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

CASE NO: 2024-095168

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

Date: 17 October 2024

K. La M Manamela

In the matter between:

JUMAR ROSTER UKOLEKO

Applicant

and

SHERIFF PRETORIA SOUTH WEST, S ISMAIL

1st Respondent

MATAMELA NELLY KGABI

2nd Respondent

**EXECUTOR OF THE ESTATE OF THE LATE
SELAMUDI JACOB KGABI**

3rd Respondent

LESOLE MOKGATLE ATTORNEYS

4th Respondent

MASTER OF THE HIGH COURT

5th Respondent

REGISTRAR OF DEEDS, PRETORIA

6th Respondent

DATE OF REASONS FOR ORDER GRANTED: These reasons for order granted were handed down or given electronically by circulation to the parties' representatives by email. The date and time thereof is deemed to be 10h00 on **17 October 2024.**

REASONS FOR ORDER GRANTED

KHASHANE MANAMELA, AJ

Introduction

[1] The applicant, Mr Jumar Roster Ukoleko, launched this application for urgent interdictory relief against the respondents. The application was opposed by the first (i.e. Sheriff Pretoria South West) ("the Sheriff"); second (i.e. Ms Matamela Nelly Kgabi) ("Ms Kgabi") and fourth (i.e. Lesole Mokgatle Attorneys) ("LM Attorneys") respondents. The third respondent was cited as the Executor of the Estate of the Late Selamudi Jacob Kgabi ("the Executor"). No specific relief was sought against fifth respondent (i.e. Master of the High Court) and sixth respondent (i.e. Registrar of Deeds, Pretoria). I refer to the first, second and fourth, being the respondents who opposed the application, collectively, as the respondents. In some instances I distinguish between the respondents. LM Attorneys would in all likelihood have acted for and on behalf of their clients, being Ms Kgabi, the Executor or both. But they were implicated and sued directly. I deal with this aspect further when discussing the costs order which was sought and granted in the matter, towards the end.

[2] The urgent application came before me on 03 September 2024. Mr TC Kwindi appeared for the applicant and Mr TA Modisenyanne appeared for the respondents. I extemporaneously granted an order after listening to oral submissions by counsel. The order granted appears in paragraph [84] below for ease of reference ("the Order"). Both counsel had gratefully also filed written submissions.

[3] On 06 September 2024, the respondents' attorneys requested reasons for the Order ("these Reasons"). Subsequently, an application for leave to appeal was also filed on behalf of Ms Kgabi and LM Attorneys. But the leave to appeal has no bearing on these Reasons, set out next.

Brief background

[4] The dispute in the matter relates to an immovable property situated at 1[...] K[...] Street, Atteridgeville, Pretoria ("the property"). The applicant and his family occupied the property at all material times until their ejectment by the Sheriff on 20 August 2024. The applicant said the ejectment was at the instance of Ms Kgabi and LM Attorneys. According to him the ejectment was unlawful. Around 22 August 2024 he brought this urgent application seeking, among others, the restoration of his possession of the property.

[5] What appears – still under this background – is common cause between the parties or has not been effectively challenged by the respondents. I only reflect those aspects which I consider material for these Reasons. Further details appear under other parts dealing with self-explanatory aspects of the matter or these Reasons.

[6] Although no longer enthusiastically so, the applicant claims to have purchased the property from the now deceased Mr Selamudi Jacob Kgabi ("the late Mr Kgabi") in 2005 for an amount of R140 000. He says he paid a deposit of R40 000. The balance he settled in what appears to have been installments; payment of a deposit for a vehicle on behalf of the late Mr Kgabi, and payment of transfer costs. In total he says he paid R160 000. The sale and purchase of the property was recorded in an affidavit deposed to by the late Mr Kgabi. As further proof or, perhaps, consummation of the sale, he was given the original title deed to the property. No written sale agreement was concluded. The applicant concedes that this was a mistake as it was contrary to the provisions of the Alienation of Land Act 68 of 1981. Consequently, the title to the property was never transferred to the applicant. Mr Kgabi died on 09 August 2013.

[7] The estate of the late Mr Kgabi was reported to the Master and Mr Herculaas Frederick Venter was appointed as the Executor. The liquidation and distribution account is said to have been finalised in 2016, already. The applicant said he was not aware of this and the respondents, retorted, that he has missed an opportunity to object to the account. Part B of the application deals with the administration of the deceased estate, in particular the finalisation of the liquidation and distribution amount by the Executor. The applicant said he is desirous of proving a claim in the estate for the property to be transferred to him.

[8] From 2009, including when Mr Kgabi's was still alive, a legal battle ensued as to the ownership of the property. The applicant lost the battle at first instance before this Division in 2012, including his attempt at leave to appeal the outcome. There was a further defeat when the Supreme Court of Appeal dismissed his petition for leave to appeal in 2013. But he was not perturbed in remaining in occupation of the property.

[9] In May 2023, Ms Kgabi, who was married to the late Mr Kgabi in community of property, brought an eviction application in the Pretoria Magistrates Court against the applicant and his fellow occupants of the property. The applicant - unsuccessfully - opposed the eviction. On 05 October 2023 an order for his eviction was granted. He requested reasons for the order from the presiding Magistrate on 05 December 2023. An appeal was noted on his behalf on 12 December 2023 whilst waiting for the reasons for the eviction order.

[10] On 07 August 2024 three people jumped over the gate to the property and entered the premises. They informed the applicant's wife that they bought the property and the applicant and his family should vacate the property. The "intruders" could not provide proof of purchase of the property. The applicant's attempt to open a criminal case against the "intruders" at the Atteridgeville police station was unsuccessful. On 08 August 2024 his attorneys also protested the "intrusion" - in a telephone call and subsequently a letter to LM Attorneys (then on board for Ms Kgabi) - but in vain. The applicant rebuffed the attempt by the police to facilitate "a discussion" with the "intruders," as he felt that they (i.e. his family and him) were victims of harassment.

[11] The applicant said that his attorneys were told by LM Attorneys that the “intruders” were in fact “security” persons sent to the property. The names and purpose of the visit of the alleged “security” persons, though, were not divulged. The respondents appear to have simply denied this.

