



**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

**Case No: 5778/2023**

In the matter between:

**HELTA BOERDERY (PTY) LTD** 1<sup>st</sup> Applicant

**AL MABROOR AGRI (PTY) LTD** 2<sup>nd</sup> Applicant

and

**DE VOS LANDGOED (PTY) LTD** 1<sup>st</sup> Respondent

**DOORBULT BEDRYWIGHEDE (PTY) LTD** 2<sup>nd</sup> Respondent

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**REASONS BY:** MHLAMBI, J

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**REASONS**

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[1] On 3 November 2023, I dismissed the applicants' application with costs and undertook to furnish the reasons for the order at a later stage. I proceed to do so.

[2] The applicants, both juristic persons, sought relief on an urgent basis on the following grounds:

1. That this application be heard as an urgent application in terms of the provisions of Rule 6(12) of the Uniform Rules of Court and that the forms and service provided for in the Uniform Rules of Court be dispensed with;
2. That the first applicant's peaceful and undisturbed control over the farm Nelsgift be restored by ordering the first respondent to remove any and all vehicles and equipment from the premises as well as any employees and/or representatives which they may have;
3. That the first respondent be interdicted forthwith from:
  - 3.1 In any way shape or form disturb the first applicant's peaceful and undisturbed control over the farms Nelsgift, Doornbult, Aangekocht and Apie Smith ("the Bultfontein Properties"), Bultfontein, Free State;
  - 3.2 Conducting any farming activities on the Bultfontein properties; and
4. That the interdict as set out in paragraph 3 above shall operate as an interim interdict until such time as the partnership between the second applicant and the first respondent is dissolved as envisaged in the relief sought in the application issued by the High Court of South Africa, Northern Cape Division, Kimberly, under case number 1574/2023;
5. That the first respondent be ordered to pay the costs of this application; and
6. Further and/or alternative relief.

[3] The application was opposed on two main grounds that:

- 2.1 The application lacked urgency and;
- 2.2 No factual basis was established for the granting of a spoliation order.

[4] Besides the founding affidavit, the applicants filed both a Rule 7(1) notice challenging the first respondent's attorneys' authority to act on behalf of the second respondent and a supplementary affidavit. The first applicant is a private company with its registered address at farm Aangekocht, Bultfontein Free State. The second applicant is also a private company with its principal

place of business situated at Block A, Unit A9, second floor, Octo Place 7 Elektron, Technopark, Stellenbosch. The first and second respondents are private companies with places of business at Farm Quaggasfontein, Terewa road, Colesburg Northern Cape and Farm Doornbult, Bultfontein, Free State respectively.

- [5] The second respondent has two shareholders, namely, the first applicant with a 50 (fifty) percent shareholding and Doornbult Landgoed (Pty) Ltd with the remaining 50 (fifty) percent shares. The applicant avers that Doornbult Landgoed has two shareholders holding 50 (fifty) percent shareholding each, namely, the second applicant and the first respondent.
- [6] The purpose of the application is contained in paragraph 11 of the founding affidavit which stated that the application was an urgent spoliation application in terms of which the first applicant sought to have its peaceful and undisturbed control and possession over the farming activities on the Bultfontein properties restored. Secondly, the application sought to obtain an interim interdict against the first respondent from interfering with and/or obstructing the first applicant's farming activities on the Bultfontein properties pending the dissolution of the partnership between the second applicant and the first respondent which is the subject of an application issued out of the High Court of South Africa, Northern Cape Division, Kimberly under case number 1574/2023.
- [7] According to the first applicant, the second respondent was established in 2020 in order to conduct farming activities on the four farms collectively known as the Bultfontein properties.<sup>1</sup> The arrangement between the shareholders of the second respondent entailed that the second applicant would provide funding which would be used to purchase crops, cattle feed and medical and pharmaceutical products while the first respondent would provide the necessary equipment needed for the backgrounding of the animals. The first applicant would be tasked to take care of the cattle and to conduct and maintain all the farming activities and crops on the Bultfontein properties.<sup>2</sup>

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<sup>1</sup> Paragraph 15 of the FA.

<sup>2</sup> Paragraph 17 of the FA.

- [8] The first applicant had peaceful and undisturbed control over the farming activities which included the backgrounding of the cattle and the farming of crops of the second respondent on the Bultfontein properties up until the 20<sup>th</sup> of October 2023 when the first applicant's control over the farming activities as well as the effective possession of the property were effectively frustrated by the conduct of the first respondent<sup>3</sup> when the latter's personnel unlawfully entered the farm Nelsgift, with a strip till ripper attached to a tractor.<sup>4</sup> They gained entry to the farm, by cutting the wire of a wired gate and laid the gate posts down in order for the tractor to drive over and on the property ripping up the ground with this trill ripper.<sup>5</sup>
- [9] At the end of the day, the first respondent's representatives fixed and reattached the broken fence and posts which were laid down but left the tractor behind. On Monday, 23 October 2023, the representatives returned and continued where they left off on Friday and successfully ripped a section of somewhat 130 hectares of the total 290 hectares available on the Nelsgift property.<sup>6</sup>
- [10] The first applicant then contacted its legal representatives who addressed a letter dated 23 October 2023 to the first respondent's attorneys, Messrs Dreyer and Dreyer Prokureurs, informing them of the activities on the farm and attempted to obtain an undertaking that the first respondent should desist from the unlawful activity and to restore the first applicant's control over the Nelsgift property.<sup>7</sup> The first respondent was requested to furnish this undertaking by the morning of Tuesday, 24 October 2023, at 09h00.<sup>8</sup> Should the first respondent fail to do so, the applicant would launch an urgent interdict to the High Court to reinstate its undisturbed possession over the Nelsgift property.<sup>9</sup>
- [11] It behoves to mention at this stage that the first respondent responded to this letter on 24 October 2023 and stated as follows:

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<sup>3</sup> Para 20 of the FA.

<sup>4</sup> Para 34 of the FA.

<sup>5</sup> Paras 35 and 36 of the FA

<sup>6</sup> Paragraph 38 of the FA.

<sup>7</sup> Paragraph 39 of the FA.

<sup>8</sup> Para 13 of the letter on page 51 of the Index.

<sup>9</sup> Para 14 of the letter.

- "1. Ons verwys na die bogenoemde aangeleetheid asook u skrywe gedateer 24 Oktober 2023.*
- 2. Ons bevestig dat ons kliënt vanoggend die slotte van die draaihek verwyder het en dus het u kliënt toegang tot die gronde van Plaas Nelsgift.*
- 3. U kliënt se reg tot toegang is 'n punt van kontensie en sal ons dit binnekort met u adresseer.*
- 4. Ons kliënt se regte om op 'n later stadium daarmee te handel word voorbehou."<sup>10</sup>*

The urgent application was filed and served on 31 October 2023 while the founding affidavit was deposed to on 26 October 2023.

[12] The first respondent submitted that the application was not urgent as the current issue pivoted on Doornbult Bedrywighede (Pty) Ltd and the fact that Helta Boerdery (Pty) Ltd had abandoned Doornbult Bedrywighede (Pty) Ltd.<sup>11</sup> The relationship between all the parties had come to an end months earlier and there was current litigation between the parties which involved an application in the Kimberley High Court.<sup>12</sup> Unlike the present application, that application was not proceeded with on an urgent basis even though the relief sought is based on the same allegations.

[13] The second respondent was registered to allow for a vessel through which it and the first applicant could take hands regarding farming activities on a number of properties. The first applicant and Doornbult Langoed were shareholders in Doornbult Bedrywighede holding 50 (fifty) percent shareholding each.<sup>13</sup> It was agreed between these parties that the first applicant would make payment of the income generated by their respective farming activities, including the income generated by cattle and grain farming. The income generated would be paid into the account of Doornbult Bedrywighede. The first applicant initially deposited the income generated by the first applicant's farming activities in the account of Doorinbult Bedrywighede<sup>14</sup> but this term of the agreement was breached in June to September 2023 when the first

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<sup>10</sup> Annexure A10 on page 60 of the Index.

