

SOUTH AFRICA / JUDGMENT

Goliath v Dirk Ellis Motor Group (Pty) Ltd and Another (3034/2021) [2021] ZAECGHC 94 (12 October 2021) [2021] ZAECGHC 94

COURT

Eastern Cape High Court, Grahamstown

BEFORE

E Smith

CASE / FILE NUMBER

3034/2021

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO: 3034/2021

Matter

heard on: 30/09/2021

Judgment delivered

on: 12/10/2021

In

the matter between:

DENVER

GOLIATH

Applicant

and

DIRK

ELLIS MOTOR GROUP (PTY)

LTD

1st Respondent

DIRK

ELLIS 2nd

Respondent

JUDGMENT

SMITH J:

- [1] The applicant brought urgent proceedings for relief in terms of the mandament van spolie, in particular seeking an order directing the respondents, inter alia, to:
 - (a) restore to him undisturbed possession of certain properties situated in Graaff-Reinet (the properties);
 - (b) return to him all farming implements, water pumps, generators and other items which they allegedly took from the properties; and
 - (c) rebuild certain structures that they allegedly demolished.
- [2] The applicant is the bona fide occupier of the properties. The first respondent, a duly incorporated company, is the registered owner and the second respondent a director of the latter.
- [3] It is common cause that the applicant has been in peaceful and undisturbed possession of the properties since 2013. It is also common cause that on 23 and 24 August 2021, the first respondent attempted to gain entry to the property, purporting to exercise the ownership rights of the first respondent. The applicant refused to allow him entry and the second respondent thereafter forcibly entered the properties and undertook certain major earthworks and demolition of existing structures. Although he was accompanied by the police, it was not contended on his behalf that their presence rendered his actions lawful.
- [4] The respondents opposed the application on the grounds that the applicant has not established urgency and that the dispute between the parties has already been finalised in another forum, namely the Graaff-Reinet Magistrate's Court. They contended that the matter is therefore *res judicata*.
- [5] In this regard they relied on a judgment granted by the Graaff-Reinet Magistrate's Court under case number 389/2021, on 22nd September 2021, in terms of which an order issued, inter alia, restraining the applicant from preventing the second respondent from entering upon the properties and from interfering with the first respondent's directors or their employees in the conduct of farming operations on the properties.
- [6] As mentioned earlier, it is common cause that the applicant was in undisturbed and peaceful possession of the properties at all material times and that the second respondent's conduct effectively amounted to a deprivation of his possession. The only issue that accordingly falls for determination is whether the Magistrate's Court court order has the effect of legitimising the respondents' unlawful conduct.
- [7] Regarding the issue of urgency, I am satisfied that the respondents' actions being of an ongoing nature, the matter was sufficiently

urgent to justify the truncated time periods and non-compliance with the Uniform Rules of Court.

- [8] There can be little doubt that the undisputed facts established that the second respondent, acting in his capacity as director of the first respondent, took the law into his own hands, forcibly deprived the applicant of possession and ex post facto approached the Magistrates Court for an order legitimising his otherwise unlawful conduct. That the applicant should be without a legal remedy in these circumstances offends one's sense of fairness and justice.
- [9] I am of the view that there is no merit in the respondents' contention that the dispute between the parties is res judicata. Ms Teko, who appeared for the applicant, has correctly submitted that the issues which fell for decision in the Magistrate's Court did not include the applicant's rights as a bona fide possessor. That case concerned the respondents' purported enforcement of their ownership rights. The order must accordingly be construed only to restrain the applicant from interfering with the respondents in the lawful exercise of their proprietary rights. Those rights do not entitle them to enter upon the property without the applicant's permission or in the absence of a court order for his ejectment. I am accordingly of the view that the applicant is entitled to relief which will have the effect of protecting his rights as bona fide possessor of the properties.
- [10] I am, however, of the view that he did not make out a case for an order compelling the respondents to rebuild demolished structures. It seems to me that this issue will depend on the resolution of the dispute relating to the ownership of the properties.
- [11] Mr Miller, who appeared for the respondents, submitted that the court should express its displeasure with the fact that the applicant did not disclose in his founding papers the existence of the Magistrate's Court order, by making a punitive costs order.
- [12] While I agree that the applicant was obliged to disclose that fact in the founding papers, I am of the view that the respondents, having taken the law into their own hands, should not be the beneficiaries of any such punitive costs order. I am accordingly of the view that it is appropriate for the parties to bear their own costs.
- [13] In the result the following order issues;
- (a) The respondents must forthwith restore to the applicant undisturbed possession of erf 4294, Graaff-Reinet and Erven 1027 and 1028,
- Addendorp, situated at Peppertree Volwas, in the magisterial district of Dr Beyers Naude Local Municipality, Graaff-Reinet, Eastern Cape.
- (b) The respondents must forthwith return all the farm implements, PVC pipes, water pumps, irrigation systems, generators and sprinkler systems that they took from the properties.
- (c) The parties shall bear their own costs.

J E SMITH

Judge of the High Cour

Counsel for the Applicant : Adv. A. Teko

Instructed by

: Matiwane Attorneys

c/o Netteltons Attorneys

118A High Street

Grahamstown

For the Respondents : Adv. T.S. Miller

Instructed by

: Dold & Stone Inc

10 Africa Street

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECGHC/2021/94.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/goliath-v-dirk-ellis-motor-group-pty-ltd-and-others-unknown-topic-aecghc-2021>

Prepared on 10 October 2026 · Esheria