



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

CASE NO: 2925/2024

In the matter between:

JOHANNES JOSHUA BEZUIDENHOUT	First Applicant
HERALD BEZUIDENHOUT	Second Applicant
JAN BERGH	Third Applicant
NUVELD FARMING EMPOWERMENT Applicant ENTERPRISE (PTY) LTD	Fourth
and	
MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	First Respondent
CHIEF DIRECTOR: WESTERN CAPE PROVINCIAL SHARED SERVICE CENTRE, DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	Second Respondent
DEPUTY DIRECTOR GENERAL: DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	Third Respondent
LUBABALO MBEKENI	Fourth Respondent
HENDRIK BOOYSEN	Fifth Respondent
LUCY NDUKU	Sixth Respondent
GERSHWIN MORRIES	Seventh Respondent
JEANRO MORRIES	Eighth Respondent

Before: The Hon. Ms Acting Justice Mahomed

Heard: 11 June 2024

Delivered: 27 June 2024

JUDGMENT

MAHOMED, AJ:

1. On 4 March 2024, the Honourable Ms Justice Salie (“**Salie, J**”) heard an application for a *mandament van spolie* brought by the applicants against the first to sixth respondents and on even date, she made the following order (“**the March court order**”):

“(i) Applicants’ possession of properties referred to in 12.1 and 12.2 are herewith declared to be restored ante omnia with immediate effect;

(ii) The first to fourth respondents and the officials of the Department of Agriculture, Land Reform and Rural Development are interdicted and restrained from allocating (and implementing such allocation) in respect of any allocation of any portion of Plateau Farms (being the various portions of the farms listed in annexure “A” hereto) to any person, pending the finalisation of the review proceedings under case number 6553/2023;

(iii) The applicants’ costs of suit shall be paid by the first to third respondents, jointly and severally, the one paying the other to be absolved.”

2. The properties referred to in the March court order are the following:

2.1 Farm Dassiesfontein No. 73 Portion 6 (South Dassiesfontein) (“*Dassiesfontein*”);
and

2.2 Farm Dassiesfontein No. 73 Portion 5 (Portion 1, North Dassiesfontein) (“*Dassies 2*”).

3. The applicants allege that the first to fourth respondent (“**the departmental respondents**”) and the fifth and sixth respondents have not complied with the March court order and that the first to sixth respondents are all in contempt of the March court order.

4. The departmental respondents are made up of:

- 4.1 The first respondent is the Minister of Agriculture, Land Reform and Rural Development, Ms Angela Thoko Didiza;
 - 4.2 The second respondent is the Chief Director, Shared Services, Western Cape Province in the Ministry of Agriculture, Land Reform and Rural Development, Mr Thokozile Xaso;
 - 4.3 The third respondent is the Deputy Director General of the Department of Agriculture, Land Reform and Rural Development, Mr Terries Ndove.
 - 4.4 The fourth respondent is the Director responsible for land acquisition, Western Cape Province, in the Ministry of Agriculture, Land Reform and Rural Development, Mr Lubabalo Mbekeni.
5. Subsequent to the granting of the March court order and on 11 May 2024, the seventh and eighth respondents (“*the Morries*”) moved onto the property known as Farm Willemskraal, Portion 1 of the Farm Bronkers Vallei No. 76 title deed number T63410/2008 (“*Willemskraal*”).
6. The applicants contend that the Morries unlawfully dispossessed the applicants of their peaceful and undisturbed possession of Willemskraal.
7. On 24 May 2024, the applicant’s launched an urgent application in terms of which they seek the following relief:
- “1. *Dispensing with the forms and services provided for in the Uniform Rules of court and directing that this portion of the application be heard on an urgent basis in terms of the Rules of court 6(12)(a);*
 2. *A rule nisi is issued calling on the first to sixth respondents to appear in court in person to show cause, on a date to be determined by this court, why an order in the following terms should not be granted:*
 - 2.1 *Declaring that the first to fourth respondents are in contempt of paragraphs (i) and (ii) of the March court order;*
 - 2.2 *Declaring that the fifth to sixth respondents are in contempt of paragraph (i) of the March court order;*
 - 2.3 *Ordering that the first to fourth respondents are sentenced to imprisonment for such period as this court deems appropriate and/or imposing on them such other sanction as this court deems appropriate;*

- 2.4 *Ordering that the fifth to sixth respondents are sentenced to imprisonment for such period as this court deems appropriate and/or imposing on them such other sanction as this court may deem appropriate;*
 - 2.5 *Ordering the first to sixth respondents jointly and severally to pay the costs of this application on an attorney and client scale, the one paying the other to be absolved; and*
 - 2.6 *Granting such further and/or alternative relief as the court deems appropriate.*
3. *Ordering the fifth respondent, within one day of the grant of this order to:*
 - 3.1 *Vacate the house on Dassiesfontein and return possession of the house to the applicants;*
 - 3.2 *Remove all animals from Dassiesfontein;*
 - 3.3 *Vacate Dassiesfontein and restore peaceful and undisturbed possession of Dassiesfontein to the applicants;*
4. *Directing the sixth respondents, within one day of the grant of this order to:*
 - 4.1 *Vacate the house on Dassies 2 and to restore possession of the house to the applicants;*
 - 4.2 *Remove all animals including sheep and goats, Dassies 2; and*
 - 4.3 *Vacate Dassies 2 completely and to restore peaceful and undisturbed possession of Dassies 2 to the applicants.*
5. *Ordering the first to fourth respondents within 2 days of the grant of this order, to take all necessary steps to remove the fifth and sixth respondents from Dassiesfontein and/or Dassies 2 together with all animals that the fifth and/or sixth respondents have brought onto Dassiesfontein and/or Dassies 2, and to restore peaceful and undisturbed possession of Dassiesfontein and/or Dassies 2 to the applicants, in the event that the fifth and/or sixth respondents fail and/or refuse to restore peaceful and undisturbed possession of Dassiesfontein and/or Dassies 2 to the applicants as provided for in paragraphs 3 and 4 above.*
6. *Ordering that the applicants' peaceful and undisturbed possession of Willemskraal is restored with immediate effect.*
7. *Ordering the seventh and eighth respondents, within 1 day of the grant of this order to:*
 - 7.1 *Vacate the house on Willemskraal and return possession of the house to the applicants;*
 - 7.2 *Remove all animals that they have brought onto Willemskraal since 11 May 2024; and*
 - 7.3 *Vacate Willemskraal completely, and to restore peaceful and undisturbed possession of Willemskraal to the applicants.*
8. *Ordering the first to fourth respondents within 2 days of the grant of this order to take all necessary steps to remove the seventh and eighth respondents from Willemskraal together with all animals that the seventh and/or eighth respondents have brought onto Willemskraal since 11 May 2024, and to restore peaceful and undisturbed possession of Willemskraal to the applicants, in the event that the seventh and/or eighth respondents fail and/or refuse to restore peaceful and undisturbed possession of Willemskraal to the applicants as provided for in the preceding paragraph.*
9. *Ordering the first to fourth respondents and any of the other respondents that oppose the relief sought, to pay the costs of this application jointly and*

severally, the one paying the other to be absolved, on a scale as between attorney and client.

10. *Further and/or alternative relief.”*

8. It is clear from the notice of motion that the applicants seeks a *mandement van spolie* order against the Morries and a contempt of court order against the departmental respondents and the fifth and sixth respondents.

Rule nisi

9. At the outset, I address the relief sought in paragraph 2 of the notice of motion being couched in the form of a rule *nisi*.
10. From a procedural point of view, the application for a rule *nisi* as a first step in the committal application was a sensible expedient step, especially when it is borne in mind that the matter was an urgent application.¹
11. No rule *nisi* was issued in this matter as the parties agreed to a timetable for the filing of their respective papers, which culminated in a court order which I granted on 30 May 2024 which confirmed the timetable.
12. I heard the matter in its entirety where all parties filed their respective papers and heads of argument, albeit out of time, and all the issues in dispute were fully ventilated by all the respective parties.
13. As such, the relief which the applicants seek at paragraph 2 of the notice of motion will not take the form of a rule *nisi* but rather a final order, for reasons that will become clear in the judgment.
14. Prior to dealing with the merits of the application, I address two issues that were raised during the course of the oral argument:

- 14.1 The condonation of the late filing of the departmental respondents answering affidavit;

¹ *Victoria Park Rates Payers Association v Greyvenouw CC & Others* [2004] 3 All SA 623 (SE) at para [8] referring to *Herbstein & Van Winsen* at 379-380

14.2 The applicants' withdrawal of the relief they seek against the departmental respondents in paragraph 2.1 of the notice of motion insofar as seeking that the departmental respondents are in contempt of paragraph (ii) of the March court order.

Condonation by the departmental respondents for the late filing of the answering affidavit

15. On 30 May 2024, the day before this matter was to be argued, I granted a court order setting out a timetable for the filing of further papers and in terms of which the first to sixth respondents were to file their answering affidavit by Tuesday, 4 June 2024.

16. The fifth and sixth respondents filed their answering affidavit timeously.

17. The departmental respondents filed their answering affidavit on Friday, 7 June 2024.

18. The effect of this was that the applicants were unable to file their replying affidavits timeously, all of the affidavits including the heads of argument were finally received by 16h00 on Monday, 10 June 2024.

19. In this regard, I requested a condonation application from the departmental respondents.

20. From the founding affidavit, it transpired that:

20.1 The State Attorney took ill on 27 May 2024 and was unable to schedule consultations with the departmental respondents who all reside in the Beaufort West area.

20.2 The senior counsel that was previously appointed in this matter was also unable to assist with this urgent application and the State Attorney had to request another counsel by way of an urgent deviation on the evening of Monday, 3 June 2024.

