



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number. **2026-053925**

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

In the matter between:

BAKWENA BA MOGOPA, KGABALATSANE & HEBRON

APPLICANT

and

KGOSI TEBOGO RENEILWE MOTHEO MAMOGALE

1ST RESPONDENT

ERNEST MAMOGALE

2ND RESPONDENT

REUBEN MOHULATSI

3RD RESPONDENT

LEPHOI MAMOGALE

4TH RESPONDENT

**ANY OTHER PERSON OR PERSONS
IN CONCERT WITH, OR UNDER THE DIRECTION
AUTHORITY OR MANDATE OF THE FIRST TO FOURTH
RESPONDENTS IN UNLAWFULLY DISPOSSESSING THE
APPLICANT OF POSSESSION OF THE PROPERTY**

5TH RESPONDENT

JUDGMENT

PILLAY AJ

Introduction

[1] This urgent application is premised on the *mandament van spolie* wherein the Applicant claims that its peaceful and undisturbed possession of immovable property ('the Property') should be restored, as the Respondents have deprived it of such possession. The Respondents deny that they have dispossessed the Applicant of its possession of the Property.

Common cause facts

[2] There is a long-standing dispute between the Applicant and the First Respondent pertaining to who the tribal authority is that should be in occupation of the Property. The Applicant has been in possession of the Property, albeit that the lawfulness of its occupation of the Property is in dispute. In March 2026, the First Respondent instituted eviction proceedings against the Applicant, in this Court, in respect of the Property. The eviction application is still pending. The Property is situated in the North-West Province.

[3] In 2017 and again in 2021, the Applicant obtained spoliation orders against certain Respondents in respect of the Property. The 2021 order was a confirmation of the 2017 order. In either 2023 or 2024, criminal contempt of court proceedings were instituted against those Respondents when the Applicant laid charges at the police station for breach of the 2017 spoliation order. These criminal charges were subsequently withdrawn by the prosecution on 10 July 2026 in the Magistrate's Court where the matter was to be heard.

[4] On 13 July 2026, the Applicant's employees or representatives were unable to gain access to the Property as the Property had been locked.

Applicant's Facts

[5] The Applicant's founding affidavit was deposed to by Loth Fancy Masilo ('Masilo'). Masilo alleges that the Second, Third and Fourth Respondents unlawfully dispossessed the Applicant of its possession of the Property on the instructions of the First Respondent. Masilo alleges that the Fifth Respondent acted in concert with, or under the direction, authority or mandate of the First to Fourth Respondents.

[6] It is necessary to quote, verbatim, the averments made on behalf of the Applicant relating directly to the spoliation and the implication of the Respondents therein.

[7] Masilo stated as follows:

“7. ... The employees of the Applicant will be referred to in this application as “the Applicant.

...

17. On 13 JULY 2026, while attempting to access the tribal offices, the applicant discovered that new locks were installed denying them access to the premises, they were further forcibly removed from the offices by Second to Fifth Respondents.

18. The Second to Fifth Respondents expressly confirmed to the applicant that they were acting on the First Respondent’s instructions and they have been stationed outside the premises to prevent the applicants from accessing the premises.

...

33. Although the respondents have denied spoliating the Applicant, it is the respondents, acting on the instructions of the First Respondent, who spoliated the Applicant. I say this because:

33.1 The spoliation occurred immediately after the withdrawal of the contempt matter in the Magistrate Court which related to the unlawful eviction of the Applicant in 2023.

33.2 During the forceful removal and changing of the locks, the people who acted under the instruction of the First Respondent and/or respondents repeatedly told us that the Magistrates Court matter was over and that the prosecutor acknowledged that the property and land belonged to the First Respondent and further that the Court now recognized the First Respondent as the rightful owner of the property.

33.3 The vehicle used in the spoliation and the changing / welding of locks belongs to Ruben Mohulatsi, who is a supporter of the First Respondent. I attach herein a picture of the vehicle used on the day as “FA6”.

34. It must be noted that to date, the respondents have forcefully removed the applicant, changed locks and placed their security people to prevent the Applicant from accessing the premises. The respondents have not occupied the building. However, on 16 July 2026, the respondents attempted to occupy the building but the alarm

system of the Applicant was activated and the Applicant's security company, City Protect, responded and intervened to stop the occupation. To date, the respondents keep their people at the entrance of the building to stop the Applicant from accessing the property."

