

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No.: 729/2014

In the matter between:

**LETELE MOSES KHALI**

Applicant

and

**SAMIA ABDULLA**

Respondent

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**JUDGMENT BY:** MBHELE, AJ

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**HEARD ON:** 19 JUNE 2014

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**DELIVERED ON:** 8 AUGUST 2014

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[1] This is an opposed application of an interim order directing the respondent to exclude or withdraw cattle belonging to the applicant from the auction to be held at 13:00 on 19 February 2014 at Twilight Breeze Animal Pound or any further auction to be held at the mentioned pound or of Twilight Breeze Animal Pound pending an application to be brought for the return/release of applicant's animals.

[2] On 19 February 2014 a rule *nisi* was granted in favour of the applicant calling upon the respondent to show cause why the following order should not be made final:

“1.1 That the respondent is ordered to exclude/withdraw any cattle belonging to applicant from the auction to be held at 13:00 on 19 February 2014 at Twilight Breeze Animal Pound or any further auction to be held at the mentioned pound or of Twilight Breeze pending an application to be brought for the return/release of applicant’s animals within 21 days of relief granted herein.

2. The order granted in paragraph 1.1 to serve as an interim interdict with immediate effect.”

### **FACTS NOT IN DISPUTE**

- [3] Respondent is the pound master of the Twilight Breeze Animal Pound (Operated in accordance with the Pound Ordinance 18/1952) (“the Ordinance”).
- [4] Respondent is in terms of the Provisions of the Ordinance authorised to receive all animals delivered at the pound between sunrise and sunset.
- [5] 192 Cattle came into respondent’s possession between the 22<sup>nd</sup> and 24<sup>th</sup> January 2014.
- [6] The 192 cattle that were impounded were marked by the respondent for identification with yellow paint.
- [7] Some of the impounded cattle had been branded with mark “KEK”.

[8] “KEK” is the identification mark used by the applicant to brand his stock.

[9] The applicant claims 183 of the 192 cattle delivered to the pound.

### **ISSUES IN DISPUTE**

[10] Whether the cattle impounded in respondent’s pound were spoliated and removed contrary to section 18(1) of the Pound Ordinances.

[11] Whether some of the cattle impounded were meant to be auctioned at an auction held on 19 February 2014 at the Twilight Breeze Animal Pound.

[12] Respondent states that between the 22<sup>nd</sup> and 24<sup>th</sup> January 2014 192 cattle were delivered at Twilight Breeze Animal Pound; The cattle were delivered by one Elton Jacobs (Jacobs), together with Lionel Thomas De Nett (De Nett). Upon the delivery of the cattle Jacobs and De Nett informed the respondent that the cattle had been trespassing on Jacobs’ farm, Goldmansrust no. 320.

[12] After the cattle were delivered for impoundment, Jacobs (through De Nett) delivered a claim to the respondent for “illegal grazing of the cattle on his farm, Goldmansrust. The claim

referred to is for R388 000 and is dated 24 January 2014. Applicant states that 183 cattle impounded by the respondent between 22 and 24 January 2014 were in his undisturbed possession and under his control when they were impounded from his farm Balmacara No. 14. Applicant further submits that 8 of his impounded cattle were due to be sold at an auction to be held on the 19<sup>th</sup> February 2014 at the respondent's Twilight Breeze Animal Pound.

- [13] Respondent denies that applicants' cattle were on the list of the cattle that were identified for sale in auction.

Both Jacobs and the applicant are in possession of letters from the Department of Rural Development and Land Affairs giving them permission to occupy the farm Balmacara No. 14. Jacobs has been given permission to occupy the farm Balmacara from 1 September 2013 to 30 November 2013 while the applicant's permission to occupy covers the period from 1 September 2013 to December 2013.

- [15] Chapter III of the Ordinance stipulates duties and liabilities of Pound-masters.

- [16] Section 8(1)(b) of the Ordinance provides that:

"It shall be the duty of every Pound-master to receive or cause to be received all animals tendered at the pound between sunrise and

sunset in accordance with the provisions of this ordinance or any law...”

[17] Section 18(1) of the Ordinance further provides that:

“(i) A landowner on whose land stock is found trespassing and who wishes to impound such stock in terms of this Ordinance shall send the same to that pound which is the nearest by any passable road or thoroughfare to the land trespassed upon whether the said pound is in the district in which the said ground is situate ...”

[18] Mr Louw on behalf of the respondent argued that the respondent impounded the cattle in terms of the provisions of section 8(1)(b) of the Ordinance. He further argued that if the applicant was spoliated, in any manner, respondent was not the one who committed spoliation.

[19] Respondent was not able to obtain affidavits from Jacobs ad De Nett confirming that the cattle were found trespassing on Jacobs’ farm, Goldmansrust.

[20] Respondent’s right to receive animals into the pound is dependent on compliance with other provisions of the Ordinance.

[21] Section 26 provides that:

“1. Every landowner who personally brings stock to the pound shall verbally or if he sends the same in charge of another person, in writing furnish to the pound-master particulars of the number of animals sent to the pound, the place from which they were sent and its distance from the pound together with his claim for damage done, if any, as duly assessed in terms of section thirty two.

2. The pound-master shall not receive any stock into the pound nor be liable to pay any driving fees therefor unless and until he has received such statement;...”

[22] Section 32 of the Ordinance provides as follows:

“Where the damage has been done by the impounded stock the landowner who suffered the damage shall be entitled to cause such damage to be estimated by two impartial persons and in such case the following provision shall apply:-

1. The landowner shall at the time when the stock is impounded furnish to the pound-master written notice of such estimate and the costs thereof together with the estimate list signed by the valuers.”

[23] Respondent, in paragraph 12 of her opposing affidavit states that after the cattle were delivered for impoundment, Jacobs (through De Nett), delivered a claim to her for “illegal grazing” of the cattle on the farm, Goldmansrust.

[24] The pound-master received the statement of claim on 24 January 2014, two days after the process of impoundment had begun. There is no indication on the statement of claim that the

claim was assessed by independent valuers.

- [25] What is more problematic is the unwillingness on the part of Jacobs and De Nett to confirm allegations as contained in the respondent's affidavit, making it difficult to ascertain whether the provision of section 18(1) were complied with.
- [26] The applicant avers that he was in peaceful and undisturbed possession of his livestock at his farm Balmacara No. 14 when it was impounded. There is no evidence before me to prove the contrary.
- [27] Spoliation is the wrongful deprivation of another's right of possession. Respondent denies that some of the applicant's cattle were on the list of stock to be auctioned on the 19<sup>th</sup> February 2014. Applicant identified cattle to be auctioned on the 19 February 2014. The said cattle are listed under numbers 3, 18, 19, 21, 23, 26, 47 and 57 on the Notice of Auction. Respondent does not dispute the correctness of the Notice of Auction.
- [28] Although the respondent relies on provisions of section 8 to justify impoundment I am not satisfied that all other relevant sections of the Ordinance were complied with
- [29] I am persuaded that the applicant was unlawfully deprived of possession of his cattle by the respondent. In the

circumstances I make the following order.

**ORDER**

[30] The *rule nisi* is confirmed.

[31] The cost of the application are to be paid by the Respondent and are to include the costs of one senior counsel.

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**N. M. MBHELE, AJ**

On behalf of the applicant:

Adv. A. H. Burger SC  
Instructed by:  
Moroka Attorneys  
BLOEMFONTEIN

On behalf of the respondent:

Adv. M. C. Louw  
Instructed by:  
Stander and Partners  
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