20.3 Approval was received on Tuesday, 4 June 2024 whereafter consultations were held with the relevant departmental respondents and a draft set of papers was

furnished to the legal administration official at the Department on 6 June 2024. A signed affidavit was eventually filed on 7 June 2024.

21. The applicants' counsel pointed out that:
 - 21.1 In the review application that was brought on 5 April 2024, the Helen Suzman Foundation brought an application to be admitted as an *amicus* and the department's answering affidavit in that application was due to be filed on 6 June 2024.
 - 21.2 The departmental respondents did not take this application seriously enough and were more concerned with filing the answering affidavit in the *amicus* application in the review timeously rather than this urgent application and were in contempt of yet another court order.
22. I noted the applicants' submissions in this regard and will consider these for the purpose of the cost order relating to the condonation application.
23. Notwithstanding the late filing of the departmental respondents answering affidavit and the late filing of the heads of argument of all the parties that followed, I granted condonation and the matter proceeded on 11 June 2024.

Applicants' withdrawal of the relief that the departmental respondents are in contempt of paragraph (ii) of the March court order as set out in paragraph 2.1 of the notice of motion

24. During the course of the argument, the applicants' counsel submitted that they no longer persist with the relief at paragraph 2.1 of the Notice of Motion insofar as it relates to paragraph (ii) of the March court order, i.e. they no longer seek a declarator that the departmental respondents are in contempt of paragraph (ii) of the March court order.
25. The basis of the withdrawal of this relief is that it transpired from the departmental respondents answering affidavit that they did not give their consent to the Morries to move on to Willemskraal.

26. The applicants' confusion was caused by the Morries advising the first applicant that the second and fourth respondents had advised them to move onto Willemskraal. However, from the Morries' answering affidavit, they admit that no such consent was ever provided by the departmental respondents.
27. The issue of the costs for this withdrawal by the applicants will be addressed later in the judgment.
28. I now turn to address the merits of the relief which the applicants seek against the various respondents:
- 28.1 That the applicants peaceful and undisturbed possession of Willemskraal be restored to them *ante omnia* with immediate effect by the Morries; and
- 28.2 That the departmental respondents and the fifth and sixth respondents are in contempt of the March court order.
29. I will first deal with the spoliation relief sought against the Morries.

SPOILIATION RELIEF SOUGHT AGAINST MORRIES

Background facts

30. According to the applicants, the five farms which form part of the Plateau Farms are all owned by the Department of Agriculture, Land Reform and Rural Development ("***the Department***") and include Dassiesfontein, Dassies 2 and Willemskraal.
31. Since 2017, the fourth applicant, Nuvelde Farming Empowerment Enterprise (Pty) Ltd ("***Nuvelde***") together with the first to third respondents have been in peaceful and undisturbed possessions of Plateau Farms in its entirety which includes Dassiesfontein, Dassies 2 and Willemskraal.
32. The first, second and third applicants have been actively farming Plateau Farms as Nuvelde with the permission of the Department, pending the outcome of the land reform allocation

application process. In doing so, the applicants have been protecting and preserving the state's assets and providing quarterly reports to the Department about their activities.

33. The short background provided by the applicants regarding when they came into possession of Plateau Farms is as follows:

33.1 In 2009, the first to third applicants were all beneficiaries of a government land distribution project on Plateau Farms, when the farms were allocated to a total of 81 individuals, organised into 11 entities.

33.2 The fifth and sixth respondents were also beneficiaries of this project.

33.3 All the entities were initially given a three-year lease over the different farms that make up Plateau Farms.

33.4 When the three-year leases came to an end in 2012, all the entities were given a further five-year lease from 2012 to 2017.

33.5 In May 2018, all the beneficiaries received letters from the Department confirming that their leases had ended, and that they were required to leave the farm. By this time, the first to third applicants were the only people still living on the farms, as all the other beneficiaries were no longer farming on the land.

33.6 The first, second and third applicants decided to form Nuvelde, to consolidate their farming activities and to participate in whatever allocation process the Department decided on for Plateau Farms.

33.7 On 20 November 2017, the first, second and third applicants wrote to the Department on behalf of Nuvelde, seeking permission to stay on Plateau Farms and to farm the land, pending the decision by the Department as to Plateau Farms going forward.

33.8 On 21 November 2017, they received a letter from the Department confirming that Nuvelde could remain on Plateau Farms. Since then, they have reported to the

Department on their activities on Plateau Farms quarterly as per the Department's request.

- 33.9 On 1 November 2019, Nuveld received a letter from the Department confirming that they had access to all five farms that make up Plateau Farms in order to take care of the state assets.
- 33.10 Nuveld also entered into a caretaker agreement with the Department between 1 October 2019 and 31 December 2019 pending the outcome of the application process for Plateau Farms that had commenced in December 2019.
- 33.11 On 6 December 2019, the Department advertised in *Die Burger* and *The Courier* that interested parties could apply for the redistribution of Plateau Farms in terms of the State Land Lease and Disposal Policy. Successful applicants would be given a 30-year lease over the property.
- 33.12 Nuveld attended the mandatory site visit on 13 December 2019 as required by the advertisement. No other groups or beneficiaries, including the fifth, sixth, seventh, or eighth respondents, attended the site visit. Nuveld submitted an application to the Department for the allocation of Plateau Farms on 17 December 2019, before the closing date.
- 33.13 On 21 January 2020, the District Beneficiary Selection Committee of the Department interviewed the first, second and third applicants. One other applicant was interviewed. Nuveld scored much higher than the other applicant.
- 33.14 On 21 May 2020, the National Land Acquisition and Allocation Control Committee (“*NLAACC*”) recommended that Nuveld be given a 30-year lease over Plateau Farms. The NLAACC is the final structure that approves allocations for state land for redistribution in terms of Section 11 of the Land Reform Act 3 of 1996 (“*the Land Reform Act*”), acting on recommendations from the District

Beneficiary Selection Committee and the Provincial Selection Committee, before the allocation goes to the Chief Director for approval.

33.15 The reasons for the decision to allocate Plateau Farms to Nuvelde included the following:

33.15.1 The applicants have been farming on the land since the acquisition of the land by the Department;

33.15.2 The applicants took responsibility for the maintenance of the properties;

33.15.3 The applicants contributed to the breeding of the merino sheep and wool production;

33.15.4 The applicants have 2 665 merino sheep and are planning to expand on that number;

33.15.5 Nuvelde registered with Responsible Wool Standards (“**RWS**”) and provides wool to BKB, Nuvelde's agent, which will auction the wool at a better price; and

33.15.6 Nuvelde is creating 10 permanent jobs that result in 10 households securing a monthly income.

33.16 Unbeknown to the applicants at the time, on 27 September 2020, the second and fourth respondents rejected the recommendation that the lease be awarded to Nuvelde. According to the NLAACC recommendation, the power to make the decision to approve the allocation had been delegated to the second respondent in terms of section 11 of the Land Reform Act.

33.17 The fourth respondent, Mr Lubabalo Mbekeni (“**Mr Mbekeni**” or “**fourth respondent**”), rejected the recommendation to grant the lease to Nuvelde and his reasons for the decision included “*complaints*” by the fifth and sixth respondents.

34. According to the applicants, they were never given an opportunity to make representations in this regard and were not notified of Mr Mbekeni's decision or the reasons for it. They accidentally became aware of Mr Mbekeni's decision in 2021, when they sought answers as to why the Department was not finalising their lease agreement as the NLAACC had recommended.
35. Nothing further seems to have happened until 17 February 2023 when first applicant received a call from Ms de Jager of the Beaufort West District Office of the Department where she invited the applicants to come to the office on Monday, 20 February 2023, to meet with Mr Mbekeni and one Mr Freddie Mapona ("**Mr Mapona**"), also of the Department.
36. The applicants attended at that meeting where Mr Mbekeni informed them that he was there to find a solution for Plateau Farms, and advised that the Department had done an investigation and found that the entire process of allocating the 30-year lease was illegal, and that the Department had thus decided to ignore the process. The applicants requested proof of this but were told by Mr Mbekeni that he could not share this.
37. Mr Mbekeni then requested whether the applicants would agree that Nuvelde would get three portions of Plateau Farms and to agree that Dassiesfontein and Willemskraal would be given to other beneficiaries. He told them that if they agreed, the Department would give Nuvelde a lease and report to the national office that the issue was resolved.
38. The applicants refused, as no proper process had been followed to decide who should get the lease. The next day, the first applicant received a call from Ms de Jager to confirm their position in respect of the allocation of the farm. While Mr Mbekeni did not say to whom he wanted to award Dassiesfontein and Willemskraal, Ms de Jager told them that if they agreed, Dassiesfontein would go to the sixth respondent and Willemskraal would go to the Tyantyi family. The applicants did not agree with this and on 5 April 2023, the applicants launched the review application.

39. The applicants heard nothing more about Willemskraal being allocated to any beneficiaries.
40. The applicants continued with the farming operations which were very successful and in 2023, Nuveld Farming received the top prize for wool as well as the highest average in the Beaufort West region.
41. The Plateau Farms have been operating as fully functional sheep and wool farms and is the sole livelihood of the applicant. Between 21 November 2017 and 17 January 2024, Nuveld as well as its directors had been in peaceful and undisturbed possession of Plateau Farms, including Dassiesfontein, Dassies 2 and Willemskraal. They conducted their farming operations on Plateau Farms without any disturbance or interference by the respondents. This is reflected in the quarterly reports to the Department.
42. On 17 January and 7 February 2024 respectively, the fifth and sixth respondents proceeded to move on to Dassiesfontein and Dassies 2 respectively. This was the basis of the spoliation application against the first to sixth respondents which culminated in the March 2024 court order.

