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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Not Reportable
Case No: 595/2025**

In the matter between:

BEVERLEY ANN CUMMINS

Applicant

And

FRASER PAUL LAMBRICK

Respondent

Coram: DA SILVA SALIE, J

Heard on: 17 December 2025

Delivered on: 18 December 2025

Summary:

Spoliation — mandament van spolie — suspension pending appeal — section 18 of the Superior Courts Act — intention to appeal does not suspend spoliation order — enforcement order granted ex tempore with reasons reserved — counter-application seeking penal relief procedurally inappropriate and struck from the roll.

ORDER – CONTEMPT APPLICATION

1. The order granted on 27 November 2025 under case number 595/2025 is confirmed to be immediately operative and not suspended by any intended or noted appeal.
 2. The respondent shall comply fully and without delay with paragraphs (ii) and (iii) of that order within 24 (twenty-four) hours of the granting of this order.
 3. The respondent or his attorney of record will confirm in writing to the Registrar of this Court (g[...]) that there has been full compliance with the order to be transmitted by 14h00 on 18 December 2025.
 4. The applicant is granted leave to approach this Court on the same papers, duly supplemented, for contempt relief should non-compliance persist.
 5. The respondent shall pay the costs of the main application.
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ORDER – COUNTER-APPLICATION

1. The respondent's counter-application is struck from the roll.
 2. Each party shall pay their own costs in respect of the counter-application.
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JUDGMENT

DA SILVA SALIE J:

Introduction:

[1] This matter was argued before me yesterday, on the urgent roll, after which I made the order herein, with the reasons to follow electronically, which I set out hereunder. Additionally, I also set out below the reasons and order for the respondent's counterclaim.

Background:

[2] This is the application for contempt brought by the applicant as well as a counter-application by the respondent. It concerns the respondent's failure to comply with an order granted by my learned sister, Justice Slingers on 27 November 2025 ("the Slingers-order"), under case number 595/2025. That order directed the immediate restoration of the applicant's physical possession of the main bedroom, kitchen and

other rooms of the property situated at Palm Line Farm, Keurbooms River Road, Plettenberg Bay, together with the return of her personal belongings to the locations from which they were removed.

Issues:

[4] The respondent opposes this application primarily on the contention that he intends to note an appeal and that, because he remains within the time-period to do so, the present application is premature.

[5] He further contends that he has *(a) acted bona fide post the order and that he substantially complied therewith by arranging for the applicant's belongings to be delivered in boxes; (b) that the matter lacks urgency; and (c) that commercial considerations by letting out rooms in the property together with a pending counter-application that the applicant has "dirty-hands" justify his continued conduct.* The applicant persists in her relief to declare the respondent in contempt of the Slingers order and opposes the counter-application.

Respondent's intended appeal of the spoliation order:

[6] A spoliation order is inherently restorative and interim in nature. Its purpose is the swift reinstatement of the status *quo ante* and the discouragement of self-help. It does not determine final rights of ownership or entitlement.

[7] The mere noting of an appeal, or the intention to note an appeal, does not suspend the operation of a spoliation order. To permit otherwise would defeat the very purpose of the remedy.

[8] Section 18(1) of the Superior Courts Act 10 of 2013 sets out the general rule that a judgment is suspended pending appeal unless the Court orders otherwise. Restorative orders such as spoliation orders, however, fall outside the ordinary operation of that rule.

[9] If a party seeks suspension, it must apply for relief under section 18(2) and satisfy the stringent requirements prescribed therein. The respondent has not brought such an application before Justice Slingers. In the absence of an order granted under section 18(2), the spoliation order of 27 November 2025 remains fully operative and binding.

Evaluation of respondent's submissions:

[10] The respondent's contention that these proceedings are premature because he intends to appeal is legally unsustainable. An intention to appeal does not suspend a spoliation order, nor does the mere availability of time within which to do so.

[11] The respondent's reliance on alleged *bona fides* and substantial compliance is misplaced. The order did not require the delivery of boxed belongings to the property. It required the restoration of physical possession of defined rooms and the return of personal belongings to their original locations. Partial or qualified compliance does not satisfy a spoliation order. It is an irresistible inference that the respondent's non-fulfilment of the order as directed together with the respondent's expressed views is

underpinned by the fact that he still believes and submits in this contempt application that it is in the interests of the company to let the property out

[12] Firstly, the explanation that neither the respondent nor the professional packers knew where items were to be placed does not constitute objective impossibility. At most, it reflects inconvenience. If genuine difficulty existed, the respondent was required to approach the court for directions or variation. He did not do so.

[13] Secondly, commercial considerations, the respondent's occupation of a separate cottage, or the desirability of letting out the main bedroom are irrelevant. Spoliation proceedings are not concerned with ownership, commercial preference, or future arrangements. Those matters fall to be determined in appropriate proceedings.

[14] A pending counter-application likewise does not suspend the operation of the spoliation order. Until set aside or lawfully suspended, a Court order must be obeyed.

Urgency:

[15] Urgency in this matter arises not from the applicant's subjective preference, but from the respondent's continued failure to comply with a Court order. Enforcement by This Court of its own order, granted to restore the ante omnia position through spoliation relief, is inherently urgent. Each day of non-compliance constitutes ongoing self-help and a continuing infringement. Proceedings aimed at enforcing compliance with a spoliation order previously granted therefore warrant urgent attention.

The Respondent's Counter-Application:

[16] The respondent launched a counter-application in which he sought wide-ranging declaratory and penal relief, including findings of contempt, committal to imprisonment or the imposition of a fine, and reliance on the so-called “dirty hands” doctrine.

[17] The counter-application did not arise directly from the issues requiring determination in the main application, which was concerned with the enforceability of the spoliation order granted on 27 November 2025 and the respondent’s obligation to comply therewith.

[18] The relief sought in the counter-application was penal in nature and would have required strict compliance with the procedural safeguards applicable to contempt proceedings, including proper enrolment, a clear factual foundation, and adherence to the applicable standard of proof. Those requirements were not met.

[19] Furthermore, the counter-application was not properly enrolled or motivated for urgent determination. Its inclusion in these proceedings did not provide a lawful basis to resist or delay compliance with the spoliation order, nor could it suspend the operation of that order.

[20] In the exercise of this Court’s discretion, and in the interests of procedural fairness and proper case management, the counter-application is struck from the roll.

Conclusion:

[21] The respondent was not entitled to withhold compliance with the order of 27 November 2025 based on an intended appeal or any of the other grounds advanced. In the result and for the reasons stated above: I made the following order *ex tempore* on 17 December 2025. In respect of the counter-application, I order as follows:

Order - 17 December 2025:

Main Application

1. The order granted on 27 November 2025 under case number 595/2025 is confirmed to be immediately operative and not suspended by any intended or noted appeal.
2. The respondent shall comply fully and without delay with paragraphs (ii) and (iii) of that order within 24 (twenty-four) hours of the granting of this order.
3. The respondent or his attorney of record will confirm in writing to the Registrar of this Court (g[...]) that there has been full compliance with the order to be transmitted by 14h00 on 18 December 2025.
4. The applicant is granted leave to approach this Court on the same papers, duly supplemented, for contempt relief should non-compliance persist.
5. The respondent shall pay the costs of the main application.

Order - Counter-Application:

1. The respondent's counterapplication is struck from the roll.
2. Each party shall pay their own costs in respect of the counter-application.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION

Appearances

For Applicant:	Adv. S M Stadler
Instructed by:	Dawie de Beer Attorneys
For First Respondent:	Adv. K.L Kloppe

Instructed by:

Klaasen Ball & Associates