REPUBLIC OF SOUTH AFRICA

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

Case Number: 2026-111982

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

_____ [redacted]
DATE SIGNATURE

In the matter between:

MASHILA KOKO

Applicant

and

MONT TREMBLANT ESTATE HOMEOWNERS ASSOCIATION

Respondent

JUDGMENT

WENTZEL -THOMPSON J

Introduction

[1] This is an urgent application in which the applicant seeks relief arising from the respondent's restriction of his access to the MyEstateLife application used at the Mont Tremblant Estate. The application is framed principally as one for *the mandament van spolie*, although certain prayers bear the character of final interdictory and declaratory relief. The essential complaint is that the respondent removed or restricted the applicant's ability to use the application, including the facility by which residents may generate access codes or pins for visitors, school transport, deliveries and other third parties requiring controlled access to the estate.

[2] The applicant contends that prior to the restriction he enjoyed full use of the application, that it formed part of the ordinary incidents of his occupation and enjoyment of his property in the estate, and that its withdrawal occurred arbitrarily, without notice, without reasons and without the disciplinary or dispute-resolution procedures contemplated by the estate's governing instruments. He submits that the application is not a mere convenience but an integral access mechanism in a controlled estate, particularly because he is a single parent whose minor children are transported to and from school by third-party transport providers.

[3] The respondent resists the application on urgency and on the merits. It accepts that access to the application was restricted, but says that the restriction was imposed because the applicant was in arrears and that the estate's governing documents permit the respondent to restrict access to the application in those circumstances. More importantly for present purposes, the respondent contends that the applicant's biometric access to the estate has not been affected, that he continues to enter and exit the estate by facial recognition; that the application is a separate facility used principally to generate codes for third parties, and that the applicant has not been dispossessed of his property or of any incident of possession protected by the *mandament van spolie*.

[4] Two issues therefore arise. The first is whether the matter is sufficiently urgent to justify the abridged timetable adopted by the applicant. The second is whether the restriction of access to the application, or to a WhatsApp or electronic system by which access codes are generated, constitutes spoliation in law. If the applicant fails on spoliation, it is necessary to consider whether the remaining prayers can be granted as final interdictory relief.

The mandament van spolie

[5] The *mandament van spolie* is an ancient possessory remedy founded upon the rule that no person may take the law into his or her own hands. Its purpose is to restore the factual position which existed before dispossession, leaving disputes about rights to be determined later in appropriate proceedings. The applicant must prove peaceful and undisturbed possession and unlawful deprivation of that possession. The remedy is robust, speedy and deliberately indifferent to the ultimate merits of the parties' underlying rights.

[6] The Constitutional Court in *Ngqukumba v Minister of Safety and Security*[1] emphasised that the mandament exists to prevent self-help and to restore possession before rights are adjudicated. The remedy protects possession, not ownership; factual control, not entitlement. It is for that reason that a spoliation court ordinarily does not decide whether the spoliator acted lawfully in some broader contractual or statutory sense. The question remains whether the applicant was in possession and was unlawfully deprived of that possession.

[7] That principle must, however, be applied carefully where the alleged dispossession concerns incorporeal rights, access systems or services. In *FirstRand Ltd t/a Rand Merchant Bank v Scholtz NO* [2] the Supreme Court of Appeal held that the *mandament* does not perform a "catch-all" function protecting the exercise of all personal or contractual rights.

[8] South African law also recognises protection of quasi-possession in limited circumstances. However, not every right or advantage is capable of quasi-possession. The protection has classically extended to certain use-rights, particularly servitudal rights and incidents of possession, but not to every contractual benefit or administrative permission.

[9] Where quasi-possession is relied upon, the court must characterise the professed right and determine whether it is the kind of use right or incident of possession deserving of protection by the *mandament*. Mere enforcement of a contractual right is not spoliation.

[10] That distinction is important in access-control cases. The courts have repeatedly emphasised that the *mandament* protects possession, not access as such. The enquiry

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[1] *Ngqukumba v Minister of Safety and Security and Others* 2014 (5) SA 112 (CC).
[2] *FirstRand Ltd t/a Rand Merchant Bank and Another v Scholtz NO and Others* 2008 (2) SA 503 (SCA).

is therefore whether the access mechanism in issue is sufficiently bound up with possession of the immovable property to qualify as an incident of possession, or whether it is merely a means of regulating a contractual or personal privilege of entry.

