



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no:2025-244669 &

Case no:2025-207118

In the matter between

**AD OUTPOST TWO THOUSAND
AND SEVEN (PTY) LTD**

APPLICANT

and

MANGAUNG METROPOLITAN MUNICIPALITY

FIRST RESPONDENT

SEKONDÊRE MEISIESKOOL ORANJE

SECOND RESPONDENT

LETTIE FOUCHÉ SKOOL

THIRD RESPONDENT

**TOTAL ENERGIES MARKETING SOUTH AFRICA
(PTY) LTD t/a BLOEMGATE TOTAL**

FOURTH RESPONDENT

THOLO RES BAR (PTY) LTD

FIFTH RESPONDENT

t/a RE-A-HOLA CENTRE

SIXTH RESPONDENT

BODY CORPORATE OF LOCH LOGAN PARK

**MINISTER OF COOPERATIVE GOVERNANCE
AND TRADITIONAL AFFAIRS
RESPONDENT**

SEVENTH

MINISTER OF FINANCE**EIGHT RESPONDENT**

Neutral citation: *Ad Outpost Two Thousand and Seven (Pty) Ltd v Mangaung Metropolitan Municipality and Others* (2025-207118 and 2025-244669) [2025] ZAFSHC 269 (4 May 2026)

Coram: VAN RHYN J

Heard: 12 February 2026

Delivered: 4 May 2026

Summary: Two urgent applications by applicant: one for interim interdict to restrain municipality from removing, without a court order, applicant's outdoor media signage on several sites – pending hearing of Part B of application – challenging constitutional validity of s 28 of By-Laws relating to Outdoor Advertising. Second application for *mandament van spolie* relating to signage/billboard removed by municipality. Defences raised by municipality – notice of removal of signage relating to site in terms of s 25(2) of By-Laws issued – display of billboard/signage unlawful due to failure to comply with notice.

ORDER

1 The rule nisi granted under case number 2025-207118 on 12 December 2025 is extended and the first respondent, pending the final adjudication of Part B of the main application, is interdicted and further restrained from removing, without a court order, or otherwise interfering with the applicant's outdoor media signage on the following sites:

1.1 Remainder of Portion 11 of the Farm Lilyvale, being Lettie Fouché School, Bloemendal Road, Bloemfontein;

1.2 Portion 3 of Erf 13073 Bloemfontein, being Bloemgate Total, Van der Riet Street, Brandwag, Bloemfontein;

1.3 Erf 15762 Bloemfontein, being Oranje Meisieskool, Aliwal Street, Bloemfontein; and

1.4 Portion 1 of Erf 15976 Westdene, being Loch Logan Park building, 163 Nelson Mandela Drive, Bloemfontein.

2 The costs of the application for interdictory relief shall stand over for later determination, if the present application is re-enrolled by the respondent or the applicant or, failing which, for determination in Part B of the main application.

3 The application for the mandament van spolie under case number 2025-244669 is dismissed with costs, which costs shall include costs of counsel on Scale B.

JUDGMENT

Van Rhyn J

[1] Two interrelated applications served before this Court as consolidated applications, the first, an application for interlocutory relief under case number

2025/207118, interdicting the Mangaung Metropolitan Municipality (the municipality), the first respondent, from removing, attempting to remove, continuing with the removal or otherwise interfering with certain of the applicant's outdoor advertising signage or billboards, pending the final adjudication of the applicant's substantive constitutional challenge in Part B of the main application. The second, a *mandament van spolie* application under case no 2025/244669 in terms whereof the applicant seeks the immediate restoration *ante omnia* of its peaceful and undisturbed possession of the billboard at Botshabelo, which was removed by the municipality.

[2] In the interlocutory application the applicant, Ad Outpost Two Thousand and Seven (Pty) Ltd, a company with limited liability and registered address in Johannesburg, cited seven other respondents apart from the municipality, cited as the first respondent. The applicant's outdoor advertising structures or billboards are erected on the properties of the second to sixth respondents. The second to sixth respondents are schools and businesses within the jurisdiction of the first respondent. The seventh respondent is the Minister of Cooperative Governance and Traditional Affairs and the eighth respondent is the Minister of Finance. No relief is sought against the second to eighth respondents.

[3] Both applications are opposed, on several grounds, by the municipality. In the answering affidavits filed by the respondent, several points in limine were raised. These points in limine include the following: introduction of further documents/affidavits outside the rules of court in addition to the served and filed founding- and replying affidavits, the lack of authority of the deponent to the applicant's founding affidavit, lack of *locus standi* of the applicant and objection to hearsay evidence.

[4] On 11 December 2025, the applicant issued the urgent spoliation application, to be heard on the 17th of December 2025, in terms whereof the applicant sought the immediate restoration *ante omnia* of its peaceful and undisturbed possession of a large billboard structure and advertisement situated at Erf 139 Botshabelo, which was forcibly removed by the respondent's contractors on the 11th of December 2025. The billboard at the Botshabelo site was more than 80 square metres in size and was visible from a substantial distance to all passers-by next to the national road.

Following the removal of the billboard at the Botshabelo site, the applicant became aware of further attempts by the respondent to dismantle the applicant's billboards at other sites, such as the Lettie Fouché School and Bloemgate Total sites.

[5] The following day, the 12th of December 2025, the applicant issued the urgent interlocutory interdict application to stop the removal of the applicant's billboards at the other sites and to interdict the municipality from removing, without a court order, or otherwise interfering, with the applicant's outdoor media structures and signage on the sites listed and referred to in the founding affidavit. The matter was heard on the same day and having ruled that the matter was urgent, Greyling-Coetzer J, issued a rule *nisi* calling upon the respondent (and any party with a legitimate interest) to show cause on the 17th of December 2025 why the interim order should not be made final. Pending the final adjudication of the main application, the respondent was interdicted and further restrained from removing, without a court order, or otherwise interfering with the applicant's outdoor media signage on the sites listed in the founding affidavit, being the sites of which the second to fourth and the sixth respondents are the owners. Costs to stand over for later adjudication.

[6] On the 17th of December 2025, Molitsoane J postponed the spoliation application the 29th of January 2026 with leave to the applicant to file a replying affidavit and for the parties to file heads of argument. The rule *nisi* issued by Greyling-Coetzer J in the interlocutory interdict application, also enrolled for the 17th of December 2025, was extended and it was ordered that both matters be heard together. Costs stood over for later adjudication.

[7] The applicant occupies specific portions of land (the sites) under lease agreements entered into between the applicant and the second to sixth respondents. Upon these sites, the applicant has erected large billboard structures designed for the display of outdoor advertisements on behalf of its various commercial customers. These physical structures were originally erected during the period between 1997 and 2004 and have remained in place since then, subject to ongoing approvals by the respondent, the most recent of which was granted during April 2025. According to the applicant, the respondent unilaterally created an account during May 2017 for the applicant and debited amounts totalling R485 556.00, which were later identified as

purported annual levies imposed by the respondent for billboards on private property. The applicant contends the 2015 By-Laws, which was in effect at the relevant time, contained no provision for such charges.

