



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 2025/117610

In the matter between:

MVELELI VA

Applicant

and

KING SABATA DALINDYEBO MUNICIPALITY

Respondent

JUDGMENT

ZONO AJ:

Introduction

- [1] The applicant approached this court on urgent basis for a spoliation relief. The application is fully opposed by the respondent in that, a notice to oppose together with answering papers have been filed, to which the applicant has

replied. At the commencement of the hearing the parties sought to argue this matter for a final relief. That agreement was informed by the nature of the relief the applicant is seeking. That approach was well accepted by the court.

- [2] The salient facts affecting this matter are succinctly set out hereinafter. The applicant contends that, whilst he is the owner of the motor vehicle bearing registration letters and numbers **J[...]**, he had been in a peaceful and undisturbed possession thereof since August 2021 when he purchased it. He employed Sibusiso Wadoni as a driver to ferry taxi passengers between Tsolo and Mthatha as he is a member of Uncedo Taxi Association.
- [3] The applicant further contends that on 14th July 2025 he was unlawfully deprived possession of the motor vehicle by the members of the respondent in the manner that follows: His driver Sibusiso was parking the motor vehicle at Uncedo Taxi Association Rank in Mthatha when he was approached by respondent's Traffic Officer who demanded his driver's licence and a permit which were produced. The Traffic Officer demanded that the driver pay **R1000.00** for the alleged illegal parking which the driver did not have. The Traffic Officer then instructed the driver to drive the motor vehicle to the respondent's pound as the Traffic Officer was impounding the motor vehicle. He drove in fears of being arrested as he was threatened with arrest when he was asking the traffic officer not to take the vehicle. The driver drove and left the vehicle at the Municipal pound. The driver was not given a Traffic ticket by the Traffic Officer. He was verbally told to go and pay an amount of **R1000.00** at the Traffic Department Counter. He disputed that he was illegally parking at the Rank.
- [4] The respondent contends in its answering papers that two Traffic Officers spotted the said motor vehicle at Madeira Street (N2) Near BP Garage illegally parked and obstructing the Traffic on the far-right lane of the road. The two Traffic Officers, namely, Moyakhe Gomagoma and Sinalo Mantanga approached the driver of the motor vehicle concerned and advised him that he was obstructing the flow of the Traffic and that he parked the motor vehicle illegally. They thereafter demanded the driver's licence and operating

permit. They then demanded a payment of fine of R1000.00 for contravention of the Regulations and the Traffic By-Laws. Such fine would be paid at the Traffic Department. The driver was then instructed to drive to the respondent's Traffic Department for payment of fine. At the Traffic Department the driver advised the Traffic Officers that he does not have the money and requested to leave the motor vehicle at the respondent's premises for him to get the money. The Traffic Officers waited for the driver and also prepared a traffic ticket to enable the driver to effect payment at the relevant office. The driver did not return and payment was never made and consequently the motor vehicle was duly impounded and kept in the respondent's custody pending the payment of the requisite traffic fine and the storage charges.

[5] The respondent concludes by contending that the dispossession of the motor vehicle was lawful. The driver of the motor vehicle was not forced to leave the motor vehicle. He left the motor vehicle to get the required traffic fine but never returned. For its defence the respondent relies on the Regulations promulgated in terms of the National Road Traffic Act, "*the regulation*," and the Municipality's Traffic By-Laws published in the Provincial Gazette No 5327, notice No 1090/2004 dated 16 December 2004, "*the By-Laws*".

[6] The starting point is Regulation 305 (6) which provides thus:

"Whenever a vehicle has been parked in contravention of any provision of the Act or any By-Law made under the Act, or in contravention of or disregard of the directions of any traffic sign or notice board as prescribed in these regulations, such vehicle may be removed or caused to be removed and impounded by the Traffic Officer and unless the vehicle has been so parked in the course of a theft thereof, the owner shall bear the costs of such removal and impoundment."