[11] In *Singh v Mount Edgecombe Country Club Estate Management Association*,[3] the estate management association withdrew the residents' access cards and biometric privileges after they fell into arrears. The court held that the residents were in peaceful and undisturbed possession of their homes and that the withdrawal of the practical means by which they entered and exited the estate constituted spoliation.

[12] The significance of *Singh* lies in its treatment of gate-access credentials as integral to the possession of the home within a gated estate. The access cards and biometric enrolment were not viewed as standalone conveniences; they were the practical incidents of the residents' physical possession and control of their homes. The court therefore restored the status quo ante and made clear that the homeowners' association could not employ self-help to compel compliance with estate obligations.

[13] A similar approach appears from *Bill v Waterfall Estate Homeowners Association NPC*,[4] as summarised in the available teaching materials. There too, the disabling of access credentials was treated as an interference with the resident's possession because the access mechanism was the means by which the resident exercised ingress to and egress from the home. The case is used alongside *Singh* to support the proposition that electronic gate controls may, in an appropriate case, be incidents of possession rather than merely contractual facilities.

[14] These cases support the proposition that where an estate body disables the resident's own means of access to the property, the *mandament* may be available because what has in substance been interfered with is the resident's possession of the home itself, exercised through the estate's controlled access infrastructure.

[15] The distinction is important in this case. The applicant was not locked out of his home. He was not excluded from the estate. He did not lose physical control of his immovable property. On the respondent's version, which must be accepted where genuine disputes of fact arise in motion proceedings for final relief, the biometric access system remained operational, and the applicant entered and exited the estate several times after the

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[3] *Singh v Mount Edgecombe Country Club Estate Management Association* 2016 (5) SA 134 (KZD)

[4] *Bill v Waterfall Estate Home Owners Association NPC and Another* 2019 (6) BCLR 711 (CC).

restriction complained of. The application therefore does not concern loss of possession of the property itself.

[16] The applicant's true complaint is that he has been deprived of the facility by which he may generate electronic access authorisations for third parties. That is not the same thing as dispossession of the property. It is, at most, the withdrawal of a service or facility linked to the administration of access control within the estate. The applicant may have a contractual, domestic-law or administrative complaint if the respondent acted contrary to the estate rules, the memorandum of incorporation or principles of procedural fairness. But the mandament is not the mechanism by which every such dispute is resolved.

[17] The authorities concerning access to estates and services confirm this distinction. In *Telkom SA Ltd v Xsinet (Pty) Ltd*, [5] the Supreme Court of Appeal held that disconnection of a telecommunications service did not constitute spoliation of the premises from which the business operated. The use of electronic impulses, lines and bandwidth was not possession of property in the relevant sense.

[18] The leading limiting authority is *De Beer v Zimbali Estate Management Association (Pty) Ltd*.[6] The court held that the *mandament* was not designed to protect mere access and that the use of an estate access disc, on the facts of that case, did not amount to possession or quasi-possession of the premises.

[19] The reasoning associated with *De Beer* is that the *mandament* protects possession and not mere access; the applicant was effectively asserting a right of entry or use, not possession in the relevant juridical sense. The access disc was not treated as equivalent to possession of the premises, and the court drew a clear distinction between control of property and a revocable or regulated means of access to it. Subsequent judgments and commentary have repeatedly cited *De Beer* for the proposition that the *mandament* protects possession, not access.

[20] That distinction has also been reinforced in later discussions of quasi-possession. Academic commentary records that rights sourced purely in contract do not readily attract possessory protection unless they operate as incidents of possession in the strict sense. This explains why modern authority has been cautious in extending the remedy

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[5] *Telkom SA Ltd v Xsinet (Pty) Ltd* 2003 (5) SA 309 (SCA).
[6] *De Beer v Zimbali Estate Management Association (Pty) Ltd* 2007 (3) SA 254 (N)

to rights such as utility supply or other regulated benefits where the claimant seeks, in substance, to enforce a contractual arrangement under the guise of spoliation.

