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

Case 2024/095052

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| (1) | REPORTABLE: Yes ☐ / No ☒ |
| (2) | OF INTEREST TO OTHER JUDGES: Yes ☐ / No ☒ |
| (3) | REVISED: Yes ☐ / No ☒ |

Date: 05 September 2024

WJ du Plessis

In the matter between:

WONGEL AMAGNOCH CHURCH TEMBISA BRANCH

Applicant

and

GOSPEL LIFE INTERNATIONAL CHURCH

First Respondent

PASTOR MITIKU ACHAMO

Second Respondent

PROPHET MAMO LATEBO

Third Respondent

UMZI WAS CHIEF CORNER STONE CHURCH IN ZION

Fourth Respondent

Coram: Du Plessis AJ

Heard on: 5 September 2024

Decided on: 6 September 2024

This judgment has been delivered by uploading it to the CaseLines digital database of the Gauteng Division of the High Court of South Africa, Johannesburg, and by e-mail to the attorneys of record of the parties. The deemed date and time of the delivery is 10H00 on 6 September 2024.

ORDER

The following order is made:

1. The ordinary forms and service provided for in the Uniform Rules of Court are dispensed with, and this application is heard and determined on an urgent basis in terms of the provisions of Rule 6(12)(a).
 2. The first to third respondents are ordered to restore physical possession of the church premise at [...] T[...] C[...] Street, S[...], Tembisa, to the applicant immediately.
 3. In the event that the first to third respondents refuse to comply with the order in 2 above, the Sheriff of this court or the South African Police Services are authorised and directed to assist the applicant with regaining possession of the aforesaid property.
 4. The first to third respondents are to pay for the cost of this application on a party and party scale (A).
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JUDGMENT

DU PLESSIS AJ

[1] In this urgent application, the applicant asks for the restoration of possession of a church building based on the *mandament van spolie*.

[2] The applicant is a non-profit company that operates a church on premises in Tembisa. The applicant sets out that it had peaceful and undisturbed possession of the property until they were unlawfully deprived of their possession by the respondent. The applicant has been in possession of the premises since November 2020 in terms of a lease agreement. It constructed a new church building on the premises when its followers increased. On these premises, the applicant continued to conduct its church activities.

[3] Around 23 June 2024, the second and third respondent unlawfully dispossessed the applicant of the premises by ejecting the current members and founders. The respondents continued to trade under the applicant's name for a while but soon changed it to "Gospel Life Church International" (first respondent) around 25 July 2024.

[4] The second and third respondent then threatened all members of the applicant to stay away from the property. They now operate under the name "Gospel Life Church International". This takeover stemmed from the second respondent being accused of mismanagement of the applicant's funds while he was still a member of the applicant. In short, without going into too much detail, the second and third respondents broke away from the applicant, who, aggrieved by how they were treated, started their own church and took over the premises where the applicant operated.

[5] Not only have they taken possession of the premises, but they have also taken down the applicant's signage from the property. This did not happen in terms of any legal or lawful process.

[6] The respondents' case is that it concluded a valid lease agreement for the property in 2016 and that they later merged with the applicant. Then, recently and out of their own free will, the second and third respondents terminated their

membership in the applicant, established the first respondent, and continued with the lease agreement they concluded in 2016. When they merged, they did not cede the lease in the property to the applicant; now that they split, they are merely relying on the lease agreement they concluded. They focus thus on who the valid lessee is.

[7] At the heart of the dispute is the issue of who can collect the funds from the churchgoers by utilising the property. This is also what the urgency is based on: if the respondent is to remain in the premises, the applicant is deprived of the premises where it can hold its services and derive its income from.

[8] I accept that the matter is sufficiently urgent to enrol in the roll. The applicant does not specify in detail what happened between 25 July 2024 and the date the application was launched, but there is some evidence of a criminal case that was opened. While it is true that no particular kind of matter is *inherently* urgent¹ based on the kind of right being enforced, the mandament being a speedy and robust remedy is more often than not a remedy that is sought with some urgency.

[9] What is left to decide is whether the applicant is entitled to their spoliation order.