[8] During March 2023 the respondent created four additional accounts and continued to debit these accounts annually for what it termed 'Signage/Advertising Non-Local Bound levies'. The applicant contends that the respondent had been advised, through internal recommendations, that these accounts were created wrongly and that the arrears should be reversed. Notwithstanding the internal recommendations, the respondent failed to implement its own recommendations and has since mid-2023 escalated enforcement by issuing notices to property owners demanding the removal of the billboards. On 1 September 2025, the applicant issued an initial application under case number 4592/2025 to challenge the constitutional validity of s 28 of the updated By-Laws, The Mangaung Metro Municipality Outdoor Advertising By-Laws as promulgated by *Local Government Notice* No. 38 of 19 July 2019 (By-Laws). Thereafter the respondent purported to withdraw its consent for the applicant's billboard displays. The applicant withdrew its initial application on 3 November 2025 and issued its current main application under case number 2025/207118.

[9] On 16 September 2025, the respondent issued a written notice to the applicant regarding the failure to comply with a condition of approval of the applicant's application to display the billboards at the different sites in that the applicant failed to pay the annual levies as contemplated in s 28 read with s 10(4) of the By-Laws. It is stated that the permission to display was granted subject to the payment of the annual levy in the amount of R253 200, R120 960, R994 950 and R512 730 in respect of the four approved applications. Four different accounts were created, and these accounts were dispatched to the applicant who, allegedly since May 2025, has not settled these amounts in respect of the annual levies. The applicant was informed that the respondent is entitled to withdraw its consent as contemplated in s 11(1)(a) of the By-Laws. The applicant was provided with an opportunity to settle the accounts within a period of seven days.

[10] On 19 September 2025 the applicant's attorney replied that the

respondent's letter is in retaliation to the applicant's court application to challenge the legality, amongst other aspects, of s 28 of the By-Laws and that the letter of demand is a coercion tactic to force the applicant to pay the disputed monies. It was furthermore denied that the accounts were already in 'arrears', as stated by the respondent, on the basis that the levy is termed an 'annual levy' and it is therefore payable once a year. Having regard to the dispute, the applicant demanded an undertaking from the respondent, no later than Monday, the 22nd of September 2025, that pending the final outcome of the litigation in case no 4592/2025 the respondent will refrain from, *inter alia*, withdrawing the applicant's billboards approvals and cutting or terminating any form of utility supply to the applicant's landlords. On the 9th of October 2025, the respondent issued a notice of compliance in terms of s 25(2) read with s 12(2) of the By-Laws regarding the display of the billboards at the different sites, including the site at Botshabelo, referring the applicant and the relevant landowner to the provisions of s 25 of the By-Laws which specifically authorise and entitles the respondent to, *inter alia*, ' . . . enter upon its own property or private property to remove a sign without a court order authorizing it to do so . . . '.

[11] In the main application the applicant contends that the 'annual levies' imposed on its billboards by the respondent under s 28 of the By-Laws constitute unlawful taxes that violate s 229 of the Constitution. Section 229 of the Constitution provides as follows:

'229. (1) Subject to subsections (2), (3) and (4), a municipality may impose—

(a) rates on property and surcharges on fees for services provided by or on behalf of the municipality; and

(b) if authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.'

The applicant argues that the same distinction is reflected in the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act), more specifically s 74(2) of the Systems Act, which deals with the contents of municipal tariff policies and provides as follows in paragraph (d): ' . . . tariffs must reflect the costs reasonably associated with rendering the service, including capital, operating, maintenance, administration and replacement costs, and interest charges . . . ' and in paragraph (f) that: ' . . .

provision may be made in appropriate circumstances for a surcharge on the tariff for a service’.

[12] In the interlocutory application the court is called upon to determine whether the applicant has made out a case for interim interdictory relief pending the determination of the constitutional issues that will arise in Part B of the main application. An interdict is a judicial process whereby the respondent is ordered to refrain from doing a particular act or is ordered to perform a particular act. It is a remedy of a summary and extraordinary nature allowed in cases where the applicant requires protection against an unlawful interference or threatened interference with his rights. The requirements for an interim interdict must be established by the applicant. These requirements are the following: (a) a *prima facie* right, even open to some doubt.; (b) a well-grounded apprehension of irreparable harm if the relief is not granted; (c) the balance of convenience favours granting of interim relief; and (d) there is no other satisfactory remedy.

[13] The following factors are common and relevant to both the interlocutory interdict as well as the *mandament van spolie* application and the relief sought by the applicant. The respondent’s Advertising By-Laws constitute subordinate local legislation which is binding in the jurisdiction of the respondent. Section 8(1) provides that ‘ . . . [a] sign may not be displayed without consent that was granted by the municipality –(a) by section 9 (referred to in these By-Laws as “deemed consent”); or (b) by section 10 (referred to in these By-Laws as “specific consent”) . . . ’.

[14] A ‘sign’ in the By-Laws means, unless the context otherwise indicates, ‘ . . . (a) an advertisement; (b) an object or device which is in itself and (*sic*) advertisement or which is used to display an advertisement; or (c) an object, structure or device which is not in itself and (*sic*) advertisement or which is not necessarily or solely used to display an advertisement . . . ’

Section 10(10) provides that:

‘ . . . when a time period, which was specified in the approval expires, an application for renewal must, at least 60 days, prior to the expiry, be submitted for consideration of approval should a person who displays a sign elect to continue the display of the sign, and should the municipality refuse consent to display the sign, the person who displays the sign must

forthwith cease to display the sign’.

[15] Section 10(1) provides that a person who must cease to display a sign must remove all structures on which such sign was erected and must also rehabilitate the site. In terms of s 12(1) no person may display an unauthorised sign on private or municipal land. A person who displays an unauthorised sign on private or municipal land must, after service on him/her of a notice of compliance in terms of s 25(2) to that effect, immediately cease to display the sign by removing it and the structures on which the sign is affixed. Section 25(2) provides that the municipality may serve a notice of compliance on the owner of a sign to remove a sign, if the sign which is displayed, is unauthorised. If a person fails to comply with a notice served by the municipality on him or her, the municipality may enter upon the land upon which the sign to which the notice relates, is being displayed and remove, confiscate and destroy the sign.¹ For purposes of enforcement of this subsection, the municipality is entitled to enter upon its own property or private property to remove a sign, without a court order authorising it to do so. In terms of the provisions of s 26(1)(d) a person commits an offense if he or she displays an unauthorised sign.

