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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: A2023-116427

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
4 April 2025	_____
DATE	SIGNATURE

In the matter between:

PIERRE DU PLESSIS Appellant

and

A TO Z BOERDERY CC First Respondent

MARCO SCHOEMAN Second Respondent

WILMARIE CORNE SCHOEMAN Third Respondent

JUDGMENT

DU PLESSIS J (with whom MEADEN AJ agrees)

Introduction

- [1] This is an appeal against the judgment and cost order of the Regional Court, Vanderbijlpark, which granted an application in favour of the respondents under the mandament van spolie. The central issue on appeal is whether the Regional Court had jurisdiction to adjudicate the dispute and whether the magistrate correctly applied the legal principles governing spoliation. There was no appearance for the respondent. The appeal proceeded unopposed.
- [2] The dispute arises from an agreement between the parties concerning the sale and rental of certain movable property, specifically trucks and trailers. The respondents alleged that on 7 February 2023, the Appellant unlawfully repossessed the vehicles at Diesel Brothers, Richards Bay, without due process.
- [3] The respondents approached the Regional Court seeking relief under the mandament van spolie, contending that they had been in peaceful and undisturbed possession of the vehicles and had been unlawfully deprived thereof.
- [4] The Regional Court ruled in favour of the respondents, holding that jurisdiction was conferred by an Acknowledgment of Debt signed between the parties, where the parties consented to the jurisdiction of the Magistrate Courts "to any action arising from the document" and that the debtor "consents to the judgment in terms of Section 57 and Section 58 of the Magistrate Court Act 32 of 1944, should he or it fails to make payment timeously". The magistrate found that the "Acknowledgement of Debt is in respect of the subject matter of this Application, the vehicles". Costs were awarded on an attorney-client scale.
- [5] The Appellant seeks to have the judgment set aside on several grounds. Firstly, it is submitted that the mandament van spolie is a remedy intended to address unlawful dispossession and is not applicable to contractual disputes and, therefore, the reliance on the acknowledgement of debt that relates to contractual disputes is erroneous. Secondly, the Appellant contends that the market value of the vehicles in question exceeded the monetary jurisdiction of the Regional Court, thereby

rendering it incompetent to adjudicate the matter. Thirdly, the Appellant submits that the costs order was improperly granted.

Legal framework

- [6] The mandament van spolie is a possessory remedy, where the applicant must prove that they were in peaceful possession and that the respondent unlawfully deprived them of the possession.
- [7] It is not concerned with ownership or contractual rights. In *FirstRand Ltd t/a Rand Merchant Bank v Scholtz NO*,¹ the Supreme Court of Appeal confirmed that a spoliation application cannot be based on contractual disputes.
- [8] Jurisdiction in spoliation cases is determined by the market value of the dispossessed property, as set out in Amler's Precedents of Pleadings with reference to section 30(1) of the Magistrates Courts Act.²
- [9] The Regional Court's monetary jurisdiction is R400 000. Where the market value of spoliated goods exceeds this threshold, the court lacks jurisdiction. From the record, the value of the dispossessed property far exceeded R400 000.
- [10] The magistrate could not rely on the Acknowledgment of Debt to establish jurisdiction. The Acknowledgment of Debt was irrelevant to determining jurisdiction in a spoliation claim, which is a processional remedy, not a contractual remedy. The court's reliance on contractual consent to jurisdiction was misplaced and legally incorrect.
- [11] The Appellant provided evidence that the market value of the dispossessed vehicles exceeded R2 325 000, far exceeding R400 000 monetary jurisdictional limit of the Regional Court. The respondents did not refute this evidence and merely provided an opinion rather than independent valuation proof.

¹ 2008 (2) SA 503 (SCA).

² Act 32 of 1944.

[12] In line with *Amler's Precedents of Pleadings*,³ jurisdiction for spoliation is based on market value, not contract. Therefore, the Regional Court lacked jurisdiction to hear the case. The order, therefore, in my view, should be set aside.

Cost order

[13] The magistrate awarded costs against the Appellant, presumably because cost followed the results. Since costs is in the discretion of the court, the test for interference with a costs order is whether the lower court applied incorrect legal principles.⁴ I am of the view that had the magistrate not misapplied the jurisdictional test, the respondent would not have been successful in the court a quo, and a cost order would not follow. Therefore, the cost order should be set aside.

Order

1. The appeal is upheld with no order as to costs.
2. The order of the learned Magistrate PM Ngindo, handed down on 15 June 2023 under RC 160/2023 in the Regional Court for the Regional Division of Gauteng held at Vanderbijlpark, is dismissed with costs.
3. As far as effect was given to the order of 15 June 2023 of the learned Magistrate PM Ngindo under RC 160/2023 in the Regional Court for the Regional Division of Gauteng held at Vanderbijlpark, it is replaced with the following order:
 - a. That the Respondents are ordered to, within 10 (TEN) days of this order being served on their attorneys of record, DAVID MEY & PARTNERS, return the Appellant's vehicles, as follows:
 - i. AFRIT TUBMASTER LINK SIDE TIPPER TRAILER with Registration Number: B[...] and VIN Number: A[...];
 - ii. AFRIT TUBMASTER LINK SIDE TIPPER TRAILER with Registration Number: B[...] and VIN Number: 1[...];
 - iii. AFRIT TUBMASTER LINK SIDE TIPPER TRAILER with Registration Number: B[...] and VIN Number: A[...];

³ Page 350.

⁴ *Van Zyl v Steyn* [2022] ZAGPPHC 302.

- iv.AFRIT TUBMASTER LINK SIDE TIPPER TRAILER with Registration Number: B[...] and VIN Number: 1[...]
 - v.AFRIT LINK SIDE TIPPER TRAILER with Registration Number: B[...]; VIN Number: A[...];
 - vi.AFRIT LINK SIDE TIPPER TRAILER with Registration Number: B[...] with VIN Number: A[...];
 - vii.VOLVO TRUCK (HORSE) with Registration Number: J[...]; with VIN Number: Y[...]; and
 - viii.SCANIA TRUCK (HORSE) with Registration Number: D[...] with VIN Number: 9[...].
- b. Should the Respondents fail and/or refuse to comply with prayers as set out in 3 (a)(i)-(viii) above that the sheriff is authorized and permitted to remove the vehicles and trailers from the Respondents' possession with the assistance of the South African Police Service.

WJ DU PLESSIS

Judge of the High Court,
Gauteng Divison
Johannesburg

Date of hearing:	20 March 2025
Date of judgment:	4 April 2025.
For the applicant:	W Coetzee instructed by Riaan du Plessis Attorneys.
For the respondent:	No appearance