




IN THE NORTH GAUTENG HIGH COURT, PRETORIA

[REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: 36277 / 2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
03 / 10 / 2014	
DATE	SIGNATURE

3 / 10 / 2014

In the matter between:

Case No: 36277/2014

In the matter between:

DAVID SCOTT LAUGHLAND

APPLICANT

And

GOUWS M G

RESPONDENT

JUDGMENT

MAVUNDLA, J.

[1] The applicant brings an application for mandament van spolie, that he

be restored of his and his children's possession of certain movable items as well as the immovable property known as Portion 30, of Farm 457 Vlakfontein, Kungwini Municipality (Bronkhorstspuit) within two days of the grant of the order, and that the respondent be ordered to allow the applicant unrestricted access to the said farm and buildings thereon.

- [2] According to the applicant, on the 1st April 2013 he concluded a verbal 5years lease agreement with the respondents who are the owners of the relevant farm in issue in *casu*. He also attached a copy of an unsigned lease agreement which stated that the duration of the agreement would be from 1st April 2013 until 01 April 2018.¹
- [3] According to the applicant, on the 26th February 2014 the respondents unlawfully locked him out of the farm and took possession of the farm without his consent. He seeks to be restored of his possession of the farm as well as his and children's movables.
- [4] The version of the respondent was that the lease agreement was for 6 months from the 1st April 2013 until the 1st October 2013.² The applicant in its papers tried to explain that the signed agreement was backdated by the respondent.

¹ Vide annexure E (names of parties not filled in) paginated page 47 -52.

² Vide annexure H at paginated pages 58—63 attached to the applicant's papers.

The explanation of the respondent that the lease agreement was for five years, cannot gainsay what is contained in the signed agreement and I do therefore accept that the lease agreement was for 6 months. Once the 6 months expired the lease, in the absence of a written agreement could only have been on month to month basis.

[5] According to the second respondent the applicant defaulted in effecting timeous payments which was due. On the 5th February 2014 the first respondent issued summons for the arrear rent. On the 18th February 2014 the applicant had already vacated the property and had moved most of his property. Subsequently the sheriff proceeded to judicially attach the remaining property of the applicant.

[6] The second respondent further averred that on the 18th February 2014, she brought a potential buyer of the property to the farm. This is confirmed by the affidavit of Mr. Frans Moreroa.³ The applicant left the property with some of his property loaded in a vehicle. According to the second respondent, the first respondent obtained a default judgment against the applicant.

[7] It is trite that in spoliation proceedings, the applicant must prove that he was in undisturbed possession and has been unlawfully or wrongfully deprived. The

³ Vide paginated pages 147- 151 annexure TG2.

despoiled is entitled to restoration, without the court having to interrogate any dispute regarding the items forming subject of spoliation; vide *Stocks Housing v Department of Education and Culture Services; Zulu v Minister of Works, KwaZulu, and Others* 1992 (1) SA 181 (D) at 187⁴.

[8] *In casu*, the relevant farm has since been leased to a third party who has since moved into the premises⁵. Counsel for the applicant conceded that in such circumstances, restoration of possession is impossible. The application in respect of restoration of possession of the farm must fail for that reason.

[9] The applicant attached a copy of an email dated 11 April 2014 at 01; 55 directed by his attorneys of record to the respondents' attorneys Mareli van Aard, confirming that the latter's clients are prepared to allow the applicant to collect his belongings⁶. On inferential basis it can be accepted that the applicant had already moved from the property. There is no explanation why he did not collect his belongings as far back as in April 2014, when he was already willing to do so. This application was only brought on the 20 May 2014. There was no justification to approach the Court when permission was already granted to him to fetch his belongings.

⁴ 1992 (1) SA 181 (D) at 187 the court held that: 'The *mandament van spolie* is a possessory remedy by which a person who has been illicitly deprived of his possession is restored to his possession before the merits of the dispute regarding the lawfulness of his possession are enquired into. An applicant for a spoliation order has to prove that he had possession.'

⁵ *Vide* annexure TG22 which is a copy of the lease agreement with the third party.

⁶ Annexure L1 at paginated page 92.

[10] The applicant attached a copy of an Eskom account in the name of the applicant, showing that in August 2013 the applicant's electricity account was in arrears of R17, 911. 29.⁷ This tends to strengthen the contention of the first respondent that the applicant defaulted in paying rent as a result the lease agreement was terminated.

[11] I am of the view that the applicant has not acquitted himself of the *onus* resting upon him to prove that at the time when he approached the court, he had any possessory right which demanded any protection through *mandament van spolie*. Consequently his application stands to be dismissed with costs.

[12] In the result the application is dismissed with costs.



N.M. MAVUNDLA

JUDGE OF THE HIGH COURT

HEARD ON THE : 15 / 09 / 2014

DATE OF JUDGMENT : 03 / 10 / 2014

APPLICANT'S ATT : CHRISTO BOTHA ATTORNEYS

APPLICANT'S ADV : ADV. L. KOK

RESPONDANT'S ATT : SJ ROUX INCORPORATED

⁷ Paginated page 158.