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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION: BHISHO**

(1) REPORTABLE: YES

**(2) OF INTEREST TO OTHER JUDGES:
YES**

DATE: 24 MARCH 2026

SIGNATURE:

CASE NUMBER: 2025-247025

In the matter between:

GWIBA GQOBO

Applicant

And

LSB GROUP

Respondent

Summary: *Rule Nisi* – Rule 6(12) - Uniform of Rules of Court - urgency, hearsay evidence – Law of Evidence Amendment Act 45 of 1988 *mandament van spolie* – *lawful and undisturbed possession* –. *Rule Nisi* confirmed and application granted.

JUDGMENT

NTLAMA-MAKHANYA AJ

- [1] On the 17th of December 2025, an application for an interdict was instituted on an urgent basis in terms of Rule 6(12) of the Uniform Rules of Court against the respondent relating to his unlawful dispossession of the Tata Truck that belong to the applicant. Pursuant to those proceedings, a *rule nisi* was granted against the respondent and for him to show cause on the 29th of January 2026 why it should not be made final. The applicant was legally represented whilst the respondent self-represented himself.
- [2] In this application, the following orders were sought and prayed for by the applicant:
- (i) *Confirmation of the rule nisi that was granted on the 17th of Dember 2025.*
 - (ii) *The declaration of the dispossession of the applicant's motor vehicle, [namely] a Tata Truck bearing registration letters and numbers K[...] to be unlawful.*
 - (iii) *ensure that the applicant has full and uninterrupted access to the Truck without any further interruptions; and*
 - (iv) *Declare that the respondent pays the costs of this application because he is its sole cause.*

- [3] This application was opposed by the respondent and disputed the (i) urgency of the application, (ii) it was based on hearsay evidence and (iii) *mandamus van spolie* were not applicable in these proceedings.

BACKGROUND

- [4] On the 17th of December 2025, the applicant obtained an interim interdict against the respondent wherein, inter alia, he was interdicted from unlawfully depriving the applicant of the lawful possession of the Tata Truck model LPT 1518 with license registration letters and K[...] (Truck). Respondent is a commercial entity engaged in the business of motor vehicle sales. The parties, therefore, entered into an oral agreement for the sale of the said Truck on the 04th of October 2025 at an amount of R180 000.00. The terms of the agreement were that the applicant will pay a 50% deposit in the amount of R80 000.00. The rest of the outstanding balance of R100 000.00 was to be settled within calendar month from the date of initial payment. On delivery of the said Truck on the 17th of October 2025, the applicant took its possession. However, the Truck turned out to have mechanical problems and the applicant attended the latter with his own money. Further, the crux of this issue came on the 10th of December 2025 when the Truck was driven by Olwethu Mntwini (Driver) from Engcobo to East London. On his way, it was intercepted by the respondent near Beacon Bay and took over its possession. Thereafter, he informed the applicant through a WhatsApp message that he took over the Truck from the Driver due to his failure to pay the outstanding amount despite the constant demands. Several attempts and exchange of messages to resolve the matter amicably proved fruitless, which led to the institution of an urgent application with its consequent result of the order of the *rule nisi*.
- [5] This background is enough for identification of issues that are the subject of dispute in this matter.

ISSUES

[6] This Court is to determine whether:

- (i) *The applicant was unlawfully deprived of the possession of the Truck.*
- (ii) *The respondent had unlawfully dispossessed the Truck from the applicant.*
- (iii) *Admissibility of hearsay evidence is justifiable.*
- (iv) *Urgency in motion proceedings.*
- (v) *The application of the principles of mandament van spolie.*

[7] With these issues, the applicant raised a point *in limine* relating to Mr Biyana's legal status as the respondent's representative in these proceedings. Let me therefore address this issue before getting into the merits of this application.

