

SOUTH AFRICA / JUDGMENT

De Beer and Others v Ntsondwa and Others (2023/070905) [2024] ZAGPJHC 466 (17 May 2024)

[2024] ZAGPJHC 466

COURT

South Gauteng High Court, Johannesburg

BEFORE

M T Jordaan

CASE / FILE NUMBER

2023/070905

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THE REPUBLIC OF SOUTH
AFRICA

IN THE HIGH COURT OF
SOUTH AFRICA

GAUTENG DIVISION,
JOHANNESBURG

1. REPORTABLE: NO

2.OF INTEREST TO OTHER

JUDGES: NO

3. REVISED:NO

17 May 2024

CASE

NUMBER: 2023-070905

In the matter between:

DE BEER N.O., DEON
(IDENTIFICATION NUMBER:
7[...])
First Applicant
DE BEER N.O., COLLETTE
(IDENTIFICATION NUMBER:
7[...])
Second Applicant
HATTINGH N.O.,
JEAN-FRANCOIS
(IDENTIFICATION NUMBER:
8[...])
Third Applicant
PROPERTY MANAGER'S
ONLINE
(REGISTRATION NUMBER:
2017/024288/07)
Fourth Applicant
and
NTSONDWA,
MARGARET
First Respondent
PATIENCE
Second Respondent
THE
FURTHER SPOLIATORS OF UNIT 2 FANILLA
COURT
(147)
Third Respondent
THE
CITY OF JOHANNESBURG
Fourth Respondent
This judgment was
handed down electronically by circulation to the parties/and or
parties' representatives and uploading on
CaseLines. The date
and time of hand-down is deemed to be 17 May 2024 at 10h00.

JUDGMENT

JORDAAN AJ

[1] This is an urgent application for eviction in terms of section 4(2) of the Prevention of Illegal Eviction Act and a spoliation order in the following terms:

“1.That this matter be treated as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.

2.That the First Respondent, and all those occupying the property by, through her and

under her, be evicted from the property described as:

ERF 4[...] KENILWORTH TOWNSHIP

REGISTRATION DIVISION I.R.

GAUTENG

situated at:

UNIT 3 F[...] COURT (147)

1[...] S[...] STREET

KENILWORTH

JOHANNESBURG

(hereinafter referred to as "the property")

3.That the First Respondent, and all those occupying the property by, through or under her, vacate the property on or before a date to be determined by this

Honourable Court.

4.That, in the event that the First Respondent, and all those occupying the property by, through or under her, do not vacate the property on or before the date determined by this Honourable Court, the Sheriff of the Court, or his/her lawfully appointed Deputy, be authorised and directed to evict the First Respondent from the property.

5.That the Third Respondents be directed to restore possession of Unit 2 at the property to the Applicants within forty-eight hours of any order of this Honourable Court.

6.To the extent that the Third Respondents fail and/or refuse to comply with prayer 5 above, that the Sheriff of the Court, or his/her lawfully appointed Deputy, be authorised and directed to remove the Third Respondents and/or any further unauthorised persons from Unit 2 at the property.

7.That the Sheriff of the Court or his/her lawfully appointed Deputy be authorised and directed to approach the South Africa Police Service for any assistance he/she may require in carrying out the orders granted in terms of prayers 4 and 6

above.

8.That the Applicants be permitted to serve the Notice of Motion, Founding Affidavit, section 4(2) Notice and all further processes and notices, including any Order of this Honourable Court, on the First and Second Respondents in

the following manner:

8.1 That the Sheriff, or his lawfully appointed Deputy, be authorised and.. directed to affix the Notice of Motion, Founding Affidavit, Section 4(2) Notice and all further processes and notices herein, including an Order of this Honourable Court, to the units occupied by the First and Third Respondents, alternatively to slide a copy thereof under the doors of such units; and

8.2 That the Applicants be authorised and directed to serve the Notice of Motion, Founding Affidavit, Section 4(2) Notice and all further processes and notices herein, including any Order of this Honourable Court, on the First Respondent by way of WhatsApp.

9. That service already conducted in the manner described in prayer 8 above be and hereby is condoned.

10. That the First to Third Respondents be directed to pay the costs of this application, jointly and severally, the one paying the other to be absolved.”[1]

[2] The first to the third applicants are the trustees of the De Beer Familie Trust (“the Trust”). [2] The trust owns the property at 1[...] S[...] Street, Kenilworth, Johannesburg, on which, the units in question are situated. [3] The Fourth Applicant is PROPERTY MANAGER'S ONLINE (REGISTRATION NUMBER: 2017/024288/07), a private company duly registered and incorporated according to the Company Laws of South Africa, the managing agent of the property in charge of the property for purposes of section 4(1) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 1998 ("PIE"), who manages the property. [4] The first to the third Respondents are the occupiers of the units 3 and 2 on the property.