POINTS *IN LIMINE* RAISED BY THE MORRIES

43. The Morries raised three points *in limine* to the applicants' application for spoliation against them:
 - 43.1 That they have been misjoined to the proceedings under this case number;
 - 43.2 That the court lacks jurisdiction on the basis that the relief sought in this application is tantamount to an eviction from farmland and therefore falls within the ambit of the Extension of Security of Tenure Act 62 of 1997 ("*ESTA*"); and
 - 43.3 The Morries at all times had co-possession of Willemskraal and were never fully displaced of their rights to be there.
44. I deal with each one of these in turn.

Misjoinder

45. The Morries contended that they were not parties to the original spoliation application in terms of which the March court order was granted.
46. The relief sought against them is completely new relief that was not ventilated during the previous spoliation application and they are in no way affected by the contempt application sought against the first to sixth respondents. The relief sought against the Morries is only in respect of the spoliation application insofar as it pertains to Willemskraal.
47. During the course of argument, the counsel for the Morries contended that the applicants failed to bring a formal application to join the Morries to these proceedings and that their joinder to the contempt application accordingly amounts to a misjoinder.
48. The counsel for the Morries referred to numerous cases² in respect of this issue of non-joinder but none of these address the basis upon which a joinder application must be brought.
49. Rule 10 of the Uniform Rules of Court provides for the joinder of parties and causes of action.
50. The Supreme Court of Appeal in the case of *ABSA Bank Limited v Naude N.O*³, the SCA set out the test for non-joinder in the following terms:

“[10] *The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject matter of the litigation which may prejudice the party that has not been joined. In Gordon v Department of Health, Kwazulu-Natal it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interest of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined. That is the position here. If the creditors are not joined their position would be prejudicially affected: A business rescue plan that they had voted for would be set aside; money that they had anticipated they would receive for the following ten years to extinguish debts owing to them, would not be paid; the money that they had received, for a period of thirty months,*

² *Western Bank Ltd v Packery* 1977 (3) SA 137 (T); in *Re Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ); *Rosebank Mall (Pty) Ltd v Craddock Heights (Pty) Ltd* 2004 (2) SA 353 (WLD); *CUSA v Tao Ying Metal Industries & Others* 2009 (1) BCLR 1 (CC)

³ Unreported judgment (20264/2014) [2015] ZASCA 97 (1 June 2015) at [10]

would have to be repaid; and according to the adopted business rescue plan the benefit that concurrent creditors would have received namely a proposed dividend of 100 per cent of the debts owing to them, might be slashed to a 5,5 per cent dividend if the company is liquidated.”

51. In *Judicial Services Commission & Another v Cape Bar Council & Another*⁴, the SCA held that:

“[12] It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg Bowring NO v Vrededorp Properties CC 2007 (5) SA 391 (SCA) para [21]). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one.”

52. In this case, it is common cause that the relief which the applicants seek against the Morries is not for contempt of the March court order and since the Morries have no direct and substantial interest in the outcome of the contempt of court relief, there is no basis, in law or otherwise, to formally join them to the application for such contempt relief. Any application to do so would constitute an irregular step.

53. The issue in this regard is whether citing the Morries in this application was correct or whether the applicants should have launched a separate application against the Morries for the spoliation relief.

54. The counsel for the Morries argued that since the relief sought against the Morries was completely different to the relief sought against the first to sixth respondents, that the applicants should have brought a separate application against the Morries with a new case number, and that the Morries object to being a party to this application under this case number.

55. It was put to the counsel for the Morries that if the application for the contempt of the March court order was brought at the same time as the application for the spoliation, whether he agreed that, given the similar facts and circumstances in both matters, these

⁴ 2013 (1) SA 170 (SCA) at para [12]

applications would have, in any event been consolidated and heard together as a matter of convenience.

56. His response was that this may well have happened, but that it is still unfair for the Morries to be included in this application.
57. One of the main reasons was that the judge hearing the spoliation application against the Morries would be influenced by the March court order and this would prejudice the Morries.
58. If regard is had to Uniform Rule 11 which addresses consolidation of actions, it states that:

“11. Consolidation of actions:

Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon—

(a) the said actions shall proceed as one action;

(b) the provision of rule 10 shall mutatis mutandis apply with regard to the action so consolidated; and

(c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said actions.”

59. The paramount test in regard to consolidation of actions is convenience for the parties, the witnesses and mostly, the court⁵.
60. Consolidation of actions will generally be ordered in order to avoid multiplicity of actions and attendant costs. Consolidation of actions will not be ordered if there is a possibility of prejudice being suffered by any party. By prejudice in this context is meant “*substantial*

⁵ *Rail Commuters Action Group v Transnet* 2006 (6) SA 68 (C) at 68B

*prejudice sufficient to cause the court to refuse a consolidation of action, even though the balance of convenience would favour it*⁶.

61. In this case, the facts pertaining to the spoliation application serve a background to the contempt of court application and, as such, a consolidation of the two applications would have, in all probability, have been granted.
62. The salient principle in our law is where any alleged or proven irregularity does not cause any substantial prejudice to the complaining party, the court is entitled to overlook it. This is so because the court rules are designed to ensure fair play and thereby prevent injustice, but that is not an end in themselves⁷.
63. It is the duty of the court to ascertain the true or real issues in dispute. The court looks at the substance of the dispute and not the form in which it is presented⁸.
64. In this case, the Morries did not satisfy the court that, by being joined to this application, that they suffered any kind of substantial prejudice at all that would have caused a court to refuse consolidation.
65. In light of the foregoing, I am satisfied that the inclusion of the Morries in this contempt of court application where separate relief is sought against the Morries is in line with the legal principles and that the substance trumps the form in this case.
66. In light of the foregoing, this point *in limine* raised by the Morries in this regard would be dismissed.

Lack of jurisdiction of this court

⁶ Erasmus Superior Court Practice at D1-134; *New Zealand Insurance Company Ltd v Stone* 1963 (3) SA 63 (C) at 71D-H

⁷ *Minister van Wet en Order v Jacob* 1994 (1) SA 944 and *Protea Assurance Company Ltd v Vinger* 1970 (4) SA 663 (O)

⁸ *Ceramic Industries Ltd t/a Betta Sanitary Ware v National Construction Building and Allied Workers Union & Others* (2) (1997) 18 ILJ 671 (LAC); *Fidelity Guards Holdings (Pty) Ltd v Professional Transport Workers Union & Others* (1) (1998) 19 ILJ 260 (LAC)

67. The second point *in limine* raised by the Morries is that this court lacks jurisdiction because the relief it seeks against the Morries is tantamount to an eviction order and that should have been instituted in the Magistrates Court in terms of ESTA.
68. ESTA is the central legislation that seeks to give effect to section 25(6) of the Constitution of the Republic of South Africa, 1996 (“*the Constitution*”) which provides that:
- “(a) *Person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an act of Parliament, either to tenure which is legally secure or to comparable redress.*”
69. In terms of ESTA, one of the main requirements is for the occupier of the farmland to have the consent of the owner or the person in charge of the land in question.
70. In this case, it is now common cause that the Morries never had the consent of the Department to occupy Willemskraal in the first place. ESTA therefore has no application in this matter and this puts an end to this second point *in limine*, which also falls to be dismissed.

The Morries at all times had co-possession of Willemskraal whenever dispossessed of their right to be there

71. The Morries contend that they were forcefully removed from Willemskraal but that at all material times, they were in possession of the keys to the gate and the house on Willemskraal.
72. Notwithstanding these contentions, the Morries admit that at least from 2018, they were not physically present at Willemskraal and that the applicants were, in fact, in physical occupation and control of Willemskraal since at least 2018.
73. The Morries also admitted that in the last 5 years, between 2018 until 11 May 2024, they did nothing to exert any control over the farm at Willemskraal.

74. The applicants, in their replying affidavit, placed the facts pertaining to the Morries' averments that they were always in possession of the keys to the house and gate at Willemskraal, in dispute and, in fact, stated in terms that the Morries have "*lied to the court*".
75. The Morries opted not to respond to these allegations.
76. In regard to the Morries' failure to respond to the averments made in the applicants replying affidavit, the applicants referred, *inter alia*, to *Tantoush v Refugee Appeal Board & Others*⁹ (and other cases) where the court was held that:

"As these averments were made in the replying affidavit the second respondent strictly speaking had no entitlement to respond to them and in the normal course they could not be denied or explained by the respondents. Nevertheless, if the allegations by Ms Peer were untrue, or if an adequate explanation were possible, leave of the court could and should have been sought to answer them - see Sigaba v Minister of Defence and Police and another 1980(3) SA 535 (Tk) at 550F. The respondents did not request to be given an opportunity to deal with these averments. Their failure to do so tilts the probabilities towards the applicant's version that the consultation occurred, that it lasted 20 minutes and that Ms Bhamjee objected."

(Emphasis added)

77. This finding was supported by the Constitutional Court in *Thint (supra)*¹⁰ and in the SCA in *Pretoria Portland Cement (supra)*¹¹.
78. In response to this argument by the applicants and to substantiate their co-possession argument, the Morries' counsel submitted that it is trite that "*access is not protected by way of a spoliation order*" and that this is what the applicants are seeking to do.
79. He made reference to the case of *De Beer v Zimbali Estate Management Association (Pty) Ltd.*¹² and submitted that if the applicants had the sole keys for the house, as they proclaim, that they would have simply locked the seventh and eighth respondents out of the house after finding them there.