[12] In their letter (of 08 August 2024) the applicant’s attorneys also threatened the institution of this urgent application, evidently to no avail. On 20 August 2024 the Sheriff, escorted by the police, removed the personal belongings of the applicant and his family from the property. The Sheriff, according to the applicant, said that he was just executing a court order and any appeal, or a notice of appeal is trumped by the eviction court order. Contemporaneous telephonic appeal to the office of the sheriff was met with the same response.¹

Relief sought (and granted)

[13] The relief sought by the applicant on an urgent basis in terms of this application was divided into Parts A and B. The Order granted only dealt with Part A.

[14] The Order granted was rephrased a number of times by the applicant’s counsel with the involvement of the Court, before being granted extemporaneously in the terms appearing in paragraph [84] below. The exchanges included when altering the draft order regarding when possession of the property should be restored to the applicant. The period of “four hours” initially suggested by the applicant was extended to fourteen days to allow the new occupants a reasonable opportunity to vacate. This did not appear in the papers but came from counsel for the respondents. He urged the Court to allow the new occupants a longer vacation period in the Order. I will return to the “back and forth” activities in altering the draft order when dealing with the issue of costs towards the end of these Reasons.

[15] It is necessary to record that I also caused to be added to the Order steps to be taken in the prosecution of the appeal. The envisaged steps appear under

[1] Annexure “U21” to founding affidavit (“FA”), on CaseLines: 02-209 to 02-210.

paragraph 5 of the Order. This was to avoid the Order granted turning into the proverbial albatross around the respondents' necks and, perhaps, being used to avoid traction in the prosecution of the pending appeal. I am mindful that according to the respondents there is no appeal. More on this later on.

[16] Part B of the application, as already mentioned, relates to the furnishing of the liquidation and distribution account in the estate of the late Mr Kgabi, and an interdict against the transfer of title to the property pending the disposal of the appeal. Although, as already hinted above, the proverbial horse may have already bolted in this regard, this part of the application would possibly be dealt with in the ordinary course.

[17] I will – immediately after reflecting the pertinent legal principles to the issues in the matter - deal with the submissions made on behalf of the contending parties. This would also include the respective party's case as borne by the papers before the Court. I continue employing headings and subheadings along the lines of the relief sought to facilitate presentation of these Reasons for the Order.

Applicable legal principles

Spoliation / mandament van spolie

[18] It is common cause between the parties that the application, or at least the relief sought in terms of Part A, is in the form of a spoliation order.

[19] A spoliation order is also known as a *mandament van spolie*.² The order or remedy is available under circumstances, which include the following:

[19.1] where, a person has been - wholly or partly - deprived of his or her possession of a movable or immovable property, unlawfully, or

² CG Van der Merwe Things in The Law of South Africa ('LAWSA') (Volume 27, Second Edition LexisNexis 2014) ("Van der Merwe, Things in LAWSA (Vol 27)") 94.

[19.2] where, a person has been deprived of his or her *quasi*-possession of other incorporeal rights, unlawfully.³

[20] ‘Spoliation’ may be explained as ‘any illicit deprivation of another of the right of possession which [she or he] has, whether in regard to movable or immovable property or even in regard to a legal right’.⁴ The following *dicta* from the decision of the Supreme Court of Appeal in *Eskom Holdings SOC Ltd v Masinda*⁵ captures the nature and extent of the remedy accurately:

“The mandament van spolie (spoliation) is a remedy of ancient origin, based upon the fundamental principle that persons should not be permitted to take the law into their own hands to seize property in the possession of others without their consent. Spoliation provides a remedy in such a situation by requiring the status quo preceding the dispossession to be restored by returning the property 'as a preliminary to any enquiry or investigation into the merits of the dispute' as to which of the parties is entitled to possession. Thus a court hearing a spoliation application does not require proof of a claimant's existing right to property, as opposed to their possession of it, in order to grant relief. But what needs to be stressed is that the mandament provides for interim relief pending a final determination of the parties' rights, and only to that extent is it final. The contrary comment of the full court in *Eskom v Nikelo* [[2018] ZAECHC 48] is clearly wrong. A spoliation order is thus no more than a precursor to an action over the merits of the dispute.”⁶

[footnotes omitted]

[21] The principle underlying the remedy of mandament van spolie is derived from the Latin maxim: ‘*spoliatus ante omnia restituendus est*’ meaning “the person who

³ Van der Merwe, Things in LAWSA (Vol 27) 94.

⁴ *Nino Bonino v De Lange* 1906 TS 120 at 122 where the observation is as follows: “... spoliation is any illicit deprivation of another of the right of possession which he has, whether in regard to movable or immovable property or even in regard to a legal right [accessed through the link: <https://lawblogs.files.wordpress.com/2013/01/nino-bonino-v-de-lange.doc>]. See also *Van Eck & Van Rensburg v Etna Stores* 1947 2 SA 984 (A)1000, 1947 3 All SA 143 (A) 152. See further Van der Merwe, Things in LAWSA (Vol 27) 94.

⁵ *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA).

⁶ *Eskom v Masinda* 2019 (5) SA 386 (SCA) [8].

has been deprived of his or her possession must first be restored to his or her former position before the merits of the case can be considered".⁷ This serves as preservation of public order as those who take the law into their own hands are restrained from doing so and, thus, induces them to rather consider submission to the rule of law and jurisdiction of the courts.⁸ Effectively, resorting to self-help in order to regain lost possession of a thing one is entitled to is discouraged in order to maintain peace and legal order in the community.⁹

[22] The protection offered by the remedy concerns a physical manifestation of a right and not the right, itself.¹⁰ A spoliation order seeks to redress a breach of the peace suggested by the unlawful interference with the factual control or the physical manifestation of a right.¹¹ Therefore, the correct approach in this regard is to avoid an enquiry into the impugned right of access or right of use forming the subject of the breach as this would amount to an investigation of the merits of the matter, which is an antithesis of the spoliation law.¹²

[23] Based on, primarily, the above, an applicant for a *mandament van spolie* ought to show that:¹³

[23.1] the applicant had peaceful and undisturbed possession of the material thing,¹⁴ and

[23.2] the applicant was unlawfully deprived of such possession.¹⁵

⁷ Van der Merwe, Things in LAWSA (Vol 27) 93, 111 and the authorities cited there.

⁸ Van der Merwe, Things in LAWSA (Vol 27) 93.

⁹ Van der Merwe, Things in LAWSA (Vol 27) 93. See also *Ngqukumba v Minister of Safety and Security and others* 2014 (5) SA 112 (CC) [10]-[12].