[3] During April 2023, the tenants were in a rental boycott, instigated by the first respondent. [5] As at 1 April 2023, the tenants owed the Trust R155,729.16 in rentals and other obligations of which the first respondent owed R73, 136.94 of the total owed. [6]

[4] The first applicant and the fourth Applicant during April 2023 noticed that the locks on unit 2, which was previously unoccupied, had been broken off and unit 2 had been spoliated by the second and third respondents at the instigation of the first respondent. [7]

[5] In an effort to establish a harmonious relationship with the occupiers at the property, the fourth applicant agreed to write off all arrears owed by the occupiers at the property and to start afresh as at 1 May 2023 and on the 09th of May 2023 installed new pre-paid electricity metres in all the units on the property.

[6] On 2 June 2023, the first respondent and her associates broke into the electrical room at the property, necessitating the fourth applicant's maintenance team to attend to the property accompanied by the South African Police Service (SAPS), however violence ensued. The fourth applicant's maintenance team returned to the property on the 03rd of June 2023 accompanied by SAPS and replaced the locks. Notwithstanding this, the first respondent once again broke the applicants' locks and replaced the locks with her own. [8]

[7] The fourth applicant directed a letter of demand to the first respondent for arrear rental which on the 06th of June 2023 amounted to R11 576.00, as the first respondent persisted in her refusal to pay rent, despite her rent having been

written off at the end of April 2023.[9]

[8] Consequently the fourth applicant sent the first applicant a letter accepting the first respondent's repudiation and that she must vacate the property.[10]

[9] This discord culminated in the launch of this urgent application which was originally enrolled on the 25th of July 2023. At the hearing, the first and second respondents appeared and requested a postponement to file their answering affidavits, which resulted in the matter being removed from the roll and allocated an opposed hearing date for the week of 5 August 2024.

[10] The applicants expedited the application back to the urgent court roll due the second respondent advising that she had vacated the property on the 02nd of April 2024. The applicants immediately secured the vacated unit with a lock and signed a rental contract with a new tenant for the unit to ensure that the first respondent not facilitate a new spoliation. However, on the 03rd of April 2024, the first respondent had facilitated an unknown male tenant and a female tenant, herein referred to as third respondents,

to move in and pay her rental for the unit in the amount of R1 500,00.[11] The first respondent subsequently sent intimidating WhatsApp to the fourth applicant.[12]

[11] The first and the third respondent caused the applicant's legitimate tenant to be arrested as a commotion broke out between

them, he was later released at the police station.[13] On the 11st of April 2024, the occupier of unit 1 requested the fourth applicant to find her an alternative place to stay due to the unpleasantness.[14] The first respondent is intractable in refusing to pay rental being in arrears of R70 203,00 and applicants are not receiving rental for the spoliated unit 2 from the spoliators.

[12] The applicants then caused the first and third respondents to be served personally as well as on the fourth respondent on the 18th of April 2024 for the urgent court on the 07th of May 2024, the respondents failed to file notice of opposition and did not appear.

[13] Having regard to Teaca[15], the grounds successfully relied upon for urgency are substantially similar to the instant case. Bolstered by this authority, the court finds the application to be urgent as the applicants will not be afforded substantial redress at a hearing in due course having regard to the commercial loss and harm that the respondents' rent boycott has done to it, the ongoing harm to its law abiding tenants, to the Rule of Law and the further potential commercial loss as law abiding tenants now wish to relocate. From April 2023 to the time this application came before the Court, the applicants' losses as a result of the rent boycott, the continued refusal to pay rent by the first respondent and the ongoing spoliation facilitated by the first respondent, amounts to approximately R296

135,16.

[14] The interests of the applicants that require protecting are, therefore, not only commercial, it also pertain to the safety and well-being of all its other tenants in the various individual units on the property-who have a right to live on the property free of threats of violence and intimidation.

[15] In the circumstances, this court is in agreement with the applicants that no hearing in due course will redress the unlawful conduct of the respondents whose resort to self-help by means of an on-going refusal to pay rent and continuous denial of the applicants'

right to possession, control and the right to commercial trading for its own profit of unit 2 in defiance of the conciliatory efforts that were brokered by the applicants is pernicious to the constitutional cornerstone of the Rule of Law.

