

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 034644/2026DATE: 19.02.2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES: NO
 (3) REVISED

In the matter between:

10 **NJILO CONSULTING AND LOGISTICS (PTY) LTD** Applicant
 and
ANTHEM APARTMENTS CO (PTY) LTD 1st Respondent
INANI PROP HOLDINGS (PTY) LTD 2nd Respondent
PROFFICIENT PROPERTY MANAGEMENT 3rd Respondent

J U D G M E N T

MOULTRIE, J: Almost all the relief that the applicant seeks
 in its notice of motion (other than the enrolment of the matter
 20 on urgent basis) is interdictory, and all of it is final in nature.

Prayer 2 seeks an order interdicting the respondents from
 interfering with the applicant's possession, control and use
 the business premises over which (it is common cause) it
 concluded a lease with the first respondent. I will address

this relief immediately. No case whatsoever was made out for any continuing reasonable apprehension that the first respondent will not honour the requirements of the lease with regard to the possession, control and use of the business premises generally.

Prayers 3 and 5 of the notice of motion deal with what is referred to as the applicant's "designated parking area". I will return to this relief in due course.

10

Prayer 4 seeks an interdict to protect the applicant's continued possession, control and use of "additional space" within the business premises. Although this "additional space" is not clearly described in the founding papers, it appears to have been well-understood by both parties what was being referred to. Mr Mureriwa correctly conceded that no case has been made out for the existence of any right, either final or *prima facie*, to continued use of the additional space. Respondent's pleaded case relies on the absence of
20 any provision in the lease giving a right of use of that space.

Prayer 6 of the Notice of Motion is worded as follows:

"... In the event that by the date of this order the respondent has been dispossessed of control, use, possession of the property or parking described in order 1 above, the Respondents and any other

person who may have taken over control of the said property, be and are hereby ordered and directed to restore the Applicant's peaceful and undisturbed possession, use and control of [such property]."

I can only assume that the references to "the Respondent has been" and to "order 1" were intended to be to "the applicant has been" and to "prayers 2 to 5" rather than "paragraph 1". I will return to this relief.

10 Prayer 7 seeks an order that:

"In the event of any alterations to the property having been done by the Respondents or its assigns, then and in that case the Respondent and any other person so acting with its authority and or on its behalf, be hereby ordered and directed to remove such alterations and restore the property to the condition it was before the 12th day of February 2026."

No argument was submitted before me, and no case was
20 made out, with regard to the relief sought in prayer 7.

Prayer 8 contains the standard residual prayer of further and/or alternative relief.

I proceed to consider the aspects of the relief that are interdictory in nature, which I have not already dealt with,

namely the interdicts sought in prayers 3 and 5. The applicant does not plead, nor was it argued before me that the applicant has any legal right (*ius possessionis*) to be given possession of any “designated parking area” at the premises. Mr Mureriwa was ultimately bound to concede that the existence of such a right could only emerge from the lease, and it is more than apparent from the lease that it affords no such right. Although he did attempt to persuade me that *animus possidendi* (i.e. the fact of possession with a particular form of intention), which might give rise to the remedy of the *mandament van spolie*, could under certain unspecified circumstances constitute a *ius possessionis* (i.e. a right to possession), he did not refer me to any authority for this submission, or explain how it would apply in the current circumstances. I consider it so fundamentally and patently flawed as not to require any further consideration.

In the circumstances, the interdictory relief sought in prayers 3 and 5 cannot be granted: an interdict is only available in respect of a right proven to the requisite evidential standard (cf. **Tshwane City v Afriforum 2016 (6) SA 279 (CC) para 141**: “The first requisite is that a ‘right’ must be established, even if open to doubt. If not, then there can be no interim interdict, just as there cannot be a final interdict in due course”). No right has been proven in relation to the use, control and possession of any “designated parking area” on

behalf of the applicant in this case.

That then takes me to the relief sought in prayer 6. This is the only relief in the notice of motion, which could potentially be described as being spoliatory in nature. Mr Mureriwa identified the subject matter of this relief as being limited to the area referred to in paragraph 8.1.4 of the founding affidavit as "our parking area", which the applicant alleges was fenced off by one or more of the respondents at some point since 12 February 2026. However, even accepting in the applicant's favour that it has made out a case for the *mandament van spolie* in respect of this area, it would seem to me that this relief cannot be granted in view of the principles set out by the Supreme Court of Appeal in **Street Pole Ads Durban (Pty) Ltd v Ethekekwini Municipality 2008 (5) SA 290 (SCA)** at paras 15 and 16. Having gone further than merely seeking the *mandament van spolie* and claimed a substantive right to possession (in prayers 3 and 5 of the notice of motion), the applicant has "forced an investigation" of its right to possession of the property that forms the subject matter of the relief. The question becomes whether or not the applicant has established such a right, applying the principles applicable to the determination of factual disputes in applications for final relief under the well-known *Plascon-Evans* rule. In other words, it is no longer open to an applicant, having 'opened the door' to a discussion of its

right to possession of property (i.e. the *ius possessionis*) to rely simply on its *animus possidendi*. This is well-established law, and it is inappropriate for the Court to decide the matter on the basis of whether the applicant has established the requirements for the mandament van spolie.

As I have mentioned earlier in dealing with prayers 3, and 5 it has already been conceded that the applicant has no right (arising from the lease or otherwise) to any particular parking
10 area, and it is abundantly clear from the answering affidavit that, as matters currently stand, the applicant continues to have general access to parking at the premises.

In the circumstances, none of the relief sought by the applicant may be granted. For the avoidance of doubt, I wish to emphasise that the factual findings that I have made in the application before me today, are not intended to be of general application in any other matter and are simply conclusions that I have reached on the basis of the evidence before me.

20

As a result, my finding that the applicant has failed to establish a right to any particular parking places or "designated parking area", is one that is based solely on the evidence that served before me. And to the extent that it may be implicit in this judgment that I have not excluded the possibility that the applicant has a right to park in the parking

area of the premises generally (as opposed to a right to park in any specified area), this is not intended to be a pertinent finding regarding the scope of the contract, since that was not the issue before me.

The general principle of costs is that they should follow the result. Mr Mureriwa made a spirited argument before me that due to the respondent's conduct in advance of the litigation, the applicant should not be mulcted in costs. Whatever the
10 merits and demerits of the parties' conduct before and during the litigation may have been however, the fact is that court proceedings are serious matters requiring careful attention, and careful attention in this case had to be paid to the formulation of the relief that was sought in the notice of motion.

The respondent's conduct in relation to other relief that the applicant might have sought, or might in future seek, is therefore not relevant in considering whether the applicant
20 should not be mulcted in costs despite its having been the unsuccessful party. The bottom line in this instance is that the applicant is the unsuccessful party in relation to the relief that it sought, and it should be mulcted in costs.

In the circumstances, I make the following order:

1. The application is dismissed.

2. The applicant is to pay the respondents' costs, including the costs of counsel on scale "A".



MOULTRIE, J

JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 19 February 2026

REVISED: 27 February 2026