

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NUMBER: 55856/2021

In the matter between:

Q4ALL (PTY) LTD

Applicant

And

PAUMANT (PTY) LTD

First Respondent

EVAN DRYDEN

Second Respondent

THE CURRENT HOSTAGE TAKERS AND/OR

Third Respondents

UNLAWFUL OCCUPANTS, HOLDING TENANTS

HOSTAGE AND REFUSING OTHER TENANTS ACCESS

TO THE PROPERTY

ALL OTHER HOSTAGE TAKERS AND/OR UNLAWFUL

Fourth Respondents

OCCUPANTS, HOLDING TENANTS' HOSTAGE AND

REFUSING OTHER TENANTS ACCESS TO THE PROPERTY

MINISTER OF SOUTH AFRICAN POLICE SERVICES

Fifth Respondent

THE SOUTH AFRICAN POLICE SERVICES RANDBURG

Sixth Respondent

STATION

JUDGMENT

BALOYI-MERE AJ

In an application, a final order will only be granted on notice of motion if the facts as stated by the Respondent together with the facts alleged by the Applicant that are admitted by the Respondent justify such an order.¹

1. This is the return date of an interim interdict granted in favour of the Applicant interdicting the First to the Fourth Respondents against holding any tenant, person or building belonging to the Applicant hostage or obstructing access to any such building, including protesting near any such build.
2. The Applicant has now approached this court on an urgent basis seeking final relief against, in particular, the First and Second Respondent, who were granted an opportunity to file affidavits and show cause why a final interdict should not be granted against them.
3. It is alleged by the Applicant that the Third and Fourth Respondents (“the hostage takers”) held the tenants in the Applicant’s property hostage and refused other tenants access to the property with the assistance of the Second

¹ Stellenbosch Farmers’ Winery Ltd v Stellenvale Winery (Pty) Ltd 1957 (4) SA 234 (c) at 235
Plascon-Evans Paint Ltd v Van Riebeeck Paints(Pty) Ltd 1984 (3) 623 (A) at 634

Respondent in that the hostage takers were dropped off by the Second Respondent in his car.

4. The Respondent argues that there is no evidence that the Second Respondent was involved in ferrying the hostage takers to the Applicant's place. The Second Respondent however, acknowledges that he knows the Third and Fourth Respondents and identifies them as individuals that were hired by a sub-contractor subcontracted by the First Respondent. It is common cause that the Second Respondent is employed by the First Respondent. It is also common cause that the First Respondent was subcontracted to render certain services on the Applicant's property. It is further common cause that the First Respondent is being owed an amount of R3 963 145.94 by the contractor who subcontracted the First Respondent.
5. It should also be noted that the debt that is being owed to the First Respondent has nothing to do with the Applicant. The First and Second Respondent, in their plea, did not put forth any facts or any evidence that militate against granting this order. As already quoted in the opening of this judgment, where a court should grant a final order on motion proceedings, the court should consider the facts as stated by the Respondents together with the facts alleged by the Applicant that are admitted by the Respondent and if such justifies the order to be granted then it should be granted.
6. The Respondent has in the main pleaded a bare denial especially to the allegation that the Third and Fourth Respondent were dropped off on the Applicant's premises by the Second Respondent. There is an affidavit by a

witness who states under oath that he saw the Second Respondent dropping off the Third and Fourth Respondent from his car.

7. The Second Respondent only denies that he was present in the premises and alleges that he was traveling from Durban to Johannesburg or vice versa at the time of the incident and on that particular date. The Respondent has failed to provide any evidence that he was at that time traveling and not around Johannesburg. The Respondent, during argument, when Counsel for the Respondent was asked why they did not provide any evidence of the Second Respondent's allegation that he was traveling between Johannesburg and Durban on the day of the incident, then and belatedly so the Second Respondent tendered to submit some form of proof to this court.
8. It is trite that an affidavit contains evidence and not only allegations of fact and therefore the Respondent should have attached any proof if they had to their affidavit.² It is also settled law that he who alleges must proof.
9. The Third and Fourth Respondents, whether by coincidence or design, demanded to be paid an amount of R4m before they could release the hostages and/or leave the Applicant's property. This amount is very close to the amount that is being owed by the contractor to the First Respondent. This is one of the issues that persuade me to find that there is a connection between the hostage takers and the First and Second Respondent. This finding is further confirmed by the allegations made by the Applicants in their replying affidavit that when the South African Police Services and Special OPS removed the hostage takers

² Valentine Globe BV v Phillips 1998 (3) SA 775 (SCA) at 779 G

after the granting of the order by Potterill J, an individual employed by the Applicant recorded a conversation she had with some of the hostage takers where the hostage takers confirmed that they were dropped off onto the Applicant's premises by the Second Respondent with the instructions to strike, loot and hijack the premises.

