

SOUTH AFRICA / JUDGMENT

Du Toit and Another v Ravenscroft and Another (M503/2021) [2022] ZANWHC 50 (27 October 2022)

[2022] ZANWHC 50

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje

CASE / FILE NUMBER

M503/2021

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Policy

IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NO: M503/2021

Reportable:

NO

Circulate

to Judges: NO

Circulate

to Magistrates: NO

Circulate

to Regional Magistrates: NO

In

the matter between: AMANDA
DU TOIT 1ST
APPLICANT
RENIER
JOHANNES DU TOIT
2ND
APPLICANT
AND
DOUGLAS
DANIEL RAVENSCROFT
1ST RESPONDENT T
THE
UNLAWFUL OCCUPIERS/TRESPASSERS
OF
PORTION [...] OF THE FARM W[...]
[...]
K[...], NORTH WEST PROVINCE 2ND
RESPONDENT

Heard: 16 SEPTEMBER 2022

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be on 27 OCTOBER 2022
ORDER
I

make the following order: 1.
It is declared that there exists no valid lease agreement enforceable between the applicants and the first respondent to lease any part of the property known as portion [...] of the Farm W[...] [...], K[...], North West Province;
2.
The respondents are ordered to restore possession and control of the property known as portion [...] of the Farm W[...] [...] K[...], North West Province with immediate effect;
3.
The respondents are interdicted and restrained from entering or possessing the property;
4.
The first respondent is ordered to immediately remove any structure and fence erected by him on the property failing which the Sheriff of the High Court is authorised to demolish and remove the said fence and structures;
5.
The first respondent is ordered to remove the water pipes he installed on the property failing which the

applicants may do so;

6.

The first respondent is ordered to pay the costs of this application.

JUDGMENT

DJAJE ADJP

- [1] In this application the applicants seek an order declaring that no valid lease agreement exists between the parties. In addition, the applicants seek an order that the respondents restore possession of the portion of the property belonging to them. Reference in this judgment to respondent is intended for the first respondent.
- [2] The applicants in this matter are husband and wife residing and owners of Portion [...], Farm W[...] [...], K[...] , North West Province. The first respondent is residing on Portion 19 of the Farm W[...] [...] K[...] , North West Province. There is an existing servitude which provides that portion 19 is legally entitled to receive water which transgresses through portion [...]. As a result, there are 2x 90mm water pipes allowing water to portion 19 through portion [...]. According to the first respondent, on 17 April 2017 the water supply was disconnected. This resulted in the first respondent approaching this court for an order to restore the water supply. On 9 May 2019 the court granted an order against the applicants to restore the water supply to portion 19. There was a cost order against the applicants.
- [3] As a result of the cost order of 9 May 2019, the first respondent taxed the costs against the applicants in the amount of R83 339.25 (eighty-three thousand three hundred and thirty-nine rand, twenty- five cents). In February 2020 the parties started negotiating a lease agreement in terms of which the first respondent would lease a portion of the applicants'

property and the rent to be set off against the amount of the taxed costs. The process was facilitated by the applicants' legal representative. The applicants on 28 February 2020 informed their legal representative that they were no longer interested in entering into a lease agreement with the first respondent and would pay the taxed costs into the first respondent's attorneys account. On 11 March 2020 the applicants paid the taxed costs into the account of the first respondent's attorneys.

- [4] The applicants' case is that there is no lease agreement between them and the first respondent and as such the first respondent should not be on the property or carry out any activities on the property. That includes removing the fence erected by the first respondent on the portion of the applicants' farm. The respondent's case is that a lease agreement was entered into by the parties and he relies on a WhatsApp message sent to him by the applicants' legal representative stating as follows: "My kliente het my meegedeel dat dit in orde is om huur te down Doen". Counsel for the applicants translated the message as meaning "My clients have shared with me that it is in order to do the rental".

- [5] The issue to be determined firstly is whether there is a valid lease agreement between the first respondent and the applicants. The applicants submitted that there were discussions with the first respondent to enter into a lease agreement, however nothing was reduced in writing. In addition to that, the applicants decided to pay the taxed amount than enter into a lease agreement with the first respondent. The applicants argued that there was never any agreement in relation to the term of the lease to be 9 years 11 months as indicated by the first respondent. As that would mean the respondent is leasing the portion of their property at R700.32 per month which is laughable.
- [6] In contention the respondent argued that a valid oral lease agreement was concluded. The respondent refers to a meeting of 23 or 24 February 2020 at the applicants' attorneys' offices with Mr Johan van Rensburg representing the applicants. At the said meeting the applicants introduced Johan van Rensburg as their attorney and that further discussion relating to the lease agreement be done with him. Subsequent to that the respondent met with the attorney and made a proposal of a lease for a period of 9 years 11 months from February 2020. The rental amount would be equal to the taxed costs which were granted against the applicants in the amount of R83 339.25. The

property to be rented was reflected on the diagram provided to Mr Van Rensburg. The respondent also undertook to repair certain water pipes on the property at his own expense. The respondent received a whatsapp message from Mr Van Rensburg stating that the applicants have agreed to do a lease agreement.

