



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

Case No: 2026-018209

In the matter between:

**EMILY MOON RIVER LODGE (PTY) LTD**

Applicant

and

**EXL CONSULTING (PTY) LTD**

Respondent

**Reportable / Not reportable**

**Coram:** Anderssen AJ

**Heard:** 23 February 2026

**Delivered:** Electronically on 24 February 2026

**Summary:** *Mandament van spolie* – unlawful dispossession not established – review application does not suspend operation of administrative decision – obligation to limit the practical consequences of the challenged action as far as possible, met.

Interim interdict – *prima facie* right established – other requirements met.

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**ORDER**

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1. The application for a *mandament van spolie* is dismissed.
2. Pending –

2.1 the determination of the review application launched by the applicant under case number 219045/2025, against the Provincial Minister of Infrastructure, Western Cape Government (as first respondent), the respondent (as second respondent) and five other parties (as third to seventh respondents), for the review and setting aside of the Minister's decision to close Minor Road OP07233 (*"the Road"*); and

2.2 the determination of the applicant's claim for a way of necessity over the respondent's property, Portion 13 of the Farm Hangklip, No. 305;

the respondent is restrained and prohibited from (a) interfering with the applicant's use of the Road, for the purpose of conducting the business of Emily Moon River Lodge on the applicant's property, Portion 2 of the Farm Mallard No. 445, and (b) doing anything which might inhibit or limit the applicant's use of the Road.

3. The applicant is directed to institute proceedings against the respondent for a declaratory order, provisionally to the extent that it may be necessary, that the applicant is entitled to a way of necessity over Portion 2, which proceedings must be instituted within one (1) calendar month after the granting of this order.

4. There shall be no order as to costs.

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## **JUDGMENT**

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## **Introduction**

- [1] This application for a *mandament van spolie*, alternatively, a temporary prohibitory interdict, was launched as an urgent application on 29 January 2026 and set down for hearing on 30 January 2026. In light of the short notice to it, the respondent (“EXL”) reluctantly consented to an order with interim operation and the matter came before me some three weeks later with the leave of the Judge President.
- [2] EXL has complained that the matter is not urgent and that any urgency has been self-created by the applicant (“Emily Moon”) as it knew of the Minister’s decision in June 2025 and instituted review proceedings in November 2025. I did not agree, as the first time that Emily Moon became aware that it would be denied access to the Road, which is the subject matter of this application, was via email on 19 January 2026. Emily Moon’s attorney replied to this email on 20 January 2026 seeking an undertaking from EXL by close of business on Friday, the 23<sup>rd</sup>. When no reply was received by the deadline, he followed up with a phone call on the Monday. A reply was delivered at 12h13 on the 27<sup>th</sup> refusing the undertaking sought and EXL commenced erecting a gate on its property, which would effectively close Emily Moon’s access to the Road, on the same day. As Emily Moon had contracted to host a wedding on 31 January 2026, it needed urgent access to its wedding venue, via the Road, the following day.
- [3] The undisputed facts are briefly summarised in the following paragraphs.
- [4] Emily Moon is the registered owner of Portion 2 of the Farm Mallard No

445 (*“Portion 2”*). EXL is the registered owner of Portion 13 of the Farm Hangklip No 305 (*“Portion 13”*). Portion 2 and Portion 13 are adjacent and situate in the Bitou River Valley near Plettenberg Bay. Portion 2 abuts the Bitou Estuary, and Portion 13 abuts the riverbanks of the Bitou River on three boundaries. The subject-matter of this application is a former public road, known as Minor Road OP07233 (*“the Road”*). The Road provides access to Portion 13 from the Rietvlei Road, which, in turn, joins the N2 highway between Plettenberg Bay and Keurbooms River. A part of the south-eastern boundary of Portion 2 abuts the Road. At the point where the Road veers away from Portion 2’s boundary, it enters and traverses Portion 13 until it reaches the riverbank. Emily Moon has, in the past, used a part of the Road that traverses Portion 13 to reach the northern lower-lying part of its property on the bank of the Bitou River. Between the southern and northern part of its property there is a steep embankment slope. The near vertical rise from the lower northern portion to the higher southern portion is approximately 15 meters.