¹⁰ Van der Merwe, Things in LAWSA (Vol 27) 103.

¹¹ Van der Merwe, Things in LAWSA (Vol 27) 103.

¹² Van der Merwe, Things in LAWSA (Vol 27) 103. See also *Eskom v Masinda* 2019 (5) SA 386 (SCA) [8], quoted in par [20] above.

¹³ Van der Merwe, Things in LAWSA (Vol 27) 108. See also *Chopper Worx (Pty) Ltd v WRC Consultation Services (Pty) Ltd* 2008 (6) SA 497 (C) [16]-[21].

¹⁴ When establishing that he or she was in peaceful and undisturbed possession of the thing, the applicant ought to show that she or he had factual control of the thing, which control was accompanied by an intention to derive some benefit from the material thing. See Van der Merwe, Things in LAWSA (Vol 27) 108

¹⁵ An act of spoliation ought to be established on the part of the respondents, being an illicit deprivation of the applicant's possession of the impugned thing or disturbance of such possession without the consent and against the will of the possessed applicant. See Van der Merwe, Things in

[24] For reasons that would become clearer below, I consider it warranted to belabour an issue or two regarding the second requirement above, namely, that the applicant ought to have been unlawfully deprived of his or her peaceful and undisturbed possession of the material thing. I understand this to mean that there is no spoliation if the applicant was lawfully deprived of possession of the material thing.¹⁶

[25] A valid defence in this regard may be that the respondent was authorised in terms of a court order or by a statutory provision to effect the dispossession or disturbance of possession. A most relevant example, for current purposes that is, is where a messenger of court or a deputy sheriff has acted upon the authority of a writ of execution when attaching the assets of a judgment debtor. Such attachment or seizure will not be unlawful.¹⁷ Other valid defences against spoliation claim are the following, that: (a) the applicant did not enjoy peaceful and undisturbed possession of the particular thing when he or she was dispossessed; (b) there was no unlawful dispossession and, thus, no spoliation; (c) it is impossible to restore possession, and (d) the respondent regained possession of the thing within the limits of counter-spoliation.¹⁸ Dispossession may have been justified by virtue of being effected in terms of a court order or a statute or with the applicant's consent.¹⁹

[26] To conclude on this topic, it is necessary to point out that the following conduct also amounts to spoliation: (a) gaining possession of a thing through means of trickery;²⁰ (b) gaining possession of a thing by a messenger of the court in terms of an invalid writ of execution;²¹ (c) eviction of persons from premises by state

LAWSA (Vol 27) 108; *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 (3) SA 371 (SCA) [27].

¹⁶ Van der Merwe, Things in LAWSA (Vol 27) 108.

¹⁷ *White & Tucker v Rudolph* 1879 K 115 [available through the link: <https://www.saflii.org/za/cases/ZATransvHCRpKotze/1879/17.pdf>] at 122-123; *Surtee's Silk Store (Pty) Ltd and others v Community Development Board and another* 1977 (4) SA 269 (W); *Kleinsakeontwikkelingskorporasie Bpk v Santambank Bpk* 1988 (3) SA 266 (C) 275B-E. See also Van der Merwe, Things in LAWSA (Vol 27) 108.

¹⁸ Van der Merwe, Things in LAWSA (Vol 27) 109.

¹⁹ Van der Merwe, Things in LAWSA (Vol 27) 109.

²⁰ *Dönges NO v Dadoo* 1950 (2) SA 321 (A) 331. See also Van der Merwe, Things in LAWSA (Vol 27) 108.

²¹ *White & Tucker v Rudolph* 1879 K 115 at 122-123. See also Van der Merwe, Things in LAWSA (Vol 27) 108.

officials without strict compliance with applicable statutory powers,²² and (d) causing illegal occupants to surrender possession of their informal dwellings under duress.²³ There are no further permissible defences due to the absolute nature of the rule *spoliatus ante omnia restituendus est* (defined in [21] above).²⁴

[27] The remedy only offers temporary relief, as the respondent may subsequently seek restoration of his or her possession, for example, through a *rei vindicatio*.²⁵ In this matter the applicant sought restoration pending an appeal he is pursuing against the eviction order. But the respondents said there is no pending appeal.

Civil cases appeals in the Magistrates Courts

[28] Rule 51 of the Magistrates Court Rules²⁶ is pertinent to the issues in the application or at least from the applicant's perspective. It reads as follows in the material part, including its caption:

51 Appeals in civil cases

(1) Upon a request in writing by any party within 10 days after judgment and before noting an appeal the judicial officer shall within 15 days hand to the registrar or clerk of the court a judgment in writing which shall become part of the record showing —

(a) the facts he or she found to be proved; and

(b) his or her reasons for judgment.

²² *George Municipality v Vena* 1989 (2) SA 263 (A); *Rikhotso v Northcliff Ceramics (Pty) Ltd and others* 1997 (1) SA 526 (W) 531-532; *Minister of Finance and others v Ramos* 1998 (4) SA 1096 (C) 1101F-H. See further Van der Merwe, Things in LAWSA (Vol 27) 108.

²³ *Ntshwaqela and others v Chairman, Western Cape Regional Services Council and others* 1988 (3) SA 218 (C) 225D-G. See also Van der Merwe, Things in LAWSA (Vol 27) 108.

²⁴ Van der Merwe, Things in LAWSA (Vol 27) 111.

²⁵ Van der Merwe, Things in LAWSA (Vol 27) 111. *Rei vindicatio* refers to a remedy which entitles an owner "to reclaim possession of her or his property". See LTC Harms, *Amler's Precedents of Pleadings* (10th ed LexisNexis 2024) 383.

²⁶ Rules 'Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa'.

(2) The registrar or clerk of the court shall on receipt from the judicial officer of a judgment in writing supply to the party applying therefor a copy of such judgment and shall endorse on the original minutes of record the date on which the copy of such judgment was so supplied.

(3) An appeal may be noted by the delivery of notice within 20 days after the date of a judgment appealed against or within 20 days after the registrar or clerk of the court has supplied a copy of the judgment in writing to the party applying therefor.

....