⁹ 2008 (1) SA 232 (T) at para [51]; *Thint v NDPP; Zuma & Another v NDPP & Others* 2009 (1) SA 1 (CC) at para [325]; *Pretoria Portland Cement Company Ltd & Another v Competition Commission & Others* 2003 (2) SA 385 (SCA) at para [63]

¹⁰ At para [325]

¹¹ At para [63]

¹² 2007 (3) SA 254 (N) at para [33]

80. The fact that the applicants could not do so was because they never had the keys to the house and gate at Willemskraal.
81. I do not agree with this argument. It is not the applicants who are alleging co-possession of the house at Willemskraal on the basis that they were in possession of the keys to the house. The applicants' case is that they have been in peaceful and undisturbed possession of Willemskraal since 2018 and that they put the lock on the house in 2021. Prior to that, the house had no keys and the gate had no lock and in fact, the gate still has no lock.
82. This is the basis of the Morries' argument for why they moved back to Willemskraal and for why they contend that they have and always had co-possession and that as such, the applicants could not have been in peaceful and undisturbed possession.
83. I have had regard to the case of *De Beer v Zimbali (supra)* to which the counsel for the Morries made reference. It is clear that this case does not support the Morries argument of co-possession based on allegedly being in possession of the keys to the house and gate to Willemskraal.
84. What happened in the case of *De Beer v Zimbali (supra)* was the following:
- 84.1 The applicant who was an estate agent who conducted business on the Zimbali Estate, that she sold property there and she was accordingly issued with a disc for the control access to Zimbali which was secured by boom gates.
- 84.2 The disc was automatically disabled after a given period of time and had to be programmed from time to time.
- 84.3 On 23 October 2005, the applicant's disc was reprogrammed but the following day it was disabled so the applicant could not gain access to any part of the Zimbali Estate. She proclaimed that she had exercised peaceful and undisturbed access for some 2½ years by that time through her attorneys, she demanded that her access be restored, but to no avail.

- 84.4 She contended that the underlying reason for the disablement of the disc was not relevant for the application and further alleged that the matter was urgent as she stood to lose a sale of a property in Zimbali worth R15 million.
- 84.5 She accordingly brought an application for spoliation in the following terms:
- 84.5.1 That the first respondent was ordered forthwith to restore the applicant's unrestricted access to the Zimbali Resort and Residential Development, reactivating the applicant's access/security disc as renewed by the first respondent on 24 October and cancelled on 25 October 2005; and
- 84.5.2 That the first respondent, or which of the two respondents opposed the application be ordered to pay the costs.
85. In analysing the applicant's application in *De Beer v Zimbali (supra)*, the court made reference to various cases pertaining to spoliation with regards to the facts of that case, the court found that:
- [33] *It is clear that the boom or gate was effectively locked as far as the applicant was concerned. The disc was in effect a key which would normally make access to the whole estate possible. The changing of the computer to prevent the disc facilitating access amounts to the same as changing the locks.*
- [34] *The only remaining question is whether the applicant had possession of the whole estate. At one level the simple answer is that she had a key or disc allowing access to the whole estate. By giving her the disc were the respondents in effect giving her possession of the whole estate? That they maintain that she was given access to the whole estate in error or due to some subterfuge on her part, does not matter.*
- [35] *In Painter v Strauss 1951 (3) SA 307 (O) at page 314 Brink J held that:*
- 'The mandament van spolie is employed to prevent people from taking the law into their own hands, and it requires the property despoiled to be restored as a preliminary to any enquiry or investigation on the merits of the dispute.'
- [36] *Van der Merwe in the title Things at para 259 says the following about the control element where possession is concerned:*
- 'The control element of possession is more closely scrutinised in the case of acquisition of possession by occupation than by transfer; since transfer need not necessarily consist in the physical handing over of the thing, but can also take fictitious forms, like the handing over of keys (*clavium traditio*) or the pointing out of an object (*traditio longa manu*), less stringent physical requirements are

on the whole exacted for acquisition of possession by transfer than by occupation.'

...

[38] *Physical control over a building Van der Merwe points out is exercised by the person who occupies it (See R v Betelezie 1941 TPD 191) ...*

...

[41] *What is of crucial importance in this matter is that for someone to exercise physical control the key must, however, be the only key to the building; the above does not apply if the owner or someone else holds a duplicate key. Van der Merwe quotes as authority for this proposition the case of Shaw v Hendry 1927 CPD 357. In that case the applicant was a builder and alleged that he was in possession of a house as a result of a builder's lien. The facts revealed that he was unable to complete certain plumbing work and gave a key to a watchman to enable another plumber to have access. A plumber and the respondent's father thereafter had access and Gardiner JP held that no possession was established."*

86. In that case, the court found that a *mandament van spolie* is to protect possession and not access and that the applicant had failed to establish the sort of possession required for a *mandament van spolie*.
87. It is clear that physical occupation of property is more akin to possession than having a key to the property.
88. The Morries admit that they have not been in physical possession of Willemskraal for over 6 years, since 2018. The fact that they have keys to Willemskraal but no other legal basis to be there, like the consent from the departmental respondents, equates to no possession at all.
89. Based on the facts, read with the legal principles, I am not satisfied that the Morries have co-possession of Willemskraal by virtue of being in possession of a key.
90. Accordingly, this third point *in limine* also falls to be dismissed.

Requirements for a *mandament van spolie*

91. It is trite that there are 2 requirements that need to be met in order to obtain the remedy of *mandament van spolie*:

- 91.1 The party seeking the remedy must, at the time of the dispossession, have been in possession of the property; and
- 91.2 The dispossessor must have wrongfully deprived them of possession without their consent.
92. It is clear from the facts as set out by the applicant which is supported by the facts and admissions made by the Morries, that the applicants were in undisturbed and peaceful possession of Willemskraal till 11 May 2024.
93. It is also common cause that the Morries lack any consent from the Department and that by moving on to Willemskraal without such consent is unlawful and amounts to taking the law into their own hands.
94. In *Ivanov v North West Gambling Board*¹³, the SCA held that:
- “[19] The historic background and the general principles underlying the mandament van spolie are well established. Spoliation is the wrongful deprivation of another's right of possession. The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands. An applicant upon proof of two requirements is entitled to a mandament van spolie restoring the status quo ante. The first, is proof that the applicant was in possession of the spoliated thing. The cause for possession is irrelevant – that is why possession by a thief is protected. The second, is the wrongful deprivation of possession. The fact that possession is wrongful or illegal is irrelevant as that would go to the merits of the dispute.”*
95. The Morries have therefore unlawfully displaced the applicants of their peaceful and undisturbed possession of Willemskraal and such status *quo ante* must be restored with immediate effect.

CONTEMPT OF COURT APPLICATION

96. The relief which the applicants seek against the departmental respondents and the fifth and sixth respondents is for contempt of the March court order.
97. The fifth and sixth respondents raised three points *in limine* in their answering papers.

¹³ 2012 (6) SA 67 (SCA) at para [19]

98. I address these briefly before setting out the background facts pertaining to the events that occurred after the March court order and the applicants' basis for bringing this application.

Fifth and sixth respondents' points *in limine*

99. The fifth and sixth respondents raised the following three points *in limine*:

99.1 That the Daters Trust of which the fifth respondent is a trustee and the Uzukhanyo Kuthi Trust of which the sixth respondent is a trustee ("*the Trusts*") were not joined to the proceedings and therefore the March court order does not apply to the Trusts;

99.2 That the fifth and sixth respondents, alternatively the Trusts, are co-possessors of Dassiesfontein and Dassies 2 respectively; and

99.3 That the March court order is akin to an eviction order.

100. With regards to the Trust:

100.1 This issue of the non-joinder of the trusts were addressed in the application for spoliation and Salie, J specifically stated that the non-joinder of the trusts was not fatal to that application given that the persons who dispossessed the applicants are the fourth, fifth and sixth respondents; and

100.2 Particularly the Daters Trust, the applicants attached to their replying affidavit a supporting affidavit of one Mr Jakob Daters, who is the brother of the fifth respondent and a beneficiary of the Daters Trust, wherein he stated categorically under oath that the fifth respondent is not acting on behalf of the Daters Trust and that the fifth respondent's on Dassiesfontein is not authorised by the Trust. The fifth respondent has not denied the contents of this affidavit.

101. With regards to the issues of co-possession and eviction, these points *in limine* were raised in the spoliation application as well. Salie, J considered both of these and found

that they had no merit. This is clear from the fact that she granted the spoliation in the March court order.

102. What is clear from these three points *in limine* is that the fifth and sixth respondents impermissibly attempted to lure the court into a reconsideration of these in respect of which an order stands and each of these points *in limine* constitute *res judicata*.
103. It is common cause that the March court order was never appealed and is, for all intents and purposes, a final judgment in the spoliation application.
104. It ill behoves the fifth and sixth respondents in this contempt of court application, to re-engage with the merits of the spoliation application and proffer the same as defences in this application knowing full well that those arguments were unsuccessful in the spoliation application.
105. Since these issues have already been determined, I will not consider them at all for the purposes of this application.

