

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-137597

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

24 December 2024

DATE

SIGNATURE

In application between:

MAGAMAT KASHIEF HASSIEM

Applicant

and

PRIME PROPERTY INVESTMENTS (PTY) LTD

First Respondent

THE BODY CORPORATE OF WILLOWDOWN

Second Respondent

Delivered: *This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 24 December 2024.*

Summary: Urgent application – rule 6(12)(b) – if there is some delay in instituting the proceedings an applicant has to explain the reasons for the delay. *Mandament van spolie* - interim relief pending a final determination of the parties' rights.

JUDGMENT

PG LOUW, AJ

[1] This application is premised on the *mandament van spolie*.

[2] The applicant seeks an order requiring the respondents to restore the electricity supply to its full load capacity for a specific unit (the flat) in the sectional title scheme known as Willowdown situated at 6 First Avenue, Bordeaux (the property) within 24 hours. The applicant also seeks a punitive cost order against the respondents.

[3] The applicant alleges to be a tenant of the flat. The second respondent is the body corporate in respect of the property in terms of the Sectional Titles Schemes Management Act (the Act).¹ The first respondent is the managing agent of the second respondent.

[4] On or about 31 July 2024, a letter was slipped under the door of the flat. The letter, authored under the letterhead of the first respondent, indicate that the owner of the flat occupied by the applicant owes the second respondent a substantial amount of money in respect of levies and electricity and water charges. The applicant was given written notice that the services to the flat will be terminated on 31 August 2024.

[5] The applicant contacted his attorney of record on or about 30 August 2024 for assistance to deal with the threat of the disconnection. On the same day, the applicant's attorney sent a letter to the first respondent stating, *inter alia*, that the threat of disconnection is unlawful, that the applicant is the tenant of the flat and is in peaceful and undisturbed possession of electricity and/or other services, and that if the first respondent disconnects the electricity or any other services to the flat without a court order, the applicant will proceed with an urgent application for the reconnection thereof and will seek punitive costs and damages against the first respondent. The letter seem

¹ 8 of 2011.

to have had the desired effect, as the electricity supply to the flat was not disconnected at that stage.

[6] However, according to the applicant, without any notice or court order, the respondents disconnected the electricity to the flat on or about 8 November 2024 (the first disconnection).

[7] The respondents' version is that, on 1 November 2024, the owners of the second respondent, in view of the substantial arrears in respect of levies, water, electricity and ancillary expenses for the flat, resolved to limit the flow of electricity to the flat by reducing the electricity amperage from 60 amp to 10 amp. The respondents deny that the supply of electricity to the flat was disconnected.

[8] The applicant submits that he was only able to consult with his attorney on 14 November 2024. On the same day, his attorney addressed a letter to the first respondent demanding that the electricity be restored to the flat. Consequently, the electricity was restored to the flat on the same day. However, one of the members of the second respondent informed the applicant's son that the electricity would *"trip if any large load appliances were used, that is appliances such as the stove, the geyser, the iron, the kettle and the like"*. The member apparently also informed the applicant's son that should the electricity trip, it would not be switched back on.

[9] The respondents admit that the amperage was reduced and contend that the applicant still had electricity for daily use. According to the respondents, the applicant's son was advised that with the reduction of the amperage there would still be electricity for lights, stove, geyser, iron, kettle and the like but that these appliances could not be used simultaneously.

[10] On 18 November 2024, the applicant switched on the geyser, which caused the electricity in the flat to trip. According to the applicant, he has not had any electricity in the flat since 18 November 2024 (the second disconnection).

[11] The respondents deny that the reduction in amperage left the applicant without the supply of electricity. According to the respondents, the applicant *"has electricity for his daily use"*.

[12] On 19 November 2024, a further letter was sent to the first respondent by the applicant's attorney demanding that the electricity supply be restored to its full capacity by 20 November 2024, failing which the applicant would proceed to urgent court. The applicant received no response to this letter.

[13] The applicant was able to consult his attorney on 25 November 2024 after he was able to raise the required funds to pay his attorney's fees. The application was ready for signature on 26 November 2024.

[14] The applicant's children aged 24, 18 and 16 resided with him until 21 November 2024. He booked a flight for them to visit his mother in Cape Town until he could resolve the current situation.

[15] It was argued on behalf of the respondents that the applicant should have approached his landlord (the owner of the flat) upon receipt of the 31 July 2024 letter from the first respondent. It was submitted that the applicant's urgency is self-made.

