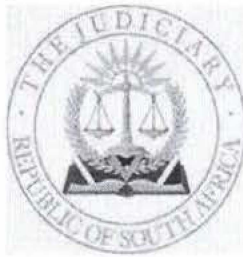


REPUBLIC OF SOUTH AFRICA



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

Case No: 053528-2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
<u>30 March 2026</u>	
DATE	SIGNATURE

CAROLYN RUTH MARTIN

FIRST APPLICANT

TUTTO VINO (PTY) LTD

SECOND APPLICANT

and

CLUB SOCIALE ITALIANO DI PRETORIA NPC

RESPONDENT

JUDGMENT

- [1] This is an application of spoliation for urgent relief to restore the agreement and operational arrangement between the parties.
- [2] The relationship between the Applicants and the Respondent is predicated upon a contract and an operational arrangement. In terms of the agreement and operational arrangements the parties had certain rights and responsibilities. The Applicants are required to pay 5% of their turnover to the Respondent. Further, the Applicants are entitled to order meals prepared by the Respondent's kitchen for their patrons through a constant and uninterrupted point of sale system, a sales code/point and access card to place orders.
- [3] From at least 2019 until the 04th of March 2026, the Applicants enjoyed free and undisturbed possession of the right to use the Respondent's point of sale system and the Applicants' order code to order food from the Respondent's kitchen. An implied term of the agreement is that the Respondent cannot act unilaterally and take the law into its own hands by removing operational arrangements making it impossible for the Applicant to trade and do business as usual. As a result, the Applicant alleges that she is being forced out of business and cannot fully service customers, resulting in a loss of revenue and customers.
- [4] The Applicants admit that there exist other disputes with the Respondent. However, the Applicant was in peaceful and undisturbed possession until the Respondent opted to resort to self-help by removing the Applicants' ability to order food for its customers from the Respondent's kitchen by means of its point-of-sale system and order code.
- [5] The Respondent took this drastic action in the absence of a court order authorizing it to take such action in an effort to cripple the Applicants' business - resulting in irreparable harm and forcing them to vacate the premises without a valid court order.

- [6] The Respondent avers that the Applicants are able to order food from the Respondent's kitchen and therefore has not breached any operational arrangement. However, it is not in dispute that the Respondent has taken the access card and denied the sales code/point as set out in paragraph 49 of the Founding Affidavit; –

“The Respondent's manager attended to the restaurant on 4 March 2026, after I had already left for the day, and instructed the staff to hand over the sales card and that no further orders were to be processed.”

- [7] The Respondent further relies on **Telkom SA Ltd v Xsinet (Pty) Ltd 2003 (5) SA 309 (SCA)**; that the right to place orders is a personal right.
- [8] The facts of the current matter materially differ with those set out in **Xsinet**. In the present matter the Respondent's physical removal of the sales/ access card and instruction to halt orders amounted to a direct interference with the Applicants' possession and operational control justifying a spoliation order.
- [9] By contrast in **Xsinet** there was no physical dispossession or interference with property, but merely a disruption of service which the court found insufficient in that case to constitute possession for purposes of spoliation.
- [10] As a result, I am satisfied that on a balance of probabilities a case has been made out for spoliation and direct that the *status quo* be restored.

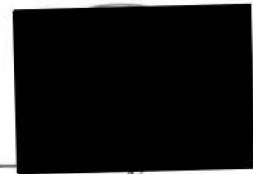
[11] **Court Order:**

[11.1] This matter is enrolled as urgent;

[11.2] The Respondent is ordered to:

- [11.2.1] Immediately return to the Applicants the sales card;
- [11.2.2] Immediately restore the operational arrangements which existed prior to 5 March 2026 between the Applicants and the Respondent;
- [11.2.3.] Restore the Applicants' ability to place and process food orders through the Respondent's kitchen and point-of-sale system, including the use of the Tutto Vino sales code;
- [11.2.4] Permit the preparation and serving of meals from the Respondent's kitchen to patrons of the Tutto Vino establishment in the same manner as occurred prior to 5 March 2026.

[11.3] The Respondent is ordered to pay the costs of this application on a party and party basis on scale B for Counsel's fees.



R. FRANCIS-SUBBIAH

Judge of the Gauteng High court: Pretoria

Hearing: 25 March 2026

Judgment: 25 March 2026

Appearances

For Applicant: Adv. WC Carstens

Instructed by: Martin Attorneys

For Respondent: Adv EG Malherbe

Instructed by: LNP Beyond Legal