



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 813/2016

In the matter between:

SNAPERS INVESTMENTS (PTY) Ltd

APPLICANT

and

ELVIS PRICE

1ST RESPONDENT

THE MASTER OF THE HIGH COURT

2ND RESPONDENT

THE ATTORNEY GENERAL

3RD RESPONDENT

YANDZISA INVESTMENTS (PTY) LTD

4TH RESPONDENT

Neutral Citation : Snapers Investments (Pty) Ltd vs Elves Price; The Master of the High Court; The Attorney General; Yandzisa Investments (Pty) Ltd (813/2016) [2017] SZHC 102 (17 AUGUST 2017)

Coram : MABUZA - PJ

Heard : 24 MARCH 2017

Delivered : 17 AUGUST 2017

SUMMARY

Civil Procedure – Spoliation proceedings – Applicant must prove that he was in peaceful and undisturbed possession – In *casu* Applicant has failed to prove such – 4th Respondent has proved that he constantly disturbed the “alleged peaceful and undisturbed” possession - Application dismissed with costs.

JUDGMENT

MABUZA -PJ

- [1] The Applicant has described itself as a company duly incorporated and registered in accordance with the laws of the Kingdom of Swaziland carrying on a business of professional car wash at Summer Place Building Plot No. 2047, Mancishane Street in Manzini.
- [2] The 1st Respondent is Elvis Price, an adult male whose fuller and further particulars are to me unknown c/o Summerplace within the Manzini Region.
- [3] The 2nd Respondent is The Master of the High Court, duly cited as such by virtue of being the custodian in law of the estate of the Late George Gkikas Estate No. 145/2015.

- [4] The 3rd Respondent is The Attorney General, duly cited herein in his official capacity as Legal representative of the 2nd Respondent herein c/o Justice Building, Usuthu Link Road, Mbabane within the Hhohho Region.
- [5] The 4th Respondent is Yandzisa Investments (Pty) Ltd, a company duly registered and incorporated in terms of the Company Laws of the Kingdom of Swaziland whose major shareholder was the Late George Gkikas which carries on business at Summerplace Building, Manzini within the Manzini Region.
- [6] There are no orders sought against the 2nd and 3rd Respondents.
- [7] Initially the Applicant came by way of urgency seeking the following orders:
1. That the Rules of the above Honourable Court relating to form, time frames and manner of service be hereby dispensed with and the matter be heard as one of urgency.
 - 1.1 That the Applicant be condoned for none compliance with the Rules aforesaid.
 2. That a *Rule Nisi* do hereby issue calling upon the 1st Respondent or any person acting on his instruction or behest be hereby

interdicted and restrained from blocking entry into the Applicant's Car Washing Business and that he removes all the locks and keys he unlawfully installed on the 3rd May 2016.

3. That the 2nd Respondent files a Report as to the status of the LATE GEORGE GRIKAS BEING Estate File No. 145/2015.
4. That the 1st Respondent pays the costs of this application at attorney and own client scale.
5. That the said *Rule Nisi* operates with immediate interim relief pending a final determination of this application.
6. Granting the Applicant such further and/or alternative relief.

[8] On the 6th May 2016, the Applicant obtained an Interim Court Order in respect of Prayers (1) (2) and (5) per Mlangeni J. The Applicant now seeks confirmation of the Rule Nisi with costs on a punitive scale.

[9] The confirmation of the Rule Nisi and costs on a punitive scale are opposed by the 1st and 4th Respondents. The 3rd and 4th Respondents did not oppose the application.

- [10] The background hereto is that the Applicant carries on business in the premises described as Summerplace Building, Plot No. 2047, Mancishana Street, Manzini.
- [11] The lease agreement relied on by the Applicant is between Yandzisa Investments (the Lessor) and Mobi Wash and Valet Pty Ltd. (the Lessee).
- [12] The Lessor is represented by George Gkikas, a director of Yandzisa Investments. The Lessee is represented by Hitler Ndlangamandla.
- [13] The lease agreement was signed on the 30th December 2014 and was to run from 1st January 2015 to 31st December 2015 with an option of renewal for 1 year by giving notification to the Lessor two months before expiry of the current lease.
- [14] It appears that Mr. George Gkikas died during the duration of the lease agreement.
- [15] The Applicant is not a party to the lease agreement though it is in occupation of the premises. It says that it derives its legitimacy to occupy the premises

through a letter written to the Registrar of Companies by the Master of the High Court dated 15th February 2016, (Annexure “SN1”).

