

SOUTH AFRICA / JUDGMENT

**Sasol Oil and Another v Bitline SA 951 CC
t/a Sasol Roodepoort West and Another
(2023-052191 ; 2023-052612) [2023]
ZAGPJHC 1437 (11 December 2023)
[2023] ZAGPJHC 1437**

COURT

South Gauteng High Court, Johannesburg

BEFORE

L R Adams

CASE / FILE NUMBER

2023-052191 ; 2023-052612

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REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
JOHANNESBURG

DATE:

11th
December 2023
NOT REPORTABLE
NOT OF INTEREST TO OTHER
JUDGES
(1)

CASE NO:

2023-052191

In the matter between: SASOL
OIL (PTY) LIMITED
Applicant
And
BITLINE
SA 951 CC t/a SASOL ROODEPOORT WEST
First
Respondent
JASSAT,
BASHIR
Second
Respondent
AMRICH
58 PROPERTIES (PTY) LIMITED
Third
Respondent
(2)

CASE NO: 2023-052612
SASOL
OIL (PTY) LIMITED
First
Applicant
AMRICH
58 PROPERTIES (PTY) LIMITED
Second
Applicant
And
BITLINE
SA 951 CC t/a SASOL ROODEPOORT WEST
Respondent

Neutral Citation: Sasol Oil v Bitline SA 951 and Other (2023-052191); Sasol Oil and Another v Bitline SA 951 (2023-052612) [2023] ZAGPJHC ---- (11 December2023)

Coram: Adams J

Heard: 01 December 2023
Delivered: 11
December 2023 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 11 December 2023.
Summary: Franchise agreement and commercial sublease agreement – application to interdict continued operation of franchise business – and eviction application by Franchisor and owner of premises – termination by effluxion of time – proper interpretation of extension agreement – text, context and purpose leading to

ineluctable conclusion that agreements came to an end –
interdict granted – application for the eviction from
commercial premises succeed.

ORDER

(1)

In the matter under case
number:

2023-052191,
the following order is granted in favour of the applicant against the
first and the second respondents: -

(a)

The first and the second respondents and/or

their privies be and are
hereby interdicted and
restrained from:

(i).

conducting any activities associated with a
service and filling station as contemplated in terms of the franchise
agreement between
the applicant and the first respondent from the
property known as Erf [...] Roodepoort West Township, Registration
Division I Q,

Gauteng Province, held by
Deed of Transfer:

T46749/2000, also known as the Sasol
Service Station situated at corner Main
Reef and Serfontein Roads, Roodepoort ('the property' or
'the site') by utilising
and/or by being associated with
the Sasol brand, know how, marketing and comprehensive blueprint
for the operation of a convenience
centre and related businesses,
equipment and programmes, licences and/or trademarks and tradenames
and/or intellectual property;

and

(ii).

sourcing and/or storing and/or distributing
any third-party automotive fuel, automotive products, emission fluids
and related products
at or from the property, which products were
sourced from parties other than the applicant.

(b)

The applicant be and is hereby authorised
to gain access to the property and the site in order to effect an
onsite disablement,
which is to include the manual locking, where so
required, of Sasol's systems and equipment on site.

(c)

The first and the second respondents,
jointly and severally, the one paying the other to be absolved, shall
pay the applicant's
costs of this opposed application.

(2)

In the matter under case
number:

2023-052612,
the following order is granted in favour of the first and the second
applicants against the respondent: -
(a)
The respondent and all those occupying the
property through or under the respondent, the property being Erf
[...], Roodepoort West
Township, Registration Division IQ, Gauteng
Province, situate at corner of Main Reef and Serfontein Roads,
Roodepoort West ('the
property' or 'the premises'),
be and are hereby evicted from the said property.
(b)
The respondent and all other occupiers of
the said premises shall vacate the second applicant's property
('the property')
on or before the 31st
of January 2024.
(c)
In the event that the respondent and the
other occupiers of the premises not vacating the second applicant's
property on or
before the 31st
of January 2024, the Sheriff of this Court or his lawfully appointed
deputy be and is hereby authorized and directed to forthwith
evict
the respondent and all other occupiers from the said property.
The
respondent shall pay the first and the second applicants'
costs of this opposed application, such costs to include the
costs
consequent upon the utilisation of two Counsel, one being a Senior
Counsel, where so employed.

