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

CASE NO: 2024-148094

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

Date: 17 March 2025

In the matter between:

LITTLE GRADUATES SCHOOL CC

Applicant

and

K2023253684 (SOUTH AFRICA) PTY LTD

Respondent

JUDGMENT

DE VOS AJ

[1] On 14 January 2025 the Court granted an order restoring the applicant to possession of the premises from which they run a school. The full order appears at the end of this judgment.

[2] These are the reasons for the order.

[3] The applicant is a school for children from pre-school to grade 7. The school has been in existence for fifteen years. The respondent, as owner, and the school entered into a lease agreement for premises for the school.

- [4] The parties soon fell into disagreement about the performance of the agreement. The owner accused the school of breaching the agreement and terminated the lease. Mr Mothowamodimo, the director of the respondent, then changed the locks to the gates and all doors, refused the learners and employees of the school access to the school and removed the school's cars with a tow-truck. The owner also, effectively, locked the director of the school inside the premises.
- [5] The effect of this is that the forty registered learners who attended the school were deprived of attending this school for the rest of 2024 and the new learners enrolled for this year, are also without their school premises. In addition, the school's ten employees were left without employment.
- [6] The school approached the Court seeking urgent relief under the mandament van spolie. To be successful, the applicant needs to meet two requirements, first undisturbed possession and second, unlawful deprivation of that possession.
- [7] In relation to the first requirement, the school pleads that it had undisturbed possession. Specifically, it ran the school, full time, with forty children attending school, for a month from 4 November until 4 December. It had the keys to the gate and to the various doors within the school. On this basis, it submits it meets the requirement of undisturbed possession.
- [8] As to the second requirement, the school pleads that it was dispossessed by the owner, when Mr Motowamodimo, on 5 December 2024 changed the locks of the gate and the doors. As a result of this conduct, the school could not run anymore and a bus had to be arranged to transport the children to another venue. On this basis, the school submits it meets the second requirement of deprivation of that possession.
- [9] At the time of these events, the respondent's attorney of record wrote multiple letters to the applicant. These letters all convey the same central tenet: as the school had breached the agreement the owner was entitled to its property. The owner did not dispute that it changed the locks of the gate or the doors. The owner, whilst

disputing the details and the motivation, also does not dispute that its director, Mr Mothowamodimo locked the director of the school in the property.

[10] It is clear the owner laboured under the misapprehension that it was entitled to evict the school on the basis of its subjective belief that the school had breached the lease agreement.

[11] This is not our law.

[12] It is not for a property owner to unilaterally determine that a lessee has breached an agreement and evict the tenants. Such conduct amounts to self-help. One can imagine the consequent uncertainty, disruption to public order and potential violence if parties to an agreement could subjectively determine that a lessee had breached a contract and evict the lessee. It is a recipe for violence. To prevent such a situation, eviction can only take place through a court process. It is a court of law which must determine if the contract has been breached and what relief is to follow: not one of the parties. This is what the rule of law requires.

[13] Even if the school was in possession through theft or fraud, it matters not. The mandament protects against self-help, it aims at public order and demands that possession be returned to the possessor – regardless of who has the right to possess the property. That determination can be made by a court. The mandament operates, by protecting the rule of law, by returning to the status quo, then and only then, will the issue of who has the right to possess the property be determined. First the rule of law is protected, then the contractual dispute can be solved: in a court of law.

[14] At the hearing, perhaps recognising the fundamental dissonance between the owner's conduct and the rule of law, the owner's counsel disputed that the school ever had possession. Counsel for the owner invited the Court to draw a distinction between possession and access. On this argument, the owner had access and not possession. The owner submits that the school lacked physical control and did not

hold the property with some intention of securing a benefit for themselves. As such, the mandament does not find application.

[15] The crux of the case is then for the court to determine whether the school had possession between 4 November 2024 until 4 December 2024 or only access. Prior to this period the school pleads it had limited access to the property to ready it for the schooling to commence.

