

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

CASE NUMBER: 135081/2026

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
.....
SIGNATURE	DATE

In the matter between:

NADIA WALKER

First Applicant

DYLAN WHEATLEY

Second Applicant

and

WALDO CROUCAMP

First Respondent

**THE SHERIFF OF THE HIGH COURT,
HALFWAY HOUSE – ALEXANDRA**

Second Respondent

JUDGMENT

LEECH, AJ:

- 1 On 9 June 2026, the applicants caused an urgent application to be issued forth out of this court, setting it down for hearing on the urgent court roll of 17 June 2026, where it served before me.
- 2 The relief that the applicants claim is directed principally at the setting aside an attachment and removal, by the second respondent (*Sheriff*), of the applicants' household goods and home-office equipment (*attached property*). The Sheriff purportedly effected the attachment in the course of executing a warrant of execution for monies owed to the first respondent, Mr Croucamp. The jurisprudential underpinning of the application is the *mandament van spolie*.
- 3 The applicants, Ms Walker and Mr Wheatley, and the first respondent, Mr Croucamp, were all self-represented in the proceedings, having drafted their papers without the benefit of any legal assistance. All three presented argument before me: the applicants first, Mr Croucamp in answer, and the applicants in reply. The Sheriff played no part.
- 4 Whilst their efforts were admirable and I thank them for the diligence shown, it has taken some time to piece together a coherent narrative and understanding of the dispute and its merits as well as the relevant legal principles applicable thereto. Both the papers presented before me and the written and oral arguments would have benefitted enormously from the input of a qualified legal practitioner. There is much in both that is legally inadmissible, irrelevant, or legally unsustainable as either a foundation for a claim or the basis of a defence. The applicants seek relief in their Notice of Motion that is not

cognisable in motion court proceedings and allegations in the affidavits—including the answering affidavit and supplementary answering affidavit—that address this relief are sometimes more detailed than those issues that are legally cognisable and relevant.

5 Within these constraints and conscious of the urgency of the application, these reasons have been provided as expeditiously as possible. They do not cover every aspect of the dispute before me and refrain from addressing aspects that are inadmissible or irrelevant. I also deal summarily with aspects of the Notice of Motion that I do not regard as seeking competent relief under the auspices of a spoliation application.

6 As is apparent from what follows, there is a single issue that is determinative of the relief sought. Before addressing that issue, I first sketch relevant aspects of the factual background.

6.1 The applicants are lessees occupying immovable property at Unit [...] P[...] P[...], 6[...] T[...] Crescent, M[...] Johannesburg (*leased premises*) that is leased to them by Mr Croucamp.

6.2 Disputes have arisen between the Parties, with both sides complaining about the conduct of the other. These include a complaint by Mr Croucamp that the applicants have fallen into arrears with payment of their rental obligations. a number of these disputes have served or are presently before the courts.

6.3 Disputes were also referred by both Parties to the Gauteng Rental Housing Tribunal (*Tribunal*), a statutory body established under the Rental Housing Act, 50 of 1999 (*Rental Housing Act*). The applicants' complaints proceeded under

referral number RT1706/25 and Mr Croucamp's under referral number RT1965/25. Under his referral, Mr Croucamp complained, amongst other things, of nonpayment of rent by the applicants.

6.4 On 16 March 2024 the Tribunal held a single hearing at which both the applicants' referral and Mr Croucamp's referral were considered. The Tribunal's ruling on both referrals is contained in a single document dated 24 March 2026.

6.5 In its ruling the Tribunal made findings in respect of both referrals before it. As far as concerns Mr Croucamp's referral, the Tribunal *inter alia* concluded that his complaint about non-payment of rental succeeded. It directed the applicants, jointly and severally, within seven days of the ruling to make payment to Mr Croucamp of the sum of R39 000 (*Rental Sum*). The ruling provided further that

Upon non-compliance by the Complainants, the local sheriff is authorized to attach and remove the asserts of the Complainants situated at [the leased premises] and/or at any address where the Complainants may in future reside and to sell same on auction to recover the amount owed to the Respondent.¹

6.6 For reasons that do not have a bearing on the outcome of this application, the Rental Sum remained unpaid and Mr Croucamp invoked the remedies available to him under section 13(13) of the Rental Act read with the Magistrates' Court Act

¹ All quotations are rendered verbatim, except to the extent that square brackets or ellipses are used to indicate an omission or insertion. Footnotes have been omitted from quotations.

and Magistrates' Court Rules.² In short, Mr Croucamp obtained a writ of execution from the Magistrates' Court and instructed the Sheriff to execute it.