- [7] It is trite that for a lease agreement to be in existence there are requirements to be met. As correctly argued by the respondent, the essential elements are that the lessor is to give and the lessee is to receive the temporary use and enjoyment of the property, the property must be identified and there must be rent payable for the use and enjoyment. The respondent's case is that all these requirements were met.
- [8] It is common cause between the parties that there were discussions of a lease agreement. Further that the applicants' attorney did send a message to the respondent that the applicants agree to do a lease agreement. The issue turns on whether the message meant that there was a lease agreement between the parties. In essence the message that the respondent received from the applicants' attorney is what is relied on for the conclusion of a lease agreement. The message was interpreted by the respondent to mean that a lease agreement was entered into. However, it is also important to have a look at what transpired after the message was sent to the respondent. The respondent replied making an appointment to see the applicants' attorney. The following appears in the WhatsApp message: "Dankie" and then "Moet ek jou n draai maak?" The response by the attorney was "More middag kan werk so 3 uur". These exchanges between the respondent and the attorney meant there were issues to be finalised between the parties.
- [9] There is a letter dated 25 February 2020 by the respondent addressed to the attorneys of the applicants. At paragraph 2 of the said letter, the respondent states as follows:

“Should you advise me by 12h00 Wednesday 26 February 2020 that my offer supra is accepted, we can enter into a lease agreement by 28 February 2020.”

A clear reading of the letter can be interpreted to mean once the proposal is accepted, the parties will enter into a lease agreement.

Not that a lease agreement would have been concluded. This explains why the respondent had to meet with the applicants’ attorney

after the message of 26 February 2020 was sent via WhatsApp.

[10] There was an agreement by the applicants through their attorney to enter into a lease agreement but the lease agreement had not yet been concluded. This could be defined as an agreement to agree. In the case of *Premier, Free State and Others v Firechem Free State (Pty) Ltd* 2000 (4) SA 413 (SCA) the following was stated:

“..an agreement that the parties will negotiate to conclude another agreement is not enforceable, because of the absolute discretion

vested in the parties to agree or disagree”.

[11] The conduct of the applicants after the message was sent to the respondent is also a telling factor that there was no agreement between the parties. The applicants paid the money that was meant to have been the rental for the property into the account of the respondent’s attorneys. Thereafter, a number of correspondence between the attorneys took place where the applicants insisted that no lease agreement had been concluded and that the applicants had certain conditions. It is clear that the applicants were not opposed to a lease agreement but same was never concluded with the respondent.

[12] The applicants also seek an interdict against the respondent from entering or possessing the property. The requirement for an interdict are trite and in the absence of a lease agreement the applicants have a clear right as the owners of the property.

[13] The applicants’ claim for spoliation is based on the fact that as there is no lease agreement, they were in peaceful and undisturbed possession of their property. As the owners of the property they are deprived the use of their property by the erection of a fence by the respondent. In the absence of a lease agreement the respondent should restore possession of the property to the applicants including removing the fence erected and the water pipes. It is not disputed that the respondent enjoys a servitude of a water furrow on the applicants’ property. The servitude remains as far as it relates to the respondent use of the water furrow on the applicants portion of the property.

[14] The respondent argued that the owners of portion 19 should have been joined to the proceedings. This argument has no merit as the outcome of this application will not affect the owners of portion 19 in anyway.

Costs

[15] It is trite that costs follow the result and I see no reason why the first respondent should not be ordered to pay costs in this application.

Order

[16] In the result the following order is made:

1. It is declared that there exists no valid lease agreement enforceable between the applicants and the first respondent to lease any part of the property known as portion [....] of the Farm W[....] [....] , K[....], North West Province;
4. The first respondent is ordered to immediately remove any structure and fence erected by him on the property failing which the Sheriff of the High Court is authorised to demolish and remove the said fence and structures;

J T DJAJE

ACTING DEPUTY JUDGE PRESIDENT

NORTH WEST HIGH COURT, MAHIKENG

APPEARANCES

DATE OF HEARING:

16 SEPTEMBER 2022

JUDGMENT

RESERVED: 16

SEPTEMBER 2022

DATE OF JUDGMENT: 27

OCTOBER 2022

COUNSEL FOR THE PLAINTIFF : ADV

RILEY

COUNSEL FOR THE DEFENDANT: ADV

J W KLOEK

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Prepared on 9 October 2026 · Esheria