



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**Reportable
CASE NO: 2025-142469**

In the matter between:

DAVID LEE HOLDINGS (PTY) LTD

Applicant

and

SARGAS (PTY) LTD

First Respondent

THE SHERIFF OF THE HIGH COURT, INANDA AREA 2

Second Respondent

ORDER

The following order shall issue:

1. The application is dismissed;
 2. The applicant is directed to pay costs of the application, including the costs of counsel, on scale B.
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JUDGMENT

NOTYESI AJ

Introduction

[1] The applicant, relying on the remedy of *mandament van spolie*, launched these proceedings on an urgent basis seeking for the restoration of goods that had been attached and removed on 19 August 2025 by the first and second respondents at Unit [...], C[...] Park, [...] C[...] Street, O[...], Blackburn, KwaZulu-Natal. The applicant alleged that the respondents had acted without just or lawful cause when attaching and removing the goods. In this regard, the applicant had contended that the first respondent had not, prior to the removal of goods, obtained any court judgment or court order authorizing the attachment. It is therefore the applicants' case that the actions of the respondents were unlawful.

[2] Only the first respondent is opposing the application. The second respondent had elected to abide the court's decision.

[3] The basis of opposition by the first respondent is that the attachment and removal of the goods was authorised in terms of a warrant of execution issued pursuant to a judgment against Prestige Apparel (Pty) Ltd and Market Demand Trading 9990 (Pty) Ltd. In this regard, the first respondent had contended that the attached goods belonged to Prestige Apparel (Pty) Ltd. Accordingly, the first respondent contends that the warrant of execution was lawfully carried out by the second respondent.

The parties

[4] The applicant is David Lee Holdings (Pty) Ltd, a limited liability company that is duly registered and incorporated in accordance with company laws of the Republic of South Africa. The applicant is related to various companies, which include Prestige Apparel (Pty) Ltd, ('Prestige') and Market Demand Trading 9990 (Pty) Ltd, ('MDT').

[5] The first respondent is Sargas (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa.

[6] The second respondent is the Sheriff of the High Court for Inanda Area 2.

[7] For the sake of simplicity, the parties shall be referred according to the pleadings, save for Prestige and MDT who are not parties to these proceedings.

The issue for determination

[8] The only issue for determination is whether the removal of the goods from Unit [...], C[...] Park, [...] C[...] Street, O[...], Blackburn, KwaZulu-Natal was lawful.

Material facts

[9] The applicant alleges that on 19 August 2025, the second respondent, armed with a writ of execution, had arrived at its place of business, Unit [...], C[...] Park, [...] C[...] Street, O[...], Blackburn, KwaZulu-Natal. He was accompanied by a team of persons. There was also a removal vehicle. On arrival at the premises, the second respondent met the applicant's duty manager, Michael Mark. He showed the applicant's duty manager a warrant of execution against property. He informed the duty manager that he was there to attach goods of Prestige. He also handed a copy of the warrant of execution to the duty manager.

[10] The applicant's duty manager disputed that the goods were liable to be attached, pointing out that the judgment was against Prestige and not the applicant. According to the applicant, the second respondent ignored the explanations of the duty manager. He proceeded to attach and remove the goods. The director of the applicant, Mr David Jonathan Pillay, was not at the premises at the time of the attachment. He relied on information furnished by the duty manager when deposing to the affidavit.

[11] More significantly, Mr Pillay is the director of both the applicant and Prestige. The contention of the applicant in this regard is that the second respondent was not entitled to attach the goods of the applicant because there was no judgment against the applicant. In addition, thereto, the warrant of execution was not against the property of the applicant. According to the applicant, the goods were attached for the reason that Mr Pillay is also a director of Prestige. The applicant contended that it is not a party to the proceedings between the first respondent and Prestige. Based on the above, the applicant had contended that the actions of the first and second

respondents constitute an act of spoliation and that possession of the goods should be restored.

[12] The first respondent, in opposing the relief, had averred that it operates in the property sector and is primarily engaged in the business of owning, managing and leasing commercial property. During the course of its business, it had entered into a written lease agreement with Prestige and MDT. Prestige, MDT and the applicant are all related companies. They all have the same director. The first respondent had obtained judgments against both MDT and Prestige on 2 December 2024 and 26 May 2025 respectively.