6.7 On 9 April 2026 the Sheriff attended at the leased premises where he is said to have effected an attachment of the attached property, in furtherance of the writ. He returned first on 21 and again on 22 May 2026—on the first occasion unsuccessfully, because he was denied entry by Mr Wheatley—whereupon he gained access to the leased premises with the assistance of a locksmith and proceeded to remove the attached property.

6.8 As at the date of the hearing of the urgent application before me, the attached property remained in the custody of the Sheriff.

6.9 The applicants initially sought recourse from the Magistrates' Court, but their application in this regard was unsuccessful with the Presiding Magistrate concluding that that Court lacked jurisdiction—it was the High Court that enjoyed jurisdiction. Thus, the applicants came to proceed with their urgent before me.

7 It is the Sheriff's actions in executing the writ that resulted in the applicants' dispossession and which forms the cornerstone of their challenge before me. They complain about both the validity and manner of execution of the Sheriff's conduct in gaining access to the leased premises and executing the writ.

² Respectively the Magistrates' Courts Act, Act 32 of 1944 and the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa – GN R740 of 2010.

8 Their Notice of Motion and affidavits range far and wide beyond this issue, however. They claim prayers for urgency, a declaratory order of unlawful dispossession on 22 May 2026 and a claim to restoration of possession. They also claim replacement of the locks damaged by the locksmith and orders against Mr Croucamp prohibiting him from accessing the leased premises, having keys to the leased premises, or communicating with the locksmith; an urgent data interdict, preventing Mr Croucamp from accessing or copying any of the digital information stored on computers that were seized; obliging him to provide them with digital recordings made during the execution of the writ and preventing him from disseminating or publishing them; a reservation of the right to claim damages; that another Sheriff (not joined) be authorised to intervene should the respondents not adhere to the terms of an order granted by me; and a punitive costs order.

9 I look at the balance of the relief more closely in what follows, but the starting point—and the central issue in this application—is the relief based on the *mandament van spolie*, which in turn entails a consideration of the lawfulness of the Sheriff’s actions on 22 May 2026 and in the days and weeks leading up to the 22ND.

10 At the outset I note that Mr Croucamp challenged urgency. In this regard, a spoliation action is ordinarily by its nature urgent. The specific allegations contained in the founding affidavit and addressed in argument before me reinforce this general position: the attached property includes computer equipment required by the applicants for them to continue with their income-earning activities; the attached property includes refrigerators and other household appliances that they reasonably require from day to day. The applicants sought and achieved an appropriate balance between curtailing the ordinary time periods applicable under the Uniform Rules of Court and giving the respondents

enough time to respond, without thereby squandering their claim to urgency. In the circumstances, I am satisfied that the application is urgent and should be treated as such.

11 I also note that an attachment and dispossession of property in the course of executing a writ is ordinarily or *prima facie* lawful. This protection is, however, forfeited where the writ upon which the Sheriff purports to execute is invalid or the process is otherwise unlawful (*Ritch v Orthopaedic Buildings (Pty) Ltd* 1979 (4) SA 19 (T)). In those circumstances, the dispossession in purported execution of a writ will be unlawful and the aggrieved party can claim relief under the *mandament*.

12 Section 13(13) of the Rental Act provides that

A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act . . . and is enforced in terms of that Act.

13 It follows that, in order for the execution of the writ to have been lawful, the Sheriff—and, insofar as is necessarily required before the Sheriff can act, Mr Croucamp before him—must have executed a valid writ in the manner stipulated in the Magistrates' Court Rules. The applicants deny this is the case and have challenged both the validity of the writ, the entitlement of the Sheriff in law to execute it, and the manner of execution, including conduct that exceeded the bounds of reasonable execution. If any one of these complaints is good, there is no need for me to consider the others.

14 The process of execution of writs under the Magistrates' Court is dealt with in Rules 46 and following of that Court's Rules. The starting point, for purposes of this case, is to be found in Rules 36(1) and (2), which read with the heading are as follows:

Process in execution

(1) The process for the execution of any judgment for the payment of money, for the delivery of property whether movable or immovable, or for ejectment shall be by warrant issued and signed by the registrar or clerk of the court and addressed to the sheriff.

