REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT (REASONS)

Case no: HC-MD-CIV-MOT-GEN-2018/00204

In the matter between:

PURROS CONSERVANCY COMMITTEE	**APPLICANT**

and

PETER UARAAVI	**FIRST RESPONDENT**
UNARO UARAAVI	**SECOND RESPONDENT**
KAUNDA UARAAVI	**THIRD RESPONDENT**
KATUTJIUA UARAAVI	**FOURTH RESPONDENT**
OTJIKAOKO TRADITIONAL AUTHORITY	**FIFTH RESPONDENT**
COMMUNAL LAND BOARD OF THE KUNENE REGION	**SIXTH RESPONDENT**
MINISTER OF LAND REFORM	**SEVENTH RESPONDENT**
THE STATION COMMANDER OF SESFONTEIN POLICE STATION	**EIGHTH RESPONDENT**

Neutral citation: *Purros Conservancy Committee v Uaraavi* (HC-MD-CIV-MOT-GEN-2018/00204) [2018] NAHCMD 231 (19 July 2018)

Coram: ANGULA DJP

Heard: **19 July 2018**

Delivered: **19 July 2018**

Reasons: **1 August 2018**

ORDER

1. The applicant's non-compliance with the Rules of this Court and the time periods prescribed therein in so far as these have not been complied with is hereby condoned and this matter is heard as one of urgency.

2. The first, second, third and fourth respondents are ordered to restore the undisturbed possession and occupation to the applicant of the lodge area of Purros Community Campsite and Bush Lodge situated at Purros Village, Kunene Region, Namibia.

3. The first, second, third and fourth respondents are interdicted and restrained from unlawfully interfering with the applicant's possession and occupation of the applicant of the lodge area of Purros Community Campsite and Bush Lodge situated at Purros Village, Kunene Region, Namibia.

4. That the first, second, third and fourth respondents pay the costs of this application, jointly and severaly, the one paying the other to be absolved.

5. The case is postponed to 1 August 2018 at 08:30 for delivery of the reasons for this Order.

REASONS

ANGULA DJP:

Introduction

[1] Having heard counsel appearing on behalf of both parties and having considered their submissions and the pleadings filed of record, I issued an order on 19 July 2018. I further indicated that my reasons for the order would be delivered on 1 August 2018. Following below are my reasons.

[2] The applicant brought an urgent application seeking an order against the first to fourth respondents to restore to the applicant the undisturbed and peaceful possession of a lodge area in the of Purros Community Campsite and Bush Lodge situated at Purros Village, Kunene Region. In addition, the applicant sought an order interdicting and restraining the first, second, third and fourth respondents from interfering with its possession of the lodge area of Purros Community Campsite and Bush Lodge. The application is opposed by the first, second, third and fourth respondents.

The parties

[3] The applicant is Purros Conservancy, a voluntary association, with perpetual succession. It has a written constitution which is registered in terms of the Nature Conservation Ordinance, Ordinance 4 of 1975. The applicant has its principal place of business situated at Purros Conservancy Office, Purros Village, Kunene Region.

[4] The first respondent is Peter Uaraavi, an adult male person, currently in occupation of the Purros Community Campsite and Bush Lodge in the Purros Village, Kunene Region, Namibia.

[5] The second respondent is Unaro Uaraavi, an adult son of the first respondent, currently in occupation of the Purros Community Campsite and Bush Lodge in the Purros Village, Kunene Region, Namibia.

[6] The third respondent is Kaunda Uaraavi, an adult son of the first respondent, currently in occupation of the Purros Community Campsite and Bush Lodge in the Purros Village, Kunene Region, Namibia.

[7] The fourth respondent is Katutjiua Uaraavi, an adult son of the first respondent, currently in occupation of the Purros Community Campsite and Bush Lodge in the Purros Village, Kunene Region, Namibia.

[8] The fifth respondent is Otjikaoko Traditional Authority, established as such in terms of section 2(1) of the Traditional Authorities Act, Act 25 of 2000, with its principal Office situated at Otjikaoko Traditional Authority, Opuwo, Kunene Region.