[16] The applicant’s founding affidavits in both applications are deposed to by Ms D Dirker (Ms Dirker), a managing director of the applicant who avers to have been authorised by the applicant to launch the proceedings against the respondent(s). A copy of a resolution by the board of directors of the applicant, authorising her to act generally on the applicant’s behalf is appended to both founding affidavits in relation to the two applications. The respondent raised the point that, firstly, Ms Dirker exclusively relies on the purported resolution which had been passed during June 2021, more than four years prior to the present court proceedings and secondly, the appended resolution, in no way or form authorises her ‘to launch or institute litigation by any stretch of the imagination’.

[17] The applicant, in reply, contends that the technical defences in respect of Ms Dirker’s authority to represent the applicant has no merit in that the board of the applicant has authorised her to generally represent the applicant in ‘all relevant and

¹ Section 25(4) of The Mangaung Metropolitan Municipality Outdoor Advertising By-Laws published in *Provincial Gazette* Notice 77 of 21 November 2008 as amended.

necessary forums', which includes legal proceedings. Ms Dirker explained that she is the only executive director of the applicant and operational decision making in respect of the applicant's affairs, as contemplated, *inter alia*, in s 66(1) of the Companies Act 71 of 2008 vests in her. The resolution, furthermore, contains no resolute term for its validity and the intent is to serve as ongoing authority for her role as managing director of the applicant.

[18] I agree with the argument by the applicant that the point raised by the respondent pertaining to Ms Dirker's lack of authority is without merit. In any event the applicant filed an updated resolution, appended to the replying affidavit, confirming her authority to act on behalf of the applicant in these proceedings. Furthermore, the assertion that the deponent is required to be authorised to depose to the affidavit and to bring the application on behalf of the applicant is misplaced. It is the attorney of a party who must be authorised, not the deponent. The respondent did not challenge the attorneys' authority in terms of rule 7 of the Uniform Rules of Court.² It is the institution of the proceedings and the prosecution thereof which must be authorised, not the deponent.³ The technical point regarding Ms Dirker's authority to move for the relief is therefore dismissed.

[19] The second point in limine raised by the respondent is that the applicant premises the application(s) and basis for the relief it seeks on the allegation that it was in undisturbed and peaceful possession of the advertising structure at the Botshabelo site since August 1997 (and the other billboards at the sites leased from the second to fourth and sixth respondents between 1997 and 2004), and to attend the structure, the applicant had undisturbed access to the premises also since August 1997. However, according to the applicant's own version, Ms Dirker was only appointed to the board of directors of the applicant during June 2021 and the applicant was furthermore only registered and established in 2007, which is ten years after the applicant gained and obtained, on its own version, undisturbed and peaceful possession of the advertising structure at Botshabelo. As to the other billboards, the

² *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) paras 14 –16.

³ *ANC Umvoti Council v Umvoti Municipality* 2010 (3) SA 31 (KZP) paras 26 – 29; *Jewel City (Pty) Ltd v Corner Spaza Shop and Others* [2013] ZAGPJHC 239 (16 March 2023) para 6.

applicant was not yet established and registered, which constitutes an impossibility and evidence the applicant's lack of standing, lack of a clear right and/or prima facie right as well as the deponent's lack of credibility.

[20] On behalf of the applicant it is argued that the respondent concedes that the applicant is on the receiving end of the removal and dispossession of the billboard at the Botshabelo site. Yet, it disputes the applicant's *locus standi* to bring the spoliation application. In relation to the interlocutory application, the respondent's challenge to the applicant's *locus standi* is based on the contention that the applicant company's registration date is 2007. In the replying affidavit filed by the applicant in the spoliation application it is stated that since 2013, it has been the applicant that made application for the approval of the billboard at the Botshabelo site. On 10 April 2025, the respondent approved the renewal applications for the applicant's existing billboards and the billboard at the Botshabelo site was similarly approved. One of the sites, the Bloemgate Total site renewal application was, together with the renewal applications of the other sites, submitted to the respondent between 6 and 8 February 2024. As at date of hearing of the applications, the Bloemgate Total renewal application has not yet been determined by the respondent.

[21] From the applications for renewal appended to the replying affidavit, it is evident that the present applicant (and not its apparent predecessor in title, being Ad Outpost (Pty) Ltd), applied for the renewals and the respondent granted approvals and invoiced the applicant accordingly. I agree with the contention on behalf of the applicant that the registration date of the applicant is of no concern as, at all relevant times, the applicant was entitled to erect the billboards in accordance with the approvals granted by the respondent. It appears that the applicant's predecessor in title was the holder of the approvals granted by the respondent since at least 1997 and that the present applicant was registered during 2007. Furthermore, the respondent directed its enforcement notices and actions specifically at the applicant. Therefore, also this point in limine regarding the applicant's *locus standi* is dismissed.

[22] The respondent raised a third point in limine that it is evident from Ms Dirker's founding affidavit in the spoliation application that the applicant's application is founded on clear hearsay evidence in that the application is bare of any substance

or credible first-hand knowledge or explanation and should for this reason alone, be dismissed with costs. The respondent, however, admitted in its answering affidavit that its contractors physically removed the Botshabelo site billboard on 11 December 2025. I agree with the applicant's contention that the respondent has indeed failed to provide any specific particularity as to which allegations it deems to be inadmissible hearsay and relies on generalised aspersions to attack the veracity of the version of events stated by the applicant. In any event, the respondent formally conceded the fact of the removal and dispossession of the billboard at the Botshabelo site with the result that no genuine dispute of fact requiring further evidentiary corroboration exists. In the circumstances, also this point in limine has no merit and is accordingly dismissed.

[23] Part A of the main application was heard on 14 November 2025, and judgment was delivered on 19 November 2025. The matter was struck from the roll by Mhlambi J due to a lack of urgency. The applicant contends that Part A remains pending and it has not been finally determined. In Part B of the main application the applicant, seeks, in summary, a declaration of constitutional invalidity of s 28 of the respondent's By-Laws relating to Outdoor Advertising in terms whereof the respondent imposes an annual levy for certain advertising signs. It is argued by the applicant that these tariffs are akin to the imposition of a tax by the respondent, which is constitutionally impermissible, unlawful and invalid.

[24] On behalf of the respondent it is contended that all the billboards are unlawful on the basis that no litigation is pending in terms of which the applicant, or any other party, seeks to review and set aside the respondent's administration function and decision which resulted in the various notices of compliance in terms of s 25(2) read with s 12(2) of the By-Laws in respect of the properties stated in paragraphs 10.1, 10.3 and 10.4 (being the site at Lettie Fouché School, the site at Oranje Meisieskool and the site at Loch Logan Park), while no approval or consent has been granted by the respondent in respect of the site at Bloemgate Total, being the site referred to in paragraph 10. 2 of the applicant's founding affidavit. Therefore, no consent exists in respect of the five billboards the applicant claims to be entitled to display advertising on, either as such consent was withdrawn and compliance notices issued calling for the removal of such billboard while no consent was ever granted in

terms of a new application for the Bloemgate Total billboard. According to the respondent, the remaining billboards, subsequent to the removal by the respondent of the Botshabelo billboard, constitute unauthorised signs as defined and envisaged in s 1 of the By-Laws.

