuing any instructions to the Applicant's bank account or signing any cheques from the Applicant's bank accounts and/or accessing the bank account of the Applicant;
 - 3.4 Representing to any person/ persons that the Respondents in any way act for and on behalf of the Applicant in any manner.

3.5 Interdicting and restraining Fourth Respondent from permitting the First, Second, Third, Fifth, Sixth and Seventh Respondents from operating or transacting in any respect any of the Applicant's accounts held at the Fourth Respondent.

3.6 Directing the First, Second, Third, Fifth, Sixth and Seventh Respondents to pay the costs of this application jointly and severally the one paying the other to be absolved.

V.S NOTSHE
ACTING JUDGE OF THE HIGH COURT

Counsel for the Applicant:	M Smit
Attorneys for the Applicants:	Messrs D.C Veldman Attorneys
Counsel for the Respondents:	Nigel Riley
Attorneys for the Respondents:	Messrs Brider and Associate
Date of the Hearing:	
Date of Judgment:	