[9] The sixth respondent is the Communal Land Board of the Kunene Region, established as such in terms of section 2(1) of the Communal Land Reform Act, Act 5 of 2002 (as amended).

[10] The seventh respondent is Minister of Land Reform, appointed as such in terms of the Namibian Constitution, and the responsible Minister responsible for the administration of the Communal Land Reform Act.

[11] The eighth respondent is the Station Commander of the Sesfontein Police Station, duly appointed as such in terms of the Police Act, Act 19 of 1990.

[12] The service address for the fifth to eighth respondents for the purposes of service of processes in these proceedings is the Office of the Government Attorney, 2nd Floor, Sanlam Centre, Independence Avenue, Windhoek, Namibia.

The applicant's case

[13] The supporting affidavit on behalf of the applicant has been deposed to by Mr Katondoihe Tjivinda. He refers to himself as the Vice-Chairperson of the applicant. The aim and objectives of the applicant are set out in its Constitution and they include amongst others: 'to enable its members to acquire rights to manage and utilise game; to enable its members to acquire the exclusive right to develop tourism accommodation and to operate guided tours; to acquire, hold and manage property and income of the Conservancy for the benefit of its members; to utilize wildlife resource for the social and economic benefit of its members; and to retain all income derived from such utilisation'.

[14] It is the applicant's case that it has been in lawful and undisturbed possession of the campsite and the lodge since 2003. Initially, the applicant only operated a campsite but in 2008, it commenced to operate a lodge business, consisting of

seven rooms. Since then, the business operation was renamed Purros Community Campsite and Bush Lodge (hereinafter referred to as 'the business').

[15] The first respondent was appointed as manager for the business at a community meeting held in August 1994. He was however dismissed by the community in October 2001. Following his dismissal, he refused to vacate the premises of the campsite. As a result, the applicant launched an application to this court for the eviction of the first respondent. The application was successful and an order for the eviction of the first respondent was granted in favour of the applicant. Pursuant thereto, the first respondent was evicted from the campsite by the Deputy-Sheriff at the end of 2002.

[16] The first respondent was re-employed again by the applicant as manager for business during 2016, but was again dismissed in February 2018. It is further the applicant's case that since the first respondent's dismissal in February 2018, he has not been in attendance at the lodge and campsite until 9 June 2018 when he suddenly returned and unlawfully occupied the lodge together with his sons; the second, third and fourth respondents.

[17] Following the respondents' unlawful occupation of the lodge, a meeting was held on 17 June 2018 in order to resolve the dispute. At that meeting, the first respondent informed the committee members of the applicant that the area where the lodge is situated is his property and therefore he will thenceforth continue to occupy the lodge; and furthermore that the court proceedings and the order of 2002 did not apply to the lodge area but only applied to the campsite area.

[18] The deponent to the applicant's affidavit disputed the first respondent's claim and pointed out that the predecessor of the applicant, an unincorporated association applied to the Minister of Lands for the grant a Permission to Occupy right (PTO). When the PTO was granted to the applicant, the first respondent was indicated on the certificate as 'manager'. The PTO covered 12 hectares and the campsite and the lodge are situated on the area covered by the PTO.

[19] Subsequent to the meeting held on 17 June 2018, three police officers from Sesfontein Police Station arrived at the applicant's business site. According to the

deponent, the reason for the police officers' visit was because of a complaint laid at their police station by the first respondent, to the effect that the members of the applicant sought to violently evict him from the lodge.

[20] The applicant's deponent further pointed out that about 30 guests have been booked into the lodge since 17 June 2018 and the income generated from those bookings were being unlawfully appropriated by the first respondent. Furthermore, the operating assets of the applicant in the lodge were at risk. In addition, there was a risk to the reputation of the business of the applicant, caused by the unlawful occupation of the lodge by the first respondent as the guests would be confused about the sudden change in management.

[21] Finally the said deponent pointed out that the applicant has not been served with a court order granted in favour of the first to fourth respondents against the applicant, evicting from the lodge; and that the first to fourth respondents simply took the law into their own hands and unlawfully despoiled the applicant of its peaceful and lawful possession of the lodge.