[25] Following Part A of the main application being struck from the roll for lack of urgency on the 14th of November 2025, the applicant has not attempted to enrol the main application as an ordinary motion matter. Therefore, so the argument goes, such application cannot be deemed to constitute the ‘main application’, pending determination of which the applicant is entitled to move for interlocutory relief. In the interlocutory application, the main issue to be decided is whether pending the final adjudication of the main application, the respondent is to be interdicted and further restrained from removing, or otherwise, interfering with the applicant’s billboards.

[26] In Part B of the main application (under case no 2025-207118), the applicant seeks an order declaring the provisions of s 28 of the By-law to be unlawful and constitutionally invalid and the imposition of an annual levy for Non-Locality Bound Advertising Signs imposed by the respondent to be declared *ultra vires* the respondent’s Tariffs Policy and be declared void and unenforceable. The respondent relies on the fact that the urgent application was struck from the roll in their argument that there is currently no pending main application entitling the applicant to move for interlocutory relief. Reliance is placed on *Inzalo Enterprise Management Systems (Pty) Ltd v the Mantsopa Local Municipality*⁴ which judgment deals with the enrolment of an application after it was struck from the roll for lack of urgency. Mantsopa Local Municipality in said matter served and filed a notice of interlocutory application in terms of rule 30(1) read with rule 30A(2) on the basis that Inzalo’s enrolment of the application be set aside due to an amendment of the notice of motion contra the provisions of rule 28 and non-compliance with the provisions of rule 6(5)(a).

[27] The court held that the application was not an urgent application anymore since it was struck from the roll for failing the urgency requirement. Therefore, the

⁴ *Inzalo Enterprise Management Systems (Pty) Ltd v the Mantsopa Local Municipality* [2023] ZAFSHC 458 (22 November 2023).

applicant must comply with the rules of court pertaining to applications in respect of form, process and service. In the result the court held that the enrolment of the main application for hearing was irregular and set aside with Inzalo to pay the costs.

[28] In the matter at hand only Part A served before court on the urgent roll on the 14th of November 2025, and only Part A was struck from the roll for lack of urgency. Part B of the main application has been issued and served upon the respondent but has not been enrolled for hearing. I therefore agree with the contention on behalf of the applicant that the matter at hand is distinguishable for the case law referred to by the respondent. Prior to the main application being heard, the applicant is entitled to amend its notice of motion in accordance with rule 28. The respondent is entitled to object to any amendment of the notice of motion under Part B and those issues, if any, will be adjudicated upon in due course, if necessary. In any event, Greyling Coetzer J had already decided that the interlocutory application heard on 12 December 2025 was urgent and issued a rule nisi returnable on 17 December 2025. On the 17 of December 2025 the rule nisi was further extended and at the hearing of this application on the 12 of February 2026, the rule nisi was extended pending delivery of the judgment. The order by Greyling-Coetzer J provided that the respondent, ‘. . . pending the final adjudication of the main application, is interdicted and further restrained from removing, without a court order, or otherwise interfering with the Applicant’s outdoor media signage . . .’

[29] A further argument raised by Mr Snyman, counsel on behalf of the respondent, is that given the importance of the separation of powers doctrine, the rationale for the standard set in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*⁵ (OUTA) and that both applications seek to prevent an organ of state from exercising its statutory powers, the relief moved for will only be granted in exceptional circumstances. According to the respondent the applicant has not made out a strong case and *mala fides* are not alleged, and given the test set out in *Webster v Mitchel*⁶ as amplified in *Gool v Minister of Justice and Another*⁷ both applications therefore stand to be dismissed.

⁵ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* [2012] ZACC 18; 2012 (6) SA 223 (CC) (OUTA).

⁶ *Webster v Mitchel* 1948 (1) SA 1186 (W).

⁷ *Gool v Minister of Justice and Another* 1955 (2) SA 682 (C) (Gool).

[30] The respondent has, *inter alia*, based its opposition in respect of both application, which overlap substantially, on the provisions of s 28 of the By-Laws which provides as follows:

‘(1) All advertising will be billed from the time that the sign was erected until the time the sign is removed or the application is cancelled (whichever is earlier).

(2) All advertising will be billed in accordance with the municipality’s published schedule of tariffs and charges as approved by the municipal council from time to time . . .

(6) Lack of the servicing of the debt by the applicant will be dealt with in accordance with the approved credit policy, which the municipal council reviews on an annual basis.’

In essence the respondent contends that it is entitled to remove and destroy the billboard structures because the applicant has failed to pay the annual levy which it imposes in terms of s 28 of the By-Laws read with the provisions of s 25(4) of the By-Laws.

The Interdictory Relief.

[31] The Constitutional Court has explained that, where there is a constitutional challenge to legislation, and where it appears that action pursuant to its terms is imminent and is likely to cause serious and irreparable prejudice, in all but the most exceptional cases interim relief should be granted.⁸ The application by the applicant cannot be described as an ordinary application for an interim interdict. This is an application for interlocutory relief restraining the exercise of statutory powers by the respondent, a municipality. In the absence of any allegation of *mala fides*, the court does not readily grant such an interdict.⁹ The common law annotation to the *Setlogelo*¹⁰ test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of Government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the

⁸ *President of the Republic of South Africa v United Democratic Movement and Others* [2002] ZACC 34; 2003 (1) SA 472 (CC) para 28.

⁹ *Gool* fn 7 at 688F.

¹⁰ *Setlogelo v Setlogelo* 1914 AD 221.

Constitution itself. The *Setlogelo*-test, as adapted by case law, continues to be a convenient and ready guide to the bench and practitioners alike in the grant of interdicts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict, it must do so in a way that promotes the objects, spirit and purport of the Constitution.

[32] The applicant places reliance upon the similarity of circumstances where the Economic Freedom Fighters sought an interim order interdicting the City of Cape Town from removing its banners until determination of a constitutional challenge where the City of Cape Town's Bylaws prohibited the use of election banners.¹¹ The contention on behalf of the applicant is that the respondent has not indicated any exceptional circumstances that point against the granting of the relief in this matter, pending the determination of the constitutional challenge in the main application.

[33] An important founding value of South Africa's constitutional democracy is the rule of law. Derived from this founding value is the principle of legality, which requires that public functionaries may only exercise public power lawfully.¹² Unlawful government decisions are invalid and void.¹³ However, citizens place reliance on extant government decisions and arrange their affairs accordingly and with the expectation that these decisions were made lawfully and will be carried out. If decisions and conduct by, for instance, a municipality, could simply be ignored without the need for a process to pronounce on its validity, that could lead to chaos and prejudice the rights and interests of many innocent citizens. A court must also be alive to and carefully consider whether the temporary restraining order would unduly trespass upon the sole terrain of other branches of Government even before the final determination of the review grounds. In *OUTA* the Constitutional Court held as follows:

'A court must be astute not to stop dead the exercise of executive or legislative power before the exercise has been successfully and finally impugned on review. This approach accords

¹¹ *Economic Freedom Fighters v City of Cape Town and Another* [2021] ZAWCHC 209 (19 October 2021).

