



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

CASE NO: 2023-031845

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

11/4/2023
DATE

J Moorcroft
SIGNATURE

In the matter between –

GLEN, LAWRENCE KLEIN

Applicant

AND

THE VILLA MEDICI BODY CORPORATE

Respondent

JUDGMENT

MOORCROFT AJ:

Summary

Spoliation – requirements - peaceful and undisturbed possession of a thing, and unlawful deprivation of such possession

Order

[1] I made the following order on 11 April 2023:

1. *The Respondent is directed to do all things necessary in order to restore access and possession to the Exclusive Use Area described as Staff Quarters SQ1 measuring 38 square meters, being as such part of the common property comprising the land and the scheme known as Villa Medici in respect of the land and building or buildings situate at Bryanston Township, City of Johannesburg Metropolitan Municipality, as shown and more fully described on Sectional Plan No. SS1188/2007, to the Applicant forthwith;*
2. *The Respondent is directed to remove all locks which it caused to be installed on the property alternatively, the Respondent is directed to forthwith deliver copies of the keys to such locks to the Applicant;*
3. *The Respondent is ordered to pay the costs of the application on the party and party scale.*

[2] The reasons for the order follow below.

The application

[3] This is a spoliation application. In *Bisschoff and Others v Welbeplan Boerdery (Pty) Ltd*¹ Dlodlo JA described the requirements of the remedy known as the *mandament van spolie* as follows:

“[5] The requirements for the mandament van spolie are trite: (a) peaceful and undisturbed possession of a thing; and (b) unlawful deprivation of such

¹ *Bisschoff and Others v Welbeplan Boerdery (Pty) Ltd* 2021 (5) SA 54 (SCA). See also Van Loggerenberg DE and Bertelsmann E Erasmus: *Superior Court Practice* RS20, 2022, D7-1. (Mandamenten van Spolie)

possession. [3]² The mandament van spolie is rooted in the rule of law and its main purpose is to preserve public order by preventing persons from taking the law into their own hands. [4]³”.

[4] The respondent is the body corporate of the Villa Medici sectional title complex. The applicant claims that he was in peaceful and undisturbed possession of the Exclusive Use Area (“the Area”) described as Staff Quarters SQ1 on the common property comprising the land and the sectional title scheme known as Villa Medici.

[5] The application was served by email on the attorneys acting for the respondent in the present dispute⁴ on 4 April 2023. An attempt at service by the Sheriff on the same day failed because the Sheriff could not gain access to the premises but a copy was left at the complex on the 5th. A copy was also served at the offices of the managing agents of the complex.⁵ I am satisfied that the application was properly served and must have come to the knowledge of the respondent.

[6] The applicant alleges that he was in peaceful and undisturbed possession of the Exclusive Use area until March 2023 when the respondent denied him access to the Area and resorted to self-help by taking control and possession.

[7] The respondent initiated correspondence in February 2023,⁶ stating that by virtue of section 27(4) of the Sectional Titles Act, 95 of 1986, the Area vested in the respondent as the Area had not been sold when the applicant sold his Section in the complex. The right to use

² “*Yeko v Qana* 1973 (4) SA 735 (A) at 739E – F. See also *Lawsa* 2 ed (2014) at 113 para 108.”

³ “*Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality and Others* 2007 (6) SA 511 (SCA) ([2007] ZASCA 70) para 22; *Ngqukumba v Minister of Safety and Security and Others* 2014 (5) SA 112 (CC) (2014 (2) SACR 325; 2014 (7) BCLR 788; [2014] ZACC 14) paras 10 – 12.”

⁴ The attorneys are not on record in this application.

⁵ See service affidavit, CaseLines 03-2.

⁶ CaseLines 02-75 and following pages.

an exclusive use area is terminated when the owner of the Section with which it is associated, ceases to be an owner of a Section and thus a member of the body corporate. However, these issues need not be decided in this spoliation application.⁷

[8] Further correspondence followed and on 13 March 2023 the applicant was advised that he had to remove his belongings from a garage in the complex where the belongings had been moved by the respondent. The correspondence on behalf of the respondent implies that the respondent had resorted to self-help and had spoliated the applicant.

[9] The respondent also changed the locks and thus denied the applicant access to the Area. Further correspondence followed in March and early April 2023.

[10] I am satisfied that –

10.1 The requirements for a spoliation order have been met in that the applicant was in peaceful and undisturbed possession of the Area and was unlawfully deprived of such possession by the respondent when the respondent resorted to self-help;

10.2 The applicant took reasonable steps to avoid having to bring an application and did not delay bringing the application;

10.3 The respondent did not dispute the spoliation in the correspondence and stated

⁷ Section 27(4) reads as follows: “27 (4) (a) An owner of a section in whose favour the right to the exclusive use of a part of the common property delineated on the sectional plan is registered, may transfer his or her interest in such right to the owner of another section in the scheme by the registration by the registrar of a notarial deed of cession entered into by the parties.

(b) If an owner ceases to be a member of the body corporate in terms of section 2 (3) of the Sectional Titles Schemes Management Act, any right to an exclusive use area still registered in his or her name vests in the body corporate free from any mortgage bond.”

that as a matter of law, the applicant's rights to the Area were terminated when he was no longer an owner of a Unit;⁸

10.4 The applicant is entitled to a cost order but not to punitive costs as sought.

[11] I therefore make the order in paragraph 1 above.


J MOORCROFT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

JOHANNESBURG

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **12 APRIL 2023**.

COUNSEL FOR THE APPLICANT:

K A SLABBERT

INSTRUCTED BY:

DMO ATTORNEYS

COUNSEL FOR RESPONDENT:

NO APPEARANCE

INSTRUCTED BY:

-

DATE OF THE HEARING:

11 APRIL 2023

DATE OF ORDER:

11 APRIL 2023

DATE OF JUDGMENT:

12 APRIL 2023

⁸ A Unit is defined in section 1 as a "section together with its undivided share in common property apportioned to that section in accordance with the quota of the section." An exclusive use area is a part or parts of the common property allocated for the exclusive use by the owner or owners of one or more sections or by the occupant or occupants thereof recognised by law, as contemplated in the Act.