(8) (a) Upon the delivery of a notice of appeal the relevant judicial officer shall within 15 days thereafter hand to the registrar or clerk of the court a statement in writing showing (so far as may be necessary having regard to any judgment in writing already handed in by him or her) —

(i) the facts he or she found to be proved;

(ii) the grounds upon which he or she arrived at any finding of fact specified in the notice of appeal as appealed against; and

(iii) his or her reasons for any ruling of law or for the admission or rejection of any evidence so specified as appealed against.

...

(9) A party noting an appeal or a cross-appeal shall prosecute the same within such time as may be prescribed by rule of the court of appeal and, in default of such prosecution, the appeal or cross-appeal shall be deemed to have lapsed, unless the court of appeal shall see fit to make an order to the contrary."

[29] Sections 83 and 84 of the Magistrates' Courts Act 32 of 1944 are also relevant for current purposes. Section 83, together with its caption, reads as follows:

Appeal from magistrate's court.—Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the provincial or

local division of the Supreme Court having jurisdiction to hear the appeal, against—

(a) any judgment of the nature described in section 48;

(b) any rule or order made in such suit or proceeding and having the effect of a final judgment, including any order under Chapter IX and any order as to costs;

(c) any decision overruling an exception, when the parties concerned consent to such an appeal before proceeding further in an action or when it is appealed from in conjunction with the principal case, or when it includes an order as to costs.

And section 84, also together with its caption, reads as follows:

84 Time, manner and conditions of appeal

Every party so appealing shall do so within the period and in the manner prescribed by the rules; but the court of appeal may in any case extend such period.

Civil appeals from the Magistrates Courts

[30] In the High Court appeals from the Magistrates' Courts are governed by Uniform Rule 50²⁷ which reads in the material part, together with its caption:

50 Civil appeals from magistrates' courts

(1) An appeal to the court against the decision of a magistrate in a civil matter shall be prosecuted within 60 days after the noting of such appeal, and unless so prosecuted it shall be deemed to have lapsed.

²⁷ The 'Uniform Rules' are the "Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa".

(2) The prosecution of an appeal shall *ipso facto* operate as the prosecution of any cross-appeal which has been duly noted.”

[31] An appeal from the Magistrates’ Court, therefore, is governed by the rules of the Magistrates’ Courts and the High Court to which it is destined. At the former court (i.e. the Magistrates’ Court) an appeal may be noted in terms of its rules, whereas the High Court is where the appeal is prosecuted in terms of the Uniform Rule of Court.²⁸ The noting of an appeal lays a foundation to the High Court’s proceedings, but it remains a step to be taken in the Magistrates’ Court, to be followed by the prosecution of the appeal in the High Court.²⁹

[32] The applicant heavily relied on the following provisions from section 18 of the Superior Courts Act.³⁰

[33] The process of issuance and execution of a warrant by the Magistrates’ Court is also relevant. I say more below. Firstly, Rule 36, governing the “process in execution” appears more relevant. It reads as follows in the material part:

“(1) The process for the execution of any judgment ... for ejectment shall be by warrant issued and signed by the registrar or clerk of the court and addressed to the sheriff.

(2) A process issued under subrule (1) may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

²⁸ DE Van Loggerenberg, *Jones and Buckle: Civil Practice of the Magistrates' Courts in South Africa*, Volumes I: The Act & Volume II: The Rules (10th edn Juta 2024) (“*Jones and Buckle*”) at RS 35, 2024 Rule-p1; DE Van Loggerenberg, *Erasmus: Superior Court Practice*, Volume 2 Uniform Rules (Part D Rules) (Juta Service 23, 2024) (“*Erasmus: Superior Court Practice*”) at RS 22, 2023, D1 Rule 50-3.

²⁹ *Erasmus: Superior Court Practice* RS 22, 2023, D1 Rule 50-3.

³⁰ Superior Courts Act 10 of 2013. Section 18(1)-(2) of this legislation reads: “ (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal. (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.”

[underlining added]

[34] Further, section 78 of the Magistrates Courts Act deals with execution or suspension of execution of judgment, including an ejectment or eviction order. It reads as follows in the material part:

“Where an appeal has been noted ..., the court may direct either that the judgment shall be carried into execution or that execution thereof shall be suspended pending the decision upon the appeal ... The direction shall be made upon such terms, if any, as the court may determine as to security for the due performance of any judgment which may be given upon the appeal”

[underlining added]

[35] In *Jones and Buckle* the learned author commented on section 78, including as follows. The noting of an appeal automatically suspend execution of a judgment unless either of the parties to a pending appeal approaches the court (on application) for either to seek execution³¹ or suspension of execution, as the case may be, pending the intended appeal.³² The default position exists in terms of the common law and is the corollary of an appeal coming into operation.³³

[36] Therefore, generally, in terms of the common law execution of a judgment or order is automatically suspended when an appeal is noted.³⁴ And, without invoking the provision of section 78 the order or judgment “cannot be carried out and no effect can be given thereto”, pending the appeal.³⁵

³¹ *Jones and Buckle* at RS 16, 2018 Act-p559: “In view of the automatic suspension of execution upon the noting of an appeal an application that execution be suspended is unnecessary.” See also *Woudstra v Jekison* 1968 (1) SA 453 (T).

³² *Nel v Le Roux NO and others* 2006 (3) SA 56 (SE) at 59F; *Jones and Buckle* RS 16, 2018 Act-p557.

³³ *Jones and Buckle* RS 16, 2018 Act-p557-559.

³⁴ *Jones and Buckle* RS 16, 2018 Act-p557.

³⁵ *Jones and Buckle* RS 16, 2018 Act-p557.

[37] It is also opined by the learned author in *Jones and Buckle* that “[i]f execution, by some oversight, is allowed to proceed, such execution is a nullity”.³⁶

Applicant’s case and submissions

[38] A greater part of the material appearing above, as background to the matter, forms part of the applicant’s case to the extent that it is common cause between the parties or not dispositively disputed by the respondents.

[39] The applicant’s case – further from what appears above - is that his eviction is unlawful and constitutes spoliation as he is appealing the outcome of the eviction proceedings. He lodged – on 5 December 2023 - with the relevant Magistrate or Presiding Officer who granted the eviction order granted on 5 October 2023 a request for reasons for the eviction order. He subsequently, on 12 December 2023, noted an appeal by serving a notice to this effect on LM Attorneys, then acting for Ms Kgabi. He attributed part of the delay in the appeal process to the withdrawal of his erstwhile attorneys of record and retaining his current attorneys. But LM Attorneys have been fully aware of the appeal and, thus, proceeded with his “unlawful eviction” from the property, despite such knowledge.