[16] Regrettably the Master of the High Court has not filed an affidavit explaining his/her role in the matter in particular the legality or otherwise of the contents of Annexure “SN1”. The contents thereof are as follows:

“15th February 2016

The Registrar of Companies
Ministry of Commerce, Industry & Trade
MANZINI

Dear Sir/Madam

RE: EXTENSION OF LEASE AGREEMENT- SNAPERS INVESTMENTS (PTY) LTD T/A MOBI VALET AND CLEANING SERVICES.

1. Reference is made to the above.
2. Be informed that the above named company is a tenant at Summer Place Building Plot No. 2047, Mancishane Street.
3. Further be notified that the Director Mr. George Gkikas (Landlord) is deceased and his estate was reported at our Master’s office under file No. 145/15 pending the appointment to wind up the estate by our office. In the meantime the Landlord is duly represented by our office in all transactions and appointments and we hereby notify you that the above named tenant’s

lease has been/renewed/extended for another year elapsing on the 31st January 2017.

4. You are kindly requested to assist Mobi Valet and Cleaning Services in their quest to renew their trading licence as they have complied with all other requirement attended thereto.

Yours faithfully,

**ZIPHOZONKE SIMANGELE FAKUDZE
ASSISTANT MASTER OF THE HIGH COURT**

[17] This letter was later revoked by the Master of the High Court thus removing the legitimacy relied on.

[18] The Applicant further states that it derives its legitimacy from the fact that the payments of rentals from February 2016 up to April 2016; and to that end has attached proof of payments through First National Bank (FNB) for the credit of the account of the Lessor and that the Lessor accepted payment. It is unclear how the acceptance of three months' rent can give legitimacy to occupancy in the present circumstances.

[19] The Applicant at paragraph 13 of its founding affidavit says that it has been in peaceful and undisturbed possession of the leased premises. And goes on

to depose that on or about the 24th February 2016 the 1st Respondent wrote to the Applicant (Annexure “SN8”) and advised of a resolution to close down the car wash business.

[20] The contents of Annexure “SN8” are reproduced hereunder:

“YANDZISA INVESTMENT

P.O. Box 1891
MANZINI

TEL: 25058504/78152530
24th February 2016

Mobi Valet Car Wash
P.O. Box
MANZINI

Dear Sir,

RE: RESOLUTION TO CLOSE MOBI – VALET CAR WASH

Following the directors meeting held on the 19th of February 2016, it was resolved that Mobi car wash should be closed until pending issues has been resolved.

Should you have queries regarding the decision please feel free to contact the caretaker’s office.

Regards

Mr. Elvis Price

(CARETAKER – YANDZISA INVESTMENTS)

[21] The contents of Annexure “SN8” amount to disturbance of the Applicant’s possession. Further evidence of disturbance is found in Annexure “SN10” dated 30/4/2016. The contents thereof are reproduced hereunder:

The Gkikas Family
P,O, Box 1593
Houghton 2041
Johannesburg

29/04/2016

The Directors
Snappers Investments (Pty) Ltd
T/A Mobi Valet and Cleaning Services

Dear Sir/Madam

Re: Extension of Lease Agreement – Snappers Investments (Pty) Ltd T/A Mobi Valet and Cleaning Services.

The above matter has reference and we note that since January 2016, through our authorized Caretaker (Elvis Price) we have repeatedly pointed out that you are operating an illegal business on our premises and have asked you to vacate same premises forthwith. In defiance you continue to operate even when the Master of the High Court has revoked your trading licence.

We have thus instructed our Caretaker to lock and bolt these premises on the 30th April 2016 and on the 2nd May 2016 renovations of the outside toilets will commence.

Should you attempt a break in or resume any operations then we will call the police and charge you with trespassing and malicious damage to property. We trust that the matter is clear!!!

Regards

Mrs Gloria Gkikas

(Head of the Gkikas Family)

[22] Further disturbance occurred on the 3rd May 2016 when new locks and a paddle were fitted to the premises effectively locking the Applicant out.

