REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 1454/2025

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO THE JUDGES: YES/**NO**

(3) REVISED: YES/**NO**

SIGNATURE: Makoti AJ

DATE: 18/02/2025

In the matter between:

SAND HAWKS (PTY) LTD	Applicant
And	
65 TWIN PROPERTY2 (PTY) LTD	First Respondent
RBP SECURITY SERVICES	Second Respondent
POLOKWANE LOCAL MUNICIPALITY	Third Respondent

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses. The date for the hand-down is deemed to be **18 February 2025**.

JUDGMENT

Makoti AJ

Introduction

[1] *Mandament van spolie* is a legal remedy that is available for a person who has been rendered a victim of unlawful deprivation of property. Spoliation is inimical to our country's constitutional order and, when proven, the court should not be afraid to restore possession to a person who has been unlawfully dispossessed of property. Whether I am confronted with a case for spoliation will be answered later when I traverse the facts.

[2] The applicant came to court on extremely urgent basis seeking to be restored possession of property, Erf 6[...] E[...] R[...] Extension 3 (the property), by the first and second respondents. The property in question belongs to the Polokwane Local Municipality (the Municipality). For years the applicant was a tenant leasing the propert from the Municipality.

[3] As a matter of common cause, the lease agreement between the applicant and Polokwane Local Municipality (the Municipality) has ended. Since the termination of the lease agreement by effluxion of time, the Municipality concluded a new agreement with the current tenant which is known as Networth Properties (Pty) Ltd has concluded a lease with the Municipality.

[4] Though its lease has terminated, the applicant continued to conduct its sand mining and supply business from the property. This was made possible through, first, an extension of the lease period with the Municipality in which the parties had agreed

that the applicant would vacate the propert by September 2023. Still, by the end of September the applicant remained in occupation and conducting its business from the property. All of these were disturbed by the events of 11 February 2025, to which I shall refer later in this judgment.

For determination

[5] The applicant seeks urgent restoration of undisturbed possession of the property, which it alleges was unlawfully dispossessed by the first and second respondents. In opposition, the first respondent raised a number of technical and substantive defences. They are that: the applicant failed to join Networth as a party to the proceedings; the application lacks urgency; and that the applicant has not been dispossessed of the property. Those are issues therefore the issues to be decided in this application.

[6] Being the registered owner of the property, the Municipality made a late entry into the proceedings. It sought to have the application postponed to Tuesday 18 February 2025, which I could not grant due to the nature of the case.

Non-joinder of Networth

[7] Without suggesting that they are all happy with it, the parties nonetheless appear *ad idem* over the fact that Networth is the current holder of tenancy rights over the property, having concluded a long-term lease with the Municipality. That being the case, one could argue that Networth has the right to protect its tenancy rights to possess and use the property for the duration of its agreement with the Municipality. That would be sound argument if the issue in this case was concerned with the legal entitlement to occupy and use the property.

[8] The test for joinder is not complicated and can best be illustrated from the authority in *SA Riding for the Disabled Association v Regional Land Claims Commissioner and Others*[1] which reads *inter alia* that:

> "[10] If the applicant shows that it has some right which is affected by the order issued, permission to intervene must be granted. For it is a basic principle of our law that no order should be granted against a party without affording such party a pre decision hearing. This is so fundamental that an order is generally taken to be binding only on parties to the litigation."

[9] At a later stage the court further elucidated the principle in *Myeni v Organisation Undoing Tax Abuse NPC and Others*[2] (Myeni) in which it held *inter alia* the following:

> "Non-joinder arises where another party has a direct and substantial interest in the matter, which is determined by the relief that is sought. A party can only be said to have a direct and substantial interest in the matter if the relief cannot be sustained and carried into effect without prejudicing their interests."

[10] The authority in *Myeni* quoted and applied the principle that was a long time ago esposed in *Amalgamated Engineering Union v Minister of Labour*,[3] where it was held that:

> "[t]he question of joinder should … not depend on the nature of the subject matter of the suit … but… on the manner in which, and the extent to which, the Court's order may affect the interests of third parties."

[11] For purposes of this case, and taking the applicants' relief into consideration, the non-joinder point cannot be sustained. It is not Networth that is alleged to have

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1 South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others 2017 (8) BCLR 1053 (CC); 2017 (5) SA 1 (CC) (23 February 2017) para 10.

2 Myeni v Organisation Undoing Tax Abuse NPC and Others (15996/2017) [2019] ZAGPPHC 565 (2 December 2019) at paras 64 - 66.

3 Amalgamated Engineering Union v Minister of Labour 1949 (3) SA 637 (A) at 657.

spoliated the property. Also, on the facts, the first respondent is the party that is alleged to have committed the unlawful act of spoliating the property from the applicant, and using the services of the second respondent. Apart from the fact that the company is the current lessee, there is no suggestion that Networth has taken over possession of the property pursuant to the events of 11 and 12 February 2025.

[12] On the first respondent's version, it is itself that was scheduled to have assumed possession to commence its business operations from 01 October 2024 and pursuant to a sub-lease concluded with Networth, but for the applicant reneging on its promise. It is not necessary to deal with the nature of the intended business(es).