Point in limine

[8] The point in limine sets the pathway for addressing issues that may negatively impact the overall fairness of the trial. The applicant in this case submitted that Mr Biyana did not have *locus standi* to institute these proceedings without the notice or minutes authorizing him to act on his behalf. I must also state that Mr Biyana is the sole Director of the LSB Group. I must also allay the concerns that may arise relating to the cause of action, which in this instance, is the case for the point *in limine*. It is settled that the cause of action must exist at the time of the institution of proceedings. It is only in exceptional circumstances that it may be considered after the case has been made against the respondent, such as in

response to answering, replying or heads of arguments. In this regard, Lamont J in *Pangbourne Properties Ltd v Your Life (Pty) Ltd*¹ who held:

*“Causes of action which have arisen after the issue of summons have been allowed to proceed where for example those causes of action are joined to the existing ones in the same action. Amendments are allowed without deciding the substantive issue. What is required is that the pleadings contain a cause of action which in term contain a justiciable issue after the amendment has been allowed. The authorities which have allowed amendments entitling a plaintiff to prosecute an action which it did not have at the time of institution of action given an indication of the attitude of the Courts to the substantive issue. It is useful to have regard to such cases for that reason,”*² (emphasis mine).

- [9] At face value this might be viewed as a procedural irregularity that limits any potential to beyond to establish the merits. I do acknowledge the significance of adherence to rules, thus, Lowe J in *Tshiki v Buffalo City Metro Municipality*³ on an appeal from the judgment of the Court *a quo* in *Tshiki v Buffalo Metro Municipality*⁴, was critical of the latter Court for limiting itself to technicality. The case involved the de-registration of a company and its legal capacity to institute proceedings whilst still deregistered. Whilst in that case the trial Judge failed to consider the substance of the application, Lowe J saw no reason for not addressing it.⁵ This is the approach in this case as well to go beyond the technicalities that may limit the determination of the merits of the case.

¹ [2013] 4 All SA 719 (GSJ).

² *Ibid* paras 32-33.

³ [2018] ZAECHGC 122.

⁴ [2017] ZAECELLC.

⁵ *Tshiki* (note 3 above) paras 31, 39 and 41.

[10] Let me revert to the issue in question and situate the point *in limine* within the context of the application of Rule 7(1) of the Uniform Rules of Court which provide:

“Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorized so to act, and to enable him to do so the court may postpone the hearing of the action or application.”

[11] In this case, Mr Biyana, as the sole director of the respondent raises the question whether he has legal capacity to file affidavits and institute these proceedings? It is settled that a deponent to the affidavit and institution of proceedings on behalf of the company must be authorized by the Board of Directors. It is not for this Court to determine how the internal processes of the respective companies should be undertaken. Of importance in this case, is whether a confirmatory affidavit was submitted as evidence of such authority being bestowed on him. I am also raising this matter and emphasizing with an open mind that sole directorships are not thrown out of the framework of the law. I am also not to articulate any reason for establishing facts that could have resulted in the status of such companies or corporations. Since Mr Biyana’s legal standing was disputed by the applicant, thus, during arguments, he dismissed the point *in limine* as the legal basis because of his status as the sole director of LSB Group.

[12] In this matter, the determination of the rationality of the point *in limine* fits within the context of the application of Rule 7(1) as noted above. The application of the said Rule was contextualized by Streicher JA in *Ganes v Telkom Namibia Ltd*⁶

⁶ 2003 (4) SA 615 (SCA).

which was cited with approval by Kganyago J in *Tshidiso Business Enterprise CC v Standard Bank of SA*⁷ who held:

“In the present case the proceedings were instituted and prosecuted by [Mr Biyana] purporting to act on behalf of the respondent. ... [He] stated that he was a ... director of the [LSB Group] and have legal capacity to duly represent the [LSB Group/ respondent]. That statement was challenged by the [applicant]. It must, therefore, be accepted that the institution of the proceedings were [not] duly authorized. In any event, rule 7 provides a procedure to be followed by a [party] who wishes to challenge the authority of an attorney who instituted motion proceedings on behalf of an applicant. The [applicant] availed himself of the procedures provided in terms of Rule 7(1).”⁸

[13] Streicher JA settled this matter and confirmed the essential requirements that are needed to ensure compliance with the validly instructed authority to represent the party in proceedings. However, this Rule is not to be interpreted in isolation of the context within which this matter arose. It is my view, despite Mr Biyana’s sole directorship of the LSB Group as the “commercial business”, he failed to meet the requirements of Rule 7(1). His arguments therefore stand to be dismissed.