BACKGROUND FACTS

Common cause facts

106. On 6 March 2024, the applicants' attorneys of record being the Legal Resources Centre ("*the LRC*") sent the judgment and the March court order to Ms Anita Fanini, the erstwhile attorneys of record for the fifth and sixth respondents wherein she stated in the accompanying e-mail that the fifth and sixth respondents should remove any belongings from the houses that they occupy, as they are used for the shepherds when the sheep are moved to Dassiesfontein and Dassies 2. She made it clear that the applicants did not want any further allegations that the applicants are disturbing the "*property*" of the fifth and sixth respondents and that the applicants are therefore requesting that the fifth and sixth respondents remove their "*property*" as soon as possible.
107. On 7 March 2024, Ms Fanini responded to the LRC's letter as follows:

- 107.1 They advised the fifth and sixth respondents to remove the locks on the gates to restore possession to the applicants and that the fifth and sixth respondents had done so the day before;
- 107.2 The court did not order fifth and sixth respondents to vacate the farms as this was not in the ambit of the spoliation order;
- 107.3 She had advised the fifth and sixth respondents that they retain their right to remain on the farm and look after their livestock;
- 107.4 Their presence on the farm will not interfere, in any manner, with the applicants' possession of the farm;
- 107.5 The applicants' instructions that the fifth and sixth respondents vacate the farms amounts to an impermissible extension of the spoliation order and is accordingly unlawful and unconstitutional;
- 107.6 The applicants were never in possession of the houses on the farms and that the fifth and sixth respondents had always maintained possession of the houses as they kept keys to the houses;
- 107.7 That should the applicants need the fifth and sixth respondents to vacate the farms and their belongings from the farms, that the applicants must approach the court for an eviction order.
108. In response to this letter, the LRC addressed a further letter to Fanini Attorneys on 8 March 2024 wherein they addressed a number of the issues in relation to the implementation of the March court order including the instruction that the keys had been returned was simply untrue. The LRC responded to the letter as follows:
- 108.1 That the first and fifth respondents indicated that they retained possession of the properties as they held keys to the homes is an averment that was never raised in the spoliation application and is being raised after the fact and is disingenuous and

done in an effort to frustrate the applicants and the implementation of the March court order. It also raises completely new allegations to which the applicants were not able to respond during litigation;

108.2 In addition these averments are false since the applicants held keys to both the house in Dassiesfontein and Dassies 2 and it is unclear as to how the fifth and sixth respondents obtained access to the houses on the property since the applicants held the set of keys for both properties;

108.3 That the fifth and sixth respondents and their legal representatives understanding of the legal consequences of a spoliation order is incorrect and in particular, they made reference to the Constitutional Court case in *Ngqukumba v Minister of Safety and Security & Others*¹⁴ which held that:

“The essence of the mandament van spolie is the restoration before all else of unlawfully deprived possession to the possessor. It finds expression in the maxim spoliatus ante omnia restituendus est (the despoiled person must be restored to possession before all else). The spoliation order is meant to prevent the taking of possession otherwise than in accordance with the law. Its underlying philosophy is that no one should resort to self-help to obtain or regain possession. The main purpose of the mandament van spolie is to preserve public order by restraining persons from taking the law into their own hands and by inducing them to follow due process.”

108.4 This was confirmed by Salie, J in the March court order where she stated that:

“As a possessory remedy, it is exclusively directed at restoring the factual position as it was before the dispossession, which is determined separately and distinct from an investigation into the rights of the parties.”

108.5 Prior to the applicants’ dispossession, neither the fifth nor sixth respondents were living on the farm. They had not been there since at least 2017 and 2019 respectively. The spoliation order has the effect of restoring the situation as it was prior to 17 January and 7 February 2024. At that point, both the fifth and sixth respondents did not live on Dassiesfontein or Dassies 2 and the spoliation order restores the possession to the applicants without the presence of the fifth and sixth respondents on the farms;

¹⁴ 2014 (5) SA 112 (CC) at [10]

- 108.6 In addition, the fifth and sixth respondents are not “*occupiers*” for the purposes of ESTA.
109. On the same day, Ms Fanini responded to say that the correspondence was received and that she would take instructions and revert. The applicants never heard back from her.
110. On 15 March 2024, the LRC wrote to the State Attorney on behalf of the departmental respondents advising them that the fifth and sixth respondents have continued to stay on the farms, and that in fact the sixth respondent has brought her children with her as well. They further sought clarity on what the Department, as the owner of the land, intended on doing about the fifth and sixth respondents' continued occupation of Dassiesfontein and Dassies 2 given the terms of the March court order.
111. They also sought clarity on the policy in terms of which the Department had decided to allocate the land to fifth and sixth respondents as well as the terms of such allocation. In addition, the LRC indicated that the applicants intended on reviewing and setting aside the decision to allocate the farms to the fifth and sixth respondents.
112. On 19 March 2024, Mr Golding of the State Attorney responded and noted that the State Attorney was taking instructions from the departmental respondents regarding the fifth and sixth respondents' continued occupation of Dassiesfontein and Dassies 2 and he sought an indulgence to respond by 2 April 2024.
113. On 8 April 2024, the LRC received a further letter from the State Attorney wherein he stated the following:
- “2. We place on record that the first to fourth respondents *accept the court order and do not condone the fifth and sixth respondents, Hendrik Booysen and Lucy Nduku respectively, to remain on the farms.* The first to fourth respondents accept that Booysen and Ms Nduku *are in contravention of the court order and first to fourth respondents have not agreed to this or consented to their continued occupation of the property.*
3. *The Department is in the process of seeking to address the situation.*”
114. The Department took no further steps to address the situation and the fifth and sixth respondents continued to stay on the farm.

115. On 15 April 2024, the LRC again wrote to the State Attorney seeking clarity as to when the Department would be taking steps against the fifth and sixth respondents, given how intolerable the situation had become on the farm.
116. In particular, the LRC pointed out that the fifth and sixth respondents had commenced with farming operations on the land and that the sixth respondent had bought goats onto Dassies 2 over the Easter weekend and was keeping these goats in the sheering shed. The LRC advised the Department that the presence of goats in the sheering shed interferes with Nuvelde's business, and could have a catastrophic impact on their business. In particular, the LRC stated that the impact would be as follows:
- 116.1 Nuvelde has a Responsible Wool Standards (RWS) certification and that the RWS annual audit was completed during April and May.
- 116.2 The presence of goat hairs in the wool would result in Nuvelde losing its RWS certification which meant that the value of the wool would drop between 8 to 15%. This was because RWS certified wool is classed higher and one can fetch a higher price. Without it, Nuvelde would incur financial losses.
- 116.3 The loss of this classification would cause financial loss to Nuvelde and impact on its sustainability and its budget.
- 116.4 In addition, the goats are kept by the sixth respondent in unsanitary conditions which can cause the outbreak of parasites and illnesses that can affect Nuvelde sheep. Nuvelde has no control over the sixth respondent's goats and cannot treat them. Should they cause illness amongst Nuvelde sheep, it can be financially devastating for the company.
117. The LRC again advised the State Attorney that the Department needed to take steps to remove the fifth and sixth respondents from the farms as the Department is the owner and are responsible for placing them on the farms in the first place. The LRC gave the

Department until 16 April 2024 to advise when they would remove the fifth and sixth respondents from the farm.

118. On 15 April 2024:

118.1 The State Attorney addressed an e-mail advising that they were taking instructions and would revert. No such response was forthcoming from the State Attorney.

118.2 The LRC wrote an urgent letter to Ms Fanini in which they noted that Ms Fanini never reverted to previous correspondence and that further developments had taken place over the Easter weekend and demanded that the fifth and sixth respondents remove their animals off the farm and vacate the houses by 17 April 2024, failing which the applicants would approach the court to hold them in contempt of the March court order.

118.3 The first applicant contacted one Mr Andrey Booysen ("**Mr Booysen**"), the then Acting Chief Director in the Department to ask what he would be doing about the fifth and sixth respondents. Mr Booysen advised the first applicant that during the week of 15 April 2024, he was planning on meeting with the fourth applicant, Mr Mbekeni, and some other Department officials and that he was going to instruct Mr Mbekeni to remove the fifth and sixth respondents from the farm.

119. According to the departmental respondents, such a meeting never took place between Mr Booysen and Mr Mbekeni.

120. On 17 April 2024, Ms Fanini responded to the LRC indicating that she no longer represented the fifth and sixth respondents and that the correspondence should be directed to the fifth and sixth respondents directly. Ms Fanini noted that the fifth and sixth respondents were made aware of the court order and the implications of same were fully explained to them.

121. On 19 April 2024, the applicant found out that Mr Booysen had been removed as the Acting Chief Director and been replaced with one Ms Thoko Xaso.

122. Instead of complying with the March court order, the sixth respondent, who initially brought 6 goats, now brought a further 24 sheep onto Dassies 2.
123. The LRC instructed the Sheriff of Beaufort West to serve on the fifth and sixth respondents the following:
 - 123.1 Copies of the March court order;
 - 123.2 Letters which the LRC addressed to the fifth and sixth respondents regarding their continued occupation of Dassiesfontein and Dassies 2 being in contravention of the March court order wherein they also advised the sixth respondent of the significant risk her goats pose to the quality of the applicants' sheep;
 - 123.3 A copy of the department's letter of 8 April 2024 advising that the department does not condone their continued occupation of the farms and that it does not agree or consent to them being on the farm and that the LRC demanded that they leave the farms by Wednesday, 8 May 2024 failing which the applicants would approach the court to hold them in contempt of the March court order.
124. On 30 April 2024, the LRC again wrote to the State Attorney advising that the fifth and sixth respondents were still on the farm and were actively farming and putting the applicants' business at risk, and that the State Attorney was again advised that the Department as the owner of the land was responsible for taking immediate steps to remove the fifth and sixth respondents from the farms. Reference was made to the assurances given by the Department to the applicants on 8 April 2024, as they were in the process of addressing the situation and that should steps not be taken by 8 May 2024 for the removal of the fifth and sixth respondents from the farms, the applicants would approach the court to have the first to fourth respondents held in contempt.
125. No response was received to the LRC's letters nor was there any indication that the Department intended to "*address the situation*". On the contrary, on Friday, 10 May

2024, Mr Mapona of the department came to Dassies 2 and delivered some wheelbarrows and rakes for the sixth respondent to assist her with planting vegetables on the farm.