[13] For purposes of the present application of *mandament van spolie*, Networth features scantily and it cannot be taken to be a party that has direct and substantial interest in the outcome of the case. The defense of non-joinder accordingly fails.

Urgency

[14] I have foreshadowed earlier that the events of 11 and 12 February 2025 are what led to the institution of this application. The applicant alleges that it was conducting business in the normal cause when the first respondent sent armed guards to the property to stop the operation of business and to remove the applicant and its equipment from the premises.

[15] Urgency stands on two anchor considerations, which are trite. First, an applicant is required to adduce [sufficient] facts which it avers renders the application urgent. Second, once the first hurdle has been successfully overcome, such applicant must provide reasons why it will not attain substantial redress at a hearing in the future. In *Cekeshe And Others v Premier, Eastern Cape, And Others*[4] the court explained that the substance of the case, factually established, is an important consideration as opposed to the form of the application.

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[4] Cekeshe And Others v Premier, Eastern Cape, And Others 1998 (4) SA 935 (TK).

[16] I have already expressed it that urgency rules enjoin a party that seeks to be heard on truncated timeframes to:

> "… set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."[5] (Emphasis added)

[17] What the sub-rule requires are facts to the satisfaction of the court, firstly, which the applicant relies on for alleging that the application is urgent.[6] The second consideration is whether the applicant will be afforded substantial redress in the future, which is a factor that is triggered once the applicant has succeeded with the first leg of the enquiry.

[18] Spoliation cases have oftrn been held to be inherently urgent. Provided that a party which complains of having been spoliated acts promptly, spoliation cases are designed for speady remedy. They have been treated as urgent in a vast number of cases. This is not to suggest that spoliation cases become automatically urgent.[7] The urgency does not, also, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession.[8]

[19] On the perculiar facts of this case I am satisfied to treat this application as urgent.

Whether the applicant was spoliated

[20] That spoliation as an extraordinary and robust remedy is well documented. It is a potent remedy against unlawful dispossession.[9] Spoliation orders are especially

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5 Erasmus: RS 13, 2020, D1-50.

6 Salt v Smith 1991 (2) SA 186 (Nm); Cekeshe v Premier, Eastern Cape 1998 (4) SA 935 (Tk) at 948F; also, East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

7 Mangala v Mangala 1967 (2) SA 415 ECD at 416 para F.

8 Siyakhulisa Trading Enterprise (Pty) Ltd v Glencore Operations South Africa (Pty) Ltd and Another (2023-038568) [2023] ZAGPJHC 1099 (2 October 2023) at para 5.

9 Bon Quell (Edms) Bpk v Munisipaliteit van Otavi 1989 (1) SA 508 (A).

important instruments in the battle against self-help, which is inimical to our constitutional order.[10] A court hearing a spoliation application does not concern itself with the rights of the parties, and it limits itself to the question whether there has been dispossession.[11]

[21] It is the case of the applicant that:

[21.1] since 2007 it was in possession of the property. Its possession and use of the property was regulated through a lease agreement which the Municipality;

[22.2] the lease agreement has since terminated and it is aware that the Municipality has concluded a new long-term lease with Networth;

[23.3] despite the termination of the lease agreement it remained in peaceful and undisturbed possession of the property;

[24.4] its peaceful and undisturbed possession (and use) of the property was disturbed on Tuesday 11 February 2025 by the first and second respondents who, armed with heavy weaponry, descended onto the property for the purpose of evicting the applicant; and

[25.5] on Wednesday 12 February 2025, the first and second respondents physically began to remove the applicant's goods, in the form of sand products, from the property.

[26] The first respondent disputes the allegation that it has dispossessed the applicant, let alone through unlawful means. Its case is that the applicant has previously made promises to vacate the property, but failed to make good of its undertakings.

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10 Lesapo v North West Agricultural Bank and Another (CCT23/99) [1999] ZACC 16; 2000 (1) SA 409; 1999 (12) BCLR 1420 (16 November 1999).

11 Top Assist 24 (Pty) Ltd T/A Form Work Construction v Cremer and Another [2015] 4 AII SA 236 (WCC) (28 July 2015) para 33.

This has led to mediation being conducted, led by Matodzi Joseph Mukwevho (Mr Mukwevho) on 11 February 2025. It is the case of the first respondent that upon the conclusion of mediation, the applicant voluntarily began to vacate the property. Further, that the materials such as sand and crushers were moved to an adjoining property which belongs to the applicant. And lastly, pointing to photographic images, the first respondent alluded to it that there could not have been spoliation because the applicant's material was still visibly on site, including its trucks and other equipment.

[27] According to Mr Mukwevho the mediation was attended on behalf of the applicant by Ms Mapula Tladi (Ms Tladi), a person who is in charge of the applicant. She denies the averments attributed to her. To sum up Mr Mukwevho's testimony, he said in his confirmatory affidavit which was used in support of the first respondent's answering affidavit that:

> "5. I mediated the dispute and all parties agreed that the Applicant will immediately vacate the site. At the time when I left the site more than thirty (30) loads of material were removed by the applicant's trucks into the adjacent plot which is also used by the applicant for the same operations. According to my observation I did not see any confrontation or intimidation between the security company and the employees of the applicant."

