

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2025-124686

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

Date: 4 August 2025

E van der Schyff

In the matter between

NKHESANI THEODORA MTHOMBENI

APPLICANT

and

NOMPUCUKO MASUKU

FIRST RESPONDENT

PAM GOLDING PROPERTIES (PTY) LTD

SECOND RESPONDENT

JANNIE SWANEPOEL

THIRD RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

- [1] The applicant approached the court for urgent relief after she was unlawfully evicted from the property she had leased by the homeowner, the first respondent. Relief was granted, but the issue of the second respondent's costs was separated and

reserved. The parties were afforded the opportunity to file supplementary heads dealing with the issue of costs.

- [2] Neither the second nor the third respondents were instrumental in the applicant's eviction from the property. The second respondent was cited in the application based on being the rental agency for the first respondent, with the third respondent being the estate agent with whom the applicant had contact. He is no longer employed by the second respondent. A costs order was, however, sought against the second and third respondents. The third respondent did not partake in the proceedings.
- [3] It is common cause between the parties that the second respondent, the only party that opposed the relief sought against it, is the managing and administering agent of the first respondent. All communication between the applicant and the first respondent is to be channeled through the second respondent, and the second respondent's address is also the first respondent's domicillium address. It is likewise common cause that the first respondent, assisted by a group of about twenty people, forcibly broke the gate to obtain entrance to the property and the house while the applicant was absent. This group began removing the applicant's belongings, furniture, and household effects from the property. Thereafter, they inserted chains and locked the doors and the main gate.
- [4] There is, however, not a single shred of evidence that links the first respondent's conduct to the second and third respondents. They did not take part in any manner in the first respondent's unlawful deprivation of the applicant's possession and occupation of the property.
- [5] The second respondent submitted that it was incorrectly joined as a party to these proceedings. I agree. The second respondent was an irrelevant party in the spoliation proceedings. It was unnecessarily and improperly dragged into these proceedings. The position would have been different if the second respondent was merely cited for it being the managing agent and no relief was sought against it.
- [6] The second respondent informed the applicant of its position and invited the applicant to withdraw the application against it and tender costs. The invitation was

ignored. This led to the accumulation of additional costs. As a result, the second respondent seeks a punitive costs order in its favour.

- [7] It is trite that a court will not lightly grant a punitive costs order. The facts underpinning the application demonstrate, however, that the second respondent was included as a respondent without any reasonable basis. The second respondent cannot be out of pocket in respect of the expense caused by the litigation. In the current scenario, justice and fairness require a departure from the general rule that a successful party is entitled to costs.¹ The applicant was successful, but not as against the second respondent.
- [8] Litigation is a costly exercise, and prospective litigants must carefully consider whom to cite as parties against whom relief is sought.

ORDER

In the result, the following order is granted:

1. The applicant is to pay the second respondent's costs on the scale of attorney and client.


E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicant:

Adv. M G Skosana

Instructed by:

TS MAKHUBELA ATTORNEYS

For the second respondent:

Adv. Z A Teperson

¹ See *Nel v Waterberg Landbouwers Ko-operatiewe Vereniging* 1946 AD 597.

Instructed by:

EY STUART INC.

Date of the hearing:

29 July 2025

Date of judgment:

4 August 2025