



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not Reportable

Case no: 5061/2025

In the matter between

KWAMANZI INVESTMENTS (PTY) LTD

FIRST APPLICANT

PLOT 2 MAXWELL FARM CC

SECOND APPLICANT

AITKEN, MICHAEL ANTHONY

THIRD APPLICANT

and

HAASBROEK, JACOB JACOBUS

FIRST RESPONDENT

HAASBROEK, JACOB JACOBUS N O

SECOND RESPONDENT

[In his capacity as trustee of the Ceaser Trust
IT 1968/2000]

ENGLISH, JASON JOSEPH

THIRD RESPONDENT

HENLEO 1072 (PTY) LTD

FOURTH RESPONDENT

BRODWILL CONSTRUCTION (PTY) LTD

FIFTH RESPONDENT

Neutral citation: *Kwamanzi Investments (Pty) Ltd & Others v Jacob Jacobus Haasbroek & Others* (5061/2025) [2025] ZAFSHC 332 (24 October 2025)

Coram: BOONZAAIER AJ

Heard: 9 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be at 10h00 on 24 October 2025.

Summary: *Mandament van spolie* can protect the 'quasi-possession' of a public servitude, but the applicant must prove they were unlawfully deprived of their undisturbed possession. The remedy focuses on restoring the *status quo* by reinstating the person's possession before the alleged spoliation, irrespective of who holds the underlying legal right to the servitude. This, demonstrating the remedy's robust nature in protecting quasi-possessionary rights. *Plascon-Evans* rule not applicable where there is no factual dispute.

ORDER

1 The first to fourth respondents are ordered to forthwith restore to the applicants and the general public the full and undisturbed use of the public road servitude 25 meters wide, created by Notarial Deed of Right of Way No K809/1976S and shown on LG Diagram No 392/76 (the Public Road Servitude), removing all barriers, earth berms/heaps, tree stumps, trees, bollards, brick columns, any other columns or structure barricades, building extensions (including any and all extensions of entrances and entrance related paraphernalia erected within the Public Road Servitude) and any other obstructions placed on or across the Public Road Servitude or in any way reducing, impeding, frustrating or diverting full and unrestricted access on and across the Public Servitude Road.

2 In the event of the first to fourth respondents failing or refusing to comply with paragraph 1 above within 12 (twelve) hours of service of this order, the Sheriff of this Court is authorised and directed to remove such obstructions forthwith, with the assistance of the South African Police Service if required, and to take any reasonable steps necessary for such removal.

3 The first to fourth respondents are interdicted and restrained from, in any manner impeding, obstructing, narrowing, diverting, policing or otherwise interfering, temporarily or permanently and directly, with the free and unimpeded use of the Public Road Servitude by the applicants or any member of the general public, including use by heavy vehicles for the lawful transport of goods and materials.

4 The first to fourth respondents to pay the applicants costs on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved, including the costs consequent to the employment of two counsel on scale C.

JUDGMENT

Boonzaaier AJ

Introduction

[1] The applicants approached this Court by way of urgency and relying on the *mandament van spolie*, claiming restoration of the full and undisturbed use of the right of way pertaining to a registered Public Roads Servitude. This servitude is registered as a condition in the deeds of the parties' respective properties. The parties (save for the fifth respondent) are all owners of portions of a farm described as Farm Maxwell No 433, District Parys, Free State Province (the Farm Maxwell). The applicants basically apply for a final interdict that the *status quo* in respect of the servitude road be restored to enable them to utilise it.

[2] This Court, in the exercise of its discretion, permitted the filing of the replying affidavit and further affidavits to ensure that the issues raised were fully ventilated.

[3] The purpose of this application is to restore to the applicants and the general public, the full and undisturbed use of the Public Road Servitude 25 meters wide, created by Notarial Deed of Right of Way No K809/1976S and shown on LG Diagram No 392/76 (the Public Road Servitude). The Public Road Servitude is registered as a condition in the titles deed of the parties' respective properties.

[4] As a result of the abovementioned servitude the restrictive condition has the same status and legal effect as a praedial servitude, which can be enforced by any owner of the properties in the Farm Maxwell against any other owner who may be acting in breach of the condition.¹

[5] The fifth respondent was joined to these proceedings by virtue of its interest in the matter. No relief is sought against it, as it has not opposed the application.