<sup>11</sup> Para 3.1 of the AA.

<sup>12</sup> Para 3.2 of the AA.

<sup>13</sup> Para 3.4 of the AA.

<sup>14</sup> Para 3.5 of the AA.

applicant deposited the income generated by its farming activities into its own account instead of depositing it into the second respondent's account. This hailed the end of the relationship between the parties.<sup>15</sup> This coincides with the Kimberley application which was served on the first applicant (as a respondent) and the first respondent in September 2023.<sup>16</sup>

[14] The first respondent contended that the first applicant failed to make out a case for any *locus standi* as far as the spoliation application and the interdictory relief was concerned. On the other hand, the first applicant failed to provide facts to sustain the allegations of possession and control in its founding affidavit. The second respondent conducted all the farming activities on the Bultfontein properties and not the first applicant even though the employees and equipment of either the first applicant or the first respondent were utilised by the second respondent. Possession, as a requirement for spoliation, vested at all times with the second respondent and the first applicant is disqualified from applying for and obtaining relief as the applicant in the spoliation application.

[15] The applicant contended that despite the dispute between the other two shareholders of the second respondent, same did not preclude the first applicant from continuing with its responsibilities on behalf of the second respondent by maintaining control of the farming activities on the Bultfontein farms.<sup>17</sup> In fact, the existence of the dispute necessitated that the first applicant continued to maintain the farming activities of the second respondent until such time as the dispute is resolved and the relationship between the second applicant and the second respondent is properly resolved.<sup>18</sup> This proposition, it was contended, was supported by the second applicant who addressed a letter to the second respondent dated 13 July 2023.<sup>19</sup>

[16] In that letter, the following was, *inter alia*, stated:

“3. Ons bevestig verder dat ons instrukies is om die volgende op rekord te plaas:

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<sup>15</sup> Para 3.6 of the AA.

<sup>16</sup> Para 22 of the founding affidavit.

<sup>17</sup> Para 28 of the FA.

<sup>18</sup> Para 29 of the FA.

<sup>19</sup> Annexure “A6” on page 17 of the Index.

- a. *Ons kliënt is die eienaar van 50% aandele in Doornbult Bedrywighede (Edms) Bpk. Die balans van die aandele word deur Doornbult Landgoed (Bdms) Bpk besit. De Vos Landgoed (Edms) Bpk ("u Kliënt") en Al Mabroor Agri (Edms)Bpk besit op hul beurt weer elk 50% van die aandele in Doornbult Landgoed (Edms) Bpk.*
  - b. *Doornbult Bedrywighede (Edms) Bpk is betrokke by die boer van gewasse en bees op verskeie eiendomme, onder andere die plase bekend as Nelsgift, Apie Smith en Aangekocht. Hierdie eiendomme word gesamentlik na verwys as die Buultfontein eiendomme.*
  - c. *Ons kliënt was aangestel by ooreenkoms, van die meerderhed aandeelhouders in Doornbult Bedrywighede (Edms) Bpk, om die bedrywighede van Doornbult Bedrywighede (Edms) Bpk te behartig. In hierdie verband word u verwys na die skrywe van Al Mabroor (Edms Bpk op 13 Julie 2023 ter bevestiging van die bogenoemde.*
  - d. *Ons kliënt was, tot en met Vrydag 20 Oktober 2023, in vreedsame en ongostoorde besit van die Buultfontein eiendomme ter uitvoering van hul pligte teenoor Doornbult Bedrywighede (Edms) Bpk. Hierdie pligte sluit in die boer van beeste wat tans afhanklik is van die kos op die ou mielielande van die Nelsgift eiendom vir hul weiding.*
4. *Op Vrydag 20 Oktober 2023 om en by 09h30 het verteenwoordigers van u kliënt, ene Manie Muller en 'n ander persoon wie nie aan ons bekend is nie, die Plaas Nelsgift binnegetree sonder die toestemming van ons kliënt of enige ander regs geldige grond."*