[8] The confirmatory affidavit of the Applicant, deposed to by Motlhoepi Jonas Mokwena ('Mokwena'), who is an assistant head of the Bahphiring clan, who was in occupation of the Property, contains the following:

"5. I confirm that on 13 July 2026, the Respondents came to the tribal offices and explicitly said they were sent by the First Applicant to forcefully remove us from the premises and lock the premises.

6. The Third Respondent, Reuben Mohulatsi, physically manhandled me by forcefully pushing and shoving me out of the offices against my will. He stated that the First Respondent, Motheo Mamogale, had instructed them to remove us from the premises and said he is coming to occupy the offices."

[9] Masilo's founding affidavit that was served and uploaded onto caselines, was not commissioned. After the Third Respondent pointed that out, Masilo's founding affidavit was commissioned and re-uploaded onto caselines.

Respondents' cases

[10] Although only the First and Second Respondents filed a notice of intention to oppose; the answering affidavits were filed by First and Third Respondents. The Third Respondent's answering affidavit purports to be on behalf of himself and the Fourth Respondent, though no authority for the Third Respondent to speak on behalf of the Fourth Respondent has been alleged or submitted. The Fourth Respondent has not deposed to a confirmatory affidavit, nor has there been any indication as to why this could not be done.

[11] The First Respondent denies any involvement in or knowledge of the Applicant's dispossession of the Property on 13 July 2026 and denies giving any instructions to anyone to do so. The First Respondent maintains that the application is devoid of:

- (11.1) Urgency;
- (11.2) Jurisdiction, as the Property is in North-West;
- (11.3) Particularity of facts implicating the 1st Respondent; and
- (11.4) A commissioned founding affidavit.

[12] The Third Respondent raised several points *in limine*:

- (12.1) Jurisdiction and proper forum – The Property is situated in the North-West Province and therefor falls to be decided by the North-West High Court; The Applicant failed to satisfy the requirement of urgency set in Rule 6(12);
- (12.2) The Applicant has failed to discharge its onus – The events of 13 July 2026 cannot be divorced from the long-standing disputes involving, amongst other things, occupation of the Property;
- (12.3) The Applicant has failed to make out a case;
- (12.4) The application is an impermissible attempt to undermine disputed rights under the guise of spoliation;
- (12.5) The dispute is already the subject of pending court proceedings; and
- (12.6) The present application improperly duplicates issues already pending before this court.

[13] The Third Respondent's answer to the merits is as follows:

“14.2 The Applicant has failed to establish, on admissible evidence, that any Respondent committed any act of dispossession. No direct evidence exists that I, or any person acting under my authority or instruction, changed locks, welded gates, denied access, or otherwise deprived Applicant of possession.

14.3 The Applicant's allegations are founded on hearsay, speculation and inference rather than admissible evidence.

...

14.7 What emerges from the papers is not an act of recent unlawful dispossession but a longstanding dispute regarding occupation, authority and administration of the tribal offices. Those disputes have existed for many years and remain the subject of pending litigation.”

[14] In respect of Mashilo's affidavit at paragraphs 16 to 22, some of which have been quoted above, The Third Respondent stated as follows:

"17.1 The allegations made in these paragraphs are denied. The third and fourth Respondents deny unlawfully they dispossessed the Applicant.

17.2 third and fourth deny that I instructed any person to change locks, prevent access, remove the Applicant, or interfere with any lawful possession.

17.3 the third and fourth Respondents deny that they acted under authority of the tribal authority or instructions committing any unlawful act. The Applicant provides no direct evidence linking me to the alleged conduct.

17.5 The Applicant has failed to establish any causal connection between myself and the alleged deprivation.

[In response to Mashilo's paragraphs 43 to 48]

21.1 The allegations contained in these paragraphs are denied.

21.1 respondents deny that I instructed any person to change locks or weld gates at the premises.

21.3 respondents deny that any vehicle associated with any supporter of mine establishes my involvement in any alleged conduct.

21.4 Ownership or association with a vehicle does not prove authorisation, participation or agency.

21.5 The Applicant invites this Honourable Court to draw speculative inferences unsupported by admissible evidence. Photographs of a vehicle or alleged alterations to the premises do not establish who performed those acts or under whose authority they acted.

