

SOUTH AFRICA / JUDGMENT

Anglo Black (Pty) Ltd and Another v Bower and Others (976/2024) [2024] ZAMPMHC 17 (15 March 2024)

[2024] ZAMPMHC 17

COURT

Middelburg High Court, Mpumalanga

BEFORE

MBG Langa

CASE / FILE NUMBER

976/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION

(MIDDELBURG LOCAL SEAT)

CASE

NO: 976/2024

In

the matter between:

ANGLO

BLACK (PTY) LTD (IN BUSINESS RESCUE)

FIRST APPLICANT

DEON

MARIUS BOTHA N.O. SECOND

APPLICANT

AND

WILLIAM

PATRICK BOWER FIRST

RESPONDENT

WILLIAM

PATRICK BOWER (PTY) LTD

SECOND APPLICANT

LVR

VERHUISING (PTY)

LTD THIRD

RESPONDENT

THE

GROENVLEI COMMUNITY FORUM FOURTH

RESPONDENT

AND

ITS MEMBERS
ALL
MEMBERS OF THE GROENVLEI COMMUNITY FIFTH
RESPONDENT
THE
SOUTH AFRICAN POLICE SERVICE
SIXTH RESPONDENT

JUDGMENT

LANGA J:

Introduction and facts

[1] This is an urgent application based on the mandament van spolie. The alleged spoliation took place on 27 February 2024 at Belfast. The First Applicant is a company in business rescue and the Second Applicant is its business rescue practitioner. In the notice of motion, the Applicants seek inter alia the following

orders:

1.1 That the First Applicant's undisturbed and peaceful possession of the access to the mine and mine area of Portion 6 and 23 of the Farm Groenvlei and Portion 12 of the Farm Lakenvlei, Belfast, and the status quo ante be restored forthwith.

1.2 That the Respondents be interdicted from harassing, threatening, intimidating and/or assaulting the First Applicant's employees, agents and contractors and/or interfering with the affairs of the First Applicant and the duties of the Second Applicant and its appointed employees, agents and contractors.

1.3 That the Respondents and all persons acting through them be ordered to vacate the mine and mining area on Portion 6 and 23 of the Farm Groenvlei and Portion 12 of the Farm Lakenvlei, Belfast.

[2] The Applicants alleged that the First Applicant was in undisturbed and peaceful possession of the mining areas of the farms referred to in paragraph 1.1 above when the First, Second, Fourth and Fifth Respondents forcibly removed the Applicants therefrom. It is common cause as contended by the Applicants that the First Applicant took possession of the said immovable properties in terms of an agreement entered into between it and the First and Second Respondents on 20 September 2023 and started to conduct mining operations therefrom.

[3] The Applicants alleged that on 27 February 2024 the First Respondent and a number of unidentified people apparently members of the Fourth and Fifth Respondents while brandishing firearms threatened to take over the mine and intimidated and removed the security company in place, Mortelmans Security, and also removed the identification

markings of the First Applicant from the equipment on the property. The Applicants contended that the Respondents, by removing the First Applicant's security company from the mine, spoliated the First Applicant of the immovable properties in question.

- [4] The First and Second Respondents, the only respondents who opposed the application, challenged the urgency of the matter. They further alleged in their answering affidavit that that the First Applicant and its contractors had vacated the properties and that the First Applicant was therefore not in undisturbed possession of the property as alleged. They contended that the mere placing of two security guards on the mine by the First Applicant to protect a heap of illegally mined coal does not amount to possession of the mine. During the oral submissions this argument was developed further to say that the First Applicant could not be said to have been in peaceful possession as it did not possess the property for a benefit.

