

SOUTH AFRICA / JUDGMENT

Amathole District Municipality v Kepe Lodge CC (459/2019) [2020] ZAECGHC 59 (9 June 2020)

[2020] ZAECGHC 59

COURT

Eastern Cape High Court, Grahamstown

BEFORE

Beshe

CASE / FILE NUMBER

459/2019

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IN

THE HIGH COURT OF SOUTH AFRICA
(EASTERN
CAPE DIVISION, GRAHAMSTOWN)

Case

No: 459/2019

In

the matter between:

AMATHOLE
DISTRICT MUNICIPALITY
Applicant
And
KEPE
LODGE CC
Respondent

JUDGMENT

BESHE J:

Introduction

[1] Applicant is seeking an order directing the respondent to deliver to it movable assets that are listed in annexure A to the notice of motion.

The parties

- [2] Applicant is a municipality, established in terms of the Provisions of the Municipal Structures Act 117 of 1998. Respondent is a close corporation which is duly incorporated in terms of the Statutes of the Republic of South Africa. The parties have their chosen domicillium citandi et executandi in East London and Centane respectively. Respondent's business is that of providing accommodation and catering.

Background

facts

- [3] The following facts appear to be common cause between the parties:

On the 29 September 2015 the parties concluded a memorandum of agreement of lease in terms of which applicant would lease office premises situated at 1 Gilbert Street, Centane, Eastern Cape from the respondent. The lease would be for three (3) years from 1 October 2015 to 30 September 2018, by which time the rental payable would have escalated to R63 159.49 per month. Applicant took beneficial occupation of the premises, operating therefrom a water services authority, providing water and sanitation to the municipalities in that area.

- [4] According to the applicant, furniture, electronic equipment and other movable assets were installed at the said premises. These comprised of the following:

A computer.

Laser printer.

20 arm chairs.

11 Jojo tanks.

First aid kits

Various pipes and fittings.

10 x vehicle canopies.

A trailer with three (3) tyres.

This is not denied by the respondent.

- [5] Applicant alleges that on the 18 October 2018 the managing member of the respondent wrongfully and unlawfully locked out municipal employees from the premises. An enquiry from the respondent as to why applicant's employees had been locked out and its assets retained, elicited a response that there was an addendum to the lease agreement. In terms of the addendum the lease was extended by a further two (2) months from 1 October 2018 to 30 November 2018. The Municipal Manager who deposed to the founding affidavit denies having signed the said addendum and anybody at the municipality having done so, stating that alternative accommodation had been secured long before the expiry of the period of three (3) year lease agreement. According to the applicant, the alleged addendum is

fraudulent and is not a valid agreement between the parties.

[6] On 14 December 2018 a letter was addressed to the applicant demanding payment of rentals for three

(3) months, being October to December

2018. This was said to be a breach of the addendum of agreement of lease entered into between the parties on the 29 September 2015.

Respondent's opposition

[7] According to the managing member of the respondent, at the termination of the lease period, applicant's manager wrote a letter acknowledging the two (2) months' extension of the lease agreement. The letter in question is annexed to respondent's answering affidavit as HMK2. It will be apposite to reproduce the letter in question which I proceed to do below:

"Attention: Mr H.M. Kepe

No. 1 Gilbert Street

CENTAN

4980

Dear Sir / Madam

NOTIFICATION FOR THE TERMINATION OF LEASE AGREEMENT: NUMBER 1 GILBERT STREET,
CENTANE

AMATHOLE District Municipality concluded a lease agreement with you for office space purposes for a period of three (3) years since 2015 and now the lease is renewed for a period of two (2) months effective from the October 1, 2018.

Accordingly ADM is hereby giving a two months notice of terminating the current agreement between you for the above mentioned property as per "clause 26" of the contract.

Our last day of occupation of the premises will be 30 November 2018.

Hoping that the above is in order.

Yours faithfully

Dr. T.T. Mnyimba

MUNICIPAL MANAGER"

The letter bears a signature and is written on applicant's letterheads.

Respondent states that despite this letter, applicant failed to pay rentals for the months of October and November. Attempts to settle the matter amicably having failed, the Centane Magistrates Court was petitioned for the attachment of respondent's goods. This in a bid to afford the respondent a hypothec over the said goods in lieu of the payment of rentals. In this regard respondent annexed as HMK9, an order in terms of Section 32 of Magistrates' Court, Act 32 of 1944. An order in the following terms was issued on the 1 April 2019:

"IT IS ORDERED:

1. THAT the Sheriff of this Court should attach so much of the movables listed in Annexure A in the office premises situated at No. 1 Gilbert Street, Centane as shall be sufficient to satisfy the sum of R 148, 610-45 (One Hundred and Forty Eight Thousand Six Hundred and Ten Rand Forty Cents) plus costs.
2. FURTHER, should the respondent wish to show cause why the Order of the attachment should not be confirmed she shall appear before this Court on the 26th day of April 2019 at 10H00 for the purpose."

Respondent denies that the goods are held unlawfully and wrongfully.

