

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 10249/2020

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
<i>28/8/20</i> Date	
<i>[Signature]</i> ML TWALA	

In the matter between:

VEX REPAIRS PROPRIETARY LIMITED
WARREN BRIAN MAC FARLANE
HENDRIK STEPHANUS PRETOIUS

FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT

AND

NEIL STEVEN MAC FARLANE
KEENAN MAC FARLANE

FIRST RESPONDENT
SECOND RESPONDENT

**JILLIAN MAC FARLANE
ALL THOSE PERSONS ENGAGING IN
OR WHO ASSOCIATING THEMSELVES
WITH ANY UNLAWFUL ACTIVITIES AT
OR ON ANY OF THE PREMISES SITUATED
AT 58 LEA ROAD, ANDERBOLT
BOKSBURG.**

THIRD RESPONDENT

FOURTH RESPONDENT

VEX MINING REPAIRS (PTY) LTD

FIFTH RESPONDENT

B2MAC INVESTMENTS (PTY) LTD

SIXTH RESPONDENT

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 11h30 on the 28th August 2020.

TWALA J

- [1] This is an application brought on urgent basis by the applicants seeking the enforcement of the court orders granted by this Court on the 22nd May 2020 and 7th of July 2020 respectively under the above case number 10249/2020, including an order that the first and second respondents are in contempt of the said Court order.
- [2] The first and second respondents have filed its opposition to this application. In these proceedings my reference to the respondents should be construed as referring to the first and second respondents.

- [3] The genesis of this case emanates from an order consented to by the parties and granted by this Court on the 22nd of May 2020 and 7th of July 2020 respectively. These orders were a rule nisi which was confirmed on the 7th of July 2020 restoring peaceful and undisturbed possession and use of the premises known as 58 Lea Road, Anderbolt, Boksburg (*“the premises”*) to the applicants. Amongst the orders was that the respondents are interdicted from entering and interfering with the access of the applicants to the premises and or interfering with the employees and business of the applicants. The applicants have obtained a wide ranging interdict against the respondents and it is these orders that the applicants aver that the first and second respondent have deliberately and intentionally failed to observe and are in contempt thereof.
- [4] It is on record and is common cause that on the 5th of August 2020 the first respondent attended at the premises at 58 Lea Road, Anderbolt, Boksburg, where he broke in and change some of the locks. The respondents however handed back the locks to the applicants on the 6th of August 2020. On the 13th of August 2020 the applicants discovered that the first respondent collected confidential bank statements of the first applicant from its bank and on the 14th of August 2020 it was further discovered that the first respondent registered himself with CIPC as a director of the first applicant which registration occurred on the 5th of August 2020.
- [5] Counsel for the respondents, Adv Kuger SC, contended on behalf the respondents that they did not act in bad faith – hence they returned the keys to the applicants the next day when they realised that the applicants were not happy with their conduct. Furthermore, it was contended, the first applicant relied on a letter from the applicants of December 2019 appointing him as Managing Director to the first applicant in updating the records of CIPC to

reflect that on the 5th of August 2020. He attended at the leased premises both as a director of the landlord and that of the lessee having been informed by his mother that the lessee was about to vacate the premises which fact was confirmed by the people working in the building opposite the leased premises. Therefore, so it was submitted, the respondents did not act with mala fides since the first respondent honestly and reasonably believed that he was a director of the first applicant.

- [6] It is long established law that, for an applicant to prove that the respondent is in contempt of a Court order, it must prove: (a) the existence of the court order; (b) service or notice thereof; (c) non-compliance with the terms of the order and (d) wilfulness and mala fides beyond reasonable doubt on the part of the respondent. (*See Matjhabeng Local Municipality v Eskom Holdings Limited and Others; Case No: CCT217/15 and CCT 99/2016 (26 September 2017)*)

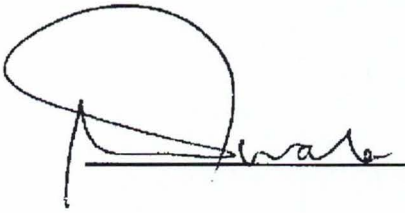
- [7] It is common cause that the applicants have met requirements (a) to (c) and that now the burden rests with the respondents to prove that they acted reasonably in the circumstances and that there was no mala fides on their part.

- [8] It is appalling that the first respondent, as he avers to be the managing director of the first applicant and director of the landlord, that he does not enquire from his co-directors if the first applicant is to vacate the premises but relies on his mother's word and that of people who occupy another building to conduct himself in the manner in which he did. Equally appalling is the first respondent's conduct in securing his appointment as the director of the first applicant a month after he consented to an order interdicting him from interfering in the business of the first applicant.

- [9] In my view nothing turns in the respondents' contention that the letter of December 2019 signed by a director of the first applicant and witnessed by another director purporting to appoint him as the managing director was not withdrawn. It is not in dispute that the first respondent resigned as director of the first applicant on 29th of July 2019 and was again released of his duties in January 2020 when he was retrenched and suspended by the first applicant. I am therefore of the respectful view that the first and second respondents deliberately and intentionally failed to comply and or to observe the Court orders which were obtained by consent between the parties.
- [10] It is of no consequence that respondents returned the keys of the premises to the applicants the next day for it is on record that those keys did not work or were not for those premises. The first respondent proceeded to interfere with the business of the applicant in that he presented himself at the bank of the first respondent as a director and obtained confidential documents of the first applicant which he was not entitled to. The first respondent has gone beyond just presenting himself as a director a month after having consented to an order interdicting him from interfering with the business of the first applicant, but proceeded to register himself on the 5th of August 2020, as a director of the first applicant without the signatures of the other directors and or following the prescripts of the Companies Act, 71 of 2008.
- [11] In the circumstances, it cannot be said that the first respondent conducted himself in a reasonable and honest manner. The ineluctable conclusion is that the first respondent had a clear intention not to observe and or obey the Court orders. I cannot but find that the applicants have proved beyond reasonable doubt that the first and second respondents acted mala fide with the clear intention not to observe and obey the Court orders.

[12] In the circumstances, I make the following order:

1. Paragraphs 1; 2; 3; 4; 5; 8 and 9 of the notice of motion are granted;
2. The first and second respondents are sentenced to a term of 30 days imprisonment, which term of imprisonment is suspended for 12 months on condition that they are not found to be in contempt of any order of this Court during the period of 12 months.



TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing: 25th August 2020

Date of Judgment: 28th August 2020

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