[40] Further submissions on behalf of the applicant are to the following effect: (a) the execution of the eviction order is impermissible pending finalisation of the appeal; (b) the applicant has filed a notice in terms of Rule 51(1)³⁷ (for the furnishing of reasons for the eviction order by the Magistrate) and a notice of appeal against the eviction order; (c) the respondents have acted arbitrarily, contrary to the Constitution and unlawfully in executing the eviction order as same is suspended, and (d) the execution of the order despite the appeal is contrary to section 18³⁸ of the Superior Courts Act.

[41] It is submitted on behalf of the applicant that section 18(1) of the Superior Courts Act reiterate the common law position of the ordinary effect of the appeal

³⁶ *Jones and Buckle* RS 16, 2018 Act-p557.

³⁷ See par [28] above for a reading of Rule 51(1) on appeals in civil cases in the Magistrates Courts.

³⁸ See par [32] above for a reading s 18(1) of the Superior Courts Act.

process, namely the suspension of an order appealed against. Case law is also said to support the position that it is illegal to execute an order “whilst leave to appeal is pending”. This is grounded upon the apprehension of irreparable harm, the submission concluded.

[42] Irreparable harm would ensue should execution of the eviction order have been allowed to prevail. The applicant may subsequently succeed with his appeal but without recourse. I must add that in some instances the applicant referred to leave to appeal as opposed to appeal, but nothing turned on this.

[43] In as far as urgency is concerned it was submitted that the respondents and LM Attorneys resorted to self-help to exclude the applicant from the protection of the law. The status *quo* ought to be restored as the applicant would not be afforded substantive remedy in the ordinary course.

[44] Also, it is submitted on behalf of the applicant that whilst aware of the existence of the intended appeal the best the respondents could have done was to bring an application for leave to execute the eviction order pending the outcome of the appeal. As stated above, the applicant or on his behalf relies on section 18 of the Superior Courts Act regarding the suspension of the operation or execution of a decision which is subject of an appeal or leave to appeal. It is submitted the provision is an enactment of the common law on the suspension of court orders sought to be appealed against. This may be so, but the applicable provision is section 78 of the Magistrates Courts Act.³⁹

[45] It is further pointed out that the current application does not concern the merits of the appeal, but whether on the issues before the Court there is an appeal pending and, if so, whether the respondents were entitled to execute the eviction order in the face of the pending appeal.⁴⁰ I agreed. Overall, the restoration to the applicant of undisturbed possession is the only remedy available to the applicant.

³⁹ Par [34] above for a reading of s 78.

⁴⁰ *Eskom v Masinda* 2019 (5) SA 386 (SCA) [8]; Van der Merwe, Things in LAWSA (Vol 27) 93, 111. See further pars [20]-[21] above.

[46] The applicant also submitted that he had met the requirements for an interim interdict and authorities are cited which according to the applicant support this contention, including *City of Tshwane Metropolitan Municipality v Afriforum and another*.⁴¹ I also agreed with this submission.

[47] Regarding the requirements for a *mandament van spolie*, it is asserted on behalf of the applicant that the current application takes that form. It is stated that the applicant and his family have been in peaceful occupation of the property for nineteen years. Reliance was placed upon the authority of *Eskom Holdings SOC Ltd v Masinda*.⁴² And, it was pointed out that, no one is entitled to self-help.⁴³

[48] The matter is urgent and there is no room to allege self-created urgency, the submission went. Spoliation applications are inherently urgent.

[49] On the issue of costs the applicant sought a punitive costs order against the respondents. With regard to LM Attorneys an alternative costs order of *de bonis propriis* was also sought. It was submitted that LM Attorneys were well aware of the pending appeal as they were served with the relevant documents regarding the appeal, but yet instructed the Sheriff to execute the eviction order. I have more to say on the issue of costs and I do so towards the end of these Reasons under a self-explanatory subheading.

Respondents' case and submissions

[50] Ms Kgabi deposed to the answering affidavit. She confirmed her marriage in community of property to the late Mr Kgabi. She asserted that the property formed part of the joint estate between her and the late Mr Kgabi. Following his death, the title to the property devolved in terms of a will and testament solely to her in 2017. She said that the administration of the deceased estate was finalised 8 years ago. This, no doubt, will have a bearing on Part B of the application.

⁴¹ *City of Tshwane Metropolitan Municipality v Afriforum and another* 2016 (6) SA 279 (CC) [49]-[77].

⁴² *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA) [8].

⁴³ *Ngqukumba v Minister of Safety and Security* 2014 (5) SA 112 (CC) [10]-[12]; *Ivanov v North West Gambling and others* 2020 (6) 67 (SCA) [59].

[51] The respondents bemoaned the fact that the applicant's case is based on spoliation whilst he has been properly evicted and granted prior notice. By and large the respondents make common cause with the issues in the background regarding the historical litigation involving the property.

[52] The respondents said that the eviction order granted the applicant an opportunity to vacate the premises – four months later - on 7 February 2024. He, nevertheless, refused to vacate and appealed the eviction order after an ordinate delay. His grounds of appeal are also contrary to case law. Also, the appeal is “defective”, “hopelessly defective”, the respondents contend. This application amounts to relitigating the same issues which previously came before the Courts and were finally determined. It is not urgent, meritless and constitutes an abuse of the process of this Court and deserves to be dismissed with costs.

[53] Regarding urgency, the following are some of the averments and/or submissions for the respondents. The applicant knew about the eviction order since October 2023, but “did nothing to prevent his eviction by bringing an appeal or any application to court”. He has indicated through his “failure to bring an appeal within the prescribed timeframe that he has acquiesced in the execution order”. Applicant's own delay is the source of the alleged urgency and, thus, the applicant is the architect of his own misfortune. Also, the timelines for the exchange of documents were unreasonably truncated and did not afford the respondents ample time to consult, prepare and deliver an answering affidavit.

