



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 24/000484

- | | |
|-----|---------------------------------------|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES / NO |
| (3) | REVISED: YES/NO |

__25 January 2024__

DATE

SIGNATURE

In the matter between:

RHEINLAND FILLING STATION (PTY) LTD

FIRST APPLICANT

CACCIATORE (PTY) LTD

SECOND APPLICANT

PREMIBIX (PTY) LTD

THIRD APPLICANT

PREMITPYE (PTY) LTD

FOURTH APPLICANT

TEXEALISPEX (PTY) LTD

FIFTH APPLICANT

and

LAZARUS SALAE MPHOSI

FIRST RESPONDENT

JOHN SIDIPA MPHOSI

SECOND RESPONDENT

**MORRIS POGRUND N.O AND
LIMARI LOMNARD N.O**

THIRD RESPONDENT

BOTTOM LINE TRADING 19 CC

FOURTH RESPONDENT

JUDGMENT

SIWENDU J

[1] This urgent application served before the Court on 12 January 2024. The applicants sought a *mandament van spolie* and an interim interdict against the first and second respondents to restore the possession of several fuel service stations with their accompanying retail convenience stores at 92 of the 94 sites operated by the applicants. The petrol service stations are located across the provinces of Limpopo, Gauteng, Mpumalanga, Free State, Northwest, Eastern Cape, and KwaZulu-Natal. On 12 January, I granted the applicants the order, with reasons to follow. These are the reasons for the order.

[2] The applicants are Rheinland Filling Station (Pty) Ltd, Cacciatore (Pty) Ltd, Premibix (Pty) Ltd, Premitype (Pty) Ltd, and Texalispex (Pty) Ltd respectively. Ms Modistwi Cinderalla Ramokoto (Ms Ramokoto), as the sole director and shareholder of the applicants disposed to the founding affidavit on their behalf.

[3] The First Respondent is Mr Lazarus Selae Mphosi (Mr Mphosi) an adult male businessman. The Second Respondent is Mr John Sidipa Mphosi (Mr Mphosi Snr), a businessman based in Limpopo. They will be collectively referred to as the respondents.

[4] Mrs Ramokoto and the respondents are consanguine. Mr Mphosi Snr is her father and Mr Mphosi her brother. Her other sibling, Mr Theophilus Ramokokono Mphosi, died on 5 June 2022 (the deceased). The deceased is survived by his wife, Mrs Reilly Mphosi (Mrs Mposi). Mrs Mphosi is the sole heir of the deceased's estate. In the context of this judgment, I refer to all of them as the Mphosi family.

Background

[5] The background to the application is as follows: The Mphosi family owns and operates a multibillion rand business involving approximately 145 service stations excluding other businesses. Mr Mphosi Snr is the Chairman of the Mphosi family business, known as the Rheinland Group. The petrol service station business is organised in the following manner:

- a. Rheinland Investments CC (Rheinland) is the licensed fuel wholesaler under the Petroleum Products Act 120 of 1977 (PPA). It supplies fuel to all the service stations with the Mphosi family business. Mr Mphosi is the only member.
- b. Rheinland trades as Global Oil and is the proprietor of the Global Oil Trademark registered in 2013.

- c. Bottom Line Trading 19 CC (Bottom Line CC) is the licenced site holder. The deceased was its only member. All fuel stations are operated by Bottom Line. Bottom Line currently operates 114 fuel stations.
- d. All income from the fuel stations was considered as the income of Bottom Line CC. Until the death of the deceased, the income was not paid into Bottom Line CC, but it was paid into bank accounts held in the name of two vehicles, Tigrarox or Compretox.
- e. Compretox (Pty) Ltd [Registration No. 2010/006144/07], which was registered on 29 March 2010 (Compretox).
- f. Tigrarox (Pty) Ltd [Registration No. 2016/44174/07], which was registered on 17 October 2016(Tigrarox). It is not clear from the papers who the shareholders of Compretox and Tigrarox are.

