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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)
REPUBLIC OF SOUTH AFRICA**

CASE NO: 00083/2023

NOT REPORTABLE

NOT OF INTEREST TO OTHER JUDGES

NOT REVISED

08.03.2023

In the matter between:

NONHLANHLA SIBIYA

Applicant

And

SIFISO NYOKA

First Respondent

BHEKANI MDLETSHE

Second Respondent

JEFFREY MTHEMBU

Third Respondent

Delivered: *By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered. The date for hand-down is deemed to be 8 March 2023.*

JUDGMENT

SENYATSI J:

[1] This is an unopposed application for spoliation brought on an urgent basis.

[2] The applicant, Ms Sibiya, was in occupation of Flat 5[...], Johannesburg which she occupied through her grandmother since 2013. Her grandmother moved out of the flat in 2021 and she lived with other tenants since then.

[3] She contends that on 3 February 2023, while out of the flat, the respondents unlawfully and illegally and without her consent, gained access to the flat by breaking the door and high jacking it.

[4] When she returned to the flat she found the third respondent in occupation of the flat and frightened she locked herself in the main bedroom. She became fearful and states that the respondents were threatening her and stating that they wanted her out of the flat. The incident was reported to the SAPS by her grandmother but no one came to assist her,

[5] She eventually vacated the flat out of fear of the respondents and their threats.

[6] During the hearing of the matter, Advocate Coetzee on behalf of the applicant submitted that the submission was confirmed in his affidavit that the two respondents who appeared in court, were pointed out to him by the unknown occupants of the flat after the applicant and her two tenants were illegally and unlawfully spoliated to be the people who allowed the unknown occupants to take unlawful possession of the flat.

[8] During the hearing, the two respondents in attendance, were Mr Nyoka and Mr Mthembu who claimed they did not live in the flat. They confirmed that they were served with the application but indicated that the second respondent Mr Mdletshe was in KwaZulu Natal. They said the flat belonged to one deceased person and that the unknown occupants were the grandchildren of the deceased. Mr Nyoka waved to the court that he was in possession of a letter from the Master of the Court in that regard. He did not explain what the letter from the Master of the High Court said.

[9] After considering the papers and the submissions by Mr Coetzee, I was satisfied that the matter was indeed urgent. I was also satisfied that despite the

denials at the hearing that the respondents had high-jacked the flat and allowed its occupation without due process and that the requirements of spoliation were indeed present. This was fortified by the attempts by Mr. Nyoka who asked as to where the grandchildren of the deceased who came from Kwa-Zulu Natal to look for employment were going to live. It became clear to me that Mr. Nyoka considered himself to be responsible of having high-jacked the flat for his own purposes.

[10] There is a plethora of judicial authority on the *mandament van spolie* as a possessory relief as well as its effects once granted. For instance in *Nino Bonino v De Lange*¹ where Innes CJ stated:

'It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the Court will summarily restore the status quo ante, and will do that as a preliminary to any inquiry or investigation into the merits of the dispute.'

[11] In *Administrator, Cape, and Another v Ntshwaqela and Others*² Nicholas AJA in an obiter at 717E-G mentioned that:

'The accepted principle is that the mandament van spolie envisages not only the restitution of possession but also the performance of acts, such as repairs and rebuilding, which are necessary for the restoration of the status quo ante. If, for example, a spoliator, in order to deprive a *spoliatus* of the possession of immovable property, physically removes him therefrom and transports him to a remote part of the country in order to prevent him from resuming possession, there would seem to be no reason in principle why the Court should not, if requested by the applicant to do so, make a transportation order as part of a mandament van spolie. But that is by the way.'

[12] The court is duty bound to enforce the rule of law and ensure that no one is allowed to take the law into one's hands through self-help. Absent the court's

¹ 1906 TS 120 at para 122

² 1990 (1) SA 705 (A) at 715F-716C

intervention under the circumstances will lead to chaos in our country where it becomes free for all. The court in spoliation applications is not called upon to determine the merits of the rights over the disputed property being spoliated. All that is required is for the applicant to allege and prove that she or he was in possession or occupation of the property and that someone without following due process took away the property.

[11] Having considered the papers and the submissions by Mr Coetzee and having considered the oral submissions made by Mr Nyoka and Mr Mthembu, I am satisfied that the elements of spoliation have been proved.

ORDER

[12] As a result it is ordered that:

- 12.1. This application is heard as an urgent application in terms of Rule 6(12) and any non-compliance with the usual service and time periods are condoned and dispensed with;
- 12.2. The occupancy of Flat 5[...] fully described as Section 3[...] Court by the First to Third Respondents, or any other person who occupies the property through the First to Third Respondents are declared to be illegal and unlawful;
- 12.3. The First to Third Respondents are ordered to immediately vacate Flat 5[...] fully described as Section 3[...] upon service of this order upon them;
- 12.4. Any other persons claiming occupancy through the First to Third Respondents be ordered to immediately vacate the property and to remove all possessions currently in the property;
- 12.5. Any other persons claiming occupancy through the First to Third Respondents are interdicted and restrained from gaining illegal and

unlawful access to Flat 5[...] fully described as Section 3[...] (“the property”);

12.6. The Sheriff, with jurisdiction, is authorised to remove the First to Third Respondents, or any other person claiming occupancy through the First to Third Respondents, from the property in the event of their failure to abide by this order;

12.7. The First to Third Respondents are ordered to immediately restore the applicant’s unrestricted access to the property known as Flat 5[...] fully described as Section3[...];

12.8. An order restraining the First to Third Respondents from forthwith spoliating, dispossessing or otherwise interfering with the Applicant’s access to the property;

12.9. The First to Third Respondents are ordered to return all keys accessing the property to the Applicant;

12.10. The First to Third Respondents are restrained and interdicted to attempt to place any tenants in the property and are further restrained and interdicting from renting out the Applicant’s property to any person;

12.11. The First to Third Respondents are ordered to return any money which may have been illegally paid to them in the form of rent during the time in which the Applicant was spoliated from the property;

12.12. The First to Third Respondents are to pay the costs of this application, jointly and severally on the Attorney-Client scale;

12.13. Further and/or alternative relief.

ML SENYATSI
JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

DATE APPLICATION HEARD: 07 March 2023

DATE JUDGMENT DELIVERED: 08 March 2023

APPEARANCES

Counsel for the Applicant: Adv D Coetzee

Instructed by: Michael Popper & Associates

First and Third Respondents: In person