- [5] Emily Moon conducts a hotel / guest lodge business, which includes destination weddings. The wedding venues include a function venue on the southern part of the property where a lodge and certain luxury chalets are also situated. It also includes a ceremony venue, called the River Deck, on the northern part of the property. A sewerage plant that services the property is also situated on the lower-lying northern part.
- [6] In July 2019, EXL applied to the Department of Infrastructure, Western Cape Government for the de-proclamation of the Road from the point where it intersects the southern boundary of Portion 13 to where it

intersects the eastern boundary. Following a public participation process, the Minister of Infrastructure of the Western Cape Government (*“the Minister”*) approved EXL’s application and announced his decision in the Provincial Gazette on 6 June 2025. EXL had applied to have the Road closed to enable it to construct a dwelling house in the south-western corner of Portion 13. This site is partially on the road reserve (which is 20 metres wide) and partially against a slope that rises up to the common boundary between Portion 2 and Portion 13. It also happens to be the only available location on Portion 13 where a dwelling can be constructed as Portion 13 is located in the Bitou Wetlands. Most of the land, except this one site, is regularly flooded due to tidal changes in the Bitou River as well as flooding during heavy rains.

- [7] The Municipal Manager of the Garden Route District Municipality was informed of the Minister’s decision on 22 July 2025 by the Deputy Director-General: Transport Infrastructure (*“the DDG”*). In this letter the DDG recorded that the Minister had attached certain conditions to his approval of the de-proclamation of the Road, which included that the Road be converted into a public right of way servitude for pedestrian access. Paragraph 11 of the letter recorded that the servitude must be registered within 12 months from the date of the letter and that, in the meantime, no gates or any other obstructions may be erected across the road reserve.
- [8] By then, and as early as 19 June 2025, Mr Cope (the husband of EXL’s sole director) had sent a WhatsApp message to one of Emily Moon’s shareholders that EXL would permit Emily Moon to continue to use the Road when required. This was confirmed in a subsequent telephonic

discussion between Mr Cope and Mr Olivier on behalf of Emily Moon. On 17 November 2025, Emily Moon launched an application, in terms of section 6(2)(e)(iii) of PAJA, for the review and setting aside of the Minister's decision to close the Road. The Minister, EXL and five other interested parties are cited therein. EXL has filed a notice of its intention to oppose but has not, as yet, filed an answering affidavit. The Minister recently informed the parties that he would abide the court's decision.

[9] Notwithstanding the pending review application, EXL caused a servitude to be registered against the title deed of Portion 13 in compliance of the Minister's directive on 17 December 2025. Although the letter from the DDG recorded that the Coastal Management Branch (*“the CM”*) recommended that EXL should discuss the conversion of the Road into a public right of way with a local community forum (*“the PBCEF”*), no such consultation took place. No notice of the registration of the servitude was given to either Emily Moon or the PBCEF. The email from EXL to Emily Moon on 19 January 2026 was also silent as to the registration of the servitude. It merely referenced the promulgation in the Gazette when informing Emily Moon that *“vehicular traffic from and related to your company and in your personal capacity is no longer allowed as of today's date. Any vehicular access required must be negotiated with the owner of the land and agreed in writing before access is granted.”* It was only on 26 January 2026, during a telephone call between the parties' attorneys, that the PBCEF and Emily Moon learned that the servitude had been registered.

[10] Emily Moon, with no knowledge of the registration of the servitude, on 20

January 2026 demanded that EXL must continue to allow them undisturbed vehicular access along the Road pending the determination of the review application. EXL refused to provide the undertaking sought and, on 27 January 2026, informed Emily Moon that an administrative decision was taken, which remains valid until reviewed and set aside by a competent court, and that EXL had complied with the requirement to register the servitude. EXL has since erected a gate across the road, although the gate is not locked and access is still possible to the Road in terms of the interim order granted on 30 January 2026.

**The relief sought in terms of the mandament van spolie**

- [11] It is trite that the mandament van spolie serves as a tool for promoting the rule of law and as a disincentive against self-help. Mr Cutler readily, and rightly, conceded that the *mandament van spolie* is available for the restoration of a *quasi-possessio* of certain rights, such as the right of access to and the use of a road.
- [12] The first requirement for a spoliation order is possession. Emily Moon alleges that it uses the Road on a regular basis in order to conduct its business activities. This includes the hosting of weddings, of which the River Deck on the northern lower-lying part of its land is an important part as it is the venue for its ceremonies. Emily Moon uses the Road to gain vehicular access to this venue to prepare it for wedding ceremonies and the bride is also transported to the venue in a car. It also uses the Road to gain access to the sewerage plant situated on the lower-lying portion in order to clean and maintain it. From time to time the Municipality's waste trucks also need access to the plant.

