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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE**

CASE NUMBER: 2025-206231

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO THE JUDGES: YES/NO

(3) REVISED.

DATE: 18 November 2025

SIGNATURE:

In the matter between:

TARIO 535 (PTY) LTD

1ST APPLICANT

REGISTRATION NUMBER: 2014/222548/07

BENJAMIN JEWELLERS CC

2ND APPLICANT

REGISTRATION NUMBER: 2007/237055/23

PIETER GIDEON BENJAMIN REYNECKE

3RD APPLICANT

IDENTITY NUMBER: 8[...]

ANGELIQUE REYNECKE

4TH APPLICANT

IDENTITY NUMBER: 8[...]

-and-

VONANI STANLEY MAKONDO

1ST RESPONDENT

IDENTITY NUMBER: 6[...]

POLOKWANE TRACTORS (PTY) LTD
REGISTRATION NUMBER: 2010.476806/07

2ND RESPONDENT

DURANDT EIENDOMME (PTY) LTD
REGISTRATION NUMBER: 2024/476806/07

3RD RESPONDENT

HENDRIK RUDOLF DURANT
IDENTITY NUMBER: 7[...]

4TH RESPONDENT

Delivered : 18 November 2025

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand down of the judgment is deemed to be **18 November 2025 at 10:00 am.**

Date heard : 11 November 2025

Coram : Bresler AJ

JUDGMENT

BRESLER AJ:

Introduction:

[1] The Applicant applies on an urgent basis for an order *inter alia*:

- 1.1 Interdicting from keeping the premises locked or relocking it before the 1st Applicant has vacated the premises;
- 1.2 Interdicting and denying access or restricting access to the premises;
- 1.3 Interdicting from stopping the Applicants from removing all movable assets from the premises;
- 1.4 Directing the 3rd and 4th Respondent to provide access to the Applicants

1.5 Ordering the 1st and 2nd Applicant to restore the premises to the satisfaction of the landlord

[2] The application is opposed by the 1st and 2nd Respondent only. A notice to abide was delivered by the 5th Respondent.

[3] On the Applicant's version, the 3rd and 4th Respondents are the owners of the premises. The 1st and 2nd Respondents, without the consent of the owner of the premises, have now presumably taken the law into their own hands and decided to refuse the Applicants access to the premises. The Applicants also submit that the 1st and 2nd Respondent's right to occupy the premises has since been terminated and that eviction is probably imminent should they not vacate the premises.

[4] In opposition to the proceedings, the 1st and 2nd Applicant denied that the matter is urgent. It was furthermore pertinently stated that any restriction to access the premises was done in accordance with the lease agreement and with the knowledge of the 3rd Applicant as he was repeatedly warned that if the rent was not paid, access will be prohibited. Reference is also made to an acknowledgement of debt in terms whereof the 3rd Applicant, representing the 1st Applicant, undertook not to remove all his equipment from the premises until the rent was paid in full.

Issues that require determination:

[5] This Court is only called upon to determine if the Applicant is entitled to the relief as set out in the Notice of Motion on an urgent basis.

The Applicable Legal Principles:

Urgency:

[6] The In the often-quoted decision of ***East Rock Trading 7(Pty) Ltd v Eagle Valley Granite (Pty) Ltd***¹ the court once again enunciated the test that needs to be applied in urgent matters. In paragraph [8], the following is stated:

'[8] In my view the delay in instituting proceedings is not, on its own, a ground for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.'

[7] This matter, being a spoliation application by nature, is sufficiently urgent to warrant the hearing on the urgent roll. Moreover, for purposes of urgency the Court must assume that the Applicants' case has merits. If this is accepted, then the landlord will in all probability soon evict the 1st and 2nd Respondent, which will have as a result the removal of the Applicants' goods from the premises. This is a perceivable and considerable risk. On this basis, substantial redress will accordingly not be afforded if the matter is to be enrolled on the normal roll in due course.

[8] The parties were consequently requested to address the court on the merits at the hearing of the matter as well.

Merits:

[9] In The 1st and 2nd Respondent raised several preliminary issues.

