

SOUTH AFRICA / JUDGMENT

Legemaat N.O and Others v Arplorox (Pty) Ltd and Others (60278/2019) [2021] ZAGPPHC 569 (30 August 2021) [2021] ZAGPPHC 569

COURT

North Gauteng High Court, Pretoria

BEFORE

Cochrane

CASE / FILE NUMBER

60278/2019

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED

30

August 2021

CASE

NO: 60278/2019

In

the matter between:

DJ
LEGEMAAT N.O.
FIRST APPLICANT
CP
LEGEMAAT
N.O.
SECOND APPLICANT
FJ
SNYMAN
N.O.
THIRD APPLICANT
and
ARPLOROX
(PTY) LTD
FIRST RESPONDENT
THE
COMMISSIONER OF THE
SOUTH
AFRICAN POLICE SERVICE
SECOND RESPONDENT

JUDGMENT

COCHRANE AJ

- [1] This is an application for the First Respondent to (i) hand over the undisturbed possession of a private road on the Applicants property; and (ii) for the removal of all structures erected by the First Respondent on the Applicants property.

FACTS

- [2] The three Applicants, in their capacities as Trustees of the Vaalbank Trust (the “Trust”), purchased three adjacent agricultural properties in 2015 to plant maize to be used as fodder for dairy cows. The relevant property for the purposes of this application being Portion 6 of the Farm Witfontein (the “Farm”).
- [3] The relevant features of the Farm are (i) a railway siding situated on the adjoining property on the Farm’s southern boundary, this adjoining property is owned by the South African National Government (the “siding”); (ii) a public road which runs across the Trust’s Farm via its eastern to western boundary (the “public road”); and (iii) a private track/road, which runs from the siding to the aforesaid public road, across the Farm (the “track”).
- [4] The only servitude registered against the Title Deed of the Trust’s Farm is an Eskom power line and substation servitude. No right of way servitude is registered over the Farm.

- [5] On 3 November 2016 the First Applicant attended a community engagement meeting regarding the First Respondents intention to stockpile and transport coal to the siding, a representative of the First Respondent attended this meeting to reassure community members that they would take steps to ensure the community was not negatively impacted by their activities.
- [6] The First Applicant confronted the First Respondent's representative at this meeting and informed him that there was no access road from the siding to the public road over the Farm and that the First Respondent was not entitled to utilize the private track across the Farm for the purposes of transporting coal to the public road.
- [7] Despite this meeting and without the permission of the Trust, the First Respondent proceeded to: (i) utilize the track for purposes of transporting coal from a mine to the siding; (ii) erect two weighbridges on the Farm, alongside the track, (iii) cut trees down situated on the Farm; (iv) widen and compact the surface of the track to 12 meters wide (allowing for two coal trucks to travel next to each other); (v) erect a water tank on the Farm alongside the track;
- (v) construct an unlined dam on the Farm; and (vi) erect a fence on the Farm.
- [8] The Trust approached the First Respondent on various occasions via meetings and correspondence throughout 2018 and 2019 in which the Trust insisted that the First Respondent remove all structures on its property and find an alternative transport route.
- [9] When the Applicants attempted to inspect the structures erected on the Farm they were repeatedly met with violence, intimidation and aggression by the First Respondents employees or representatives.
- [10] The First Respondent's answers to the Applicants requests and demands to remove the structures erected on the Farm and to terminate its use of the track ranged from (i) offering to lease or purchase the land; (ii) question the ownership of the Farm; and (iii) refer to an agreement for the use of the track with the previous owner of the Farm.
- [11] The siding had previously been leased by MS Rail and they had graded and used the track with the permission of the previous owner, to be accessible for light delivery vehicles for security personnel. It was a mere plantation dirt road at the time.

RESPONDENT'S POINT IN LIMINE – NON-JOINDER

- [12] The First Respondent has raised as a point in limine that certain third parties, namely Eskom, Transnet, Palesa Mine and the National Department of Public Works ought to have been joined in this Application on the basis that these third parties would be greatly prejudiced if this Application were to be granted and the First Respondent be prevented from utilising the track.

- [13] The test for joinder of parties is whether or not a party has a 'direct and substantial interest' in the subject matter of the action, that is, a legal interest in the subject matter of the litigation which may be affected prejudicially by the judgment of the court." [1] (my emphasis).
- [14] The "direct and substantial interest" must be a legal interest, in other words, one which gives rise to a legal right. [2]
- [15] This application relates specifically to the First Respondents right to access and use the track and the land on which it has erected its structures. The third parties' interests relate to the First Respondents provision of services in respect of transporting and handling of coal.
- [16] The third parties' interests do not entail a legal interest giving rise to a legal right to the access and use of the track or the land on the Farm.
- [17] Furthermore, if the Applicant were to be successful and the First Respondent's use of the track was indeed unlawful, the alleged prejudice suffered by these parties would be irrelevant. An unlawful act being committed by one party cannot be cured or condoned by a court in consideration of third parties who are benefitting from such an unlawful act.
- [18] The First Respondents point in limine on the question of non-joinder is accordingly dismissed.