JUDGMENT

Adams J:

[1]. On 01 December 2023 the above two opposed applications came before me in the Commercial Court of this Division. The first application ('the interdict application') is by Sasol Oil (Pty) Limited ('Sasol Oil' or 'the first applicant') against Bitline SA 951 CC ('Bitline SA' or 'the respondent') and two other respondents. The second one ('the eviction application') is by Sasol Oil and Amrich Properties 58 (Pty) Limited ('Amrich' or 'the second applicant') against Bitline SA. Sasol Oil is an applicant in both these applications and Bitline SA is a respondent in both applications. The further commonality between these two opposed motions is the central fact in these applications that Erf [...], Roodepoort West Township, Registration Division IQ, Gauteng Province, situate at corner of Main Reef and Serfontein Roads, Roodepoort West ('the property' or 'the premises') is occupied by and is in possession of Bitline SA.

[2]. The factual matrices underlying the applicants' causes of action overlap to a great extent and central to both these matters is the ownership and occupation of the property. It is accordingly convenient to deal with these two matters in one judgment.

[3]. In the interdict application, Sasol Oil applies for final interdictory relief in terms of which Bitline SA is to be interdicted from carrying on the business of a service and filling station under the 'Sasol' name and brand. The case of Sasol Oil in a nutshell is that the Franchise Agreement in terms of which Bitline SA was entitled to operate the filling station under the Sasol banner came to an end by effluxion of time, whereafter Bitline SA could no longer carry on as a Sasol franchisee. The termination of the franchise agreement is denied by Bitline SA, who contends that the said agreement was not lawfully terminated by Sasol Oil, which means, so Bitline SA submits, that they are entitled to continue with the business on the basis of the franchise agreement.

[4]. The issue to be decided in the interdict application is therefore simply whether the Franchise Agreement came to an end as alleged by Sasol Oil.

[5]. In the eviction application, Sasol Oil and Amrich apply for the eviction of Bitline SA from the property, which by all accounts, are owned by Amrich, who let same to Sasol Oil, who, in turn, sublet to Bitline SA pursuant to and in terms of the Franchise Agreement. Sasol Oil's case is based on the termination of the Franchise Agreement, including the sublease, which means, so their case goes, that Bitline SA has no right to occupy the said property and should vacate same. Amrich's case is based simply on the rei vindicatio, and it alleges that, in the absence of a ius retentionis (the right to retain) in favour of Bitline SA, the latter's occupation is unlawful and it is liable to be evicted from the said property.

[6]. Bitline SA opposes the application mainly on the basis that its occupation is lawful as the franchise agreement, which entitled it to occupy the premises, has not been lawfully terminated. It also contends that Sasol Oil does not have the necessary locus standi to bring the application for its eviction from the property. As regards the eviction claim by Amrich, Bitline SA alleges that a case is not made out on behalf of it as the necessary allegations are not made nor supported by the founding papers. The application is also opposed by Bitline SA on the basis of what can best be described as overly technical defences, to which I shall revert later on in this

judgment.

[7]. The issue to be considered by this court in the eviction application is simply whether the applicants made out a case for the eviction of Bitline SA from the commercial premises in question. This issue, as well as that implicated in the interdict application, are to be decided against the facts in the matters, which I will discuss when analysing each case. Most notable are the two agreements and a proper interpretation of their provisions.

The Interdict Application

[8]. A convenient starting point for an analysis of and a discussion on the issues pertinent to the interdict application is the franchise agreement, which was the sole and exclusive source to Bitline SA's entitlement to occupy and operate the Sasol service and filling station as a franchisee and for it to use Sasol Oil's equipment, intellectual property and petroleum products.

[9]. Amrich is the registered owner of the property. In terms of and pursuant to a written notarial deed of lease concluded between the parties, Sasol Oil secured the right to occupy the site for the sole purpose of conducting a Sasol branded fuel service and filling site, as well as accessory and ancillary business activities associated with the filling station. Moreover, Sasol Oil secured the right to sub-let the site to Bitline SA for the sole purpose of operating the site as a Sasol service and filling station.

[10]. The initial franchise agreement was concluded between Sasol Oil and Bitline SA during 2012 and was subsequently renewed for an additional period of three years, terminable on 01 August 2020. On 01 April 2021, an addendum was concluded between the parties, which stipulated that the 'third period franchise agreement' would endure from 31 July 2020 on a month-to-month basis until 30 June

2022. The addendum accordingly had a definitive and defined termination date which did not require any notice of termination.