The respondents' opposition

[22] The opposing affidavit on behalf of opposing respondents is deposed to by the first respondent.

[23] A point *in limine* in law was raised regarding the applicant's deponent's *locus standi* and authorisation to bring the application. Having heard arguments by counsel for the parties, I dismissed the point *in limine* with costs.

[24] The first respondent initially complained about the short time available to him to file his answering affidavit. However, at the first appearance, the matter was postponed and the applicant was granted leave to file a supplementary answering affidavit. When the proceedings are commenced, the respondents contended that the matter was not urgent. However, during the course of the arguments on the merits, Mr Namandje wisely informed the court that the point regarding urgency would not be persisted with. In my view, the concession was wisely and responsibly made.

[25] As regard the merits, the respondents, denied that the lodge is part of the Conservancy; and that the lodge is not in the conservancy area. Furthermore, they argued that the applicant was not in factual or legal occupation at the time the first respondent took occupation of the lodge.

[26] It was the first respondent's testimony that the lodge has been a subject of a dispute for many years and that after protracted negotiations over the years, he was invited by the applicant to return after the applicant realised that the lodge was developed and built by the first respondent more than two decades ago.

[27] The first respondent went on and stated that the court's eviction order of 2002 was irrelevant to the proceedings because the applicant has jeopardised its right in respect of the court order by acknowledging that the first respondent is the *bona fide* owner and possessor of the lodge. Furthermore, the dispute regarding his employment by the applicant as a manager was in respect of the campsite and not the lodge.

[28] With regard to the 2002 court order, the first respondent re-iterated that the lodge is not located in the same area as the PTO of the campsite referred to in the court order and as such, the possession and occupation of the lodge by the applicant was unlawful.

[29] The first respondent disputed that the applicant operated the lodge since 2008 and pointed out that the applicant was in occupation of the lodge since 2003. The respondent continued and stated that during his tenure as manager, he repeatedly informed the community that he sought to run the lodge as a private concern but he was ignored.

[30] It was the first respondent's case that the lodge and the campsite are located on separate pieces of land demarcated by separate PTO's; that he applied for a PTO for the lodge to the Ministry of Lands on 30 January 2018 and that application for the PTO was yet to be issued.

Issues for determination

[31] The issue for determination is whether the applicant has proved that it was in possession of the lodge and that it was unlawfully despoiled of such possession by the first respondent.

Applicable legal principles

[32] The applicable legal principles to the issue of spoliation were summarised by this court in *Kandombo v The Minister of Land Reform*[1]. They are set out at para 25 of Mr Tjombe's heads and read as follows:

'1. In spoliation proceedings it is only necessary to prove that the applicant was in possession of a thing (movable, immovable or incorporeal) and that there was a forcible or wrongful interference with his or her possession of that thing;

2. The purpose of the remedy is to preserve law and order and to discourage persons from taking the law into their own hands;

3. To give effect to the objectives of the remedy it is necessary for the *status quo ante* to be restored until such time a court has assessed the relative merits of each party;

4. The lawfulness or otherwise of the applicant's possession of the thing does not fall for consideration during the hearing of the spoliation application, the question of ownership in the thing is equally not considered;

5. The applicant for a spoliation order must establish that he/she was in peaceful and undisturbed possession of the thing at the time he/she was deprived of possession;

6. The words 'peaceful and undisturbed' possession mean sufficient stable or durable possession for the law to take cognisance; and

7. As a form of remedy spoliation is not concerned with the protection of rights "in the widest sense".'

[1] (A 352/2015) [2016] NAHCMD 3 (18 January 2016).

Application of the Law to the Facts

[33] Keeping the foregoing principles in mind, I turn now to consider the facts of the present matter. It is common cause that the applicant was in possession of the lodge until 9 June 2018. It is also common cause that the first respondent took possession of the lodge on 9 June 2018. It is further common cause that the respondent did not obtain a court order to evict and thereafter occupy the lodge since he alleged that the applicant's occupation of the lodge was unlawful.

