



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

JUDGMENT

**Not Reportable
Case No: A290/2025**

In the matter between:

JOHANNES VAN DER WESTHUIZEN

Appellant

and

KOOS BOOYSEN

Respondent

Coram: DA SILVA SALIE, J et MAYOSI, AJ

Heard on: 6 March 2026

Delivered on: 6 March 2026

Summary:

Civil procedure – Appealability – Mandament van spolie – Interim *ex parte* order restoring access to immovable property pending return day of rule nisi – Appeal noted before adjudication on return-day – Whether order appealable – Application of *Zweni v Minister of Law and Order 1993 (1) SA 523 (A)* – Order expressly interim, revisitable and susceptible to discharge or variation – No final determination of rights

by court *a quo* – Immediate restoration of access and authorisation of sheriff to secure premises constitute practical consequences but not legal finality – Interests of justice not warranting exceptional intervention – Policy against fragmented interlocutory appeals reaffirmed – Appeal dismissed as incompetent for want of jurisdiction – Ordinary costs ordered.

ORDER

1. The appeal is dismissed as incompetent for want of jurisdiction.
2. The appellant is ordered to pay the respondent's costs of appeal.
3. The order of 23 October 2025 is herewith set aside and substituted as follows:
 - (a) The applicant shall file his replying affidavit, if any, by Tuesday, 24 March 2026.
 - (b) The rule is extended for hearing on Monday, 30 March 2026.
4. The Chief Registrar of this Court is directed to serve a copy of this order (by email) within three (3) days of date hereof on the Clerk of the Civil Court, Stellenbosch Magistrates' Court. The Clerk is directed to set the matter down on the motion court roll as ordered in 3 above.

JUDGMENT

DA SILVA SALIE, J:

Introduction

[1] This is an appeal against an interim spoliation order granted by the Stellenbosch Magistrates' Court on 23 September 2025 on an urgent *ex parte* basis. The order restored the respondent's immediate access to immovable property pending the return day of a rule *nisi*.

[2] On appeal, the appellant raises three (3) grounds of appeal:

(a) There was no basis for hearing the application as an *ex parte* one.

(b) There were no grounds for urgency, and the application should not have
been heard on an urgent basis.

(c) The court *a quo* granted the spoliation order in circumstances where the
respondent had not made out a case for such order.

Historical background and spoliation application:

[3] The respondent was employed on the Bonfoi Farm, Stellenbosch for the past forty (40) years. He submitted that as part of his employment benefit, the appellant had provided him with housing on the farm. He lived at the property with his late spouse and daughter. During his hospitalization due to a serious medical condition, his daughter moved in with her boyfriend. After being discharged from hospital, he had been staying with relatives temporarily to facilitate his hospital follow-up

consultations and rehabilitation therapy sessions. When he returned to the house in June 2025, he found that the locks of the premises have been changed. Upon further investigation, he was advised by the appellant that he will not be allowed access to the property. He proceeded to launch an *ex parte* application on 22 September 2025, seeking that the matter be heard as one of urgency to restore his free and undisturbed access to his house on the farm immediately upon service on the appellant by the sheriff of the interim order. The relief was granted on 23 September 2025 as an interim order, pending the return date. The appellant was called upon to give reasons why the order should not be made final.

[4] On 23 September 2025, the respondent's attorney sent an email to the appellant attaching the spoliation order. The correspondence also requested that the respondent's attorney ensure that the house be unlocked for the respondent so as to avoid further sheriff's fees or costs. Notwithstanding the fact that the order was interim in nature, the appellant filed the Notice of Appeal two (2) days later, on 25 September 2025, together with security for costs and a request for the court to provide further reasons. The answering affidavit was filed on 20 October 2025 with a supplementary affidavit filed by the appellant on 22 October 2025. On the return day, 23 October 2025, the court *a quo* postponed the matter *sine die* pending the outcome of this appeal.

Submissions on appeal:

[5] The appellant contends on appeal that the application was incorrectly entertained as an *ex parte* matter as the founding affidavit does not deal with the reasons why the application is brought on an *ex parte* basis nor is any allegation made that notice would defeat the object of the application. Furthermore, the affidavit is alleged not to address urgency. The respondent indicated that he was sleeping over at the homes of family members, he could not access his belongings in the house and that he needed rest due to his medical circumstances. The appellant submits that whilst the respondent claimed that he was evicted without due process, the respondent had known about the spoliation for three (3) months before he took

action by way of the spoliation application. The appellant also submitted that the wrong party was cited as the property is owned by Bonfoi Wynlandgoed CC and opposed the merits of the relief claimed.

[6] In short, the appellant submits that this Court, on appeal, must find that the application should not have been entertained in the manner that it was, both *ex parte* and urgent, and also find that the spoliation order was not correctly granted on the merits.

