



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/ Not Reportable

Case no: 2919/2024

KIMBERLEY LOCAL TRANSPORT ASSOCIATION

Applicant

and

MOSES MOFANA

First Respondent

THAMSANQA GABUZA

Second Respondent

CALVIN JOHNSON

Third Respondent

Coram: Chwaro AJ

Heard on: 27/02/2026

Delivered on: 06/03/2026

Summary: Mandament van spolie – Act of spoliation- Change of locks and keys to the security gate and main door -Spoliation established - *Rule nisi* confirmed - Costs to follow the result.

ORDER

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1. The *rule nisi* issued on 4 November 2024 be and is hereby confirmed.
 2. The First to Third Respondents are ordered to pay the costs of the application, jointly and severally, the one paying the others to be absolved.
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JUDGMENT

CHWARO AJ:

Introduction

[1] This application concerns the restoration of possession and use of the offices of the Kimberley Local Transport Association (the applicant) situated at [...] C[...] Street, Kimberley. The applicant contends that its possession and use of the said offices was unlawfully disturbed by the respondents on 29 October 2024 when they allegedly changed the locks and keys of the security and main doors leading to the offices.

[2] On 4 November 2024, the applicant approached this Court on an urgent basis seeking a *rule nisi*, primarily along the following terms:

‘2.1. That the Respondents and/or any person acting under their instructions or authority be ordered to return the undisturbed possession and use of the KIMBERLEY LOCAL TRANSPORT ASSOCIATION OFFICES situated at [...] C[...] Street, Kimberley, Northern Cape to the Applicant.

2.2. The Respondents and/or any person acting under their instructions or authority be ordered to unlock the Applicants (sic) premises situated at [...] C[...] Street, Kimberley, Northern Cape.”

- [3] The application is opposed by the first to third respondents who contend that the locks and keys to the applicant's offices were replaced to minimise acts of security breaches after an incident where one Mr Lucas was seen attempting to open the door to the offices with the use of a knife.

Background

The applicant and its management structure

- [4] The applicant is a voluntary association of minibus taxi owners and operators within the Sol Plaatjie Local Municipality area. It is an affiliate of the South African National Taxi Council. It has a constitution which provides for, amongst others, the election of an executive committee which is entrusted with the daily management of its activities.
- [5] At a special general meeting held on 12 July 2023, the membership of the applicant resolved to suspend some members of the executive committee and elected an interim executive committee under the chairmanship of Mr. Gaopalelwe Lebona, (Mr Lebona).
- [6] Though there has been some exchange of correspondence between the respective attorneys of the interim executive committee and those who were suspended relating to the latter's status within the applicant, no further significant developments occurred since their suspension until the date of the alleged spoliation.

The alleged act of spoliation

- [7] From the common cause facts gleaned from both parties' versions of events, on 29 October 2024, Mr Piet Mpongwana, who serves as an additional member of the applicant's interim executive committee, attended to the

applicant's offices situated at [...] C[...] Street, Kimberley. Upon his arrival, he met Mr Moses Mofana, the first respondent. The latter requested an urgent meeting with the interim executive committee to discuss the position of the applicant following an earlier meeting held at the Premier's office relating to a possible merger of various local taxi associations. Mr Mpongwana relayed this information to Mr Lebona, who declined an invitation to a meeting arranged at short notice.

- [8] Mr Lebogang Lucas, another member of the interim executive committee, also went to the offices to find out what was it that the first respondent sought to discuss with them. Upon his arrival, he found the first respondent, in the company of Mr Trevor Moshimane. The first respondent indicated that he was going to grind the locks to the main door and replace them as he was "the boss" of the applicant.
- [9] Soon thereafter, Mr Thamsanqa Gabuza, the second respondent, arrived with the new locks. The first respondent then instructed Mr Moshimane to grind the locks of the security gate and the wooden door and replace them with the new locks. None of the members of the interim executive committee was provided with the keys to the new locks.
- [10] A meeting was convened by the two factions on 31 October 2024 at the offices of the applicant. It was at the said meeting that the first respondent confirmed to have given instructions to change the locks. Nothing came out of this meeting as it was adjourned due to confrontation between the parties.

