



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

Case Number: 2026-059752

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

22 May 2026

In the matter between:

**THE EDUCATION, TRAINING, AND DEVELOPMENT PRACTICES
SECTOR EDUCATION AND TRAINING AUTHORITY (ETDP SETA**

Applicant

and

SKG AFRICA (PTY) LTD

Respondent

JUDGMENT

Mdalana-Mayisela J

Introduction

[1] This is an urgent application in which the applicant, the ETDP SETA (a public entity), seeks a *mandament van spolie* against the respondent, its former landlord, SKG Africa (Pty) Ltd. The applicant does not seek restoration of occupation of the leased premises

at 45 Mooi Street, Johannesburg. It seeks an order compelling the respondent to grant it access to the premises solely to identify, secure, and remove its movable property, including office furniture, IT servers, and critical statutory records.

[2] The respondent opposes the application on several grounds, including that the matter is not urgent because any urgency is self-created, and more critically, that the applicant has failed to make out its case for spoliation and interdict in its founding affidavit and has impermissibly sought to remedy that defect in its replying affidavit.

The factual background

[3] The facts are largely common cause. The parties concluded a written Service Level and Lease Agreement (“SLLA”) on 13 June 2024. The applicant occupied the premises from July 2024. In April 2025, the applicant’s employees vacated the building, citing health and safety concerns. The applicant’s movable property, however, remained in the building. The applicant continued to pay the rental until August/September 2025.

[4] On 29 November 2025, the applicant terminated the SLLA with immediate effect. The respondent disputes the validity of this termination.

[5] The central factual dispute concerns what happened on 9 December 2025. The applicant alleges that on this day, its officials were prevented by the respondent’s security personnel from accessing the premises and removing their property.

[6] On 15 December 2025, the respondent issued a summons in the Johannesburg Regional Court for arrears of rent, which included an automatic rent interdict in terms of section 31 of the Magistrates’ Courts Act 32 of 1944. The Sheriff served this summons on 18 December 2025 and attached the movable property found on the premises.

[7] After a letter of demand dated 6 February 2026 and the respondent’s refusal dated 10 February 2026, the applicant filed the present application on 13 March 2026. The applicant filed its replying affidavit, together with confirmatory affidavits from three of its officials (Mokoena, Chirwa, and Mudenda), on 22 April 2026.

Urgency

[8] The respondent argues that the matter is not urgent, citing the delay between the alleged spoliation on 9 December 2025 and the application’s launch on 13 March 2026. Rule 6(12)(b) of the Uniform Rules of Court requires an applicant in urgent proceedings to set forth explicitly the circumstances which render the matter urgent and the reasons why the applicant cannot obtain substantial redress at a hearing in due course. The court in *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another*¹ cautioned that the degree of relaxation of the rules must be commensurate with the exigency of the case, and mere lip service to Rule 6(12) will not do. The applicant did not truncate the normal

¹ 1977 (4) SA 135 (W) at 137.

time periods for filing answering affidavits, precisely to avoid prejudicing the Respondent.

[9] The applicant's explanation for the delay in launching this application includes the appointment of a new Accounting Authority in September 2025, the appointment of a new Acting CEO on 17 November 2025, and internal consultations. However, the founding affidavit is notably silent on why, if the IT infrastructure was its "*lifeblood*," no urgent steps were taken for over three months.

[10] In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*² it was held that the delay in instituting proceedings is not, on its own a ground for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. A crucial test for urgency is "*whether, if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress.*" If the applicant can be afforded substantial redress in due course, the matter is not urgent.

[11] The applicant states that it would not be afforded substantial redress at a hearing in due course because the alleged unlawful deprivation is ongoing. The deprivation of access to statutory records and IT infrastructure is a continuing violation. Each day the applicant is denied access, a fresh harm occurs. To force the applicant to wait for the finalization of the respondent's summary judgment application in the Magistrates' Court would not afford it substantial redress. I am satisfied that the application should be determined in the urgent court. The point *in limine* of urgency is dismissed.

Spoliation

[12] The *mandament van spolie* is a cornerstone of our law, designed to prevent self-help and preserve public order. As the Constitutional Court held in *Ngqukumba v Minister of Safety and Security*³ self-help is repugnant to the rule of law. The remedy requires an applicant to prove only two elements: (i) that it was in peaceful and undisturbed possession of the property; and (ii) that it was unlawfully deprived of that possession. Ownership, contractual rights, and the merits of any underlying dispute are irrelevant.

[13] The respondent argues that the applicant failed to make out a proper case for spoliation in its founding affidavit and impermissibly sought to do so in its replying affidavit, relying on a long line of authority, including the very case it provided to the court, *National Council of SPCA v Openshaw*⁴.

² 2011 JDR 1832 (GSJ) para [8].

³ 2014 (5) SA 112 (CC) para [10].

⁴ 2008 (5) SA 339 (SCA).

