

Reportable:	NO
Circulate to Judges:	NO
Circulate to Magistrates:	NO
Circulate to Regional Magistrates:	NO



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

CASE NUMBER: UM286/2021

In the matter between:

CAROL STEFNE MULLER

FIRST APPLICANT

WAYNE MULLER

SECOND APPLICANT

BRITTANY JOY MULLER

THIRD APPLICANT

**BOSS SAFARIS AND OUTFITTERS
(PTY) LTD**

FOURTH APPLICANT

In re:

CAROL STEFNE MULLER

FIRST APPLICANT

WAYNE MULLER

SECOND APPLICANT

BRITTANY JOY MULLER

THIRD APPLICANT

**BOSS SAFARIS AND OUTFITTERS
(PTY) LTD**

FOURTH APPLICANT

and

JOHANNES CORNELIUS VISAGIE

FIRST RESPONDENT

LINDA VISAGIE

SECOND RESPONDENT

NORTH WEST PARKS BOARD

THIRD RESPONDENT

**THE PROFESSIONAL HUNTERS
ASSOCIATION OF SOUTH AFRICA**

FOURTH RESPONDENT

CORAM: PETERSEN ADJP

Heard: 05 October 2023

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail and released to SAFLII. The date and time for hand-down are deemed to be delivered on **24 November 2023**.

Summary: Opposed Motion – Two separate applications brought under same case number on different dates - Interdict – rule *nisi* on first application confirmed – rule *nisi* on second application discharged (application has become moot).

ORDER

- (i) The *rule nisi* issued on 23 November 2021 is confirmed.
- (ii) The *rule nisi* issued on 01 December 2021 is discharged.
- (iii) The first and second respondents shall pay the applicants costs in the application of 23 November 2021, jointly and severally, the one paying the other to be absolved, to be taxed on a party-party scale.
- (iv) No order as to costs in the application of 01 December 2021.

JUDGMENT

PETERSEN ADJP

Introduction

[1] On **17 and 30 November 2021**, the applicants approached this Court with two separate *ex parte* urgent applications under the same case number UM286/2021, seeking final relief against the first, third and fourth respondents.

[2] On **23 November 2023**, in the application of **17 November 2021**, the relief sought by the applicants was granted by Hendricks DJP (as he then was), in the following terms:

- "1. *The First and/or Second Respondents are to cease all unsanctioned hunts in respect of the Fourth Applicant's animals/game, in respect of animals/game that are not solely the First Respondent's animals/game, and any unsanctioned hunts and conduct related thereto at all at Farm Wegdraai 205, 1851 Hectares, Dr Ruth Mompati District, North West Province ("the farm").*
2. *The First Respondent is to cease making threats on the First Applicant's life and/or person, and cease any actions in furtherance of such threats or previous threats.*

3. *A rule nisi is calling upon the Respondents to show cause on the 13th of JANUARY 2022, at 10:00 am or soon thereafter as the matter may be heard, as to why the order in paragraphs 1 and 2 above should not be made final.*
4. *The First and Second Respondents are to pay the costs of this application on the attorney and client scale, jointly and severally, the one paying the other to be absolved."*

[3] On **01 December 2021**, in the application of **30 November 2021**, the relief sought by the applicants was granted by Mahlangu AJ, in the following terms:

- "1. *The First and/or Second Respondents immediately hand over all 7 lion skins to the Applicants or the duly authorised Sheriff, being held at Farm Wegdraai 205, 1851 Hectares, Dr Ruth Mompati District, North West Province ("the farm").*
2. *Ordering and directing the Sheriff to attend at the Farm in order to search and seize all 7 lion skins in the event that the First and Second Respondents refuse handing over same.*
3. *The First and Second Respondents are interdicted and restrained from removal, destruction and sale of the lion skins from the Farm.*
4. *The First and Second Respondents are interdicted and restrained from removal, destruction and sale of the lion skins from the Farm.
(REPETITION OF PARAGRAPH 3) as per original court order.*
5. *The First and Second Respondents to immediately hand over all associated paperwork for the lion hunts held in their possession following various hunts at the Farm.*