(2) A process issued under subrule (1) may be sued out by any person in whose favour any such judgment shall have been given, if such judgment is not then satisfied, stayed or suspended.

15 Hence, the process is initiated through the issuing of a signed warrant by the registrar or clerk of the court, addressed to the Sheriff. The purpose behind this is to ensure oversight of the process, from the outset, by the court or its officials. The Rule 36(1) warrant is a *sine qua non* for everything that follows, as the validity of the Sheriff's conduct is in turn premised on the warrant authorising him to act.

16 When he acts, the Sheriff is obliged thereafter to act in accordance with the Magistrates' Court Rules; he has no authority to undertake another process or to depart from the requirements of those Rules.

17 It is not in dispute before me that the attached property comprises moveables. The Sheriff was therefore obliged to adhere to the requirements of Rules 41 and 42.

18 Rule 41 stipulates a bifurcated process, in terms of which the Sheriff is required to first take an inventory of and attach the moveable property and, at a later stage after other steps have been satisfied, if necessary to remove the attached property.

18.1 The purpose of this bifurcated process is, amongst other things, to afford the judgment debtors an opportunity to make payment of the amount owed to the judgment creditor or otherwise to exercise such rights as may be available to

them. In this way, a balance can be struck between the inroads made on the rights of the debtors and the need to ensure compliance with the order that is being executed upon. This ensures adherence to rights under the Constitution of the Republic of South Africa, 1996 and adherence to the rule of law.

18.2 There are means by which the intervening period between attachment and removal can be shortened, but none of those are applicable here. Put differently, Mr Croucamp has not sought refuge in any of them.

18.3 At each of these steps in this bifurcated process, the Sheriff must produce a valid warrant, which necessarily means a warrant as envisaged by Rule 36(1). To be abundantly plain, it must at very least on the face of it be a warrant issued and signed by the registrar or clerk of the court and addressed to the Sheriff. This must have been done before the Sheriff purports to act on the warrant.

18.4 Because both steps are mandatory and sequential, due compliance with the second cannot cure non-compliance with or any invalidity attaching to the first.

19 In their founding affidavit the applicants squarely took the point that there had been no compliance with this dual process, which rendered the execution unlawful. They described this as the “mandatory two-step process”. It was therefore incumbent on Mr Croucamp to place some evidence before the Court to gainsay this case that was made out. The easiest way in which he could have done so was by putting up documentary evidence that demonstrated that the bifurcated process had indeed been complied with.

20 There is only one writ or warrant of execution, issued by the court, that has served in the papers before me. It was attached to the founding affidavit and is dated 22 May 2026. Self-evidently, it cannot serve to validate the first step in the bifurcated process, because the Sheriff attached the property on 9 April 2026, which was more than a month before the warrant was issued and signed by the clerk of the court.

21 *Prima facie*, therefore, when the Sheriff attached the property on 9 April 2026, he was not acting in accordance with a valid warrant as required. There was no evidence advanced by Mr Croucamp in his answering affidavit or supplementary answering affidavit to contradict this.

22 When I asked, during the course of argument, what the position was regarding the applicants' complaints about the two-step process, Mr Croucamp confirmed the evidence as it appears in the affidavits: on 21 May 2026 an attempt was made to execute the second step in the bifurcated process, which was resisted by Mr Wheatley; on the morning of 22 May 2026, Mrs Croucamp went to the Magistrates' Court where the warrant was stamped; it was executed the same day. Hence, it would seem to be common cause on the papers that prior to the morning of 22 May 2026 the warrant had not been issued by a clerk of the Magistrates' Court.

23 The result is that, prior to 22 May 2026, there was no valid warrant upon which the Sheriff could execute attachment or removal. His first step in the bifurcated process, taken on 9 April 2026, was therefore taken without a valid warrant and was unlawful.

24 It follows necessarily that if the first step was unlawful the process as a whole does not comply with the requirements stipulated in the Magistrates' Court Rules. The second

step—in the form of the removal of the attached property on 22 May 2026—was accordingly also unlawful. The applicants’ dispossession thus constituted an unlawful spoliation entitling the applicants to redress under the *mandament*.

