

IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C OF A (CIV) NO.76/2018

In the matter between:

CHEN ZHENG HONG

1ST APPELLANT

DAI JUN

2ND APPELLANT

NATIONAL ENERGY RESOURCE (PTY)LTD

3RD APPELLANT

AND

GU JINGXIN

RESPONDENT

CORAM : DR K. E. MOSITO P.
M.H. CHINHENGO AJA
DR J VAN DER WESTHUIZEN AJA

HEARD : 19 OCTOBER 2020

DELIVERED : 30 OCTOBER 2020

SUMMARY

Spoliation - Mandament van spolie -Order to restore possession of immovable property (office space) - - Underlying rationale is that no one entitled to take law into own hands - Applicant for mandament not required to prove that spoliator acquired possession of property.

Labour Court having no jurisdiction – Section 8 of the Labour Code conferring exclusive jurisdiction over matters within the Labour Code.

Appeal dismissed with costs.

JUDGEMENT

K.E. MOSITO P

Background

[1] This matter came before us as an appeal against the order of the High Court (Chaka-Makhooane J). As far as relevant to the matter for determination by this Court, the respondent applied to the Commercial Division of the High Court for an order of spoliation and other reliefs. The proceedings have their origin in a contract the internecine friction between the directors of the second respondent. The matter ended up before the High Court (Chaka-Makhooane J).

[2] The present appellants pleaded that this was a labour matter because, so they argued, they had suspended the applicant from office as an employee. They therefore pleaded that the applicant's application was one for suspension from office and therefore a matter for the Labour Court. Having so characterised the matter, they raised the issue of lack of jurisdiction of the High Court to hear the matter.

[3] On the 15 June 2018, the learned judge heard the matter. On 19 December, she handed down her ruling in which she granted the prayer for spoliation. She ordered that the applicant's possession of his office be restored. Dissatisfied with that order, the appellants then brought this appeal against the respondent (applicant in the court a quo).

Factual matrix

[4] At all times relevant to this matter, the two appellants were directors and shareholders of the third appellant. When relations between them and respondent deteriorated, they suspended him from office and despoiled him of access to the office rooms he was using, hence the application for spoliation and other relief.

Issues for Determination

[5] The primary issue in this appeal is whether the learned judge had jurisdiction to entertain the application.

The law

[6] The justification underlying the grant of a *mandament van spolie* is that no person is entitled to take the law into his own hands. An applicant for a *mandament van spolie* need not, therefore, as part of his case prove that the spoliator had acquired possession of the property. Where an order to restore possession of immovable property has been granted, there can be, in the nature of things, no physical handing over of the property. Such an order may be mandatory in part (for example, where it requires the spoliator to vacate the property), and it can be prohibitory, in that it requires the spoliator to forebear from preventing or hindering the *spoliatus* in resuming possession.

Evaluation of the appeal

[7] I now turn to consider the appeal before us. It comes from the premise that, because the respondent had been despoiled in circumstances where he was an employee, therefore, the High Court had no jurisdiction. The argument is that in such a case, the Labour Court is the one that has jurisdiction.

[8] In my opinion, the Labour Court has no jurisdiction over *mandament van spolie*. This is a matter justiciable in the Subordinate Court under **the Subordinate Court Act**¹. However, the High Court has jurisdiction which it can exercise under section 6 of the **High Court Act, 1978**. The Labour Court has exclusive jurisdiction to deal with matters under the **Labour Code Act 1992** and section 8 of the **Labour Code (Amendment) Act 2000**.

Disposition

[9] It follows that this appeal cannot succeed and it falls to be dismissed with costs.

Costs

[10] In my view, this appeal has no substance and ought not to have been brought. I would award costs to the respondent.

Order

[11] In the result, the following order is made:

[a] The appeal is dismissed with costs.

[b] The court a quo's decision is confirmed.

¹ See s16 and 17 of the Subordinate Court Act, 1988.



K.E. MOSITO
PRESIDENT OF THE COURT OF APPEAL

I agree



M.H. CHINHENGO
ACTING JUDGE OF APPEAL

I agree



DR J VAN DER WESTHUIZEN
ACTING JUDGE OF APPEAL

For the Appellant : Messrs K. Ndebele & M. Rasekoai

For the Respondent : Adv K.K. Mohau KC