



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

Case No: 398/2025

In the matter between:

LINDELWA MANGALA

Applicant

and

**THE MUNICIPAL MANAGER FOR OR TAMBO DISTRICT
MUNICIPALITY**

First Respondent

O.R. TAMBO DISTRICT MUNICIPALITY

Second Respondent

REASONS

APPELS AJ:

Introduction

[1] The issue the court was called upon to decide in this matter is whether the applicant was entitled to a spoliation order when the second respondent ("the Municipality") disconnected the supply of water to the property where she resides.

[2] An interim order was issued in her favour on 28 January 2025 in which the Municipality was ordered to reconnect the supply of water pending the final determination of the dispute between the parties. On 30 October 2025 an order was issued discharging the interim order and dismissing the application for final relief with costs, with reasons to be provided on 13 November 2025. The reasons for the order are set out below.

The Facts

[3] The applicant resides at the property known as 3[...] L[...] Street, Ngangelizwe Township, Mthatha (“the property”). The property is owned by Ms Ayanda Godlo (“Ms Godlo”). It is apparent from the deed of transfer of the property that Ms Godlo became the registered owner of the property pursuant to an agreement of sale between herself and the executrix of the estate of the late Sarah Sitiwe Xangayi (“the executrix”). The applicant is the granddaughter of the late Sarah Sitiwe Xangayi. In her replying affidavit she made bald assertions, that the agreement of sale between the Ms Godlo and the executrix was unlawful. It is not necessary for the determination of this dispute to deal with these assertions.

[4] The applicant alleges that the Municipality unlawfully disconnected the water supply to the property. She contends that since the Municipality was not in possession of a court order authorising the disconnection, the disconnection was unlawful and ought to be restored. In this regard, she alleges that she is the lawful occupier of the property and accordingly, the Municipality had no right to disconnect the water supply without due process. The factual or legal basis for the assertion that she is the lawful occupier of the property is not clear from the papers. It is common cause that she is not the registered owner of the property. She has also made it clear in her papers that she does not occupy the property in terms of a lease agreement with the owner or any other person who has a lawful right to let the property.

[5] Therefore, other than making the bald assertion that she has a clear right to occupy the property she has not established the legal basis for the alleged lawful possession of the property or the legal basis for the alleged right of supply of water to the property. She merely alleges that she was in peaceful and undisturbed

possession of the water supply when she was allegedly unlawfully deprived by the Municipality and therefore relied on the *mandament van spolie* for the relief sought.

[6] The Municipality denies that the applicant has any right to be supplied with water to the property or that the disconnection of the water supply was unlawful. In support of this denial, the Municipality alleges that the right to be supplied with water to the property at all material times belonged to Ms Godlo in terms of a contractual arrangement with the Municipality which is governed by paragraphs 7.5 and 7.11 of the Municipality's Credit Control and Debt Collection Policy ("the policy"). In this regard, in terms of the policy Ms Godlo as owner opened an account with the Municipality for the provision of municipal services including the supply of water to the property.

[7] The supply of water to the property is metered in accordance with consumption and monthly accounts are rendered. Ms Godlo as owner and customer was in terms of the policy obliged to pay for the services on the due date as reflected in the monthly account. Customers such as Ms Godlo are entitled in terms of paragraph 7.11 of the policy to apply for the termination of the services. On 21 January 2025, Ms Godlo submitted a written request to the municipality for the temporary termination of services at the property. Subsequently, on 22 January 2025, the Municipality disconnected the water to the property based on Ms Godlo's request. Accordingly, the Municipality contends that the disconnection of the water supply was lawful and that the application ought to be dismissed.

[8] In the matter of *Blendrite (Pty) Ltd and Another v Moonisami and Another*¹, the Supreme Court of Appeal ("the SCA") described the remedy of the *mandament van spolie* with reference (*inter alia*) to a decision by Innes CJ in *Nino Bonino v De Lange*² as follows:

"Spoliation is any illicit deprivation of another of the right of possession which he has, whether in regard to movable or immovable property or even in regard to a legal right."

¹ *Blendrite (Pty) Ltd and Another v Moonisami and Another* 2021 (5) SA 61 (SCA) at para 5.

² *Nino Bonino v De Lange* 1906 TS 120 at p122

“The remedy is a possessory suit based on the maxim spoliatus ante omnia restituendus est. In simple terms, this means that possession must be restored to the dispossessed person before enquiring into anything else.”

[9] The *mandament van spolie* is thus designed to be a speedy remedy which serves to prevent recourse to self-help.³ The dispossessed person must prove that he or she had possession of a right which warrants the protection accorded by the remedy, and that he was unlawfully deprived of that right.

[10] In relation to the supply of water it has been held that it is only protected in limited circumstances by the *mandament van spolie*, and only where it has been received as an incidence of possession of the property.⁴ What this entails has been made clear by the SCA in the matter of *Eskom Holdings SOC Ltd v Masinda*⁵, where the court considered the types of rights that can be protected by the *mandament*. In this regard it was held that in the context of a disconnection of the supply of water, spoliation should be refused where the right to receive it is purely personal in nature.⁶

[11] The mere fact that there has been a prior supply of water is in itself insufficient to establish a right constituting an incident of possession of the property to which it is delivered. The SCA held in *Eskom Holdings SOC Ltd v Masinda* that:

“In order to justify a spoliation order the right must be of such a nature that it vests in the person in possession of the property as an incident of their possession. Rights bestowed by servitude, registration or statute are obvious examples of this. On the other hand, rights that flow from a contractual nexus between the parties are insufficient as they are purely personal, and a spoliation order, in effect, would amount to an order of specific performance in proceedings in which a respondent is precluded from disproving the merits of the applicant's claim for possession. Consequently, insofar as previous cases may be construed as holding that such a

³ *Blendrite (Pty) Ltd and Another v Moonisami and Another*, *supra* at para 6.

⁴ *Blendrite (Pty) Ltd and Another v Moonisami and Another*, *supra* at para 16

⁵ *Eskom Holdings SOC Ltd v Masinda* 2019 (5) SA 386 (SCA)

⁶ *Eskom Holdings SOC Ltd v Masinda*, *supra* at para 20

supply is in itself an incident of the possession of property to which it is delivered, they must be regarded as having been wrongly decided.”⁷

[12] In other words, the mere fact that the applicant resides on the property to which there has been a supply of water prior to the disconnection, is not sufficient to establish a right that warrants protection in terms of the *mandament van spolie*. Even a right to water supply which is governed by a contract would not be sufficient to make out a case for spoliation as that would only constitute a personal right which would amount to an order for specific performance. Examples of right to water supply which would be protected under spoliation as rights flowing from the incidence of possession of the property are rights bestowed by registered servitudes and statutory water rights.

[13] The applicant’s alleged right to supply of water appears to be based solely on the fact that she resides on the property to which there was a prior supply of water. That is not sufficient to show that she had a right which vests in her by virtue of the possession of the property. She has therefore failed to show that she has a right to water which warrants protection under the *mandament van spolie*.

[14] Accordingly, the interim order granted on 28 January 2025 was discharged and the application was dismissed with costs.

G. APPELS

ACTING JUDGE OF THE HIGH COURT

Heard: 30 October 2025

Reasons made available on 13 November 2025.

⁷ *Eskom Holdings SOC Ltd v Masinda, supra* at para 22

APPEARANCES:

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