

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 24968/2014

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

9 APRIL 2014

K E MATOJANE

In the matter between:

BRIDGET SYBIL WILLIAMS

Applicant

and

MALCOLM ISAACS

Respondent

JUDGMENT

MATOJANE, J

[1] The Applicant seeks a *mandament van spolie* against Respondent on the grounds that the Respondent unlawfully deprived

the Applicant of her access to water supply to the property in which she resides.

[2] The Applicant alleges in her founding affidavit that on 12 February 2012, she entered into an agreement of lease with the Respondent whereby she rented the property she resides in. She never received a copy of the lease agreement from the Respondent despite repeated requests. In terms of the agreement, Respondent was obliged to render to her an account for rent, water and electricity, alternatively to put her in a position to apply for an account for services from the municipality. Respondent failed to put her in such position and failed to provide proof that the account for the property was paid up before she took occupation of the premises and further failed to provide her with a monthly account specifying the portion of water and electricity.

[3] During October 2013 and December 2013 she was presented with water accounts in the name of the Respondent in the amounts of R22 797.00 and R39 658.00 respectively. The arrear amounts were claimed from her. The Respondent then caused the pre-paid meter facility to be installed without informing Applicant and caused the pre-paid meter to be loaded with a debit amount of R3 000.00 with the result that Applicant would first have to settle the debt if she wanted to buy water.

[4] The water was disconnected on 26 February 2014 for non-payment. The Respondent submitted in *limine* that as the City of Johannesburg Municipality disconnected Applicant's access to water, Applicant's failure to join the municipality has amounted to a material non-joinder and/or misjoinder in this application. In the alternative, the Respondent submitted that in terms of the lease agreement, Applicant was responsible for the payment of all charges for water and electricity to the municipality and accordingly the Respondent was not liable for the interruption of water and electricity supplies to the leased property.

[5] It is common cause that Applicant does not have an account for this property with the municipality and that the account for rates and taxes is in the name of the Respondent who is liable for the account. It follows, in my view, that the municipality does not have a direct and substantial interest in the order sought by Applicant as the relief is based on the lease agreement between the parties. The point in *limine* is accordingly dismissed, as there is no *lis* between Applicant and the municipality.

[6] In order to obtain an order for *mandament van spolie* Applicant must show that she was in peaceful and undisturbed possession of the thing; and that she was unlawfully deprived of such possession. See LAWSA vol 27 page 186 par 269. There can be no doubt that the

mandament van spolie not only envisaged the return of possession but also a restoration. The spoliated party by such remedy is to be put back in the same position in relation to the thing spoliated as she was before, with the thing in question in the same condition. See **Zinman v Muller** 1956 (3) 12.

[7] Counsel for the Respondent submitted, wrongly in my view, that it is impossible for the Respondent to restore Plaintiff's right to water as it is the municipality that can reconnect the water supply. It is not in dispute that Applicant was in peaceful and undisturbed possession of access to water on the property. It is also not in dispute that Respondent caused a pre-paid meter to be loaded with the amount of R3 000.00 that he owes to the municipality and as a result of Respondent's failure to pay water charges; the municipality disconnected the water supply. The Respondent's claim in the circumstances can therefore be properly considered as a claim for a *mandament van spolie* as Applicant seeks restitution *ante omnia* which can only be achieved by the Respondent paying his debt to the municipality. In my view, the Respondent deliberately deprived Applicant of her right of to access water supply in premises.

For this reason, the following order shall issue:

- a. The Respondent is ordered to restore the status quo ante by restoring Applicant's access to water at 9A Helen Street, Buccleugh, Johannesburg, Gauteng.
- b. Respondent to pay the costs.

K E MATOJANE
JUDGE OF THE HIGH COURT