[23] The answering affidavit is deposed to by Elvis Price, the 1st Respondent who derives his authority from Annexure “EP1” attached to his affidavit. The contents thereof are reproduced as follows:

“Date: 26 May 2016
Our Ref: G1399
Your Ref:
Per Email: yandzisainvestments@gmailcom

To Whom it may Concern

Re: The management of Summer Place on behalf of the Gkikas Family

1. We confirm that we act on behalf of the Gkikas family.
2. This letter serves as a confirmation that Mr. Elvis Price has the authority, as given to him by the legal heirs to Summer Place (“the property”), to manage the property. This authority authorizes him to manage the said property on the heirs’ behalf in the absence of an Executor.
3. The authority was given to Mr. Elvis Price on account of him being authorized by the late Mr. George Gkikas prior to him having left for Greece to manage the property. Since that time Mr. Elvis Price has been managing the property.
4. We trust that whoever this concerns, finds the above in order.

Yours faithfully,

KOKKORIS ATTORNEYS

M POTIADJIS”

[24] The 1st Respondent raised the following point of law:

“AD LOCUS STANDI IN JUDICIO

5. The Applicant Company lacks the necessary locus *standi in judicio* to institute the present application. The Applicant seeks to rely for her cause of action on a lease agreement annexed and marked “SN2” in her application yet the agreement reflects that it was between the 4th Respondent and a company known as Mobi Wash and Valet (Pty) Ltd, hereinafter referred to as the lessee. Unfortunately, the lessee was also found to be non-existent on the Registrar of Company’s records. Therefore, Applicant is a foreigner in the aforesaid agreement”.

[25] I agree with the 1st Respondent and uphold this point of law.

[26] On the merits the 1st Respondent pleaded as follows:

AD LOCUS STANDI IN JUDICIO

5. The Applicant Company lacks the necessary locus *standi in judicio* to institute the present application. The Applicant seeks to rely for her cause of action on a lease agreement annexed and marked “SN2” in her application, yet the agreement reflects that it was between the 4th Respondent and a company known as Mobi Wash and Valet (Pty) Ltd, hereinafter referred to as the lessee. Unfortunately, the lessee was also found to be non-existent on the Registrar of Company’s records. Therefore, Applicant is a foreigner in the aforesaid agreement.

AD PARAGRAPH 6

7. Save to admit that the Applicant is duly incorporated in terms of the laws of Swaziland, the rest of the contents are denied. It is specifically denied that the

Applicant is carrying on business at the 4th Respondent's premises. There was never a lease agreement between the Applicant and 4th Respondent but there was an agreement between 4th Respondent and the lessee.

7.1 It is further denied that the Applicant's nature of business is a professional car wash. I submit that the 4th Respondent discovered that the lessee was operating her car wash business illegally as she does not have a valid trading license to carry on that business. Applicant is put to strict proof thereof.

AD PARAGRAPH 7

“...Firstly, I reiterate that there was no lease agreement between the Applicant and the 4th Respondent but with the lessee. Even that lease agreement expired on the 31st December, 2015 and was never renewed and or extended. The alleged existence of a contract is therefore denied. Applicant is put to strict proof thereof.”

AD SUB PARAGRAPH 7.1

“...I submit that annexure “SN1” sought to be relied upon was fraudulently obtained as the office of the 2nd Respondent was fed with the wrong information to induce the officers to draft the letter. However, after being informed of the true position, the office of the 2nd Respondent rectified the mistake by alerting the office of the Registrar of Companies of same. **See annexed copy of letter, marked “EP2”** ”.

[27] Annexure “EP2” is a letter from the office of the Master of the High Court.

Its contents are reproduced hereunder:

“The Registrar of Companies
MINISTRY OF COMMERCE INDUSTRY & TRADE
MANZINI

Dear Sir/Madam

RE-EXTENSION OF LEASE AGREEMENT – SNAPPERS INVESTMENTS (PTY) LTD T/A MOBI VALET AND CLEANING SERVICES.

The above matter refers.

It has come to our attention that the above mentioned company's lease renewal was attained through treachery.

Mr. M.P. Ndlangamandla, who was appointed to act as a correspondence for a law firm in South Africa (Kokkoris). The latter was to wind up the estate late Georgios Gkikas. Master's Reference: EM 145/2015. When I signed the letter dated 15/02/2016,

I was of the impression that Mr. Ndlangamandla was acting in accordance with the beneficiaries' instructions through their attorneys; Kokkoris Attorneys.

I was then shocked to realise that the beneficiaries had clearly indicated that they were against renewal of such a trading license. In fact, according to the beneficiaries, the car wash business was operating without a license. The lease agreement which he had obtained from Mr. Elvis Price (a recognized caretaker in the building) expired in the year 2015. The beneficiaries then took a decision that without a valid lease agreement, it would be irresponsible of them to agree to the continuance of these illegal operations.