- [5] The First and Second Respondent further argued that they were not involved in the spoliation of the First Applicant if any spoliation took place. Although they contended that the First Applicant left the property during December 2023, the Respondents, however, did not deny that the First Applicant's security company was removed from the property on 27 February 2024 but only denied having participated in the security's removal. Further, in their heads of argument, the First and Second Respondents conceded that on 26 February 2024, the Third and Fourth Respondents wrote a letter to the First Applicant as well as Mortelmans Security essentially ordering Mortelmans Security to leave the property or be forcefully removed by the community the next day. They further conceded that the Fourth and Fifth Respondents intimidated Mortelmans Security at the mine and ultimately entered the mine as they had threatened. Lastly the Respondents also argued that they had a legal right to the property as it is their property.

Applicable legal principles

- [6] It is trite that the purpose of the mandament van spolie is to restore unlawfully deprived possession at once (*ante omnia*) to the possessor in order to prevent people from taking the law into their own hands. The mandament van spolie is a possessory remedy aimed at merely restoring the status quo ante the illegal action. *Makowitz v Loewenthal* 1982 (3) SA 758 (A). Where any person takes the law into their hands, the court will summarily restore the status quo ante as a preliminary step to any investigation into the merits of the dispute. Mandament van spolie is described as a speedy and robust remedy which can be obtained on an urgent basis. It restores the status quo ante forthwith, as per its maxim *spoliatus ante omnia restituendus est*. This means that the person who has been despoiled must be restored to his or her position prior to him/her being despoiled, before all else. Merits are irrelevant and may not be raised during spoliation proceedings at all and the parties may only litigate on

the merits in subsequent legal proceedings (*Nienaber v Stuckey* 1946 AD 1049 1053).

- [7] It is well established in our law that the court hearing a spoliation application does not concern itself with the rights of the parties (whatever they may have done) before the spoliation took place. *Top Assist 24 (Pty) Ltd T/A Form Work Construction v Cremer and Another*
- [2015] 4 AII SA 236 (WCC) (28 July 2015) at para 33. It merely enquires whether there has been spoliation or not, and if there has been, it restores the status quo ante. *Rosenbuch v Rosenbuch and Another* 1975 (1) SA 181 (W) at 183 A-B. In *Makowitz v Loewenthal* (supra) at 767 F-G, the court held that a spoliation order is a final determination of the immediate right to possession; it is the last word on the restoration of possession ante omnia.
- [8] In order to succeed with an application for spoliation an applicant must allege and prove that he/she was in undisturbed possession of the property when he/she was dispossessed. *Mhlantla JA in Ivanov v North West Gambling and Others* (312/2011) [2012] ZASCA 92 (31 May 2012) at paragraph 19, held that:

"Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant - that is why a thief is protected. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant, as that would go to the merits of the dispute. "

Discussion

- [9] In this matter it is common cause that the Second Respondent is the registered holder of the mining rights over the property which forms the subject matter of this litigation. It is further common cause that the First Applicant lawfully took possession of the properties in terms of a valid agreement between it and the First and Second Respondents. Although it is common cause that the First and Second Respondents had rights in the same property, spoliation application does not concern itself with the rights of the parties before the spoliation took place. See *Top Assist 24 (Pty) Ltd T/A Form Work Construction v Cremer and Another*, supra. What is important is whether or not a spoliation took place. If the applicant was spoliated the status quo ante must be restored.

Urgency

- [10] Spoliations are inherently urgent in nature. This application was brought on an urgent basis under the circumstances where the incident complained of took place on 27 February 2024 and the application launched on 1 March 2024, three days after the incident. In view of the history of the case leading up to the hearing thereof on 12 March 2024, I am satisfied that the Applicants brought the application within reasonable time after the occurrence of the act complained of. Given the nature of the harm complained of as well as the relief sought, this is an urgent matter which ought to be dealt as such. The contention therefore that it should

be dismissed as it is not urgent cannot be sustained.