[13] EXL does not admit the use of the Road in the manner and to the extent alleged by Emily Moon. Mrs Cope recorded seeing a waste truck on one occasion only in the last several months. It has denied that Emily Moon uses the Road on a regular basis. I do not think the extent to which Emily Moon uses the Road matters. It is sufficient, to establish possession, that Emily Moon uses the Road. And there is no doubt that EXL was aware of Emily Moon's use of the Road in light of the content of Mr Cope's WhatsApp to a shareholder of Emily Moon on 19 June 2025, the terms of the telephonic discussion between Mr Cope and Mr Olivier that followed this WhatsApp, and the content of the 19 January 2026 email. These facts are not disputed by EXL.

[14] That leaves the second requirement for a spoliation order. Emily Moon contends that the communication of 19 January 2026 amounts to the unlawful deprivation by EXL of its *quasi-possessio* of the right to use the Road. EXL denies, in the first instance, that the content of the email amounted to dispossession as it had, in the same email, invited Emily Moon to negotiate vehicular access with it and undertook to grant access if agreed to in writing prior to the access. I am not persuaded by this argument. The *quasi-possessio* of the right lies in the actual exercise of an alleged right.<sup>1</sup> Emily Moon had, in the past, had free and unfettered access to the Road. A promise to negotiate and allow future access does not allow for the same free access, particularly when EXL has disputed the extent of Emily Moon's past use of the Road and the need for it to use the Road to the same extent in the future.

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<sup>1</sup> *Firststrand Ltd t/a Rand Merchant Bank v Scholtz N.O.* 2008 (2) SA 504 (SCA) at par [12].

[15] EXL, secondly, also denies that its actions were unlawful as it contends that due legal process was followed. There can be no doubt that the decision to close the Road to vehicular traffic, to erect a gate to ensure that closure, and to control access to the Road thereafter, was against the consent of Emily Moon. The narrow issue is whether EXL's actions were unlawful. It says 'not' as it had applied for the de-proclamation of the Road, and its application was granted subject to the condition of the registration of a servitude. Having registered the servitude, it acted lawfully in taking steps to close the Road. Emily Moon had been afforded participation in the application process and had availed itself of the opportunity to make objections and representations to the Minister, which the Minister considered but rejected.

[16] On the other hand, Emily Moon, relying on ***Ntshwagela v Chairman, Western Cape Regional Services Council***,<sup>2</sup> contends that the deprivation of possession was without due process of law. The passage reads as follows:

*"This Court must insist on observance of the principle that a person in possession of property, however unlawful his possession may be and however exposed he may be to ejectment proceedings, cannot be interfered with in his possession except by due process of law."*

What was expected of EXL, according to this argument, is to have preserved the *status quo* pending the review and to have obtained the court's leave if it wished to prohibit Emily Moon its continued free and unfettered use of the Road. Because it did not, the dispossession is unlawful as it was without the consent of the person deprived of

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<sup>2</sup> 1988 (3) SA 218 (CPD) at 225G-H.

possession and without due process of law.

[17] I turn to the other authorities referred to by Mr Vivier SC. In ***Ntshwagela*** the applicants had lived in shacks on the land until a removal operation was mounted at the instigation of the respondents with the assistance of the police and the applicants – among others – were moved to a township.

[18] In ***Stocks Housing (Cape) (Pty) Ltd v Chief Executive Director, Department of Education and Culture Services***<sup>3</sup> the applicant, who had been given occupation of a building site on 8 December 1993, on which site a school for the respondents were to be erected, had on 11 November 1994 been notified via letter that it had one hour to vacate the site as their contract with the respondents had been terminated. The court held that the clear inference from the facts was that the officials of the department sought to effect the repossession of the site by sudden manoeuvre rather than by collaboration and consent.

