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

**28/10/2016**

**CASE NO.: 80731/16**

**Reportable: No**

**Of interest to other judges: No**

**Revised.**

In the matter between:

CHRISTINE BROWN

First Applicant

ADRIEN MORNAY BROWN

Second Applicant

JOHAN ABRAHAM FREDERIK BOOYSEN

Third Applicant

And

JOHANN MORKEL

First Respondent

MARICHELE MORKEL

Second Respondent

ESKOM HOLDINGS SOC LIMITED (REG NO.: 2002/015527/30)

Third Respondent

CITY OF TSHWANE MUNICIPALITY METROPOLITAN

Fourth Respondent

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**JUDGMENT**

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**VAN DER WESTHUIZEN, A J**

1. This application comes before me by way of urgency and relates to interrupted supply of electricity to the main house on the premises of the first and second applicants,

situated at [...] P. Road, Kameelfontein, Derdepoort Park, Pretoria and an order is sought that the uninterrupted supply of electricity be restored forthwith. .

2. The first and second applicants are the occupiers of the main house situated on the aforementioned property. The third applicant is the present registered owner of the said property.

3. The first and second respondents occupy another building or buildings on the property from which they conduct a creche. The first and second respondents have purchased the property, but have not taken transfer thereof. They oppose this application.

4. The third respondent is Eskom Holdings SOC Limited, the supplier of electricity to the aforementioned property.

5. The fourth respondent is City of Tshwane Metropolitan Municipality.

6. Third and fourth respondents are merely cited in so far as they may have an interest in these proceedings and no relief is sought against them. They have not opposed this application.

7. The applicants rely on the *mandament van spolie* for the granting of the relief sought.

8. The requirements<sup>1</sup> for a successful reliance upon the *mandament van spolie* are:

(a) That the applicant is in possession of the property; and

(b) That the respondent deprived the applicant of the possession forcibly or wrongfully against his consent.

9. It is common cause that the first and second applicants are in occupation of the main house on the aforementioned property and as an incidence of that occupation enjoyed uninterrupted supply of electricity to the said house.

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<sup>1</sup> *Yeko v Qana* 1973(4) SA 735 (A) at 735G-H.

10. It is further common cause that the first and second respondents have caused the uninterrupted supply of electricity to the main house to be cut. In this regard the first and second respondents admit that the interruption of the electricity supply to the main house was due to an intentional and deliberate decision and act to cause the uninterrupted supply of electricity to be cut (links to be pulled) by the third respondent.

11. It is further common cause that the first and second applicants have not consented to the interruption of the supply of electricity to the main house.

12. It follows that the first and second applicants have proven the requirements of *mandament van spolie*.<sup>2</sup>

13. The defences raised by the first and second respondents are curious.

14. In the first instance the first and second respondents attack the urgency of the matter. It is trite that a *mandament van spolie* is by its very nature urgent<sup>3</sup>.

15. Secondly, a point *in limine* is taken, that of misjoinder. The first and second respondents allege that the third applicant joins in the proceedings in respect of issues that are not relevant to the present application and are to be dealt with in another forum in due course. No relief is sought in that regard in this application. It is, however, common cause that the third applicant is presently the registered owner of the said property.

16. The third and foremost defence that is raised relates to alleged lack of cause of action. In this regard the first and second respondents allege that the first and second applicants are mistaken when they suggest that they are entitled to the relief sought. This contention is premised presumably on the allegation that the first and second applicants are perpetually in debt in respect of the costs of electricity consumed by them.

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<sup>2</sup> *Shoprite Checkers Ltd v Pangboume Properties Ltd* 1994(1) SA 616 (WLD) at 620

<sup>3</sup> *Le Riche v PSP Properties CC et al* 2005(3) SA 189 (C)

17. It is trite that there are limited defences that a respondent can raise in spoliation proceedings and are:

(a) Denial of the facts alleged for *spoliatus ante omnia restituendus est*, i.e. that the applicant did not possess the property in dispute at the time of the alleged spoliation, or that it was legally justified;

(b) Restoration is impossible; or

(c) Counter-spoliation.

18. The first and second respondents seek to justify their termination of the uninterrupted electricity supply to the main house on the premises that the first and second applicants are "in perpetual debt".

19. In my view, there is no merit in that contention. There is no legal justification that the first and second respondents have the right to terminate the uninterrupted supply to the main house due to "perpetual debt" on the part of the first and second applicants.

20. Further in this regard, the first and second respondents seek to rely on an alleged agreement between the parties, first and second applicants and first and second respondents, relating to the supply of electricity to the main house. In so far as that alleged agreement is concerned, it contains provisions for the non-payment or non-timeous payment of the first and second applicants' share of the electricity consumption. It provides for penalties to be levied. Furthermore, that agreement does not contain any provision that the agreement may be terminated due to any breach. In any event, the first and second respondents are not the supplier of electricity to the property.

21. The first and second respondents have failed to prove a defence justifiable of their admitted spoliation.

22. It follows that the application must succeed.

I grant the following order:

(a)The first and second respondents are ordered to take all steps necessary to restore uninterrupted supply of electricity to the main house of the premises occupied by the first and second applicants, situated at [...] P. Road, Kameelfontein, Derdepoort Park, Pretoria;

(b)The first and second respondents are to pay the costs of the application, jointly and severally, the one to pay the other to be absolved.

CJ VAN DER WESTHUIZEN  
ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant:	JD La Grange
Instructed by:	Vermaak Beeslaar Attorneys
On behalf of Respondent:	TP Krüger SC
Instructed by:	Rothmann Phahlamohlaha Inc