6. *A rule nisi be issued calling upon the Respondents to show cause on the 13th of JANUARY 2022, at 10:00 am or soon thereafter as the matter may be heard, as to why the order in paragraphs 4 and 5 should not be made final."*

- [4] The first and second respondents oppose the relief sought in both applications. The first, second and third applicants are directors and shareholders of the fourth applicant ("Boss Safaris"). The first respondent according to the applicants is a contract worker, whilst the first respondent contends that he is in fact a director and shareholder in Boss Safaris.

The case for the applicants

- [5] Boss Safaris was founded by the second applicant, a professional hunter and outfitter¹ on **11 January 2014**. Boss Safaris conducts various hunts of wild animals and exotic animals (game animals/wildlife) for different purposes and in different manners and handles all logistics from the initial booking for the hunt to the day the client's trophies arrive back at their home, and custom tailor packages to suit budgets and preferences of specific clients. The second applicant would organise Boss Safari's hunts and the first respondent would lead the hunts.

¹ The applicants describe a hunting outfitter as any person who presents or organises the hunting of a wild animal or an exotic animal for reward, who is registered as a hunting officer for the purposes of conducting hunting operations for commercial purposes.

- [6] The applicants aver that the first respondent during or about **January 2019**, joined Boss Safaris as a contract worker after an argument with Mr Wouter Roets ("Roets"), who previously owned Wegdraai 205, 1851 Hectares, Dr Ruth Mompati District, North West Province ("the Farm"), which included various assets and game. During **September/October 2019**, Roets sold the Farm to the Government of the Republic of South Africa. The land on which the Farm is situated was subsequently transferred to the Mariba Land Development Trust ("the Trust").
- [7] During **2020**, because of the Covid-19 pandemic, all hunting in South Africa stopped as no foreign clients were allowed in the country. On or about **15 August 2020** Boss Safaris duly represented by the first applicant and Geelhout Safaris, duly represented by Roets entered into a sale agreement in respect of the purchase and sale of certain goods for the agreed amount of R3 450 000 (three million four hundred and fifty thousand rand). The sale agreement was essentially for the purchase of all the assets on the Farm and all relevant game on the Farm. All the goods and all the relevant game on the Farm (811 wild animals) which is for hunting, breeding, and conservation, pursuant to the sale agreement, therefore belongs to Boss Safaris. Boss Safaris further purchased lions and certain buffalo from Roets, which was roaming on the Farm. The lions which were purchased in **2019** for the 2020 hunting season were, however, only delivered in 2021. The first respondent owns certain animals on the Farm, which include three (3) rhinos, certain sables and roans.

- [8] The applicants allege that the first respondent on **2 December 2020** entered into a lease agreement with the Trust to lease the Farm for a period of 120 months, commencing on **1 January 2021** until **31 December 2030**. The lease agreement is alleged to have been concluded by the first respondent under the pretext and misrepresentation that the Kgosi (Chief) of the Tshidimolondo community, being a male, would not enter into negotiations with the first applicant, a female contracting on behalf of Boss Safaris.
- [9] The applicants allege that the first respondent misrepresented to the Trust that he was leasing the Farm in his personal capacity and that all game on the Farm belonged to him, whereas the lease agreement was in fact for the benefit of Boss Safaris. The applicants contend that this misrepresentation by the first respondent is part of the *causa* for the present applications.
- [10] At the beginning of **2021** Boss Safaris attempted biltong hunting which did not prove feasible. According to the first applicant she was in the full time employ of a company, the Red Ants, and could not attend regularly at the Farm. She suspected that the first respondent was culling the wildlife on the Farm and selling the meat for personal gain. On occasion when she did attend at the Farm, staff paid by the first respondent on his instruction, refused to speak to her.
- [11] On or about **20 June 2021**, the second and third applicants came to South Africa. The first applicant accompanied them to the Farm with

each of the first to third applicants hunting a lion on Father's Day. On the evening of **20 June 2021**, the first applicant contends the first respondent told her daughter in law that he would kill the first applicant if she took away his livelihood. *"During our first weekend spent on the farm, Jacus had quite few drinks and started telling me how he would kill anybody who interfered with his livelihood, or "messed with" his family or home. He then pointed back over his shoulder with his thumb at Carol and said "like this bitch". I would kill her". He continued to assure me that he was not making an idle threat and how very serious he was that he would, without a doubt, kill her if she did anything that threatened his livelihood on the farm because according to him that is his home and without it he has nothing."*