*“The element of unlawfulness of the dispossession which must be shown in order to claim a spoliation order relates to the manner in which the dispossession took place, not to the alleged title or right of the spoliator to claim possession.”*

[19] In ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another***<sup>4</sup> the SCA held that violence or fraud is not an essential element of dispossession, provided the act is done against the consent of the person despoiled and illicitly. In this context 'illicitly' is understood to mean *“in a manner which the law will not countenance.”* The appellant was a building contractor who had entered into an agreement with the first respondent to perform certain construction work on the first respondent's property. When

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<sup>3</sup> 1996 (4) SA 231 (C) at 241J-242A/B and 240C-D.

<sup>4</sup> 2008 (3) SA 371 (SCA) at par [27].

a dispute arose between the parties, the respondent engaged other contractors to complete the work and, using the duplicate keys delivered to him by the appellant, provided the new contractors with access to the premises. When the appellant thereafter arrived at the premises, he was refused access.

[20] It is evident from the facts of the cases quoted above that, in each case, the spoliator had taken steps dispossessing the applicant without recourse to the law. The facts *in casu* differ. EXL had followed due legal process by making application to the relevant authorities to have the Road de-proclaimed. The Minister's decision was announced in the Provincial Gazette. The condition imposed by the Minister (the registration of a servitude) was met by EXL. It was only after the servitude was registered that EXL took steps to close the Road.

[21] Emily Moon has complained that the registration took place clandestinely and in a *mala fide* manner as EXL had neither consulted with the PBCEF (as CM had recommended) nor notified Emily Moon or the PBCEF that it was taking steps to register the servitude. Even if this is so, and I am not persuaded that it is, I do not believe that EXL, by taking these steps, acted in a manner that cannot be countenanced by law. Mr Vivier SC conceded that the Minister's recommendation of consultation is not legally binding on EXL. The thrust of his argument was that the launching of the review application requires all parties, including EXL, to respect the pending legal process and, as far as reasonably possible, to limit the practical consequences of the challenged action. For this argument he relied on the

**Pikoli**-judgment.<sup>5</sup>

- [22] In answer Mr Cutler directed my attention to **OUTA**<sup>6</sup> where the Constitutional Court dealt with the granting of temporary restraining orders against the exercise of statutory power. The relevant passage is:

*[50] Under the Setlogelo test the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.*

- [23] I am not persuaded by the argument that **OUTA** has overtaken **Pikoli**. The above passage relates to the test for establishing a *prima facie* right and the requirement of irreparable harm in interdict proceedings. The reliance on **Pikoli** is here within the context of the *mandament van spolie*. In the **Pikoli**-matter the court described the state of uncertainty that exists pending finalisation of review proceedings (and the obligations that may therefore be imposed on the parties) as follows:

*“When there is a serious challenge to the validity of the purported exercise of public power, a state of uncertainty necessarily follows: On the one hand the action is treated as if it were valid until declared invalid. On the other hand the practical consequences of the action may turn out to be invalid, as well. For that reason the law requires of all concerned to respect the pending legal process and, as far as is reasonably possible, to limit the practical consequences of the challenged action, ‘in appropriate circumstances . . . an authority should . . . halt its actions when it is aware that review proceedings are to be instituted against it. Failure to do so may render the official concerned liable for contempt of court.’”*

- [24] These remarks should be considered against section 18(1) of the Superior Courts Act, which records that the operation and execution of a decision,

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<sup>5</sup> **Pikoli v President of the Republic of South Africa and Others** 2010 (1) SA 400 (GNP) at 408E-F.

<sup>6</sup> **National Treasury and Others v Opposition to Urban Tolling Alliance and Others** 2012 (6) SA 223 (CC) at par [50].

which is the subject of an application for leave to appeal, is suspended pending the decision of the application or the appeal. An applicant in review proceedings does not have the same advantage.

[25] The issue is whether EXL acted unlawfully “*in a manner which the law will not countenance*”. I have considered the following:

[25.1] Unless and until the review application succeeds and the Minister’s decision is set aside, the decision is treated as if it were valid. EXL was under an obligation to cause the servitude to be registered before 21 July 2026 in terms of the DDG’s letter. Thus, until the decision is set aside, EXL was, and is, legally entitled to close the Road.

[25.2] If the Minister’s decision is set aside, the practical consequences of the action may, however, turn out to be invalid (although it does not follow that it automatically is). If the Minister’s decision is not set aside, then Emily Moon will not have the right to continue using the Road, irrespective of its past *quasi-possessio* of this right.