[13] The first respondent alleged that it had encountered difficulties in executing the judgment of 26 May 2025 against Prestige and MDT. It then resorted to employ the services of a tracing agent, FSG Forensics (Pty) Ltd. The tracing agent delivered their final tracing report. According to the report, the warehouse of Prestige was located at Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn, KwaZulu-Natal. The first respondent alleged that the tracing agent had conducted investigations to establish that indeed, the address was that of Prestige. According to the report furnished to the respondent, Mr Sibiya of the tracing company conducted the investigation. He had conducted interviews with the on-site security guards. Those security guards and other persons had confirmed that Prestige was operating from Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn. Prestige had goods at the aforesaid address kept in its warehouse.

[14] Based on the above, the first respondent was satisfied that the goods of Prestige were stored in the warehouse at Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn. The first respondent then instructed the second respondent to attach and remove the goods of Prestige in accordance with the warrant of execution issued by the registrar of this court on 11 June 2025.

[15] The first respondent further states that on the date when the goods were attached, it was again confirmed that the goods were at the warehouse of Prestige at the given address. The report of the tracing agent was confirmed by the employees found at Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn. On 19 August 2025,

the second respondent attended to the premises with the FSG Forensics (Pty) Ltd tracing agent, Mr Sibiya, and proceeded to attach and remove the assets at the premises. According to the first respondent, whilst the second respondent was attaching the goods, boxes labelled “Prestige Apparel” and “Market Demand Trading” were found in the warehouse. That confirmed the goods and the premises to have been correctly identified. In this regard, the first respondent had filed photographs and screenshots of the labelled boxes that were at the premises.

[16] In such circumstances, the first respondent alleged that it is convinced that the attached goods belong to Prestige. The first respondent had invited the applicant to invoke interpleader proceedings so that it can prove its ownership of the attached goods. The first respondent contends that the applicant has not instituted interpleader proceedings and maintains that the execution was lawful.

Legal framework

[17] The applicant is seeking for a final relief in the form of the return of the attached goods. As these are motion proceedings, any disputed facts must be determined based on *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,¹ where it was held:

‘...Where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant’s affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances, the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or *bona fide* dispute of fact.’

[18] The applicant has predicated the cause of action on the remedy of *mandament van spolie*. In *Ngqukumba v Minister of Safety and Security and Others*,² it was elaborated that:

‘The essence of the *mandament van spolie* is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-I; *President of the Republic of South Africa and Others v M & G Media Ltd* 2011 (2) SA 1 (SCA) paras 13-14.

² *Ngqukumba v Minister of Safety and Security and Others* [2014] ZACC 14; 2014 (5) SA 112 (CC) para 10.

spoliatus ante omnia restituendus est (the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the *mandament van spolie* is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process.’

[19] The Constitutional Court in *Ngqukumba*³ also confirmed the long-standing principle set out in *Nino Bonino v De Lange*,⁴ where it was held:

‘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 enquiry or investigation into the merits of the dispute.’

[20] Where a respondent is opposing an application for *mandament van spolie* and relies upon a statutory provision as a defence, such as in the present case, which he claims had entitled him to deprive the possessor of the property, such statutory provision must be restrictively interpreted and the respondent relying thereupon, must establish that he has acted strictly within its terms.

[21] For the applicant to obtain a relief based on the *mandament van spolie*, the applicant is required to establish that:⁵

‘He was in peaceful and undisturbed possession; and
Was unlawfully deprived of such possession.’

[22] *Mandament van spolie* is a remedy that is available to a person or entity who seeks to have deprived possession immediately restored for as long as he can satisfy the court that such possession has been unlawfully deprived or removed without due legal process. Spoliation or *mandament van spolie* does not require proof of existing right to property, but it protects possession of the property. The

³ Ibid.

⁴ *Nino Bonino v De Lange* 1906 TS 120 at 122.

⁵ *City of Tshwane Metropolitan Municipality v Mamelodi Hostel Residents Association and Others* [2011] ZASCA 227 at para 6; *Ngqukumba v Minister of Safety & Security* supra at para 13

remedy is preliminary to any investigation into the merits of the dispute.

[23] The remedy applies whether the despoiler is a government entity or state functionary.

[24] In *George Municipality v Vena and Others*,⁶ it was stated:

‘The Court came to the conclusion that the section was not worded so clearly as to detract from the general principle of law ‘... that there shall be no spoliation by any person, be it an individual, or a government department or a municipality or any similar body’... What the learned Judge said at 117D-F bears repetition:

“...(T)he clear principle of our law is that, ordinarily speaking, persons are not entitled to take the law into their own hands to enforce their rights. There is a legal process by which the enforcement of rights is carried out. Normally speaking, it is carried out as a result of an order of court being put into effect through the proper officers of the law such as the sheriff, deputy sheriff, messenger of the magistrate’s court or his deputies, reinforced if necessary, by the aid of the police or some such authority; in most civilised countries there exists the same principle that no person enforces his legal rights himself. For very obvious reasons that is so; if it were not so, breaches of the peace, for instance, would be very common. It is clear, therefore, that if you want to enforce a right you must get the officers of the law to assist you in the attainment of your rights.”