[14] The legal principle is trite and was confirmed in *Openshaw*⁵: "It is trite law that the applicant in motion proceedings must make out a proper case in the founding papers." A party cannot wait for the answering affidavit to identify a deficiency in its own case and then seek to cure it in reply. As held in *Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa*⁶ the founding affidavit must contain the primary facts upon which the applicant relies to discharge the onus of proof. The replying affidavit is for responding to a new matter raised by the respondent, not for building a case that should have been built from the start. See also *Shephard v Tuckers Land and Development Corporation (Pty) Ltd*⁷ and *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others*.⁸

[15] Applying this principle to the present matter is dispositive. The essential facts for a *mandament van spolie* are: (i) peaceful and undisturbed possession of the property; and (ii) unlawful deprivation thereof.

[16] The Founding Affidavit, deposed to by Ms. Mafahla, the Acting CEO, is deficient in establishing the first requirement. It states that the applicant's employees vacated the premises in April 2025. It states that the applicant exercised "*uninterrupted physical control and access to the premises and to its movable property from the commencement of occupation until the events described below*". However, it provides no primary facts, no names, no dates, no descriptions of specific acts to support the critical inference that the applicant retained physical control over its movable property for the eight months between April and December 2025. The deponent admits she lacks personal knowledge, yet no confirmatory affidavits from the ICT personnel or other officials who allegedly maintained access are attached to the founding papers. The deponent merely states in para 4 that information from officials "*is confirmed under oath where necessary*," but no such confirmations were provided. As held in *Crossman v Capital Alliance Group Risk and Others*⁹ an applicant cannot set out a skeletal case and then supplement it in reply. This is precisely what the applicant has done.

[17] The fatal flaw becomes apparent upon examination of the replying affidavit. It is there, for the first time, that the applicant introduces the confirmatory affidavits of Mr. Mokoena, Mr. Chirwa, and Ms. Mudenda. These affidavits are not merely responsive to the respondent's denial of the lock-out. They provide the very primary facts that were absent from the founding affidavit:

- They identify specific officials (Mokoena, Chirwa, Mudenda, Magaba) who accessed the premises between April and December 2025.

⁵ at para [29].

⁶ 1999 (2) SA 279 (T) at 323I-324F.

⁷ 1978 (1) SA 173 (W) at p180

⁸ 1974 (4) SA 362 (T) at p369

⁹ 2022 JDR 1125 (GJ) at para [44].

- They state that these officials accessed the premises for operational purposes.
- They provide detailed, first-hand accounts of the events of 9 December 2025.

[18] These are not new facts arising from the respondent's answering affidavit. They are foundational facts that the applicant knew, or should have known, from the very beginning. They are facts that were essential to prove the applicant's case in relation to the spoliation remedy and interdict. The applicant's failure to include them in the founding affidavit and its attempt to introduce them only in reply constitute a clear violation of the rule confirmed in *Openshaw and Swissborough*.

[19] The respondent alleges prejudice. It was required to answer a vague founding affidavit that did not properly put it on notice of the detailed case against it. Allowing the applicant to now rely on the confirmatory affidavits in the replying papers would ambush the respondent, who has no automatic right to respond to this new material. This court cannot permit such a procedural irregularity. I refuse to consider the said confirmatory affidavits.

[20] The applicant bears the onus of establishing the factual basis for the relief it seeks. A bare assertion of dispossession is insufficient, especially where the applicant had, on its own version, ceased physical occupation of the premises long before. The respondent denies any lock-out on that date in its answering affidavit. It has placed before the court evidence that the applicant made no complaint about the alleged lock-out for two months and that, when access was requested in April 2026, it was granted. The respondent's version is at least plausible. There is a material dispute as to whether the alleged lock-out occurred. In motion proceedings, where there is a material dispute of fact that cannot be resolved on the papers, the court applies the rule in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*¹⁰ and accepts the respondent's version. Applying that test, the applicant has not discharged the onus of proving the unlawful deprivation required for spoliation. The interdict prayed for in the notice of motion must therefore be refused on this substantive ground as well.

Conclusion

[21] The applicant has failed to make out a proper case for spoliation and interdict in its founding affidavit. It has impermissibly sought to remedy this defect in its replying affidavit. The application, in its current form, cannot succeed.


[22] The general rule is that costs follow the result. I see no reason to depart from this principle. The respondent asks for costs on the attorney-client scale; alternatively, scale C. I am not persuaded to grant punitive costs.

¹⁰ 1984 (3) SA 623 (A).

ORDER

[23] In the result, I make the following order:

1. The applicant's non-compliance with the forms and service requirements is condoned, and the application is heard as one of urgency in terms of Uniform Rule 6(12).
2. The application is dismissed.
3. The applicant is ordered to pay the costs of this application on a party and party, Scale C.


MMP Mdalana-Mayisela
Judge of the High Court
Gauteng Division

(Electronically delivered by uploading on Caselines and emailing to the parties)

Date of hearing:	30 April 2026
Date of Judgment:	22 May 2026
Counsel for the Applicant:	Adv T Tshavhunwa
Instructed by:	Raphela Incorporated Attorneys and Conveyancers
Counsel for the Respondent:	Adv J Pretorius
Instructed by:	Sim Attorneys Incorporated