[6] Mrs Ramokoto, an accountant, entered the Mphosi family business full-time in 2017. She became responsible for its financial operations including the fuel retail sites operated by Bottom Line CC. Although there is some disagreement about whether the exit of Mr Mphosi from the family business was perfected, it appears to be common cause that in 2020, Mr Mphosi voluntarily left to pursue his own business interests.

[7] Mrs Ramokoto alleges that after the death of the deceased, the family agreed to split the retail fuel sites between four legal entities until an agreement was reached about their future conduct. She states that:

‘[I]n accordance with the agreement reached between the first and second respondents and me, the businesses operated at the sites were transferred into the names of the applicants from some of the legal entities ... over the course of the latter part of 2022.’

These sites were reflected in the spreadsheet attached to the application papers and are the subject of the application.

[8] Mrs Ramokoto claims further that the applicants managed and operated the service stations “to the exclusion of the respondents” since September 2022 and earlier in respect of some, pursuant to the family agreement. Each of the applicants operates as a separate legal person. Each applicant has a bank account for the respective sites. In some instances, there were two bank accounts catering to the convenience stores and forecourts respectively, each

applicant is the employer of the employees at the sites where each respective applicant operates the business. Each also files separate legal financials with South African Revenue Services (SARS), and the respective bankers are filed as is expected. The applicants employ people in the respective operations and file separate returns for PAYE. The arrangement has endured for approximately thirteen months.

[9] On 23 December 2023, while out of the country, she received information that on 22 December 2023, Mr Mphosi Snr called a meeting of all area managers and issued instructions to each of them to divert the cash receipt procedures and practices previously in place by (a) depositing the cash received in manual safes instead of the pre-existing electronic safes; (b) changing Speed-Point machines used for processing card transactions and installing different ones; (c) diverting the bank usually utilised for cash deposits to a bank the applicants cannot access. Engagements with Mr Mphosi Snr came to naught. Overall measures taken in her absence to restore possession failed except in respect of two sites.

[10] On her return, from the 29th of December 2023, she took further measures to secure certain sites to restore possession, by substituting the newly installed Speed-Point machines but succeeded only in respect of two sites. She employed an alternative security company to secure the fuel stations. Tension, threats of violence, and intimidation arose leading to a criminal investigation. On 3 January 2024, she instructed her current attorneys to bring the urgent application.

[11] Mrs Ramokoto claims that the clearest indication that the respondents persist with spoliation is from a letter dated 6 January 2024, received from the respondent's attorneys which states that:

'8. The operator of the filling stations being Bottom Line is entitled to receive the revenue as Bottom Line previously resolved to receive income through special purpose vehicles namely Premibix Pty Ltd with company registration number 2017/084647/07 and Premitype Pty Ltd with company registration number 2017/093720/07. Notwithstanding the above, Bottom Line has resolved to receive funds in its own bank account which decision was taken by the executor who is the sole member of Bottom Line.

9. Accordingly, under no circumstances does Ms Ramokoto have any right to interfere with the retailing operations and revenue from any Global sites which was operated under the auspices of Rheinland and Bottom Line. This includes the fact that Ms Ramokoto has no power or authority to issue instructions or demands to any person employed in any capacity whatsoever on the Global sites concerned.

10. We also advise that any Employee who does not follow the instructions of Mr Lazarus and who diverts any funds to Ms Ramokoto, will be causing a loss of those funds to the rightful owners of such funds, more in particular the Executor of Mr Theo's Estate, Ms Limari Lombard and other Beneficiaries entitled thereto.

11. Ms Ramokoto, we wish to caution you against interfering with our client's business activities and/or its Employees, directly or indirectly and your intimidatory tactics will not be countenanced. ...'

[12] The urgent application was opposed by the respondents in an affidavit deposed to by Mr Mphosi, also on behalf of Mr Mphosi Snr. They (a) challenged the urgency of the application, and (b) contended a material non-joinder of Bottom-Line CC, Rheinland, and the Executors, whom they contend have a direct and substantial interest in the subject matter of the urgent application and relief. They also sought the leave of the court to admit a further affidavit to place further facts before the Court in response to the replying affidavit. The Court exercising its discretion admitted the further affidavit to ameliorate the complaint about the urgency and truncated period and decide the application of full facts.