126. Earlier in that week, the first applicant had contacted Ms Xaso to find out what the Department was doing about enforcing the March court order as promised. On the evening of 30 April 2024, Ms Xaso responded to the first applicant and advised that she had spoken to the legal officer and was advised to request that the applicants ask their attorneys to engage with the attorneys of the Department. This was because the matter was in court and there was a ruling in respect of the people on the farm.
127. As a result, the applicants brought this application.

Disputed facts

128. The following are disputed facts arising from the papers:
- 128.1 That the departmental respondents have not violated paragraph (i) of the March court order.
- 128.2 That the Department has no obligation to restore possession of Dassiesfontein and Dassies 2 to the applicant.
- 128.3 That it is fifth and sixth respondents who are in occupation of Dassiesfontein and Dassies 2 and that the obligation rests on them to restore these 2 farms to the applicants.
- 128.4 It is not the role of the departmental respondents to enforce the March court order.
- 128.5 The March court order does not direct the departmental respondents to launch eviction proceedings against the fifth and sixth respondents.

ISSUE FOR DETERMINATION

129. The issue for determination under this heading is:

129.1 Whether the departmental respondents and the fifth and sixth respondents are in contempt for failing to comply with the March court order compelling them to restore the peaceful and undisturbed possession of Dassiesfontein and Dassies 2 to the applicant with immediate effect.

APPLICABLE LEGAL PRINCIPLES

130. The main issue to determine under the heading of contempt of court is whether the failure to comply with the March court order by the first to sixth respondents was wilful or *mala fides*.

131. In *Victoria Park (supra)*¹⁵, the court set out the legal principles pertaining to contempt of court as follows (footnotes omitted):

[15] Contempt of court is a criminal offence. It is committed, generally speaking, when a person unlawfully and intentionally violates the 'dignity, repute or authority of a judicial body' or interferes in the administration of justice in a matter pending before such a body. It serves three important purposes, namely to protect the rights of everyone to fair trials, to maintain public confidence in the judicial arm of government and to uphold the integrity of orders of courts.

[16] *Contempt of court may take a number of forms, being descriptive of 'a broad variety of offences that have little in common with one another save that they all relate, in one way or another, to the administration of justice'. As a result, a number of categorisations have been developed to conveniently pigeon-hole the various manifestations of this offence. The form of contempt of court that is involved in this matter is usually referred to as contempt ex facie curiae because it is not alleged to have been committed during the course of judicial proceedings. It is also, rather inaccurately, referred to as civil contempt because the committal of the respondents has been sought by a party to civil proceedings on notice of motion, and not by way of a charge at the instance of the Director of Public Prosecutions. Thirdly, it takes the form of a failure or a refusal to obey a court order, as opposed to such forms of contempt as scandalising the court or publishing material that tends to prejudice pending judicial proceedings.*

[17] Although usually brought by way of notice of motion, 'civil' contempt cases remain criminal in nature. This has led to a re-assessment of the issue of onus. In *Uncedo Taxi Service Association v Maninjwa and others*. Pickering J held that the fundamental right to a fair criminal trial guaranteed by s35(3) of the Constitution requires that, in order for an applicant in contempt proceedings to

¹⁵ At paras [15] to [23]

succeed, he or she must prove the elements of the offence beyond reasonable doubt. I am in agreement with this statement of the law.

[18] *The elements of the offence that the applicant must establish are set out and discussed as follows by Baker AJ in Consolidated Fish Distributors (Pty) Ltd v Zive and others:*

‘Contempt of Court, in the present context, means the deliberate, intentional (i.e. wilful), disobedience of an order granted by a Court of competent jurisdiction. ... In *Southey v Southey*, 1907 E.D.C. 133 at p. 137, it was said that applicant for an attachment had to show a wilful and material failure to comply with the reasonable construction of the order. The requirement of materiality is hardly ever mentioned in the cases, however, probably for the reason that in 99 per cent of these cases the whole order was disobeyed, which is obviously a “material” non-compliance. It is reasonable to suggest that where most of the order has been complied with and the non-compliance is in respect of some minor matter only, the Court would take the substantial compliance into account, and would not commit for the minor non-compliance.

An applicant for committal needs to show -

- (a) that an order was granted against respondent; and
- (b) that respondent was either served with the order ... or was informed of the grant of the order against him and could have no reasonable ground for disbelieving the information; and
- (c) that respondent has either disobeyed it or has neglected to comply with it.
(In this instance it is undisputed that the order was duly served).

Once it is shown that an order was granted and that respondent has disobeyed or neglected to comply with it, wilfulness will normally be inferred ... and the onus will then be on respondent to rebut the inference of wilfulness on a balance of probabilities.’

[19] *The principal purpose of contempt of court proceedings when an order has been disobeyed has been held to be ‘the imposition of a penalty in order to vindicate the Court’s honour consequent upon the disregard of its order ... and to compel the performance thereof’.* This purpose must, however, be viewed in a wider context. *The Constitution, in which the judicial authority of the State is sourced, is founded, inter alia, on constitutional supremacy and the rule of law.*

At the heart of the rule of law is the idea, foundational in civilised society, that the law must be administered by independent courts and that, as Dicey expressed it, ‘no man is above the law’ and ‘every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals’.

[20] *As part of what may be termed a parcel of kindred fundamental rights designed to give expression to the founding value of the rule of law, s34 of the Constitution provides that ‘[e]veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum’.* In *Chief Lesapo v North West Agricultural Bank and Another, Mokgoro J set out the purpose of s34 and its relationship to the rule of law. She held:*

‘A trial or hearing before a court or tribunal is not an end in itself. It is a means of determining whether a legal obligation exists and whether the coercive power of the State can be invoked to enforce an obligation, or prevent an unlawful act being committed. It serves other purposes as well, including that of institutionalising the resolution of disputes, and preventing remedies being sought through self-help. No one is entitled to take the law into her or his own hands. Self-help, in this sense, is

inimical to a society in which the rule of law prevails, as envisioned by s 1(c) of our Constitution. ...Taking the law into one's own hands is thus inconsistent with the fundamental principles of our law.'

- [21] *The learned judge proceeded to hold that an 'important purpose of section 34 is to guarantee the protection of the judicial process to persons who have disputes that can be resolved by law' and that the right of access to court is 'foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is indeed of cardinal importance'.*
- [22] *The right guaranteed s34 would be rendered meaningless if court orders could be ignored with impunity: the underlying purposes of the right -- and particularly that of avoidance of self-help -- would be undermined if litigants could decide which orders they wished to obey and which they wished to ignore. The Constitution recognises this in s165, the section that creates the judicial authority. Section 165(3) provides that '[n]o person or organ of state may interfere with the functioning of the courts' and s165(5) provides that a any order issued by a court 'binds all persons to whom and organs of state to which it applies'.*
- [23] *When viewed in the constitutional context that I have sketched above, it is clear that contempt of court is not merely a mechanism for the enforcement of court orders. The jurisdiction of the superior courts to commit recalcitrant litigants for contempt of court when they fail or refuse to obey court orders has at its heart the very effectiveness and legitimacy of the judicial system. In this sense, contempt of court must be viewed in a particularly serious light in a constitutional state such as ours that is based on the democratic values listed in s1 of the Constitution, particularly those of constitutional supremacy and the rule of law. Contempt of court is not merely a means by which a frustrated successful litigant is able to force his or her opponent to obey a court order. Whenever a litigant fails or refuses to obey a court order, he or she thereby undermines the Constitution. That, in turn, means that the court called upon to commit such a litigant for his or her contempt is not only dealing with the individual interest of the frustrated successful litigant but also, as importantly, acting as guardian of the public interest. The contempt jurisdiction, whatever the situation may have been before 27 April 1994, now also involves the vindication of the Constitution. This principle was, it appears to me, what Kirk-Cohen J had in mind when he held, in Federation of Governing Bodies of South African Schools (Gauteng) v MEC for Education, Gauteng, that contempt of court was an issue 'between the Court and the party who has not complied with a mandatory order of Court'.' (Emphasis added)*

132. In *Fakie N.O v CCII Systems (Pty) Ltd*¹⁶, the SCA stated the following:

- "[9] *The test for when disobedience of a civil order constitutes contempt has come to be stated as whether the breach was committed 'deliberately and mala fide'. A deliberate disregard is not enough, since the non-complier may genuinely, albeit mistakenly, believe him or herself entitled to act in the way claimed to constitute the contempt. In such a case good faith avoids the infraction. Even a refusal to comply that is objectively unreasonable may be bona fide (though unreasonableness could evidence lack of good faith).'*" (Emphasis added)

¹⁶ 2006 (4) SA 326 (SCA) at para [9]

133. The criminal standard of proof, namely proof beyond a reasonable doubt, applies. The applicant must show:

133.1 That the respondent was served with or otherwise informed

133.2 of an existing court order granted against him;

133.3 and has either ignored or disobeyed it.¹⁷

134. To avoid being convicted, the respondent must establish a reasonable doubt as to whether his failure to comply was wilful and *mala fide*. In *Fakie (supra)* the SCA said:

“[23] It should be noted that developing the common law thus does not require the prosecution to lead evidence as to the accused’s state of mind or motive: once the three requisites mentioned have been proved, in the absence of evidence raising a reasonable doubt as to whether the accused acted wilfully and mala fide, all the requisites of the offence will have been established. What is changed is that the accused no longer bears a legal burden to disprove wilfulness and mala fides on a balance of probabilities, but to avoid conviction need only lead evidence that establishes a reasonable doubt.”

135. Once the applicants have proved the order, service or notice, and non-compliance, the respondents bear an evidential burden in relation to wilfulness and *mala fides*. Once these elements are established, wilfulness and *mala fides* are presumed and the respondents bear an evidentiary burden to establish a reasonable doubt. Should the respondents fail to discharge this burden, contempt will have been established¹⁸.