[10] The first issue is the authority of the Applicants' deponent. The 1st and 2nd Respondent submitted that the wording of the resolution is inadequate to convey that the deponent has the required authority to represent the 1st and 2nd Applicant in

¹ 2011 JDR 1832 (GSJ)

these proceedings. The parties were invited to submit supplementary Heads of Argument on the applicability of Rule 7 in this instance.

[11] **Uniform Rule 7(1)** states the following:

'(1) Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

[12] According to Van Loggerenberg²:

'On reconsideration, and in the light of the cases referred to in the notes to rule 7 s v 'General' above, in which it was held that rule 7(1) is now the appropriate remedy available to a party (in both action and application proceedings) who wishes to raise the issue of authority, it would rather seem that the challenge in terms of rule 7(1) should be raised by means of a notice or letter, or orally, with or without supporting evidence, depending on the circumstances and the stage of the proceedings, and not in pleadings or application papers.'

[13] Regardless of the aforesaid, this Court is of the view that any challenge to a party's authority must be substantiated fully and must be *bona fide*. Save for their interpretation of the wording of the said resolution, the 1st and 2nd Respondent raises no other factual ground to challenge the authority of the deponent. They, in fact, concomitantly with their denial of authority, wish to argue that the very same deponent indeed had authority to bind the 1st Applicant in the alleged acknowledgement of debt.

² DE Van Loggerenberg, **Erasmus Superior Court Practice**, Volume 2, Juta 2025 on page Rule 7 - 7

[14] Even if one regards the wording of the resolution, this Court is satisfied that the Company resolved to institute spoliation proceedings. It is, after all, the institution and prosecution of the proceedings that must be authorized and not the person. This much appears fully from the resolution and the Founding affidavit.

[15] On this basis this *in limine* argument is unfounded and stands to be dismissed.

[16] The 1st and 2nd Respondents also submit that there is a dispute of fact and that action proceedings should have been instituted. As to the elements of spoliation, being possession and deprivation, there is no factual dispute that cannot be determined on the papers before court. Spoliation is after all aimed at a swift and cost-effective remedy to restore the *status quo ante*.

[17] The 1st and 2nd Respondents furthermore highlighted that the Applicants failed to ask for condonation for their non-compliance with Rules 6(5) and 6(12). Equally, this objection holds no water. The Court has the power to regulate its own proceedings in terms of Section 173 of the **Constitution**, 1996. Equally, Rule 6(12) specifically is aimed at regulating the process to ensure that justice is done between the parties. It is often stated that the Rules are for the court and not the other way around. The rules ensure that legal proceedings are conducted in an orderly and efficient manner but should not be utilized to prohibit reasonable access to the courts.

[18] This *in limine* argument is consequently also rejected.

[19] As to the spoliation, the 1st and 2nd Respondents submit that the Applicants possession and occupation was no longer peaceful and undisturbed. The Applicants were in arrears which rendered their position unlawful. Any restriction of access was done in terms of the lease agreement and the several warnings to the Applicants that they are going to be restricted in their access if they don't pay.

[20] Spoliation is defined as the wrongful deprivation of another's right of possession. A person who has been dispossessed of property without due legal procedure may apply to court to have the property returned to him.

[21] The nature of a *mandament van spolie* is described in the seminal case of **Nino Bonino v de Lange**³, where the Learned Innes CJ at p.22 stated that:

'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'.

[22] In the case of **Yeko v Qana**⁴, it was held that an applicant for spoliation remedy must satisfy the court that -

22.1 he was in possession or had *quasi* possession of the property; and

22.2 that the respondent deprived him of the possession forcibly or wrongfully against his consent.

[23] In **Ngqukumba v Minister of Safety and Security**⁵ at 118 B this sentiment was expressed as follows:

'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.'

[24] The first requisite for the grant of a *mandament van spolie* is proof that an applicant possessed the spoliated thing. Possession need not be possession in the legal sense. It suffices if the applicant factually held (*detentio*) the thing with the intention (*animus*) of securing some benefit for himself⁶. Both elements, viz *detentio* and *animus*, must be present.⁷

[25] Two elements are thus essential for the possession which is protected against spoliation namely *detentio* (the physical holding of and control of the thing) and *animus* (the intention of securing some benefit for oneself).