[13] The respondents deny that the Applicants were "in undisturbed possession (or any other type of possession) and/or control of any of the alleged fuel retail sites, nor were they unlawfully or otherwise deprived of such possession." According to Mr Mphosi, Mrs Ramokoto's involvement with the Mphosi family business, is that of a salaried employee of Rheinland, engaged as "its bookkeeper or head of account as she is a qualified accountant." He claims that the application is an attempt to "high jack" the petrol stations and to usurp Bottom Line CC's business. It is said the application is aimed at diverting the income of fuel stations operated by Bottom Line CC to the Applicants.

[14] Premised on the merits about ownership, it is said the applicants have not produced "a single retail licence certificate" pertaining to the service station other than in respect of two of these. Materially, they contend that a spoliation order would amount to an illegality. Only the holder of a fuel retail licence (or a person or entity who manages such operation on behalf of the licence holder) is entitled to the revenue. They submit that all the staff who run these sites are employed by Bottom Line or Rheinland and remain so employed. Their salaries are paid by either Bottom Line or Rheinland.

[15] Mr Mphosi confirmed that the Mphosi family decided that Mrs Ramokoto would, in addition to her day-to-day responsibilities, temporarily be charged with the business

operations of Bottom Line CC. He accepted that there was indeed a family agreement to utilise the third and fourth applicants to “serve as conduits into which the revenue generated from the fuel stations would be deposited. He stated in this regard:

‘After Theo's death and during August 2022, the Mphosi family, which included Mphosi Sr., Reilly, Cindy and I, met and decided that as an interim measure, that all Bottom Line's revenue would be paid into accounts held in the names of the Third and Fourth Applicants. Cindy was aware and it was always agreed that Bottom Line's funds would later be paid into accounts nominated by it.

....

The Mphosi family, including Reilly are part of the Lemba religion, which provides that a surviving spouse is obligated to mourn for a period of 6 months after a spouse's death. This meant that Reilly could not be involved in any of the business dealings of the Rheinland Group for a period of 6 months. As appears below, various meetings were arranged with Cindy, which include meetings for 30 October 2023 and again on 10 November 2023, the purpose of which was to discuss changing the interim arrangement in order for all Bottom Line's revenue to be paid into accounts held by Bottom Line and not into the accounts held by the Third and Fourth Applicants. Cindy attended the 30 October 2023 meeting where this was conveyed to her. Cindy never attended the 10 November 2023 meeting.’ [Emphasis Added]

[16] Mr Mphosi claims that Mrs Ramokoto was uncooperative in implementing the decision to change the interim arrangement. Bottom Line CC changed the speed points or points of sale devices in all the fuel stations operated by it. It arranged for all cash generated by such fuel stations to be collected and deposited into Bottom Line's bank account. The decision was implemented on 23 December 2023.

[17] In her replying affidavit, Mrs Ramokoto disputed that there was a change in the arrangement. She stated that on 1 October 2023, the respondents met with her and her younger sister, Maude. Mr Mphosi Snr suggested “they split the businesses, in the following proportions: 40% to the second respondent, 20% to Maude, 20% to her, and Reilly 20%.” She requested an adjournment to think about this suggestion.

[18] Mrs Ramokoto's version is that when they met on 30 October 2023, she informed them she preferred to retain the status quo. No decision was taken. They were due to reconvene on 10 November 2023, but the meeting did not materialise. Post-mortem results revealing that the deceased had been poisoned, came to hand. She had to meet with the

police. She denies she was informed of the decision to remove the operation of the sites from the applicants.

[19] Although the question of ultimate ownership is in dispute and has not been resolved, it is not a deciding factor on whether to grant relief. The respondents contend that the revenues belong to Bottomline Line CC as the retail licence holder of the sites. It bears mentioning that the further affidavit by Mr Mphoko makes common cause with Mrs Ramokoto, that at some point, the revenues belonging to Bottom Line CC we paid to different entities, Tigrarox or Comprebox, ostensibly on behalf of Bottom Line CC.

