

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION – MAKHANDA)**

**CASE NO.: 3370/2022**

**Matter heard on: 30 September 2022**

**Judgement delivered on: 11 October 2022**

**REPORTABLE: NO**

**OF INTEREST TO OTHER JUDGES: NO**

**REVISED.**

In the matter between: -

**W[....] F[....] S[....]1**

**Applicant**

and

**S[....]2 S[....]3 S[....]1 (Born J[....])**

**1<sup>st</sup> Respondent**

**THE SOUTH AFRICAN POLICE SERVICES**

**2<sup>nd</sup> Respondent**

**JUDGMENT**

**SMITH J:**

[1] The applicant brought urgent proceedings for an order allowing him access to the parties' former matrimonial home for six hours each on 1 and 2 October 2022, to remove his personal effects and belongings. Although not conceding that the matter was urgent, the respondent's counsel did not pursue the points regarding urgency raised in the answering affidavit and instead urged me to decide the matter on the merits.

[2] The parties are in the process of divorcing, and the applicant has left the matrimonial home some seven months ago. He has since been barred from entering the property in terms of an interdict issued under the Domestic Violence Act, 116 of 1998.

[3] The application is based on the following factual matrix. The applicant would be moving into a new rental property from 1 October 2022. He asserts that it is thus imperative that he must be in a position to furnish his new property with his personal effects so that he can make a new life for himself 'in the manner and style' that he has become used to throughout his married life. Amongst the specialized items the applicant wishes to remove are: a drone collection, specialized tools, camera equipment, an Apple Computer and speakers and cables. He claims that it is imperative that he disconnects and pack these items himself since they are fragile and sensitive.

[4] He also wants to fetch his surf-skis, kayaks, an inflatable boat, and electric motor and a barge, the latter being stored at a neighbour's home. In addition, he wants the opportunity to choose one of the television sets for his own use.

[5] The parties have, since 1 September 2022, entered into extensive communication regarding the timing and manner of the applicant's proposed visit to the matrimonial property to collect his personal items. On that day the applicant's attorneys addressed a letter to the respondent's, attorneys, Gray Burmeister Inc, requesting that he be allowed access to the former matrimonial home in order to uplift his personal effects and belongings, inclusive of tools and equipment. He requested access to the property for the weekend of the 24<sup>th</sup> and 25<sup>th</sup> of September 2022. Gray Burmeister Inc. responded as follows:

'Our client shall ensure that your client's personal belongings are packed, boxed and ready for collection on Saturday, 24 September 2022 at 11h00. All the items will be available for collection at the gate and your client is required to arrange third parties to collect items. Your client may be in attendance outside the property but may not enter upon the property'.

[6] The applicant's attorneys responded to that letter on 6 September 2022, stating that he objected to the respondent packing any of his personal belongings since they are fragile and 'the handling thereof' is particularly within his knowledge. He also stated that he would have a member of the South African Police Services (the SAPS) present to accompany him when he enters the property. Gray Burmeister Inc. responded on that same day, stating that the applicant was welcome to have members of the SAPS present to collect his belongings from the garage. The respondent would welcome such an arrangement since there can then be no dispute as to the condition of his goods. They stated, furthermore, that the respondent was perfectly capable of carefully gathering the goods and placing them in the garage and that she was unwilling to grant him access to the property in the manner he demanded.

[7] The applicant's attorneys responded to that letter on 13 September 2022, confirming that he would have a member of the SAPS present and that the respondent was 'not to have any hand in the movement, distribution, packing', of these items as he would do so himself and that those items should not be placed in the garage. He also provided a list of items he intended to collect.

[8] Gray Burmeister Inc. responded to that letter on 15 September 2022, stating that the process of packing the applicant's belongings had almost been completed. It would thus be impractical for him to attend at the property to collect them in the manner he suggested. They also provided a list of the items that would be placed in the garage.

[9] The applicant's attorneys replied to that letter on 21 September 2022, recording his disagreement with the proposed course of action and stating that he required unlimited access to the former matrimonial home. If an undertaking was not provided as demanded, he would seek urgent relief in the High Court without any further notice to the respondent, as well as a punitive costs order.

[10] In their reply to that letter on 21 September 2022, Gray Burmeister Inc. stated that the respondent had already packed all the applicant's personal belongings and that they would be in the garage, available for collection. They also stated that

‘should your client however insist on walking through the former matrimonial home to ensure he has collected all of his personal items, he is most welcome to do so, provided he is accompanied by uniformed member of the South African police services.’

