

**REPUBLIC OF NAMIBIA**



**HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK  
JUDGMENT**

Case No: HC-MD-CIV-MOT-GEN-2019/00489  
(INT-HC-CONTCRT-2020/00080)

In the matter between:

**V5 FARMING BOERDERY CC  
ALMARIE VAN DER MERWE  
PAUL JOHANNES ROOS VAN DER MERWE**

**1<sup>ST</sup> EXECUTION CREDITOR  
2<sup>ND</sup> EXECUTION CREDITOR  
3<sup>RD</sup> EXECUTION CREDITOR**

and

**TEACHERS UNION OF NAMIBIA (TUN)  
GREENSQUARE INVESTMENTS CC  
CECILIA GAYA  
IVAN GAYA**

**1<sup>ST</sup> EXECUTION DEBTOR  
2<sup>ND</sup> EXECUTION DEBTOR  
3<sup>RD</sup> EXECUTION DEBTOR  
4<sup>TH</sup> EXECUTION DEBTOR**

**Neutral Citation:** *V5 Farming Boerdery CC & others v Teachers Union of Namibia (TUN) & others* (HC-MD-CIV-MOT-GEN-2019/00489 (INT-HC-CONTCRT-2020/00080) [2021] NAHCMD 188 (27 April 2021)

**CORAM:** MILLER AJ  
**Heard:** 11 March 2021  
**Delivered:** 27 April 2021

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## **ORDER**

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(1) The application is dismissed with costs.

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## **Judgment**

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**MILLER AJ:**

[1] The issue before me is whether the fourth respondent (Mr Gaya) is in contempt of an order made by Parker, AJ on the 24<sup>th</sup> of January 2020. The relevant part of that order restrained the fourth respondent inter alia from unlawfully interfering with the applicant's possession and occupation of Workshop 3 Erf 3083, Ranonkel Street, Khomasdal, Windhoek.

[2] It is common cause that subsequent to the date on which the order was issued, the fourth respondent, arrived at the premises and proceeded to unload four game carcasses which were then placed in a freezer on the premises. It is further not disputed that there were some rather vulgar and heated exchanges between the fourth respondent and the third applicant, Mr Van der Merwe.

[3] What is in issue are the reasons why the fourth respondent went to the premises. On that score there is a substantial factual dispute on the papers. These are application proceedings and no application was made to refer any issue to oral evidence. I will therefore decide the issue on the papers as they are.

[4] In proceedings of this nature it is incumbent upon the applicant to prove;

- 4.1 The existence of a court order.
- 4.2 That the respondent was aware of the order.
- 4.3 That the respondent acted in breach of the order.
- 4.4 The respondent acted wilfully.

[5] As to the standard of proof what is required is the standard applied in criminal proceedings namely proof beyond reasonable doubt. The onus ultimately rest upon the applicant.

[6] On the papers there is a direct conflict between the version of Mr van der Merwe and the fourth respondent as to what the intention of the fourth respondent was when he went to the premises. According to the version of Mr van der Merwe one can infer that the intention of the appellant was to interfere in the business being conducted on the premises. The evidence of the exchange between Mr van der Merwe and the fourth respondent lends some support for such an inference.

[7] The fourth respondent contents that he went to the premises in order to have the game carcasses processed by the butcher at the premises as to, put it differently he was there as an ordinary paying customer.

[8] Counsel for the applicant submitted that in order to resolve the dispute I should adopt the approach followed in *Van Wyk vs Chibueze*<sup>1</sup>. In that case the court followed the ratio formulated in *Stellenbosch Farmers' Winery Group and Another vs Martell et Cie and Others*<sup>2</sup>

[9] The approach adopted on those cases may well be relevant in civil proceedings where the onus is one of a balance of probabilities, and where the Court hearing the matter heard *viva voce* evidence.

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<sup>1</sup> *Van Wyk vs Chibueze* (I 755/2016) [2018] NAHCMD 305 (26 September 2018) at par. 23 to 25.

<sup>2</sup> *Stellenbosch Farmers' Winery Group and Another vs Martell et Cie and Others* (2008 (1) SA 11 SCA)

[10] It finds no application in cases where the onus of proof is one of proof beyond reasonable doubt, and where the determination depends solely on what is contained on the papers.

[11] In so far as a resolution of the factual dispute are concerned, the approach I must adopt when drawing inferences must be the approach in criminal cases. It involves a twofold process. Firstly the inference to be drawn must be consistent with all the facts and secondly it must exclude only at other reasonable inference which may be drawn.

[12] Based upon that approach I am not able to conclude that the intention of the fourth respondent was to unlawfully interfere with the business being conducted at the premises.

[13] In the result I make the following order:

- (1) The application is dismissed with costs.

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K MILLER  
**Acting Judge**

## APPEARANCES:

## APPLICANTS:

A Delpont  
Delpont Nederlof Legal Practitioners

1<sup>st</sup> RESPONDENT:

TEACHERS UNION OF NAMIBIA (TUN)  
No 4551  
Dollar Street  
Komasdal  
Windhoek  
Namibia

2<sup>nd</sup> RESPONDENT

GREENSQUARE INVESTMENTS CC  
ERF No. 3029  
Rand Street  
Komasdal  
Windhoek

3<sup>rd</sup> RESPONDENT

C GAYA  
Erf No 3029  
Rand Street

4<sup>th</sup> RESPONDENT

PD THERON & ASSOCIATES