Intervention

[20] Mr Pogrund N.O and Ms Lombard N.O are attorneys of the firm Kampherbeek, Twine & Pogrund of Polokwane. They are the joint Executors of the estate of the deceased. Since they oversee the affairs of the deceased, they have been registered as members of Bottom-Line CC. They sought the Court's leave to intervene as the third and fourth respondents.

[21] It is common cause that apart from being the site licensee, Bottom Line CC operated all the service stations forming part of the Mphosi family business, until the agreement in *casu*. Although I have found that no relief is sought against Bottom Line CC or its Executors in this application, I granted the intervention application. Bottom Line CC and the Executors have an interest in the subject and outcome of the urgent application.

Jurisdiction

[22] Even though they sought to be joined in the urgent application, the Executors and Bottom Line CC objected to the jurisdiction of the court, necessitating that this be disposed of first.

[23] Although the registered address of the applicants is in Polokwane, Limpopo, and Mr Mphosi Snr is in that jurisdiction, the service stations are in more than one province. Mrs Ramokoto resides in Roodepoort. Mr Mphosi resides in Hyde Park, Johannesburg. All of them are within the jurisdiction of the court. Section 21(1) of the Superior Courts Act 10 of 2013 (the Act) provides that a "division has jurisdiction over all persons residing or being in and in relation to all causes arising and of all offences triable within its area of jurisdiction ...".

[24] On 6 January 2024, the first and second respondents' attorney David de Agrella consented on their behalf to the jurisdiction of this court. Our law is clear that when a party consents to a court's jurisdiction, it does not oust the jurisdiction of another competent court.

Non-Joinder

[25] The non-joinder of Bottom-line CC and the Executors of the deceased estate were overtaken by the intervention application and the order. The argument for the joinder of Rheinland is that it has a direct and substantial interest in the relief sought because:

- a. Rheinland is the holder of the headlease of virtually all the fuel stations falling within the Rheinland Group.
- b. Any order will directly affect the rights of Rheinland in that the lessee in terms of the headleases held by Rheinland will change, and this directly affects the rights of Rheinland in terms of its headlease.
- c. All the fuel stations trade under the name "Global Oil", of which Rheinland is the proprietor. Any order made will affect the rights of the proprietor of the trademark as the effect will be that an unlicensed entity will be using its trademark.

[26] The test of whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In *Gordon v Department of Health: KwaZulu-Natal*¹ the court held that if an order or judgment cannot be sustained without necessarily prejudicing the interests of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined.

[27] Although it is correct that Rheinland is amongst the parties that have an interest in the unfolding dispute, the first and second respondents are its alter-ego. Its non-joinder is not fatal at this stage. As it will be demonstrated, the nature of the relief sought is discrete and directed at the conduct of the first and second respondents. The Court order is not in any way directed at nor will it impact any of the rights of Rheinland. Its non-joinder would be material in the action contemplated by the applicants.

Urgency

¹ *Gordon v Department of Health: Kwazulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA).

[28] The respondents dispute the application is urgent. Although they do not dispute that Mrs Ramokoto was out of the country on 23 December 2023, when the spoliation occurred, they claim that she was aware of the facts and conduct complained of from that date. They submit that she delayed bringing the application. The third and fourth respondents, on the other hand, submit that since the applicants are not license holders, the case lacks merit as the applicants have no protectable right or interest.

[29] Urgency involves the exercise of judicial discretion by a court concerning which deviations it will tolerate in a specific case. It does not only relate to a threat to life or liberty. The urgency of commercial interests may justify the invocation of subrule 6(12) no less than any other interests.² The applicants must show why they will not be afforded substantial redress in due course.

[30] In *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*³ the court held that:

‘The nature of the prejudice an applicant will suffer if they are not afforded an urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the spoliated person acts promptly, the matter will nearly always be urgent. The urgency does not arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession.’

[31] It is common cause from the papers that the act of spoliation took place on 23 December 2023 when Mrs Ramokoto was out of the country. Although the respondents say it was an implementation of a decision taken in November 2023, (a matter I return to later) it is not clear why it was implemented more than a month after it was allegedly taken. The change was without forewarning.

