

REPUBLIC OF SOUTH AFRICA



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

Case Number: 2026-068440

Delete whichever is not applicable
REPORTABLE: YES / NO
OF INTEREST TO OTHER JUDGES: YES/NO
REVISED: YES/NO

23 April 2026

DATE

SIGNATURE

In the matter between:

**ANNA MARIA VAN ONSELEN
CONA & KIE (PTY) LTD**

1st Applicant

2nd Applicant

And

ANNA SOPHIA SMIT

1st Respondent

ANNA SOPHIA SMIT NO

2nd Respondent

ARNO BASSON NO

3rd Respondent

PIETER GERHARDUS VILJOEN NO

4th Respondent

JOHANNES AUGUSTUS DU PLESSIS NO

5th Respondent

THE MASTER OF THE HIGH COURT, PRETORIA

6th Respondent

JUDGMENT

Mazibuko J

Introduction

- [1] The applicants seek a spoliation order against the respondents, on an urgent basis, under Part A, for the first to fourth respondents to restore to the applicants full access and control of the immovable property forming part of the Gooseberry Estate under the Gooseberry Trust ('the Trust').
- [2] Under Part B, on a normal course, the applicants seek an order reviewing and setting aside the decision of the sixth respondent, in appointing the third and fourth respondents as trustees and issuing them with Letters of authority. Further, for the first to fourth respondents to account to the applicants for all income received and all expenses incurred in the administration of the affairs of the Trust.
- [3] At this stage, the first applicant, Anna Maria van Onselen ('Van Onselen'), in both her personal and official capacity as a director of the second applicant, Cona & Kie (Pty) Ltd ('Cona'), and Cona, (together referred to as 'the applicants') only proceed with the urgent application. The application is opposed by the first and second respondents, Anna Sophia Smit ('Smit'), in her personal capacity and in her official capacity as a trustee of the Trust, respectively, the third respondent, Arno Basson NO, a trustee of the Trust and the fourth respondent, Pieter Gerhardus Viljoen NO, a trustee of the Trust, (together referred to as 'the respondent'). The fifth respondent, Johannes Augustus Du Plessis NO, cited in his capacity as an Executor and the sixth respondent, the Master of the High Court, Pretoria, ('the Master') are not participating in the application.
- [4] It is common cause that Van Onselen was married to Willem Albertus Smit ('the deceased'), who died in July 2021. In December 2006, the deceased, together with his mother, Smit and Lynnette Brunt who has since emigrated overseas years ago and took no interest in the Trust, established the Trust. In August 2008,

the Trust acquired an immovable property. Van Onselen is an income beneficiary of the Trust.

- [5] The applicants allege that, on the date of the deceased's demise, the Trust terminated and the Trust's assets vested in the capital beneficiaries. She is the deceased's sole heir; accordingly, the estate property vests in her. She has a protected interest in the Trust property and the income stream, and a stake in possession and control of the Trust, since she is a beneficiary of the Trust and a beneficial owner of the Trust property.
- [6] Further, since the demise of the deceased the Trust has not been properly functional. They exercised control over the Trust estate, including the immovable property, by renting out some units of the property, and collecting the monthly rental and administering the property through Cona & Kie as *negotiorum gestor*, with Smit's knowledge or acquiescence, until 27 February 2026.
- [7] According to the founding affidavit Van Onselen states that on 27 February 2026, whilst Van Onselen and her husband were at the Trust property, Smit's armed guards from Arctic Security (Pty) Ltd ('Arctic Security') informed them that Smit had "taken over" the estate. Their entry and exit were blocked. They were locked inside the gate and refused exit.
- [8] On 28 February 2026, access to a scheduled function at the immovable property was obstructed because a caterer was initially refused entry and a key was removed from the lockbox. On 1 March 2026, Smit, with armed guards, ordered Van Onselen's husband to leave, asserting ownership and relying on the letter of authority appointing the trustees. On 16 March 2026, Van Onselen was prevented from removing the lawnmower. The tenants' rental is now redirected to the Trust, and their lease agreements are in the Trust's name.
- [9] It was argued on behalf of the applicants, firstly, that mandament van spolie is a quick and summary remedy, whose purpose will be destroyed if not executed swiftly and effectively. Having gained full control over the Trust's assets, Smit, motivated by the discord with Van Onselen and her previous threats, will prevent Van Onselen from continuing to receive all income received from the Trust.