¹² *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) paras 56–58.

¹³ *Ferreira v Levin NO and Others; Vreyenhoek and Others v Powell NO and Others* 1996 (1) SA 984 (CC).

well with the comity the courts owe to other branches of Government, provided they act lawfully.’¹⁴

[34] In *Gross Border Development Consultants (Pty) Ltd v The MEC: North West Provincial Government: Department of Local Government and Human Settlements and Others*¹⁵ Landman, J summarised the factors, having regard of the *OUTA* judgment, relating to the test for interim interdicts where a temporary restraint or interdict is sought against the exercise of statutory power well ahead of the final adjudication of the applicant’s review case.

‘(f) When a court weighs up where the balance of convenience rests, it must consider the probably impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought;

(g) The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of Government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm;

(h) A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant’s case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm.

(i) Under the Setlogelo test, the *prima facie* right a claimant must establish is not merely the right to approach a court in order to review an administrative decision;

(j) The *prima facie* right is thus a right to which, if not protected by an interdict, irreparable harm will ensue;

...

(l) ... The right to review the impugned decisions does not require any preservation *pendente lite*;

...

(r) In evaluating where the balance of convenience rests, a court must recognise that it is invited to restrain the exercise of statutory power within the exclusive terrain of the Executive or Legislative branches of Government. It must assess carefully how and to what extent its interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers.’¹⁶

¹⁴ *OUTA* fn 5 para 26.

¹⁵ *Gross Border Development Consultants (Pty) Ltd v The MEC: North West Provincial Government: Department of Local Government and Human Settlements and Others* [2015] ZANWHC 42 (7 August 2015).

¹⁶ *Ibid* para 20.

[35] The applicant contends that it has the right not to be subjected to unlawful taxation by the respondent and to have its possession of its billboards and property made subject to the payment of unlawful and unconstitutional 'annual levies'. From the contents of the main application, it is evident that the applicant's arguments are based on the levies imposed in relation to the applicant's billboards and not with the fees imposed as read with the definition of a 'Municipal Tariff' and 'Tariff' in the Tariff Policy of the respondent. The powers afforded to municipalities in s 229(1)(a) of the Constitution is an important source of revenue for it in that it allows municipalities to raise revenue to cover the costs of services it provides to its citizens. However, the important parameter imposed by s 229(1)(a) is that the respondent may impose fees only in respect of services provided by the municipality. If no service is provided by the respondent, the only fees that a municipality may charge will then be regarded as a tax. This, however, a municipality cannot impose unless authorised by national government.

[36] The applicant contends that in the tariffs adopted, the respondent imposes an annual levy per m² and this is a levy as contemplated by s 229(1)(b) of the Constitution. No national legislation authorises the imposition of a levy on advertising. The only provision authorising the imposition of such a 'levy' is set out in s 28 of the By-Laws which makes provision for a 'billing' where the word 'billing' and 'levy' are synonyms. The contention on behalf of the applicant is that the effect of s 28 is that it authorises the imposition of a levy by the respondent outside the legal prescripts of s 229(1)(b) of the Constitution. The applicant has a right under s 34 of the Constitution to have the substantive constitutional and legal issues raised in the main application judicially determined before being subjected to the irreversible consequences of the respondent's enforcement actions. In this regard, it is necessary to note that the respondent transmitted a letter of demand during September 2025 claiming that the applicant is in arrears with respect to annual levies billed in respect of four of the five accounts held with the respondent. The respondent claims that the applicant is in arrears in the total amount of R998 559.69 of unpaid levies. The applicant contends that even if the annual levies are assumed to be legally competent, these levies are not due and payable by the applicant yet. The respondent has threatened to cut or terminate any form of utility supply to the applicant's lessors' premises, being the

second to sixth respondents' premises. During October 2025, the respondent proceeded to issue contravention and withdrawal notices to the applicant and to five of the applicant's lessors, including demands for the removal of the billboards from certain of the relevant sites.

[37] I am satisfied that the applicant has established a *prima facie* right and has advanced factual allegations that support how the respondent's implementation of the By-Laws will infringe its rights and why it is entitled to interim protection to continue its outdoor advertising operations based on the regulatory approvals formally granted by the respondent during April 2025. Although the respondent has purported to withdraw these consents due to the applicant's failure to settle the accounts relating to unpaid levies, the applicant contends that these withdrawals are unlawful and invalid pending the determination of the main application. The applicant is entitled to interim protection to ensure that the status *quo ante* is maintained so that the eventual adjudication of its constitutional challenge is not rendered academic or futile by the prior destruction of the billboards by the respondent. At this stage of the enquiry the applicant only has to establish a *prima facie* right though open to some doubt.

[38] This court is cognisant of the fact that it is necessary to stay clear from determining the cogency of the review grounds advanced by the applicant. For similar considerations expressed by the Constitutional Court in *OUTA*¹⁷ it would not be appropriate to usurp the pending functions of the review court and thereby anticipate its decision.

[39] The respondent has clearly indicated that it intends to continue its conduct of removing and/or destroying the applicant's billboards. The respondent had already removed the applicant's billboard at the Botshabelo site and attempted to remove another billboard at the Lettie Fouché site when the applicant issued the urgent application on 11 December 2025. Therefore, the harm it will suffer is anticipated since without protection, the respondent will simply continue to remove the applicant's billboards. The applicant has obligations to those parties with whom it contracted to display their advertisements. The longer the advertisement on the billboard is removed from the public eye, the less exposure the applicant's customer

¹⁷ At para 31.

has, which will in turn expose the applicant to potential damages claims from the advertiser and cause further strain for the commercial relations between the applicant and its lessors. The applicant stands to suffer irreparable harm, and also in respect of the already concluded long term agreements for the 2026 period, in its commercial relationships with its lessors and its advertising clients if the billboards are removed from the relevant sites. Not only economic loss may follow but also significant and potentially permanent reputational damage to the applicant in a specialised industry. I agree with the contention on behalf of the applicant that cancellations by customers could severely strain the applicant's relationships within the broader outdoor advertising industry and diminish its standing as a reliable media provider.