[11]. It may be apposite to cite the relevant provisions of the addendum relating to the period of the extended franchise agreement. It reads, in the relevant part, as follows: -

'1 Preamble

Whereas [Sasol Oil] and [Bitline SA] ('the parties') entered Into a Franchise Agreement for the operation of a Sasol Franchise in accordance with the defined standard of operations and procedures as set out in the Franchise Agreement for Sasol Roodepoort West.

And whereas the parties have agreed to extend the 3rd Period Franchise Agreement from 31 July 2020 on a month-to-month basis for a period not exceeding 30 June 2022.

And whereas [Sasol Oil] has agreed that it will provide three (3) months' notice to [Bitline SA] for termination of this Agreement if terminated earlier than 30 June 2022,

And whereas the parties wish to record the amendment of the Franchise Agreement In this Addendum.

2 Amendments to the Addendum to Option and Final Franchise Agreement

2.1 The parties wish to record in writing the following agreed amendments to the Franchise Agreement: -

2.1.1 Duration of the Agreement

2.1.1.1 Notwithstanding signature date, this 3rd Period Franchise Agreement shall endure from 31 July 2020 on a month-to-month basis, unless it is terminated at any earlier time in terms or this Franchise Agreement.

2.1.1.2 [Sasol Oil] shall notify [Bitline SA] In writing, at least three (3) months prior to the termination of this Agreement.

2.1.1.3' (Emphasis added).

[12]. A textual and contextual interpretation of the cited provisions of the 'Second Addendum to the Option and Final Franchise Agreement', signed by the parties on 01 April 2021, ineluctably leads one to the conclusion that the intention of the parties, when concluding the said addendum, was that the extended Franchise Agreement would endure only to 30 June 2022. The addendum expressly provides so in as many words in the preamble, which states that the parties have agreed to extend the Franchise Agreement 'for

a period not exceeding 30 June 2022'. It cannot be stated in clearer terms than that and there can, in my view, be little doubt that the parties intended for the 'month-to-month' agreement to terminate by effluxion of time on 30 June 2022.

Moreover, the three months' notice period found application only in the event of Sasol Oil intending to terminate the extended

agreement prior to 30 June 2022. I reiterate that, if regard is had to the text and the wording of the addendum, one cannot come to a conclusion other than that the Franchise Agreement terminated on 30 June 2022, as contended by Sasol Oil.

[13]. In sum, the foregoing conclusion I reach after having given due consideration to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed, and the material known to those responsible for its production. (Natal Joint Municipal Pension Fund v Endumeni Municipality[1]). The point is simply that the language, grammar and syntax used in the quoted addendum confirm the intention of the parties that the Franchise Agreement was to come to an end on 30 June 2022.

[14]. As regards context, the head lease between Sasol Oil and Amrich terminated on 27 July 2022, at which stage the right to occupy the property and to operate the filling station of both Sasol Oil and Bitline SA ceased to exist. This was confirmed by Sasol Oil in a written communiqué dated 22 June 2022, in which Bitline SA's Mr Jassat (the second respondent in the interdict application) was advised that Sasol Oil had no tenure in respect of the property beyond July 2022. Subsequently, on 21 September 2022, Sasol Oil advised Bitline SA in writing that, the lease negotiations between Sasol Oil and Amrich relating to an extension of the lease having failed, Sasol Oil was obligated to 'divest from the site'. Bitline was accordingly afforded thirty days within which to vacate the premises on or before 01 November 2022. They were also placed on terms to attend to the closure of all operations at the Sasol Roodepoort West premises, including employee relations, supplier relations and any other operational elements which such closure may impact.

[15]. Against the aforesaid background, it has to be accepted that the agreement, as per the addendum, was that the Franchise Agreement would terminate on 30 June 2022. I accordingly do not accept Bitline SA's contention that the parties, Sasol Oil and Bitline SA, had during July 2022 agreed verbally to extend the franchise agreement, which verbal agreement, according to Bitline SA, was reduced to writing and was for a period of six months until 31 January 2023.

[16]. In the circumstances, I am satisfied that Sasol Oil has made out a case for final interdictory relief sought in the first application. I am persuaded that Sasol Oil, as the applicant for interdictory relief, has fulfilled the requirements for such relief, to wit:

- (a) it has a clear right; (b) it has a reasonable apprehension of irreparable harm; and (c) it has no alternative remedy that would suitably address any harm suffered in the normal course of events.