[12] When the first applicant called a meeting on Monday **21 June 2021** to announce that she would be leaving the business due to her commitments, the first respondent convinced her to stay, which the first applicant believes was based on the first respondent being aware that her withdrawal from the business would entail withdrawal of funding for the business from her.

[13] According the first applicant, during early **July 2021** certain irregularities at the Farm came to the attention of Boss Safaris and herself. These irregularities constituted unsanctioned hunts on the Farm by the first respondent of Boss Safaris animals/game. The first applicant describes unsanctioned hunts as being hunts which the first respondent did not have permission to conduct. The first applicant further describes the unsanctioned hunts as a hunt, where an

individual undertakes hunts without informing the company paying his or her salary, where arranging hunts is part of the arrangement between such individual and his or her employer, where the individual utilises assets and hunts animals that do not belong to them without prior consent from the owners of such assets and animals. Any of these hunts would require utilising the owner's lodge without the owner's knowledge or permission and retaining all the funds from such activities. These is what the first respondent allegedly did in respect of Boss Safaris.

[14] The applicants allege that the first respondent was specifically taking Boss Safaris international clientele who trusted the name and reputation of Boss Safaris, on unsanctioned hunts. In respect of one client, Mr Rivas, information was received from the tracker of Boss Safari, Mr Innocent Nyathi and a Mr Joseph Mativenga who provided voice notes to the second applicant and photographs of the unsanctioned hunts to the first applicant, on or about **28 July 2021**. The second applicant upon investigating the allegations found them to be true, and thereby uncovered evidence of the first respondent's unlawful dealings. On **16 August 2021**, the applicants allege, the first and second respondents brought Boss Safaris last clients for the hunting season to the Farm, referred to as the McMurdie hunting party. Nothing specific is alleged in respect of this hunting party.

[15] The applicants allege that the first respondent has flouted both legislation governing hunting in South Africa and the procedures of Boss Safaris. In this regard, the applicants allege that in respect of

what is termed biltong hunting which is for personal purposes where meat is for consumption of the hunter and his family, his friends and for sale to butcheries. In respect of trophy hunting where the hunt is for horns, tusks and skins, the meat is used to feed the lions. Some meat is also provided to the local Tshidimolondo community. The first respondent is alleged to have sold the meat for his own benefit despite claiming that it was in a storage unit in an adjoining farm. In 2020 he allegedly gave no meat to the community.

[16] The applicants further allege that the first respondent attempted to export certain animal carcasses and trophies from unsanctioned hunts which was established from a register held in this regard. No taxidermy was being performed by the first respondent in respect of trophy hunts. Despite the conduct of the first respondent being reported to a representative of the North West Department of Economic Development, no feedback has been forthcoming.

[17] The applicants contend that in an attempt to establish an exact count of how many of the animals/game of Boss Safari were hunted through unsanctioned hunts, the first applicant hired a helicopter and undertook a flight over the Farm on **26 August 2021**. During the said flight, the first applicant maintains that various animals/game of Boss Safaris, discounting those belonging to the first respondent, could not be accounted for, as they were missing. This confirmed the information received from Mr Nyathi and Mr Mativenga that the first respondent was conducting unsanctioned hunts. An inventory of such count is adduced as evidence revealing the exponential difference in

animals from the time of introduction. The first respondent when confronted about this anomaly allegedly reacted with hostility and nevertheless continued with unsanctioned hunts.