21.6 The Applicant has failed to identify the persons allegedly responsible for the conduct complained of."

Evaluation

[15] It is evident that all the parties who partook in this matter, are well aware of the requirements of and defences against the *mandament van spolie*. It need not be restated, save for pointing out that it is a purely possessory remedy. The Supreme Court of Appeal, in *Blendrite (Pty) Ltd and Another v Moonisami and Another*,¹ stated

¹ [2021] ZASCA 77; 2021 (5) SA 61 (SCA); [2021] HIPR 172 (SCA) (10 June 2021) at para 5.

that “[t]he mandament van spolie remedy relates to possession”. The fact that the lawfulness of the Applicant’s possession of the Property is highly contested does not alter the fact that the Applicant has, factually, been in possession of the Property. It is trite that this remedy is even available to a thief who has been in peaceful and undisturbed possession of the property. In *Steenkamp v Jammie*,² the Court stated that “...the cause for possession is irrelevant hence that is why possession by a thief is protected.” It is therefore of no assistance to the Respondents that the Applicant, by seeking the protection of section 8(1) of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act,³ is describing itself as an unlawful occupier – the protection in this subsection is only available, specifically, to an unlawful occupier.

[16] There is no dispute that the Applicant has been, until 13 July 2026, in the factual peaceful and undisturbed possession of the Property. The Respondents’ insistence on repeatedly pointing out the historical dispute between the parties, does not assist. Rather, it only adds to confirm that they may have a motive to dispossess the Applicant of the Property.

[17] It is also not denied that the Applicant was indeed spoliated. The only real issue to decide, is the question of whether the Respondents were the ones who spoliated the Applicant. But before turning to this, the preliminary points raised by the Respondents need to be addressed.

[18] The Respondents questioned the urgency of this matter. The Applicant referred to the often-quoted case of *Ross v Ross*,⁴ where it was held that spoliation applications, ordinarily, ought to be afforded some degree of urgency. That does not mean that a spoliation application would always be urgent. As was pointed out in *Van Onselen and Another v Smit and Others*,⁵ where the applicants delayed bringing their spoliation application for about a week, an applicant must set forth the circumstances that render the matter urgent.

² [2022] ZAGPPHC 54 (24 January 2022) at para 19.

³ Act 19 of 1998.

⁴ 1994 (1) SA 865 (E) at para 872J.

⁵ [2026] ZAGPPHC 360 (23 April 2026)

[19] In this matter, the Applicant set out that since being dispossessed of the Property, it has not rendered the assistance to the community that it used to, in that access to the equipment in the office is not possible. The Respondent's reply was that the explanation is over-exaggerated. Having regard to the fact that as far back as 2017, the Applicant obtained a spoliation order against the Respondents, it must be accepted that the Applicant has been in possession of the Property for a number of years. That the legality of such possession is disputed, makes no difference. It was not disputed that the nature of the Applicant's work from the Property is community orientated. A disruption of that continuation, absent a lawful termination of possession, would bring the matter within the realm of urgency.

[20] In respect of the Respondents' objection to jurisdiction, it is quite ironic that it is the First Respondent who brought the eviction application before this Court, and now objects to this Court's jurisdiction in deciding a dispute between the same parties in respect of the same property, but for different relief. It is, however, less ironic when considering the premise on which the Respondents rely for this, namely the determination of areas of jurisdiction for the High Courts, which came into effect on 1 July 2026. According to this determination, the Property falls outside of the jurisdiction of this Court.

[21] The Respondents submit that the spoliation application is a stand-alone matter and should not to have been brought as an interlocutory matter using the same case number as the eviction application. If the spoliation application is indeed correctly categorised as an interlocutory matter under the eviction application, then paragraph 2 of the Ministerial determination of the areas of the High Courts' jurisdiction dictates that despite the determination "...proceedings which have been placed on the court roll for trial but have not been concluded before the coming into effect of this Notice, must be concluded as if this Notice has not been published".

[22] Whether the eviction application has been enrolled for hearing or not, has not been disclosed by either party. It appears that the parties are all in agreement that the eviction application is indeed pending before this Court. The nature of interlocutory proceedings is to regulate matters between litigants in order to ensure the smooth running of trial. The Appellate Division in *South Cape Corporation (Pty) Ltd v*

Engineering Management Services (Pty) Ltd,⁶ explained that, in the broad sense, “interlocutory” refers to orders made upon matters incidental to the main dispute, preparatory to, or during the progress of the litigation. It need not only deal with aspects directly affecting the running of the trial but may extend to regulate the conduct as between the parties in relation to the *lis*. So, for example, an interim interdictory relief may be granted in order to secure the *status quo* as between parties. In the present factual matrix, the Applicant is seeking not to be disturbed in his possession of the Property, pending the final determination of the eviction application. That is proper interlocutory relief. Hence the determination of jurisdiction in the present matter would necessarily follow the jurisdiction of the eviction application which, according to the parties, is in this Court.