[7] The respondent opposes the appeal and raises a point in *limine* that the order is purely interim and not appealable. For the respondent it is submitted that as the order is not final, the effect is susceptible to alteration by the court of first instance. Interim relief by its very nature is designed to operate quickly, should be revisited by the court *a quo* and prevent irreparable harm pending final determination. The spoliation order granted herein preserves a temporary position and an appeal undermines the purpose of interim relief.

[8] In my view, the *in limine* issue regarding appealability must be determined first, for if successful, it would be dispositive of the appeal.

Applicable legal principles:

[9] It is trite that appeals ordinarily lie only against final decisions.

[10] In *Zweni v Minister of Law and Order 1993 (1) SA 523 (A)*, the Appellate Division held that an order is generally appealable if it:

- (a) Is final in effect and not susceptible to alteration by the court of first instance.

(b) Is definitive of the rights of the parties; and

(c) Disposes of at least a substantial portion of the relief claimed.

[11] Our courts have repeatedly emphasised the policy against piecemeal appeals, particularly in relation to interim relief designed to operate pending reconsideration on a return day. Appeals are generally impermissible unless exceptional circumstances exist which warrant consideration of the appeal in the interests of justice.

[12] However, the “interests of justice” approach does not render every interlocutory order appealable. Exceptional circumstances must be shown.

Application of the law to these facts:

[13] The order appealed against was granted *ex parte* and expressly operates pending the return day of a rule *nisi*, by restoring the respondent’s possession of the property. However, this is not a final order and by its nature and structure, it is susceptible to discharge, variation or confirmation on the return day once the affected party is heard. The interim order is not a final pronouncement that the respondent had been in peaceful and undisturbed possession of the property and that he had been dispossessed.

[14] The appellant contends that the order had immediate practical consequences, including the restoration of access to the property. The appellant’s factual disputes of the claims made by the respondent in support of spoliation and the opposition thereto is however *sub judice* and must be determined by the court *a quo* so as to make a final determination of the parties’ rights and dispose of the final relief. Likewise, the court *a quo* would consider the submissions by the appellant whether sufficient facts were correctly placed before the court to warrant granting the order *ex parte*, as it did. On that basis alone the interim order may be discharged and set

aside if so determined by the court *a quo*. That is, however, not the jurisdiction of this Court.

[15] It must be born in mind that interim interdicts and spoliation orders commonly have immediate practical effect. That feature does not, without more, convert such relief into a final, appealable order. The return-day procedure provides the built-in mechanism through which the interim order may be challenged, discharged or varied.

[16] The effect of the interim order is that the appellant would be required to give possession to the respondent of the home he had been resident in, on the farm, as an employee. This is, however, not a case where the interim order produces irreversible consequences incapable of correction by the court *a quo*, nor one where immediate appellate intervention is required to prevent irreparable injustice.

[17] To entertain the appeal at this stage would undermine the established principle against fragmented interlocutory appeals. The interests of justice do not justify exceptional appealability in the present circumstances. I am of the view that the order is interlocutory in nature and not appealable.

[18] At the time the appeal was noted, no determination on the return day had been made. Instead, it was postponed by agreement *sine die* pending this appeal. Accordingly, there has been no final adjudication of rights by the court *a quo*.

[19] The postponement *sine die* on 23 October 2025 was a misdirection in that an interim order cannot exist without a return day. Given my conclusion that the matter is not capable of appeal, it would be appropriate for the court *a quo*'s postponement *sine die* of the return day to be set aside and substituted with a provision that the interim order be heard by the court *a quo* on a specified date. In the circumstances, the order below will provide for the further conduct of the matter.

Costs:

[20] The respondent seeks punitive costs on the basis that the appeal is premature. Whilst I find that the appeal is incompetent, I am not persuaded that the appellant's conduct warrants a departure from the ordinary rule as to costs. Accordingly, there is no basis for an attorney-and-client costs order.

Order:

[21] For the reasons set out herein, the appeal must fail and, in the premises, I order as follows:

[21.1] The appeal is dismissed as incompetent for want of jurisdiction.

[21.2] The appellant is ordered to pay the respondent's costs of appeal.

[21.3] The order of 23 October 2025 is herewith set aside and substituted as follows:

(a) The applicant shall file his replying affidavit, if any, by Tuesday, 24 March 2026.

(b) The rule is extended for hearing on Monday, 30 March 2026.

[21.4] The Chief Registrar of this Court is directed to serve a copy of this order (by email) within three (3) days of date hereof on the Clerk of the Civil Court, Stellenbosch Magistrates' Court. The Clerk is directed to set the matter down on the motion court roll as ordered in 21.3 above.

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

I AGREE:

N. MAYOSI
ACTING JUDGE OF THE HIGH
COURT
WESTERN CAPE DIVISION

Appearances

For Appellant: Adv. J Williams
Instructed by: Cluver Markotter Inc.

For Respondent: Adv. D Filand
Instructed by: September & Associates