

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: **2026-029522**

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

DATE **24 FEBRUARY 2026**

SIGNATURE

In the matter between:

**N GOOLAB T/A HJ GOOLAB & SONS T/A ALABAMA
SHOE CENTRE**

Applicant

and

SHEHZAAD TAYOB- N. O

First Respondent

THE SHERIFF OF PRETORIA EAST

Second Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **24 February 2026**.

JUDGMENT

KUBUSHI, J

[1] This is an urgent application launched by the applicant seeking relief under the *mandament van spolie*. Despite the truncated time periods in this matter, the application is urgent. The applicant's allegation that his being locked out of the premises, has resulted in a situation where he is unable to trade and earn a living, renders this application urgent.

[2] The relief sought by the applicant was for an order in the following terms:

"1. That the matter to be enrolled as an urgent application and that the applicant's non-compliance with the uniform rules of court be condoned, in particular, that the forms and service provided for in the rules be dispensed with, and it is directed that this matter be adjudicated as a matter of urgency in terms of rule 6(12)(a);

2. That the first and second respondents be ordered to restore possession of the premises at 4[...] S[...] B[...] Street ("the premises") to the applicant immediately and provide keys to all locks and doors at the premises to the applicant.

3. That the first and second respondents restore possession of any and all stock/inventory and documents (which do not pertain to red rose outfitters (Pty) Ltd), which was removed from the premises to the applicant immediately.

4. Should the first and/ or second respondent fail and/ or refuse to comply with prayers 2 & 3 above, the Sheriff of the High Court and / or the members of the South African Police Service, if necessary, be authorised to assist the applicant to give effect to prayers 2 and 3 above.

5. That the first respondent pay the cost of this application on the attorney and client scale."

[3] The application is in essence to obtain an order under the *mandament van spolie*, compelling the respondents to restore possession of the premises at 4[...]

S[...] B[...], Arcadia, Pretoria (the premises), as well as the stock/inventory and documents which the respondents have unlawfully spoliated (the property), back to the applicant. The applicant contends that he is the owner of the stock/inventory and documents removed from the premises by the respondents.

[4] The application is opposed by the first respondent who in addition to opposing the application on the merits has raised three points *in limine*, namely that, the property was lawfully spoliated, a wrong process was employed by the applicant, and lack of specificity of the assets.

[5] The Constitutional Court in *Ngqukumba v Minister of Safety and Security and Others*,¹ defines *mandament van spolie* as follows:

“The essence of the *mandament van spolie* is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim *spoliatus ante omnia restituendus est* (the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the *mandament van spolie* is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process.” (footnotes omitted)

[6] The *mandament van spolie* is therefore a possessory remedy. The object of the order is:

"Merely to restore the *status quo ante* the illegal action. It decides no rights of ownership: it secure only that such a decision required, it shall be given by a court of law and not be affected by violence. If before the spoliation, either party needed a legal decision to establish his rights, he requires it just as much after, as before, the order. He is no better, and not worse, position than he was before the spoliation. There is consequently nothing

¹ (CCT 87/13) [2014] ZACC 14; 2014 (7) BCLR 788 (CC); 2014 (5) SA 112 (CC); 2014 (2) SACR 325 (CC) (15 May 2014).

inherent in a *mandament van spolie* which demands that it should be conditioned as being granted *pendente lite*.”²

[7] The applicant is carrying on business as a tailor and outfitter on the premises. The said premises are owned by a company known as Red Rose Outfitters Pty Ltd (Red Rose). Red Rose is a company in liquidation. Having been finally liquidated pursuant to a court order of 16 October 2024, the first respondent was appointed as one of the joint liquidators of the insolvent estate of Red Rose.

[8] Pursuant to the liquidation of Red Rose, on 8 January 2026, the joint liquidators obtained out of the Magistrates' Court held at Pretoria Central, an order and search warrant under section 69 of the Insolvency Act, 24 of 1936 (as amended) (the Insolvency Act). The court order authorised the joint liquidators to attend the premises and to search for and remove concealed property belonging to Red Rose. Pursuant to that court order the property in question was attached by the Sheriff (the second respondent) in the presence of the liquidator. The stock/inventory and documents which are believed to be that of Red Rose were removed from the premises, and the premises were locked to prevent the applicant's access.

[9] Section 69 of the Insolvency Act provides that

“(1) A trustee shall, as soon as possible after his appointment, but not before the deputy- sheriff has made the inventory referred to in subsection (1) of section nineteen, take into his possession or under his control all movable property, books and documents belonging to the estate of which he is trustee and shall furnish the Master with a valuation of such movable property by an appraiser appointed under any law relating to the administration of the estates of deceased persons or by a person approved of by the Master for the purpose.

(2) If the trustee has reason to believe that any such property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned

² *Schubart Park Residents Association v City of Tshwane Metropolitan Municipality* 2013 vol 1 SA 323 (CC) at 330G - 331A.

in subsection (3).

(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

(4) Such a warrant shall be executed in a like manner as a warrant to search for stolen property, and the person executing the warrant shall deliver any article seized thereunder to the trustee.

