



**THE HIGH COURT OF SOUTH AFRICA  
(NORTHERN CAPE DIVISION, KIMBERLEY)**

**Reportable/Not Reportable**

**Case no: 2026-117635**

In the matter between:

**ANDRIES SWART**

Applicant

and

**GARIEP SYSTEMS (PTY) LTD**  
(Reg. No: 2023/982840/07)

First Respondent

**FREDERICK MARK SLEMECK**

Second Respondent

**Neutral citation:** *Swart v Gariep Systems (Pty) Ltd and Another* (2026-117635)  
(05 June 2026).

**Coram:** Mamosebo J.

**Heard:** 29 May 2026.

**Delivered:** 05 June 2026.

**Summary:** Law of Property – Mandament van spolie – possessory remedy aimed at restoring the status *quo ante* – applicant required to establish peaceful and undisturbed possession and unlawful deprivation thereof – respondents

denying applicant access to property unless he signed an exit agreement – self-help impermissible – merits of the alleged repudiation and consequent cancellation of the management agreement irrelevant to the spoliation enquiry – possession restored *ante omnia*.

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## ORDER

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1. The application is urgent and the ordinary forms and service provided for in the Uniform Rules of Court are dispensed with.
2. The first and second respondents are ordered to immediately restore occupation and possession of the Property described as the Farm Warmbad Noord Number 1 and the Farm Warmbad Zuid Number 2 to the applicant in accordance with the provisions of the management agreement.
3. The first and second respondents are ordered to, forthwith and simultaneously with the restoration of possession referred to in order 2 (above) hand to the applicant all keys, access cards, remote controls, gate keys and other means of access to the Property, and to remove any locks, chains or other devices installed for the purpose of excluding the applicant from the Property and his home.
4. That the first and second respondents, and all persons acting on their instructions or under their control, are interdicted and restrained from interfering with, obstructing or disturbing the applicant's free and undisturbed occupation and possession of the Property, pending the final determination of the dispute between the parties in respect of the

management agreement, whether by arbitration in terms of clause 8 thereof or otherwise.

5. That the respondents pay the costs of this application, jointly and severally, the one paying the other to be absolved, on a scale between attorney and client, which costs are to include costs attendant upon the employment of two counsel.

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## **JUDGMENT**

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### **MAMOSEBO J**

#### Introduction

- [1] The applicant brought this spoliation application on an urgent basis. He asked this Court to condone his non-compliance with the prescribed time limits, forms and service and hear the application to restore his peaceful and undisturbed occupation and possession of the immovable property and his home thereon, together with his movable property kept thereon of which he was unlawfully deprived by the respondents. He contended that he would not be afforded substantial redress in the ordinary course. He also sought a special costs order on a scale as between attorney and client, which costs shall include the costs of two counsel. This application is opposed and was heard at the end of the unopposed motion roll, and judgment in the matter was reserved.

## The parties

- [2] The applicant is Mr Andries Swart, a major male person residing on the farms Warmbad Noord and Warmbad Zuid, Kenhardt, Northern Cape. The first respondent is Gariep Systems (Pty) Ltd, a private company with limited liability, registered and incorporated in terms of the laws of the Republic of South Africa. The second respondent is Mr Frederick Mark Slemeck, a major male.

## Salient facts

- [3] The facts are mainly common cause or not seriously disputed. In brief, the applicant was the previous owner of the farm, which he subsequently sold in 2024 to the first respondent. Part of their agreement, which according to the applicant, was an integral part of the sale agreement, was that he was entitled to reside on the farm until his death or upon due cancellation of the contract in terms of clause 7 of the management agreement. His benefits were to occupy the farm without paying rent, and the sole use and occupation of the portions of the farm referred to as the Main Complex, the Runaway, the Hangar, and the Goat and Sheep camp areas. He agreed to render management services to the first respondent without remuneration.
- [4] After concluding the management agreement, he acquired a camper vehicle<sup>1</sup> to facilitate travel within the country, thereby enabling him to be away from the property from time to time. The agreement permitted him to be away from the property for four months in a year, but for the remaining eight months, he was required to keep the buildings and

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<sup>1</sup> A camper vehicle (often called an RV, motorhome, or camper van) is a motorized or towable vehicle equipped with living spaces, including sleeping areas, a kitchenette, and sometimes a bathroom.

paraphernalia in a good state of repair. Notwithstanding his periods of absence, he left behind his movable property, which included his furniture, truck, licenced firearms, as well as cattle which the agreement allowed to roam freely and to graze on the property.