[34] Mr Namandje for the opposing respondents raised two technical defences on behalf of the respondents. The first defence was that the evidence placed before court by the applicant constituted inadmissible hearsay evidence. This it was so argued, because there was no certificate of translation by Mr Tjombe stating that he did 'correctly and accurately' translate the contents of the affidavit of the applicant; that, so the argument went, in the absence of such certificate, the evidence before court was hearsay and thus in inadmissible. The second defence was that there was a dispute of facts, whether the lodge was situated in the conversancy area of the applicant as proclaimed by the Minister in terms of the provisions of the Nature Conservation Ordinance, 1975 or not; and that if the lodge was not situated in the conversancy area then in that event, the applicant had no cause to complain.

Inadmissible hearsay

[35] I proceed to consider the first defence raised. It is not in dispute that the Mr Tjivinda the deponent to the applicant's supporting affidavit cannot speak or read English. It was however his testimony that his legal practitioner, Mr Tjombe, is fully conversant in both Otjiherero and English languages and that he conveyed his instructions in Otjiherero and Mr Tjombe in turn reduced same to writing in English and thereafter conveyed the content of the English written version to him in Otjiherero, which he confirmed was true and correct. Furthermore, it is not disputed that when the affidavit was commissioned by the Commissioner of Oath a certain, Mr Rutari, explained to him the oath, whereupon the deponent again confirmed that the content of the affidavit was true and correct and then he took the prescribed oath and signed the affidavit.

[36] Mr Namandje argued before this court that notwithstanding the applicant's deponent compliance with the requirements regarding the commissioning of an affidavit, the supporting affidavit suffered from a defect in that there was no certificate of translation to the effect that Mr Tjombe did 'correctly and accurately' translate the content of the affidavit to the deponent; and that in the absence of such a certificate, the evidence contained in the affidavit constituted inadmissible hearsay. This meant that no case has been made out by the applicant and the whole application stood to be dismissed with costs on that ground alone.

[37] In support of his argument, Mr Namandje referred the court to *Mabaso v State*[2]. as well as to paragraph 6.2 at page 19 of *Law of Hearsay Evidence* written by Mr Namandje himself in which he discussed the judgment in the *Mabaso* matter. In that matter, the court was considering contemporaneous notes made by an investigating officer which purported to have recorded what transpired between the investigating officer, the interpreter and the appellant when a pointing out exercise was conducted at the scene of the crime. The notes were in English, which recorded what was conveyed by the appellant in isiZulu to the interpreter. The latter translated from isiZulu to English to the investigating officer, who did not speak nor understand isiZulu, which was however spoken and understood by the interpreter and the appellant.

[38] At trial, the investigating officer testified that when they were done with the pointing out, he read the notes back to the appellant which the interpreter translated to the appellant who indicated that the notes were correct. However, when the interpreter testified, he denied that they went through the written notes with the appellant and the investigating officer. When it was put to the interpreter that the investigating officer had testified that he had read the notes back to the appellant with the assistance of the interpreter, the interpreter denied that this ever happened. The court found that the handwritten notes under those circumstances, constituted an inadmissible hearsay statement.

[39] Mr Namandje urged upon this court to adopt the approach in the *Mabaso* matter and accordingly reject the applicant's evidence as it constitutes inadmissible hearsay evidence in the absence of a certificate of translation.

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[2] 2016 (1) SACR 617 (SCA) 23 March 2016 at par 15.

[40] I do not agree with Mr Namandje's submission for the following reasons: In my judgment, the *Mabaso* case is distinguishable from the facts of this matter. First, the *Mabaso* scenario consisted of three parties: the appellant, the interpreter and the investigating officer. The investigating officer did not understand or speak isiZulu language, which was spoken and understood by the interpreter and the appellant. It was therefore necessary for the interpreter to translate from isiZulu to English and vice versa for the investigating officer to understand and make his notes in English. Furthermore, there was a contradiction between the testimony of the interpreter and the investigating officer as to whether the notes were read back to the appellant. In addition the court found that, notwithstanding the fact that the notes purported to record *ipsissim* a *verba*, the statement of the appellant, there was no record of some of the replies by the appellant to some of the questions put to him by the investigating officer. It was for those reasons that the evidence of the investigating officer with regard to the content of his written notes was found to be inadmissible hearsay evidence.