[14] The point *in limine* set the bar for this Court to determine the submissions of the parties.

PARTIES SUBMISSIONS

Applicant

⁷ [2025] ZALMPPHC 5.

⁸ *Ibid* para 19.

[15] The applicant submitted that the respondent's conduct of taking the Truck was never part amongst other the conditions of their agreement. In addition, his attempts and plea for the return of the truck were in vain. He was therefore left with no other option than to institute these proceedings on an urgent basis. He substantiated his submission and held that he was in lawful and peaceful possession of the Truck until his deprivation by the respondent. It was therefore wrongful and without consent that the respondent deprived him of his lawful possession of the Truck. As the argument goes, the applicant submitted that this Court is enjoined to show its discomfort towards the conduct of the respondent.

[16] The applicant further asserted that the deprivation of the lawful possession of the Truck by the respondent had dire consequences for him including his Driver (Olwethu). He argued that they depend on the Truck for living. The alleged consent to the handing over of the Truck was based on a legitimate purpose that the respondent will reimburse him for all the costs which were associated with payments relating to the fixing to the Truck's mechanical problems. He further contended that his success for a temporary relief on the 17th of December 2025 served as a *prima facie* proof of the urgency of the matter which needed confirmation in these proceedings.

Respondent

[17] The respondent submitted that he is the Managing Director of LSB Group. He submitted that the order of the 17th of December 2025 should be reconsidered because the entire application was based on unconfirmed hearsay evidence that was relayed by the Driver to the applicant. He submitted that such evidence was inadmissible and should be disregarded. The Driver consented to the Truck being taken and was never forced to hand over it. He sought to address the application of section 3(1) of the Law of Evidence Amendment Act 45 of 1988. However, based on the discretion that bestowed on this Court, this issue will be addressed

below on the merits of this case. In sum, he submitted that this application is defective because:

- (i) *The applicants' own documents contradicted the assertion of urgency which justified an adverse inference.*
- (ii) *The dispute of facts including those relating to urgency render this matter unsuitable for motion proceedings; and*
- (iii) *The application ought to be dismissed on urgency alone.*

[18] His broad submission was that the application was defective and did not stand any legal scrutiny.

[19] Therefore, the parties' submissions are not "double-edged" as they sought redress on different terms which are not distinct from each other. In the evaluation of these submissions, I will analyze them chronologically to ensure coherence of the judgment.

ANALYSIS

[20] The applicant sought restoration of the lawful possession of the Truck, that was unlawfully taken from his Driver with a direct impact on him. On the other hand, the respondent sought reconsideration of the order granted by Nobatana AJ on the 17th of December 2025. The structure of this analysis will first deal with the issue of urgency because it is the basis of this application. Secondly, it will address the admissibility of hearsay evidence in motion proceedings. Lastly, to further deal with the main content of this application: *mandamant van spolie*. This principle is analyzed as the last principle because it tightens the arguments raised about the rationality of the afore-grounds which are of equal importance to this application.