[10] The points *in limine* raised by the first respondent are correct. First, the respondents were duly authorised by a court order to attend the premises and search for and remove concealed property belonging to Red Rose. Therefore, the applicant was not wrongfully spoliated as he claims in his papers. Unlawful dispossession is one of the requirements of *mandament van spolie*. The applicant can, therefore, not be granted the relief he seeks in respect of prayer 2 of the notice of motion as he will be unable to satisfy the requirements of *mandament van spolie*. The applicant's argument that the Magistrate court order should not have been granted, is meritless. It is a trite principle of our law that an unlawful or invalid court order remains legally binding and produces legal consequences until set aside by a court of law.³

[11] Second, since *mandament van spolie* is a possessory remedy, it is not the correct procedure to follow where ownership of property is contested. The correct procedure for the applicant to follow should it wish to dispute the ownership of the attached property would be a form of vindicatory or interpleader action where ownership can be determined, not possession. Furthermore, such proceedings must be instituted in the Magistrates Court, being the court that issued the section 69 order.

³ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* (CCT 77/13) [2014] ZACC 6; 2014 (5) BCLR 547 (CC); 2014 (3) SA 481 (CC) (25 March 2014).

[12] The Supreme Court of Appeal in *Naidoo and Others v Kalianjee N.O and Others*⁴ remarked as follows:

“The appellants’ next challenge to the warrant was based on an allegation by Mr Naidoo that certain of the assets which form the subject matter of the warrant were acquired by ‘the [appellants] independently and with money emanating from [their] own resources’. Mr Naidoo also asserted that the warrant improperly gave the liquidators carte blanche to reap from the appellants’ premises ‘everything they could have laid their hands upon’.

There is no merit in this challenge. As is apparent from the terms of the warrant, it relates to assets of M&M and not to any assets that belong to any of the appellants. Moreover, as both Smalberger JA and Marais JA stated in their respective judgments in *Cooper*, the magistrate’s decision to issue the warrant is not dispositive of any ownership rights. As Marais JA said:

‘The decision to issue a warrant is in no sense an adjudication of any substantive issue, existing or potential, between the trustee and any third party or between the insolvent and the third party. Success in obtaining a warrant and success in its execution brings the trustee no more than provisional physical possession of the relevant asset. The trustee’s continued possession is open to challenge in the courts and the customary gamut of remedies (review proceedings, prohibitory interdicts, vindicatory actions, declarations of right, etc) is available to the third party. A successful challenge will bring an end to the trustee’s possession’.”

It is accordingly always open to any affected owner to take legal measures relating to ownership of assets falling outside the ambit of the proceedings to which a warrant relates. In these circumstances, if assets seized in execution of the warrant are shown by the appellants not to have been the property of M&M when it was placed into liquidation, they are liable to be

⁴ (20345/2014) [2015] ZASCA 102; [2015] 3 All SA 679 (SCA); 2016 (2) SA 451 (SCA) (29 June 2015) para 15 – 17.

returned. But that is no reason to invalidate a warrant which relates to assets of M&M. The challenge on this basis must therefore also fail.”
(footnotes omitted)

[13] The applicant’s other argument is that even though there is a court order in place, it did not authorise the respondents to remove him from the premises. The order reads as follows:

“After reading the papers and hearing counsel for the Applicant, the following order is made.

1. That the search warrants in terms of Section 69(2) of the Insolvency Act 24 of 1936, which is annexed to this application be hereby authorised and issued for execution on

a. Nirmal Kumarid Goolab and any other occupant at 4[...] S[...] B[...] Street, Pretoria, Gauteng Province.

b. Nirmal Kumarid Goolab at 3[...] M[...] Street, Eldopark, Centurion.

Authorizing the South African Police Services or the Sheriff and the liquidator of Red Rose Outfitters (Pty) Ltd to conduct a search of the aforementioned premises for any property books or documents belonging to the liquidated company and taking possession of any such property, books or documents. A list of documents as set out as annexure "A" hereto.” (own emphasis)

[14] Section 69 mandates trustees (liquidators) to take control of all assets belonging to the insolvent estate. It empowers the trustee (liquidator) to obtain a search warrant to search and seize all concealed or withheld assets. An asset in the Insolvency Act is defined as property which includes both movable and immovable property. Section 69(1) and (2) is specific to movable property, whilst section 69(3) relates to any property which includes both movable and immovable property.

[15] It is clear from the above that the Magistrate’s order is issued in terms of section 69(2). Section 69(2) refers to movable property and not immovable property.

It goes without saying that section 69(3) is not applicable here. Hence, the applicant has been unlawfully removed and/or locked out of the premises unlawfully. It is not in dispute that he has been in peaceful possession of the premises. Therefore, he has been unlawfully dispossessed of the premises. As such, the applicant's claim should on that basis succeed.

[16] As regards costs, both parties have been substantially successful, and no order of costs should be made.

[17] In the premises the following order is issued:

1. The matter is enrolled as an urgent application and the applicant's non-compliance with the uniform rules of court is condoned, in particular, the forms and service provided for in the rules are dispensed with, and it is directed that this matter be adjudicated as a matter of urgency in terms of rule 6(12)(a);
2. The first and second respondents are ordered to restore possession of the premises at 4[...] S[...] B[...] Street ("the premises") to the applicant immediately and provide keys to all locks and doors at the premises to the applicant.
3. Should the first and/ or second respondents fail and/ or refuse to comply with paragraph 2 above, the Sheriff of the High Court and / or the members of the South African Police Service, if necessary, are authorized to assist the applicant to give effect to paragraph 2 above.
4. No order as to costs.

E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant:

Adv J Mouton – (072 994 3209)

For the first Respondent:

Adv J Delport – (083 261 6676)

For the second Respondent:

No appearance

Date of the hearing:

12 February 2026

Date of judgment:

24 February 2026.