[16] In *Arcfyre International (Pty) Ltd and Others v Govender and Another*,² Adams J held as follows:³

"Moreover, the applicant must justify the invasion of the respondent's rights to proper notice and an adequate opportunity to prepare. . . . The applicant must fully set out the facts supporting the conclusion advanced; mere lip service will not do. If there is some delay in instituting the proceedings an applicant has to explain the reasons for the delay and must also explain why, despite the delay, it claims that it cannot be afforded substantial redress at a hearing in due course. This however does not mean that an applicant can create its own urgency by simply waiting until the normal rules of court can no longer be applied and a delay in bringing the application, or self-created urgency, is a basis for a court to refuse to hear a matter on an urgent basis." (Emphasis added.)

[17] In *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*,⁴ Wilson J held the following:⁵

² (2023-098452) [2023] ZAGPJHC 1243 (31 October 2023).

³ *Arcfyre* at para 24.

⁴ (2023/067290) [2023] ZAGPJHC 846 (1 August 2023).

⁵ *Volvo* at para 6.

“There is, accordingly, no class of proceeding that enjoys inherent preference. Counsel appearing in urgent court would, in my view, do well to put the concept of ‘inherent urgency’ out of their minds. There are, of course, some types of case that are more likely to be urgent than others. The nature of the prejudice an applicant will suffer if they are not afforded an urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the person spoliated acts promptly, the matter will nearly always be urgent. The urgency does not, though, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession. The applicant comes to court because they wish to restore the ordinary state of affairs while a dispute about the right to possess a thing works itself out. Cases involving possible deprivations of life and liberty, threats to health, the loss of one’s home or some other basic essential of daily life, such as water or electricity, destruction of property, or even crippling commercial loss, are also likely to be urgent.” (Emphasis added.)

[18] In this matter, the application was not instituted with haste. On the applicant’s version, he “*was in peaceful and undisturbed possession of electricity immediately prior to the first disconnection and I had limited possession of electricity after the partial restoration thereto on 14 November 2024*”. If the letter from the first respondent dated, 31 July 2024, was not sufficient indication for the applicant to approach his attorney or his landlord to try to resolve the situation, the indication to his son on 14 November 2024 of the reduced electricity supply, should have triggered the launching of this application on an urgent basis. The applicant, however, only proceeded to prepare the application eleven days later on 25 November 2024. The application was heard on 11 December 2024, more than a month after the first disconnection. One would have expected the applicant to approach the court much sooner. I accordingly find that the applicant did not act promptly as suggested in *Vo/vo*.

[19] There is another reason why the application ought not to succeed. The *mandament van spolie* provides for interim relief pending the final determination of the parties’ rights.⁶ In this matter, the applicant is not seeking any determination of the parties’ rights. Put differently, the spoliation order sought is not subject to or pending any action over the merits of the dispute between the parties. If this reasoning is

⁶ *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA) at para 8.

correct, it means by necessary implication that the *mandament van spolie* is not available to the applicant, but rather that the applicant should meet the requirements of injunctive relief. The applicant, however, made it clear that his case is based on the *mandament van spolie* and that he does not seek interdictory relief.

[20] In *Eskom Holdings SOC Ltd v Masinda*,⁷ the Supreme Court of Appeal summarised the essence of the remedy of the *mandament van spolie* as follows:

“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* is clearly wrong. A spoliation order is thus no more than a precursor to an action over the merits of the dispute.” (Footnotes omitted and emphasis added.)

[21] In the circumstances, I am not inclined to grant the relief sought by the applicant. The matter ought to be struck from the roll for lack of urgency.

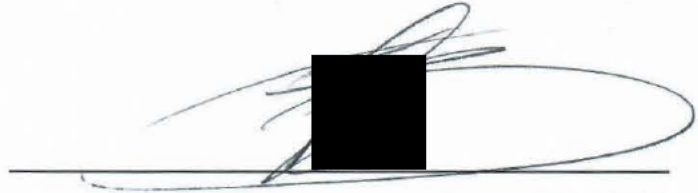
[22] Insofar as the issue of costs is concerned, the respondents seek a costs order on the attorney and client scale. The request is based on Management Rule 25(4),⁸ which provides for the liability of a ‘member’ to the body corporate for legal costs and disbursements in the collection of arrear contributions or any other arrear amounts due and owing to the body corporate, or in enforcing compliance with the Management Rules, the conduct rules or the Act. In my view, the provisions of the rule do not find application in this spoliation application. The respondents are not collecting any monies or enforcing any compliance in this application.

⁷ *Eskom* at para 8.

⁸ Prescribed in terms of s 10(2)(a) of the Act.

[23] In the circumstances, I grant the following order:

1. The application is struck from the roll for lack of urgency.
2. The applicant is ordered to pay the first and second respondents' party and party costs, including the costs of counsel on Scale B.



PG LOUW

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances

Counsel for applicant:	Adv M Rodrigues
Instructed by:	Kaveer Guinness Inc.
Counsel for first and second respondent:	Adv C D Roux
Instructed by:	Arnold Joseph
Date of hearing:	11 December 2024
Date of judgment:	24 December 2024