- [10] In opposing the application, the respondents argued that the mere fact that the mandament van spolie is a speedy remedy does not mean it is automatically urgent. Furthermore, even if Smit prevents Van Onselen from continuing to receive all income from the Trust, this does not render the application urgent as it concerns harm (which may be relevant to interim relief), not the absence of substantial redress in due course. The applicants also unreasonably delayed the bringing of the application.
- [11] Further, the respondents raised points in limine, the misjoinder of Cona & Kie, contending that a *negotiorum gestor* does not possess in the sense required under a *mandament van spolie*. The non-joinder of Arctic Security, which is a necessary party that has a direct and substantial interest in any order the court may grant in this application, because the applicants allege it was instrumental in the spoliation.
- [12] In response to the alleged spoliation, the respondents deny that the applicants were in peaceful and undisturbed possession of the Trust property because tenants occupied the units. They contended that the applicants accessed the Trust property despite the alleged conduct of Smit and Arctic Security. As a beneficiary, Van Onselen has no right to possess or control Trust property or collect Trust rentals unless authorised by the trustees.
- [13] Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter urgent and why they cannot be afforded substantial redress at a hearing in due course.
- [14] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.¹ In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course,

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

the matter will be struck from the roll.² The matter may also be struck from the urgent roll where the court finds that urgency was self-created.

[15] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable harm" for the purposes of establishing an interim interdict.³

[16] *Ordinarily "spoliated victims" are "entitled to approach the Court ... on an urgent basis". The mandament van spolie is by its very nature a speedy and a robust remedy, which should, in my view, ordinarily be afforded some degree of urgency, depending on the facts of the particular matter, in order to be effective.*⁴

[17] In support of their application, Van Onselen asserted that the application is urgent since the first incident occurred on 27 February 2026, followed by another on 16 March 2026. The urgent application was launched on 24 March 2026. The about one-week delay in preparing and launching the application of this nature is not unreasonable, so was it argued.

[18] The applicant must explicitly set forth the circumstances that render the matter urgent and the absence of substantial redress if not heard as a matter of urgency. This is not the equivalent of irreparable harm. Delay will not automatically result in the matter not being considered urgent.⁵

[19] Notwithstanding that the applicants are legally represented and commenced the exchange of correspondence in February 2026 and obtained counsel's legal advice on 5 March, only on 24 March did they launch the proceedings. It can be accepted that the applicants had been fully appraised of their rights and any harm they could suffer with respect to the spoliation, at least since the last incident on 16 March. Therefore, urgency cannot be relied on a week later.

² *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).

³ *Several matters on the urgent court roll* 2013 (1) SA 549 (GSJ).

⁴ *Ross v Ross* 1994(1) SA 865(E), para 872J.

⁵ (*Molosi and Others v Phahlo Royal Family and Others* [2022] 3 All SA 160 (ECM)).

[20] I believe it was not the respondents' failure or delay in responding to the applicants' correspondence of 16 March that necessitated this application. The applicants proffered no explanation for their conduct and the events leading up to the launch of the application. No facts or evidence were placed by the applicants before the court, justifying the urgent attention of the court with regard to the alleged spoliation. In my respectful view the applicants will be afforded substantial redress at a hearing in due course.

[21] The applicant has not passed the threshold prescribed by the provisions of uniform rule 6(12)(b) for the reasons already mentioned. Therefore, the application ought to be struck off the roll due to lack of urgency. For this reason, I need not proceed to determine the issue of merits, including the points in limine.

[22] This brings me to the next issue concerning the costs. The facts of the present matter and the interest of justice justify me to follow the general rule that the successful party should be awarded costs.

[23] Consequently, I make the following order.

Order:

- a) The applicants' urgent application is hereby struck off the roll due to lack of urgency.
- b) The applicants will pay the costs of the application, including that of counsel, one paying, and the other to be absolved.

N G M MAZIBUKO
JUDGE OF THE HIGH COURT
PRETORIA

Heard on: 14 April 2026

Judgment delivered on: 23 April 2026

For the applicants: Adv P Ellis SC

Instructed by: Lombard & Partners Inc

For the respondents: Adv DB du Preez SC

Instructed by: NDBV Inc