[23] The Respondents’ objections to the Applicant pursuing this application when there is already a dispute pending in respect of the Property, can only be taken as raising *lis alibi pendens*. This would only be available if it is the same dispute between the same parties and the same relief is sought. The eviction application seeks a determination of proprietary rights. The spoliation application seeks a determination of possessory rights. There is a marked difference between the two, hence the point cannot stand.

[24] The other points *in limine* raised by the Third Respondent, relating to the Applicant having failed to discharge the onus, and failing to make out a case, are not really points *in limine*, but more appropriately speak to the overall evaluation of this matter, which this Court will proceed to do now.

[25] The Applicant’s case, particularly against the First and Third Respondents, is premised on:

(25.1) The history of the dispute over the Property as between the Applicant and the First Respondent; and

(25.2) Mokwena stating that the Third Respondent forcibly removed him from the Property.

⁶ 1977 (3) SA 534 (A) at para 534H–535A.

[26] This Court is reluctant to state that Mashilo's affidavit contained any direct implication of any of the Respondents. Absent greater clarity from Mashilo, and precisely because it lacks greater particularity, it is more probable that he does not have personal knowledge of what any of the Respondents did in relation to the Applicant's dispossession of the Property on 13 July 2026. All he has is the history of the dispute and his obvious belief that the dispossession was as a result of the Respondents.

[27] The context of the history of the long-standing dispute over the Property as between Applicant and Respondents, coupled with the spoliation orders granted in 2017 and 2021, does provide a firm premise for Mashilo's belief that the Respondents, did what Mashilo alleged was done by them. The 2017 and 2021 spoliation orders disprove the First and Third Respondents' contention that they follow due court process and do not engage in self-help. However, that the Respondents have been found wanting in the past, does not necessarily mean that they have done what they are accused of doing this time around.

[28] The Third Respondent, in particular, is quite silent on Mokwena's direct implication of him forcibly removing Mokwena from the Property. The Third Respondent does no more than to point out that the Applicant has failed to adduce direct evidence implicating him. Mokwena's evidence is such direct evidence, and a mere denial that there is direct evidence does not suffice to absolve the Third Respondent.

[29] Neither the First nor Third Respondent deny that Respondents threatened to dispossess the Applicant of the Property on 10 July 2026, the day on which the criminal charges were withdrawn. In fact, these Respondents rely on that threat to criticise the Applicant for not bringing the spoliation application then. The threat was followed, three days later, by actual dispossession.

[30] These circumstances, seen as a whole, namely the existing dispute between the parties, which includes the Respondents' stance that the Applicant is in unlawful possession of the Property, the history of spoliation by the Respondents, the

dispossession of the Applicant's possession of the Property and the Third Respondent's unanswered forced removal of Mokwena from the Property, collectively lead to the conclusion that it is probable that the Respondents did dispossess the Applicant of possession of the Property.

Costs

[31] The default position is that costs follow the success of a party. The Applicant sought costs on a punitive scale albeit costs including costs of counsel, and nothing more. Given the history of repeated spoliation by the Respondents, this request is justifiable.

Order

[32] In the result, this Court orders as follows:

1. That the Applicant's non-compliance with the Rules relating to form and service is condoned, and that this application be heard as one of urgency in terms of rule 6(12) of the Uniform Rules of Court.
2. The Applicant was unlawfully deprived of peaceful and undisturbed possession of the tribal office ("premises") situated at: 380 BOGOPA STREET, HEBRON, NORTH WEST, violating section 8(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.
3. The Respondents and everyone involved in the unlawful eviction of the Applicant must restore possession of the aforesaid premises to the Applicant and cease from interfering with the Applicant's possession of the abovementioned property until the eviction application is concluded.
4. The First Respondent shall take all necessary steps to make the contents of this order known to the members of the traditional community.
5. The First to Fourth Respondents are jointly and severally liable for the costs of this application including costs of counsel, the one paying the others to be absolved.

**ACTING JUDGE PILLAY
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 18 August 2026.

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Date of hearing:

28 July 2026

Date of judgment:

21 August 2026