Urgency in motion proceedings

[21] The substance of urgency in this matter which is regulated by Rule 6(12) of the Uniform Rules of Court was decided in the order of the 17th of December 2025. In that order, the respondent had to show cause and reasons in these proceedings why it should not be made final. In these proceedings, the respondent argued for reconsideration of that judgment because it was granted in inconvenient periods / times within which to respond to application which included amongst others, the filing of affidavits. Besides, the urgency was self-created because of the applicant's failure to comprehend the chronology of events that resulted in the taking over of the Truck. He argued that "urgency is not established ... on mere procedural incantation; it is a jurisdictional fact that must be established on papers." In his argument with reference to this issue, he, amongst other judgments cited the judgment by Tuchten J in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo*⁹ who held:

*"It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. ... Once such prejudice is established, other factors come into consideration [which] include (but are not limited to): whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing, other prejudice to the respondents and the administration of justice, the strength of the case made by the applicant and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."*¹⁰ (emphasis mine).

⁹ [2014] 4 All SA 67 (GP).

¹⁰ *Ibid* para 64.

Judge Tuchten further stated and touched on the content of the applicant's case with reference to urgency and held:

“The case for the applicant is that the respondents are seeking unlawfully to take away its lawfully derived power to govern the municipality at a local government level. That case, if ultimately substantiated, is directed at redressing nothing less than a serious violation of the rule of law. The prejudice to the applicant is manifest. Every action taken by someone who is in law a usurper of power is unlawful and, especially where third parties are involved, might give rise to complex questions of fact and law. Where the funds of a municipality are disbursed by such a usurper, recovery might be attended by serious problems and even be impossible. I find that the applicant has shown that it will suffer prejudice which cannot be redressed at a hearing in due course,”¹¹ (emphasis mine).

- [22] In this case, the respondent describes himself as a “commercial business” entity that is involved in the selling of motor vehicles. This is the authority that Judge Tuchten rejected because it entrenches the usurpation of authority over those with less authority. It is further deduced from Judge Tuchten that on an allegation of the lack of urgency by the respondent, it is not disputed in this judgment that it is the applicant that is required to explicitly justify the urgency in terms of Rule 6(12). According to me, the applicant provided sufficient reasons that justify the urgency of this matter. The contention is motivated by the fact the issue in this application was never about the existing sale of agreement. The primary issue was the unlawful dispossession of the Truck from the applicant. The substance of the reasons provided and its link to the provisions of Rule 6(12) are of fundamental importance because they entail an objective assessment by the Court to guard against the abuse of urgent processes. Notshe AJ in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*¹² held:

¹¹ *Ibid* para 65.

¹² [2011] ZAGPHC JHC.

“The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant [must] set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.”¹³ (emphasis mine).

- [23] It seems to me without repetition and as correctly articulated by Notshe AJ, the rules of urgency are constituted by: (i) circumstances which renders the matter urgent must be explicitly stated; (ii) reasonable belief of not getting substantial redress at the hearing in due course; (iii) Court to be cautious whether urgency has been established and (v) urgency must not be self-created.¹⁴ In these circumstances, the standard of proof, although it is on a balance of probabilities, should be interpreted in a way that justify the urgency of the issue. In this instance, it is common cause that the parties know each other but in terms of economic balance, they are not on an equal standing. Therefore, as articulated by the respondent during oral argument, they have a relationship of trust between them. Thus, despite the said relationship, in terms of economic equality and the unlawful dispossession of the Truck showed the power imbalance between them. The imbalance is an affirmation of the urgency of this matter to ensure the justified substantial redress without any delay. It is a common understanding that the economic value of any vehicle involves its depreciation at the prejudice of the affected party. In this case, the continued dispossession of

¹³ *Ibid* para 6.

¹⁴ *Ibid*.

the Truck by the respondent does not bring any economic value regarding its status in the financial markets. This makes this application urgent, particularly with what it seems to me to be a disregard of the framework that regulates the principles of urgency. I found it difficult to understand the substance of the argument against urgency. The applicant did not deny that payment was not effected in full including the agreement itself. The respondent has failed to provide justifiable reasons that could have met the minimum threshold against the prescripts of Rule 6(12).