³ 1906 T. S. 120

⁴ 1973 (4) SA 735 (A)

⁵ 2014 (5) SA 112 (CC)

⁶ Nienaber v Stuckey 1946 AD 1049 1053; Yeko v Oana 1973 (4) SA 735 (A).

⁷ Meyer v Glendinning 1939 CPD 84. See also Engling v Bosiel 1994 (2) SA 388 (B); Du Randt v Du Randt 1995 (1) SA 401 (O)

[26] The conventional description of the animus is to hold the thing in question is for 'own benefit'. The definition of possession most relied upon comes from Wille's *Principles of South African Law*, 8ed, at 262:

'Possession is the physical control by a person of a corporeal thing with the intention of keeping the control of it for his own benefit.'

[27] *In casu*, it is common cause between the parties that the Applicants had access to the premises and to the equipment held on the premises. Although substantial reliance was placed on the alleged Acknowledgement of Debt, this document only related to the removal of 'all of the equipment' from the premises. It does not state that the 1st and 2nd Respondent may unilaterally deprive the Applicants of access to the premises or to remove some of the equipment - especially insofar as it is alleged that the equipment does not belong to the 1st Applicant.

[28] The second element that must be present is the element of deprivation.

[29] The deprivation must be actual and physical. Interference with possession (for instance damage to property) or repudiation of contractual obligations relating to possession does not amount to spoliation. The Applicants must prove that the deprivation of possession was unlawful. In this context unlawful means without the Applicants' consent or due legal process.⁸

[30] More recently the Supreme Court of Appeal in the case of **Eskom Holdings SOC Ltd v Masinda**⁹ again defined spoliation as thus:

'[8] The mandament van spolie (spoliation) is a remedy of ancient origin, based upon the fundamental principle that persons should not be permitted to take the law into their own hands to seize property in the possession of others without their consent. Spoliation provides a remedy in such a situation by

⁸ See in this regard **Sillo v Naude** 1929 AD 21 and **George Municipality v Vena** 1989 (2) SA 579 (A)

⁹ 2019 (5) SA 386 (SCA)

requiring the status quo preceding the dispossession to be restored by returning the property 'as a preliminary to any enquiry or investigation into the merits of the dispute' as to which of the parties is entitled to possession. Thus a court hearing a spoliation application does not require proof of a claimant's existing right to property, as opposed to their possession of it, in order to grant relief'

[31] Having said the aforesaid, this court is of the view that the Applicants were in possession of the premises and the movable goods contained on the premises. This possession was disturbed by the 1st and 2nd Respondent without the consent of the Applicant and without recourse to due legal process.

[32] On this basis the application must succeed.

Costs:

[33] Having regard to the nature of the dispute, the level of complexity and the importance of these proceedings to the parties, costs to counsel on Scale B are warranted.

Order:

[34] In the result the following order is made:

34.1 The application is heard on an urgent basis as contemplated in Uniform Rule 6(12);

34.2 The 1st and 2nd Respondent, and/or any one acting on their behalf or under their direct or indirect instruction is interdicted from having or keeping the business premises used by the 1st Applicant, including the main building, parking area and amenities used by the business known as Tyre Express Polokwane, which business premises is situated at 3[...] C[...] Street, Futura Polokwane, locked or from relocking it before the Applicants have completely vacated the building on the premises and

moved all of the 1st and 2nd Applicant's movable property from the building;

34.3 The 1st and 2nd Respondents, and/ or anyone acting on their behalf or under their direct or indirect instruction is interdicting from denying or restricting access, in any way whatsoever, of any of the 4 (four) Applicants, or anyone acting on their behalf or under their instructions, to the Tyre Express business premises in any way whatsoever, including access to the main building or any portion thereof, the parking area and any amenities used by the business known as Tyre Express Polokwane;

