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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Not Reportable
Case No: 2026-186634**

In the matter between:

**DR JAPIE JIMMY LA POORTA
PASTOR SUSAN LA POORTA**

First Applicant
Second Applicant

And

**THE APOSTOLIC FAITH MISSION OF SOUTH AFRICA
MR SEBASTIAN LUCAS**
Respondent

First Respondent
Second

**Coram: DA SILVA SALIE, J
Heard on: 21 August 2026
Delivered on: 21 August 2026**

Summary:

Spoliation – mandament van spolie – peaceful and undisturbed possession disputed – applicants alleged to have occupied property as employees or agents of Children's Home – enquiry directed at factual possession immediately preceding dispossession and not right or entitlement to possess – applicants established sufficient physical control to constitute possession – respondents replacing locks without court order – unlawful self-help – pending eviction proceedings determining right to occupation – spoliation relief granted – possession restored – costs following result.

ORDER

1. The application is heard as one of urgency in terms of Rule 6(12), and the applicants' non-compliance with the ordinary forms and service provided for in the Uniform Rules of Court is condoned.
2. The first and second respondents are directed forthwith to restore to the first and second applicants peaceful and undisturbed possession of Building C situated on Erf 3[...].
3. The first and second respondents are directed to hand to the applicants, within 48 hours of the granting of this order, a complete set of keys to the locks installed at Building C.

4. This order does not determine the applicants' right or entitlement to occupy the property which remains to be determined in the eviction proceedings pending between the parties under case number 2026-114283.
5. The first and second respondents shall pay the costs of this application (Scale C), jointly and severally, the one paying the other to be absolved.

JUDGMENT

DA SILVA SALIE, J:

Introduction:

[1] This is an urgent application for a *mandament van spolie*. The applicants seek restoration of their possession of Building C, situated on Erf 3[...], following the replacement of the locks to the building by the respondents.

[2] The central question is whether the applicants were in peaceful and undisturbed possession of Building C immediately before the locks were replaced. The respondents contend that the applicants acted as employees or agents of the Children's Home and that possession of Building C vested in the Children's Home, rather than in the applicants personally. Thus they contend that it was not the applicants who enjoyed possession of the building, accordingly they could not have lost possession thereof.

[3] The enquiry in spoliation proceedings is concerned with factual possession immediately preceding the alleged dispossession, and not with the parties' respective rights or entitlement to possess or occupy the property.

[4] The respondent dispute that the matter is urgent and deny that the applicants were in possession of the property. On the respondents' version, they contend that the Orphanage/Children's home was in possession and control of Building C until February 2026 at which stage the property had undergone renovations. It alleges that the renovations had ceased and that the property had been unoccupied. In May 2026, the first respondent noticed that a lock had been appended to Building C and requested the keys from the applicants as representatives of the Children's Home and to open the building. Thereafter, on 18 June 2026, when they did not get the keys, the first respondent removed the lock and replaced it with different locks. The applicants however maintain they were in possession of Building C and sought relief in terms of which the respondents restore possession of Building C to the applicants.

[5] The fork in the road so to speak between the two versions is that the applicants submit that the renovations were temporarily paused due to funding or administrative timelines, however, that they remained in peaceful and undisturbed possession. The respondents however contend that the state of the building, being sparsely equipped and appearing vacant, meant that the building was unoccupied. The respondent reasoned in their papers that since the Children's Home was in possession of the property it would have the *locus standi* to apply for relief. The respondents thus distinguish the applicants as mere detentors and not possessors.

[6] However, the enquiry in spoliation proceedings is concerned with the factual possession exercised immediately preceding the alleged dispossession. While the capacity in which physical control is exercised is relevant to this enquiry, the description of the applicants as employees or agents does not on these facts determine whether

they exercised possession of Building C at the relevant time. They clearly did. It is not in dispute that they had barricaded Building C and held the keys thereto. This was the position for some time. In other words, they had physical control over the building before they were deprived of access.

[7] Having considered the evidence on the papers as a whole, I am satisfied that before the locks were replaced, the applicants exercised sufficient physical control and possession over Building C to constitute peaceful and undisturbed possession for purposes of the *mandament van spolie*. Their relationship with the Children's Home and the capacity in which they originally came to occupy or control the building do not alter the factual position which existed immediately before the locks were replaced and together with all other relevant facts, they had been spoliated from their possession. The requirements for spoliation relief have accordingly been established.

Eviction proceedings under Western Cape High Court case number: 2026-114283

[8] It is not without significance that the respondents had instituted eviction proceedings against the applicants under case number 2026-114283. The applicants' right or entitlement to remain in occupation is to be determined in the pending eviction proceedings. The respondents were not entitled to resort to self-help by depriving the applicants of their possession. Restoration of possession must accordingly follow.

Urgency:

[9] In respect of urgency, having considered the circumstances giving rise to the application and the nature of the relief sought, I am satisfied that the matter is urgent and should be determined as such in terms of Rule 6(12).

Costs:

[10] In respect of costs, I see no reason why the ordinary costs principle may not apply or that there is justification on the facts to depart therefrom. Costs must follow the result. I am however not persuaded that the punitive costs order sought by the applicants is warranted.

Order:

[11] In the premises and based on the papers and submissions before me, I make the following order:

- (i) The application is heard as one of urgency in terms of Rule 6(12), and the applicants' non-compliance with the ordinary forms and service provided for in the Uniform Rules of Court is condoned.
- (ii) The first and second respondents are directed forthwith to restore to the first and second applicants peaceful and undisturbed possession of Building C situated on Erf 3[...].
- (iii) The first and second respondents are directed to hand to the applicants, within 48 hours of the granting of this order, a complete set of keys to the locks installed at Building C.
- (iv) This order does not determine the applicants' right or entitlement to occupy the property which remains to be determined in the eviction proceedings pending between the parties under case number 2026-114283.

- (v) The first and second respondents shall pay the costs of this application (Scale C), jointly and severally, the one paying the other to be absolved.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE PROVINCE

Appearances

For Applicants: Mr S Tshabalala
Instructed by: TT Mpshe Attorneys Inc.

For Respondents: Mr M Dewrance SC
Mr M Smit
Instructed by: Cliffe Dekker Hofmeyr Inc.