- [5] He attended a charity function known as Africa Burn in Quaggafontein in the Tankwa karoo. Upon his return to the farm on 17 May 2026, he was, wrongfully and against his consent, denied access to the farm and the house. The farm manager, one Jandre, whose full and further particulars are unknown to the applicant, obtained telephonic instructions from the second respondent in the presence of the applicant that the applicant was no longer welcome at the farm and was not allowed to enter his house and collect his belongings. Jandre further told the applicant that he was instructed to change all locks on the premises. The applicant left.
- [6] There was correspondence between the applicant's attorneys and the respondents' attorneys. The letter dated 7 April 2026 dealt with the applicant's cattle kept at the farm. It notified him of their long-term plan to return the property to a wilderness reserve, their proposal to remove his cattle to the slaughterhouse, and that they would reimburse him accordingly. In response, his attorneys wrote a letter dated 26 April 2026, warning against the removal of his cattle, which would constitute spoliation. On 17 April 2026, the respondents' attorneys referred to an incident of assault apparently carried out by the applicant on one Thabang Mashinini and that the assault constitutes repudiation of the agreement which they accepted. The letter further dealt with his exit from the farm. Whereas on 20 April 2026, the applicant's attorneys presented a counterproposal to the respondents' attorneys, the respondents' attorneys' response on 22 April 2026 suggested that the applicant and his cattle will not be "tossed out" but that an "exit agreement" will address the matter.

The applicant refused to sign the exit agreement because it contained a clause that the management agreement had been validly terminated, which, according to him, was not the case. On 21 May 2026, the respondents' attorneys then concluded that because the applicant declined their tender to access the property in their terms as specified in the "exit agreement", his refusal nullifies the necessity for a spoliation application.

- [7] It was this conduct by the respondents which sparked the present application. The applicant accordingly claims an order for the restoration of his peaceful and undisturbed occupation and possession of the immovable property and his home, which he was unlawfully deprived of by the respondents.
- [8] The respondents' version of events confirms the existence of the management agreement. The answering affidavit, deposed to by the second respondent, elaborately deals with the vision of the first respondent that informed the acquisition of the said Property and the altercation between the applicant and one Thabang Mashinini, a former farm labourer, as reported to the second respondent by one Mr Jandre de Beer, the farm manager. I deem it unnecessary to amplify on these aspects as they are disputed and not before me, but the subject of an arbitration which is provided for in clause 7 of the management agreement. The second respondent seems to suggest that the applicant has repudiated the contract entitling them to demand that he vacate the property with immediate effect and to return all their property, including keys and access devices.
- [9] The applicant was invited to attend on the property to collect his firearms or to authorise a third party to do so on his behalf, but their offer was declined. They deny that the Property is the applicant's permanent

residence as he spends most of his time in George in the Western Cape Province. The respondents' stance was informed by the applicant's repudiatory conduct and the alleged assault on Thabang. Ms Katz, for the respondents, argued that there was no peaceful disturbance because the applicant preferred to stay off the farm after acquiring the camper van. Counsel further submitted that there was no physical control over the Property. Ms Katz relied on the case of *Mans v Mans*,<sup>2</sup> contending that the matter is not urgent and urged the Court to strike it from the roll for lack of urgency, considering further that the applicant refused to follow a process of mediation as contemplated by Rule 41A of the Uniform Rules of Court before litigating. The respondents sought a punitive cost order, on a scale as between attorney and own client, against the applicant.

### Spoliation

[10] The *locus classicus* in spoliation applications which enunciated the principle underlying mandament van spolie stems from *Nino Bonino v De Lange*<sup>3</sup> where Innes CJ articulated:

'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 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 inquiry or investigation into the merits of the dispute.'

[11] Mhlantla JA, then, writing for a unanimous court in *Ivanov v Northwest Gambling Board and Others*<sup>4</sup>, and emphasizing the well-established general principles underlying the mandament van spolie pronounced:

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<sup>2</sup> 1999 JDR 0450 (C) para 8.

<sup>3</sup> 1906 TS 120 at 122.

<sup>4</sup> 2012 (6) SA 67 (SCA) para 19.

‘ . . . Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant — that is why possession by a thief is protected. The second is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant, as that would go to the merits of the dispute.’

