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

JUDGMENT

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**

First Respondent
Second Respondent

**Coram: DA SILVA SALIE, J
Heard on: 09 September 2026
Delivered on: 11 September 2026**

Summary:

Application for leave to appeal - Mandament van spolie - Possession - Distinction between possession and mere detention - Applicants exercised physical control over building while also acting as employees, managers and trustees of separate juristic person - Principle in Mbuku v Mdinwa 1982 (1) SA 219 (TkS) considered - Animus possidendi requires intention to hold property for one's own benefit and not merely for another - Benefit need not be proprietary or financial - Applicants' longstanding pastoral, community and related activities on property constituted sufficient benefit - Possession of keys alone is not determinative - Applicants managed access and respondents repeatedly sought keys and ultimately removed and replaced lock to gain access - Evidence considered cumulatively established effective physical control - No reasonable prospect that another court would reach a different conclusion - No compelling reason for appeal - Leave to appeal refused.

ORDER

1. The application for leave to appeal is dismissed.
2. The first and second respondents are ordered to pay the costs of the application for leave to appeal, jointly and severally, the one paying the other to be absolved.

JUDGMENT

DA SILVA SALIE, J:

Introduction

The urgent restoration order granted:

[1] This is an application for leave to appeal against the judgment and order of this Court delivered on 21 August 2026, on the urgent roll, and which directed restoration to Pastors Japie and Susan La Poorta ("the applicants"), peaceful and undisturbed possession of Building C situated on Erf 3[...] by ordering the Apostolic Faith Mission of South Africa and Mr Sebastian Lucus ("the respondents") to hand to the applicants, within 48 hours of the granting of the order, a complete set of keys to the locks which respondents have installed at Building C.

[2] The application is brought in terms of Section 17(1) of the Superior Courts Act 10 of 2013. Leave is sought to the Supreme Court of Appeal, alternatively to the Full Court of this Division. The respondents contend that another court would reasonably conclude that the applicants had not established peaceful and undisturbed possession of Building C immediately before the locks were changed as any physical control which they may have exercised did not constitute possession for the purposes of spoliation relief.

Capacity of Possession and control by Pastors La Poorta:

[3] The main ground advanced concerns the **capacity** in which the applicants exercised control over Building C. The respondents contend that, insofar as the applicants previously held the keys and exercised control over the building, they did so as employees, managers or trustees of the Susan La Poorta Children's Home ("the Children's Home"), a separate juristic person. They contend that the applicants were accordingly no more than agents or detentors and could not themselves invoke the mandament van spolie.

[4] The remaining grounds concern whether the applicants exercised sufficient physical control over Building C, the reference in the judgment to the building having been barricaded, and the contention that the judgment establishes a precedent that the mere retention of keys to an unoccupied building constitutes possession for purposes of the mandament.

Were Pastors La Poorta mere detentors of the building?

[5] A person who exercises physical control over property solely on behalf of another, without the requisite intention or interest in holding it, may be a mere detentor rather than a possessor entitled personally to invoke the mandament. The **capacity** in which physical control is exercised is therefore also relevant to the enquiry.

[6] The distinction between possession and mere detention was explained in ***Mbuku v Mdinwa 1982 (1) SA 219 (TkS)*** where at 223, the Transkei Supreme Court held that an agent who has no interest in the property which he holds for his principal, or derives no benefit from holding it, is not entitled to claim the mandament van spolie. The *animus possidendi* required to transform detention into possession is no more than the intention to hold the thing in question **for one's own benefit** and not for another. Conversely, where a person holds the thing not for himself but for another, that person is merely a custodian and the person on whose behalf it is held remains the possessor. The question therefore is not resolved merely by describing the applicants as employees, managers or trustees.

[7] The principle recognises that an employee or agent who exercises physical control solely on behalf of another, without any interest in or benefit from such control beyond that representative capacity, is a mere detentor. It does not, however, follow that the requisite benefit must take the form of a proprietary or financial interest in the property. The enquiry remains whether, having regard to the nature and purpose of the control actually exercised, the person held the property with the intention of securing

some benefit for himself or herself, rather than merely exercising custody on behalf of another.

[8] On the facts of this matter, I am not persuaded that the applicants' control of Building C was exercised solely for the benefit of the Children's Home or that they were merely its physical instruments. Their pleaded case went beyond the performance of a discrete function as employees or agents. They alleged that they exercised "*full, exclusive factual and physical control*" over Building C and the other structures identified in the founding affidavit, held the keys, were responsible for the security and maintenance of the buildings and bore responsibility in relation to the municipal services associated with them. More particularly, in relation to Building C, they alleged that they held the keys, managed entry and exit and exercised "effective, exclusive control over access to the premises". The applicants' pleaded case was that Building C formed part of their longstanding activities on the property and was used as a core operational facility for the Children's Home and associated community projects in which they were directly involved. Clearly their involvement with the property was not confined to the performance of duties as employees or representatives of the Children's Home.

Can it be held that Pastor La Poortas also derived benefit from their control of the building:

[9] The first applicant is an ordained pastor of the Apostolic Faith Mission and had served it in various leadership capacities for many years. The applicants' activities on the property also included their pastoral duties and their involvement in the local congregation which they had established. The respondents themselves acknowledged that the applicants' presence and activities on the property extended to both the Children's Home and the church. Against that background, the La Poortas' involvement in the associated community activities was not merely representative of the Children's Home but formed part of their broader pastoral and community involvement on the property. It may reasonably be inferred that their continued involvement in those activities constituted a benefit to them in the possessory sense. In my view, this

constituted a sufficient benefit for the purposes of the *animus possidendi* contemplated in **Mbuku**.