[40] In *City of Tshwane v Afriforum*¹⁸ the Constitutional Court explained the meaning of harm in the context of a restraining order as follows:

'Within the context of a restraining order, harm connotes a common-sensical, discernible or intelligible disadvantage or peril that is capable of legal protection. It is the tangible or intangible effect of deprivation or adverse action taken against someone. And that disadvantage is capable of being objectively and universally appreciated as a loss worthy of some legal protection, however much others might doubt its existence, relevance or significance.'¹⁹

[41] The respondent will only be inconvenienced if the interim interdict is granted on the basis that it will have to wait until the outcome of Part B of the main application's determination. However, if the court finds in the respondent's favour in the adjudication of Part B, then it can lay claim to the applicant's supposed due annual levies and also interest on those amounts. The billboards had been present at the various sites for many years and if the respondent fails in the main application, then the levies will in any event prove never to have been due and owing and the respondent's intent to remove (and the removal at Botshabelo site) will be equally baseless. I agree with the argument that the respondent cannot be inconvenienced more than the applicant if it is temporarily barred from collecting the disputed dues.

[42] The inconvenience and prejudice facing the applicant are both immediate and

¹⁸ *City of Tshwane Metropolitan Municipality v Afriforum and Another* (157/15) [2016] ZACC 19; 2016 (9) BCLR 1133 (CC); 2016 (6) SA 279 (CC).

¹⁹ *Ibid* para 56.

profound if the interlocutory relief it seeks is denied. I find favour with the argument by the applicant that the balance of convenience is further tilted by the fact that the applicant faces significant financial exposure to third-party advertisers, whose paid content is being removed or will be removed, if the interim relief is not granted. If the respondent is allowed to remove the billboards before the court has determined the validity of the underlying levies, it will render the adjudication of the main application academic. I am of the view that the interests of justice and the protection of the rule of law requires that the status quo be preserved to ensure that the applicant receives meaningful judicial redress.

[43] The necessity for the institution of the urgent application by the applicant is underscored by the fact that the respondent and its attorney have ignored formal demands to cease their removal of the billboards pending the hearing of the applicant's constitutional challenge. The applicant has made out a clear case that it did not have any other satisfactory remedy available to protect its property and commercial operations from the respondent's implementation of the decision to withdraw the consent to display the billboards and to remove same from the relevant sites.

[44] In the result, the applicant has made out a proper case for the interim protection of its rights pending the adjudication of Part B in the main application.

The Spoliation Application.

[45] The law affords possessors every possible protection and assistance not only in retaining physical control, but also in regaining it when dispossessed unlawfully. The *mandament van spolie* is, in the first place, a possessory remedy and its aim is to restore the factual possession of which the *spoliatus*, the person who asserts the remedy, has been unlawfully deprived.²⁰ The *mandament van spolie* provides for an especially specific and limited relief. In *Nino Bonino v De Lange*,²¹ the court held as follows:

'It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the

²⁰ *Zulu v Minister of Works, KwaZulu and Others* 1992 (1) SA (D) at 187G.

²¹ *Nino Bonino v De Lange* 1906 TS 120.

possession of property, whether movable or immovable. If he does so, the court will summarily restore the *status quo ante* and will do that as a preliminary to any enquiry or investigation into the merits of the dispute.’²²

Therefore, the key characteristic of a *mandament van spolie* is that it is a possessory remedy (*remedium possessorium*). The essential characteristic of a possessory remedy is that the legal process whereby the possession of a party is protected (*iudicium possessorium*), is kept strictly separate from the process whereby a party’s right to ownership or other right to the property in dispute, is determined (*iudicium petitorium*).²³

[46] The Constitutional Court summarised the applicable principles pertaining to the *mandament van spolie* in *Ngqukumba v Minister of Safety and Security*²⁴ as follows at paras 10-13:

‘[10] The essence of the mandament van spolie is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim *spoliatus ante omnia restituendus est* (the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the mandament van spolie is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process.

...

[12] A spoliation order is available even against government entities for the simple reason that unfortunately excesses by those entities do occur. Those excesses, like acts of self-help by individuals, may lead to breaches of the peace: that is what the spoliation order, which is deeply rooted in the rule of law, seeks to avert. The likely consequences aside, the rule of law must be vindicated. The spoliation order serves exactly that purpose.

[13] It matters not that a government entity may be purporting to act under colour of a law, statutory or otherwise. The real issue is whether it is properly acting within the law. After all, the principle of legality requires of state organs always to act in terms of the law. All that the despoiled person need prove is that—

(a) she was in possession of the object; and

²² *Nino Bonino v De Lange* ibid at 122.

²³ *Jigger Properties CC v Maynard NO and Others* [2017] ZAKZPHC 9; 2017 (4) SA 569 (KZP) para 12.

²⁴ *Ngqukumba v Minister of Safety and Security* [2014] ZACC 14; 2014 (5) SA 112 (CC).

(b) she was deprived of possession unlawfully.’

[47] It is trite that there are limited defences that a respondent can raise in spoliation proceedings. The defences are:

- (a) Denial of the facts alleged for *spoliatus ante omnia restituendus est*, namely that the applicant did not possess the property in dispute at the time of the alleged spoliation, or that it was legally justified;
- (b) Restoration is impossible; or
- (c) Counter-spoliation.

[48] The respondent’s opposition to the spoliation application is based upon three substantive grounds:

- (a) Firstly, it alleges that the removal was legally sanctioned in terms of the provisions of s 25 of the By-Laws and was thus not unlawful;
- (b) Secondly, that the *mandament van spolie* is an inappropriate remedy in this instance because the applicant is attempting to protect contractual rights; and
- (c) Thirdly, that the restoring of the billboard at the Botshabelo site is impossible.

[49] On behalf of the respondent, the argument is advanced that the applicant’s right to access or use of the billboard at the Botshabelo site is not an incident of actual possession recoverable by the *mandament van spolie*. Reliance is placed on *ATM Solutions (Pty) Ltd v OLKRU Handelaars CC and Another*²⁵ and *Jigger Properties CC v Maynard NO and Others*²⁶ (*Jigger Properties*) for the argument that the relationship between the applicant and the respondent, although governed by the By-Laws, is nothing more or less than a commercial transaction or relationship. In *Jigger Properties* the court ruled that contractual rights to access an exclusive use area for servicing underground tanks based on contract do not constitute *quasi-possessio* protected by a *mandament van spolie*. *Jigger Properties CC*, the new owner of the units, threatened to restrict access unless rent was paid. It was emphasised that the *mandament van spolie* is for restoring possession of property, not for enforcing contractual rights or specific performance.

²⁵*ATM Solutions (Pty) Ltd v OLKRU Handelaars CC and Another* [2008] ZASCA 153; 2009 (4) SA 337 (SCA).

²⁶ Footnote 23 paras 18, 21 and 23.