[25.3] EXL did not simply close the Road – it extended an olive branch and offered to negotiate future vehicular access. It did therefore as far as is reasonably possible, try to limit the practical consequences of the challenged action. Finally, I consider it a step too far to require EXL, who has a legally binding decision from the Minister obtained after due process, to approach a court and to seek interdictory or other relief against Emily Moon.

[26] I have thus not been persuaded that, on a balance of probabilities, EXL’s

actions were unlawful. As such the application for a *mandament van spolie* must fail.

### **The temporary interdict sought by the applicant**

- [27] It is trite that a temporary interdict may be granted pending an application for review of administrative action. To succeed, Emily Moon must persuade the court that it has a *prima facie* right, that there is a reasonable apprehension of irreparable harm if the interdict is not granted, that the balance of convenience favours the granting of the interdict and that it has no other satisfactory remedy.
- [28] EXL is disputing Emily Moon's entitlement to the relief sought, in the main, by disputing the allegation that it has a *prima facie* right. In this regard its argument is two-fold. Firstly, it submits that Emily Moon has failed to establish prospects of success in the review. Secondly, it submits that the relief sought constitutes a *brutum fulmen* as it would not be practically enforceable for the stated purpose – Emily Moon and its guests would not be able to reach the venue or the sewerage plant without trespassing on EXL's land as the Road does not pass through to the northern part of Portion 2 but, instead, curves away.
- [29] The nature of the *prima facie* right that an applicant has to prove in these circumstances was described by the court in **Pikoli** as follows:

“... the applicant had to show that he has at least a *prima facie* right, though it might be open to some doubt, to the relief he seeks in the main application, that is, to review and set aside the decision to remove him from office. In other words, the applicant had on a *prima facie* basis to prove facts that establish that his removal from office was unlawful and therefore subject to be reviewed and set aside”

[30] Emily Moon is challenging the Minister's decision in terms of section 6(2)(e)(iii) of PAJA on the basis that the Minister considered irrelevant considerations or failed to consider relevant considerations. The essential premise of EXL's application to the Minister was that the Road does not exist because it had been damaged in the Laingsburg floods 30 years ago, and that there is no need for the public to make use of the Road as it terminates at the Bitou River. As the first statement is patently incorrect and the second statement is a distortion of the truth, Emily Moon contends that it has established a *prima facie* right to the relief sought on review. The correct facts are that Emily Moon has, for the past 18 years, been using the Road to gain access to the lower-lying northern part of its property for various purposes. It did so as there is a steep embankment between the southern and northern parts. And it is not possible to gain access, by vehicle, from the higher part to the lower part given the steep slope and the geographical features thereof, i.e. dense vegetation and rocky terrain.

[31] This last averment was disputed by EXL who contended that there is an existing road network on Portion 2 and that Emily Moon has not explained why it cannot use the existing network or improve same to provide access to the wedding venue and the sewerage plant. During the hearing Mr Cutler sought to bolster this point with reference to EXL1 to the answering affidavit. As the author of the wording on the white blocks that appear on EXL1 has not been identified, I do not place any value on these submissions. For purposes of establishing a *prima facie* right I also do not believe that it is necessary to determine, at this stage, the factual accuracy of the averment by Emily Moon.

[31] Mr Cutler referred me to several cases, including ***Spur Steak Ranches***<sup>7</sup> and ***OUTA*** in support of his argument. In summary, he argues that Emily Moon has pinned its colours to a narrow mast in that the review application relies on a single statutory ground. Emily Moon complains that the Minister was misled by EXL, whilst conceding that its objections had been placed before the Minister. The DDG's letter expressly records that the objections during the first and second public participation processes had been submitted to the Minister (paragraph 2) and that the Minister took its decision "*having reviewed all the objections received*" (paragraph 3). The Minister correctly found that none of the properties abutting the subject portion of the Road are landlocked and that only Portion 13 would be directly impacted (paragraph 4). Furthermore, Emily Moon is faced with the *praesumptio omnia rite esse acta* (all things are presumed to have been done correctly) and this poses a significant hurdle to its review.

[32] I am not persuaded by Mr Cutler's argument. The presumption is rebuttable and the author of the letter on which he relies was not the Minister but the DDG. Applying the approach set out in ***Spur Steak Ranches***, I must take the facts set out by the applicant, together with the facts set out by the respondent that the applicant cannot dispute and I must then consider whether, having regard to the inherent probabilities Emily Moon should, not could, obtain final relief in the review proceedings.