- [18] When the first applicant attended at the Farm with employees of the security company the Red Ants to retrieve the animals/game of Boss Safaris, the second respondent confronted the first applicant and refused to open the gate and called the first respondent. The first applicant broke the lock on the gate and entered the Farm with the Red Ants. They were confronted by the first respondent who allegedly opened three (3) lion cages and let loose three (3) lions, which is said to be extremely dangerous and contrary to the law. Another unsanctioned hunt was in progress on the Farm that day.

The case for the first and second respondents

- [19] An unsigned employment contract entered into between Boss Safaris and the first respondent, which is not in dispute, is provided by the respondents as proof. In the unsigned contract of employment, the first respondent is appointed as the Chief Operating Officer (COO) of Boss Safaris and elsewhere also referred to as a Director in Boss Safaris. Save for being the COO, the duties of the first respondent included that of a Hunting Outfitter. The contract further records that the first Respondent would be paid a monthly salary of R30 000.00 (upon presentation of an invoice generated and supplied to Boss Safaris for "services rendered"), a cell phone allowance of R1800.00

and the acquisition of a 10% shareholding in Boss Safaris. It was a further term of the agreement that the first respondent would receive 25% of the profit at the end of every hunt contracted by himself after all expenses had been calculated for the particular hunt. The said agreement was not signed by the parties but agreed to in WhatsApp communications between the parties. The first respondent maintains that he is still owed fees and commission in terms of this agreement in excess of an amount of R790 000.00 (R556 206.00 commission and R232 750.00 professional hunter's fees). This amount owed to him he alleges would be set off, by agreement with the second applicant, through hunting for his own clients some of the game of Boss Safaris. This agreement he alleges was reached during **August 2019**.

[20] The first and second respondents have been dismissed by the applicants, which issue they have referred to the Commission for Conciliation, Mediation and Arbitration (CCMA).

[21] The first respondent contends that he was at all relevant times authorised as the sole person to conduct any game related activities, hunts or operations. The first respondent further contends that the involvement of any of the applicants of the Farm, which he legally leased was through himself and for which he made payments with his commission paid by the applicants. According to the first respondent, Boss Safaris stopped making payments towards the lease agreement of the Farm and elsewhere alleges that Boss Safaris made no payments. This contradicts invoices issued by the first respondent to

Boss Safaris described as Rental of 205 Farm Wegdraai, Piet Plessis.

[22] The respondent denies the allegation that he opened the lion cages and let the lions loose on the first applicant and employees of the Red Ants. On his version, the first applicant was aware at all relevant times that the lions are kept in camps and she could not walk around the Farm oblivious to this. He further maintains that there were rhinos and buffalos around as well, which are also dangerous animals.

[23] The first respondent also disputes that he carried out any unsanctioned hunts and maintains that the applicants have failed to adduce any evidence of unsanctioned hunts. In this regard his defence is that whilst there are some animals belonging to Boss Safaris on the Farm, he is the sole lessee of the Farm and authorised to hunt and conduct operations on the Farm. He asserts that he did not conclude this agreement on behalf of Boss Safaris, in his personal name as the applicants allege. In this regard he relies on an authorisation from the Mariba Land Development Trust dated **18 January 2021**:

"I/We the undersigned KGOSI K.S. LEKOKO & MR M.G. RAMPAGANE (CHAIRPERSON) representative(s) of the MARIBA LAND DEVELOPMENT TRUST (T54/2010), the registered owner of the property FARM: Wegdraai 205 (IN) Portion 1 located in the Piet Plessis/Gemsbokvlakte Area, Dr Ruth S Mompoti District Municipality, North West Province, hereby give consent to JACOBUS CORNELIUS VISAGIE, identity number, the legal tenant of the said property, to undertake and implement the following activity in his personal name, for his own benefit and for which he will be solely responsible:

- i. The continuation and further development of a breeding, keeping and hunting facility for game species, that may include dangerous game and TOPS species, on the specified property.
- ii. The application for and obtaining of the necessary permits/permissions, as required by the relevant authorities in terms of applicable legislation, in his own name and at his own expense, for all activities, including restricted activities, pertaining to the management and operation of the facility.
- iii. All payments and administrative functions required by the terms of the conditions of the permits and all relevant legislation pertaining to conservation and environmental activities with regard to the specified property."