[21] In *Shoprite Checkers Ltd v Pangbourne Properties Ltd* [7] the court held that a mere right to use property does not amount to possession of that property.

[22] There are, of course, cases in which interference with access may amount to spoliation. A resident physically excluded from a gated estate, deprived of keys, locked out of a dwelling, or prevented from using an access route forming an incident of possession may be able to invoke the *mandament*. But this is not such a case. The applicant retains personal biometric access to the estate and to his property. The restriction complained of concerns the convenience and utility of arranging access for third parties. That may be important, particularly for a resident with children and service providers, but importance does not convert a contractual facility into possession.

[23] The involvement of the applicant's children does not alter the legal character of the claim. The Court accepts that school transport arrangements matter and that safety concerns in a controlled estate may be real. But the respondent's answer is that the children and transport providers may be collected or met at the gate, and that the applicant remains able to use his own access to facilitate entry and exit. That answer may be inconvenient for the applicant, but the inconvenience does not establish dispossession.

[24] The applicant relies on *Bill v Waterfall Estate Home Owners Association NPC* [8] and related authority to submit that estate access systems may in appropriate circumstances form part of quasi-possession. I accept that proposition; but it does not follow that every component of every estate application is protected by the *mandament.* The decisive factual distinction is that the applicant's own access to the estate has not been terminated; the resident remained able to enter and leave the estate personally by means of biometric access. The deprivation concerned the applicant's ability, through the estate application, to authorise a third-party transport service to enter the estate for the purpose of collecting and returning the resident's children. The children were accordingly required to wait at the gate and to be dropped there, rather than at the residence.

[25] Those facts do reveal a serious practical interference with the ordinary use and enjoyment of the property, and they may raise concerns of convenience, safety and

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[7] *Shoprite Checkers Ltd v Pangbourne Properties Ltd* 1994 (1) SA 616 (W).
[8] *supra*

reasonableness. However, the question for purposes of the *mandament* is narrower: whether the resident was dispossessed of possession, or quasi-possession, rather than merely deprived of a facility by which third-party access had previously been managed.

[26] The facility restricted is one used to grant access to others. On the facts before me, that facility is too remote from the applicant's possession of his property to sustain spoliatory relief. The applicant's possession of his immovable property was not disturbed in the manner contemplated in *Singh*. Applicant's personal ingress and egress remained intact; what was withdrawn was a functionality enabling the resident to procure entry for a third party through the estate's managed security system. That functionality is more readily characterised as a contractual or administrative facility than as an incident of the applicant's own possession of the home.

[27] The facts are therefore materially closer to the line of reasoning associated with *De Beer* than to *Singh*. The resident was not excluded from the property, nor deprived of the practical means of occupying it. Instead, the estate restricted a particular method by which a third party could be admitted. The inconvenience and even prejudice flowing from that restriction do not, without more, convert the app-based visitor authorisation facility into a possessory interest protected by the *mandament.*

[28] The position might have been different had the estate disabled the applicant's own credentials, or otherwise rendered it practically impossible for the resident and the children to gain access to their home. In those circumstances, the reasoning in *Singh* and cognate cases would be directly engaged because the access mechanism would then operate as the practical incident of possession itself.

[29] Nor does the fact that the affected third party is a school transport service necessarily alter the possessory analysis. That fact strengthens any argument directed at the unreasonableness or unlawfulness of the estate's conduct, and may be relevant to other forms of relief. It does not, however, by itself transform the applicant's ability to admit a third-party service provider by means of an app. into possession or quasi-possession recognised by the spoliation remedy.

[30] The better view is therefore that, on these facts, the disabling of the application insofar as it prevents the resident from authorising the children's transport service to enter the estate does not constitute dispossession of possession for purposes of the *mandament van spolie*. It constitutes, rather, an interference with a regulated access facility enjoyed

by or through a third party, while the applicant's own possession and occupation of the home remain undisturbed.

[31] That conclusion does not mean the respondent's conduct is necessarily lawful or justified. It means only that the *mandament van spolie* is not the most natural doctrinal vehicle for the complaint on the assumed facts. If the restriction is alleged to be arbitrary, punitive, contrary to the estate's governing instruments, or inconsistent with the welfare and safety interests of the children, those considerations may more appropriately found contractual, declaratory or interdictory relief than possessory restoration.