[7] Municipal Traffic By-Law Section 36 provide thus:

"36.11 No vehicle shall park on a public road in a position or in circumstance which in the opinion of traffic officer is likely to

cause danger or an obstruction to other traffic on such roads. Such vehicles shall be towed forthwith to a pound yard by any such traffic officer or person or authority instructed by such officer.”

- [8] The word **Park** is defined in the By-Law to mean “*to keep a vehicle, whether occupied or not, stationary for a period of time longer than is reasonably necessary for the actual loading or unloading of persons or goods, but does not include any such keeping of a vehicle by reasons of cause beyond control of the person in charge of such vehicle*”.

Discussion

- [9] The general principle underlying the *mandament van spolie* are well established. Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant, upon proof of two requirements is entitled to a *mandament van spolie* restoring the status *quo ante*. The first, is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant- that is why possession by a thief is protected. The second, is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant as that would go to the merits of the dispute¹.
- [10] A spoliation order is available even against government entities for the simple reason that unfortunately excesses by those entities do occur. It matters not that a government entity may be purporting to act under colour of a law, statutory or otherwise. The real issue is whether it is properly acting within the law. After all the principle of legality requires of state organs always to act in terms of the law. All that the despoiled person needs to prove is that he was in

¹ *Ivanov v North West Gambling Board and Others* 2012 (6) SA 67 (SCA) Para 19.

possession of the object; and that he/ she was deprived of possession unlawfully².

- [11] In *Nino Bonino*³ Innes CJ enunciated the principle underlying the mandament van spolie as follows:

“It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the court will summarily restore the status quo ante and will do that as a preliminary to any inquiry or investigation into the merits of the dispute.”

- [12] From the above-mentioned factual exposition, it is plain that the applicant posits a case that he was *bona fide* possessor of the motor vehicle from August 2021 when he purchased same from Nedbank. He was in an undisturbed and peaceful possession thereof until the alleged unlawful deprivation by the members of the respondent on 14th July 2025. The respondent refutes that the applicant was in possession of the motor vehicle at the time of the alleged spoliation; the driver was, so it is contended. It is common cause that the driver of the motor vehicle, Sibusiso Wadoni was in the employ of the applicant, ferrying passengers between Mthatha and Tsolo and also driving long distances. On the day in question Mr Wadoni, the driver was driving the motor vehicle and the members of the respondent took it from him. The question of who was in possession of the motor vehicle on 14th July 2025 at the time of its seizure and impoundment is addressed hereinafter.

- [13] It is trite law that possession consists of both an objective and subjective element, namely the objective or physical element (*corpus, detentio*) and the subjective or mental element (*animus*). Literally, a possessor must control the article with both the body and the mind. The physical element consists in the factual control exercised over the article. The mental element concerns the

² *Ngqukumba v Minister of Safety and Security and others* 2014(5) SA 112 (CC) Para 13.

³ *Nino Bonino v De lange* 1906 TS 120 at 122.

state of mind of the possessor⁴. Once possession is acquired it will be retained as long as the possessor is capable of exercising physical control over the article⁵. Apart from physical control, a person must have the correct mental attitude towards the thing before he can qualify as a possessor. Broadly speaking, he must have the will to possess (*animus possidendi*)⁶.

[14] It is easy to deduce from the above that a person may possess an article on behalf of another. I am not alone on this view. Leach J⁷ writing for the full court observed as follows:

“The learned acting judge also held that the actual possessor of the vehicle at the time it was seized was its driver, Mpomposhe. That finding, too is not justified. It is clear that Mpomposhe was acting as the appellant’s employee in driving the vehicle, and therefore did not have the intention to possess. The appellant remained in possession of the vehicle, but exercised his possession through his employee. Indeed, where physical control is exercised on behalf of the master or employer by a servant or an employee, the courts have decided that only the master or employer is entitled to bring the mandament- see Mpunga v Malaba 1959 (1) SA 853(W) at 861F and Mbuku v Mdinwa 1982 (1) SA 219 (TK) at 222H. accordingly, in the present case, while Mpomposhe may have been the detentor, the appellant was the person in possession of the vehicle”.