Admissibility of hearsay evidence

[24] The admissibility of hearsay evidence is one of the basic principles that seek to determine the credibility of the person relaying such evidence as opposed to the one who is giving evidence. Broadly, hearsay evidence is inadmissible due to various factors such as unreliability of such evidence which may subsequently mislead the court. It is a standing principle that the introduction of evidence in motion proceedings is by way of affidavits. Reddy AJ in *Mabale v Verey*¹⁵ affirmed the principle and went on to state that “save for its application in urgent matters.”¹⁶ The promulgation of The Law of Evidence Amendment Act 45 of 1988 (Amendment Act) cures the missing link between the evidence that is introduced in affidavits and the one I will refer to as “orally” obtained evidence. The Amendment Act provides in section 3 that:

(1) Subject to the provisions of any other law, Hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless:

¹⁵ [2023] ZANWHC 147.

¹⁶ *Ibid* para 44.

- (a) *Each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings.*
- (b) *The person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; [and]*
- (c) *The Courts [are enjoined] to have regard to (i) the nature of the proceedings; (ii) the nature of the evidence; (iii) the purpose for which the evidence is tendered; (iv) the probative value of the evidence; (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends; (vi) any prejudice to a party which the admission of such evidence might entail; and (vii) any other factor which should in the opinion of the court be taken into account.*

[25] This provision entails a holistic understanding of all the relevant factors relating to the implications of alleged hearsay evidence. It affords the court an opportunity to exercise its discretion to determine how much weight it should place on such evidence. In this case, as the respondent argued that the Driver relayed hearsay evidence to the applicant and was therefore inadmissible. The application of hearsay evidence in motion proceedings was foregrounded and anchored by Rugunanan J in *Eastern Cape Development Corporations v Occupiers of Erf 117 and Erf 110 Umtata, Windsor Hotel, 36 Sutherland Street, Mthatha*.¹⁷ In that case, the Judge shared the sentiments that hearsay evidence may be excluded under normal circumstances. However, he went on to state that:

“Hearsay evidence is more readily admitted in urgent matters, but this does not mean that the requirements of the Evidence Act may be

¹⁷ [2023] ZAECKMHC.

*bypassed. It merely means that a court, having regard to exigencies on the urgent roll, will approach the admission of hearsay with some degree of latitude, if in appropriate circumstances, it is properly advanced and motivated. Differently put, a proper motivation must be set out in an affidavit by the party relying on the hearsay matter having regard to the requirements in section 3(1) of the Evidence Act. But this is not the only basis upon which the applicant's reliance on the hearsay evidence fails."*¹⁸

[26] In this case, I found it improbable that the evidence communicated to the applicant was hearsay. The respondent, on papers and during oral arguments boldly stated that "he took the truck from Olwethu (Driver)." Thereafter, he immediately sent messages to the applicant to advise him that he took over the Truck. The probative value of the alleged hearsay evidence that was transmitted by the Driver, which was also not disputed by the respondent, gave credence to the truthfulness of the relayed information to the applicant. I am not to doubt the credibility of the Driver's evidence as it was also confirmed by the respondent. My discretion to admit the "hearsay evidence" was justifiable in these circumstances. I must state although the respondent did not violently take over the Truck from the Driver, he missed the point. The crux of the issue was his taking of the possession of the Truck from Driver at the prejudice, not only of the applicant but the undermining of what I refer to as the 'interest of justice'. I am of the view that the latter interests are incapsulated in section 3(1) of the Amendment Act. If it was not for justifiability of hearsay evidence which needed the exercise of the discretion by this Court, it is my affirmative view that legislature, as the law-making body, could not have seen the need for the Courts to consider such evidence. It is also not disputed by this Court the humanity the respondent showed the Driver and his offer for him to sleep at his place of residence in East London. However, it is deeply concerned by what appeared to be the execution of authority over the Driver which therefore, amounted to self-help. This brings me to the crux of the prayer by the applicant.

¹⁸ *Ibid* paras-28-31.