[25] I add that the spoliation remedy is an incident of the rule of law. Its purpose is to maintain law and order in society ensuring that no person resorts to self-help. In overall, it protects possession and possessory rights. The remedy has evolved and survived constitutional scrutiny. I have no doubt that the remedy is not in conflict with the Bill of Rights and more importantly, s 25 of the Constitution.

[26] On these principles, I turn to discuss the present application.

Discussion

[27] In the founding papers, the applicant has alleged that it was in peaceful and undisturbed possession of the attached and removed goods prior to being unlawfully and forcefully deprived thereof by the first and second respondents. The contention

⁶ *George Municipality v Vena and Another* 1989 (2) SA 263 (A) at 271H-272A; See also *Ngqukumba v Minister of Safety and Security and Others* [2014] ZACC 14; 2014 (5) SA 112 (CC) para 11.

by the applicant is that the conduct of the first and second respondents had constituted spoliation. In this regard, the applicant had alleged that the attached goods belonged to it and not Prestige.

[28] According to paragraph 22 of the founding affidavit the applicant stated that the judgment which had formed the basis of execution was against Prestige. It was the applicant's case in the founding papers that the respondents had no court order or judgments against it. The removal of the goods was said to have been without lawful basis, in other words, the applicant had submitted that the respondents had not followed the due process of the law.

[29] It is a trite legal principle that the purpose of a founding affidavit is to set out all essential facts and contentions to establish the applicant's case. The founding affidavit serves as both the pleadings and evidence in application proceedings. The key principle is that the applicant is required to make out its case in the founding affidavit and will not be allowed to raise new facts other than in a replying affidavit.

[30] The general rule which has been laid down repeatedly is that an applicant must stand or fall by his founding affidavit and the facts alleged in it, and that although sometimes it is permissible to supplement the allegations contained in that affidavit, still the main foundation of the application is the allegation of facts stated there, because those are the facts that the respondent is called upon either to affirm or to deny.⁷

[31] As I understand it, the applicant had approached this court on a simple basis that the attachment and removal of goods was carried out by the first and second respondent without any form of authorization. This means that there was no court order or judgment against the applicant. This position was persisted at the hearing by the counsel for the applicant, Mr *Khan* SC. This submission is incorrect. The second respondent was armed with a warrant of execution when attaching and removing the goods forming subject of these proceedings. That execution warrant forms part of the record. The court would have to examine the contents and terms of

⁷ Herbstein and Van Winsen *The Civil Practice of the Supreme Court of South Africa*, 6th Edition at 13 - 26 and the cases cited therein.

the warrant of execution. The applicant had elected not to challenge the lawfulness of the issuing of the warrant.

[32] According to the first respondent, prior to the execution of the judgment against Prestige, it had traced and confirmed the address or warehouse of Prestige to be Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn, KwaZulu Natal. The warrant of execution relied upon by the first respondent, which was executed by the second respondent, instructs the sheriff to attach and take into execution the movable goods of Prestige Apparel (Pty) Ltd (*first defendant in that case*) at Office [...], B[...] House, 3[...] F[...] Drive, Mount Edgecombe, KwaZulu Natal and of Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn, KwaZulu Natal. For completeness, I quote the relevant portion of the writ of execution:

‘TO: SHERIFF/DEPUTY SHERIFF

Pursuant to Default Judgment granted in the above Honourable Court on 26 May 2025, you are hereby directed to attach and take into execution the movable goods of Prestige Apparel (Pty) Ltd (*first defendant in that case*) at Office [...], B[...] House, 3[...] F[...] Drive, Mount Edgecombe, KwaZulu Natal and of Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn, KwaZulu Natal as per the attached tracing report, and of the same to cause to be realized by public auction the sum of:

- (a) R7 719 063,11;
- (b) Interest for the months of June 2024 to February 2025 (both inclusive) in the sum of R496 831,48;
- (c) Further interest on the aforementioned capital sum at the rate of 4% above the current prime overdraft rate of the plaintiff’s bankers, reckoned from the due date of payment of such amount to the actual date of final payment thereof; and
- (d) Costs of the suit on the attorney and client scale (to be taxed).

and also all other costs and charges of the Plaintiff in the said case to be hereafter duly taxed according to law, besides all of your costs thereby incurred.