[28] It is telling that when Mr Mukwevho first went to site, Ms Tladi had not yet arrived there and that the security personnel employed by the second respondent were present. This is confirmed by the statement of Ms Tladi who in confirming the contents of the replying affidavit mentioned that she heard of the presence of the security personnel at around 08H30 on 11 February 2025. She further mentioned that she then received a telephone call from Mr Mukwevho who indicated to her that he was at the property.

[29] Upon being requested to attend at the applicant's offices, Mr Mukwevho went there to meet and discuss the matter with Ms Tladi. Out of these statement is where the

key to what happened lies. In as much as Mr Mukwevho talks about mediation, the question is, what triggered the mediation as it appears that he went to the property on 11 February 2025 on his own accord. He also said in his affidavit that:

> "4. In turn NETWORTH PROPERTIES entered into an agreement with 65 TWIN PROPERTY2 (PTY) LTD. As a result, the first Respondent is the lawful occupier of the site in question. I further confirm that there have been numerous engagements between I and the applicant with regards to its vacation from the premises."

[30] The notion that Mr Mukwevho was a mediator of some sort is belied by the contents of the above stanza. In it he presents a partisan stance which supports the position of the first respondent to take over the property as a lawful occupier. No doubt, based on the lease and the sub-lease, the respondents have acquired the legal right or title to occupy the property. But spoliation is not concerned with that at all.[12]

[31] There is, of course, a dispute as to whether the applicant's employees removed material from the property to an adjacent one. It arises from the fact that Mr Tladi calls the version proffered by the first respondent in paragraph 16 of the answering affidavit blatant lies. Her version is that there was no mediation and no agreement was reached for the applicant to vacate the property. Mindful of the principles from the fames *Pascon-Evans Paints*[13] case, the court is required to use its best industry to unravel the prevailing disputes of a factual nature.[14]

[32] Taking the full facts of the case into account, it is difficult to see how the applicant began the repatriation of its material from the property. I say this also taking into consideration the fact that on 11 February 2025 the applicant had already approached its lawyers about what was happening on site. That can hardly signify

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[12] Top Assist 24 (Pty) Ltd T/A Form Work Construction v Cremer and Another, *supra*.

[13] Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

[14] Stellenbosch Farmers' Winery Group Ltd. and Another v Martell & Cie SA and Others (427/01) [2002] ZASCA 98; 2003 (1) SA 11 (SCA) (6 September 2002).

the conduct of a person who is willingly moving his assets from one property to another. The legal representatives addressed a letter to the first respondent on the same date and demanded that it desist with its act of spoliation.

[34] The facts point to another undeniable fact, that the applicant was at least in the morning on 11 February 2025 in peaceful and undisturbed possession of the property. On 10 February 2025 there were no security personnel on site. Neither was the first respondent occupying the property. The applicant did not expect a visit from the first and second respondent. It is to be viewed from objective evidence that the second respondent's men were heavily armed, ostensibly to guard the property once the second respondent gains occupation and control. Through their conduct, the applicant was indeed dispossessed of the property without legal means being employed. I could point to much more facts, however, given the nature of the dispossession, which renders the matter quite urgent, I will stop here.

[35] Ultimately, I am satisfied that the applicant has succeeded to show that it was a victim of unlawful spoliation and it must be grated the relief that it has asked for. Though it had been told to vacate the premises on account of the expiry of its lease, the applicant had peaceful and undisturbed possession of the property up to the fateful day. That is the deciding factor in spoliation matters. The fact that its properties were still on site even on 12 February 2025 only points to the fact that spoliation was partial, which should still afford the applicant relief in a case of this nature.

[36] The costs of the application have to follow the results, and are to be borne by the first and second respondents. With regard to the Municipality, it has not committed any wrong, and its participation in the proceedings was merely intended to provide the court with information that court help it to determine the outcome. In the result, there shall be no cost order against the Municipality.

Order

[37] I make the following order:

[a] The application is heard on urgent basis in terms of Rule 6(12)(b) of the Uniform Rules;

[b] The first and second respondents are ordered to forthwith restore the applicant in possession of the property, being Erf 6[...] E[...] R[...] Extension 3, as it had it immediately prior to 11 February 2025;

[c] The first and second respondents shall pay the costs of this application jointly and severally, the one paying the other to be absolved.

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MOKGERWA MAKOTI
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION,
POLOKWANE

APPEARANCES:

HEARD ON:	**13 FEBRUARY 2025**
JUDGMENT DELIVERED ON:	**18 FEBRUARY 2025**
FOR THE APPLICANT:	**ADV L VAN GASS** **KHAMBEEK TWINE & POGRUND ATTORNEYS** **POLOKWANE**
FOR THE RESPONDENT:	**ADV M MONENE** **ADV R MUSHIANA-SIGWAVHULIMU** **MPHELA MOTIMELE ATTORNEYS**

POLOKWANE