Peaceful and undisturbed possession

- [11] It is common cause in this case that the First Applicant occupied the property on the basis of a mining agreement in terms of which the First Applicant was to mine the area. In the light of this fact, one obviously has to determine whether the First Applicant was still in peaceful and undisturbed possession of the property when the alleged spoliation took place on 27 February
2024. Although it is common cause that the First Applicant was at the time not conducting mining operations on the property because of other reasons, this is, however, not relevant for the purposes of this application. What is relevant for determination is whether the First Applicant was in undisturbed and peaceful possession. In my view this question should be answered in the affirmative especially if the following factors are taken into account.
- [12] The First Applicant's case is that although he had halted mining activities at the time, he was nevertheless still occupying the property. He stated that in order to its interests specifically in relation to its right to occupy and possess the mine and to ensure safety of its equipment and employees, it employed the services of Mortelmans Security company to provide security on the mine. That the First Applicant had placed Mortelmans Security on the mine seems to be common cause. In their heads of argument, the Respondents conceded that the question whether the Applicant had possession of the premises turns on whether or not Mortelmans Security had possession of the premises as the Applicant's agent.
- [13] When one considers the letter dated 26 February 2024 by the Third Respondent threatening to remove the First Applicant it can be concluded that Mortelmans Security was indeed on the mine. They stated in this letter inter alia that Mortelmans Security must immediately pack and leave the premises of the mine within 24 hours and also remove the guards on site. There can be no doubt therefore that Mortelmans Security was physically on the property on 27 February 2024 when the incident took place. The evidence further shows that Mortelmans Security was on site at the behest of the First Applicant. Further, the Respondents did not deny that Mortelmans Security was on site but contended that it was not in possession of the property as the agent but was rendering security services in exchange of the monetary consideration and cannot therefore be said to have been there to advance the First Applicant's interests.
- [14] In addition there can be no doubt that the First Applicant was in possession of the property considering the contents of the letter by the First and Second Respondent's attorneys dated 28 February 2024 in which they state the following. "It is our instruction that your client cannot retain possession of the mining site. Your client must remove himself from the mining site. It is further so that our client suffers damages as he cannot proceed with the mining activities due to your client's refusal to leave the premise". (sic). In this correspondence the Respondents have unwittingly conceded that the First Applicant was still on the property. I therefore conclude that as at 27 February 2024 the First Applicant was

still in peaceful and undisturbed possession of the mine. Furthermore, Mortelmans Security guards were on the property as agents of the First Applicant to mainly guard the interests and assets of the First Applicant.

- [15] The Respondents, however, argued that Mortelmans Security's presence on the mine is not sufficient to constitute possession for the purposes of spoliation. The Respondents' argument that Mortelmans' Security was on the site only to render security services in exchange of the monetary consideration and cannot be said to have been there to advance the First Applicant's interests is bad in law. The evidence in my view clearly establishes that Mortelmans Security was placed on the mine by the First Applicant to safeguard its properties. As a service provider the security company will render services in exchange for a fee. The argument by the Respondents does not make any sense. In the light of this fact, there can be no doubt that the First Applicant enjoyed a peaceful and undisturbed possession of the property by and through Mortelmans

Security.

- [16] In the light of this finding, the next obvious question to be determined is whether Mortelmans Security was removed from the mine by the Respondents. There is sufficient evidence suggesting that Mortelmans Security were removed from the mine. The First and Second Respondents not only conceded that Mortelmans security was intimidated by the Third and Fourth Respondents, but they also conceded that Mortelmans were removed from the property by the Third and Fourth Respondents. The First and Second Respondents only denied having participated in the removal. The letter of the 26 February 2024 by the Third Respondent threatening to remove the Applicant is consistent with what happened on 27 February 2024. As stated above in this letter the Respondents expressly ordered Mortelmans Security to immediately pack and leave the mine within 24 hours and that failure to do so would result in the guards on site being forcefully removed by the community. In line with this threat, the security guards were removed from the property the next day. The removal of the security guards hired and placed on the property by the First Applicant clearly constituted an act of spoliation.
- [17] Next, I want to deal with the question of the involvement of the First and Second Respondents in the removal of the First Applicant from the mine. Although the First Respondent denies participation, the evidence establishes that he was present on the property when the spoliation took place. The contention that the First Respondent had the right to be on the property does deal with the allegation that he was in the company of the group of people who descended the property and removed the security guards. The bare denial by the First Respondent is not sufficient to constitute a real dispute of fact in the circumstances. Furthermore, similar to the Third Respondent's letter, it is clear from the letter by the First and Second