[10] More particularly, in relation to Building C itself, the first applicant stated that immediately before the respondents' conduct complained of the applicants held the keys, managed entry and exit, and exercised "effective, exclusive control over access to the premises". The case advanced in the founding affidavit was therefore one of actual and effective factual control by the applicants themselves, and not merely that they possessed a key to premises controlled by another.

[11] The respondents disputed that control. Their own evidence, however, is material to the enquiry. They recorded repeated attempts during May and June 2026 to obtain the keys to Building C from the applicants. On 11 June 2026, the second applicant was informed that, if the keys were not made available, the second respondent had been instructed to remove the existing lock "in order to gain access" and install a new lock. The applicants did not surrender the keys, and the respondents thereafter caused the existing lock to be removed and replaced.

[12] That evidence is difficult to reconcile with the contention now advanced that the first respondent at all material times exercised unrestricted physical control over Building C. Indeed, the answering affidavit itself explains the alleged "*unfettered access*" on the basis that the first respondent could obtain access by removing the security gate at the back of the building or by removing the padlock. The ability to obtain access by removing the very security measures by which access was controlled does not establish that the Apostolic Faith Mission was thereby already exercising possession of the premises. In other words, having the ability to break/remove the lock to get in is not the same as already possessing the building.

[13] I equally find the first respondents' argument problematic that, because the applicants exercised control in connection with the activities of the Children's Home, that control necessarily amounted to mere detention. The evidence must be considered

holistically. The applicants were not merely employees entrusted temporarily with a key in the performance of a discrete function. Their pleaded case was one of longstanding control of the property, management of access to Building C and responsibility for its security and maintenance. The respondents themselves alleged that the applicants' presence on the property had historically been in various capacities associated both with the Children's Home and the church. As Mr. Tshabalala submitted, Pastors Japie and Susan La Poorta were the *"heart and soul of the Susan La Poorta Children's Home"*.

[14] I accordingly remain unpersuaded that the description of as employees, managers or trustees displaces the factual possession established on the papers. In my view, another court would not have a reasonable prospect of finding, on these facts, that the applicants were merely detentors and consequently lacked possession for purposes of the mandament.

Physical control

[15] The second arrow in the respondent's bow is that the applicants did not exercise sufficient physical control. It is correct that Building C was not being occupied residentially and that the respondents alleged that renovation work had ceased and that the building stood vacant. They alleged that the building was empty, unfinished and deteriorating.

[16] Physical occupation of a building on a continuous basis was not, however, the test applied in the judgment. The question was whether the applicants exercised sufficient factual control over Building C immediately before the alleged dispossession. Their evidence was that they held the keys and controlled access. The significance of the keys lay not in their mere possession, but in what the evidence disclosed about control of access to the building. The respondents' own evidence concerning their attempts to obtain those keys and their eventual removal of the lock provided objective

support for the conclusion that the applicants exercised effective control over access immediately before the locks were changed.

[17] The respondents' reliance upon disputes of fact does not require a different conclusion. The application of the rule in *Plascon-Evans* does not require a court to accept, as a fact, a respondent's legal characterisation that it was "*in possession*". The underlying facts concerning access, the keys, the lock and the circumstances in which it was removed remained to be evaluated in determining whether the legal requirement of possession had been established.

What is the effect of the possession of physical keys to the building:

[18] During argument Mr. Smit submitted that the applicants' possession of the keys did not, in itself establish possession of Building C. That proposition may be accepted. However, the significance of the keys cannot be considered in isolation from the evidence concerning the control of access to the building. I have considered the evidence cumulatively. It is that evidence, rather than the mere possession of keys, which supported the finding that the applicants exercised effective physical control over Building C immediately before the dispossession.

[19] I am similarly not persuaded by the contention that the judgment establishes a precedent that the mere retention of keys to an unoccupied building constitutes sufficient possession for purposes of the mandament van spolie. That is not what I held. The finding of possession was made upon an assessment of the evidence as a whole, including the applicants' control of access, their possession of the keys, the security of the premises and the circumstances immediately preceding the respondents' replacement of the lock.

[20] The suggested precedent accordingly does not arise from the judgment and does not constitute a compelling reason contemplated in s 17(1)(a)(ii) of the Superior Courts Act.

Appealability

[21] Although the order expressly left the applicants' ultimate right or entitlement to occupy the property for determination in the eviction proceedings, it is unnecessary for present purposes finally to determine whether that feature affects the appealability of the order. I have assumed in favour of the respondents that the order is appealable and considered whether the requirements of s 17(1) have been met.

Conclusion

[22] An application for leave to appeal is not concerned with whether another court might express aspects of the reasoning differently. The question under s 17(1)(a)(i) is whether the appeal would have a reasonable prospect of success. Having reconsidered the findings challenged by the respondents, and in particular their submission that the applicants were mere detentors, I am not persuaded that another court would have a reasonable prospect of reaching a different conclusion.

[23] Nor has a compelling reason been established why the appeal should be heard as contemplated in s 17(1)(a)(ii).

[24] The application for leave to appeal must accordingly be refused.

Order

[25] The following order is made:

- (i) The application for leave to appeal is dismissed.

- (ii) The first and second respondents are ordered to pay the costs of the application for leave to appeal, jointly and severally, the one paying the other to be absolved.

**GAYAAT DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION**

Appearances

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

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