



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

Reportable

Case no:2026-000004

In the matter between:

HAMID ALLI MUHAMMAD

AHMED FRAZ TALIB

HAMZA SHAHBAZ

HAMMAD ALI CHEEMA

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT

and

LINDA JOHN

AUGUSTINE JOHN

HOD PROPERFTIES

THE MINISTER OF POLICE

THE STATION COMMANDER, SAPS BOTHASIG

SERGEANT MUSCTHENGE, SAPS BOTHASIG

CONSTABLE NGUBO, SAPS BOTHASIG

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

Coram: BHOOPCHAND AJ

Heard: 6 and 8 January 2026

Delivered: 8 January 2026

Summary: Mandament van spolie is an unyielding remedy. It restores undisturbed possession unconditionally when unlawfully disposed. Can it be applied with mechanical indifference to human dignity. While the *mandament* cannot be reshaped into a merits-based enquiry, the Court retains a narrow discretion at the periphery of its application to structure the manner of restoration in a way that avoids immediate and irreparable hardship, particularly to minor children. Such a limited, humane accommodation does not alter the substance of the remedy, nor does it legitimise self-help; it merely ensures that the restoration of possession, which must occur, is implemented in a manner consonant with the constitutional values of dignity, care, and humanity. The structured order appears at the end of the *ex tempore* judgment. Urgent counterapplication under Rule 5 of PIE struck from the roll for lack of urgency.

JUDGMENT

Bhoopchand AJ:

[1] This is an urgent application for a *mandament van spolie*. The application is brought by four applicants. It emerged from the papers and from submissions that the fourth applicant concluded the lease agreement in 2023 but was detained shortly thereafter and has remained in custody for an extended period. He has not been in physical occupation of the property, described as erf 2[...] Milnerton, 2[...] J[...] Street, Bothasig, since his incarceration. The first

applicant, together with the remaining applicants and other persons residing with them, occupied the main dwelling on the property until 1 January 2026.

[2] The application was initially set down for hearing on 2 January 2026. The Judge hearing urgent matters directed the Applicants to serve their papers on the Respondents. The matter was then set down to be heard on Tuesday 6 January 2026. When the matter was called in the urgent court, the parties requested a short adjournment to discuss a settlement. The parties had reached a partial settlement but stalled on certain important aspects. Due to the *impasse*, the Applicants withdrew from the settlement negotiations and insisted that the spoliation application be heard. After hearing the parties both before and after the adjournment, the Court considered that it would be fair and equitable to allow the parties to file a complete set of papers upon which the Court could deliberate.

[3] The respondents together with their children took occupation of the whole property once the Applicants and those living with them vacated it on 1 January 2026. The property at the centre of this application comprises a main building with a garage and an outhouse. During the unsuccessful settlement negotiations, the parties considered whether they could share the property by having the possession of the main house restored to the applicants and for the respondents to occupy the outhouse until the Applicants moved out. The respondents had returned from overseas a few months earlier. Their position was that they have two children and could not afford to live in a guest house any longer.

[4] The respondents, who appear in person, returned to the property on 1 January 2026 with the assistance of the South African Police Service. The applicants and the other occupants were removed from the premises. The respondents contend that the applicants left voluntarily. The surrounding circumstances, including the presence of SAPS and the fact that several

occupants fled or sought refuge on the roof, strongly suggest that the departure was not voluntary. No eviction order existed at the time. The dispossession was therefore *prima facie* unlawful.

[5] The *mandament van spolie* is a summary remedy designed to restore factual possession to a person who has been unlawfully dispossessed, without regard to the merits of the underlying dispute, the lawfulness of the occupation, or the contractual rights of the parties. The fourth applicant, having been in custody and not in factual possession, cannot be restored to possession he did not hold. The first applicant, and those applicants who occupied the property with him immediately prior to the dispossession, were in peaceful and undisturbed possession and are entitled to restoration.

[6] The respondents have raised concerns regarding the number of persons who resided with the applicants and the condition of the property. These matters fall outside the scope of the *mandament*. The remedy is concerned solely with restoring factual possession as it existed immediately before the dispossession. The Court may not regulate the terms of occupation, limit the number of persons who may reside with the applicants, or impose conditions relating to the use of the property. Any concerns regarding overcrowding, damage to the property, or breach of lease must be addressed through the appropriate eviction or civil processes.

[7] The *mandament van spolie* remains one of the law's most unyielding remedies. It is deliberately narrow, concerned not with fairness, nor with the merits of occupation, nor with the equities between the parties. It is not a remedy about who deserves to be in the house, nor about who has children, nor about who has nowhere else to go. It is not about the lawfulness of occupation, nor about the conduct of the possessor, nor about the hardship of the dispossessor. It is, instead, the legal system's firewall against self-help, the

mechanism by which the rule of law insists that unlawful acts would not be tolerated. The unlawful act has to be undone and then everything else can be considered subsequently. For that reason, courts are slow to dilute its operation or to include in it, considerations that properly belong to PIE or other substantive processes.

