

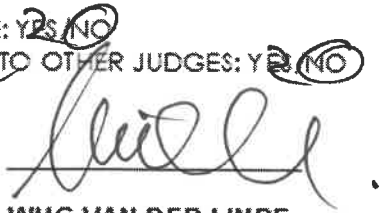
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 1845/2019

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED
25.1.19	
Date:	WHG VAN DER LINDE

In the matter between

Kukubi Pitshou

Plaintiff

And

Kendricks Estate Agencies cc

1st Respondent

Kene Oguejiofor

2nd Respondent

Judgment

Van der Linde, J:

- [1] This is an urgent application for a spoliation order brought by the applicant against his landlord because his electricity has been discontinued. The applicant seeks an order that the electricity be restored, since electricity supply was a feature of his possession and occupation of the residential property, being a flat in Bellevue, Johannesburg. The landlord opposes the relief. The parties appear in person. Both sides have filed opposing papers. At the hearing on Thursday only the applicant was present, but since the papers were ripe, I treat the matter as if it was a proper opposed application.
- [2] The landlord disputes terminating the electricity supply. He says that the electricity supply to the flat was constantly short-circuited, because the applicant has sublet the premises, a residential flat, causing over-crowding, and in turn that resulted in water leakage. The water leakage, which has affected both the applicant's flat and the one below, caused the electrical supply repeatedly to short-circuit. The landlord says that the obligation to keep the water pipes and installations in good order and repair rested on the applicant, and he relies on clause 15 of the lease agreement between the parties.
- [3] The landlord says that in any event the applicant is in arrears with his rental, and the applicant admits this. The landlord says too that the applicant has before raised these complaints with the Housing Tribunal, but when the true facts came to the fore, he dropped the complaint.
- [4] The problem for the applicant's spoliation relief is that the respondents' version is not disputed. I afforded the applicant an opportunity to prepare a replying affidavit, and to that

end stood the matter down for a day. The applicant handed up a replying affidavit on 24 January 2019, but it takes only the technical point that the answering affidavit was not commissioned. It does not purport even to deal with the substance of the evidence contained in the landlord's affidavit.

[5] In the exercise of my discretion to condone non-compliance with court rules in urgent matters, I condone the applicant's short-service of papers, but I also condone the fact that the landlord's evidence is contained not in a duly commissioned affidavit, but in a written statement, not commissioned.

[6] What thus confronts the court is a dispute between the tenant and his landlord about who causes the electricity to sort-circuit or trip: the landlord says it is the applicant, through his sub-letting the flat and overcrowding it, causing water leakage; the applicant says (from the Bar) that water leakage is the landlord's issue.

[7] For an application for spoliation relief to succeed, the applicant must show that it is the respondent who has deprived the applicant of his possession – in this case of full possession of the flat, electrical supply of which was an incidence of occupation. I will assume in favour of the applicant that electrical supply was an incidence of ownership; but the difficulty for the applicant remains the question whether he has shown that it is the landlord that has taken the law into his own hands by cutting electrical supply.

[8] On the facts before me, which include the landlord's uncontested version, the termination of electrical supply occurs through tripping of electrical supply; and that in turn occurs through water leakage, and not through deliberate action on the part of the landlord terminating electrical supply because the applicant did not pay his rental. In the circumstances the application cannot succeed. Since neither party was represented, no question of costs arises.

[9] I make the following order:

The application is dismissed.



WHG van der Linde
Judge, High Court
Johannesburg

Applicant (in person)
Kukubi Pitshou
4 Houghton Close
Bellevue
Johannesburg

First Respondent(unrepresented)
Kendricks Estate Agencies cc
50 Hawknest
Elands Road
Steeldale
Johannesburg

Second Respondent (in person)
Kene Oguejifor
50 Hawknest
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