The rule nisi

- [11] Since the interim executive committee members were not provided with the new keys to the offices of the applicant, they formed a view that they were thus denied access and use of the applicant's office by the respondents. This

led to the applicant launching an urgent application out of this Court seeking a *rule nisi* for the restoration of the possession and use of the offices and that the respondents be ordered to hand over the keys to the offices.

[12] The urgent application served before my brother Van Tonder AJ on 4 November 2024 and the *rule nisi* was accordingly granted.

[13] On 12 November 2024, the applicant's attorney, Mr Kgotlagomang of Towell & Groenewaldt Attorneys received correspondence from the respondents' former attorney, Ms Feltman of Engelsman Magabane Incorporated, where the latter conveyed to Mr Kgotlagomang that her instructions were to place the applicant's attorneys in possession of the new keys to the offices. Since receipt of the keys, the applicant's possession and use of the offices was restored.

Discussion

[14] Our law recognises a spoliation order as a robust, extraordinary and urgent remedy available to a party who has been dispossessed of either a moveable or immovable property without a lawful cause or without the consent of such a party.¹

[15] An applicant who seeks this remedy must meet the two main requirements, being to establish that such a party had peaceful and undisturbed possession of the property and that there was wrongful deprivation of possession without any justifiable cause.²

¹ Van Rhyn and Others NNO v Fleurbaix Farm (Pty) Ltd 2013 (5) SA 521 (WCC) para 7

² Ivanov v North West Gambling Board 2012 (6) SA 67 (SCA) para 19

- [16] The purpose of this robust remedy is trite. It is to encourage the rule of law by ensuring that there is public order. It also serves to discourage persons to take the law into their own hands.³
- [17] On the basis of the established facts, it cannot be disputed that the interim executive committee that was elected at the meeting of 12 July 2023 had actual possession and use of the applicant's offices prior to 29 October 2024. They continued to render the day-to-day activities of the applicant from the said offices without any disturbance.
- [18] On 29 October 2024, first and second respondents did, through the acts of Mr Moshimane, change the locks to the security gate and the wooden gate of the offices and thereby denying the applicant, through its interim executive committee, access and use of the offices. The applicant obtained undisturbed access and use of the offices only after the granting of the *rule nisi* on 4 November 2024 and pursuant to the tendering of the keys by the respondents' erstwhile attorneys.
- [19] Based on the conspectus of these established facts, it is without any doubt that the applicant has succeeded to satisfy the two requirements to be granted the spoliation remedy. The respondents have no justifiable reason to have changed the locks and failed to provide the new keys to the applicant, through its interim executive committee.

Costs

- [20] During argument, the applicant's representative urged this Court to award a punitive costs order against the respondents based on their conduct. The respondents' counsel argued otherwise. Ordinarily, the award of costs is a

³ Bisschoff and Others v Welbeplan Boerdery 2021 (5) SA 54 (SCA) para 5

matter entirely within the discretion of the court, which discretion is exercised not only with due regard to the substantive outcome of the matter but guided by reasonableness and fairness.

[21] I am of the view that the applicant has not laid a basis for a punitive costs order in its papers nor are there any objective facts upon which this Court may be persuaded to award a punitive costs order.

[22] It is trite that the usual and ordinary order relating to costs is that the successful party is entitled to costs. There are no grounds established in the present application upon which this Court can deviate from this established principle and accordingly, the respondents are to bear the costs of the application.

Order

[23] In the premises, the following order is made:

1. The *rule nisi* issued on 4 November 2024 be and is hereby confirmed.
2. The first to third respondents are ordered to pay the costs of the application, jointly and severally, the one paying the others to be absolved.

O K CHWARO
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:

Mr C. Kgotlagomang

Instructed by:

Towell & Groenwaldt Attorneys
Kimberley

For the First to Third Respondent:

Adv. A Eillert

Instructed by:

Mathewson & Mathewson Inc
Kimberley