[8] Yet, the Constitution cannot require that the remedy be applied with mechanical indifference to human dignity. The court is acutely aware of the hardship faced by the respondents and their minor children. The court has structured the restoration order to mitigate immediate hardship, but it cannot condone unlawful dispossession. While the *mandament* cannot be reshaped into a merits-based enquiry, the Court retains a narrow discretion at the edges of its application to structure the manner of restoration in a way that avoids immediate and irreparable hardship, particularly to minor children. What is contemplated is a temporary, compassionate measure to prevent immediate hardship, without affecting the applicant's restored possession of the main dwelling. Such a limited, humane accommodation does not alter the substance of the remedy, nor does it legitimise self-help; it merely ensures that the restoration of possession, which must occur, is implemented in a manner consonant with the constitutional values of dignity, care, and humanity.

[9] During the initial hearing, the court drew the parties' attention to the statutory framework governing urgent evictions, including section 5 of PIE. This was done in the ordinary course of judicial case management to ensure that any relief sought complied with the peremptory provisions of PIE. The respondents were unrepresented. The court did not advise any party on litigation strategy nor express any view on the merits. The Applicants' contention that this constituted judicial prompting is without merit.

[10] The respondents have duly instituted an urgent counterapplication under section 5 of PIE. They allege that there is ongoing damage to the property and their children will be affected by not having a stable environment before the school year begins. The respondents state further that they are unable to sustain both guesthouse and mortgage loan payments. They provide no details of their employment or lack thereof or objective details relating to the issue of affordability. The respondents have not satisfied the requirements for urgency.

[11] The Applicants have raised numerous points that reflect the defects in the urgent counterapplication, including lack of urgency, the prior notice to them and hence the commencement of the PIE process, and non-joinder. These points are well made. The counterapplication must therefore be struck from the urgent roll. Nothing stops the Respondents from pursuing their application for eviction under section 4 of PIE.

[12] The fourth to seventh respondents were represented by the State Attorney in Court. The Court was informed that the Applicants do not seek any relief or costs against these Respondents.

[13] In the circumstances, the Court is satisfied that the second, third, and fourth applicants have made out a case for the *mandament van spolie*. A structured order will be granted.

ORDER

1. The respondents are directed to restore undisturbed and peaceful possession of the main dwelling situated at erf 2[...], Milnerton, 2[...] J[...] Street, Bothasig to the applicants and those persons who occupied the property together with them immediately prior to 1 January 2026.

2. For the avoidance of doubt, this order does not restore possession to the fourth applicant, who was not in occupation of the property immediately prior to the dispossession
3. The restoration contemplated in paragraph 1 shall take place no later than 12h00 on Monday, 12 January 2026, under the supervision of the Sheriff.
4. To avoid immediate hardship to the respondents' minor children, the respondents are permitted to occupy the outhouse and the single garage on the property on a strictly temporary basis for a period of 21 calendar days from the date of this order, unless extended by written agreement between the parties or further order of this Court. Failing any further agreement or order of this Court, the Respondents are directed to vacate the property immediately on or before the expiry of 21 calendar days from the date of this order and to restore possession of the outhouse and the garage to the Applicants.
5. The temporary occupation referred to in the preceding paragraph does not create or confer any right of occupation on the respondents and may not be relied upon by the respondents in any subsequent proceedings as establishing a right to remain on the property.
6. The Sheriff of the Court is authorised and directed to supervise the restoration of possession, take all reasonable steps to ensure peaceful implementation of this order, ensure that no additional persons, beyond those who occupied the property with the second applicant immediately prior to 1 January 2026, are introduced onto the property during the restoration process, and request the assistance of SAPS only to maintain the peace, if necessary.
7. During the Respondents temporary occupation of the property, neither party shall interfere with the other.
8. A copy of this judgment is to be served immediately by the Applicants on the Sheriff for the area wherein the property is situated.
9. The Respondents shall pay the Applicants costs of this application.
10. The Respondent's counterapplication is struck from the roll for lack of compliance with the statutory requirements of section 5 of PIE, including failure to join the municipality and failure to establish urgency.
11. The Respondents are granted leave, if so advised, to institute a proper eviction application in compliance with section 4 of PIE, after joining the municipality and issuing the required notices.

12. The costs of the counterapplication are held over for later determination.
13. All references to the Respondents in this order refer specifically to the First and Second Respondent alone.

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down *ex tempore* on 8 January 2026.

Applicant's Counsel: A R Sukdeo
Respondent's in person