Undisputed facts

[6] The uncontested evidence in the present matter is that the parties are only able to access their respective properties, by way of Public Servitude, created by Notarial

¹ *Camps Bay Ratepayers and Residence Association and Others v Minister of Planning, Culture and Administration, Western Cape and Others* 2001 (4) SA 294 (C) at 324I-325A.

Deed of Right of way No K809/1976S and registered on 30 November 1976 and shown on LG diagram No 392/76. The Public Road Servitude, registered in favour of the general public, is 25 meters wide and runs parallel to the boundary line adjacent to the properties of the applicants and the first to fourth respondents. Part of the servitude road was paved during August 2024 by first to fourth respondents. The servitude road comprises of a paved part and an unpaved part. The servitude road is 25 meters wide and the paved road is approximately 3 meters wide.

[7] On 16 September 2025, the respondents commenced constructing bollards along the paved section of the road, specifically at the boundary between the paved and unpaved areas. Despite requests for undertakings to cease construction, the respondents continued with the works. The respondents' opposition to the relief sought is based solely on the contention that although the bollards have been installed at the edge of the roadway, both the public and the applicants can still make use of the road. The applicants have used the dirt part of the road and the paved road for various purposes without objection and without contributing to the construction or maintenance thereof. The erection of these bollards has prompted this application.

Applicants' version

[8] The central issue in the applicant's case is the allegation that the respondents have obstructed the roadway by installing bollards along the edge of the paved surface, within the roadway itself. The respondents claim, that the public and the applicants can still use the road, does not constitute a valid defense to this alleged obstruction. The applicants deny that the bollards erected by the respondents on the side of the paved road serve to reinforce and stabilise the paved road. This claim was expressly rejected by the engineer appointed by the applicants. Counsel for the applicants dismisses the applicability of the *Plascon-Evans* rule in the present case without providing any argument on the issue.

Respondents' version

[9] The first to fourth respondents oppose the application on various grounds, including, inter alia, the denial of dispossession and spoliation. The respondents submit that the applicants' spoliation application concerns a *quasi*-possession arising from the servitude right of way. The respondents further submit that the applicants'

quasi-possession prior to the alleged spoliation was limited solely to the actual use of the servitural road. The section of the servitural road utilised by the applicants before the contested act—namely, the erection of bollards alongside the paved road—remains in use and is still available to the applicants. The respondents argued that, in spoliation proceedings, the applicants are not entitled to enforce the full right of way but are limited to the extent that their actual *quasi*-possession was disturbed. The respondents argued further that the bollards which they erected on the side of the paved road reinforce and stabilise the paved road.

[10] The respondents contend that the applicants are pursuing relief and a final order by way of motion proceedings. As such, the applicants are bound by the evidentiary and procedural rules applicable to motion proceedings. Consequently, the facts relevant to *quasi*-possession and the alleged deprivation thereof must be assessed in terms of the *Plascon-Evans* rule.² In support of this position the respondents rely on the judgment of *Van Rhyn & Others NNO v Fleurbaix Farm (Pty) Ltd*,³ which addresses the issue of spoliation and the principle is succinctly stated as follows:

'The *Plascon-Evans* rule falls to be applied to resolve any factual dispute on the papers pertaining to the issue of dispossession.'

Accordingly, the respondents submit that the facts as stated by the respondents, together with those facts admitted by the applicants must be considered in determining whether the applicants are entitled to the relief sought.

Issues for determination

[11] The main issues to consider are: firstly, whether the *Plascon-Evans* rule applies or must be applied in *mandament van spolie* cases; secondly, whether access or alternative access constitutes a valid defense to spoliation where a public servitude is registered; and thirdly, if the applicants' *quasi*-possession prior to the alleged spoliation was limited solely to the actual use of the servitural road.

Legal principles pertaining to spoliation

² *Plascon – Evans Paint Ltd v van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-I.

³ *Van Rhyn & Others NNO v Fleurbaix Farm (Pty) Ltd* [2013] ZAWCHC 106; 2013 (5) SA 521 (WCC) [2013] 4 All SA 236 (WCC) para 23.

