

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 066390/2024

DATE: 17-04-2025

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE 17/4/25

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SIGNATURE

In the matter between

ZAHEER CASSIM N.O.

Applicant

and

GROUP OF PERSONS CURRENTLY ON AND/OR

OCCUPYING THE PREMISES SITUATED AT [...] A[...],

BRYANSTON, JOHANNESBURG

Respondents

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J U D G M E N T

MAKHOBHA, J:

1. This is an application by the applicants in terms of Section 18(3) of the Superior Courts Act 10 of 2013 to

enforce the judgment that I delivered on 11 July 2024. It is a spoliation order.

2. There was an application for leave to appeal which was dismissed this morning.

3. For all intents and purposes therefore there is no leave to appeal in this matter. The 1st respondent is not represented. The 2nd and 3rd are represented by
10 Mr Maponya.

4. I did pose a question to Mr Maponya whether the 2nd and 3rd respondents are occupying the property and whether they are opposing the application. The answer was in the positive, that yes they are occupying the property and they are opposing the application.

5. Mr Raubenheimer for the applicants is of the view that the 2nd and 3rd respondents, they have now
20 identified themselves as the occupiers of the property and as part of the people that are opposing this application. It must be remembered that in my judgment there is just a group of persons, there is no individual identified.

6. Mr Maponya argued on the misjoinder and with

respect, I do not understand why he says there is a misjoinder, because the parties that have been cited, they are saying we are occupying the property and we are opposing this application for various reasons that I am not going to go into.

7. Importance in this application is what I said in the judgment. I am going to quote myself on paragraph 17 of my judgment, I say the following:

10 "The true purpose of the *mandament van spolie* is not the protection and vindication of rights in general, but rather the restoration of the *status quo ante*."

8. I did ask counsel, Mr Maponya, in fact I did say to him that even a thief in our law is protected, you must return the *status quo ante*, there is no self-help that is allowed in our law.

20 9. Now should this Court not protect the applicants, I am not concerned about any appeal, I think Mr Raubenheimer put it rightly so that a question about the appeal and the merits is of no importance in such an application, because this is a spoliation order.

10. Now they have asked me, the applicants, to protect them and I did issue an order to protect them. They want that order to be implemented. And there is no appeal against my decision.

Now why can this Court not then give effect to Section 18(3)? I think that is the question I must ask myself, why should this Court not give effect to Section 8(3) without going into the theory, the case law of Section 18(3).

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From face value it is clear that with the spoliation the Court must act as soon as possible to protect the victim. Especially in this matter where there is no leave to appeal granted or any appeal, why should I not protect the victim that is the applicants? On paper and in the address by counsel, there is no good reason furnished to me.

For that reason, I am of the view that the application must succeed and the draft order which encompasses or which I asked counsel to upload it and on CaseLines which consist of the prayers on the notice of motion, that draft order is then made the order of Court.

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MAKHOB A, J

JUDGE OF THE HIGH COURT

DATE: