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

Case no. **22/004979**

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

09/8/2022

In the matter between:

THE TRUSTEES FOR THE TIME BEING OF THE NOMVULA TRUST [IT 6956/94(T)] **Applicant**

And

LANGLAAGTE TRUCK AND CAR CC **Respondent**

Coram: Dlamini J

Date of hearing: 12 July 2022 – in a ‘virtual Hearing’ during a videoconference on Microsoft Teams digital platform.

Date of delivery of reasons: 09 August 2022

The reasons hereunder are deemed to have been delivered electronically by circulation to the parties’ representatives via email and shall be uploaded onto the caselines system.

JUDGMENT

DLAMINI J

[1] This is an urgent spoliation application.

[2] On the 12th July 2022, I granted court the following order:

2.1 The application is struck off the roll due to lack of urgency;

2.2 The applicant is to enrol the application on the ordinary court roll;

2.3 The applicant is ordered to pay the costs of this application.

Below are my reasons for the above order.

[3] The applicants are the Trustees of Nomvula Trust an *inter vivos* trust which was established by the applicants to acquire and hold its various assets.

[4] The applicants testify that they have been in peaceful and undisturbed possession of a property known as Erf [....] B [....], extension [....] Township, Registration Division I.R Gauteng Province ("the property").

[5] The applicants aver that they have been unlawfully deprived of the occupation of the property by the respondents on 11 June 2022.

[5] The applicants further testify that they have been responsible for the upkeep and maintenance of this property for the past 16 years until it was unlawfully dispossessed by the respondents on 11 June 2022 .

[7] The respondent testified that they bought the property in a sale in execution and same was transferred to respondent name in November 2021. That the respondent have been in possession of the property since November 2021.

[8] The question in this matter is whether this application is urgent. Whether the relief sought by the applicant stands.

[9] The applicants contends that the respondent's actions are unlawful and the applicant has a right not to be arbitrarily deprived of the property. Further, that the applicants have been led to believe that the respondent intends to sell the property. The applicants contends that if the respondent sells the property, this will leave the applicants helpless against a respondent who has resorted to self help.

[10] Furthermore, the applicants submit that if the respondent sells the property next week, for instance, it will likely provide a third party with possession of the property and should possession be transferred to a third party, the applicants will have no remedy against the said third party.

[11] Finally the applicants contends that the facts of this matter are by their very nature urgent. If a speedy remedy is not available through urgent court, then there is no remedy available but will suffer irreparable harm.

[12] The respondent contends that there is no pending threat or sale of the property. Having said that, however, the respondent submits that there is no pending dispute on the issue of ownership, and transfer occurred already in November 2021, whereby the property was transferred into the name of the respondent. As owner of the property, the respondent insist that it has the rights attach the property inclusive of the rights to sell it.

[13] The principle governing urgency are trite. It is for the applicant to set out exceptional circumstances which it avers renders the matter to be urgent and furnish clear reasons why the applicant's claim that applicant could not be afforded substantial or equitable relief at the hearing in due course.

[14] The main contention of the applicant's claim to urgency is the alleged information received by the applicant that the respondent intends to sell the property, which will ultimately deprive the applicant's rights to maintain, clean and occupy the property.

[16] In my view this ground has no relevance and no bearing on urgency as the respondent has testified that it has not sold the property. Even if the property is sold by the respondent this week, (which is denied by the respondent) there is no way that the ultimate transfer of the property will occur, this week or even next week or the next month. The respondent has not entered into any agreement with any party to sell the property. If there was an agreement of sale, which there is none, then the respondent and its alleged buyer should then have proceeded to transfer the property in the name of the new buyer. Transfer of the property would not have occurred this week or even next month.

[17] Also, during the period of transfer the applicants will have plenty of opportunity bring an application to stop the transfer.

[18] The applicants contention that applicants have been responsible for the maintenance, cleaning and upkeep of the property, does not raise any urgency. Spoliation on its own does not amount to urgency. The common cause facts are that this property is vacant, unoccupied, there is no running water and electricity in the property. In all the above circumstances, it is my considered conclusion that the applicants have failed to show that if the matter is not heard this week that applicants will suffer irreparable harm. There is no urgency in this application.

ORDER

The draft order marked X that I signed on 12 July 2022 is made an order of this court.

DLAMINI J

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

Date of hearing: 12 July 2022

Delivered: 09 August 2022

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