[54] Further submissions included the following. The applicant was lawfully evicted by the Sheriff. Also, the Sheriff was merely doing his work and did not deserve to be entangled in this litigation. I also return to this aspect when dealing with the costs order granted. The applicant was not in a peaceful and undisturbed possession of the property. He was an unlawful occupier who was lawfully evicted. He lacked rights from the beginning and, therefore, there are no rights to be restored. The respondents also argued that the applicant has failed to indicate that he would not obtain substantial redress in the ordinary course, considering he has a “plethora of recourses at its [sic] disposal”. The applicant is estopped from pursuing the appeal

with no prospects, but solely aimed at delaying and defeating the rights of Ms Kgabi to the property.

Issues which required determination

[55] From the above I deduced the following as issues requiring determination for a disposal of this urgent application:

[55.1] whether the matter or at least Part A of the application was urgent;

[55.2] whether the relief sought was in the form of a *mandament van spolie* and, if so, whether the requirements for the remedy have been met, namely:

[55.2.1] was the applicant deprived of his possession of the property, unlawfully?

[55.2.2] linked to the above, was there an appeal process pending before the Magistrates Court?

[55.3] is the applicant relitigating the same issues where the Courts have already made final determination?

[55.4] whether a punitive costs order should be granted against the respondents, including, in the alternative, a *de bonis propriis* costs order against LM Attorneys, and

[55.4] did it matter that the applicant was an unlawful occupier or lacked rights from the beginning?

[56] The issues stated in [55] above may not necessarily offer an accurate and/or sufficient description of the issues pertinent to the disposal of the matter. But they have been generated to guide the discussion in these Reasons for the Order granted. In the end, the Court is satisfied that all the issues requiring its attention

would be addressed in the discussion to follow. In some instances the issues are dealt with together.

Mandament van spolie and requirements thereof (applied)

[57] There is no doubt that the relief sought by the applicant in Part A of his application was in the form of a *mandament van spolie*. The nature and requirements of the remedy are outlined above.⁴⁴ The applicant naturally asserted that he has met the requirements. The respondents, on the other hand, denied this and even argued that the remedy is inapplicable. Obviously, these Reasons being for the Order already made, I found in favour of the applicant on a case based on the remedy. I turn, next, to discuss why I granted a spoliation order.

[58] For the spoliation order made to have been correct, the applicant ought to have established that he was, wholly or partly, deprived by the respondents of his possession of the property and that the deprivation was effected by the respondents unlawfully.

[59] There is no doubt that the applicant was deprived of his possession of the property. This much was common cause between the parties. If not common cause, the facts are daunting for any valid contrary view. There is no valid ground to deny that the applicant was in possession of the property. This is not the same as saying his possession was lawful. The principle underlying the remedy of *mandament van spolie* oust an enquiry into the merits of possession for purposes of restoration of possession to an applicant.⁴⁵ The superior purpose served is preservation of public or legal order through restraint of any form of “self-help”.⁴⁶ The next question or part of the determination is whether the applicant was unlawfully deprived of his possession of the property.

[60] From the principles of the remedy above, it is clear that a remediable deprivation ought to have taken place unlawfully or in an “illicit” manner for it to

⁴⁴ Pars [18]-[27] above.

⁴⁵ Pars [20]-[22], [45] above.

⁴⁶ Par [21] above.

constitute ‘spoliation’.⁴⁷ What the remedy, essentially, seeks to guard against is the unlawful interference with the possession or factual control of property.⁴⁸ Again, it ought to be emphasised – with respect - an enquiry into lawfulness or absence thereof does not extend to the right of use or possession of the property by the applicant. Such an enquiry amounts to an impermissible investigation of the merits of the matter, inimical to law on or principles of spoliation.⁴⁹

[61] In this matter the applicant said he was unlawfully deprived of possession of the property or dwelling, because despite the eviction order granted by the Magistrates Court in October 2023, he launched an appeal against the order. The respondents ought to have waited for the appeal to finalise or to have taken the requisite steps in terms of law necessary for authority to execute the eviction order whilst the appeal is pending. The respondent’s case in this regard was that there is no appeal and/or, generically, that the deprivation was lawfully executed.

[62] I agreed with the applicant. The law is to the effect that where there is an appeal process, execution of the eviction or ejectment order, without any complementary order of the Court is improper and, in fact, unlawful.⁵⁰ A complementary order would be one granting authority to the respondents to execute the eviction order pending appeal in terms of section 78 of the Magistrates Courts Act.⁵¹

[63] The unlawfulness or lawfulness of the deprivation may be determined on the following two-step basis. First, whether there was a valid appeal process? But an answer in the negative to this question wouldn’t fully dispose of the issue of “unlawfulness”, hence the second step. The second step requires the existence of a lawful process of eviction or ejectment. Rule 36 requires the existence of a warrant of ejectment issued and signed by the registrar or clerk of the court.⁵² I start with the first leg of this enquiry or determination: was there a valid appeal process or not?

⁴⁷ Par [20] above.

⁴⁸ Pars [21]-[22] above.

⁴⁹ Par [22] above.

⁵⁰ Pars [34]-[36] above.

⁵¹ Par [34] above for a reading of s 78 of the Magistrates Courts Act.

⁵² Par [33] above for a reading of the material part of Rule 36 of the Magistrates Court Rules.

Unlawful deprivation: was there a pending appeal process?

[64] Three steps or activities are pertinent in response to the question whether there was a pending appeal process: (a) the granting of the eviction or ejectment order; (b) the request for reasons of judgment or order from the Magistrate, and (c) the noting of an appeal by the applicant.

[65] Granting of the eviction or ejectment order. It is common cause between the parties that on 05 October 2023 an order for eviction of the applicant and other unlawful occupiers of the property was granted. The applicant and anyone occupying the property had to vacate the property by no later than 31 January 2024.⁵³

[66] Request for reasons of judgment or order from the Magistrate. Following the granting of the order on 05 October 2023 the applicant and/or anyone disgruntled by the order had ten days to request reasons in terms of Rule 51(1) of the Magistrates Courts Rules.⁵⁴ It is common cause or cannot be *bona fide* disputed that the applicant requested reasons for the eviction order on 05 December 2023.⁵⁵ Clearly, this was way beyond the stipulated ten-day period and, therefore, in non-compliance with Rule 51(1). But the time limit, as generally with any time limits in terms of the Magistrates Courts Rules, may be extended by consent between the parties or by the court,⁵⁶ whether before or even after it has expired.⁵⁷ Also, the court may “take cognizance of the fact that a request in terms of the subrule had been filed out of time: it need not leave the question of the lateness of the request to be dealt with by the court of appeal”.⁵⁸ I understand this to mean that non-compliance doesn’t *ipso facto* nullify the nascent process of appeal. Once requested, the Magistrate or judicial officer has 15 days to hand to the registrar or clerk of the court a written

⁵³ Eviction Order, annexure “U12” to FA on CaseLines 02-181 to 02-182.