25 It follows that the applicants are entitled to relief as prayed for in the first three prayers of their Notice of Motion. They are also entitled to have the locks restored, as these were damaged at the instance of the Sheriff in the course of his executing an unlawful warrant and is akin to a form of spoliation. I am not persuaded that they are entitled to the further relief preventing Mr Croucamp, the lessor, from having access to the keys as the leased premises are and remain his—always subject, of course, to his duty not to disturb the applicants’ peaceful use and enjoyment of the premises.

26 As indicated above, the applicants have challenged the execution of the warrant of execution on other grounds.

26.1 These include a number of complaints about the wording of the Tribunal’s ruling and whether or not it can be enforced. Among these complaints, by way of example, is a concern that the word “asserts” is incapable of meaning, when it is a clear typographical error and should be taken as reading “assets”. *Prima facie* at least, I am not persuaded by these complaints insofar as they serve before me in this urgent application,³ but I need make no finding on this for two reasons.

³ I am enjoined to interpret the ruling sensibly having regard to the ordinary meaning of the language used, read in context and having regard to the factual circumstances (*University of Johannesburg v Auckland Park Theological Seminary* 2021 (6) SA 1 (CC). See also *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) and *Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd* 2022 (1) SA 100 (SCA)). When I do so, the applicants complaints seem to me to be more contrived than real.

26.1.1 First, because the Tribunal's decision constitutes administrative action which remains valid unless and until set aside by a court of competent jurisdiction on review.⁴ The applicants have not sought to review the ruling before me, but have pursued those proceedings before another court. In the result, I am constrained to accept the ruling as a fact.

26.1.2 Secondly and flowing from this, once I have concluded that the spoliation was unlawful for the reasons set out above, it is not necessary for me to inquire into the other grounds of challenge based on the applicants' interpretation. More importantly, it would be inappropriate for me to do so in circumstances where this issue will serve before another review court.

26.2 For the same reason as informed the second proposition above, it would be inappropriate for me to inquire into or express a view on the manner in which the Sheriff executed the warrant and if he exceeded the bounds of reasonableness. I have already concluded that the execution of the warrant on 22 May was unlawful; how it was carried out by the Sheriff cannot change that. The applicants seek relief recording the reservation of their right to pursue a damages remedy, but that is not relief that I need consider: whether or not they have a valid cause of action for damages is something that another court might be called upon to determine and they do not need my imprimatur to their pursuing such a claim if it exists. I am not going to prejudge the merits of any such claim, however, by

⁴ *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) at [64], *ff* approving and endorsing *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA).

commenting in these urgent court proceedings on matters in respect of which there are disputes of fact. Those are matters best left to a trial court.

27 As for the other relief that the applicants seek, the attached property is in the possession of the Sheriff. There is therefore no room for the urgent data interdict, preventing Mr Croucamp from accessing or copying any of the digital information stored on computers that were seized. I am also not persuaded that the applicants have made out a case for an interdict against Mr Croucamp obliging him to provide them with digital recordings made during the execution of the writ or preventing him from disseminating or publishing them. I therefore decline to grant that relief.

28 What remains is the question of costs, which the applicants claim on a punitive scale. The difficulty they face in this regard, however, is that they have been self-represented throughout and therefore there are no costs that they can tax. I accordingly decline to make any order for costs in their favour.

29 That said, to the extent that there are any costs that might be incurred arising from the restoration of the applicants to possession of their property, those costs are to be borne by the first respondent.

30 I accordingly make the following order:

- 1 The application is enrolled as one of urgency under Rule 6(12).
- 2 It is declared that the applicants were unlawfully dispossessed of their possession of the items purportedly attached on 9 April 2026 and

removed on 22 May 2026 by the second respondent, at the instance of the first respondent.

- 3 The second respondent is directed, forthwith, to release the attached property from attachment and to restore the applicants to possession thereof.
- 4 Pursuant to the order in sub-paragraph 2 above, the second respondent is directed forthwith to restore the applicants' previous possession of the premises situate at Unit [...] P[...] P[...], 6[...] T[...] Crescent, M[...] Johannesburg through the replacement of the locks damaged by the locksmith on 22 May 2026 during the course of the second respondent's purported execution of the warrant on that day.
- 5 Insofar as there may be any costs arising from the orders in sub-paragraphs 2 to 4 above, those costs are to be paid by the first respondent.
- 6 Save as aforesaid, there is no order as to costs.

B.E. LEECH
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

For the applicants:

In person

For the first respondent:

In person

Date of hearing:

17 June 2026

Date of judgment:

23 June 2026