[12] According to the law, the *mandament van spolie* is a remedy which purpose is to restore possession *before anything else (ante omnia)* to someone who has been unlawfully dispossessed of property—movable or immovable—or *quasi*-possession of a certain incorporeal right. It is a possessory remedy, not asking the court first to determine the underlying right, but rather to restore the *status quo ante* so that disputes over the right can be litigated properly.⁴ It is trite that in a spoliation application, an applicant must comply with two requirements namely: firstly, peaceful and undisturbed possession (or *quasi*-possession immediately prior to the alleged spoliation; and secondly, that they were unlawfully deprived of that possession (without their consent, by wrongful act).⁵

[13] Wrongful or unlawful deprivation refers to dispossession without the applicant's consent or without due legal process.⁶ The applicant must show that the use was open, peaceful, undisturbed (i.e. without having to ask permission, or being subject to control/interference) up to the moment of the alleged spoliation. Once possession (even *quasi*-possession) is established, the act of deprivation (e.g. locking gates, blocking road, erecting obstruction) must be wrongful (i.e. without legal justification, without consent). *Quasi*-possession refers to possession of some incorporeal rights (rights that are not physical things) by virtue of using or exercising them in relation to landed property. Examples are servitudes (rights of way, access, etc.), rights of use, etc.

[14] In *Eskom Holdings SOC Ltd v Masinda*,⁷ the Supreme Court of Appeal (SCA) considered whether a person whose electricity supply was disconnected could use the *mandament van spolie* to force reconnection (i.e. *quasi*-possession of the supply). The SCA decided (among other things), that the *mandament van spolie* historically protected physical possession, but over time the courts have extended it to certain incorporeal rights (e.g. rights of use, servitude).

⁴ *Abrahams N.O and Others v Geldenhuys N.O and Others (Reasons)* [2025] ZAWCHC 78; [2025] 2 All SA 388 (WCC) paras 4-5.

⁵ LAWSA volume 11 para 342., *Oosthuizen v Terblanche (Oosthuizen)* [2022] ZAFSHC 81 para 34.

⁶ Harms *Amler's Precedents of Pleadings* 7 ed at 358.

⁷ *Eskom Holdings SOC Limited v Masinda* [2019] ZASCA 98; 2019 (5) SA 386 (SCA) para 14.

[15] In *Oosthuizen v Terblanche*,⁸ the court affirmed that the right to use a road or route is included in the concept of (*quasi*-) possession, and that locking gates across such a route can constitute spoliation. The question was whether the applicant had *de facto* possession of the route, and whether there was wrongful deprivation. Daffue J thus concluded:

'I dealt with the requirements in order to succeed with the mandament van spolie quite recently in *Kymdell v Kymdell* as follows:

"The requirements to be proven by an applicant relying on the mandament van spolie are well-known. All that the despoiled person needs to prove is that—

- (a) he/she was in peaceful and undisturbed possession of the property; and
- (b) he/she was deprived of possession unlawfully, ie forcibly or wrongfully against his consent."

The remedy was quite recently discussed in *Ngqukumba v Minister of Safety and Security and Others*. The Constitutional court held 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 *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. (Emphasis added)."

A co-possessor such as a spouse or partner, or even a person entitled to partial possession only, is entitled to rely on the *mandament van spolie* in the event of an infringement of his or her rights.

The *mandament van spolie* is an extraordinary and robust remedy. Few defences may be raised and once an applicant has discharged the onus to prove the aforesaid requisites and none of the recognized defences have been raised with success, the court is bound to grant relief, notwithstanding the merits of the dispute between the parties. It is also a speedy remedy and restoration should take place immediately or "dadelik." I shall later show that this principle does not entail that each and every spoliation application shall automatically be deemed urgent, or even extremely urgent, requiring a flouting of the Uniform Rules of Court.'

[16] It is important to keep in mind that the rights of the parties and the lawfulness

⁸ *Oosthuizen* in 5 para 34.

or not of the applicant's possession are not considered by the court during a spoliation application.⁹ Therefore the applicant does not even have to show that he was entitled to be in possession, but that he was in *de facto* possession at the time of being despoiled as explained in *Malan an Another v Green Valley Farm Portion 7 Holt Hill 434 CC and Others*.¹⁰ In the case of *De Beer v Zimbali Estate Management Association (Pty) Ltd and Another*,¹¹ it was held as follows:

'A summary of the above cases would seem to me to indicate that the *mandament* is there to protect possession, not access.'

[17] In the case of *Viljoen and Another v Bekker (Viljoen)*¹² the court found that:

'The use of an alternative route has, in my opinion, no relevance to the exercise of peaceful and undisturbed possession of the servitude road. Furthermore, it is not a defence to the unlawful deprivation of the thing possessed.'

