

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
(4)	DATE DELIVERED: 22/4/14

Case Number: 26148/14

22/4/2014

In the matter between:

JOHNSON FAMANDA MDAKA

First Applicant

KEMPTONPARK TAXI ASSOCIATION CONCERNED GROUP

Second Applicant

and

ELIJAH MSONGELWA

First Respondent

KEMPTONPARK TAXI ASSOCIATION

Second Respondent

STATION COMMISSIONER SAPS KEMPTONPARK

Third Respondent

GAUTENG TRANSPORT REGISTRAR

Fourth Respondent

MEC PUBLIC TRANSPORT ROADS AND WORKS

Fifth Respondent

JUDGMENT

BAM J

1. The applicants, on an urgent basis, based on the "*mandament van spolie*", applied for an order to be restored occupation of a building named Keta House. The application is opposed by the first and second respondents.
2. Prior to 2007 the second applicant and the second respondent were one taxi association, known by the name of the second respondent as cited. The association occupied a building known as Keta House, 28 Pretoria Road, Kempton Park. Subsequently, in 2009, according to the applicants, the association split in two, the one the second applicant, as cited, and the other the second respondent, which remained known by the name of the original association.

3. It is alleged by the applicants that the second respondent, in 2009, vacated the said building and relocated to Standard Bank Building, West Street, Kempton Park, whilst the second applicant and its members remained in occupation of Keta House. The second applicant's business administration was allegedly conducted from the said premises.
4. The founding affidavit of the applicants was deposed to by the first applicant who alleged that he is the chairman of the second applicant. It is unfortunate that certain inaccuracies appear in the founding affidavit. It however seems to be nothing more but typing errors. In this regard I refer to paragraphs 5.1, 6.6, 6.7, 6.8 where the words "*second respondent*" should read "*second applicant*".
5. It is alleged by the applicants that whilst members of the second applicant were in peaceful occupation of Keta House on 13 March 2014 they were on that day forcefully chased from the building by the second respondent's employees who thereafter locked the doors and chained the security doors, effectively denying the applicants access to the building. This is denied by the first and second respondents.
6. Accordingly, and not surprisingly, the first and second respondent's version differs materially from that of the applicants. According to the respondent's case the second respondent has at all relevant times been in possession of Keta House. It was however conceded that the second respondent's employees have relocated to another venue, referred to as Standard Bank Building.
7. The first and second respondents conceded that the premises was locked up, and stated the reason for "*closing*" the said building is "*that it is now in a dilapidated stage and homeless people were trying to take over the occupation of the building.*"
8. The first and second respondents further averred that it was the duty of the second respondent to renovate the building and that the second respondent has, on numerous occasions, been fined by the Municipality due to the poor condition the building was in.
9. In response to the applicant's allegation that the building was locked without their consent, the first and second respondents stated the following: "*The executive committee of the Second Respondent does not have to obtain the permission of the First Applicant for it to exercise its duties in terms of the Second Respondent's constitution. It is the duty of Second*

Respondent to renovate the said building instead of leaving it unattended because it was starting to create a health hazard to the surrounding neighbours."

10. The applicant's version that the members of the applicant actually occupied Keta House at the relevant time was elaborated upon in that it was further stated by the applicants that they were deprived from getting access to their safe where the association's money is kept and that they were unable to pay the second applicant's 25 employees monthly salaries. The two applicants further complained that their seeking assistance from the police, the third respondent, was of no avail.
11. The applicants named 5 members of the second respondent who removed the staff and members of the second applicant from Keta house. In regards to the named 5 persons the two respondents replied that they *"are the ones who are ensuring that the process of renovating the building must proceed without any hindrance."* This answer is clearly confirmation of the allegation that the first and second respondents actually took measures to ensure that nobody else should occupy the premises in question.
12. The first and second respondents are clearly not prepared to acknowledge the existence of the second applicant. It was specifically stated in the answering affidavit that the second applicant *"does not exist"*. This was again emphasized by Mr Mashaba, appearing on behalf of the first and second respondents, during argument. This version of the two respondents creates the impression that it is the said two respondents' attitude that the applicants do not have any rights at all. It seems to be totally unfounded and actually disrespectful of the applicants. The animosity between the two taxi associations is palpable and deadly violence seems to be a real concern.
13. After having considered all relevant facts and issues, as well as the arguments of counsel, and I have no hesitation to find that the applicant's version is true. The members of the second respondent took the law into their own hands. The said two respondents' defence is rejected.
14. The applicants were in fact spoliated. See *Street Pole Ads Durban (Pty) Ltd v Etekweni Municipality* [2008] All SA 182 SCA. The first and second respondents were not entitled to remove the applicants from the building neither were they entitled to lock them out without due process of law.

15. The averments made by the two respondents that Keta House is being renovated and that it became dangerous to occupy, is a matter of concern. However, on the probabilities it appears that Keta House can still be occupied by the applicants.

16. In my view the applicants are clearly entitled to the relief sought on an urgent basis.

17. I therefore make the following order:

1. The first and second respondents are ordered to restore the applicants' possession and occupation of the property known as Keta House, 28 Pretoria Road, Kempton Park, not later than 15h00 on 22 April 2014.
2. In the event of the first and second respondents failing to comply with this order the local Sheriff is authorized to remove the chains and locks to the gates and doors leading to the said property.
3. The first and second respondents are ordered to pay the applicants' costs, jointly and severally, the one paying the other to be absolved, on the attorney and client scale.



A J BAM

JUDGE OF THE HIGH COURT

22 APRIL 2014