



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 15 June 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Bisschoff & Others v Welbeplan Boerdery (Pty) Ltd (Case No. 815/2016) [2021] ZASCA 81 (15 June 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding the appeal against the North West Division of the High Court, Mahikeng (the high court).

The issue before the SCA was whether a letter of demand instructing a possessor of land not to return to it constitutes an act of spoliation in accordance with the requirements for the *mandament van spolie*.

The appellants own a number of farms in the North West Province, utilised collectively for the production of maize and sunflower. In 2015 they concluded a number of agreements with Welbeplan Boerdery (Pty) Ltd represented by Mr Gerhard Olivier, in terms of which they sold some 14 portions of the farms to the company. Each agreement was subject to a suspensive condition that the respondent obtain finance to pay the purchase price. The parties agreed that in the event of the suspensive condition not being fulfilled within the period stipulated in the agreements, those agreements would be regarded as contracts of lease for one season, ie 12 months. In the interim the respondent was granted access to the farms for the purpose of cultivating certain portions of the land.

The suspensive condition was not fulfilled because the respondent failed to obtain the necessary finance. The respondent subsequently breached the lease agreements. The appellants' attorneys sent two letters, both dated 1 February 2016, to the respondent's attorneys in which they were informed that all agreements between the parties had been cancelled and that the respondent should not trespass upon the land (the letters). Based solely on what was stated in the letters, the respondent obtained a spoliation order as a matter of urgency together with costs in the high court.

The SCA held that where the conduct complained of merely constitutes threatened deprivation of possession, the *mandament van spolie* is not available as a remedy because it is aimed at the actual loss of possession. For a spoliation order there must be unlawful spoliation, ie a *disturbance* of possession without the consent and against the will of the possessor. The SCA held further that the high court erred in its interpretation and application of the requirement of unlawful deprivation of possession for a spoliation order. In the process it extended the scope of the *mandament* beyond its intended purpose, scope and limits. Its order, if allowed to stand, would mean that a strongly worded letter threatening deprivation of possession, or a threat to approach a court to restrain possession, would found an application for the *mandament van spolie*. The SCA therefore upheld the appeal with costs.

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