136. The standard of proof must be applied in accordance with the purpose sought to be achieved, that is, the consequences of the various remedies¹⁹, the civil contempt remedies of committal or a fine have material consequences on an individual’s freedom and security of the person, and where these remedies are sought a criminal standard of proof (beyond a reasonable doubt) applies.

137. On the other hand, where civil contempt remedies such as declaratory relief, mandamus or a structural interdict are sought, these do not have the consequence of depriving an

¹⁷ *Fakie (supra)* at para [6]

¹⁸ *Secretary, Judicial Commission of Enquiry into Allegations of State Capture v Zuma & Others* 2021 (5) SA 327 (CC) at para [37]

¹⁹ *Matjhabeng Local Municipality v Eskom Holdings Ltd & Others* 2018 (1) SA (CC) at para [67]

individual of their freedom and security of a person and therefore the civil standard of proof (balance of probabilities) applies.

THE FIRST TO SIXTH RESPONDENTS' DEFENCES TO THE CONTEMPT OF COURT RELIEF SOUGHT BY THE APPLICANT

Departmental respondents

138. The defences raised by the departmental respondents are essentially the disputed facts that are set out hereinabove.

139. Further to those defences, the departmental respondents alleged the following:

139.1 Subsequent to the letter of 8 April 2024, the Department consulted with its legal team regarding the ambit of the March court order, whereupon the Department ascertained that it had not been directed to launch eviction proceedings against the fifth and sixth respondents and accordingly did not have to take any further steps;

139.2 Furthermore, the department enquired from the fifth and sixth respondents as to whether they had granted access to the applicants to Dassiesfontein and Dassies 2, which they answering in the affirmative.

139.3 In the departmental respondents' heads of argument, they submit the following:

139.3.1 That paragraph (i) of the March court order did not impose obligations on the departmental respondents. Given that it was the fifth and sixth respondents who are in possession of Dassiesfontein and Dassies 2, the departmental respondents understood, from a clear reading of the wording of paragraph (i), that it was directed at the possessors, on whom the court imposed the obligation to restore possession *ante omnia* to the applicants with immediate effect.

139.3.2 That even if the court were to find that paragraph (i) of the March court order imposed an obligation on the departmental respondents to take

positive steps to ensure that the fifth and sixth respondents vacated the property (and essentially to evict them from the property, which the departmental respondents submitted was not the case given the fact that the departmental respondents were not in possession of the property), and that the departmental respondents did not comply with this obligation, their submission was that the requisites of wilfulness and *mala fides* have not been established by the evidence that is before the court.

139.3.3 Subsequent to the letter of 8 April 2024, the departmental respondents consulted with their legal team regarding the ambit of the March court order, whereupon the Department ascertained that it had not been directed to launch eviction proceedings against the fifth and sixth respondents, and accordingly did not have to take further steps.

140. During oral argument, counsel for the departmental respondents reiterated their argument on the papers and submitted further that in order to determine whether the departmental respondents are in contempt of the March court order, that only their conduct subsequent to the March court order must be assessed and considered, and not what transpired prior to the March court order.

141. I am in agreement with this submission.

142. In order to determine whether there is any wilfulness or *mala fides* for the purposes of the relief sought, I set out hereunder the conduct of the departmental respondents as it appears from their own answering affidavit:

142.1 Notwithstanding what the department stated in the letter of 8 April 2024, the departmental respondents never advised the fifth and sixth respondents of the revocation of the Department's consent for the fifth and sixth respondents to continue to occupy Dassiesfontein and Dassies 2.

- 142.2 All the departmental respondents did was enquire from the fifth and sixth respondents whether they had granted access to the applicants to Dassiesfontein and Dassies 2.
- 142.3 Despite advising the applicants on two occasions that it would take steps to address the situation relating to the fifth and sixth respondents' continued occupation of Dassiesfontein and Dassies 2, no steps were taken and the applicants were never advised that the departmental respondents had no intention to take any steps
- 142.4 Given that they revoked their consent for the continued occupation of Dassiesfontein and Dassies 2, instead of notifying the fifth and sixth respondents that they should vacate both farms, the departmental employee, Mr Mapona, was delivering wheelbarrows and rakes to assist the sixth respondent in planting vegetables on the farm. As pointed out by the applicants' counsel, the message which this delivered to the sixth respondent is that she was allowed to continue farming at Dassies 2 with the blessings of the department.
- 142.5 The explanation for Mr Mapona's conduct was that:
- 142.5.1 The sixth respondent is a widow and the sole breadwinner feeding a family of 11 and that Mr Mapona, whose directorate is responsible for food security, was simply assisting the sixth respondent.
- 142.5.2 As well intentioned as the assistance was by Mr Mapona, he may not have been prudent in the circumstances; and
- 142.5.3 They would instruct Mr Mapona and other officials in the Department to ensure that this was not repeated.
143. This explanation regarding Mr Mapona is nothing short of astonishing. At no stage did the departmental respondents consider it necessary to explain to the court how or why this conduct would not be perceived by the sixth respondent as the department's "*continued*

consent” for her to continue to occupy Dassies 2 in direct contravention of the March court order and their alleged revocation of their consent.

144. The March court order was clear as to what is required by the departmental respondents in order to comply. However, instead of taking positive steps to comply with the March court order, the departmental respondents argued that, as far as they have been legally advised, paragraph (i) of the March court was “*not applicable to them since they are not in possession of Dassiesfontein and Dassies 2*”.
145. In fact, the entire tone of the answering affidavit is dismissive of the applicants’ claims that the departmental respondents had a positive duty in terms of the March court order to restore the applicants peaceful and undisturbed possession of Dassiesfontein and Dassies 2 and that they have failed to comply therewith.
146. The department is the rightful owner of Dassiesfontein and Dassies 2 and that it was the departmental respondents who gave the fifth and sixth respondents consent to occupy these farms and yet, they submitted that nothing was expected of them in terms of paragraph (i) of the March court order.
147. The conduct of the departmental respondents after the March court order, on their own version, is demonstrative of wilfulness and *mala fides* on their part.
148. Their attempt to distance themselves from the unlawful conduct of the fifth and sixth respondents by their continued occupation of Dassiesfontein and Dassies 2, which conduct and occupation was instigated by the departmental respondents, also speaks directly to wilfulness and *mala fides* on the part of the departmental respondents. The departmental respondents had a legal responsibility to comply with the March court order and reverse their actions that took place on 17 January and 7 February 2024. They did not do so.

149. And yet, the departmental respondents contended that in the event that the court finds that they have not complied with the March court order, that such non-compliance is not wilful or *mala fides* given the legal advice they received with regards to the eviction issue.
150. I disagree with this contention.
151. The conduct of the departmental respondents is clearly wilful and *mala fides* and I say this for the following reasons:
- 151.1 They failed to inform the fifth and sixth respondents, in writing, on 4 March 2024, that they have revoked their consent for the fifth and sixth respondents from occupying Dassiesfontein and Dassies 2, as required by the March court order.
- 151.2 They failed to instruct the fifth and sixth respondents that since such consent has been revoked, that they are no longer in lawful occupation of Dassiesfontein and Dassies 2 and that they are, for all intents and purposes, unlawful occupiers.
- 151.3 They failed to instruct the fifth and sixth respondents that should they not vacate Dassiesfontein and Dassies 2, given that the department is the owner of these farms and in order to restore these to the applicant in compliance with the March court order, the department will be forced to bring eviction proceedings.
- 151.4 They failed to provide the fifth and sixth respondents with a date by which to vacate.
- 151.5 Instead, the departmental respondents, via their employees, continue to assist the fifth and sixth respondents, which is a clear indication that there, in fact, was no revocation of the department's consent.
- 151.6 That this conduct also flies in the face of the March court order.
152. To summarise:

- 152.1 The applicants were in peaceful and undisturbed possession since 2017 until 17 January and 7 February 2024.
- 152.2 The departmental respondents, by their conduct, dispossessed the applicants from Dassiesfontein and Dassies 2.
- 152.3 The departmental respondents gave the fifth and sixth respondents consent to move onto Dassiesfontein and Dassies 2 and even assisted them in moving on to the farms.
- 152.4 Had the departmental respondents not granted consent to the fifth and sixth respondents, they would not have occupied Dassiesfontein and Dassies 2.
- 152.5 If the departmental respondents had genuinely revoked their consent, the fifth and sixth respondents would possibly feel compelled to vacate Dassiesfontein and Dassies 2.
- 152.6 The conduct of the departmental respondents towards the March court order is such, that it encourages the fifth and sixth respondents to feel brazen enough to ignore the March court order as well.
153. The departmental respondents also submitted onus of “*beyond a reasonable doubt*” is a strict one and that the applicants have not discharged but rather, the departmental respondents have created the necessary reasonable doubt to avert a contempt of court order being granted against them.
154. From the plain facts which appear above, I am not convinced that the departmental respondents’ have created any reasonable doubt at all to avert the contempt of court relief.
155. In my view, the departmental respondents are aware of the March court order and that they have not wilfully complied therewith and their failure to do so is *mala fides*.

Fifth and sixth respondents

156. The defences raised by the fifth and sixth respondents for the contempt application are the following:

156.1 That they act in their fiduciary capacities as trustees of their respective trusts.

156.2 That the March court order does not apply to them personally as they act on behalf of the trust to whom the department granted its consent.

156.3 Since the granting of the March court order, that they granted to the applicants access to Dassiesfontein and Dassies 2.

156.4 That the sixth respondent has brought goats and sheep onto Dassies 2.

156.5 That the fifth and sixth respondents will only move their property from Dassiesfontein and Dassies 2, upon receipt of an eviction order properly granted by a court and ordering them to do so; and giving them an alternative farm for their property.

