

SOUTH AFRICA / JUDGMENT

Gatsby Vibe Salon (Pty) Ltd v Hgbahiwe and Another (2023/082751) [2023] ZAGPJHC 995 (6 September 2023) [2023] ZAGPJHC 995

COURT

South Gauteng High Court, Johannesburg

BEFORE

Moorcroft

CASE / FILE NUMBER

2023/082751

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IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023 – 082751

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

In the application by

THE GATSBY VIBE SALON (PTY) LTD Applicant And CHARLES UCHECHUKWU HGBAHIWE First Respondent NEW MARKET DEVELOPMENTS (PTY) LTD Second Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Spoliation order – applicant company was in peaceful and undisturbed occupation of rented commercial premises – first respondent seized control of premises on the basis that he had purchased the company and that the company was now his – cannot take law into his own hands

Order

[1] In this matter I made the following order on 30 August 2023 after argument in the Urgent Court:

1. The 1st respondent, and anyone occupying the business premises known as the Gatsby Vibe Salon situated at Floor 1, Unit 4B, Northlands Corner Centre in Northriding (“business premises”) through the 1st respondent, is ordered and directed to vacate the property and to restore undisturbed possession of the business premises to the applicant represented by its director Nkey Lewanga, forthwith.
2. The 1st respondent is ordered to pay the costs of the application.
- [2] The reasons for the order follow below.

Introduction

- [3] The applicant brought an urgent application to seek an order that occupation of business premises in Northriding be restored to it. The deponent to the founding affidavit, Mr. Lewanga, owns 50% of the shares of the applicant and his nephew, Mr. Sakala, own the other 50% according to a shareholders’ agreement that form part of the papers. Mr. Sakala managed the business until 20 July 2023 when he was detained on suspicion of non-compliance with visa requirements and the deponent then traveled to Johannesburg from Durban to take over the management of the business.
- [4] The deponent was then appointed as a director of the business on 28 July 2023 and he obtained the services of his brother-in-law, Mr. Kapela, to supervise the business in his absence when he was away in Durban.
- [5] While he was in Johannesburg he was advised by the first respondent that Mr. Sakala had sold the business to the first respondent. This sale is disputed and the deponent states that he was never consulted and denied that the sale ever happened. The first respondent relies on an agreement for the sale of the business between himself and Mr. Sakala. In terms of the agreement it was not the shares that were sold but the business of the company, and the seller selling the business was not the owner of the business but Mr. Sakala as the shareholder.
- [6] Mr. Sakala may not be able to perform in terms of the agreement as he is not the owner. He may possibly, depending on the parties’ rights and obligations, be entitled to sell his shares but the agreement does not provide for the sale of shares. The fate and the status of the alleged sale of business agreement need however not be decided in this application. That is a fight for another day.
- [7] Mr. Kapela locked the business on 1 August 2023. It is not disputed by the first respondent that he then seized control over the premises by having the locks changed by a locksmith. This happened on 2 August 2023. The first respondent states that he was entitled to do so as he was attempting to regain access to the premises “in which my company was situated at.” He seems to be of the view that he had bought the company, in other words the shares.

- [8] I am satisfied that a case is made out for approaching the Court on an urgent basis. The applicant satisfactorily deals with the aspect of urgency in the founding affidavit.[1]
- [9] The applicant is the lessee of the premises and was in peaceful and undisturbed occupation[2] until it was unlawfully deprived of occupation by their first respondent. The applicant is entitled to a spoliation order.
- [10] The right of the applicant to occupation is of course quite independent of questions about the shareholding of the applicant, and it is the applicant that is in a contractual relationship with the landlord (the second respondent). Nothing in this judgment or in the order has any bearing on the rights of the landlord and the contract between landlord and tenant.
- [11] The applicant also sought an order that the first respondent be restrained from unlawfully seizing control of the premises again. In terms of the order I made and that is quoted above the first respondent is to restore undisturbed possession of the business premises to the applicant. He would obviously be in contempt of this order if he restored possession and then seized control by dispossessing the applicant

again.

- [12] I therefore grant the order set out above in order to restore the status quo ante. The first respondent is at liberty (if so advised) to seek to enforce the sale of business agreement that he relies on.

J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be 6 SEPTEMBER 2023.

COUNSEL FOR THE APPLICANTS: B VAN TONDER INSTRUCTED BY: THOMSON WILKES
ATTORNEYS COUNSEL FOR THE FIRST RESPONDENT: K M BOSHOMANE INSTRUCTED BY:
NTSANE MONA ATTORNEYS DATE OF ARGUMENT: 30 AUGUST 2023 DATE OF JUDGMENT: 6
SEPTEMBER 2023

- [1] See Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others 2004

- (2) SA 81 (SE), East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd 2011 JDR 1832 (GSJ) para 9, and South African Informal Traders Forum and Others v City of Johannesburg and Others 2014 (4) SA 371 (CC) para 37.
- [2] See Van Loggerenberg Erasmus: Superior Court Practice D7-1, especially footnotes 4 and 5.
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