

# **IN THE HIGH COURT OF SWAZILAND**

**HELD AT MBABANE**

**CIVIL TRIAL 391/2009**

**In the matter between:**

**P.K. MSIBI & ASSOCIATES**

**Applicant**

**And**

**NTFULINI INVESTMENTS (PTY) LTD**

**Respondent**

**Date of hearing: 4 February, 2009**

**Date of Judgment: 4 February, 2009**

**Mr Attorney P. Msibi for the  
Applicant No appearance for the  
Respondent**

## ***EX TEMPORE JUDGMENT***

### **MASUKU J.**

[1] This is an urgent application moved by the Applicant for the grant of a *mandament van spolie*. The application is moved in the following terms:

- (a) Dispensing with the normal time limits forms of service stipulated by the rules of court applicable in ordinary application proceedings and hearing this matter as one of urgency.

(b) That an order be hereby issued directing the Respondent to restore possession/occupation to the applicant of office number S6 situate at Applicant's Second Floor, Hatzin's Center Building, Tenbergen Street Manzini forthwith.

(c) That an order be hereby issued declaring the act of unilaterally locking the doors to the office described in prayer (b) above with padlocks and chains as an act of spoliation and unlawful.

(d) Directing the Respondents to pay costs of the Application at an attorney and own-client scale.

(e) That an interim order with full interim effect do hereby issue returnable on Tuesday on the 10<sup>th</sup> February 2009 in terms of prayers (b)- (d) of the Notice of Motion.

(f) Such further and or alternative relieve as the court deems fit.

[2] This Application is supported by the founding affidavit of Khumbulani P. Msibi who described himself as an attorney of this Court and duly entitled to depose of this affidavit. Briefly stated, it would appear that the Respondent entered into a lease agreement with the Applicant. It is conceded that the Applicant fell into arrears in respect of the rentals and for that reason the Respondent probably decided to lock out the Applicant for failure to pay rent thereof. It is clear that the Applicant is seeking a spoliation order.

[3] In the case of **Daniel Didabantu Khumalo Vs Mafelenkhosini Khumalo and Another**, citation 4004/2000, I stated and I quote;

"In order to succeed in obtaining relief under these proceedings, the Applicant must prove:-

- (a) that he was in possession of the thing; and
- (b) that he was illicitly ousted (despoiled) from such possession."

[4] In this case, from the contents of the founding affidavit, two things are clear; (i) that the Applicant was occupying the premises in question: and (ii) that the act of unilaterally locking the premises without an order of Court was unlawful. It is common cause that there was no appearance for the Respondent and I have noted that they were served with the papers. I am however not going to grant an interim order as I see no need in granting an interim order in spoliation proceedings.

[5] Having been satisfied that a case has been made for spoliation, I therefore grant prayers (a), (b) and (d) and I grant costs in the manner applied for in order to send a warning that no one is to take law into their own hands.

**DELIVERED IN MBABANE ON THIS THE 4<sup>th</sup> FEBRUARY, 2009.**

**T.S. MASUKU  
JUDGE**

**MESSRS P.K. Msibi for the Applicant.**