[24] The first respondent states that he also has various animals on the Farm other than those belonging to Boss Safaris. The first respondent further states that he did not hunt any of Boss Safaris on the Farm, as such conduct would have diminished his shareholding in Boss Safaris. On the contrary, the first respondent contends that the applicants attended at the Farm on numerous occasions, for their own enjoyment and performed hunting expeditions to the value of more or less R650 000.00 without paying for their hunts.

[25] The aforesaid facts on which the respondents rely to oppose the relief sought by the applicants, forms the basis of the submissions of Counsel on their behalf on the merits.

[26] The relief sought in the lion skins application brought in **December 2021** is moot and does not require consideration, save on the issue of costs.

Points *in limine*

- [27] The first and second respondents raise two points *in limine* in the first urgent application based on lack of urgency and the service of unsigned, unissued and uncommissioned affidavits; and lack of urgency in the second urgent application.
- [28] With the elapse of time since the granting of the orders and the opposition to the relief sought, until the hearing of this application close on two years later, the points *in limine* raised by the respondents have become moot, are in any event without merit and if there was any merit therein, it would at most impact the question of costs. This Court therefore proposes to restrict itself to the merits of the matter.

Discussion

- [29] It would be prudent to state at the outset that the high watermark of the case for the respondents, on the merits, is a contention that there is a material dispute of fact which the applicants should have anticipated, and that the relief sought should have been brought by way of action proceedings rather than on application (motion proceedings). The question, on a consideration of the evidence on behalf of the applicants and the respondents, is thus whether there is

in fact a material dispute of fact, which impacts the relief sought by the applicants in the first application.

[30] The first respondent claims that he is owed in excess of R790 000.00 by Boss Safaris. To this end he relies on an agreement with the second applicant around **August 2019**, in terms of which he was allowed to offset the amounts owed to him, by hunting animals owned by Boss Safaris. There is a patent problem with this allegation. Boss Safaris and the first respondent entered into a contract of employment in **2019** at a time when the Farm and all its assets was still owned by Roets and not by Boss Safaris. It follows that any animals on the Farm at the time were not owned by Boss Safaris. Boss Safaris only acquired ownership of animals and other goods on the Farm in **August 2020**. Thus, the second applicant could not have reached an agreement with the first respondent in **August 2019** to offset amounts allegedly owed to him by Boss Safaris by hunting animals which were not owned by Boss Safaris. Even later, he alleges that hunts did take place, but not without the consent of Boss Safaris.

[31] Even if the benefit of doubt were given to the first respondent that the agreement with the second applicant was in **August 2020** it is highly unlikely that he would be owed in excess of R790 000.00 at that time, when no hunts were allowed in 2020 due to the Covid 19 pandemic. The version of the first respondent in this regard does not accord with logic. Further thereto, the first respondent contrary to the contract of employment in terms of which he was to invoice Boss Safaris for

“services rendered”, has failed to adduce any invoices for such services rendered in satisfaction of his claim to being owed in excess of R790 000.00. The first respondent further contradicts the purported agreement with the second applicant that he could hunt the animals owned by Boss Safaris by claiming that in regard to the allegation of unsanctioned hunts, that he did not hunt the animals owned by Boss Safaris as it would reduce his shareholding in Boss Safaris.

[32] In regard to the lease agreement with the Trust, the first respondent maintains that he entered into the said lease agreement for his own benefit and not for the benefit of Boss Safaris. In advancing this contention, the respondent claims that he paid the amounts due for the lease of the Farm with commission earned from the applicants. The applicants, on the contrary maintain that they paid for the lease of the Farm. The difficulty with the first respondent’s contention in this regard is that he also maintains that he was never paid any commission by the applicants in terms of the agreement. These contentions are mutually destructive and demonstrative of being self-created to establish a non-existent dispute of fact. Invoices issued by the first respondent to Boss Safaris further contradict his two mutually destructive versions as the content thereof speaks for itself, it was issued for the lease of the Farm.