[10] The mandament is sometimes counter-intuitive because it focuses on restoring possession regardless of rights. For the most part, courts should disregard the dispute's merits when deciding whether the remedy should be granted.² In the affidavits, the concepts “possession”, “proprietary rights”, “lease agreement”, and “ownership” are at times used interchangeably. During the hearing I reminded the parties that the focus of the mandament is on possession only, and then not possession in the legal sense, but factual possession.

[11] This is because the purpose of the mandament is to restore unlawfully deprived possession at once to the possessor to prevent people from taking the law into their own hands. It is a remedy that seeks to ensure respect for the rule of law

¹ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* [2023] ZAGPJHC 846.

² ZT Boggendoel *Property Remedies* (2017) p 96.

and to encourage the establishment and maintenance of a regulated society. The mandament further only provides temporary relief; it is speedy and robust. Once possession is restored, the parties in this case can focus on the dispute regarding who has the right to occupy the premises.³

[12] There are two requirements for the mandament: possession and unlawful or wrongful deprivation of that possession. While it is final in effect because it restores the possession, it is not aimed at restoring rights. For that reason, an inquiry into the parties' rights is not evaluated in mandament proceedings. That is for the proceedings that usually follow after the restoration of possession. If restoration is ordered, the restoration is factual possession – it does not mean that the court made a finding on the merits of the property rights.

[13] The applicant must thus satisfy the court that they were in possession of the property. Again, that is not legal possession but factual possession (*detentio*) with the intention (*animus*) of securing some benefit. The cause of the possession is also irrelevant. Even a thief's possession can be protected by the mandament. If the possession is peaceful and undisturbed, it is protected.

[14] The second requirement for granting the mandament is the wrongful deprivation of possession. This deprivation must be actual and physical.

[15] During argument in court, much was made about the merits of the dispute and about who concluded the lease agreement. That is neither here nor there in spoliation applications. The question is: was the applicant in peaceful and undisturbed possession, and was the applicant unlawfully deprived of such possession? The answer in both instances in this case is yes. In fact, with regards to the second requirement, as much was conceded to some extent by counsel for the respondents during argument.

[16] It is also not seriously disputed that until the second and third respondents left the applicant, the applicant was in charge of the building, conducted their church

³ ZT Boggendoel *Property Remedies* (2017) p 94 onwards.

services and other activities, and had signages on the outside walls. This all indicates factual possession.

[17] When the second and third respondents left the church and established the first respondent in July 2024, the first respondent (through the actions of the second and third respondent) deprived the applicant of that possession by taking over possession of the property and banning the applicant and its leaders from entering the premises and taking off the signage of the first applicant. That is dispossession. And that is unlawful because they did not do so in a lawful manner.

[18] The respondents cannot resort to self-help, and this is what the mandament is there to prevent. If the first to third respondents have concluded a valid lease agreement with the owner (on which I make no finding), and if the applicant does not have a valid lease agreement (on which I also make no finding), they must request the applicant leave. If the applicant refuses, they must bring an application for the *rei vindictio* to have the applicant ejected from the premises. Arriving on the premises, threatening the applicant, and even having some members arrested are not lawful ways to gain possession.

[19] I accordingly grant the applicant the relief it seeks, despite how inelegantly it was phrased in the notice of motion.

Order

[20] The following order is made:

5. The ordinary forms and service provided for in the Uniform Rules of Court are dispensed with, and this application is heard and determined on an urgent basis in terms of the provisions of Rule 6(12)(a).

6. The first to third respondents are ordered to restore physical possession of the church premise at [...] T[...] C[...] Street, S[...], Tembisa, to the applicant immediately.

7. In the event that the first to third respondents refuse to comply with the order in 2 above, the Sheriff of this court or the South African Police Services are authorised and directed to assist the applicant with regaining possession of the aforesaid property.

8. The first to third respondents are to pay for the cost of this application on a party and party scale (A).

WJ du Plessis

Acting Judge of the High Court

For the Applicants: C Economou, an attorney with right of appearance

For the Respondents: SM Nkabinde instructed by Khaolonyane K Attorneys