[17]. Sasol Oil has a clear right, in the form of its ownership of the intellectual property, which requires protection and which Bitline SA presently uses without Sasol Oil's authority to do so. No more needs to be said about this requirement. Bitline SA and Mr Jassat continue to operate the site as a Sasol branded service station, without the consent of Sasol Oil, misrepresenting to the general public that the site is and remains a Sasol service and filling station. They are also using Sasol's equipment and intellectual property, on the unsubstantiated and contradictory contention that a valid and binding franchise agreement is and remains in place.

[18]. There can also be no doubt that Sasol Oil will suffer irreparable harm if the interdict is not granted. It is so, as contended by Mr Aucamp, Counsel for Sasol Oil, that in the case of a vindictory or quasi vindictory claims, it is factually presumed, until the contrary is shown, that Sasol will suffer irreparable harm if the interdict is not granted.

[19]. Moreover, Sasol Oil does not have available to it any alternative remedy. Even where an injury may be capable of pecuniary evaluation and compensation, the court will generally grant an interdict if the injury is a continuing violation of an applicant's rights as is the case with Sasol Oil in casu.

[20]. For all these reasons, the interdict application should succeed.

The Eviction Application

[21]. Both Sasol Oil and Amrich make application for the eviction of Bitline SA from commercial premises, being the property situate at corner Main Reef and Serfontein Roads, Roodepoort West ('the premises' or 'the property') and from which premises Bitline SA conducts the franchise business as Sasol Roodepoort West. Amrich approaches the court for an eviction order in its capacity as owner of the premises and Sasol Oil's cause of action is based on its contractual and common law obligation(s) owed to Amrich as owner to return free and undisturbed possession of the premises to its owner.

[22]. As I have already found, the franchise agreement, at best for Bitline SA, came to an end by effluxion of time on 30 June 2022. This therefore means that it does not have any right to remain in occupation of the premises. Sasol Oil is therefore entitled to an eviction order against Bitline SA. The simple fact of the matter is that Bitline SA was granted the right to occupy the premises by Sasol Oil pursuant to and in terms of the Franchise Agreement and this is the only basis on which they could and in fact did occupy the said property. Once the Franchise Agreement was terminated, Bitline SA's entitlement to occupy the premises came to an end and Sasol Oil was entitled to ask for their eviction from the premises.

[23]. Amrich, on the other hand, as the owner of the property, is entitled to an eviction order against an unlawful occupier on the basis of the *rei vindicatio*. An owner is entitled to reclaim possession of its property with the *rei vindicatio* and is required only to allege and prove: (a) ownership of the premises; and (b) that the respondent is in possession of the said

thing. Should the respondent claim a right to be in possession or occupation of the premises, the respondent must allege and prove such right. Accordingly, in *casu* the onus is on Bitline SA to justify its continued occupation of the premises in relation to Amrich as the owner thereof. This, Bitline SA has miserably failed to do, which, in my judgment spells the end of Bitline SA's case in opposition to the eviction application.

[24]. As correctly submitted by Mr Brett SC, who appeared on behalf of Amrich, together with Mr Kaplan, the *rei vindicatio* is available to an owner as a cause of action for the recovery of immovable property from whoever is in possession thereof whether or not the possession is *mala fide* or *bona fide*.

[25]. Bitline SA argued that, because of its right to possession to the site in terms of the Franchise Agreement, Amrich needed to assert its right against Sasol Oil. Mr Brett contended that this argument is misguided. I find myself in agreement with this submission. There is no contractual nexus between Amrich and Bitline SA and the Franchise Agreement between Bitline SA and Sasol Oil is irrelevant to Amrich's claim. Moreover, Amrich is entitled, as a matter of law, to proceed on the basis of the *rei vindicatio* against whoever is in possession of the site.

Other Defences raised by Bitline SA and Other Interlocutory Issues

[26]. Bitline SA has raised various other defences to the claim by Amrich. None of these defences has any merit and it is therefore not necessary for me to deal with them in any detail.