Mandament van Spolie

[27] It is stated and settled that no person may be deprived of property without the due process of law. In this regard, the principle of *mandament van spolie* serves as a catalyst to remedy any disturbance of the peaceful and undisrupted possession of the property. The Court in this case considered the application of the principle of *mandament van spolie*. The respondent brought to the attention of this Court the judgment by Binns-Ward J in *Van Rhyn v Fleurbaix Farm (Pty) Ltd*¹⁹ which provided an insight into the said principle as the Judge held:

*“Mandament van spolie primarily seeks to prevent individuals from taking the law into their hands. It prevents unlawful dispossession of property without consent, a court order or any other legal basis. It is about protecting and restoring peaceful and undisturbed possession before the merits of the case can be considered. Therefore, there must be actual possession and actual unlawful dispossession of the property. ... The fundamental purpose of the remedy is to serve as a tool for promoting the rule of law and as a disincentive against self-help.”*²⁰

[28] This is the basic point in this case. The respondent framed his argument against *mandament van spoliatio* within the framework of a contractual dispute. He argued for the retention of the Truck until the final payment was made. This meant misdirection relating to the legal question raised by the applicant in this matter, which was not about the enforcement of a contract. The primary issue, if it was not for the respondent unlawfully dispossessing the applicant of the Truck, the issue of *spoliatio* could not have arisen. The relegation of this issue to contractual obligations diminishes the legal question raised herein. I do not intend to traverse this issue. Even if that was to be the case, the argument for the

¹⁹ 2013 (5) SA 521 (WCC).

²⁰ *Ibid* para 7 (footnotes omitted).

retention of the Truck does not absolve the respondent from ensuring compliance and following due processes of law to have the Truck handed over to him. I repeat, he would still be required to apply for a Court Order for it to be returned to him. In these circumstances, as I affirmatively do, no property had to be repossessed without a Court Order despite the type of any agreement that was entered into by the parties.

[29] Returning the gist of the *mandament van spolie* the respondent further brought to the attention of this Court the judgment by Madlanga J in *Ngqukumba v Minister of Safety and Security*²¹ which turned to be unsupportive of his argument against *spoliation*. In that judgment, Madlanga J held:

“Possession of the vehicle by the applicant pursuant to its return in terms of a court order would only be unlawful if it were established that he did not have lawful cause to possess it. That is a conclusion that can only be reached after an enquiry into the facts surrounding the applicant’s possession. Before that enquiry, one is not in a position to say the applicant’s possession of the vehicle will be unlawful – it may or may not be, depending on the result that the enquiry would yield. The question that arises is: in proceedings for a spoliation order, is it proper to hold that enquiry? I say not. That would be enquiring into the merits of the lawfulness of the applicant’s possession. Those merits are irrelevant in proceedings for a spoliation order: the despoiler must restore possession before all else. Self-help is so repugnant to our constitutional values that where it has been resorted to in despoiling someone, it must be purged before any enquiry into the lawfulness of the possession of the person despoiled. ... [And] that restoration of possession may even be to a person who might eventually be shown to be a thief or robber. The return to the applicant of the tampered vehicle, which may be possessed lawfully, is no different,”²² (emphasis mine).

²¹ 2014 (7) BCLR 788 (CC).

²² *Ibid* para 21 (footnotes omitted). Madlanga J in *Ngqukumba* cited with approval Cameron JA in *Tswelopelo Non-Profit Organisation v City of Tshwane Metropolitan Municipality* [2007] ZASCA 70 para 21 who held: “... Under (*mandament van spolie*), anyone illicitly deprived of property is entitled to be restored

The crux of spoliation principles was earlier dissected by Mhlantla JA in *Ivanov v Northwest Gambling Board*²³ who held:

“The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant – that is why possession by a thief is protected. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant as that would go to the merits of the dispute.”²⁴ (emphasis mine).