When I requested to see the documents, Mr. Ndlangamandla produced them. It is so unfortunate that I did not make copies of any of the documents so as to attach them onto this letter. However, I have attached a printed e-mail sent by the beneficiaries to the caretaker Mr. Elvis Price, attached hereto as Annexure "MHC 1" – "MHC 3". It is due to the above stated reasons that I request that you revoke and or annul the trading license issued to Snappers Investments (Pty) Ltd T/A

MOBI VALET AND CLEANING SERVICES as a result of our letter dated; 15/02/2016.

I hope you find the above in order.

ZIPHOZONKE FAKUDZE
ASSISTANT MASTER OF THE HIGH COURT

[28] With regard to Annexure “SN2” (being the lease agreement) the 1st Respondent states that:

“11. The existence of the lease agreement attached thereto, marked “SN2”, and the terms thereof are not denied. However, I reiterate that the aforementioned agreement lapsed and the lessee never exercised the option of renewal as per the agreement.”

“12. It is not denied that the lessee continued to occupy the leased premises after the expiry of the agreement. However, that ceased to be contractual at the date of the expiry of the lease. The 4th Respondent did inform the lessee that it will not be renewing the lease as the lessee had failed to notify 4th Respondent of her willingness to renew the lease as per the agreement. (See annexed copy of letter, marked “EP3”)”

[29] The contents of Annexure “EP3” are reproduced hereunder:

“YANDZISA INVESTMENTS

P.O. Box 1891
MANZINI
M200

TEL: 25058504/78152530

DECEMBER 18, 2015

The Director
Mobi – Wash Valet
C/O Mr. Hitler Ndlangamandla
P.O. BOX C 367
Hub
MANZINI

**RE: MEMORANDUM OF LEASE AGREEMENT BETWEEN YANDZISA
INVESTMENTS AND MOBI – WASH VALET**

1. Reference is made to the above subject matter.
2. We note that clause one of the aforesaid lease agreements provides that it expires on the 31st December 2015. Furthermore, in terms of the agreement, you were required to furnish us with notification of renewal of the same expired.
3. We note however that you have not given us the notification of renewal of the lease agreement. We therefore put you on notice that the lease agreement shall not be operational beyond the 31st December 2015. Kindly make the necessary arrangements to vacate the leased premises by the 1st January 2016.

Yours faithfully,

Elvis Price.
CARETAKER-YANDZISA INVESTMENTS

[30] The 1st Respondent states that even after the expiration of the lease, 4th Respondent notified the lessee to vacate the premises by the 1st January 2016 because she had failed to exercise the renewal option. The notification appears in Annexure “EP4” whose contents are reproduced hereinunder:

“YANDZISA INVESTMENT

P.O. Box 1891
MANZINI
M200

TEL: 25058504/78152530

30TH DECEMBER 2015

The Director
Mobi – Wash Valet
C/O Mr. Hitler Ndlangamandla
P.O. BOX C 367
Hub
MANZINI

Dear

RE: EXPRESSION OF INTEREST – RENEWAL OF LEASE-MOBI WASH & VALET

We refer to your letter dated the 22nd December 2015 regarding the above and we respond as follows:

- 1) We regret to inform you that we will not be able to renew the lease. As stated in our lease agreement clause No. 1, expression of interest to renew should be submitted 2 months before the expiry of the agreement.
- 2) Kindly make arrangements to vacate the leased premises by the 1st January 2016.

Yours faithfully

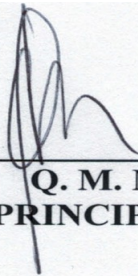
Elvis Price
Caretaker – Yandzisa Investment.

[31] Thereafter the 4th Respondent wrote to the Lessee notifying her to close the business in the 4th Respondent's premises See Annexure "SN8" and "EP5" whose contents are the same and have been reproduced above.

[32] The 1st Respondent further says that the payment of rent did not necessarily mean that the contract was renewed as the 4th Respondent was constantly ordering the lessee to vacate the premises and because of this denies that the Applicant was in peaceful and undisturbed possession.

[33] I agree with the 1st and 4th Respondent that the Applicant was never in peaceful and undisturbed possession and has failed to prove that it was.

[34] In the circumstances the interim order is set aside and the application is dismissed with costs on the ordinary scale.



Q. M. MABUZA
PRINCIPAL JUDGE

For the Applicant : Mr. D. Dlamini
For the 1st and 4th Respondents : Mr. B. Phakathi