[50] In *Firststrand Ltd t/a Rand Merchant Bank v Scholtz NO*²⁷ the legal principles that apply where *quasi-possession* is protected by a spoliation order were re-affirmed by Malan AJA as follows:

'The *mandement van spolie* is a remedy to restore to another *ante omnia* property dispossessed "forcibly or wrongfully and against his consent". It protects the possession of movable and immovable property as well as some forms of incorporeal property. The *mandement van spolie* is available for the restoration of *quasi-possession* of certain rights and in such legal proceedings it is not necessary to prove the existence of the professed right: this is so because the purpose of the proceedings is the restoration of the status quo *ante* and not the determination of the existence of the right. The *quasi-possession* consists in the actual exercise of an alleged right or as formulated in *Zulu v Minister of Works, Kwazulu, and Others* in "die daadwerklike uitoefening van handelinge wat in die uitoefening van sodanige reg uitgeoefen mag word".'²⁸

[51] In para 13 of the judgment, Malan AJA points out that the *mandament van spolie*:

'... does not have a "catch-all function" to protect the *quasi-possession* of all kinds of rights irrespective of their nature. In cases such as where a purported servitude is concerned the *mandement* is obviously the appropriate remedy, but not where contractual rights are in dispute or specific performance of contractual obligations is claimed: its purpose is the protection of *quasi-possession* of certain rights. It follows that the nature of the professed right, even if it need not be proved, must be determined or the right characterised to establish whether its *quasi-possession* is deserving of protection by the *mandement*. Kleyn seeks to limit the rights concerned to 'gebruiksregte' such as rights of way, a right of access through a gate or the right to affix a nameplate to a wall regardless of whether the alleged right is real or personal. That explains why possession of 'mere' personal rights (or their exercise) is not protected by the *mandement*. The right held in *quasi-possession* must be a 'gebruiksreg' or an incident of the possession or control of the property.'

[52] It is now well-established that mere personal rights are not protected by the *mandament* and that only rights to use or occupy property or incidents of occupation

²⁷ *Firststrand Ltd t/a Rand Merchant Bank and Another v Scholtz NO and Others* [2006] ZASCA 99; 2008 (2) SA 503 (SCA).

²⁸ *Ibid* para 12.

will warrant protection by a spoliation order.²⁹ To my mind the relationship between the applicant and the respondent is primarily governed by a legislative and regulatory framework, rather than a purely private contractual agreement. In this regard it is also necessary to take cognisance of the fact that on 19 May 2016, the respondent replied to the applicant's predecessor, Ad Outpost (Pty) Ltd, that the application for the display of the custom-made billboard at the Botshabelo site has been approved. In paragraph 5 of the said letter, it is stated that the respondent must enter into a contractual agreement with Ad Outpost for the display of the sign. Certain documentation was requested and Ad Outpost was requested to confirm that the conditions set by the respondent are agreed to whereafter the respondent would 'continue to draw up a contract' with Ad Outpost. However, none of the parties appended any written agreement(s) to their papers and none of the parties referred to any specific contract or agreement concluded between them. It therefore appears that even if it might have been the intention of the respondent to enter into a written agreement with the owner of the billboards, no such agreement was concluded. The respondent would surely have appended such an agreement, apart from the application form(s) appended by the applicant, if such agreement(s) indeed existed. Based on the totality of the facts and circumstances of this matter, I am satisfied that the applicant proved on a balance of probabilities that it was in peaceful and undisturbed possession of the billboard at the Botshabelo site at the time when it was removed by the contractors on instructions from the respondent.

[53] The third defence raised by the respondent is that restoration of the billboard is impossible as the structure, which weighs around four and a half tons and is approximately 15 metres high, was rendered completely unfit for use by such removal. The structure is no longer structurally sound following its dismantling and removal from the site. According to the respondent, it has effectively been destroyed and cannot be reassembled. The steel structure had no protruding foundation above ground and was inserted into the ground with some unknown submerged foundation. The structure was merely cut at its base by the respondent's contractors and cannot be reconnected with the submerged foundation safely.

²⁹ Footnote 25.

[54] The applicant denies that the respondent cannot restore possession of the billboard *ante omnia* as stated by the deponent to the respondent's answering affidavit. According to the applicant, the opinion of the City Engineer of the respondent on the subject matter has not been obtained. On the other hand, the applicant appended a confirmatory affidavit deposed to by Mr Francois Polome (Mr Polome), the director of a company specialising in the fabrication, erection and maintenance of large-format billboard structures for the past 24 years, who studied the photographs of the removal of the billboard and of the remains of the site where the billboard's foundations are, and who opines that the billboard structure is not in such a state of destruction that it cannot be re-assembled and restored, with further or substituted items of equipment, to its prior status. A cost estimate in the amount of R690 000 excluding VAT is appended to the replying affidavit as compiled by Mr Polome.

[55] In the replying affidavit, the applicant further anticipated the filing of a further confirmatory affidavit by a registered professional structural engineer, Mr Henk Fourie pertaining to the restoration of the billboard to its prior status. However, due to the December holiday season, Mr Henk Fourie was not available to depose to the intended affidavit. The respondent raised the filing of further affidavits by the applicant, apart from the normal sets of affidavits, as a point of contention and due to the finding made regarding the Botshabelo billboard, I do not deem it necessary to deal extensively with the contention regarding the further affidavits filed by the applicant apart from noting that the confirmatory affidavit of Mr Polome has not been signed by him even though it was signed by a commissioner of oath. A further confirmatory affidavit by Mr Polome, properly deposed to and commissioned, some 20 days later, was electronically filed by the applicant's attorney. Ms Dirker also filed a supplementary affidavit to explain the omission of a page from an annexure to the replying affidavit and requested the court to accept the supplementary affidavit and the attached document as part of the replying affidavit. On 27 January 2026 the fresh resolution dated the 12th of January 2026 was electronically filed by the applicant's attorney.

[56] Having regard to the fact that both the interlocutory application as well as the

mandament van spolie were issued as urgent applications and time periods were set within which to file answering— as well as replying affidavits, it is understandable that neither of the parties had ample time to consult and draft papers without being pressed by time constraints. I, furthermore, have regard to the fact that the applicant is a company based in Johannesburg and the applications were issued subsequent to the December recess having commenced on 5 December 2025. It is therefore understandable that numerous obstacles were encountered to address all the objections raised by the respondent and as such, I accept the fresh resolution and the explanations tendered by the applicant as to the mishaps regarding the commissioning of the affidavit deposed to by Mr Polome.

[57] In *Vena v George Municipality*³⁰ and *Ierse Trog CC v Sulra Trading CC*³¹ it was held that restoration is impossible only where the original materials comprising the spoiled property have been destroyed entirely. However, the distinction between a spoliatory, a vindicatory, a possessory and a delictual remedy becomes blurred having to adjudicate upon the possibility or impossibility of reconstruction and/or rebuilding foundations and structures such as a 15 metre high billboard structure on motion proceedings. The respondent has not invited the applicant to inspect the structure, and the opinion of Mr Polome was obtained merely on studying the photographs taken when the billboard was dismantled by the respondent. The scope of the *mandament of spolie* order, which is a final order, should not be extended beyond the mere reassembling of the still existing original billboard. However, in view of the findings I will be making later in the judgment pertaining to the spoliation application regarding the Botshabelo billboard, I do not deem it necessary to deal with the arguments whether the reconstruction of the said billboard will be possible or not.