⁵⁴ Par [28] above.

⁵⁵ Request for Reasons, annexure “U13” to FA on CaseLines 02-183.

⁵⁶ Rule 60(5)(a), which reads as follows: “(a) Any time limit prescribed by these rules, except the period prescribed in rule 51(3) and (6), may at any time, whether before or after the expiry of the period limited, be extended - (i) by the written consent of the opposite party; and (ii) if such consent is refused, then by the court on application and on such terms as to costs and otherwise as it may deem fit”. See also *Snyman v Crouse en 'n ander* 1980 (4) SA 42 (O) at 45F-G; *Jones and Buckle* RS 35, 2024 Rule-p51-3.

⁵⁷ *Vleissentraal v Dittmar* 1980 (1) SA 918 (O) 921-912; *Manyasha v Minister of Law and Order* 1999 (2) SA 179 (SCA) at 190I. See also *Jones and Buckle* RS 34, 2023 Rule-p60-3.

⁵⁸ *Snyman v Crouse* 1980 (4) SA 42 (O) at 46E; *Jones and Buckle* RS 35, 2024 Rule-p51-3.

judgment evincing “the facts he or she found to be proved” and “his or her reasons for judgment” (“Reasons for Judgment”). It is common cause that the Reasons for Judgment were not yet received when the Order was granted in this matter.

[67] Noting of an appeal by the applicant. The applicant noted an appeal on 12 December 2023.⁵⁹ A prospective appellant has twenty days either from date of a judgment appealed against or from date of supply of the judgment or reasons for judgment or order to note an appeal by the delivery of notice.⁶⁰ The applicant in this matter noted an appeal, even without Reasons for Judgment. This may not have been necessary when the Reasons for Judgment were still awaited, but it was done.

[68] As mentioned above, the Reasons for Judgment remained outstanding at the hearing of this matter. It is necessary to point out that the magistrate “is not entitled to refuse to react to a request brought in terms of [Rule 51(3)] on the ground that it does not comply with local practice in a particular magistrate's court.”⁶¹ I didn’t hear anything to this end, but I am just aiming towards completeness. Therefore, the magistrate remains obliged to furnish reasons upon request.⁶²

[69] Bearing the above in mind, I found that there was a pending appeal process and, thus, the execution of the eviction order was suspended in terms of the common law, absent any order for authority to execute same amidst the pending appeal, as envisaged by section 78 of the Magistrates Courts Act.⁶³ In the interests of justice I added the part of the order dealing with the supply of the Reasons for Judgment in a quest to give traction to the process stalled by the absence of the the Reasons for Judgment.⁶⁴ This means that the eviction of the applicant could not have been lawful and, therefore, was unlawful deprivation of possession of the property.

⁵⁹ Rule 51(1). See Request for Reasons, annexure “U14” to FA on CaseLines 02-184 to 02-186.

⁶⁰ Rule 51(3).

⁶¹ *Priem v Hilton Stuart Trust and another* 1994 (4) SA 255 (E) at 255I-259C. See also *Jones and Buckle* RS 35, 2024 Rule-p51-3.

⁶² *Priem v Hilton Stuart Trust* 1994 (4) SA 255 (E) at 258H-259C. See also *Jones and Buckle* RS 35, 2024 Rule-p51-3.

⁶³ Par [34] above for a reading of s 78 and pars [35]-[36], [44], [62] above for a discussion of the provision.

⁶⁴ Par [15] above.

Unlawful deprivation: was there a valid warrant of ejectment?

[70] The finding that there was unlawful deprivation of possession of the property due to execution of the eviction order despite the appeal put paid to the respondents' defence that the deprivation or eviction was lawful. But for completeness I will deal with a further ground or basis on which the eviction was unlawful.

[71] I mentioned above that Rule 36 of the Magistrates Court Rules governs the process for execution of any judgment, including a judgment for ejectment of an occupier of a dwelling or property.⁶⁵ The rule employs peremptory language (in the use of the word "shall") to prescribe that the ejectment be effected by way of warrant.⁶⁶ Further, that the warrant ought to have been issued and signed by the registrar or clerk of the court and addressed to the sheriff.⁶⁷

[72] The papers before the Court when the Order was made did not include any warrant. The applicant had included a copy of the ejectment or eviction order.⁶⁸ The applicant – I specifically remember oral submission by counsel for the applicant on this – contended that there was no warrant of eviction. Despite the sheriff being cited as one of the respondents, no such warrant had been produced when the Order was made. The Court accepted that no such warrant existed and, therefore, the execution of the order or judgment for eviction was carried out not only without a valid warrant, but without a warrant at all. It is not due to lack of diligence – I must mention with respect – that there is no reference to "warrant" or "writ" of ejectment in the respondents' papers before the Court. The respondents were aware that the eviction or ejectment of the applicant was without a warrant of ejectment.

[73] In the matter of *White & Tucker v Rudolph*,⁶⁹ evidently an authority with time-tested durability, it was held that gaining possession of a thing by a messenger of the court in terms of an invalid writ of execution constituted spoliation.⁷⁰ This touches on

⁶⁵ Par [33] above.

⁶⁶ *Ibid.*

⁶⁷ Pars [33], [63] above.

⁶⁸ Eviction Order, annexure "U12" to FA on CaseLines 02-181 to 02-182.

⁶⁹ *White & Tucker v Rudolph* 1879 K 115.

⁷⁰ *White & Tucker v Rudolph* 1879 K 115 126. See further Van der Merwe, Things in LAWSA (Vol 27) 108.

another issue. With the finding of the Court above, being that there was a pending appeal process no valid warrant would have been possible to issue for the eviction of the applicant. So, whether a warrant existed or not had no bearing on the matter. However, from a procedural point of view the applicant would have been saddled with the prior task of applying for the warrant to be set aside due to non-compliance in its issuing. But, as matters stand, the eviction is unlawful as it was effected without a valid warrant.

Was applicant relitigating the same issue(s) where the Courts have made final determination?