34.4 That the 1st and 2nd Respondents, and/or anyone acting on their behalf or under their direct or indirect instruction, is interdicted from stopping or trying to stop, or hindering in any way whatsoever, the 1st, 2nd and 3rd Applicant and/or anyone acting on their behalf or under their direct or indirect instruction, from removing or causing to remove from the Tyre Express Polokwane business premises, situated at 3[...] C[...] Street, all movable assets, business stock, signage, branding, tools, equipment, furniture, computer equipment, shelving, shopfitting and improvements effected by or on behalf of the business known as Tyre Express Polokwane to the business premises, including the main building, parking area and amenities used by the business known as Tyre Express Polokwane, which business premises is situated at 3[...] C[...] Street, Futura Park Polokwane;

34.5 That the 3rd and/or 4th Respondent (Durant Eiendomme (Pty) Ltd and/or Mr. H Durant), or anyone acting on their behalf and/ or under their instructions, with or without the assistance of the South African Police Service ('SAPS'), shall be mandated and authorized, in their respective capacities as the landlord and landlord's representative, to grant the Applicants full access to the Tyre Express Polokwane business premises, so as to *inter alia* allow the 1st, 2nd and 3rd Applicants, or anyone acting on their behalf, to remove or causing to be removed from the Tyre Express Polokwane business premises, all assets, business stock, signage, branding, tools, equipment, furniture, computer equipment, shelving, shopfitting and improvements effected by or on

behalf of the business known as Tyre Express Polokwane to the business premises, including the main building, parking area and amenities used by the business known as Tyre Express Polokwane;

34.6 That the Applicants are authorized, for purposes of gaining access to the business premises and building to which the Applicants should have access to for purposes of removing the 1st and 2nd Applicants' movable property, to cut any locks and/or to remove any physical barriers or hindrances necessary so as to be able to gain access to the building and premises, in the event that none of the 1st to 4th Respondents restore the Applicants' access within 6 (six) hours of the court order being serviced upon the 1st to 4th Respondents, provided that the Applicants shall replace all locks cut and/or removed with similar locks and the keys thereof to be provided to the 3rd and 4th Respondent once the 1st Applicant has vacated the premises;

34.7 The 1st and 2nd Applicants are ordered to restore the Tyre Express Polokwane business premises to the satisfaction of the landlord (owner) of the immovable property situated at 3[...] C[...] Street, Futura Polokwane, to wit the 3rd Respondent, to the condition the premises was in before this application was launched but for the removal of all movable assets, business stock, signage, branding, tools, equipment, furniture, computer equipment, shelving, shopfitting and improvements as envisaged in the prayers above, and to specifically repair and make good all glass which might have to be broken, security measures over doors, windows and other access points which might have to be removed, padlocks or other locks which might have to be removed in order for the Applicants to gain access to the business premises and building occupied by Tyre Express Polokwane in order to give effect to prayers 34.2 to 34.6 above;

34.8 This order is to be served by the relevant sheriff or her appointed deputy sheriff upon the 1st and 2nd Respondents at the business premises of Polokwane Tractors, situated at 3[...] C[...] Street, Futura, Polokwane, alternatively at an address and / or in a manner selected, identified and agreed to by the 1st and 2nd Respondents in writing;

34.9 That this order is to be served by the relevant sheriff or her appointed deputy sheriff upon the 3rd Respondent at the registered address of the 3rd Respondent, situated at c/o CJ Accountants, Unit 1[...], JCJ Corner Building, [...] B[...] Street, Polokwane alternatively at an address and / or in a manner selected, identified and agreed to by the 3rd Respondent in writing;

34.10 That this order be served by the relevant sheriff or her appointed deputy sheriff upon the 4th Respondent at his residential address, situated at [...] C[...] Street, Bendor Village, Bendor, Polokwane alternatively at an address and/ or in a manner selected, identified and agreed to by the 4th Respondent in writing;

34.11 That this order be served by the relevant sheriff or her appointed deputy sheriff upon the 5th Respondent's at its main place of business, situated at Unit 1[...], K[...] Business Park, 1[...] V[...] Avenue, Spartan Extension 7, Sebenza, Kempton Park, Gauteng Province alternatively at an address and/ or in a manner selected, identified and agreed to by the 5th Respondent in writing;

34.12 The 1st and 2nd Respondents, jointly and severally, the one paying the other to be absolved, are ordered to pay the Applicants' costs including costs to counsel on Scale B.

**M BRESLER AJ
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE**

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