[32] Indeed, the applicant himself complains that the respondent did not follow its own procedures and that the restriction was imposed without reasons, prior notice or proper authority. Those contentions may be relevant in contractual proceedings, internal estate dispute procedures, proceedings under the Community Schemes Ombud Service Act 9 of 2011, or a properly framed interdict. They do not answer the threshold requirement of possession for purposes of the *mandament van spolie*.

Urgency

[33] The urgency of the application must be considered against the above analysis. Spoliation applications are often urgent because their object is to prevent self-help and restore the *status quo* immediately. But they are not automatically urgent in every case, and the degree of urgency must still be commensurate with the relief sought and the timetable imposed on the respondent.

[34] The applicant became aware of the restriction on 13 May 2026, demanded reinstatement within two hours, but only issued and served the application on 18 May 2026, giving the respondent one day to deliver an answering affidavit. The applicant does not adequately explain why a matter said to be so urgent that the respondent had only one day to answer was not itself launched immediately.

[35] More fundamentally, the applicant has not shown that he would be deprived of substantial redress in due course. His own access to the estate remains intact. The prejudice relied upon concerns inconvenience in arranging access for third parties and alleged safety concerns regarding his children. Those matters are not trivial, but they do not justify the extreme abridgment of time periods adopted, particularly where the factual evidence shows that the applicant is able to continue to enter and leave the estate.

[36] The respondent's objection to this application being brought on an urgent basis is therefore well founded. Applying *Luna Meubel Vervaardigers (Edms) Bpk v Makin* and *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*,[9]the applicant has not demonstrated that he will be unable to obtain substantial redress in due course or that the degree of urgency justified the procedure adopted.

[37] Even if I were to entertain the application on the urgent roll, it fails on the merits. The applicant has not established peaceful and undisturbed possession of the application or WhatsApp facility in the sense required by the *mandament*; he has established only prior access to an electronic service used to generate third-party entry permissions. The restriction of that service does not constitute dispossession of the applicant's property or of a protected incident of his possession.

The final interdictory relief sought

[38] The remaining relief fares no better. To the extent that the applicant seeks final interdictory relief, he must establish a clear right, injury actually committed or reasonably apprehended, and the absence of any adequate alternative remedy. He has not done so. The existence and extent of arrears, the respondent's entitlement under the estate rules, the lawfulness of the restriction, and the procedures required before restriction are all contested. Those disputes cannot be resolved finally on the urgent papers. On the *Plascon-Evans* approach, the respondent's version must prevail unless palpably untenable. It is not.

[39] There is also an adequate alternative remedy. The applicant may invoke the estate's internal procedures, approach the Community Schemes Ombud Service, or institute properly framed proceedings for contractual or interdictory relief if he contends that the respondent acted outside its powers. The *mandament* cannot be used to bypass those remedies where the complaint is not dispossession but disputed entitlement to an estate management facility.

[40] And of course the applicant has the remedy of paying his arrears and thereby having the restriction to the access to the third party access lifted.

[41] The applicant's application must accordingly fail.

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[9] *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W); *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2012 JDR 183

Costs

[42] I do not consider punitive costs appropriate. The applicant's complaint is not frivolous; it arises from a practical access difficulty affecting his family arrangements. But the respondent has been brought to court on extreme urgency in circumstances where spoliation was not established and where the respondent was afforded an unduly restricted time to respond. Costs should therefore follow the result on the ordinary party-and-party scale, including counsel's costs on Scale B.

[43] The application must accordingly fail.

Order

[44] In the result, I grant the following order:

(1). The applicant's non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court is not condoned.

(2). The application is dismissed.

(3). The applicant shall pay the respondent's costs, including counsel's costs on Scale B

S.M WENTZEL-THOMPSON
JUDGE OF THE HIGH COURT
JOHANNESBURG

HEARING:
Date of the hearing: 3 June 2026
Date of the judgment: 21 June 2026

APPEARANCES

For the applicant:	T. Mahlare instructed by Mashila Koko Attorneys
For the respondent:	S. Mc Turk instructed by Otto Krause Inc