[30] It is, therefore, a common cause that the applicant was in lawful possession of the Truck until his deprivation by the respondent. The issue which had been put to rest by the above judgments was the fact that even if the applicant was a thief, the Truck needed to be restored to him. The reasons for the dispossession are immaterial because they will be stepping into the merits of the case. The non-payment of the outstanding balance of R100 000.00 dug deeper into the merits of this case which are of no relevance. I am also not to make an issue about the applicant’s consent for the Truck to be taken from him because it does not carry any substance for the *spoliation* principle. The respondent’s argument failed to demonstrate that he was well-abreast with principles of *mandament van spolie*. Binn-Ward J contextualized the basis of spoliation because it involves the unlawful possession of the property before the determination of the merits that constituted the cause of action.²⁵ This is guarded by the foundational values of the Constitution of the Republic of South Africa, 1996 (Constitution) which seeks

to possession before anything else is debated or decided Even an unlawful possessor – a fraud, a thief or a robber – is entitled to the *mandament*’s protection. The principle is that illicit deprivation must be remedied before the courts will decide competing claims to the object or property.”

²³ [2012] ZASCA 92.

²⁴ *Ibid* para 19 (footnotes omitted).

²⁵ Binn-Ward J (note 6 above).

to promote the rule of law as articulated by Binn-Ward J. It carries the weight for the establishment of a stable society that ensures peaceful and regulated mechanisms of resolving disputes. Mokgoro J in *Lesapho v North West Agricultural Bank*²⁶ simplified the quest for the resolve of disputes in an amicable way and held:

“... is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help ... is indeed of cardinal importance.”²⁷

[31] It is my opinion that the distinct nature and the misconceived respondent's arguments for taking over Truck constituted a failure to demonstrate a thorough understanding of the two-stage process in *spoliation* issues. In essence, the facts and legal issues raised by the applicant regarding the *mandament van spoliation*, were the unlawful dispossession of the Truck from the applicant. If this matter was not based on *mandament van spolie* but on contractual basis, the respondent was still required to follow the normal processes in enforcing the contract. Let me reiterate that the enforcement of the contract was not a subject of dispute herein. The principle of spoliation cannot be framed through the lens of enforcing a specific performance in contractual obligation. The applicant had to be restored to his original possession under which he came to be in possession of the said property.

[32] The established facts, which I do not intend to reproduce, showed that the applicant has made a case for confirmation of the *rule nisi* that was granted by Nobatana AJ on the 17th of December 2025. I am equally satisfied that the applicant has fulfilled the interrelationship of the principles that exists between those that regulate urgency *vis-à-vis mandament van spolie*.

²⁶ 1999 (12) BCLR 1420 CC.

²⁷ *Ibid* para 22.

[33] It is therefore essential that I consider the issue of costs. I am not to deviate from the standing principle that costs should follow the results. This Court does not view this litigation as vexatious. It sought to ensure the evolution of the well-established principles on urgency and *mandament van spolie*. They further give content to broader framework of ensuring access to justice. The costs are ordered as they appear below.

[34] In the result, the following order is made:

[34.1] The *rule nisi* which was granted by Nobatana AJ on the 17th of December 2025 is confirmed.

[34.2] The respondent is ordered to return the Tata Truck model LPT 1518 with license registration letters and numbers: K[...] to the applicant within seven (7) of the delivery of this judgment.

[34.3] There is no order as to costs.

N NTLAMA-MAKHANYA
ACTING JUDGE OF THE HIGH COURT
BHISHO

Delivery: *This judgment is issued by the Judges whose name appears herein and is delivered and submitted to the parties /legal representatives. Its date of delivery is deemed 24 March 2026.*

Date Heard: 29 January 2026

Date Delivered: 24 March 2026

Appearances:

Applicant: Advocate D Pitt

Instructing Attorneys: Nieuwoudt-Du-Plessis Inc

East London

Respondent: Lungelo Biyana (In person) for LSB Group