[41] In the present matter, unlike in the *Mabaso* matter, the appellant and his legal representative speak and understand one common language, Otjiherero. It was thus a two party-matter as opposed to a three-party matter in the *Mabaso* case. This is the first distinguishing feature between the two matters. The second distinguishing feature is that Mr Tjombe and the applicant did not communicate to each other through an interpreter. The appellant's instructions were simply transcribed or written out by Mr Tjombe from Otjiherero to English. Thereafter the transcribed in English version was read back by Mr Tjombe to the applicant in Otjiherero. Accordingly, there was no translation at all. There was simply audio transcription into written words.

[42] The third distinguishing feature is that, unlike in the *Mabaso* matter where there was a contradiction between the interpreter and the investigating officer, as to whether the content of the notes had been read back to the appellant or not, in the present matter there is no such contradiction. In fact, the appellant confirmed that the contents of the affidavit as conveyed to him by Mr Tjombe, were a true and correct account of what he had narrated to Mr Tjombe.

[43] Mr Namandje appeared to place a high premium on the value of the so-called certificate of translation. For my part, I have grave doubt about whether the said certificate adds any probative value to the evidence. In my view its value is little, if any at all, if the rule against hearsay is strictly applied. In my judgment, the certificate propounded by counsel simply serves as a mere feel-good catalyst against the rule of inadmissible hearsay evidence, but on the strict application of the rule, the evidence is not cleansed of its hearsay character. In other words the hearsay factor remains embedded in the evidence despite the certificate that it has been 'correctly and accurately' conveyed.

[44] In my view, the probative value of the evidence which has been certified that it has been correctly and accurately conveyed, is akin to the evidence of a person making a statement under oath that she or he was born on such and such a date. The fact that the evidence is made under oath which, in my view, is even to a lesser extent, equal to the certificate of translation, remains, strictly speaking hearsay. This is because, notwithstanding the fact that the statement is made under oath, the fact remains that nobody can independently and positively say when he or she was born. The fact that the statement about the date of birth is made under oath does not change the fact of its hearsay character but it makes the court comfortable to accept its probative value.

[45] Mr Namandje argued that even if accepting that Mr Tjombe 'could appropriately be the interpreter and the lawyer, the translator and the lawyer which is scandalously inappropriate, in fact impermissible', he did not confirm the correctness and accuracy of his interpretation. In the preceding paragraph, I dealt with the value that may be added to the probative value of the evidence covered by the certificate of translation and found it of little value or indeed worthless as an insulation against inadmissible hearsay evidence under those circumstances.

[46] What is significant to note, I think, is the fact that the first respondent did not say that Mr Tjombe is not proficient in both English and Otjiherero languages. Neither was it his case that Mr Tjombe did not correctly nor accurately convey the content of his transcribed version to the deponent from English to Otjiherero. Under these circumstances, I am not persuaded that I am precluded from exercising my discretion to accept the evidence by the deponent of the applicant's affidavit merely

because of the absence of the so-called certificate of translation. Mr Tjombe an officer of the court has also filed confirmatory affidavit.

[47] I should mention that Mr Namandje did not refer the court to any rule, statute or principle of common law where the requirement for a certificate of translation is stated. I must confess that, I was perplexed by the submission. As a result, I made some research on the matter. I could not find anything of that sort. The regulations promulgated under the Justices of the Peace and Commissioners of Oath Act 1963, which I thought would be an appropriate and obvious instrument to deal with the requirement as propounded by Mr Namandje, do not provide for such a requirement. The only closely related issue I came upon, during my research, was a discussion in Herbstein and Van Winsen 3rd Edition at page 86, where the learned authors discussed the prohibition to commission an affidavit before a person who has own 'interest' in the matter, for instance, if the affidavit is commissioned before the legal practitioner of record or a partner in the law firm acting in the case[3]. The learned authors also discussed the judgment of the full bench in the matter of *S v Munn*[4] where it was held that: 'Compliance with the regulations (for administration of oath) provides a guarantee of acceptance in evidence of affidavits attested in accordance therewith, subject only to the defence such as duress and possibly undue influence'. It is not the first respondent's case that the deponent to the applicant's affidavit acted under duress or was under undue influence when he gave the instructions. In my view, the submission by Mr Namandje that it was 'scandalously, inappropriate and impermissible' for Mr Tjombe to have interpreted – which I found not to be an interpretation or translation but a mere act of transcription, is not only unduly harsh to a fellow legal practitioner, but has no basis in law and falls to be rejected. Mr Tjombe is an officer of this court. He deposed to a confirmatory affidavit in which he confirms the correctness and truthfulness of what is stated by the deponent in the supporting affidavit. There is nothing before this court to cause the court to doubt or not to believe what Mr Tjombe has stated under oath.