[58] In the answering affidavit filed in the *mandament van spolie* application, the respondent alleges that the By-Laws constitute legislation as clearly defined in, *inter alia*, s 1 of the Systems Act. None of the provisions or sections of the By-Laws have been declared unconstitutional and/or set aside and/or repealed, and as such, are enforceable as legislation. The respondent

³⁰ *Vena v George Municipality* 1987 (4) SA 29 (C).

³¹ *Ierse Trog CC v Sulra Trading CC* 1997 (4) SA 131 (C).

withdrew its consent to display the billboard at the Botshabelo site on 9 October 2025 with the result that the billboard displayed since then was unauthorised. The applicant was afforded a period of seven days after service of the notice of compliance, to immediately cease to display the sign by removing the billboard and the structures on which the billboard was affixed.

[59] The applicant was, furthermore, referred to the provisions of s 25(4), 25(6), 25(7) and 25(8) of the By-Laws which provide that the respondent may enter upon the land to remove the sign and also to destroy the sign. If the respondent removes, confiscates or destroys the sign, it is not required to compensate a person for any loss or damage which results from its actions. In *African Billboard Advertising (Pty) Ltd v North and South Central Local Councils, Durban*³² (*African Billboards*), the applicant erected advertising signs in the Durban area on property owned by Spoornet. The respondent local authority, acting under its building By-Laws in force at the time, placed the applicant on terms to remove the offending signs. When the applicant did not comply with the notice requesting such removal within 14 days, the respondent local authority authorised a contractor to remove the signs.

[60] The applicant in *African Billboards* brought a spoliation application which served before the court a *quo*. It was common cause that the respondent local authority did not obtain a court order prior to the removal. The court a *quo* dismissed the spoliation application. The question which served before the court a *quo* (and also before the full court on appeal) was whether the respondent local authority was entitled to enter upon Spoornet's property and remove the signs without such a court order. On appeal it was held:

'The by-law in question confers a discretion on the city engineer to direct any person who has erected a sign either in contravention of the by-laws or without having received permission to erect such sign in the first place to remove the sign within 14 days from the date on which notice is given. In the event of non-compliance s 7(3) empowers the city engineer to remove the sign. I am not persuaded that the framers of the by-laws intended that this should occur without a Court order. It was a simple matter to say that no Court order would be required. Our

³² *African Billboard Advertising (Pty) Ltd v North and South Central Local Councils, Durban* 2004 (3) SA 223 (N).

Courts have in the past applied rules against self-help strictly. ...The canons of construction laid down by our Courts require the statutory provision to stipulate in clear language that the dispossession of an individual's property can take place without an order of Court. The by-law in the present case does not do so and I am of the view that the removal in question ought not to have been done without an order of Court.'³³

The appeal was consequently upheld, the order of the court *quo* set aside, and it was declared that the removal of the signs was unlawful.

[61] The principles enunciated in *African Billboards* were confirmed and followed in *Midvaal Local Municipality v Meyerton Golf Club*³⁴ and the court found, at para 14 that '... the appellant is not exonerated from obtaining a court order; the by-laws do not absolve the appellant. . . '.

[62] Contrary to the circumstances in the last-mentioned two cases, s 25(4) of the By-Laws explicitly makes provision for the removal of the billboard to which the notice relates and for purposes of enforcement of this sub-section, the respondent is entitled to enter upon the private property of the cited respondents to remove the billboard, without a court order authorising it to do so. In view of the explicit and clear wording of s 25(4) of the By-Laws and having regard to the process followed by the respondent and the principle that a spoliation order is meant to prevent the taking of possession other than in accordance with the law, I am of the view that the respondent was entitled to remove the billboard at the Botshabelo site and that spoliation cannot be found to have occurred in circumstances where the respondent acts in terms of a statutory right to remove and dispossess a party of its property.

[63] This brings me to the issue of costs in respect of the two applications brought by the applicant. From the correspondence exchanged between the parties it is clear that if the urgent application for the interlocutory relief had not been issued by the applicant, no undertaking would have been given by the respondent. The applicant was thus compelled to bring the urgent application for an interim order to prevent the alleged infringement of the applicant's rights. The applicant is substantially successful in the application for interlocutory relief

³³ Ibid at 228 E - 229 A

³⁴ *Midvaal Local Municipality v Meyerton Golf Club* [2014] ZAGPJHC 235 (15 October 2014).

whereas the respondent is successful in the opposition to the relief sought in the spoliation application. The court retains a discretion to award costs that is fair to all parties concerned. The usual order pertaining to costs is that costs follow the outcome of the matter.

[64] However, the approach to be adopted as to the issue of costs in dealing with an application for an interim interdict pending the outcome of an action or review, such as in the matter at hand, has been the following:

‘There are sound reasons for not granting the costs of an interdict *pendente lite* to a successful applicant in the absence of exceptional circumstances. While it can be said that such an applicant has achieved substantial success, such success is of a limited and temporary nature, often based upon a balance of convenience, and even despite a serious dispute of facts on the papers. It is inherent in an order granting a temporary interdict that such order, and the relief consequence thereof, will fall away should the applicants be unsuccessful in the trial. It would in such a case, be unjust to compel the defendant in the trial to bear the costs of the interdict to which the plaintiff may subsequently be shown to have been not entitled.’³⁵

Order

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

1 The rule nisi granted under case number 2025-207118 on 12 December 2025 is extended and the first respondent, pending the final adjudication of Part B of the main application, is interdicted and further restrained from removing, without a court order, or otherwise interfering with the applicant’s outdoor media signage on the following sites:

1.1 Remainder of Portion 11 of the Farm Lilyvale, being Lettie Fouché School, Bloemendal Road, Bloemfontein;

1.2 Portion 3 of Erf 13073 Bloemfontein, being Bloemgate Total, Van der Riet Street, Brandwag, Bloemfontein;

³⁵ ENS Belting Company Sa (Pty) Ltd v Lloyd 1983 (1) SA 641 (E) at 646 ??; Ward v Cape Peninsula Ice Skating Club 1998 (2) SA 487 (C) at 501.

1.3 Erf 15762 Bloemfontein, being Oranje Meisieskool, Aliwal Street, Bloemfontein; and

1.4 Portion 1 of Erf 15976 Westdene, being Loch Logan Park building, 163 Nelson Mandela Drive, Bloemfontein.

2 The costs of the application for interdictory relief shall stand over for later determination, if the present application is re-enrolled by the respondent or the applicant or, failing which, for determination in Part B of the main application.

3 The application for the mandament van spolie under case number 2025-244669 is dismissed with costs, which costs shall include costs of counsel on Scale B.

I VAN RHYN

JUDGE OF THE HIGH COURT

Appearances

For the applicant:

S F Pudifin-Jones

Instructed by:

Symington De Kok Attorneys

Bloemfontein

For the first Respondents

C Snyman

Instructed by:

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Bloemfontein