

IN THE HIGH COURT OF SWAZILAND

CIV. CASE 2714/96

In the matter between

GREYHOUND RACING INTERNATIONAL (PTY) LTD Applicant

and

GAME SUPERMARKET (PTY) LTD 1st Respondent

DEPUTY SHERIFF (H.F. LONG) 2nd Respoondent

CORAM : MAPHALALAA J

FOR THE DEFENDANT: MR. L.K. KHUMALO

FOR THE PLAINTIFF: MR. S.V. MDLADLA

RULING ON URGENT APPLICATION

23RD MAY 1997

This is an urgent application brought to court with a certificate of urgency on the 23rd May 1997. Seeking an order in the following terms:

- 1) Dispensing with the usual forms and procedures relating to the institution of the proceedings and allowing this matter as a matter of urgency;
- 2) That the first and second respondents be barred from ejecting or closing the premises of the applicant pending the hearing of the application to staying the ejectment of the applicant from the premises on the 30th May of 1997.

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- 3) That the respondent pay costs of this application.
- 4) Further alternative relief.

The application is supported by the affidavit of Adheesh Maharaj the director of the applicant.

Mr Mdladla in support of the applicant's case submitted that the applicant's business was closed by the Deputy Sheriff (A.F. Long) on the 22nd May, 1997 and that the applicant's business has ceased to operate. Some of the machinery in the premises is on lease and applicant is paying for it. He argued further that the machinery in the premises is delicate and would need specialist to remove it and as such applicant needs up on the 30th of June 1997, so that it may move out without damaging any of its equipment. He submitted, further that the 1st respondent cannot suffer any prejudice. Reference was made to the case of BEHL CONSTRUCTION AND DEVELOPMENT CO. LTD VS DENIS HEENAN (CIVIL CASE NO 753/87) to the proposition that a court can stay an order for ejectment on certain conditions.

Mr Khumalo for the 1st respondent submitted that they were served with papers late to file opposing papers. He argued on questions of law raised, by applicant's papers. Mr Khumalo's submissions on points of law are two-pronged. To capsule respondents submission an arguement was advanced that

there is no urgency in this matter and secondly that the sheriff has already ejected the applicant, thus, the

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court cannot be called upon to interdict the respondent for an act it has already done. Mr Khumalo went further to outline in great detail that the applicant has failed to fulfill all the prerequisites for a final or an interlocutory interdict (See "THE LAW'S PRACTICE OF INTERDICTS - C.P. PRESY)

The brief facts of the matter are as follows. On the 1st November, 1996, the first respondent caused summons to be issued against the applicant for an order cancelling the agreement of lease which existed between applicant and 1st respondent. 1st respondent also prayed for an order for ejection of the applicant from the premises. The summary judgment was subsequently granted in favour of the 1st respondent. Subsequent to that order applicant moved an application before the court staying the warrant of ejection from the premises until the 30th June, 1997 and this applicant is to be heard on the 30th of May 1997.

I will deal with the question of urgency first. It is my considered view, that the facts advanced do not justify that the matter is urgent. The warrant of ejection was issued on the 5th March 1997 and from that time the applicant knew that it was to vacate the premises, they come to court on the 22nd May, 1997 and say the matter is urgent. I am not persuaded by the applicant's submission in this regard.

Now I come to the question of whether the court can issue an order in terms of prayer 2 of the applicant's notice of application, viz that the 1st and the second respondent be

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barred from ejecting or closing the premises of applicant pending the hearing of the application to stay the ejection of applicant from the premises on the 30th May, 1997. It is common cause that applicant has already been ejected from the premises. The court is asked to make an order to interdict an act which has already been done. The court will not grant an interdict restraining an act already committed for the object of an interdict is the protection of an existing right (See MAEDER V PERM-US (PTY) LTD CPD 208 AND CONDE NAST PUBLICATIONS LTD V JAFFE 1951(1) S.A. 81 (C)). The present application is totally misconceived.

For the reasons I have outlined I dismiss the application with costs.

S. B. MAPHALALA

ACTING JUDGE