[32] She took measures to resolve the issues and engaged the second respondent without avail. She sent one of the managers to several sites on 24 December 2023 to remove speed points delivered by the first and second respondents. She failed. She was only able to take measures to secure possession immediately on her return. These measures failed. The attempt to try and resolve a dispute prior to bringing the urgent application or resort to litigation cannot be considered dilatory.

² See Harms *Civil Procedure in the Superior Courts Service* 78 (2023); and *Loghdey v Advanced Parking Solutions CC and Others* [2009] ZAWCHC 15; 2009 (5) SA 595 (C) at para 21.

³ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* [2023] ZAGPJHC 846.

[33] The clearest intention yet that the respondents intend proceeding with their unlawful conduct, came on 5 January 2024 by way of the letter addressed by the second respondent to employees. She had by this time issued instructions to her attorneys to bring the urgent application. On these facts, I find that the delay is fully explained, reasonable, and not self-created.

[34] As I see it, this matter involves a family dispute that implicates a substantial business, part of which generates multibillion rands in revenue. The family business serves the public across more than one province. It has several employees. After attempts to restore the status quo, there were acts of aggression and intimidation which were reported to the South African Police Services (SAPS). They attended at some of the premises and successfully subdued the aggression. The above factors as well as the spoliation relief sought prompted the Court to exercise its discretion to hear the application.

The Spoliation

[35] A spoliation relief is designed to prevent self-help and thus vindicates the rule of law. It is the foundation for stability of an orderly society and it ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The merits and demerits of ownership or right to title, partly the basis for the opposition raised by the respondents do not come into play in the consideration of whether to grant the relief at this stage⁴.

[36] The court in *Administrator of Cape of Good Hope and Another v Ntshwaqela and Others*⁵ as follows:

‘It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the court will summarily restore the status quo ante, and will do that as a preliminary to any inquiry or investigation into the merits of the dispute.’

[37] To obtain the order, the applicants must show on balance of probabilities that (a) they were in peaceful possession and (b) that they have been unlawfully deprived of peaceful possession. The applicants reiterate a trite legal position that good title is irrelevant in a claim

⁴ *Yeko v Qana* 1973 (4) SA 735 (A).

⁵ *Administrator of Cape of Good Hope and Another v Ntshwaqela and Others* [1989] ZASCA 167; [1990] 2 All SA 34 (A).

to spoliatory relief which arises solely from an unprocedural deprivation of possession.⁶ A spoliation order thus protects the physical possession not the underlying right to possession⁷. If granted, it is final in effect. On the strength of these principles, the first question is whether the applicants had physical possession of the service stations which were wrongfully dispossessed by Mr Mphosi and Mr Mphosi Snr.

[38] The first and second respondents sought to suggest that the applicants were never in possession. Yet Mr Mphosi confirmed the decision to entrust Mrs Ramokoto to oversee and conduct the operations. He also confirmed the agreement to use the third and fourth applicants to receive the revenues from the service stations. Mrs Ramokoto supported the claim that the applicants had possession with proof of bank statements of the applicants for the last six months and the payroll for the sites. These were furnished in response to rule 35(12) made available during the application. These bank statements reveal that revenues from several service stations streamed into these bank accounts. Mrs Ramokoto as the sole director and shareholder in the third and fourth respondents was not a mere employee in relation to the operations. On the other hand, the allegation by Mr Mphosi that Bottom Line CC paid employees was supported by information dating January 2024, after the spoliation. There is no evidence that Bottom Line CC did so during the period Mrs Ramokoto claims possession.

[39] The next question relates to wrongful dispossession, which is not hotly contested in my view. This is demonstrated by the instructions issued to the managers of the sites and the removal of equipment therein. When Mrs Ramokoto called in the quest to restore the equipment and to withdraw the instruction, Mr Mphosi Snr confirmed issuing it. This version was not denied but justified as an instruction of Bottom Line CC.

[40] The respondents did not dispute that they issued an instruction to enter the various sites and physically removed pre-existing speed-point machines previously used for the business. They placed alternative speed-point machines and manual safes instead of the electronic ones, previously in place. All the equipment removed related to the conduct and operation of the service stations. It was previously in the possession of the applicants. It was substituted with different equipment. The applicants did not consent to this.