[48] The courts in this jurisdiction, as far as I am aware, have been satisfied and have been accepting affidavits where the contents have been conveyed by the deponent to the legal practitioner of the deponent, who speaks and understands the

[3] Herbstein and Van Winsen: The Civil Practice of the High Courts & Supreme Court of Appeal of South Africa. 3rd Ed. Juta & Co, page 87.
[4] 1973 (3) SA 734 at 737.

same language as the deponent without any certificate of translation. I am not aware of the requirement of the certificate of translation in those circumstances. The rules of this court do provide for such a requirement. It is my considered view that such a requirement would seriously impede the administration of justice and render if costly in a country such as ours where, there are multiple languages which require interpretation, or transcription into English the official language which is not the dominant language of this country, but which the founders of this Republic, in wisdom found it appropriate to proclaim it as the official language. For my part, I welcome and endorse a situation where our legal practitioners are able to assist the deponents in matters where they are acting, to simply transcribe what has been conveyed to them by deponents to affidavits in the form of transcription from the indigenous languages, in which the legal practitioners are conversant, to the official langue and not requiring a certificate of translation. After all there is a safeguard provided by the prescribed oath where by the deponent swears that the content 'is true and correct'. Otherwise the legal practitioner's would be required to file a certificate at enormous costs to the client. I say this for the reasons that, notwithstanding the fact that the legal practitioner speaks and understands the same language as the deponent, he would be required to have the services of an interpreter who would then certify that he or she has 'correctly and accurately' translated the content of the affidavit to the deponent. Sight should not be lost that interpreters charge for their services. It is for this reasons, I say the requirement would renders the administration of justice costly.

[49] For the foregoing reasons, my conclusion is therefore that the principle against inadmissible evidence even though well-articulated by Mr Namandje in his work, *Law of Hearsay Evidence*, which is a welcome addition to a body of the interpretation of our home-grown law of evidence, and the principles discussed in the *Mabaso* matter, do not unfortunately find application to the facts in the present matter. Accordingly the argument is rejected. I am therefore satisfied that the evidence contained in the affidavit by the deponent to the applicant's evidence is acceptable and is received onto the record

Possession of the contested premises

[50] The next point raised by Mr Namandje is the issue of possession of the demarcated conservancy area by the applicant. In this connection, counsel pointed out that the applicant did not indicate by way of coordinates that the lodge is situated in the conservancy as asserted on behalf of the applicant; that the applicant only possesses and occupies the proclaimed area consisting of the campsite; and that the lodge is not situated in the area proclaimed as a conservancy. The respondent contended further that the lodge from which the applicant sought to eject the respondents is not part of the conservancy as declared by the Minister. In this connection, Mr Namandje submitted that there is a dispute of facts in so far as the applicant's version that the lodge is situated within the proclaimed conservancy, whereas the respondents' is that the lodge is situated outside the proclaimed conservancy area. Mr Namandje thus urged upon this court to apply the well know Plascon-Evans rule. It was counsel's submission that on a proper application of the said principle, the respondent's version should prevail over that of the applicant.

[51] In my view, this point is an attempt by the respondent to divert attention from the real issue, namely the question whether or not the applicant was in occupation of the lodge and whether the first respondent unlawfully, in the sense that it was done without due process of law, dispossessed the applicant of such possession. The argument is, in my view, clearly disingenuous. The so-called dispute is spurious. For the purpose of determining the issue of spoliation, it does not matter where the lodge is situated neither does it matter who is the owner of the lodge. (See para 32).

