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REPUBLIC OF SOUTH AFRICA



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

Case No: 061502-2026

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE 30 MARCH 2026
SIGNATURE

In the matter between:

In the matter between:

WASQAR TRADING (PTY) LTD

APPLICANT

and

BRONKHORSPRUIT MALL (PTY) LTD

RESPONDENT

JUDGMENT

[1] The matter is considered to be urgent in light of the Respondent locking up the premises on 07 March 2026 depriving the Applicant from continuing to engage in business resulting in a loss of customers attending at the shop and thereby a loss of revenue.

[2] It is common cause that the Applicant was in peaceful and undisturbed possession of the premises described as:

“Shop No: 5[...]

Internal area, measuring approximately 308m² (three hundred and eight square meters), as per centre plan annexed hereto marked “A”, forming part of the development situated on Portion 17 of the Farm Nooitgedacht, 525 JR, Corner of general Louis Botha and R25, Bronkhortspruit.”

before the Respondent locked the premises with a chain and padlock, which dispossessed the Applicant of the property.

[3] The question before the Court is whether the dispossession was lawful.

[4] The requirements for a Spoliation Order are:

- 1) That the Applicant was in possession of the property; and
- 2) That the Respondent deprived him of possession forcibly or wrongfully against his consent (as set out in ***Erasmus Superior Court Practice D7 – 6***)

[5] The Applicants were dispossessed of the property without their consent, and without due legal process being followed.

[6] It is trite to note that a notice to vacate a property encourages voluntary compliance as it can be seen to be brought in good faith, and results in procedural fairness.

[7] The Respondent relies on the lease agreement between the parties, in particular clause 34 quoted as follows:

“Any breach by the Lessee of the terms and conditions in this Offer to Lease shall entitle the Lessor, without prejudice to any other rights and without giving notice, either to cancel this Offer to Lease, or to claim specific performance. The Lessor shall be entitled to recover from the Lessee all legal costs incurred by it, including Attorney and own client charges, hereof, from the Lessee. The Lessor shall be entitled to institute any claim for the payment of rental or other amounts and/or damages, in any court having jurisdiction.”

[8] The Respondent, however, cannot resort to self-help by locking the Applicant out of the property under the auspices of eviction, notwithstanding that clause 34 of the lease agreement (quoted above) provides for proceeding with legal action without giving notice.

[9] On their own version, the Respondent has placed the Applicant on terms contained in letter dated 25 February 2025 (transmitted to the Applicant on 25 February 2026), to launch a liquidation application with an eviction notice.

[10] The terms read as follows:

“We confirm that if your breach is not rectified, our client will proceed to cancel the lease agreement with immediate effect and demand payment of R102 000-00 immediately and further to request that you vacate the premises immediately

failure to do so will resolve our client in proceeding to launch a liquidation application together with an eviction notice as well as an application for sequestration to the sureties who committed an act of insolvency in writing, as such, we trust such drastic measures are not necessary and that you would comply with this reasonable request.”

[11] A reasonable interpretation submitted is, if the Applicant made payment of the abovementioned R102 000.00, the arrears would be expunged and the contract proceed.

[12] In this instance, the Applicant has expunged all the arrears, and approaches the urgent court with proverbial “clean hands”.

[13] The respondent, by stating that they intend to evict the Applicant by notice thereof, has acknowledged that the Applicant was in possession of the property. Notice to vacate encourages voluntary departure and avoids legal costs. It is indicative of showing good faith and procedural fairness.

[14] Any self-help to evict the Applicant by locking up the premises is disingenuous and results in unlawful conduct.

[15] The urgent application succeeds and the Court Order is as follows:

[15.1] The Respondent is ordered to forthwith restore peaceful and undisturbed possession to the Applicant of the shop premises situated at shop 58, Bronkhorspruit Mall and which trades as SOHI HOUSE & HOME.

[15.2] The sheriff of the court is ordered to forthwith open up premises mentioned in (2) above and to hand free and undisturbed possession of same, to the Applicant’s representative.

[15.3] Respondent is ordered to pay Applicants costs of suit on Scale B.

R. FRANCIS-SUBBIAH

Judge of the Gauteng High court: Pretoria

Date of hearing: **24 March 2026**

Date of Judgment: **24 March 2026**

Appearances

For Applicant: Adv. Y Omar

Instructed by: Omar Attorneys

For Respondent: Adv. J Gregory

Instructed by: Frik Van Schalkwyk Attorneys Inc