

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

CASE NO: 2022/022132

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

E LABUSCHAGNE

DATE: 21 JULY 2023

In the matter between:

JOHANNES FRANCOIS CORNELIUS LOUW

Applicant

and

BEN JACOBUS PRINSLOO

First Respondent

SIMONE PRINSLOO (formerly WEYERS)

Second Respondent

JUDGMENT

- [1] The applicant brings an urgent *mandament van spolie* pertaining to offices situated at 7[...] P[...] Street, Sunnyside, Pretoria. On 14 July 2023 the first and second respondents attended at those premises and demanded the keys from employees of the applicant. When they refused to hand over the keys, the first respondent and a number of people that he brought with him used bolt cutters or angle grinders to gain entry by force.

- [2] In a video taken at the scene, the first respondent tried to force an agreement onto the applicant's representative in terms of which the respondents took control of the premises. The applicant's employees eventually relinquished possession of the offices after the respondents had gained access and had demanded possession. They did not leave freely and voluntarily (**Metropolitan Evangelical Services v Goge** 2018(6) SA 564 (GJ) at par [19].
- [3] The respondents opposed the application and contended that there is no urgency, that there are *bona fide* disputes of fact and that the applicant failed to establish the jurisdictional requirements of spoliation.
- [4] On the respondents' version it is common cause that the first respondent is the registered owner of the premises at 7[...] P[...] Street, Sunnyside, Pretoria. The applicant and the first respondent were partners who practiced as orthotists and prosthetists from the premises. The applicant still practices from the premises, which he leases from the first respondent. The second respondent is also an orthotist and prosthetist who practiced from the same premises. It is alleged that she has a lease agreement with the first respondent for the offices on the premises.
- [5] On the respondents' version they, together with witnesses attended at the premises on 14 July 2023. Certain locks were cut and replaced. A full set of keys were provided to the applicant's employees and/or representatives for the new locks. The first respondent informed the employees and the representatives of the applicant that the purpose of the

visit was for the second respondent to reoccupy her three offices. The respondents confirm that, prior to the visit of the property, the applicant had refused the first respondent access thereto.

[6] The right to be protected by means of the *mandament* is a "*gebruiksreg*" or an incident of the possession or control of the property concerned (**First Rand Limited t/a Rand Merchant Bank v Scholtz NO** 2008(2) SA 503 (SCA) at 503 A-B.

[7] The respondents contend that the possession claimed by the applicant is purely personal in nature and is not afforded protection by the *mandament*. In this regard the respondents rely on an SCA case (Eskom Holdings SOC Ltd v Masinda 2019 (5) SA 386 SCA) dealing with the supply of electricity and the contention that a deprivation of the electricity service is a spoliation. The matter is distinguishable on the facts and does not assist.

[8] The respondents contend that there are disputes of fact that cannot be resolved on the papers. This contention relates to whether the applicant was in possession of the three offices. However, the common cause facts are that the applicant controlled his possession of the entire premises by means of keys. And he refused the applicant access. Those facts establish the requisite degree of possession required.

[9] It appears to me that the respondents have misconstrued the facts required to establish the *mandament van spolie*. The only two requirements are:

9.1 That the applicant must have been in undisturbed possession of the thing dispossessed;and

9.2 That he was dispossessed by the respondent.

[10] The *mandament van spolie* is only available in cases where persons are deprived of their possession or part of their possession or their rights of possession, where the possession has passed over to the person or persons who were responsible for deprivation, and thus are in a position to restore such possession to the person or persons who have been deprived thereof (**Potgieter en 'n Ander v Davel** 1966(3) SA 555 (0)).

[11] In *Wille's Principles of South African Law, 8th Edition* at 267 the learned authors state:

"It is a fundamental principle that no man is allowed to take the law into his own hands. Consequently, if a person without being authorised by a judicial decree, dispossesses another person, the court without inquiring into the merits of the dispute, will summarily grant an order for restoration of possession to the applicant, as soon as he has proved two facts; namely, that he was in possession, and that he was despoiled of possession by the respondent. The policy of the law is neatly summed up in the maxim, spoliatus ante omnia restituendus est."

[12] The court is not required to enter into the dispute between the applicant and the first respondent as to who is entitled to possession of the property. In a *mandament van spolie*, restitution of possession before all else is the focus. Such an order is appropriate in this matter.

[13] I accordingly grant the following order:

1. The matter is found to be urgent for purposes of Rule 6(12) of the Uniform Rules of Court.
2. The first respondent is ordered to forthwith restore to the applicant the full possession and access to the premises situated at 7[...] P[...] Street, Sunnyside, Pretoria, by handing over to the applicant's attorneys of record all keys to the doors at the said premises .
3. The first respondent is ordered to pay the costs of the application on an attorney and client scale.

E. LABUSCHAGNE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

Applicant's Counsel:	Adv. A Coertze
Instructed by:	JPA Venter Attorneys
Respondent's Counsel:	C Jacobs
Instructed by:	Dreyer & Dreyer Attorneys