FURTHER pay to the said Plaintiff, or its attorney, the sum or sums due to it with costs as above-mentioned, for so doing this shall be your warrant.

AND RETURN you this Writ with what you have done thereupon.’

[33] Upon production of the warrant of execution, the applicant had sought to rely on a rescission application alleged to have been launched by Prestige and MDT. Mr *Khan* had pointed to the authority of *Mbiza and Another v Phola Coaches Limited*

and Others.⁸ The case deals with the stay and suspension of the operation of a warrant of execution pending the outcome of a rescission application in part B. The case is distinguishable from the facts of this case. I therefore reject this contention; first, it was not raised in the founding affidavit, and therefore it was not the case that the respondents were called upon to meet; and, the rescission application cannot stop the execution of the warrant. In *Erstwhile Tenants of Williston Court and Another v Lewray Investments (Pty) Ltd and Another*,⁹ it was stated:

‘[18] The provisions of s 18 of the Superior Courts Act must be interpreted in accordance with the established principles of interpretation. (See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18; *Bothma-Batho Transport (Edms) Bpk v S Bothma & Seun Transport (Edms) Bpk* 2014 (2) SA 494 (SCA) para 12.) Contextually read, I am of the view that had it been the intention of the legislature for the operation and execution of a decision which is the subject of an application for rescission also to be automatically suspended, then such decision would have been expressly included in section 18(1). The legislature would have expressed its intention to include such decision in clear and unambiguous language.

[19] The contrary interpretation would result in the absurdity that the filing of any unmeritorious application for rescission could foil the operation and execution of a decision which is the subject of such application. Moreover, it would result in the absurdity that the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal may by order of court as contemplated in s 18 be carried into effect, but not a decision which is the subject of an application for rescission. But a person against whom the decision which is the subject of an application for rescission was given can always approach a court under rule 45A to suspend its execution pending the finalisation of an application for rescission. I see no reason in principle or in logic why an applicant for rescission should be placed in a better position than an applicant for leave to appeal or an appellant as far as the operation and execution of court orders is concerned. The glaring absurdities that could result in hardship to the party in whose favour a decision that forms the subject of an application for rescission was given could never have been contemplated by the Legislature. (See *Klein v Minister of Trade and Industry and Another* 2007 (1) SA 218 (T); [2007] 1 All SA 257 (T) para 34.)

[20] The Superior Courts Act 10 of 2013 commenced on 23 August 2013. Its s 18 only

⁸ *Mbiza and Another v Phola Coaches Limited and Others* [2023] ZAGPJHC 1388.

⁹ *Erstwhile Tenants of Williston Court and Another v Lewray Investments (Pty) Ltd and Another* 2016 (6) SA 466 (GJ).

provides for the automatic suspension of the operation and execution of a decision pending an application for leave to appeal or an appeal. No other provision of the Superior Courts Act provides for the automatic suspension of the operation and execution of a decision which is the subject of an application to rescind, correct, review or vary an order of court. There is also nothing which indicates an intention on the part of the legislature to broaden the automatic suspension of the operation and execution of decisions beyond those included in s 18. A court can always be approached under rule 45A to suspend the operation and execution of orders not included in s 18. But their operation and execution are not automatically suspended.'

[34] In *City of Tshwane Metropolitan Municipality v Afriforum and Another*,¹⁰ it was held that:

'... It needs to be stated categorically, that no aspect of our law requires of any entity or person to desist from implementing an apparently lawful decision simply because an application, that might even be dismissed, has been launched to hopefully stall that implementation. Any decision to that effect lacks a sound jurisprudential basis and is not part of our law. It is a restraining order itself, as opposed to the sheer hope or fear of one being granted, that can in law restrain. To suggest otherwise, reduces the actual grant of an interdict to a superfluity.'

[35] In this case, there was no interdict that had been sought against the execution of the judgment against Prestige or MDT. There was no attempt to seek for the stay of the execution pending the rescission application to be launched by either Prestige or MDT. As I understand, the present execution is not against the applicant nor the property of the applicant, instead, it is against Prestige or MDT. Those parties have not been joined in these proceedings. The execution against those parties is lawful. The warrant of execution is against the properties of those entities which had been traced to be in the addresses mentioned in the warrant. There is no merit in the contention that the execution is unlawful. I find no basis that the second respondent's conduct had amounted to an act of spoliation.