- [12] The principle was endorsed by the Constitutional Court in *Ngqukumba v Minister of Safety & Security and Others*,<sup>5</sup> where Madlanga J, though dealing with possession of a vehicle, reiterated that the despoiler must restore possession before the enquiry into the lawfulness of the possession can be conducted.
- [13] The applicant must allege and prove that he was in peaceful and undisturbed possession of the property or right.<sup>6</sup> It is settled law that the applicant bears the onus of proving the required possession and that he was unlawfully deprived of such possession on a balance of probabilities. It is further trite that the required possession which must be proved is not possession in the juridical sense.<sup>7</sup> Ms Katz argued that because the applicant was off the farm most of the time since acquiring the camper van, there cannot be dispossession. This submission cannot be correct. For possession to be protected by a spoliatory remedy, it must consist of the *animus* – the intention of securing some benefit to the possessor, and of *detentio*, the holding itself. Both these elements, especially *detentio*, will be held to exist despite the fact that the claimant may not possess the

<sup>5</sup> 2014 (5) SA 112 (CC); 2014 (2) SACR 325 (CC) para 21.

<sup>6</sup> *City of Tshwane Metropolitan Municipality v Mamelodi Hostel Residents Association & Others* [2012] JOL 28434 (SCA) para 6; see also *Algoa Taxi Association v Cleary Park Property (Pty) Ltd and Others* [1998] JOL 1830 (SE) at 16.

<sup>7</sup> *Yeko v Qana* 1973 (4) SA 735 (A) at 739E.

whole property or may not possess it continuously.<sup>8</sup> The argument, as advanced, is inconsistent with the nature of the possession upon which the *mandament van spolie* is based, which, in the case of immovable property, involves factual control as well as the intention to derive some benefit from the land. The possession must be both peaceful and undisturbed, which it has been held to mean possession that was sufficiently stable and durable for the law to take cognisance of it.<sup>9</sup>

[14] It is trite that the mandament van spolie is a remedy rooted in the rule of law, the purpose of which is to uphold public order by precluding resort to self-help and the taking of the law into one's own hands. The remedy is not available in cases of threatened deprivation of possession, but is confined to instances of actual dispossession. A spoliation order will issue only where unlawful spoliation is established, namely a disturbance of possession without consent and against the will of the possessor. This requires a minimum threshold of actual physical interference or deception sufficient to constitute effective deprivation of possession. The deprivation element entails that the interference must be substantial enough to terminate or frustrate the possessor's control over the property.<sup>10</sup>

[15] The requirements for the mandament van spolie are trite: (a) peaceful and undisturbed possession; and (b) unlawful deprivation of such possession.<sup>11</sup> The remedy is possessory in nature and is aimed at the restoration of possession to a party who has been unlawfully deprived of prior peaceful and undisturbed possession of property. What constitutes spoliation or unlawful deprivation is a matter to be determined on the facts

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<sup>8</sup> *Bennet Pringle (Pty) Ltd v Adelaide Municipality* 1977 (1) SA 230 (E) at 233G – H.

<sup>9</sup> *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA) para 22.

<sup>10</sup> *Bisschoff and Others v Welbeplan Boerdery (Pty) Ltd* 2021 (5) SA 54 (SCA) para 7.

<sup>11</sup> *Ibid* para 5.

of each case.<sup>12</sup> It is common cause that the applicant had left his cattle and truck as well as his movable property inside the house, including his firearms. His mere travelling did not amount to absence of both the control (*corpus*) and mental (*animus*) elements, nor did it signify an abandonment of possession.

[16] The defences against the *mandament van spolie* are limited<sup>13</sup>, namely:

- (a) *Denial of the facts in issue*; the respondents did not deny the applicant's possession or dispossession;
- (b) *Restoration is impossible*; this is not applicable because the property has not been destroyed or irreparably damaged;
- (c) *Lapse of time*; the applicant approached court as soon as he was denied access;
- (d) *Counter-spoliation*; the respondents did not file any counter-spoliation; and
- (e) *Exceptio spoli*.

There is no mention made of any previous spoliation against the respondents.

[17] The respondents' answering affidavit is silent on the incident of 17 May 2026, when the farm manager related the instruction from the second respondent pertaining to the refusal of access to the property and the changing of locks. The respondents, however, rely on the alleged assault perpetrated on Thabang as a repudiation of the management agreement, which repudiation they have accepted. The respondents further contend that the spoliation application is premature as the parties could have

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<sup>12</sup> *Ibid* para 6.

<sup>13</sup> G Muller, R Brits, JM Pienaar and Z Boggenpoel *Silberberg and Schoeman's: The Law of Property* 6ed (2019) at 349-355, para 13.2.1.6.

followed the Rule 41A mediation process. The second respondent took this submission as far as to claim that the applicant's refusal to agree to mediation is clear evidence of his unreasonableness and that seeking spoliatory relief is opportunism on his part. I disagree. It is clear that the respondents have not raised any defence, and their attempt to conflate issues of the merits in the spoliation application is but an obfuscation of the facts.