⁶ *Street Pole Ads Durban (Pty) Ltd v eThekweni Municipality* [2008] ZASCA 33; [2008] 3 All SA 182 (SCA).

⁷ *Dennegeur Estate Homeowners Association and Another v Telkom SA SOC Ltd* [2019] ZASCA 37; 2019 (4) SA 451(SCA) at paras 9 and 10.

[41] It was contended that an order restoring position ante would be unlawful and in breach of the PPA. The answer to this defence is the court's decision in *Ivanov v North West Gambling Board and Others*⁸ where it was held that:

'Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant — that is why possession by a thief is protected. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant, as that would go to the merits of the dispute.'

[42] The submission is also gainsaid by the fact although Bottom Line CC was the site licensee, until the deceased's death, income derived from the fuel stations was paid into bank accounts held in the name of Tigrarox or Compradox.

[43] Whatever the legality, validity, or the terms of the underlying causa for the arrangement were, they are not a primary consideration at this stage. Applying the Plascon-Evans rule the first and second respondents confirmed the version advanced on behalf of the applicants that they have been trading without any disturbance for the last 13 months up until 22 December 2023. Specifically, the arrangement, including the payment of proceeds to the third and fourth applicants was admitted by Mr Mphosi. The only point of difference is that Mr Mphosi says it was a temporary arrangement, while Mrs Ramokoto says it was until the future conduct of the business was agreed upon. These differences do not belie possession.

[44] Although it is said Bottom Line (as represented by the executrix and Reilly) resolved to make payment of all its funds into accounts held by Bottom Line at Nedbank, there was no resolution filed by Bottom Line and or its Executors of Bottom Line CC to this effect, nor evidence of termination of the arrangement from Bottom Line CC to the applicants. The purported redirection of the revenue belonging to Bottom Line CC flows from the dispossessive act of removal of the speed-point machine by the first and second respondents. The opposition by the Executors does not reveal that the conduct by the first and second respondents was at their instruction or behest.

[45] Accordingly, I find that a case for a spoliation order against the first and second respondent succeeds.

⁸ *Ivanov v North West Gambling Board and Others* [2012] (6) ZASCA 92; 2012 (6) SA 67 (SCA) A at para 19.

Interim Interdict

[46] The applicants seek an interim interdict to prevent the first and second respondents from further unlawful conduct. Given the spoliation order, the above facts are relevant and are relied upon for the interim interdict.

[47] The requirements for an interim interdict are well established, the applicants must advance a *prima facie* case even if open to some doubt.⁹ The applicants have established *prima facie* right to operate the sites based on the undisputed arrangement with family members. Again, here the issue is not about the definitive ownership of the service stations.

[48] Next is the requirement for a reasonable apprehension of harm. The respondents have not given an undertaking to refrain from their wrongful action. On the contrary, it is clear from the facts that the harm that has already occurred will continue, negatively affecting the applicants and the employees across the sites, potentially the business. The applicants have shown that they conduct and have assumed ongoing business statutory obligations flowing from the operations. It will be difficult to restore the status quo at a later stage. Accordingly, the apprehension of harm is reasonable and continuing.

[49] As was made plain in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,¹⁰ the absence of substantial redress is not the same as the showing of irreparable harm before the granting of an interim relief and is something less. Flowing from the spoliation order, in my view the balance of convenience favours the applicants. The conduct of the first and respondents shows there is no alternative remedy, and the Court's discretion is exercised in favour of the interim relief, granted in the light of the spoliation to prevent further harm.

[50] It bears emphasising again that the interim interdict is solely directed at the unlawful conduct, of the first and second respondent. It does not in any way detract or deprive the lawful owner/s of the sites from taking legal measures to assert and enforce its/their contractual rights relating to the right to trade at and/or ownership of the sites. It does not

⁹ The test requires that an applicant establishes the following prerequisites: (a) a *prima facie* right even if it is open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted; (c) the balance of convenience must favour the grant of the interdict and (d) the applicant must have no other remedy. See also in this regard: *Setlogelo v Setlogelo* 1914 AD 221; *Erikson Motors (Welkom) Ltd v Protea Motors, Warrenton and Another* [1973] 4 All SA 116 (A); 1973 (3) SA 685 (A) at 961C; and *Economic Freedom Fighters and Others v Manual* [2020] ZASCA 172; [2021] 1 All SA 683 (SCA).

