**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**CASE NO: 43831/2019**

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

17/12/2019
DATE

SIGNATURE

In the matter between:

| | |
|---|---|
| **KARABO SELEMOLELA** | 1ST Applicant |
| **TIEGO MAEYANE** | 2ND Applicant |
| **MOSES TSIETSI LESHODI** | 3RD Applicant |
| **THABANG NTULI** | 4TH Applicant |
| **BOPAPE KENNY** | 5TH Applicant |
| **TSHEGOFATSO MOHUBE** | 6TH Applicant |
| **BUANG NATHANIEL GAOHOSE** | 7TH Applicant |

And

| | |
|---|---|
| **CENTRAL JOHANNESBURG COLLEGE** | 1ST Respondent |
| **PHUMZILE KEDAMA N.O** | 2nd Respondent |
| **BRAVO SPAN 90 CC SECURITY COMPANY** | 3rd Respondent |

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**JUDGEMENT**

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**MABESELE J.:**

[1] On the 17th December 2019 the Applicants approached this court on an urgent basis for an order, directing the first Respondent to restore the Applicants' possession of their rooms which are situated in the residence of the first Respondent and allow the Applicants access to the residence of the first Respondent. The application was opposed. After both counsel had presented argument the application was dismissed with costs. The written reasons are provided in this judgement.

[2] The central question was whether spoliation is available where the Applicants allege to have been deprived of possession of their rooms by the first Respondent when it suspends its academic activities for the festive season and lock the Applicants outside its residence without the court order.

[3] All seven Applicants were registered students at the first Respondent (Central Johannesburg College) for the academic year 2019 which came to an end on 5th December 2019. It stands to reason, therefore, that due to the completion of the academic year programme for the year 2019, the Applicants together with all other students should re-register with the first Respondent for the academic year 2020 should they wish to further their studies at the first Respondent, subject to the decision of the first Respondent accepting their registration. To my knowledge, on admission to the institution the following year, students may not be given the same rooms which they had previously occupied.

[4] On the 26th November 2019 the Applicants and all other students received a notice from the first Respondent, informing them of the closure of the first Respondent on the 5th December 2019. That notice did not come as a surprise to the Applicants

and all other students since they all knew from the beginning of that year that the first Respondent will close on the 5th December 2019. Following that notice the Applicants approached the management of the first Respondent and pleaded with it to allow them to remain in the residence of the first Respondent until the 15th December 2019 because they did not have money to go home and had no alternative accommodation. Although their plea was considered to be reasonable their period of stay in the residence of the first Respondent was extended to the 10th December 2019. Before the end of that day the Applicants were forcefully removed from the residence of the first Respondent by the security officers, acting at the behest of the first Respondent. That decision of the first Respondent triggered the application of the 17th December 2019.

[5] It is trite that a spoliation order is available where a person has been deprived of his or her possession of movable or immovable property or his or her quasi-possession of incorporeal. Once the applicants prove that they were in peaceful possession and their possession was disturbed, the first Respondent must restore the possession[1] of the Applicants' rooms.

[6] The Applicants argued that although the academic year programme came to an end on the 5th December 2019 the first Respondent has no authority in law to lock them outside its residence and dispossessed them of the rooms without the court order or without providing them with alternative accommodation. They argued that the conduct of the first Respondent has infringed their constitutional rights as enshrined in

[1] Mangala v Mangala 1967(2) SA 415(ECD) at 416 D-F

sections 25 and 26 of the Constitution[2]. Section 25 provides that no one may be deprived of property except in terms of the law of general application and no law may permit arbitrary deprivation of the property. Section 26 provides that everyone has the right to have access to adequate housing. Arguing further, the Applicants relied also on Tshwane University of Technology v All Members of the Central Students Representative Council and others[3] wherein the court declared the eviction of the students who were involved in violent and unlawful protests on the residence, unlawful. The court was of the view that in determining whether there has been a spoliation the unlawfulness or otherwise of person's occupation is irrelevant. The court was mindful of the principle that no one may take the law into ones hands[4].

[7] In contrast, the first Respondent argued that since the Applicants were contractually bound to vacate its residence at the end of the academic year 2019 after the academic programme for that year came to an end on the 5th December 2019, the Applicants cannot claim dispossession of the rooms. With regards to the matter of Tshwane University of Technology[5] it was argued that the matter is distinguishable from the present matter in that in the former the affected students were entitled to accommodation by virtue of their registration with the University and right to education.