I therefore find that respondent’s point of applicant’s lack of possession of motor vehicle is devoid of merit.

[15] No spoliation is committed where a person is lawfully deprived of his possession⁸. The respondent can justify his dispossession of the applicant by showing that the applicant was authorised by statute to dispose the

⁴ LAWSA, First Reissue, Volume 27, Para 246, Page 265.

⁵ LAWSA(Supra) Para 250 Page 168.

⁶ LAWSA (Supra) Pra 252 Page 169.

⁷ Unreported Judgment of **Ntuthuzelo Renene v Minister of Safety and Security and another** (Case No 951/2004- full court’s judgment-Mthatha.

⁸ **Despatch Municipality v Sunridge Estate & Development Corporation (Pty) Ltd** 1997 (2) ALL SA 283 (SE);1997(8) BCLR 1023 (SR); 1997 (4) SA 596 (SE) 602 I-J.

applicant⁹. On the authority of Plascon-Evan Principle¹⁰, it must be accepted that the applicant's motor vehicle parked on the traffic lane at Madeira Street next to BP Garage, Mthatha, thereby obstructing the movement of the other traffic. Applicant's motor vehicle became an obstruction to other traffic.

- [16] Section 36(11)(ii) of the Municipality Traffic By-law is not the only provision that prohibits obstruction and parking on a public road, Regulation 305 (1) does prohibit the parking in the following terms:

“No person shall park a vehicle on a public road-(b) in any place referred to in regulation 304”

Regulation 304(a) and (i) prohibits the parking / stopping of a motor vehicle on a public road or in any other place where it would likely to constitute a danger or an obstruction to other traffic. It is for those circumstances that Regulation 305(6) referred to above provides for the removal and impoundment of the motor vehicle. I find merit in the respondent's contention that the removal and impoundment of the applicant's motor vehicle was authorised by the statute as demonstrated above.

- [17] It is basic principle of our law that a court can never lend its aid to the enforcement of an illegal act. In our democratic order, it is the duty of the court to apply and enforce legislation. If the validity of legislation is not impugned, there can be no justification for not enforcing it, let alone giving legal effect to prohibited conduct¹¹. Courts are constrained by the doctrine of legality to enforce the law¹² and exercise those powers bestowed upon them by the law¹³. The court has a duty to refuse to countenance an ongoing statutory contravention which is also a criminal offence. Mr Mapekula argued strongly that the respondent's Traffic Officer should have issued the driver with a traffic ticket and left the motor vehicle. There is no merit in this argument. Section 89(1) of the National Road Traffic Act 93 of 1996 outlaws the parking of a

⁹ **Van Eck No and Van Resnseberg NO v Etna Stores** 1947 (2) SA 984 (A) at 1000.

¹⁰ **Plascon Evans Paints Ltd v Van Riebeek Paints (Pty)** 1984 (3) SA 623 (a) 634-5.

¹¹ **Cool Ideas 1186 CC v Hubbard and another** 2014 (4) SA 474 CC; 2014 BCLR 869 (CC) Para 77 & 99.

¹² Section 165(2) of the Constitution.

¹³ **National Director of Public Prosecutions v Zuma** 2009(2) SA 277(SCA) Para 15.

motor vehicle on public road and also make that conduct a criminal offence. The motor vehicle was an instrument used to commit a crime. There is no justification for the traffic officer to leave the motor vehicle being used to commit the crime when regulation 305 (6) of the National Road Traffic Act 93 of 1996 provides that they must remove and impound same.