[52] The first respondent, on his own version admits that 'I have been in occupation [of the lodge] since 2016 up to February 2018. And also occupied [the lodge] since 9 June 2018'. On the facts which are not in dispute, the first respondent was re-employed as manager of the applicant's business from 2016 to February 2018 after he was dismissed in 2001. It is for that reason that he says he was in occupation of the lodge. It is also common cause that the first respondent was dismissed in February 2018 and thus henceforth on he was not in occupation of the lodge. It is to be noted however, that the occupation exercised by the first respondent during that time was merely him being an employee on the premises of the applicant, who exercised actual and factual occupation over the lodge. In other words, during the said period, the first respondent did not exercise occupation of the

lodge in his own right and independent from the occupation conferred on him by the applicant. He was in occupation at the pleasure of the applicant. It was not the first respondent's case that during the period 2016 to February 2018 he a co-occupier together with the applicant.

[53] The first respondent further admitted occupation of lodge since 9 June 2018 in the following words: 'Further no property belonging to members of the community existed in the lodge since I moved in on the 9 of June 2018'. This statement was made in response to the applicant's concern that since the respondent moved in the lodge, there were 'several assets of the community in the lodge such as beds bedlinen, kitchenware, furniture, crockery and the like'. As we have been refused access to the lodge, we are not sure of the safety of these assets. I supplied the underlining for emphasis.

[54] It is clear from the above excerpts from the affidavits of the parties that the first respondent admits that he moved into the lodge on 9 June 2018. What is significant to note is the fact that he does not say he 'lawfully' moved into the lodge and does not provide a court order that enabled or allowed him to do so.

[55] The deponent to the applicant's affidavit stated that: 'The applicant has 10 fulltime employees, and all of them, except the second respondent (who is also an employee of the applicant) have been evicted from the lodge'. In response to this statement, the first respondent responded that: 'And further, when I occupied the lodge on the 9th of June 2018, I did not find 10 employees and I further did not dismiss or chase any employee'. (The underlining supplied for emphasis). This statement in my view clearly, demonstrates that the first respondent took occupation of the lodge on 9 June 2018. It needs pointing out again that the first respondent does not claim to have taken possession of the lodge lawfully.

[56] In paragraph 38, the deponent to the applicant's founding affidavit stated that: 'The Applicant has not been presented with any written communication regarding to be evicted despite its occupation and possession of the premises for over 15 years'. No court order was served on the applicant for its eviction. In response to this statement, the first respondent simply said: 'The applicant was not evicted, I simply took occupation of a property that belonging to me as the lawful owner'. (Underlining

supplied for emphasis). It is to be noted again that the first respondent did not deny that the applicant was in occupation and possession of the lodge for over 15 years. Neither did he deny that the applicant was not served with a court order authorising the applicant's occupation and the first respondent's eviction. In light of the admission by the first respondent that, he 'took occupation the property' which is the lodge, coupled with an absence of a denial that he did so without a court order authorising him to take occupation of the lodge, in my judgment, leads to the ineluctable conclusion that the applicant has proved on a balance of probability that it was unlawfully despoiled of its peaceful and undisturbed possession of the lodge by the first respondent.

[57] As regard to the applicant's concern of the reputational damage to the applicant's business as a result of the first respondent's abrupt and forceful occupation of the lodge, the first respondent stated that he did not share such concern as the guests who had made advance payments for accommodation would simply provide proof of their advance payment and would be accommodated. In my considered view this statement again serves as a confirmation by the respondent's demonstration and an admission that he unlawfully took occupation of the lodge.

[58] It was for these reasons that, I was satisfied that the applicant had made out a case for the relief prayed for in the notice of motion and it was further for these reasons that I granted the order on 19 July 2018.

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H Angula

Deputy-Judge President

APPEARANCES

APPLICANT:	N Tjombe of Tjombe-Elago Inc., Windhoek
FIRST, SECOND, THIRD FOURTH RESPONDENTS:	S Namandje of Sisa Namandje & Co. Inc., Windhoek