157. The counsel for the fifth and sixth respondents argued that by granting applicants access to Dassiesfontein and Dassies 2, as they were apparently advised by the departmental respondents to do, that they had complied with the court order and are therefore not in contravention thereof and any alleged non-compliance on their part is not wilful or *mala fide*.

158. I have a fundamental difficulty with the submissions made by the fifth and sixth respondents' in their answering papers, as well as in their heads of argument and during oral argument, for the following reasons:

158.1 First, the March court order applies to the fifth and sixth respondents directly and not to their respective trusts. The trusts do not feature in this application at all and any reference to these trusts by the fifth and sixth respondents have been disregarded.

- 158.2 Second, according to Mr Jakob Daters, the fifth respondent's brother, the Daters Trust has not authorised the fifth respondent to occupy Dassiesfontein and that he is, accordingly, not acting on behalf of the Daters trust.
- 158.3 Third, even though the fifth and sixth respondents did grant the applicants access to Dassiesfontein and Dassies 2 by removing the locks from the gates thereto, this is not what was contemplated in the March court order.
- 158.4 That prior to the fifth and sixth respondents' occupation of Dassiesfontein and Dassies 2 on 17 January and 7 February 2024, the applicants had full possession and occupation of both these farms and were conducting the wool business from all five Plateau farms.
- 158.5 The only way for the status quo to be restored to the applicants in terms of paragraph (i) of the March court order, is for the fifth and sixth respondents and their animals to vacate the farms.
- 158.6 Access to Dassiesfontein by the applicants does not constitute peaceful and undisturbed possession, because the applicants' sheep cannot graze on the Dassiesfontein Farm. The reason for this is because the fifth respondent has full access to the sheep and has openly and admittedly threatened that he will slaughter some of the sheep as compensation for animals that were allegedly stolen from him. This is hardly peaceful and undisturbed possession as contemplated by the March court order.
- 158.7 As for Dassies 2, applicants utilised the sheering shed on Dassies 2 prior to the occupation thereof by the sixth respondent and given that the sixth respondent's goats and sheep are in that area, this would contaminate the wool of the applicants' sheep if they came into contact with them, thereby causing financial losses to the applicants, as well as having their RWS certification revoked.

- 158.8 The applicants used both houses on Dassiesfontein and Dassies 2 for their shepherds to stay in when the sheep were in those camps. Whilst the fifth and sixth respondents remain on the farms, the applicants are unable to do so.
159. The defences put up by the fifth and sixth respondents are also somewhat disconcerting in that fifth and sixth respondents are clearly aware of the March court order and what the consequences of the court order are.
160. This is clear from:
- 160.1 The last letter from the fifth and sixth respondents erstwhile attorney advising the applicants that the fifth and sixth respondents were fully informed of the consequences of the March court order; and
- 160.2 The fifth and sixth respondents' clear averments that they have no intention to vacate Dassiesfontein and Dassies 2.
- 160.3 Their misplaced reliance on their alleged fiduciary duties owed to their respective trusts which is without any legal foundation.
161. The fifth and sixth respondents have also made it clear that unless there is an eviction order and they are granted alternative farmland, they will not vacate Dassiesfontein and Dassies 2. (Emphasis added)
162. In light of the facts that arise from the fifth and sixth respondents own papers, I cannot accept the submission by their counsel that there has been compliance with the court order and that in the event that there is any non-compliance with the court order, such conduct is not wilful or *mala fides*.
163. Like the departmental respondents, the fifth and sixth respondents are well aware of the March court order and they have wilfully not complied therewith and such conduct is *mala fides*.

COSTS

Condonation application

164. Regarding the costs in respect of the condonation application, further to what I state above, it is trite that condonation is an indulgence sought by a party from the court and in for such an indulgence to be granted, the party seeking the indulgence has to show that there is no prejudice to the other parties and that if there is prejudice, it is not such that it cannot be cured with an appropriate costs order.
165. Since the departmental respondents were rather late in filing their answering affidavit, even though their explanation therefore was adequate, it still placed the applicants under pressure to file replying affidavits and heads of argument which had a domino effect where the court received voluminous sets of papers very late the day before the hearing.
166. Under these circumstances, the departmental respondents should bear the costs of the applicant arising from the late filing of the answering affidavit.

The withdrawal of relief by the applicant

167. During the hearing of the application, the applicants mentioned that the relief which they seek in paragraph 2.1 of the Notice of Motion, is for a declarator that the first to fourth respondents are in contempt of both paragraphs (i) and (ii) of the March court order.
168. They no longer seek the relief insofar as it pertains to paragraph (ii) of the March court order since it was admitted in the departmental respondents' answering affidavit that the seventh and eighth respondents did not occupy Willemskraal with the Department's consent.
169. As regards to the issue of costs in this regard, the applicant places the following undisputed facts before the court:
- 169.1 On 20 February 2023, the fourth respondent, Mr Mbekeni, asked the applicants to agree that, *inter alia*, Willemskraal be given to other beneficiaries;

- 169.2 On 11 May 2024, the Morries advised the first applicant that the Department had given them Willemskraal and that they had a lease agreement with the Department;
- 169.3 When the applicant called the Legal Administration Office of the Department, Mr Vonk, to enquire about the Morries' presence on Willemskraal, Mr Vonk simply said "*Sorry bru, speak to your lawyers*";
- 169.4 The LRC, on 15 May 2024 addressed a letter to the State Attorney advising the State Attorney of what the Morries and Mr Vonk had stated and specifically stated that the Department was in breach of the March court order in that it had allocated Willemskraal to the Morries;
- 169.5 Neither the Department nor the State Attorney responded to the LRC's letter;
- 169.6 The first time the applicants were advised that the Department had not in fact allocated Willemskraal to the Morries was when the answering affidavit was received on 7 June 2024.
170. In light of the common cause facts, the applicants contend that they can hardly be faulted for genuinely believing that the Department had allocated Willemskraal to the Morries in breach of the March court order.
171. Had the State Attorney or the department itself simply afforded the applicants the courtesy of a response to the letter of 15 May 2024 and corrected the applicants' genuine but mistaken belief as to how the Morries came to be at Willemskraal, the applicants would not have sought the relief in paragraph 2.1 of the Notice of Motion insofar as it relates to paragraph (ii) of the March court order.
172. The applicants submit further that there is no reasonable basis upon which the departmental respondents can seek a cost order against the applicants in regard to this relief.

173. I am satisfied that the departmental respondents could have advised the applicants sooner than 6 June 2024 that they had not given the Morries consent to occupy Willemskraal. This would have alleviated unnecessary relief which the applicants sought in the notice of motion.
174. Accordingly, I am satisfied that each party can pay their own costs in that regard.

CONCLUSION

175. The relief which the applicants seek in paragraphs 3, 4, 5, 7 and 8 of the Notice of Motion would, in my view, amount to a backdoor eviction, and I am accordingly not inclined to grant the relief set out in these paragraphs.
176. However, I am satisfied that the applicants have made out a case for the relief which they seek at paragraphs 1, 2 and 6 of the Notice of Motion.
177. In applying the legal principles pertaining to a *mandament van spolie*, I am satisfied that the applicants have satisfied the requirements therefore and have made out a case for the relief which they seek against the Morries to restore the applicants' peaceful and undisturbed possession of the farm Willemskraal with immediate effect.
178. In applying the reasoning in *Fakie* and the further case law which refer to the legal principles pertaining to the contempt of court applications, I am also satisfied that the applicant has proved beyond a reasonable doubt that:
- 178.1 The departmental respondents and the fifth and sixth respondents were served with the March court order granted against them and they ignored and/or disobeyed the March court order.
179. On the issue of costs, I see no reason why the costs should not follow the result.
180. Accordingly, I make the following order:

First to sixth respondents:

- (a) The fifth and sixth respondents' points *in limine* are all dismissed.
- (b) It is declared that the first to sixth respondents are in contempt of paragraph (i) of this court's order dated 4 March 2024 granted by Salie, J.
- (c) The first to sixth respondents are ordered to comply with this court's order dated 4 March 2024 within thirty (30) days of this order.
- (d) Failing compliance with this order, the first respondent, Ms Angela Thoko Didiza, the second respondent, Mr Thokozile Xaso, the third respondent, Mr Terries Ndove, the fourth respondent, Mr Lubabalo Mbekeni, the fifth respondent, Mr Hendrik Booysen and the sixth respondent Ms Lucy Nduku, will be committed to prison for a period of thirty days.
- (e) That the first to sixth respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved, on a party and party Scale C;
- (f) The first to fourth respondents will pay the costs of the condonation application on a party and party scale B;
- (g) That the costs pertaining to withdrawal of paragraph 2.1 of the Notice of Motion insofar as it pertains to the first to fourths respondents' contempt of paragraph (ii) of this court's order dated 4 March 2024, will be borne by each party.
- (h) That the applicants' peaceful and undisturbed possession of Farm Willemskraal: Portion 1 of the Farm Bronkers Valei No. 76 with title deed number T63410/2008 is restored to the applicants *ante omnia* with immediate effect by the seventh and eighth respondents;
- (i) That the seventh and eighth respondents will pay the costs of this application jointly and severally, the one paying the other to be absolved on a party and party Scale B.

The Hon. Ms Acting Justice Mahomed

Of the Western Cape High Court

APPEARANCES:

Applicant's Counsel:

Adv M Adhikari

Instructed by:

The Legal Resources Centre

First to fourth Respondents' Counsel:

Adv N Mayosi (with Adv K Ngqata)

Instructed by:

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Fifth to Eighth Respondent's Counsel:

Adv M Titus

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