¹⁰ (11/33767) [2671] ZAGPJHC at paragraph 7

detract from the duty of the Executors to fulfil their statutory obligation to administer the affairs of the deceased's estate.

[51] With regards to the costs of the urgent application, they must follow the result, and the first and second respondents are ordered to pay the costs of the applicants, including the costs of two counsel. In so far as the intervention application, the third and fourth respondents despite their intervention made no real contribution to the disputed issues. Accordingly, it is corrected that they be ordered to pay the costs of the intervention application.

[52] In the result, the following order was granted:

1. Leave is granted to Morris Pogrud NO, Limari Lombard NO and Bottom-Line Trading 19 CC to intervene in the application as Third and Fourth Respondents respectively.
2. The Court has jurisdiction over the applicants, the first and second respondents (the parties) as the subjects of this order.
3. The rules relating to service and time periods are dispensed with and this application is disposed of as one of urgency, in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court.
4. The applicants are forthwith restored to possession of the businesses operated by them as at 21 December 2023 at the 95 (ninety five) sites identified on annexure "FA2" to the founding affidavit, including the ability to receive all the income generated by such businesses on a daily basis.
5. The first and second respondents are ordered to forthwith and immediately upon the granting of the order and to give effect to the order instruct all the area managers of Global Oil and each of the site supervisors at the sites:
 - 5.1 that the second respondent's letter of 5 January 2024 is withdrawn.
 - 5.2 to restore the applicants to the position ante with regards to the possession of the businesses conducted at the sites.
 - 5.3 to cease using the Speed point machines the first and second respondents had placed at the sites since 22 December 2023.
 - 5.4 to store, manage and handle the cash received from customers at the sites in the

manner it was so stored, managed and handled prior to the respondents' intervention and instructions issued on 22 December 2023.

6. The first and second respondents are to remove from each of the sites the Speed point machines and any safes they had installed thereat from 22 December 2023 to date, within 48 (forty eight) hours of the order.
7. The first and second respondents are interdicted and restrained from issuing any instructions to any staff, embarking on any conduct, or taking any actions which are designed or may have the effect of interfering in the applicants' operation of the sites.
8. The interdict referred to in paragraph 5 above is interim in nature and remains in force and effect pending the finalization of an action to be instituted by the applicants within 20 (twenty) days in which repayment of the monies collected at the 95 sites referred to above between the period of 22 December 2023 and the date on which possession of the sites is restored to the applicants is sought, together with declaratory relief as to the applicants' right to trade and operate the businesses on all sites.
9. In the event of the applicants failing to institute the action envisaged in paragraph 6 above within 20 (twenty) days of this order, the interim interdict referred to in paragraph 5 above will lapse and be of no further force and effect.
10. The above orders do not detract or deprive the lawful owner/s of the sites from taking legal measures to assert and enforce its/their contractual rights relating to the right to trade at and/or ownership of the sites.
11. The first, second, third and fourth respondents are to pay the costs of the applicants jointly and severally, the one paying the other to be absolved, including the costs of two counsel, where so employed.
12. The third and fourth respondents are ordered to pay the costs of the intervention application, which shall be limited to costs of one counsel.

NTY SIWENDU
JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment is handed down electronically by circulation to the Applicants and the Respondents' Legal Representatives by e-mail, publication on Case Lines and release to SAFLII. The date of the handing down is deemed to be 25th of January 2024

Date of hearing: 12 January 2024
Date of the Order: 12 January 2024
Date of delivery: 25 January 2024

Appearances:

For the Applicants: Advocate Cassim SC
With him: Advocate Freese
Instructed by: LM Attorneys

For the first and second Respondents: Advocate South
With him: Advocate Coetzee
Instructed by: De Agrella Attorneys

For the third and fourth Respondents
(the intervening parties): Adv Savvas
Instructed by: Murray Kotze and Associates