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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 9985/2021
REPORTABLE: NO
OF INTEREST TO OTHER JUDGES: NO
REVISED: YES
DATE: 31 May 2022

In the matter between:

PLIT: HAROLD **APPLICANT**

and

GRIMBEEK: ANDRIES JOHANNES HENDRIK **RESPONDENT**

JUDGMENT

ALLY AJ

INTRODUCTION AND FACTUAL BACKGROUND

[1] This is an application for a prohibitory final interdict against the Respondent which application is opposed.

[2] The Applicant owns a property described as Portion [....] (a portion of Portion [....]) of the Farm H [....] , Number [....] , Vereeniging, [....] F[....] S[....], H [....] , Vereeniging, hereinafter referred to as 'the property' to which this application relates.

[3] The Applicant was approached by a certain Ms Lindie Reinhardt in 2017 and requested, on behalf of the Respondent, to permit the Respondent to plant a maize crop on 'the property'. Ms Reinhardt, unbeknown to Applicant, married the

Respondent. The Applicant acceded to the request and the Respondent proceeded to plant his crop. Ms Reinhardt made the same request in 2018 and 2019 and permission was granted by the Applicant on both subsequent occasions.

[4] On 24 October 2020 the Applicant communicated with Ms Reinhardt, via WhatsApp[1], a widely known technological application to submit text and other messages, to enquire whether they, Ms Reinhardt and the Respondent were interested in purchasing 'the property' because he had received an offer to purchase the H [....] Farm. The further communications reveal a further request by the Respondent to plant another crop as well as a rejection of the offer for the Respondent to purchase 'the property.

[5] The Applicant entered into an offer to purchase agreement[2] with a certain Thobeka Ndlovu regarding 'the property' on 9 November 2020.

[6] The Applicant, *ex facie,* the said WhatsApp communication responded to the request by the Respondent for permission to again plant a crop, by indicating that such permission would have to be sought from the purchaser and the Applicant provided the details of the agent that was selling 'the property'.

[7] The Respondent went ahead with planting another crop, according to Applicant as well as the aforementioned WhatsApp communication, without the Applicant's consent. This forms the crux of the dispute between the parties, namely, whether the Respondent had permission to plant the crop in 2020.

[8] Applicant's Counsel indicated in his introductory remarks that this matter is moot because the purchaser, Mr Ndlovu has occupied 'the property' meaning that the Respondent had vacated 'the property'. However, Counsel for the Applicant submitted further, that the Applicant seeks costs on a punitive scale because the Respondent had forced the Applicant to come to Court to enforce his rights. The fact of Mr Ndlovu having occupied 'the property' is common cause.

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[1] Caselines: 009-15 – 009-16
[2] Caselines: 001-13 – 001-16

EVALUATION AND ANALYSIS

[8] Whilst this matter is moot, the Applicant would in any event have to convince the Court that he would have succeeded on the merits in order to obtain a costs order in his favour. The Applicant needs to prove that all the requirements[3] for a final interdict have been met in order to succeed on the merits.

[9] The Respondent's Counsel submitted that the Applicant would not have succeeded on the merits because the Applicant chose to proceed with this matter by way of application and there were material disputes of fact which militate against the Applicant succeeding on the merits.

[10] The Respondent's Counsel's submission relates to the principles laid down in the oft quoted judgment of **Plascon-Evans[4].**

[11] Applying the abovementioned Plascon-Evans principles to the issue whether permission was granted or not for the planting of the crop, this Court is satisfied that no permission was granted. It is clear from the communications between Ms Reinhardt and the Applicant, that there could be no misunderstanding about whether permission had been granted and the Court finds that no permission had been granted.

[12] At the time of the launching of these proceedings, the Applicant was the owner of 'the property' and had a clear right to have occupation and possession of same. The Applicant, in my view, has proven that the Respondent, by planting the crop without his permission, infringed his rights of ownership. Furthermore, the Applicant has proven that there was no other remedy other than the launching of the present proceedings that he could take.

[13] It is appropriate to state at this juncture that the Respondent abandoned reliance on the Extension of Security of Tenure Act[5] [ESTA] and therefore this Court will not deal with this aspect.

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[3] Setlogelo v Setlogelo 1914 AD 221 @ 227
[4] 1984 (3) SA 623 AD @ para 7 - 9

[14] The Respondent raised the issue of a *lien* for not vacating 'the property[6]' when requested. In other words, the Respondent alleges that his crop was planted and was therefore entitled to remain in possession of the property. In answer to this, the Applicant requested the Court to have regard to the *Plaecaten* enacted in Holland which pertains to agricultural land. Counsel for the Applicant submitted that the Plaecaten is part of South African law and referred the Court to the SCA judgment in **Business Aviation Corporation (Pty) Ltd & Another v Rand Airport Holdings (Pty) Ltd[7].**

[15] For the Respondent to succeed with this defence, he would have to prove, *inter alia,* that the crop was planted with the consent of the Applicant. The Court has already dealt with the issue of 'consent' above and found that the Respondent did not have the consent of the Applicant to plant his crop and accordingly, this defence does not avail the Respondent. I do not deem it necessary to delve into the other requirements for a *lien* as the absence of consent in the circumstances of this case is dispositive of the issue.

CONCLUSION

[16] Arising from the above, this Court cannot do other than but conclude that the Applicant would have been successful on the merits of the application and does so find based on the above. In other words, the Applicant is entitled to a final interdict having fulfilled the requirements of same.

It being common cause that the Respondent has in the meantime vacated the property, after the launch of these proceedings, it is not necessary to grant an order in terms of prayers 1 and 2 of the Notice of Motion.

COSTS

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[5] 62 of 1997, as amended
[6] Caselines: 008-7 – 008-9
[7] 2006 (6) SA 605 SCA @ page 609 *et seq* para 7-11

[17] It is trite that the Court has a discretion regarding the issue of costs and that such discretion must be exercised judicially. The Applicant during his initial submissions to the Court, submitted that should the Court find in favour of the Applicant then costs should be awarded to the Applicant on a punitive scale, namely, on an attorney and own client scale. However, during reply, Applicant's Counsel indicated that the Applicant would only be requesting costs on a party and party scale, should the Applicant be successful.

[18] I am of the view that costs should follow the result in this matter and therefore having found in favour of the Applicant, the Applicant is entitled to his costs on a party and party scale.

[19] Accordingly, the follow Order shall issue:

a) The Respondent is ordered to pay the party and party costs of this application.

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG
Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be **31 May 2022**.

Date of virtual hearing: 2 February 2022
Date of judgment: 31 May 2022

Appearances:

Applicant : **Adv. P. Leeuwner**
Rossouw & Prinsloo Inc/Swanepoel Van Zyl Attorneys
johan@swanepoelvanzyl.co.za

tian@swanepoelvanzyl.co.za

Respondent :**Adv. K. Meyer**
Couzyns Incorporated
nakka@couzyns.co.za