[36] I find merit from the submissions made on behalf of the first respondent that the applicant, in these circumstances, ought to have invoked the interpleader proceedings, if so advised. Uniform rule 45(3) provides that:

¹⁰ *City of Tshwane Metropolitan Municipality v Afriforum and Another* [2016] ZACC 19; 2016 (6) SA 279 (CC) para 74.

‘whenever by any process of the court the sheriff is commanded to levy and raise any sum of money upon the goods of any person, the sheriff shall forthwith or by such sheriff’s assistant proceed to the dwelling – house or place of employment or business of such person...and there- (a) demand satisfaction of the writ and, failing satisfaction, (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the writ, and failing the pointing out of sufficient property, (c) search for such property.’

In practice, the sheriff will attach property even if it is not sufficient to satisfy the debt in full.

[37] If a claim, as is the case here, is made by any other person to property seized or to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage arising from the seizure, the sheriff must retain or seize, as the case may be, make an inventory of and keep the property in question. Failing an indemnity, a sheriff who has attached in execution, money or property in respect of which conflicting claims are made, has the rights of an applicant, and an execution creditor the rights of a claimant in interpleader proceedings. He may, accordingly, deliver an interpleader notice to the claimant, pay the money or tender the subject matter to the registrar, and obtain a ruling from the court as to the person to whom the money is in law due or the property should be transferred.¹¹ It is open to the applicant to follow the interpleader proceedings. I agree with the submissions made on behalf of the first respondent.

[38] Based on the warrant of execution and its terms, I am satisfied that the attachment and removal of goods at Unit [...], C[...] Park, 0[...] C[...] Street, O[...], Blackburn, KwaZulu Natal was lawful. The result is that the applicant has not made out a case based on *mandament van spolie*. The respondents have not resorted to self-help. The sheriff had acted strictly within the terms of the warrant of execution.

Interdict

[39] The applicant is also seeking an interdict against the respondents. The relief is couched in these terms-

¹¹ Herbstein and Van Winsen *The Civil Practice of the Supreme Court of South Africa*, fourth edition, at 782 and the cases cited therein.

‘The first and second respondents are hereby interdicted and restrained from continuing with the attachment and removal of movable property from the premises of the applicant at Unit [...], C[...] Park, [...] C[...] Street, O[...], Blackburn, KwaZulu-Natal.’

[40] In order to succeed in obtaining a final interdict, whether it be prohibitory or mandatory, an applicant must establish-

- (1) a clear right;
- (2) an injury actually committed or reasonably apprehended; and
- (3) the absence of similar protection by any other ordinary remedy.

[41] The applicant has failed to establish a legal right that would entitle it to such a relief. First, the respondents have obtained a warrant of execution. The warrant of execution specifies the address at which the execution should take place. For as long as that warrant exists, the respondents would be lawfully permitted to attach goods at Unit [...], C[...] Park, [...] C[...] Street, O[...], Blackburn, KwaZulu-Natal. The applicant has not established any legal right for preventing the respondents from attaching the goods at the given address in the warrant. A different consideration would have been given, if the applicant was seeking to stop the attachment of its own goods. The goods that are being attached are those of Prestige and not the applicant. The applicant has not even established a *prima facie* right worth of protection. The interdict will not be granted. The interdict sought by the applicant seeks to perpetually prevent the respondents, even if lawfully authorized, as is the case here, from attaching goods located at the premises. That is not permissible.

Conclusion

[42] The applicant has not met the requirements of *mandament van spolie*. Accordingly, the applicant is not entitled to the relief that it is seeking. For all the reasons set out, the application should fail. I cannot think of any reason, and none has been suggested, as to why the costs should not, as a general rule, follow the result. The costs shall be borne by the applicant. The costs should include all costs reserved, including costs of counsel on scale B.

Order

[43] In the result, I make the following order:

1. The application is dismissed;
2. The applicant is ordered to pay costs of the application, including the costs of counsel, on scale B.

NOTYESI AJ

APPEARANCES:

Counsel for the Applicant	:	Mr <i>Khan SC</i>
Attorneys for the Applicant	:	Bilal Malani & Associates 343 Essenwood Road Durban
Counsel for the First Respondent	:	Mr <i>Voormoolen SC</i>
Attorneys for the First Respondent:		Cox Yeats Attorneys Ncondo Chambers 45 Vuna Close Umhlanga Ridge Durban
Date Heard	:	21 August 2025
Date Delivered	:	11 September 2025