10. Although these allegations were only made in the replying affidavit, it cannot be said that the Applicant deliberately brought new evidence in reply and therefore it cannot be admitted. The Second Respondent did not raise that issue although in their answering affidavit, the Second Respondent had indicated that any new evidence brought in reply would be opposed. This new evidence was not in the possession of the Applicant when the founding affidavit was drafted as it was a conversation that was held after the first order was granted.

11. Distinction is drawn between a case in which new material is first brought to light by Applicant, in a replying affidavit, who knew of it at the time when his founding affidavit was prepared and in a case which facts alleged in the Respondent's answering affidavit revealed a possible existence of a further ground for relief sought by the Applicant.³ In this instance, the new evidence brought in the replying affidavit is evidence that was not in the possession of the Applicant when the founding affidavit was drafted and it is therefore admissible.

12. It is also surprising that the letter attached as AA-3 contains a veiled threat that the First and Second Respondent will be visited by "underworld parties" if the

³ Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd 2016 (2) SA 586 (SCA)

R3 963 145.94 is not paid on time. Coincidentally, the Third and Fourth Respondents invaded the Applicant's property, occupied it, took tenants hostage, refused some of the tenant's access to the property and demanded payment of R4m.

13. In weighing the facts as stated by the Respondent and alleged by the Applicant which are admitted by the Respondent, it is justifiable that a final order should be granted. Where a court is satisfied as to the inherent credibility⁴ of the Applicant's factual averment, the court may proceed on the correctness thereof and include this fact among those which it determines whether the Applicant is entitled to final relief sought.⁵ The court has a wide discretion in terms of rule 6(5)(g) to make an order such as it deem fit with a view of ensuring a just and expeditious decision.⁶

14. The Second Respondent argues that this matter should not be decided before the criminal case pending somewhere in the criminal courts is decided, and in the alternative, the Second Respondent argued that the costs of this application should not be decided until the criminal case is finalised. It is this court's view that the proceedings in the criminal case do not have a bearing on the outcome of this case or even the cost order that may or may not be granted in this application.

15. In the premise I make the following order:

⁴ Buffalo Freight System (Pty) Ltd v Crestleigh Trading (Pty) Ltd 2011 (1) SA 8 (SCA) at 14E-H

⁵ Room Hire Co (Pty) Ltd v Jeppes Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1163 - 1165

⁶ Ploughman NO v Pauw 2006 (6) SA 334 (c) at 340 H-I

(a) First to Fourth Respondent are hereby interdicted from:

(i) Further holding any tenant, person or building hostage, currently belonging to the Applicant;

(ii) Remaining on the property of the Applicant, described as Ikamva Mews, Stand no. 118, Northgate Extension 56, situated at 94 Montrose Avenue, Northgate Randburg;

(iii) Causing any damage whatsoever to the Ikamva Mews or any other property belonging to the Applicant;

(iv) In any way whatsoever disrupting the business activities in the Applicant;

(v) Blocking the entrance of Ikamva Mews and/or the access roads leading thereto;

(vi) Protesting or gathering closer than 150m from Ikamva Mews; and

(vii) Enticing members of the local community to conduct any of the activities mentioned in paragraphs i, ii, iii, iv, v, and vi above.

(b) Any person, not specifically cited as a Respondent that is served with a copy or obtains knowledge of the contents of this order, be similarly interdicted from committing any of the actions mentioned in paragraphs i, ii, iii, iv, v, vi and vii above and that the implementation of the mandamus mentioned in paragraph a above under the said circumstances would equally apply to such person(s).

(c) Costs of this application on attorney and client scale.

EM Baloyi-Mere



Acting Judge of the High Court

APPEARANCES

FOR THE APPLICANT:

ADV J SCHOEMAN

FOR THE RESPONDENT: FIRST AND SECOND RESPONDENT

ADV L PETER

Date of hearing: 25 November 2021

Date of Judgment: 02 December 2021