[17] The letter dated 13 July 2023 provided amongst others, as follows:

*"tot en met hede is daar nog geen vordering gemaak mbt die oordra van Nelsgift na Doornbult Landgoed nie, ook ons poging om sekuriteit te verkry in vorm van 'n verband val ook op dowe ore. Ons bevestig voorts weereens dat enige winste wat AMA en DVL toekom op Doornbult Bedrywighede in 'n onafhanklike prokureur se trustrekening betaal word hangende die uitslag van die forensiese ondersoek.*

*Ons glo ook dat tot tyd en wyl die forensiese ondersoek afgehandel is, die bedrywighede voorgesit moet word in Doornbult Bedrywighede en behartig moet deur Helgardt, Tania en hul personeellede, sonder inmenging deur AMA en DVL. Hulle moet derhalwe toegelaat word om van die winste en opbrengste gelde te gebruik ten voordeel van die boerdery en derhalwe nou toegelaat word om die Doornbult lande en Nelsgift voor te berei vir die komende plant seisoen. Ons glo dis in alle partye se belang dat die plaasvind hangende die uitslag van die forensiese ondersoek uitslag.*

Ons sal ook vir Helgardt en Tania verwittig hiervan en indien hul toestem sal die nodige meerderheids besluit in Doornbult Bedrywighede daar wees om sodoende voort te gaan.”

- [18] Unlike the applicants' contention that it continued with farming activities peacefully and undisturbed as mandated by the majority shareholders, the two letters mentioned above are conflictory on this point. The letter of 20 October 2023 seeks support from the one of 13 July 2023, which it fails to find. It is clear that no resolution was reached around 13 July 2023 to place the first applicant in undisturbed possession of the Nelsgift property. Even if there was such a resolution, it did not refer to the first applicant. What is evident in the letter of 13 July 2023, is a suggestion by the second applicant to approach Helgaardt, Tania and their personnel to assist with the activities in the second respondent pending the outcome of the forensic result. This has a bearing on the type of the alleged control and undisturbed possession that the first applicant enjoyed. What is evident from the correspondence is an endeavour to approach individuals, and not a *juris persona* for assistance pending the outcome of the forensic audit.
- [19] On the contrary, it appears to me that the applicants wished to use this matter to bolster the Kimberley case. It is also mindboggling why, despite the first respondent's letter of 24 October 2023, the applicants chose to proceed with an urgent application hardly two days thereafter. This justified a removal of the case from the roll for lack of urgency as there was no urgency at all at that stage.
- [20] The contents of paragraph 3.8 of the answering affidavit were not fully grappled with by the applicants. According to the first respondent, the applicant and the first respondent were invested in a company known as Jamela which was used to rent out heavy equipment to, amongst others, the second respondent. Jamela provided services to the second respondent which included ripping and harvesting services to the second respondent which in turn conducted farming activities on Nelsgift. The first applicant did not have a link to Nelsgift apart from its link to its shareholding in the second respondent. The second respondent was the one doing the farming on the four properties and not the first applicant.



[22] In these circumstances, it can never be said that the first applicant was in undisturbed farming activities on the farm Nelsgift. Furthermore, the first respondent complied with the first applicant's request as embodied in its letter of 24 October 2023. The first applicant has failed to show that the requisites of an interim interdict have been proven. The first applicant contends that it will be of paramount importance that its control over the Nelsgift be restored from any future interference by the first respondent on an urgent basis based in light of the dispute in the Kimberly application under case number 1574/2023 as it would be prudent to do so. It is therefore clear to me that the provisions of Rule 6(12) of the Uniform Rules of Court relating to the urgency are not applicable to this case and the conduct of the applicants boils down to an abuse of the court process. I was therefore, unable to concede to the applicants' prayers in the notice of motion and dismissed the application with costs for lack of substance.

These are my reasons.

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**MHLAMBI, J**

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