[8] It is common cause between the parties that the Applicants were to vacate the residence of the first Respondent by the 5th December 2019 when the academic programme for that year came to an end. This, in my understanding, means that the registration of the Applicants with the first respondent expired on the 5th December

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[2] Act 108 of 1996
[3] 67856/2014 [2016] ZAGPPHC
[4] See also, City of Cape Town v Strümpher (104/2011 [2012] ZA SCA (30 March 2012)
[5] Supra

2019 when first Respondent suspended its end of year academic activities. As a result, the Applicants together with all the students are to re-register with the first Respondent in the academic year 2020 to further their studies. Therefore it stands to reason that when the Applicants approached the court on the 17th December 2019 were no longer registered students of the first Respondent. The Applicants, in their own version, admitted that they were contractually bound to vacate the residence of the first Respondent by the 5th December 2019 (after they had achieved their objectives; being the completion of their academic year programmes) This implies that their stay in the residence of the first Respondent was subject to them completing their end of year academic programmes.

[9] The Applicants, as I understand their case, argue that at the end of each academic year the first Respondent should approach the court for the order, evicting them and all other students who may choose to remain in the residences of the first Respondent for purposes other than study. This argument has no substance.

[10] Accommodation of every student at the institution of learning is subsidized by the State from the public purse, provided the student is registered and furthers his or her studies on the expectations that on completion of his or her studies the student will render his or her service to the public. Therefore, any student who intends to occupy the residence of the institution of learning for any purpose than study should forfeit the subsidy benefit and automatically be disqualified from occupying a room in the residence. Such student cannot claim to be in peaceful possession of his or her room when he or she is disqualified. This may not be the case where the students disrupt the academic activities temporarily due to education related matters. The reason is

that the students are still furthering their studies and entitled, therefore, to subsidy and student accommodation. Their eviction from the residence or deprivation of possession of their rooms will infringe their rights to education unless they are ordered by the court to vacate the residence after they will have been given the opportunity to present their side of story.

[11] In the present case the Applicants admit that the academic programme of the first Respondent came to an end on the 5th December 2019, thereby disqualify them from occupation of the rooms in the residence hence they pleaded with the first management of the first Respondent to extend the period of their stay in the residence. Therefore it cannot be said that the conduct of the first Respondent in locking the Applicants outside its residence after the extended period of their stay in the residence had expired, has infringed their constitutional rights as enshrined in sections 25 and 26 of the constitution as alleged by the Applicants. The Applicants were bound to vacate the residence of the first Respondent after they had completed their end of year academic year programme and the first Respondent closed its doors for the festive season. For these reasons it cannot be said that the Applicants proved that they were in peaceful possession of the rooms and their possession was disturbed. Importantly, the Applicants cannot occupy the residence of the first Respondent and pursue their own interests unrelated to education and expect to be subsidized with water and electricity from the public purse. For all these reasons I dismissed the application with costs.

**M.MABESELE**

(Judge of the Gauteng Local Division)

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| Date of hearing | : 17 December 2019 |
| Date of judgment | : 17 December 2019 |

APPEARANCES

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|---|---|
| For the Applicant | : Flatela Attorneys |
| For the Respondent | : Mncedisi Ndlovu & Sedmumedi Attorneys |

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## Legal Summary

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**MABESELE J,**

*Constitutional Law; Right to housing, University Accommodation, Spoliation Order*

This is a matter that came before court on urgency. The applicants are students at a college, the first respondent. All the students of the first respondent were sent a notice to vacate their hostels on the 5th of December 2019 because the academic year had ended. The applicants pleaded with the first respondent to extend that date to the 15th as they had no money to go home and had no alternative accommodation. Their request was partially accepted. Their stay was extended only to the 10 of December 2019. On the 10th of Dec the applicants were forcefully removed by the third respondent, acting on behalf of the first respondent.

The applicants brought an application to court for a spoliation order, in that they were in peaceful possession of their rooms and the respondents disturbed this possession. They argued that the first respondent had no authority to dispossess them of their rooms and lock them outside of residence without providing alternative accommodation and or without the court order to do so. Their argument was that the conduct of the first respondent infringed their constitutional rights as enshrined in sections 25 and 26 of the Final Constitution.

The court held that accommodation of students at institutions of higher learning was subsidized by the State on condition that students were furthering their studies. Any student who intended to occupy the residence of a learning institution, such as the first respondent, for a purpose other than to study was disqualified from occupying a room in the residence. Therefore such a student cannot claim to have been in peaceful possession of his or her room.

Further, the court held that the applicants' registration with the first respondent at the beginning of the academic year was the basis of their relationship, vis-à-vis their stay at the residence. Their registration expired on the 5th of December 2019 when the academic year came to an end. Therefore the applicants were contractually bound to vacate the residence of the first respondent on the latter date. The first respondent did not need to secure a court order for this to happen. The applicants could therefore not prove that they were in peaceful possession of the rooms and their possession was disturbed, at the time when they were removed from the residence.

Consequently, for the above the reasons the application was dismissed with costs.