Respondents' attorneys dated 28 February 2024 that they were also insisting that the First Applicant cannot retain possession of the mining site and must remove himself therefrom. I am satisfied that the First Respondent was present at the mine and knew what was happening. He did not take the court in his confidence about what transpired on the mine in his presence. The Applicants have established that the First Respondent and the Second Respondent by extension, have participated in the unlawful removal of the First Applicant from the mine.

[18] Lastly, I turn to the contention by the First and Second Respondents that the mandament van spolie does not protect the First Applicant in this matter as it is not possessing the property for a benefit. While this argument was canvassed for the first time in the oral submissions it cannot succeed for two reasons. Possession for a benefit is not a consideration in a spoliation application. But if I am wrong, it cannot be disputed that the First Applicant is possessing the property for a benefit. According to uncontroverted evidence the First Applicant has interest and is deriving a benefit from the property. Apart from having invested around R60 Million rand, it is not disputed that it also has stockpile of coal and mining equipment on the property. The possession of the property is clearly for a benefit. The fact that the First Applicant has halted the mining operations by no means suggests that mining is the only benefit derived from the property. In the result this

purported defence by the First and Second Respondent ought to fail.

Conclusion

[19] In conclusion, the purported defence raised by the Respondents has no merit. I am satisfied that the First and Second Respondents together with the members of the Third and Fourth Respondents spoliated the First Applicant of the property. The Applicants have therefore made out a case of spoliation under the Mandament van Spolie and consequently, the application ought to be granted.

Order

[20] In the result I make the following order:

1. That this application be dealt with as one of urgency and that the non-compliance by the Applicant with the rules of court relating to forms and service be condoned in terms of the provisions of Rule 6(12) of the uniform rules of court;
2. That the First Applicant's undisturbed, peaceful possession of the acces to, mine and mine area of Portion 6 and 23 of the Farm Groenvlei and Portion 12 of the Farm Lakenvlei, Belfast, Mpumalanga and the status quo ante be restored forthwith;
3. The Respondents be interdicted them from harassing, threatening, intimidating and/or assaulting the First Applicant's

emplyees, agents and contractors and/or interfering with the affairs of the First Applicant and the duties of the Second Applicantand its appointed employees, agents and contractors.

4. The the Respondents and all persons acting through it, be ordered to vacate the mine and mine area on Portion 6 and 23 of the Farm Groenvlei and Portion 12 of the Farm Lakenvlei, Belfast, Mpumalanga forthwith;
5. That the Applicants be authorised to employ the services of the Sheriff of Court and the South African Police Services, as may be necessary, to enforce and give effect to the order.
6. That Sheriff of Court and the South African Police Services be mandated to give effect to the order.
7. That the First, Second, Fourth and Fifth Respondents pay the cost of this application.
8. That First, Second, Fourth and Fifth Respondents be ordered to pay the costs of the application including the costs of one senior counsel and one junior counsel.

MBG LANGA

JUDGE OF THE HIGH COURT

MIDDELBURG LOCAL SEAT

Appearances:

For the Applicant:

Advocate JJ Brett SC

For the Respondent:

Advocate SA Tyson

Date heard:

12 March 2024

Date delivered:

15 March 2024

This judgment was handed down electronically by circulation to the parties' representatives by email. The date for hand-down is deemed to be the 15 March 2024 at 14h00.

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Prepared on 10 October 2026 · Esheria