Applicant's reply

- [8] Applicant persists with the denial that the signature appearing in annexure HMK2 is that of its Municipal Manager.

Argument and discussion

- [9] During the hearing of the application, the respondent was not represented. Mr Mili who appeared on behalf of the respondent for purposes of moving an application for the removal of the matter from the roll stated that he held no instructions to deal with the main application. This was after the application for the removal of the matter from the roll was refused.
- [10] It is trite that a party has to make his case on the founding affidavit. Applicant's case as would appear from the founding affidavit was that the addendum to the lease agreement extending same for two (2) months was not signed by the Municipal Manager "and no person at the municipality did, as plans had already been made long before the expiry of the initial period, to relocate to other offices".[1] And at paragraph 21 the following is stated: "As indicated above the alleged "addendum" is a fraud and not a valid agreement between the municipality and the respondent." I must mention that the purported addendum only bears what purports to be the signature of the lessee and those of two witnesses.
- [11] No reliance is placed in the founding affidavit on specific terms of the lease agreement regarding the manner of its renewal. Paragraph 8 of the founding affidavit sets out what applicant regards as the material terms of the agreement as being inter alia:

“8.1 That the municipality would lease office premises at No 01 Gilbert Street, Centane, Province of the Eastern Cape;

8.2 The lease agreement would be for a period of three (3) years from the 1st of October 2015 and expire on the 30th of September 2018;

8.3 The monthly rental amounts escalated on an annual basis and the rental payable as at the end of September 2018 amounted to R63 159.43 per month;

8.4 The respondent chose No 01 Gilbert Street, Centane, as its domicillium citandi et executandi;

8.5 The municipality would have the right to renew on the same terms and conditions for a further three year period; and

8.5 Although disputes between the parties may be arbitrated, either party may obtain interim relief, on an urgent basis, from a court of competent jurisdiction.”

[12] There is no mention of the addendum or purported extension being impugned on the basis that the written lease agreement sets out specific terms as to how and when applicant could exercise an option to renew the lease. Respondent was therefore not afforded or called upon to answer to this allegation. During the hearing of this application applicant’s argument revolved around this point with reference to specific clauses of the agreement.

[13] The following aspects are also noteworthy. The Municipal Manager denies signing the impugned addendum, adding that no person at the municipality signed the document. There is not basis laid for making the latter assertion or confirmatory affidavits filed in this regard. The elephant in the room appears to be the annexure HMK2, a letter that is alleged to have been written by the Municipal Manager acknowledging the extension of the lease agreement by two (2) months. But as I indicated, emphasis was placed on the “addendum” it being argued that it was not signed by both parties. As for MHK2 the following is stated in the replying affidavit:

“2.1.3 I emphasise that annexure “MHK2” is a fraud and is not my signature. It will also be noted that “MHK2” is of a very poor quality.”

MHK2 purports to give notice of the termination of the two (2) months extension period of the lease, stating that the last day of

occupation of the premises would be 30 November 2018. However, this is dealt with in passing by the applicant. If this were not what the parties had agreed upon, why were the applicant’s employees seeking access to the premises when they were locked out of the premises by the 18 October 2018? The initial lease expired on the 30 September 2018. Why were applicant’s assets still in the premises? Especially in view of the fact that long before the expiry of the lease the applicant had secured other premises.[2] Applicant alleges that respondent is keeping its assets unlawfully. Yet applicant admits that respondent obtained an order to attach the very assets from the Magistrates’ Court, Centane. How then can it be said that respondent is keeping or refusing to release the assets in question unlawfully. It cannot be.

[14] In the circumstances outlined hereinabove, I am not persuaded that applicant has made out a case for the relief it seeks. It is not necessary in my view to even dissect the factual disputes in any detail. The court order issued by the Magistrate, Centane, puts paid to the allegation that respondent is unlawfully and wrongfully refusing to release applicant's assets. The general rule as enunciated in *Plascon-Evans Paints v Van Riebeeck Paints*[3] makes it plain that:

"Wherein proceedings on notice of motion disputes of facts have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief may be granted if those facts averred in applicants affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order."

This is certainly not the case in this matter. The order sought is not justified by the averments made by both parties.

Order

[15] The application is dismissed with costs.

NG BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Plaintiff : Adv: Cole

Instructed by :

WHEELDOM RUSHMERE & COLE

119 High Street

GRAHAMSTOWN

Ref.: Mr Brody/Lelani/S21746

Tel.: 046 – 622 7005

For the Defendant : NO APPEARANCE

Instructed by : MILI ATTORNEYS

110 High Street

Ref: Mr Mili

Tel.: 046 – 622 7076

Date Heard : 19 March 2020

Date Reserved : 19 March 2020

Date Delivered : 9 June 2020

[1] Paragraph 17 of Founding Affidavit.

[2] Paragraph 12 of Founding Affidavit.

[3]

[1984] ZASCA 51; 1984

(3) SA 623 AD at 634.

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Prepared on 12 October 2026 · Esheria