[33] The facts set out by Emily Moon (and which cannot be disputed by EXL as it arises from the report submitted on its behalf to the Minister), are that EXL's representative had informed the Minister in its application that the

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<sup>7</sup> ***Spur Steak Ranches Ltd v Saddles Steak Ranch, Claremont*** 1996 (3) SA 706 (C).

Laingsburg flooding had done permanent damage to the Road, that the Road has been in disuse due to the damages caused by the floods and that there is no need for the Road as its sole purpose is to provide access to the subject property (Portion 13). These recorded facts are patently incorrect. EXL admitted that Emily Moon has been using the road to gain access to the lower-lying northern part of Portion 2 as appears from the WhatsApp, telephone call and email referred to above. It did not explain in the answering affidavit why these incorrect facts appeared in the application. The singular fact set out by EXL is that Emily Moon does not need to use the Road to gain access to the lower-lying part. Emily Moon has consistently denied this.

[34] I am strengthened in my conclusion that Emily Moon has established a *prima facie* right, though open to some doubt, by the content of the DDG's letter. Although mention is made that objections were received, the sources of the objections and the content thereof were not disclosed. The letter recorded issues raised by CM but no other objection was identified or discussed. The considerations listed in the letter appear to be factually incorrect and/or incomplete.

[32] Finally, I must consider the possible trespass offence that has been raised by EXL. Emily Moon has expressed the view that the link between the Road and the northern part of Portion 2 is part of the road reserve. No supporting evidence has been provided. What is, however, indisputable is that Emily Moon has been potentially trespassing on Portion 13's land for many years and that EXL has acquiesced in that potential trespass. In light of Emily Moon's stated intention of instituting proceedings for a *via ex*

*necessitate*, I do not consider the possible *brutum fulmen* to be a bar to the relief sought.

[33] EXL is also disputing that Emily Moon has established the remaining requirements for interim relief. I do not agree with the averment that Emily Moon has not alleged (or established) irreparable harm. The test is whether Emily Moon has a well-grounded apprehension that it will suffer irreparable harm if the interim relief is not granted and the ultimate relief is granted. The facts put forward by Emily Moon is that it cannot gain vehicular access to the northern part of Portion 2 except via the Road, it needs to have vehicular access to use the River Deck and to repair and maintain the sewerage plant, the northern part of Portion 2 is landlocked and the Road is its only access thereto, the income from weddings is substantial and the closure of the Road would have a substantial and adverse impact on the profitability of its business. It is in this context that I must consider **OUTA** and determine whether Emily Moon, having demonstrated a *prima facie* right that is threatened by an impending act, will suffer irreparable harm. In my view the right to review the impugned decision does, in this instance, require a preservation of the *status quo pendente lite*. Should the ultimate relief be granted, but the interim relief is not granted, Emily Moon has a well-grounded apprehension of irreparable harm.

[34] The balance of convenience also favours Emily Moon. It had historically had access to the Road and had used it. This cannot seriously be disputed by EXL. Emily Moon avers that it cannot gain vehicular access to the northern part of Portion 2 without using the Road. I am not persuaded that

Emily Moon had an obligation to consider and put forth other options, such as expanding its existing network of roads or building a new road for purposed of an interim interdict. It stated unequivocally that vehicular access to that part of its land (other than via the Road) is impossible because of the embankment and other geographical features. EXL can satisfy its need to secure its land and for security against third party entry by retaining the gate that is closing off access to vehicles whilst providing Emily Moon with access codes. Any offence caused by trespass on Portion 13, to the extent that there is trespass, can be addressed in the way of necessity proceedings I am directing Emily Moon to institute. There is clearly also no other satisfactory remedy available to Emily Moon as it may face substantial (and difficult to quantify) financial and reputational loss if the interim relief is not granted.

### **Costs**

[35] The ordinarily rule is that the successful party is entitled to its costs. In this matter, however, I have found against the applicant in respect of the *mandament van spolie* and for the applicant in the interim interdict application. As such I am not prepared to mulct either party in costs.

[36] The order is recorded above.

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**ANDERSSEN J S**

**Acting Judge of the High Court**

**Appearances:**

For the applicant: Adv P de B Vivier SC  
Instructed by Enderstein Malumbete Inc

For the respondent: Adv C Cutler  
Instructed by: Doyer & Doyer Attorneys