[18] It is clear to me that the dispossession of the applicant was without his consent. The fact that the respondents denied the applicant access and would only do so upon him signing an exit agreement amounts to spoliation. The respondents' reliance on the purported repudiation of the management agreement to deny the applicant access is untenable because that is one of the matters that will be fully ventilated at arbitration. That will include whether or not the applicant had assaulted Thabang.

[19] As stated hereinbefore, mandament van spolie is a possessory remedy, offering temporary relief. It is also a robust and speedy remedy. It is not necessary at this stage to delve into the merits of the case and enquire into the lawfulness of the possession. Of importance is for the despoiler, namely the first and second respondents, to restore possession before all else. Borrowing from *Ngqukumba*,<sup>14</sup> self-help is so repugnant to our constitutional values that where it has been resorted to in despoiling someone, it must be purged before any enquiry into the lawfulness of the possession of the person despoiled.

[20] It is a fundamental principle of our law that a person may not take the law into his own hands. I am satisfied that the applicant has proven both his

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<sup>14</sup> *Ngqukumba v Minister of Safety and Security and Others* 2014 (2) SACR 325 (CC); 2014 (5) SA 112 (CC) Para 21.

possession of the property and his dispossession. The urgency is also supported by the fact that he has left his cattle and licenced firearms on the premises. I am further satisfied that the applicant has made out a case for the relief sought in the notice of motion. There is no reason why his possession cannot be restored forthwith (*ante omnia*).

[21] I am left with the question of costs. The applicant sought a punitive costs order on the basis that the respondents were, in effect, in contempt of the rule of law by resorting to self-help and taking the law into their own hands. The respondents remained adamant, as appears from the contents of their letters addressed to the applicant's attorneys that they would not grant the applicant access to the farm unless he signs the exit agreement, which contained a clause coercing him to agree to the cancellation of the management agreement. The respondents merely asked that the matter be struck off the roll and the applicant to pay costs on a scale as between attorney and own client, steadfast in their contention that the matter was not urgent, alternatively that that the urgency was self-created.

[22] Costs on an attorney and client scale are awarded when a court wishes to mark its disapproval of the conduct of a litigant. Over the years, courts have awarded costs on an attorney and client scale to mark their disapproval of fraudulent, dishonest or mala fides conduct; vexatious conduct; and conduct that amounts to an abuse of the process of court.<sup>15</sup> It is trite that costs on the attorney-and-client scale constitute an extraordinary remedy, reserved for cases where a litigant's conduct is clearly vexatious and reprehensible. Such an award is exceptional in nature, is punitive in effect, and reflects the court's strong disapproval of such conduct.<sup>16</sup>

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<sup>15</sup> *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) Para 223.

<sup>16</sup> *Plastics Convertors Association of SA on behalf of Members v National Union of Metalworkers of SA & Others* (2016) 37 ILJ 2815 (LAC) para 46.

[23] It is also trite that spoliation applications are, by their nature, urgent. Having regard to the circumstances of this case, and the respondents' failure to advance any defence to the relief sought, a punitive costs order is warranted.

[24] In the result the following order is made:

1. The application is urgent and the ordinary forms and service provided for in the Uniform Rules of Court are dispensed with.
2. The first and second respondents are ordered to immediately restore occupation and possession of the Property described as the Farm Warmbad Noord Number 1 and the Farm Warmbad Zuid Number 2 to the applicant in accordance with the provisions of the management agreement.
3. The first and second respondents are ordered to, forthwith and simultaneously with the restoration of possession referred to in order 2 (above) hand to the applicant all keys, access cards, remote controls, gate keys and other means of access to the Property, and to remove any locks, chains or other devices installed for the purpose of excluding the applicant from the Property and his home.
4. That the first and second respondents, and all persons acting on their instructions or under their control, are interdicted and restrained from interfering with, obstructing or disturbing the applicant's free and undisturbed occupation and possession of the Property, pending the final determination of the dispute between

the parties in respect of the management agreement, whether by arbitration in terms of clause 8 thereof or otherwise.

5. That the respondents pay the costs of this application, jointly and severally the one paying the other to be absolved, on a scale between attorney and client, which costs are to include costs attendant upon the employment of two counsel.



**MC MAMOSEBO**  
**JUDGE OF THE HIGH COURT**  
**NORTHERN CAPE DIVISION**

### **Appearances**

For the applicant:

Adv. P Ellis SC  
Adv AG Van Tonder

Instructed by:

Manley Inc  
c/o VDH Law

For the respondents:

Instructed by:

Adv. A Katz  
Francis Thompson & Aspden Attorneys  
c/o Mjila & Partners t/a Mhlabeni Inc