[16] At the hearing, counsel for the respondent denied that the school had been provided with keys. This was the central basis on which the distinction between access and possession was drawn. However, the court has regard to a letter written by the respondent's wife – his attorney which demands that: "All sets of keys to the premises must be handed to the landlord". The letter also demands that the school "remove all furniture" on the "vacation date". The letter further demands that the school make good on any damages to the property whilst they were "in occupation". In fact, there are multiple correspondence from the respondent's attorney indicating that the school must "vacate" the premises.

[17] These contemporaneous letters indicates that the school was in possession – even on the owner's version.

[18] The distinction sought to be drawn by the owner was presented as a factual one. However, the facts indicate possession. It is common cause that the school was running from 4 November to 4 December 2024. There is no dispute in this regard. The Court has photos of children in school uniform standing in a row to kick a ball. Behind them is a jungle gym set up for the children to play. They are kept in the area by a low fence painted in the same playful colours as the jungle gym. The children are in school uniform and standing in a row to play soccer. These photos paint the picture which everyone accepts: the school was running as a school during the relevant period. The school could only do this if it was in possession of the premises.

[19] In addition, the distinction between access and possession is curious as the respondent's reason for terminating the contract is that the school had commenced the running of a school without authorisation. On the respondent's version, the applicant was running a school from the premises for a month. For this month, the applicant was in possession.

[20] The owner's attempt at drawing a distinction between access and possession – assuming without deciding it is legally sound – is not borne out by the facts.

[21] The school has met the requirements of mandament van spolie. They are entitled to have their possession returned. They also wished to obtain an interdict, as they contend that whilst the mandament would return them to possession of the property, the respondent's conduct creates a reasonable apprehension of harm that they may be evicted outside the confines of the rule of law in future. Based on the owner's conduct – this apprehension is reasonable and an interdict is to issue.

[22] The length of the interdict is to be addressed. The school requested a 3 month interdict. The school indicates that it would obtain another premise within 3 months. During these three months, they request protection to ensure they are not deprived of possession whilst they find another school. The school was willing to limit the interdict to three months. The Court is satisfied in granting this three month interdict. This requires clarity. This is not an order for the eviction of the applicant with three months' notice. The respondent can only evict the applicant with an order of court – the three month's period is the duration of the interdict.

[23] Lastly, a word on costs. The applicant has been successful and is therefore in terms of the usual rule entitled to its costs. The applicant has sought punitive costs due to the respondent's conduct before and during the trial. Before the hearing the respondent unlawfully evicted a school, threatening the schooling and employment of several persons. This was done in conflict with our law and undermined the rule of law. The respondent then, instead of confronting the error of its ways, doubled down and filed an answering affidavit running to 467 pages with annexures. The affidavit raised a host of unfortunate defences, including that the matter was not

urgent and – despite the filing of an answering affidavit and heads of argument – the respondent contended that service had been defective. Lastly, the distinction the respondent sought to draw was plainly not borne out by the facts.

[24] In these circumstances, a punitive costs order is appropriate.

Order

[25] The Court orders:

1. Application for condonation in terms of Rule 6(12) is hereby granted.
2. The respondent is to immediately restore to the applicant's full access and use of the preschool, portion 043 ERF3[...], situated at 3[...] M[...] Street, Brooklyn, Gauteng Province.
3. The respondent is hereby interdicted and restrained from unlawfully dispossessing the applicant from the preschool, portion 043 ERF3[...], situated at 3[...] M[...] Street, Brooklyn, Gauteng Province for a period of 3 (three) months.
4. The respondent is to pay the costs of this application on a scale between attorney and client scale, on scale B.

I de Vos
Acting Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be e-mailed to the parties/their legal representatives.

Counsel for applicant: JDB Themane
Instructed by: Agyei Maseko Attorneys

Counsel for respondent: PP Bindza
Instructed by: Mothowamodimo Inc Attorneys

Date of hearing:	14 January 2025
Date of order:	14 January 2025
Date of judgment:	17 March 2025