[27]. The most notable of the legal defences raised by Bitline SA relates to the fact that, according to Mr Venter, Counsel for Bitline SA, Amrich did not, in its founding papers, make out a case necessary to sustain its cause of action based on the *rei vindicatio*. There is no merit in this contention. In the founding affidavit, which was filed on behalf of both Sasol Oil and Amrich, the undisputed and unchallenged averment is made that Amrich is the owner of the property. In its answering affidavit, Bitline SA does not only not challenge this allegation, but it in fact also confirms it, which, in my view, makes that issue common cause between the parties on the papers. That, in my judgment, is the end of that legal point on behalf of Bitline SA.

[28]. Bitline SA's argument that the allegation relating to ownership of the property should have been made by Amrich itself and not by the deponent to the founding affidavit, who happens to be an officer of Sasol Oil, is equally devoid of any merit. The evidence to that effect was given by the deponent and there is no bar to a third-party giving evidence on behalf of a party, as was the case in *casu*. What is more, is that this fact is accepted by Bitline, which meant that this aspect was no longer in dispute between the parties.

[29]. The simple point is that Amrich, via the deponent to the founding affidavit, properly pleaded ownership of the property and, in addition, presented the supporting evidence in the form of the Windeed search report. Bitline SA's contention to the contrary is misguided, as is its reliance on the myriad of case authorities which require an applicant to make out its case in its founding papers. That is exactly what Amrich did.

[30]. Moreover, it cannot possibly be, as contended by Bitline SA, that the evidence relied upon by Amrich is inadmissible as being of a hearsay nature. Hearsay evidence which, according to a party, is inadmissible will only be disregarded if it is struck out on application. This is not the case in *casu*. And, as correctly contended by Mr Brett, there is not a blanket prohibition against hearsay evidence. In this application, the

facts

which arise from such evidence was, in any event, admitted by Bitline SA, which, I reiterate, became common cause on the pleadings.

[31]. For all of these reasons, it was not necessary, in my view, for Amrich to subsequently file an affidavit, confirming on its behalf what was said in the first and the second applicants' combined founding affidavit. Amrich however did so *ex abundanti cautela* and their approach in that regard cannot be faulted. Their application to file the confirmatory affidavit rather belated should therefore be granted. The opposition by Bitline SA to the application for leave to file the said confirmatory affidavit is ill-advised. All things considered, and especially having regard to the fact that the affidavit merely served to confirm what was already said indubitably in the founding affidavit, the application should be granted, and Amrich is therefore granted leave to file the said affidavit.

[32]. There is one last issue, which I need to deal with briefly and that relates to condonation applications by the various parties for late delivery of affidavits. The objections to these applications were somewhat muted and I am of the view that it would be in the interest of justice that such applications for condonation should be granted. I therefore grant such applications, with no costs orders relative thereto.

Costs

[33]. Accordingly, the relief sought by the applicant in the interdict application and by the first and the second applicants in the eviction application should be granted.

[34]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[2].

[35]. I can think of no reason why I should deviate from this general rule.

[36]. The applicants have also urged me to grant punitive costs orders against the respondents to show my displeasure with what is perceived to be an abuse by the respondents of the court processes in their opposition to the applications. I am not persuaded that a case is made out for punitive costs orders on the scale as between attorney and client.

[37]. I therefore intend awarding 'ordinary' costs against the respondents in favour of the applicants.

Order

[38]. Accordingly, I make the following order: -

- (d) The respondent shall pay the first and the second applicants' costs of this opposed application, such costs to include the costs consequent upon the utilisation of two Counsel, one being a Senior Counsel, where so employed.

L R ADAMS

Judge of the High Court of South Africa

Gauteng Division, Johannesburg

HEARD ON: 1st December 2023 JUDGMENT DATE: 11th December 2023 – judgment handed down electronically. FOR SASOL OIL (APPLICANT IN THE FIRST MATTER): Advocate Schalk Aucamp INSTRUCTED BY: DM5 Incorporated, Illovo, Johannesburg FOR THE AMRICH 58 PROPERTIES (SECOND APPLICANT IN SECOND MATTER): Adv J J Brett SC, together with Adv J L Kaplan INSTRUCTED BY: Hirschowitz Flionis Attorneys, Rosebank, Johannesburg FOR THE BITLINE SA 951 (FIRST RESPONDENT IN THE FIRST MATTER) AND THE SECOND RESPONDENT: Advocate J A Venter INSTRUCTED BY: Des Naidoo & Associates, Parktown, Sandton

[1] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012

(4) SA 593 (SCA) at para 18;

[2] *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

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Prepared on 12 October 2026 · Esheria