ISSUES

- [19] The First Respondent contends that it is entitled to use the track and the land on which it has erected said structures on the basis that:
- (i) The Applicants had not proven that the Trust was indeed the owner of the Farm;
 - (ii) The previous owner had agreed to the use of the land; and
 - (iii) That the Applicants had not enjoyed undisturbed use of the track due to MS Rail's prior use thereof and that the Applicants had accordingly not satisfied the requirements for spoliation.

The ownership of the property on which the track is situated

- [20] The Applicant placed before the court a deeds office search confirming the Trust owns Portion 6 of the Farm Witfontein, the Applicant also provided a map/diagram depicting the location and situation of the track and the area on which the structures are situated on the said property.
- [21] The First Respondent did not produce any evidence which contradicted the Applicants evidence in respect of ownership of the land.
- [22] I noted from the Applicants papers that the Trust is also the owner of the properties surrounding the Farm on which the siding was situated.

[23] In addition, the First Respondent did enquire as to whether the Applicants would consider an offer to purchase or lease the land in question. It is unclear why the First Respondent would consider approaching the Applicants on this basis if they did not believe the Applicants (the Trust) to be the owner.

[24] It can be accepted, on the papers before me, that the Trust is indeed the lawful, registered owner of the property upon which the track and the said erected structures are situated.

Agreement with the previous owner

[25] It is trite that in order for any right to the use of immovable property to bind future owners, either (i) a servitude must be registered against the Title Deed of the property (via court order or agreement); or (ii) a lease with the former owner must be proven and accordingly entitle such a lessee to invoke the huur gaat voor koop rule.

[26] The First Respondent provided no evidence of a servitude or a lease. The agreement MS Rail had with the former owner was an informal arrangement and even if it was a formal agreement or lease no evidence was produced showing that this right had been ceded to the First Respondent from MS Rail.

Spoliation

[27] The First Respondent argued that the Applicant had not satisfied the requirements for spoliation and proceeded to argue the requirement of undisturbed possession. I am of the view that this argument is misconceived. The Applicant has asked this court for an order to hand over the undisturbed possession of the track and for the removal of the structures erected on its property on the basis of the Applicants ownership of the property and not on the basis of the Applicants prior possession of the property.

[28] This application is not based on spoliation; it is based on ownership and the Applicants are accordingly not required to prove undisturbed possession when they have shown that the Trust is the lawful owner of the property.

Conclusion

[29] From beginning, the First Respondent would most certainly have been aware of the fact it was not the owner of the property in question. They have not produced any evidence of a lease, servitude or any legal right it may have had to access and use the track and the land on the Farm.

[30] In light of the above, I am of the view that the First Respondent, acting in bad faith, went ahead and invaded the Trust's Farm, knowing full well it was not legally entitled to do so and without any regard for the lawful owner of the Farm.

Order

[31] I accordingly make the following order:

A The First Respondent is ordered to:

1. Immediately handover the undisturbed possession of the road traversing the property of the Vaalbank Trust, namely Portion 6 (A Portion of Portion 4) of the farm Witfontein, No. 510, as depicted on Annexure "A" attached to the Notice of Motion, more particularly indicated as the road between the letter C to D, to the Applicants.
2. Remove all structures erected by the First Respondent on the aforesaid property within 7 days of date of this order.

B First Respondent is interdicted from utilising the road mentioned in paragraph A.1 supra, either personally or through its agents or employees, other than for the purposes of executing paragraph A.2 of this order.

C First Respondent, its employees or agents are ordered to allow, with immediate effect, the trustees of the Vaalbank Trust, its employees or authorised agents unhindered and undisturbed entry to the aforesaid road and surroundings.

D Should the First Respondent fail to comply with the orders in paragraphs A, B and C supra, the Sheriff is authorised to eject all employees of the First Respondent and its agents from the property and to remove all immovable structures erected by the First Respondent on the aforesaid property. To this end, and if so requested by either the trustees of the Vaalbank Trust or the Sheriff, the Commander of the SAPS Bronkhorstspuit is ordered to assist with the ejectment of persons and/or removal of all structures erected by the First Respondent on the aforesaid property and to protect any person(s) executing the orders in the abovementioned paragraphs.

E First Respondent is ordered to pay the costs of this application on the scale as between attorney and own client.

J COCHRANE

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Applicant

: Adv CF Brand SC

Instructed by

: DP Du Plessis Incorporated

For the 1ST Respondent : Prof T Madima SC & Adv P Mafisa

Instructed by

: Nothemba George Attorneys

Date of Hearing

: 19 May 2021

Date of Judgment

: 30 August 2021

Judgment

transmitted electronically.

[1] Erasmus-Superior Court Practice Volume 2 at 01-124

[2] Minerals Council South Africa v Minister of Mineral Resources and Another (2020) 4 All SA 150 (GP) at Para 9

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Prepared on 10 October 2026 · Esheria