

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
CASE NO.: 78433/2014**

DATE: 19 AUGUST 2016

In the matter between:

BOBBEJAAN'S KLOOF CARAVAN PARK (PTY) LIMITED First Applicant

And

SOUTH AFRICAN NUCLEAR ENERGY CORPORATION

SOC LIMITED (NECSA) First Respondent

RJD CONSORTIUM trading as AFRICA LAND

DEVELOPMENT Second Respondent

DUNCAN, RORY Third Respondent

JUDGMENT

VAN DER WESTHUIZEN, A J

1. The applicant, Bobbejaan's Kloof Caravan Park (Pty) Ltd, comes by way of an urgent application before court.
2. The first respondent is The South African Nuclear Energy Corporation SOC Limited (NECSA). The second respondent is RJD Consortium trading as Africa Land Development and the third respondent is Mr Rory Duncan.
3. The relief sought against the respondent is premised upon alleged spoliation actions on the part of the respondents. In this regard a final order is sought interdicting the respondents from interfering with the business activities of the applicant on premises situated at the farm [W..... 5.....], Registration Division J. Q., Transvaal. The restraint that is sought is specifically described in the notice of motion.

The applicant, in the alternative, seeks an interim interdict on the same terms as the final interdict, pending the institution of an action by the applicant for final relief within one month from the date of the order.

The respondents oppose the relief sought and the first respondent has brought a counter application for the eviction of the applicant from the premises.

The underlying *causa* for both applications is a written lease agreement entered into by the applicant and the first respondent during 2014.

The nub of the dispute between the parties relates to whether the aforesaid

lease agreement has been terminated.

The aforesaid lease agreement contains, in Schedule 1 thereto, a clause 3 that reads:

“Expiry date ...30 June 2024. Notwithstanding the expiry of this agreement, either the Lessor or the Lessee has the right to cancel this agreement for any reason whatsoever with one (1) month’s written notice

It is common cause between the parties that notice of cancellation in terms of afore quoted clause was given to the applicant on 27 June 2016. It is recorded in the said notice that the lessee, the applicant, is to vacate the leased premises by 31 July 2016. It is also common

cause that by 1 August 2016 the applicant had to have vacated the leased premises.

10. It is further common cause that the applicant had not vacated the leased premises by 1 August 2016 and that the applicant had no intention to vacate the leased premises. The reason proffered is that the applicant has a lien over the leased premises in respect of alleged development of the leased premises and improvements thereof.

11. It is a term of the lease agreement that any alteration etc. to the leased premises shall only be effected with written consent on the part of the lessor. There is a dispute whether the applicant has been compensated for the alleged developments and improvements or not.

12. On 29 July 2016 the applicant addressed a letter to the first respondent’s attorneys of record stating that the application for an interdict restraining the respondents from interfering with the applicant’s business on the leased premises will be held in abeyance until 15 August 2016 for the first respondent to serve by that date its application or action for the eviction of the applicant.

13. However, on 10 August 2016 the applicant launched the present application, the threatened application for restraining the respondents from interfering with the applicant’s business on the leased premises.

14. The first respondent retaliated by opposing this application and launching the counter application for eviction of the applicant from the leased premises.

15. The only defence raised by the applicant to the counter application for eviction is a reliance on the alleged lien in respect of the development and improvement of the leased premises. In this regard the applicant submits that the first respondent had “known for months” of the applicant’s right to retention of the property and hence it is not entitled to an eviction order.
16. The applicant on 29 July 2016 through the gauntlet down by challenging the first respondent to institute proceedings for the eviction of the applicant by 15 August 2016. The first respondent dearly accepted the challenge, hence the counter application.
17. In view of the approach that I take in respect of the counter application, I do not intend to deal with the applicant’s application for interdictory relief.
18. As referred to earlier in this judgment, the only defence raised by the applicant to the eviction application, is a reliance of the alleged right to retention in respect of the development and improvements made to the leased premises. In so far as such defence may have been raised in respect of the status of the notice of termination of the lease agreement, it was not pressed on behalf of the applicant and correctly so in my view. In this regard, the relief that is sought, both final and interim, is premised upon the applicant's alleged lien or right to retention in respect of the alleged development of and improvements to the leased premises.
19. It follows that the first respondent is entitled to a declaratory order confirming the termination of the lease agreement.
20. Mr Coertzen, who appears on behalf of the respondents, submitted that in view of the fact that the leased premises are situated on farmland, the applicant does not hold any right to retention for development and/or improvements made. In this regard he relies upon the decisions in *Business Aviation Corporation (Pty) Ltd et al v Rand Airport Holdings (Pty) Ltd*,¹ a decision of the full bench of the Witwatersrand Division of the High Court, and *Rekdurum (Pty) Ltd v Weider Gym Athlone (Pty) Ltd t/a Weider Health Fitness Centre*.¹
21. The full bench in *Business Aviation Corporation*, *supra*, considered the question whether the provisions of the Placaaten of 26 September 1658 and

¹ 1997(1) SA 646(C)

24 February 1696 apply to both urban and farmland properties. The Placaaten stipulate that a lessee had the right to claim compensation only after he had evacuated the property and accordingly had no lien or right of retention. It is trite that the Placaaten have been received into South African law and have been applied by the courts.

22. It was further held by the full bench in *Business Aviation Corporation, supra*, that the Appellate Division in *Van Wezel v Van Wezel's Trustee*² had decided that issue.
23. It is common cause that the leased premises is situated on farmland. It follows that the Placaaten apply. Consequently the applicant has no lien or right of retention in respect of the alleged development and improvements to the leased premises.
24. In the decision of *Rekdurum, supra*, it was held that in exercising a lien or right of retention, it does not entitle the lessee to continue to conduct its business on the leased premises.³
25. It therefor follows that the applicant's defence to the eviction application has no merit and the application for eviction must succeed.
26. In the event that the application for eviction succeeds, the parties have not addressed the issue when the applicant is to evacuate the

² 1924 AD 409

³ At 654D-E

leased premises. In view of the fact that a *rententor* is not entitled to continue to conduct its business on the leased premises, I am of the view that it would be just and reasonable that the applicant is to vacate the leased premises by midnight on 31 August 2016.

27. There is no reason why the costs should not follow the event. I grant the following order:

- (a) It is declared that the written lease agreement entered into between Bobbejaan's Kloof Caravan Park (Pty) Ltd and the South African Nuclear Energy Corporation SOC Limited on 1 August 2014 has been terminated;
- (b) Bobbejaan's Kloof Caravan Park (Pty) Ltd and all persons who occupy or purport to occupy through Bobbejaan's Kloof Caravan Park (Pty) Ltd, be evicted from the premises described as Necsa Recreation site, the Preller House and Phaladingwe Hiking Trail, situated on the farm Weldaba 567, Registration Division JQ, Transvaal;
- (c) Bobbejaan's Kloof Caravan Park (Pty) Ltd is directed to evacuate the premises referred to in (b) above by midnight on 31 August 2016;
- (d) The applicant, Bobbejaan's Kloof Caravan Park (Pty) Ltd, is to pay the costs of the application.

C J VAN DER

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION

On behalf of Applicant: Instructed by:

J G Botha

SchGler Heerschop Pienaar Inc Attorneys

On behalf of Respondents: Y Coertzen

Instructed by:

Noko Ramaboya Mason Attorneys