[74] The respondents' defence included that the applicant was rehashing issue(s) that has/have been finally determined by the Courts. This is in reference to the unsuccessful litigation by the applicant in an attempt to secure or protect a valid title to the property on the basis of his alleged sale agreement with the late Mr Kgabi, discussed above.⁷¹

[75] But, this argument has no merit as the applicant is only relying on an appeal arising from the litigation (i.e. the eviction proceedings) by one or more of the respondents in this matter. He came to Court simply because his possession of the property (not title or ownership thereof) has been disturbed. There is clearly no "re-litigation" demonstrated here.

Does it matter that the applicant was an unlawful occupier or lacked rights from the beginning?

[76] A further defence or aspect in the defence argument is that the applicant lacked rights from the beginning. With respect this misses the whole *raison d'être* of the remedy of *mandament van spolie*.⁷² Crispily put the remedy protects even possession of a thing by a thief.

⁷¹ Pars [8]-[9] above.

⁷² Pars [18]-[27] above.

[77] Also, the reference to “right” misplaces the focus onto the merits of the remedy. This is incorrect. As stated above, the authorities hold that the protection offered by the remedy concerns a physical manifestation of a right and not the right, itself.⁷³ A spoliation order seeks to redress a breach of the peace suggested by the unlawful interference with the factual control or the physical manifestation of a right.⁷⁴

Whether the matter or at least in Part A thereof was urgent and the requirements for an interdict

[78] I agreed with the applicant’s view that spoliation applications are inherently urgent. But clichés aside there is independent urgency manifested by the facts of this matter. The applicant was in possession of the property irrespective of whether he had a valid right to do so or not. His possession was disturbed, unlawfully so, as I have found on 03 September 2024 when I granted the Order. This was a few days after the Sheriff on 20 August 2024 had unlawfully evicted the applicant. The relief sought was indeed urgent. I was also satisfied that the requirements for an interdict were met.⁷⁵

Conclusion and costs order granted

[79] For these Reasons I granted the Order. As part of the Order I granted a costs order that “the 1st to 4th respondents be ordered to pay the costs of this application”.

[80] The applicant had sought a punitive costs order against the respondents, including, in the alternative, a *de bonis propriis* costs order against LM Attorneys, cited as the fourth respondent. The Executor, cited as the third respondent, did not enter the lists. The application was opposed by the Sheriff; Ms Kgabi and LM Attorneys, as the first, second and fourth respondents, respectively.

⁷³ Par [22] above.

⁷⁴ *Ibid.*

⁷⁵ Par [46] above, including the authorities cited there.

[81] There were no specific grounds stated in the application or raised during the hearing on why the Executor, notwithstanding his absence and lack of participation in the proceedings - including in activities which precipitated the proceedings - ought to be mulcted with costs. It follows that the order I granted was erroneous in this respect.

[82] Regrettably, at all material times and the patching up of the draft order in the urgent court, the error crept in. It is something which - in my respectful view - is capable of resolution by an Order in terms of Uniform Rule 42.⁷⁶ But the cost order may even be academic if the Executor has lodged an account years ago with no prospects of further assets in the estate. Also, in his official capacity the Executor represents the interests of the main respondent Ms Kgabi whose primary interests the opposition to the application sought to advance. She may, in fact, have been advancing the interests of the estate. Therefore, the costs order if not varied in terms of Rule 42(1) or other provision of the law may not be feasible against the Executor.

[83] This brings me to the first respondent, namely, the Sheriff. As an officer of the Court and acting not in the advancement of personal interests but execution of the orders/judgments of the Court ordinarily a sheriff should not be held liable for costs of litigation. But in this proceedings, although I have been on an unfixed stance on this, the situation is different. The Sheriff when sued made common cause with the second and fourth respondents in the matter and opposed the relief sought by the applicant. There is no explanation by the Sheriff of this stance and, therefore, this part of the costs order is uneventful. The same logic applies to the role played by LM Attorneys, the position they took in the litigation and the ultimate order granted.

Order

⁷⁶ Uniform Rule 42 provides: "(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary: (a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby; (b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission; (c) an order or judgment granted as the result of a mistake common to the parties. (2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought. (3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed."

[84] In the premises, I made the Order on 03 September 2024, that:

1. This application is heard as one of urgency on an urgent basis in accordance with Rule 6 (12), the requirements of the Uniform Rules of Court in respect of notice, service and time periods being dispensed with the applicant's departure therefrom being condoned.

2. The Court condones the abridged manner of service on the respondent(s) by email, WhatsApp or other social media account of the respondents given the urgency of the matter.

3. The applicant and his family is restored possession of the property commonly known as **1[...] K[...] STREET, ATTERIDGEVILLE, PRETORIA AND GAUTENG PROVINCE** on Friday, the **20th day of September 2024 before 12h00.**

4. That the 1st respondent is ordered and directed to restore to the applicant undisturbed possession of the said property.

5. That The applicant shall take steps mentioned below towards, final determination of the appeal noted by the applicant under case number: **A2024/093672.**

5.1 the Honourable Magistrate Munyai of Atteridgeville Magistrate Court is requested to provide written judgement and reasons in terms of the applicant's notice in terms of Rule 51 (1) of the Magistrate Court which was served and filed within a period of twenty (20) days from the date of service by the 1st respondent.

5.2 The applicant shall serve and file supplemented Notice to Appeal together with affidavit explaining the delay, if any, and why such delay should be overlooked and/or condoned by the Court.

5.3 The applicant is to serve and file appeal record within thirty (30) days from the date of filing of the supplemented notice of appeal.

6. That the 2nd to 4th respondents are ordered and directed not to interfere, call and/or harass the applicants and his family.

7. That the 4th respondent be ordered and interdicted from sending any person in his employ to the forementioned premises unless so directed by the court in accordance with the rules of court.

8. That the 1st to 4th respondents be ordered to pay the costs of this application

Khashane La M. Manamela
Acting Judge of the High Court

Date of Hearing and Order : 03 September 2024
Date of Request for Reasons for the Order : 06 September 2024
Date of Reasons for the Oder : 17 October 2024

Appearances:

For the Applicant : Mr TC Kwinda
Instructed by : Makhafola & Verster Inc, PTA

For the Respondents : Mr TA Modisenyane
Instructed by : Mgiba Kgabi Inc, Pretoria