[16] On 14 September 2023, the Honourable Acting Justice Wanless granted an authorising the notice in terms of section 4(2) of PIE.[16] The notice, informing the first and fourth respondents of the hearing on 7 May 2024, was served on them. The applicants have accordingly

complied with the procedural requirements.

[17] The first to the third applicants are the trustees of the De Beer Familie Trust("the Trust").[17] The trust owns the property at 1[...] S[...] Street, Kenilworth, Johannesburg, on which, the units in question are situated, proved through the Windeed documentation.[18] The Fourth Applicant is PROPERTY MANAGER'S ONLINE (REGISTRATION NUMBER: 2017/024288/07), a private company duly registered and

incorporated according to the Company Laws of South Africa, the managing agent of the property in charge of the property for purposes of section 4(1) of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act, 1998 ("PIE"), who manages the property.[19] This court is according satisfied that notwithstanding the first respondent's assertions that multiple people claim to own the property, documentary proof has been submitted of ownership and that the fourth applicant is in charge of the property as required by PIE, has been proven by the applicant.

[18] In *Grobler v Phillips* 2021 JDR 1520 (SCA) it was stated:

" a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land..."

The first respondent's did not raise a real defence to this in the initial application, except to state that she did not trust who the owner is as various persons portrayed themselves as the owner. This court is satisfied that the first respondent's occupation of unit 3 was validly terminated.[20]

[19] Section 4(6) of PIE provides:

“if an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.”

- [20] The first respondent have fashioned herself into a formidable force, who does not yield to authority, capable of successfully rallying masses even against SAPS, who boldly sends intimidating messages and has seen it fit to the law into her own hands.
- [21] The first respondent has not just embarked on a rent boycott and thereby denying the applicants of their right to garner an income from their property, she rallied others to participate in it with her and further appropriated unit 2 as her own and generated a rental income from it for herself by denying the applicants control and use of their own unit, and further through posing a threat to the safety of the law abiding tenants through creating disturbances on the property and a threat to the income stream they provide as they want to relocate. The first respondent still persist in her refusal to pay rent.
- [22] The first respondent also mentioned that the owner, Deon, informed her he has no money to fix the property, however she the first respondent does not set out the extent of the purported damage to the property and what impact this had on her occupation thereof, if at all. The first respondent does not state whether she actually did repairs and to what extent she financially expended on such repairs or attach receipts.
- [23] The applicant deny the first respondents assertions and state in addition that her past rental of R73 136,94 was written off. No reasons are advanced for any of her actions except that various persons pretend to be the owners of the property, but there is no basis for her persistent recalcitrance in the face of ongoing eviction proceedings in court and documentation of ownership and control produced.
- [24] The first respondent does not assert that she is destitute. The applicants submitted that the first respondent is employed and has the means to obtain alternative accommodation. She will not receive assistance from the Municipality. She has no just or equitable reason for remaining on the property; and she has the undue benefit of more than a year of unpaid rental which should be used to access affordable accommodation elsewhere.
- [25] When tenants join a rental boycott they reduce the landlord's revenue stream. This conduct is repugnant to Constitutional values and the rule of law. In *Wingprop (Pty) Ltd v Bahlekazi and Others*[21] the court dealing with the obligation to provide alternative accommodation, stated that:

“in any event that obligation only arises in respect of persons who find themselves in an emergency housing situation that they are unable to address, for reasons beyond their control. In this instance, the reasons are within the named respondents’ control as they deliberately embarked on a rent boycott...”

- [26] The first respondent does not deny that she: 1. Illegally broke the lock to the electricity room; 2. Illegally assisted her daughter in gaining access to unit 2; 3. Was part of the rental boycott; 4. That she is employed and 5. That she refuses to pay rent. There is thus no emergency situation for alternative housing arising in the circumstances as it is self-created.
- [27] Accordingly, the court is faced with enforcing compliance with the rule of law or a situation where there is simply no consequences to resorting to self-help and willful disregard of the law. The constitutional court has on more than one occasion held that the resort to self-help cannot be sanctioned, the respondents simply cannot take the law into their own hands and undermine the rule of law. In the instances, I consider it just and equitable to uphold the rule of law and evict the respondents from the applicants' property unit 3.
- [28] It is trite that to obtain an order for a mandament van spolie the applicants must prove on balance of probabilities that they were in peaceful possession of the property and that they have been unlawfully deprived of their peaceful possession. For the first requirement of possession to be established two further requirements must be met: firstly, that the applicants were in effective control of the property and secondly that the applicants intend to derive some benefit from the possession.
- [29] The applicant exercised control over the property in that unit 2 was locked for the purpose of exercising that control over it as no tenant was in occupation. The applicant's intention was to rent unit 2 out with the intention to gain rental income as an income stream, thus for commercial benefit from the letting of unit 2.
- [30] It is common cause that the second respondent has taken possession of the unit and vacated the unit 2 on 02 April 2024. The unit 2 was thus restored to the applicants again upon which the applicants immediately through their centre manager confirmed that the unit was again secured through attaching applicants' lock. However, through the first respondent an unknown male took occupation with a female and prevented the applicants' tenant from taking possession on 03 April 2024 by having the tenant arrested by the police when a commotion broke out. Thus the applicants' control of unit 2 for commercial benefit is continuously deprived through the actions and facilitation of the first respondent of second and thereafter third respondents. In this regard the second respondent admitted same and the first respondent did not deny same, her version of preventing people from invading and hijacking unit 2, does not hold.
- [31] In the circumstances this court finds that the applicants met the requirements of a mandament van spolie.
- [32] Subsequently, the court makes the following order:

ORDER:

1. This application is heard as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.

2. The First Respondent, and all those occupying the property by, through or under her, are evicted from the property described as and situated at:

situate at:

UNIT 3 F[...] COURT (147)

(hereinafter referred to as "the property")

3. The First Respondent, and all those occupying the property by, through or under her, are ordered to vacate the property on or before the 30th day of June 2024.
4. In the event that the First Respondent, and all those occupying the property by, through or under her, do not vacate the property on or before the 30th day of June 2024, the Sheriff of the Court or his/her lawfully appointed Deputy, is authorised and directed to evict the First

Respondent and all those occupying the property by, through or under her, from the property on the 01st day of July 2024.

5. The Third Respondents are ordered to restore possession of Unit 2 at the property to the Applicants within forty-eight hours of this order of this Honourable Court being served by the Sheriff on the Third Respondents either personally, or by pushing the order under the door of unit 2, or by attaching the order to the door of unit 2 or by WhatsApp.
6. In the event that the Third Respondents fail and/or refuse to comply with paragraph 5 above, the Sheriff of the Court, or his/her lawfully appointed Deputy, is authorised and directed to remove the Third Respondents and/or

any further unauthorised persons from Unit 2 at the property.

7. The First to the Third Respondents are ordered to pay the costs of this application on scale A, jointly and severally, the one paying the other to be absolved.

M T JORDAAN

ACTING JUDGE OF THE GAUTENG DIVISION

OF THE HIGH COURT OF SOUTH AFRICA

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Instructed by:

No Appearance

Date of Judgement:

17 May 2024

Date of hearing:

07 May 2024

- [1] CaseLines pages 020-1 to 020-8
- [2] CaseLines: Annexure FA-1 page 002-38
- [3] CaseLines: Annexure FA-5 pages 002-45 to 002-49
- [4] CaseLines: Founding Affidavit page 002-20 paragraphs 13, 14 and 15
- [5] CaseLines: Founding Affidavit pages 002-24 paragraph 31
- [6] CaseLines: Annexure FA-7 page 002-53
- [7] CaseLines: Founding Affidavit pages 002-23 to 002-24 paragraphs 23 to 27
- [8] CaseLines: Founding Affidavit pages 002-25 to 002-26 paragraphs 33 to 38
- [9] CaseLines: Founding Affidavit pages 002-27; Annexure FA-9 pages 002-54
- [10] CaseLines: Founding Affidavit page 002-30; Annexure FA-14 page 002-61; Annexure FA-15 page 002-62
- [11] CaseLines: Supplementary Affidavit pages 017-7 to 017-8 paragraphs 6 to 10.4; Annexures SA-1 and SA-2 pages 017-16 to 017-17 to 017-27
- [12] CaseLines: Annexures SA-3page 017-28
- [13] CaseLines: Supplementary Affidavit pages 017-7 to 017-8
- [14] CaseLines: Supplementary Affidavit pages 017-1 to 017-2 page 017-12; Annexure SA-6 page 017-31
- [15] Teaca Properties Pty Ltd and Others v John Banza and Others [2018] ZAGPJHC 72
- [16] CaseLines: Order pages 010-22 to 010-23
- [17] CaseLines: Annexure FA-1 page 002-38
- [18] CaseLines: Annexure FA-5 pages 002-45 to 002-49
- [19] CaseLines: Founding Affidavit page 002-20 paragraphs 13, 14 and 15

[20] CaseLines: Founding Affidavit page 002-30; Annexure FA-14 page 002-61; Annexure FA-15 page 002-62

[21] 2022 JDR 3799 (GJ)

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