[18] In *Viljoen* above,¹³ the court also found the following:

'[12] It is the respondent's submission that this application for spoliation be dismissed as the applicants had an alternative route that they could use or were using and that the applicants never used the servitude road. In my view, this is a collateral issue which cannot be raised as a defence against spoliation. It has been recognised that the use of a servitude can be protected by the *mandament* without proof of the existence or otherwise of the servitude.

[13] As mentioned above, the applicants need only show two grounds, peaceful and undisturbed possession of the thing or in this case, the road and that they have been unlawfully deprived of that possession. The respondent is generally not allowed to contest the spoliated applicant's title to the property because good title is irrelevant. The claim to relief under the *mandament* arises solely from deprivation of possession without following legal procedure.'

Discussion of the law

[19] In a case involving a public road servitude or right of way and access, if the

⁹ *Rosenbuch v Rosenbuch and Another* 1975 (1) SA 181 at 183A-B and *Painter v Strauss* 1951 (3) SA 307 (O) at 131H.

¹⁰ *Malan an Another v Green Valley Farm Portion 7 Holt Hill 434 CC and Others* 2007 5 SA 114 (E) para 25.

¹¹ *De Beer v Zimbali Estate Management Association (Pty) Ltd and Another* 2007(3) SA 254 (N) para 54. See also *Vital Sales Cape Town (Pty) Ltd v Vital Engineering (Pty) Ltd and Others* [2021] ZAWCHC 67; 2021 (6) SA 309 (WCC); [2021] HIPR 168 (WCC) para 23.

¹² *Viljoen and Another v Bekker* [2015] ZAGPPHC 161 para 14.

¹³ *Ibid* paras 12-13.

user has been using the road or servitude openly, peacefully, without disturbance, and that use amounts to *quasi*-possession, then an unlawful obstruction or interruption could give rise to a *mandament van spolie*.

[20] Given the above, if someone was using a route as a right of way (servitude) in an undisturbed manner, without asking permission, that use can amount to *quasi*-possession of that route. The relevant test is whether the use was peaceful, undisturbed, and the route was exercised as right of use, not a mere license or a contract.

[21] In the more recent case of *Salcarb KZN (Pty) Ltd v Ikwezi Mining (Pty) Ltd*,¹⁴ the court clarified that in spoliation proceedings, exclusive possession is *not* required. The applicant can have *quasi*-possession, such as the exercise of a right (eg to enter upon property), and wrongful deprivation of those right amounts to spoliation. The nature of the right matters: rights to use of property, incidents (*gebruiksregte*) etc. But the court will not immediately adjudicate the merits (ownership, contract, etc.) in spoliation proceedings; rather, it will restore *status quo ante* if spoliation proved.

[22] In the case of *Jigger Properties CC v Maynard NO and Others*,¹⁵ a servitude (right of way/ access) and whether the *quasi*-possession of that servitude is protected by *mandament van spolie* were addressed. The court emphasised that mere contractual rights are not enough; the right must be of a nature that is incidental to possession/control (a *gebruiksreg*) such as rights of way, gates, etc.

[23] A claim by the respondents that the applicants have 'access' by some other way or route does not necessarily make the deprivation lawful. Courts have held that having an alternative route is not always a defence to spoliation if the applicant had previously used the servitude/route in a manner amounting to possession, and then was deprived of that use.

[24] In essence the applicants were using a servitude road (whether paved or not)

¹⁴ *Salcarb KZN (Pty) Ltd v Ikwezi Mining (Pty) Ltd* [2024] ZAGPJHC 434 para 31.

¹⁵ *Jigger Properties CC v Maynard NO and Others* (2017) ZAKZPHC 9; 2017 (4) SA 569 (KZP) para 17.

and were in peaceful, undisturbed possession or *quasi*-possession of access via that specific route. The respondents then erected bollards, restricting that specific use — even if an alternative dirt road is available. The respondents argue: '[y]ou can still access the area via a dirt road, so you're not really dispossessed'.

[25] In regard to unlawful deprivation, erecting bollards to restrict access likely counts, if applicant did not consent to that restriction and no lawful basis exists. The respondents' claim that the applicants 'have access' through some other way is not per se lawful deprivation avoidance — what matters is if the applicants' access via the paved, previously usable road was taken away. If that route was used, then blocking it is a deprivation. If the 'access' the respondents refer to is inferior, burdensome, or not the route previously used, that might be relevant in assessing harm.

