

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 2219/98

In the matter between

WALTER MJINGENI MNTSHALI	1st APPLICANT
PAUL SIPHO MAKHANYA	2nd APPLICANT
VS	
SWAZILAND SKILLS CENTRE	1st RESPONDENT
THE SWAZILAND ELECTRICITY BOARD	2nd RESPONDENT
CORAM	S.B. MAPHALALA - J
FOR 1st APPLICANT	MR. DUBE (In Attendance)
FOR 2nd RESPONDENT	MR P. DLAMINI

RULING ON URGENT APPLICATION

(18/09/98)

The matter before court is for a spoliation order. It is alleged that the 1st respondent through the 2nd respondent has despoiled the 1st and 2nd applicants by ordering the 2nd respondent to switch off the electricity supply in the houses occupied by the applicants such that the applicants are now highly inconvenienced. It transpired from the papers before court that the two applicants are employees of the 1st respondent and the latter is the one, which is the subscriber with the 2nd respondent. The two applicants pay the 1st respondent and the latter then pays the 2nd respondent. Due to a misunderstanding it appears that the 1st respondent instructed the 2nd respondent to cut off the supply. The 2nd respondent duly complied and switched off the supply of electricity. Now the two applicants come before court to apply for a spoliation alleging that they were in peaceful and undisturbed possession and that possession has been illicitly been deprived by the respondents. That the principle of mandament van spoile should apply.

The 1st respondent who has Mr. Dube in attendance as one of the employees of the 1st respondent asks that the matter be postponed so that they instruct their attorneys to

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defend the matter. The 2nd respondent is represented by Mr. Dlamini who told the court that they will abide by the decision of the court as they were merely instructed by their customer being the 1st respondent to switch off the electricity in the houses which are being occupied by the applicants. Mr. Dlamini submitted that they are only interested in the 1st respondent who is their customer - what it does with the applicants is not their concern so long as the bills are paid.

The applicants in their papers that prior the 8th and 10th September, 1998 respectively, they were in peaceful and undisturbed possession of the houses which had some electricity supply and the respondents illicitly and without any court order despoiled the applicants of the electricity supply. They submit that the 1st respondent has virtually taken the law into its own hands without addressing the matter of the dispute between the parties and thereby despoiled applicants of the full use and enjoyment

of the houses allocated to them. At paragraphs 15.1, 15.2 and 15.3 they allege why they say the matter is urgent.

Coming to the plea by Mr. Dube for postponement it appears from the papers that they were duly served with the papers instead of going to instruct an attorney to come and argue the matter he prefers to come himself to court to offer some defence.

To revert back to the matter in applications such as the present one what an applicant has to make and prove are two allegations:

- i) That the applicant was in peaceful and undisturbed possession of the property, and
- ii) That the respondent deprived him of the possession forcibly or wrongfully against his consent.

The object of the order is merely to restore the status quo ante the alleged action. It decides no rights of ownership, it secures only that if such decision were required, it shall be given by a court of law, and not affected by violence. The reason behind the practice of granting spoliation orders is that no man is allowed to take the law into his own hands and so to dispossess another illicitly of possession of property, and if he does the court will summarily restore the status quo ante as a preliminary to any inquiry into the merits of the dispute (see voet 41.2.16 and Nino Bonino vs De Lange 1966 T.S. 120).

In the present case it is clear to me that the two allegations have been proved by the applicants and would like to cite the case of Naidoo vs Modley 1982 (4) &A. 82 (t) the applicant in that case was in possession of certain lodgings, the electricity supply to which was cut off by the respondents having manipulated the relevant electricity meter. The court held that this was an act of spoliation and ordered restoration of supply. Further, in the case of Fronton vs Herbmore Timber and Hardware (PTY) Ltd 1984 (3) S.A. 609 (w) a seller of sectional title unit cutting off electricity and supplies to purchaser unit in occupation before transfer. It was held that there is no reason why the right to electricity and water supplies should not form subject of spoliation proceedings. In the

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case in casu it is without doubt that the two applicants' were in peaceful possession and such possession was despoiled by the act of the 1st respondent

The restoration to the status quo ante does not determine rights. The 1st respondent is perfectly entitled to sue the applicant's for arrears rental but not to take the law into his own hands.

I am inclined to grant the application and order that the 2nd respondent to restore the electricity supply forthwith and the parties may thereafter seek to resolve their dispute in whatever way they may be advised.

The court makes no order as to costs.

S.B. MAPHALALA

JUDGE