IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ***NO***

(2) OF INTEREST TO OTHER JUDGES: ***NO***

(3) REVISED:

Date: **19th April 2021** Signature:

CASE NO: 12248/2021

In the matter between:

YOUTH LABORATORIES (PTY) LTD t/a YOUTH LAB — Applicant

(Reg. No.: 1994001064)

and

VRESTHENA (PTY) LTD t/a GREY OWL VILLAGE — Respondent

(Reg. No.: 2001/015148/07)

JUDGMENT

NYATHI, AJ:

INTRODUCTION

[1]. This is an urgent spoliation application wherein the applicant seeks the following relief:

1. That this application be entertained as one of urgency and that the non-compliance with Rule 6(I2) of the Uniform Rules of Court with regard to service and time periods be condoned.

2. That the Respondent be ordered to: —

2.1 Restore possession of all the Applicant's goods situated at the leased premises at UNIT 03A, GREY OWL SHOPPING CENTRE, PRETORIA within three days from the granting of this order.

2.2 Provide the Applicant with undisturbed access to the leased premises situated at the leased premises at UNIT 03A, GREY OWL SHOPPING CENTRE, PRETORIA within three days from the granting of this order.

2.2 Provide the Applicant with undisturbed access to the leased

premises situated at UNIT 03A, GREY 0WL SHOPPING CENTRE, PRETORIA.

3. That the Respondents pay the costs of this application on a punitive cost scale.

4. Further and or alternative relief.

[2] At the commencement of the hearing of this application, the Respondent raised a point in limine challenging the urgency of the application. In the circumstances the Respondent assumed the duty to begin and set out the reasons for its objection.

BRIEF BACKGROUND

The following facts were gleaned from the Applicant's founding affidavit, the Respondent's answering affidavit and the Applicant's replying affidavit:

[3] The applicant and the respondent had entered into an agreement of lease in terms whereof the applicant had leased certain premises from which she conducted her business related to aesthetics.

[4] On 15 December 2020, the Respondent withheld access to the leased premises consequent to a dispute between them, by locking the Applicant out of the leased premises with a lock and chains.

[5] The Applicant was thus spoliated and with the consequence that it was deprived of its peaceful and undisturbed possession of the leased preemies.

[6] The Applicant engaged the Respondent's representatives by email correspondence back and forth from the 12th, 27th and 29 January 2021 in its effort to resolve their dispute and have the spoliation reserved, seemingly to no avail.

[7] There is an undenied averment that the Applicant has on her part also caused a counter-spoliation to be carried out on its behalf whereat some of the equipment in the leased premises were removed. It is alleged that only a desk had remained behind.

[8] At the risk of immersing my analysis too much on the merits, I now retreat to consider the legal position regarding **urgency.** The importance of this arose at the commencement of the hearing of this application. The Respondent raised a point in limine bringing the issue of urgency into question.

THE LAW

[9] Rule 6 (12) regulates urgent matters, i.e., matters which need the urgent or immediate attention of the court instead of awaiting their turn to be allocated a date of hearing in the ordinary course of events. This subrule allows applicants to ask the court to "...dispense with the forms and service provided for in these rules."

[10] In this instant application, the spoliation event occurred on the 15th of December 2020. As stated above, there were the email correspondences in the month of January 2021. Nothing is disclosed in relation to February 2021. The matter was heard on the 23rd of March 2021.

CONCLUSION

[11] It is apparent from the above timeframes that the Applicant did not act in a manner one would expect from a person dispossessed and in need of speedy restitution. More than three months have passed since the dispossession took place and the matter is enrolled on the urgent court roll. Tardiness of this nature must have triggered Coetzee J to remark that *"Undoubtedly the most abused Rule in this Division is Rule 6 (12)"*[1]

[12] The Applicant has not made out a persuasive case for urgency in its founding affidavit or give a sound explanation as to why it took this long before launching its application for a spoliation order. In *Luna Meubel,* Coetzee J cautioned practitioners regarding contrived urgent applications as follows:

> "mere lip service to the requirements of Rule 6 (12) (b) will not do and the applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down."[2]

[13] In *Mangala v Mangala* 1967 (2) SA 415 (E) the court held as follows: "It does not follow that, because an application is one for spoliation

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[1] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers* [1977] 2 All SA 156 (W)

[2] Page 137

order, the matter automatically becomes one of urgency. The applicant must either comply with the Rules in the normal way or make out a case for urgency in accordance with the provisions of Rule 6(12)(b)."

[14] In *East Rock Trading 7 (Pty) Ltd and others v Eagle Valley Granite (Pty) Ltd and others* (2012) JOL 28244 GSJ at par 6 and 7 it was held "The import thereof is that the procedure set out in Rule 6(12) is not there for the taking. An applicant must set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial readdress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial readdress in the application in due course. The rules allow the court to come to the assistance of a litigant because of the latter, were to wait for the normal course laid down by the rules, it will not obtain substantial redress." [own emphasis]

Accordingly, I make the following order:

The application is struck from the roll with costs on an attorney and client scale.

JS NYATHI

Acting Judge of the High Court of South Africa

Gauteng Division, Pretoria

HEARD ON: 8th March 2021

DATE OF JUDGMENT: 19th April 2021

FOR THE APPELLANT: ADV JH LERM

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