[26] Therefore the reason why I regard the respondents' version as legally irrelevant: In *spoliation*, it is the *act of dispossession* itself that is unlawful, not whether the dispossessed person still has another way to exercise their rights. In *Viljoen*, a servitude road was registered in favour of the applicants, and the respondent erected barriers and blocked it. The court granted a spoliation order even though respondent argued an alternative route existed.

[27] If I have regard to whether I need to apply the *Plascon-Evans* rule, the only factual dispute is about whether the applicants can still get access via another road, that dispute is not material for purposes of the spoliation remedy. Therefore, *Plascon-Evans* need not be applied, because the dispute doesn't go to a material factual issue under the *mandament*. This is a key legal distinction in the *mandament van spolie*.

[28] The respondents' argument that the applicants 'has alternative access' does not justify putting up bollards or blocking an existing access route that was being used. That's a classic form of unlawful self-help, which is exactly what the *mandament van spolie* is designed to prevent. The remedy is about restoring the *status quo ante* — i.e., giving back what was taken — and letting any legal dispute about the route be resolved *afterwards*.

Findings

[29] A servitude like *in casu* is for the general public an easement. This is a public right vs a private right of individuals: A public servitude is a right of way granted for public use—individuals cannot obstruct or limit access to it. Even if only part of it is in use (eg 3m paved), the entire 25m is protected, and barriers are typically not allowed. Interference with a servitude by erecting bollards, barriers or structures that limit or hinder access amount to unlawful interference. The fact that 'some access' remains (like a gravel road) does not justify partial obstruction. The servitude must allow full and proper enjoyment of the right, not merely 'some' access. The respondent has unilaterally reduced the public's right by paving only 3m and erecting bollards, the respondents are unilaterally redefining the scope of a public servitude, which they are not entitled to do.

Conclusion

[30] The respondent intentionally and deliberately decided to erect the bollards. 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 without his consent for 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.¹⁶

[31] Having considered the submissions made, I am of the view that the *Plascon-Evans* rule does not find application due to the fact that *in casu* no dispute of fact exists. I am also of the view that the respondents cannot lawfully restrict access to a public servitude by limiting it to a 3m paved road and blocking the rest. I am satisfied that the applicants have on a balance of probabilities proven the requirements for spoliation and are thus entitled to the relief sought in the application

[32] Consequently, the following order is made:

1 The first to fourth respondents are ordered to forthwith restore to the applicants and the general public the full and undisturbed use of the public road servitude 25 meters wide, created by Notarial Deed of Right of Way No K809/1976S and shown on

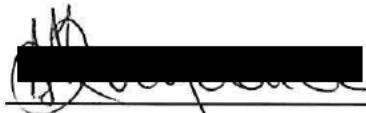
¹⁶ *Nino Bonino v De Lange* 1906 TS 120 at 122.

LG Diagram No 392/76 (The Public Road Servitude), removing all barriers, earth berms/heaps, tree stumps, trees, bollards, brick columns, any other columns or structure barricades, building extensions (including any and all extensions of entrances and entrance related paraphernalia erected within the Public Road Servitude) and any other obstructions placed on or across the Public Road Servitude or in any way reducing, impeding, frustrating or diverting full and unrestricted access on and across the Public Servitude Road.

2 In the event of the first to fourth respondents failing or refusing to comply with paragraph 1 above within 12 (twelve) hours of service of this order, the Sheriff of this Court is authorised and directed to remove such obstructions forthwith, with the assistance of the South African Police Service if required, and to take any reasonable steps necessary for such removal.

3 The first to fourth respondents are interdicted and restrained from, in any manner impeding, obstructing, narrowing, diverting, policing or otherwise interfering, temporarily or permanently and directly, with the free and unimpeded use of the Public Road Servitude by the applicants or any member of the general public, including use by heavy vehicles for the lawful transport of goods and materials.

4 The first to fourth respondents to pay the applicants costs on the scale as between attorney and client, jointly and severally, the one paying the other to be absolved, including the costs consequent to the employment of two counsel on scale C.


S BOONZAAIER
ACTING JUDGE OF THE HIGH COURT

Appearances

For the appellants:	J G Wasserman SC with C L Robertson
Instructed by:	Cliffe Decker Hofmeyer, Johannesburg c/o Webbers Attorneys Inc, Bloemfontein
For the 1 st to 4 th respondents:	S Reinders
Instructed by:	Henk Scheepers Inc, Van Der Byl c/o Rosendorff Reitz and Barry Bloemfontein.