- [18] Provisions of Regulation 305(6) of the National Road Traffic Act are consistent with the provisions of section 20 of the Criminal Procedure Act 51 of 1977 as amended¹⁴ which read thus:

*“The state may, in accordance with the provision of this chapter, seize anything (in this chapter referred to as an article)-
(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere”.*

- [19] Another provision that Mr Mapekula, applicant’s Counsel sought to invoke the provisions of Section 36(1) and (2) of the Municipality’s Traffic By-Law which reads as follows:

- “1. The vehicle to be impounded must be towed by KSD Breakdown or towed through the authority of the Chief protection, by a Private Towing Company to the official municipal vehicle pound.*
- 2. A vehicle should not be impounded unless clearly interferes with ongoing operations or movement of traffic (double parking and owner is not around) threaten public safety, inconvenience to pedestrian (pavement / sidewalks) or abandoned.”*

- [20] Firstly, there is huge difficulty in accepting this proposition for the following reasons:

¹⁴ **Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others** 2004 (4) SA 490 (CC) Para 27.

20.1 The applicant does not make out a case in the founding affidavit that his motor vehicle was double parked and that the owner of the vehicle was not around. Neither does he make out a case about towing of the motor vehicle. Instead, the applicant posits a case that the driver was parking the motor vehicle when he was approached by the traffic officers. This contention cannot be sustained.

20.2 In *Mistry*¹⁵ Diemont JA puts this point aptly as follows:

“When, as in this case the proceedings are launched by way of notice of motion, it is to the founding affidavit which a judge will look to determine what the complaint is. As was pointed out by Krause J in Punta’ Trustee v Lahanas 1927 WLD 67 at 68 and as has been said in many other cases... an applicant must stand or fall by this petition and the facts alleged therein and that although something it is permissible to supplement allegations contained in the petition, still the main foundation of the application is the allegation of facts stated therein, because those are the facts which the respondent is called up in either to affirm or deny.”

[21] Secondly, the driver cooperated with the traffic officers and the motor vehicle was removed with that cooperation. The driver went to obtain the traffic fine of R1000.00 and the applicant refused to assist him due to the fact that there was no traffic ticket given to the driver. The issue relating to the towing of applicant’s motor is not a case the respondent is called upon to answer, and therefore cannot be accepted. Reliance on section 36(1) and (2) of the By-Law is an afterthought and is accordingly rejected. It should be accepted that the driver cooperated with the traffic officer in the light of the offence he committed using the motor vehicle. That removal fell four squarely within the provisions of regulation 305(6) of the National Road Traffic Act.

[22] In the amalgam of all this I am satisfied that the dispossession of applicant’s motor vehicle was not unlawful as it was in terms of the National Road Traffic

¹⁵ *Director of Hospital Service v Mistry* 1979 (1) SA 626 (A) at 635-636A.

Act Regulations¹⁶ and other relevant legislations. In the circumstances applicant's application cannot succeed. There is no reason why the general rule cannot be applied regarding costs. Costs of this application should follow the result.

Order

[23] In the result I make the following order:

23.1 **The application is dismissed with costs.**

A.S ZONO
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

For the Applicant	:ADV MAPEKULA
Instructed by	:CHUMA NGQONGWA ATTORNEYS INC
	45 Leeds Road
	Unit 4, Glencombe Place
	Mthatha
	Tel: 067 188 8204
	Cell: 071 083 5467
	Email: cngqongwa@gmail.com
	Ref: VA
 For the Respondent	 :MR MALALA
Instructed by	:MVUZO NOTYESU INC
	2ND Floor Old T.H Madala Chambers

¹⁶ Regulation 304(a) and (i), 305(6) and Regulation 320 which prohibit the obstruction and interruption of free and proper passage of traffic on a public road.

14 Durham Street

Mthatha

Tel: 047 531 4714

Email: mnotyesi@tekomsa.net

Ref: Mrs A. Klaas/Mr Malala

Matter heard on : 23 July 2025

Delivered on : 01 August 2025