

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

CASE NO: 0037622/2021

REPORTABLE:
OF INTEREST TO OTHER JUDGES:
REVISED.
14/9/2021

In the matter between:

TIMEOUT SPORTS BAR (PTY) LTD t/a TIMEOUT SPORT Applicant

and

CORALFIG KYALAM Respondent

JUDGMENT

MAKUME J:

[1] There is an existing lease agreement between the Applicant and the Respondent in terms of which the Applicant occupies certain premises situated at Shop number [...], [...]and [...] in the building known as Kyalami Downs Shopping Centre at the corner of Main Road and Kyalami Boulevard, Kyalami Midrand (the premises).

[2] On the 12th June 2021 a person named Babi Prokats addressed an email to the Respondent threatening to “shut you down with immediate effect.” The email mentioned certain incidents being breach of the lease, late payments, disturbing peace and intimidating security.

[3] On receipt of that email the Applicant informed the Respondent to address the complaints through their respective lawyers.

[4] On the 24th August 2021 the Respondent’s attorneys addressed a letter to the Applicant in which they demanded payment of the amount of R325 064.95 being arrear rental and that on failure of payment they have instructions to institute legal action to recover same, including cancellation of the lease agreement.

[5] On the morning of the 25th August 2021 at about 11h00 four men entered the premises and informed the Applicant’s Manager one Balsu Pillay that they had been sent by the landlord to inspect electrical connections at the premises. They were granted permission and shortly thereafter the electricity supply to the premises was cut off and when Mr Pillay enquired what the problem was he was referred to the landlord and the men left.

[6] On the inspection as evidenced by annexure J9 and J10 it is clear that electrical wires were cut off thus interrupting supply to the premises.

[7] Applicant’s attorneys addressed an urgent letter immediately to the landlord and demanded that electricity be reconnected by not later than 08h00 on the 26th August 2021.

[8] On the 26th August 2021 the electricity was not reconnected instead the Respondent’s attorneys addressed a letter in response and told the Applicant’s attorneys that their client had discovered illegal electrical connection on the premises and denied having spoliated. The Respondent maintained that the illegal connections were jeopardising the safety of all other tenants of the shopping centre.

[9] The Respondent did not deny that it was their employees or agents that disconnected the electricity at 12h45 on the 25th August 2021 their attorneys informed Applicant's attorneys that they have secured services of an electrician and mandated him to reconnect the electricity supply however, that he was unable to do that immediately.

[10] A further letter demanding reconnection of electricity supply was sent to the Respondent on the 26th August 2021 demanding reconnection by 16h00 on the same day failing which urgent court application will be served. A response was received from the Respondent in which they said that material had been ordered which will be on site the following day being Friday the 27th August 2021 on which day they will reconnect.

[11] On Friday the 27th August 2021 Respondent attorneys sent a letter to Applicant's attorneys that an amount of R49 795. 51 was required to be paid for the electrical material and demanded payment from the Applicant. Applicant refused to pay and insisted on reconnection.

[12] An urgent application was then served and placed on the roll for hearing late on Friday the 27th August 2021 by which time the Respondent had not filed its answering affidavit. I granted an interim order restoring electricity supply immediately to the premises and granted the Respondent an opportunity to file their opposing affidavit by Monday the 30th August 2021.

[13] An answering and a replying affidavit were duly filed timeously the matter served before me on the 01st September 2021 being the return date of the rule nisi.

[14] On the return date I was informed that the electricity was reconnected immediately within 30 minutes after I had issued the order on Friday the 27th August 2021 without having had to utilise any new material as it had previously been told to the Applicant.

[15] In their answering affidavit the Respondent firstly denies having spoliated the Applicant secondly it is now alleged that because of the arrears the lease agreement

had been cancelled. In the further alternative the Respondent says that the disconnection was lawful because of the illegal connection which they allege was posing a danger to other tenants. This eventually became their main argument in the submissions by their counsel.

[16] It is common cause that ultimately the Respondent admitted that it was its employees or agents who disconnected the electricity supply on their instructions after a report of unsafe connection had been reported to them.

[17] At paragraph 40.5 the Respondent says:

“The Respondent reiterates that it is not unwilling to restore the electrical connection save for the requirement that the Applicant make payment therefore which the Applicant has refused to.”

[18] There was a clear spoliation in this matter. The offer to restore on condition that the Applicant pay is what has resulted in this application. It would have been avoided had the Respondent proceeded to restore at own costs with or without the ordered material and then bill the Applicant for such expenses. They did not do that seemingly this was part of the execution of the threat issued during June 2021 to shut down the Applicant. This had nothing to do with illegal connection.

[19] The Applicant had been in occupation of the premise for 7 years and this was the first time that they are being told of illegal connection. The employees proceeded to cut off the electricity and only thereafter told the manager why they did that.

[20] The sensible thing to have been done would have been to bring the alleged illegal connection to the attention of the manager and then call upon the Applicant to rectify the situation failing which necessary action be taken which may include disconnection.

[21] I am satisfied that the Applicant has satisfied all the requirement of a final interdict. The Applicant as a tenant and lessee has a clear right to secure a

permanent cessation of unlawful disconnection of electricity supply to the leased premises.

[22] The court on the matter of **Minister of Law and Order, Bophuthatswana & Another v Commissioner of the Church of Summit of Bophutatswana and Others 1994 (3) SA 89 (BGD) at 97 H 100A** said that:

“A Plaintiff is in general entitled as of course to a perpetual injunction to prevent recurrence of the wrong the jurisdiction to grant a perpetual injunction is founded on the equity of relieving a party from the necessity of bringing action after action at law for every violation of a common law right and finally quieting the right, after a case has received such full decision as entitles a person to be protected against further trials of the right.”

[23] The Applicant has a contractual right to receive uninterrupted supply of electricity to their business premises which contractual right was tempered with by the Respondent in an unlawful manner.

[24] The Respondent acted carelessly and with an ulterior motive which is to get rid of the Applicant without following procedure. They chose a short cut thinking that on the cutting of electricity the Applicant will abandon its business. That was not to be. They displayed oppressive measures by first denying their actions and later when they did admit they impose penalties to make it more onerous for the Applicant to return to normal business. It is this overbearing attitude that was displayed that has persuaded me to concede to the granting of a punitive costs order.

[25] In the result I hereby grant the following order:

ORDER:

1. The interim order granted on the 27th August 2021 is hereby confirmed.
2. The Respondents are ordered to pay the Applicant's taxed costs on the scale as between attorney and client.

Dated of Johannesburg on this 13th Day of September 2021

M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING : 27 August 2021
DATE OF JUDGMENT : 14 September 2021
FOR APPLICANT : Adv Bodhana
FOR RESPONDENT : Adv Morland