

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 1518/2022

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

Date: 3/02/2022

In the matter between:

DR CYRIL SAMUELS

Applicant

and

DR RENGANATHAN REDDY

Respondent

JUDGMENT

STRYDOM J:

- [1] The applicant Dr Cyril Samuels brought an urgent spoliation application and further interdictory relief against the respondent, Dr Ranganathan Reddy, cited herein N.O acting in his capacity as the sole trustee of the Central Trust of the Sathya Sai Organisation of Transvaal.

- [2] The applicant averred that he was in the peaceful and undisturbed possession and had access to the Sathya Sai Primary School operating from a property described as erf 2809 extension 2, Lenasia South and situated at 76 Kingfisher Street (the premises).
- [3] The applicant alleged that he was unlawfully removed as a mentor and chairperson of the School Governing Body (the SGB).
- [4] A dispute between the SGB and the Education Trust, which applicant represented on the SGB, started to brew from 07 December 2021 when the SGB communicated its election to sever all ties with the Education Trust. The latter did not accept this action.
- [5] It is this action, which the applicant alleges deprived him of the possession and access to the school. As far as the deprivation of access to the school was concerned the applicant, before this court, relied on a letter received from the respondent's attorneys wherein it was noted that the respondent was the owner of the property on which the school was situated and that the respondent restricted all access of the Trustees of the Education Trust onto the school's property.
- [6] The name of the applicant was specifically mentioned and it was stated that should they enter the premises the relevant security service or the South African Police Service will be called in to remove these individuals.
- [7] Being an alleged spoliation application it would be central to a decision in this matter to establish if the applicant was in possession of the school. Would a member of a school governing body if removed be deprived of

possession of that school? Only if this question is answered in the affirmation, the issue about the denial of access and the further interdictory relief could be considered.

[8] The court will first deal with the question whether this matter was urgent. The applicant alleged that he was spoliated and that a spoliation application is a speedy remedy and inherently urgent. Accordingly, as part of the enquiry as to the urgency of this application the court will have to decide whether this application can be classified as such.

[9] It is common cause that applicant was informed that he will be denied access to the premises from 9 January 2022. Regardless of this the applicant had to show that he possessed the school premises as access, or the deprivation thereof, in the spoliation context means access to what you previously peacefully, without being disturbed, possessed.

[10] Applicant lost his position on the SGB. Whether this happened lawfully or unlawfully is irrelevant for the enquiry at this stage. He could no longer participate in the day to day running of the school. Did he as an individual member of the SGB possessed the school premises?

[11] It was argued on behalf of the applicant that being a member of the SGB provided him with a right to enter the school premises to perform his functions. It was argued that this right was an incorporeal property right which was invaded. He was in quasi possession of this right. The possession of the applicant was represented by the actual exercise of the right and the dispossession of such right amounted to spoliation.

- [12] That the mandament of spolie was broadened to include incorporeal rights is trite. (See *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA) at para 9)
- [13] On behalf of applicant reliance was placed on the matter of *Singh and Another v Mount Edgecombe Country Club Estate Management Association (RF) NPC and Others* 2016 (5) SA 134 (KZD). In this matter the applicant's access card to an estate was deactivated and he could not access his residence within the estate. The court found that the applicant was illicitly deprived of his right to enter the estate in his capacity as a resident. He was in quasi possession of this right.
- [14] In my view this case is to be distinguished from the case of applicant. Mr Singh wanted access to his property within an estate and the access which he required was to exercise his right to access his property. The applicant did not establish any right to property pertaining to the school. His right to obtain access to the school to serve on the SCB and to exercise control was not an incorporeal property right. He never possessed the school and the premises of the school or any portion thereof. The applicant failed to allege and prove factual possession of the school. He instead relied on a right to possess, by virtue of being a SCB member.
- [15] The applicant had to show actual possession, albeit quasi possession, to ground spoliatory relief. In order to succeed in obtaining spoliatory relief the applicant had to demonstrate possession for his own benefit. (See *Yeko v Qana* 1973 (4) SA 735 (A) at 739H). This was not established. The

high watermark of the applicant's case is that he has the right to enter and access the property because he is a member of the SCB.

[16] In my view the applicant has failed to indicate that the court was in fact dealing with a spoliation application. Consequently, the need for a speedy remedy and relief have not been established. This also pertains to the interdictory relief sought as a further claim.

[17] Even if the court was dealing with a spoliation application urgency should still be considered. It was argued on behalf of the applicant that any spoliation application is by its very nature urgent. It is indeed so that the *mandament van spolie* is designed as a speedy remedy which provides summary relief. This does not, however, mean that because an application is one for a spoliation order, the matter automatically becomes one which should urgently be dealt with. See in this regard *Mangala v Mangala* 1967 (2) SA 415 ECD at 416 para F where it was found as follows:

"F It does not follow that, because an application is one for a spoliation order, the matter automatically becomes one of urgency. The applicant must either comply with the Rules in the normal way or make out a case for urgency in accordance with the provision of Rule 6 (12) (b)."

[12] On behalf of the respondent it was argued in order to obtain redress in the urgent court, the applicant must satisfy the requirements of rule 6(12)(b) by establishing that there are circumstances which render the

matter urgent and, crucially, that he could not obtain substantial redress at a hearing in the ordinary course. I agree with this submission.

[13] Contrary to what is required by this rule, the applicant has failed to provide circumstances, which render the matter urgent. His claim that *"dispossessing and depriving me of possession and access to the school, will result in the Education Trust not being involved in the management of the school, and effectively losing all control"* self-evidently does not create grounds for urgency.

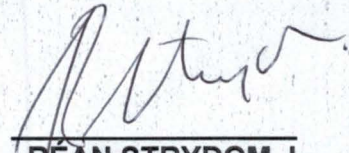
[14] The applicant alleged that the urgency of this matter rests upon the need for the applicant's involvement in the academic and financial day-to-day management of the school.

[15] No further allegations were made why the matter was urgent. Nothing was stated or suggested what would happen to the school if his *"possession"* was not restored and if he is was not given access to the premises.

[16] What the applicant is in fact seeking is to be placed in a position to exercise some control over the school. This redress can substantially be obtained in due course.

[17] I am of the view that the applicant failed to indicate that the matter should have been dealt as an urgent application.

[18] The matter is struck off the roll for lack of urgency with costs.



**RÉAN STRYDOM J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
JOHANNESBURG HIGH COURT**

Date of Hearing: 01 February 2022

Date of Judgment: 03 February 2022

Appearances:

On behalf of the Applicant:

Adv. C.J. Pammenter SC
Adv. M. Cajee

Instructed by:

Jailal and Associates

On behalf of the Respondent:

Adv. K. Pillay

Instructed by:

PGA Attorneys