[33] A golden thread running through the version or versions of the first respondent is that he is not hunting any of the animals of Boss Safaris. The animals notably are assets of Boss Safaris. In the

progression of the answering affidavit, the first respondent continues to contradict his narrative that he is not hunting any of the animals belonging to Boss Safaris. He goes on to state that the only animals belonging to Boss Safaris that were hunted by himself were a baboon and a zebra in satisfaction of the monies owed to him by Boss Safaris, seemingly in terms of the **August 2019** agreement with the second applicant.

[34] The nub of the matter is this, in terms of the agreement between Boss Safaris and the first respondent, he was to issue Invoices for “services rendered”. No proof has been adduced of any such Invoices having been issued, which went unpaid by Boss Safaris, to justify his claim of being owed in excess of R790 000.00. By adducing proof that such invoices were in fact issued to Boss Safaris would give credence to the allegation of Boss Safari’s indebtedness to the first respondent. Instead, the first respondent’s opposition to the relief sought by the applicants is tainted with a plethora of self-contradictions inherent in his ever changing admission and then denial and admission again of hunting the animals owned by Boss Safaris.

Conclusion

[35] The relief sought by the applicants in the first application that the first and second respondents do not carry out unsanctioned hunts of the animals belonging to Boss Safaris is reasonable. A submission was

made on behalf of the respondents that the applicants do not state what an unsanctioned hunt is. The applicants in fact do just that and the definition of the word unsanctioned alluded to in the Notice of Motion is self-explanatory. On the contradictory versions of the first respondent, the ineluctable deduction is that he conducted unsanctioned hunts on the Farm. If the hunts were in fact sanctioned in terms of the employment contract with Boss Safaris, invoices for such “services rendered”, which have not been adduced as evidence, would easily have put pay to the allegation of unsanctioned hunts.

[36] The first respondent has further failed to put up a cogent defence to the allegations of the first applicant in the first application, that he threatened her life if she interfered with his livelihood. The relief sought in this regard is justified by the evidence of the first applicant which finds support through confirmatory affidavits.

[37] The relief sought in the first application accordingly stands to be granted. The relief in the second application is moot and the only issue remaining is costs as stated above.

Costs

[38] Costs follow suit. The applicants are entitled to costs of the application. In my view, and in the exercise of my discretion on costs, a punitive cost order is not merited.

[39] In respect of the second application, the first respondent could not hand over the lion skins to the applicants without the necessary permits in place. The order of **December 2021** removed this statutory requirement and the Sheriff was authorised to take possession of the lion skins. This in my view constitutes a no fault scenario, as the applicants as with the first respondent would not have been in a position to summarily take possession of the lion skins. The correct order in this regard would therefore no order as to costs.

Order

[40] Consequently, the following order is made:

- (i) The *rule nisi* issued on 23 November 2021 is confirmed.
- (ii) The *rule nisi* issued on 01 December 2021 is discharged.
- (iii) The first and second respondents shall pay the applicants costs in the application of 23 November 2021, jointly and severally, the one paying the other to be absolved, to be taxed on a party-party scale.
- (iv) No order as to costs in the application of 01 December 2021.



A H PETERSEN

**ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT OF
SOUTH AFRICA, NORTH WEST DIVISION, MAHIKENG**

APPEARANCES:

FOR THE APPLICANTS' : ADV T MASIKE

Instructed by : PRANAV JAGGAN ATTORNEYS
c/o Smit Neethling Incorporated
29 Warren Street
MAHIKENG

FOR THE RESPONDENT : ADV H SCHOLTZ

Instructed by : THERON, JORDAAN & SMIT INC
c/o Van Rooyen Tlhapi & Wessels
9 Proctor Avenue
MAHIKENG