[11] The applicant’s attorneys replied that ‘he did not agree to his goods being packed’ and that he ‘will certainly need time to walk through the home in order to collect those items. He will not be accompanied by a member of the SAPS in that he is not an imposter or a criminal. This is his home where he lived for 17 years.’ He also required her to vacate the property for six hours each on 24 and 25 September 2022.

[12] Mr. *Cole* SC, who appeared for the respondent, submitted that the respondent has misconstrued the applicant’s position since she appears to be of the belief that the applicant is intent on removing a number of items that he knows she will be disputing. He submitted that this is clearly not the case since the applicant has also applied for an order allowing a police officer to be present to oversee the execution of the order.

[13] He submitted that she also speculates that the application is motivated by his intention to invade her privacy and to provide him with access to her private documents. There is also no basis for such speculation, or so he argued.

[14] Mr *Cole* submitted, furthermore, that the applicant has established that the items he seeks to collect are essential to his spiritual well-being. He has no idea which items the respondent has unilaterally selected on his behalf. The applicant wishes to collect and pack his own personal items. It is essential and reasonable that he disconnects and deal with the electronic equipment himself as it is sensitive and specialized. And he has made out a case for such an order, or so the argument went.

[15] Mr. *de la Harpe* SC, who appeared for the respondent, correctly submitted that I must accept that all the items identified by the applicant had already been packed by the respondent and placed in the garage. In this respect the horse has

already bolted, so to speak, and it is a development that cannot be undone. Unless of course the applicant suggests that the respondent should unpack all of those items to allow him to go to the matrimonial property for the purposes of reassembling and checking them.

[16] Essentially then, the applicant is seeking an order allowing him to access the former matrimonial property in order to choose certain unidentified items which he wants to select for his own use. There is, however, no reason why he needs to have access to the property in order to do so. The respondent has been fair and accommodating, and has consistently been willing for him to collect his items, albeit not on his own terms. One can, however, understand why she is concerned about having the applicant walking through the matrimonial home and choosing items which he would want to remove for his own use. While he initially agreed to be accompanied by a member of the SAPS, in the last letter to the respondent's attorneys, it was emphatically stated that he will not be accompanied by a member of the SAPS. He insisted that he required six hour's free access to the property on both Saturday and the Sunday, 24 and 25 September 2022. And while in his notice of motion the applicant seeks an order allowing the SAPS to assist with the execution of the order to provide 'free and uninhibited access' to the property, if he had agreed to the respondent's reasonable demand that he should be accompanied by a police officer, this application may well not have been necessary.

[17] Mr *de la Harpe* has correctly argued that while the applicant has a right to his property, he does not have the right to enter into the matrimonial home to identify property in order to determine whether they are his. He has accordingly not been able to establish a clear right, because all the items which he had identified and demanded, had been packed up, safely stored, and is available for collection by him.

[18] He submitted, furthermore, that the applicant has also not been able to establish that there has been any interference or injury, prejudice or damage to his rights. On the respondent's version - which must be accepted in terms of the principle enunciated in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) 1984* (3) SA 623(A) at 634 - the respondent has packed, bubble wrapped and boxed up all his belongings. They are safely stored in the garage waiting for him to collect them.

His concern about the manner in which his sensitive electronic equipment might have been damaged if they were not unplugged and assembled in a particular manner, has thus been overtaken by events. This application was therefore unnecessary and the application falls to be dismissed with costs on the attorney and client scale.

[19] The applicant also has an alternative remedy in that after he had collected his items, and should there be any damaged or missing items, he can bring an application in the ordinary course premised on the *rei vindicatio* or claim damages.

[20] While I agree with Mr *de la Harpe's* submission that the applicant has failed to establish all the requisites for final interdictory relief, I do not believe that there are any grounds for the award of costs on a punitive scale.

[21] In the result the following order issues:

The application is dismissed with costs.

**JE SMITH**

**JUDGE OF THE HIGH COURT**

**Appearances:**

Counsel for the Applicant : Adv.Cole S.C.  
: Whitesides  
53 African Street  
MAKHANDA

Attorney for the Respondents : Adv. De La Harpe S.C.  
: Neville Borman & Botha  
22 Hill Street  
MAKHANDA