Republic of South Africa

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

Case No: 13008/2012

Before: The Hon Mr Justice Binns-Ward

In the matter between:

ZINE DINGINTO	First Applicant
DANISILE DINGINTO	Second Applicant
and	
GERALD BLOEMBERG	Respondent

JUDGMENT DELIVERED: 9 NOVEMBER 2012

BINNS-WARD J:

[1] On Friday, 6 July 2012, sitting after hours, Henney J granted an order directing the respondent to restore the applicants to possession and occupation of certain immovable property at 6 Northumberland Close, Milnerton. The order was made in the following terms (adopting a draft handed in by the applicants' counsel):

1. Applicants be restored to their rightful use and occupation of the property situated at 6 Northumberland Close, Parklands, Table View with immediate effect.

2. That respondent hand over the keys of the residence to applicants, as he has changed the locks to the premises. Immediately upon receipt of this order.
3. The cost of the application should be (sic) awarded on the attorney and client scale.
4. Further and/or alternative relief. (sic)

[2] The application had been brought before the judge as one urgency in terms of rule 6(12). According to the notice of motion, it was set down for hearing at 18h00. It is not apparent at exactly what hour the matter came before the judge. In any event the papers were telefaxed to the respondent's telefax number only at 18h14. There is no proof of service of any sort in the court file. It is thus perhaps no cause for surprise that the order was made in the absence of the respondent. He first became aware of the proceedings later that evening when the order was served on him at his home by the sheriff, who was accompanied by a number of policemen. Nothing in the terms of the order provided for the sheriff to be assisted by the police in serving it. This was not the first occasion on which the police had been involved in the litigation between the applicants and the respondent. The other occasion, to be mentioned below, was also in questionable circumstances.

[3] The respondent applied on Monday, 9 July, in terms of rule 6(12)(c), for a setting aside or reconsideration of the order. Pursuant to that application, Henney J made an order on 13 July postponing the hearing of the matter to 27 August 2012 on a timetable which allowed for the filing of affidavits by the respondent showing why the order should not have been granted and for affidavits in reply thereto by the applicants. I shall come back to the terms of the order made on 13 July 2012 at the end of this judgment.

[4] The respondent duly delivered papers in terms of the directions made by Henney J. The applicants did not reply to those papers. The matter could not be heard on 27 August 2012 and was then postponed to 5 November 2012, when it came before me.

[5] By 5 November, the applicants had still not delivered any replying papers. They had also failed to submit heads of argument as required in terms of the directions given by Henney J and indeed also by practice note 50. They also failed to formally and timeously seek condonation for that non-compliance as required by the practice note. The applicants, who were legally represented by a firm of attorneys and counsel, also neglected to file a practice note to facilitate the allocation of the matter for hearing, as also required of them in terms of the consolidated practice notes of this court. It fell to the respondent to do what the applicant should have done to arrange for the matter to be heard on 5 November. The applicants remained *domini litis*, and therefore responsible for the order of the file, notwithstanding that the reconsideration of the initially made order was occurring at the instance of the respondent.

[6] I do not find it necessary to particularise the numerous incidences, but the applicants' non-compliance with the court's directions and the applicable procedures has been characteristic of their conduct of litigation with the respondent over an extended period both in this court and in the magistrate's court. Suffice it to say that the impression given upon a consideration of the entire history of litigation between the parties is one of delay, tardiness and non-compliance by the applicants. The object of this behaviour appears to be to prolong their occupation of the property in issue, while avoiding the timely proper determination of the underlying issues they have raised to justify such occupation.

[7] It is necessary to broadly describe the background to the current proceedings. The applicants had been the registered owners of the property. The property had been mortgaged by them in favour of First National Bank. They had defaulted on their mortgage loan obligations, which resulted in the bank taking judgment against them. The bank had been on the point of selling the property in execution when the applicants entered into an agreement,

on 9 June 2010, to sell the property to the respondent for R910 000. The bank was willing to cancel the planned sale in execution and consent to the transfer of the property to the respondent in consideration for the receipt of the proceeds of the sale of the property by private treaty to the respondent. The sale in execution had been advertised to take place on 10 June 2010. The property was consequently transferred to the respondent against payment by him of the purchase price in reduction of the applicant's indebtedness to the mortgagee. The payment, which (for reasons I have not found it necessary to investigate) resulted in the reduction of the applicants' mortgage debt by only R778 000, was nevertheless insufficient to extinguish the applicants' total indebtedness to the bank.

[8] The agreement between the applicants and the respondents provided for the applicants to remain on in the property as 'tenants' for a year and provided that they could elect to repurchase the property from the respondent during that time. (I have put the word 'tenants' between inverted commas because the obligation to pay the respondent a monthly amount, purportedly as 'rental', attached even before transfer of the property was effected into the respondent's name.) The right to repurchase was referred to in the papers as an 'option'. It plainly was not an option, properly so-called, because no price was stipulated. It was more in the form of a *pactum de contrahendo* because it purported to bind the respondent to sell the property back to the applicants should they so elect at a price determined by the respondent. Whether the provision was enforceable is questionable, but that is neither here nor there for current purposes.

[9] The property was transferred to the respondent in due course and the applicants made a number of 'rental' payments to the respondent. They very shortly fell into arrears, however. The respondent thereafter instituted proceedings in the magistrate's court for the eviction of the applicants from the property. Those proceedings were instituted and

prosecuted in accordance with the requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('PIE'). In terms of that Act a court will grant an order, at the instance of the owner or person in charge of the land, for the eviction of a person from his or her home only in the event that it is satisfied that the person's occupation of the property is unlawful and that it is just and equitable in the circumstances for them to be evicted. The Act is structured so as to promote and give effect to the rights of everyone in terms of s 26 of access to adequate housing, and in particular with reference to the requirement of s 26(3) of the Constitution that no-one may be evicted from their home without an order of court made after consideration of all the relevant circumstances.

[10] The applicants raised a number of defences in the proceedings brought against them in terms of PIE. One of them was that the registration of transfer of the property out of their names had been effected pursuant to a forgery of their signatures on the relevant power of attorney. The applicants had first made this allegation in correspondence with the respondent during April 2011. The significance and materiality of the allegation was not explained because it has at no stage been suggested that the applicants had not sold the property, or that the purchase price had not been paid, or that the respondent had not been entitled to take transfer of the property. The applicants also took no steps, at least until much later, to have the registration of transfer out of their names set aside. The respondent instituted the eviction proceedings against them three months later in July 2011. During one of the scheduled court appearances a member of the police force sought to remove the respondent from the court to take him in for questioning on the fraud or forgery allegations made by the applicants. The timing and circumstances of this intervention was odd to say the least. It is the other of the two questionable involvements of the police mentioned earlier.

[11] The onus of establishing that the property had not been validly transferred to its current registered owner was on the applicants. The magistrate held that the applicants had failed to discharge this onus. Judgment in favour of the respondent for the payment of outstanding rental and the eviction of the applicants was granted by the magistrate on 23 February 2012. In terms of that judgment the applicants were directed to vacate the property by 24 May 2012, failing which the sheriff might evict them. The applicants did not appeal against the judgment. The correctness or otherwise of the judgment given against the applicants in the magistrate's court is not an issue in these proceedings. That is a question that could properly be entertained only in the context of an appeal against the judgment, or possibly a review application.

[12] The applicants ascribed their failure to appeal to their inability to speak to their legal representatives between 25 February 2012, when they say they learned of the judgment, and 'mid-April'. They averred that their legal representatives failed to take their calls, 'always being out of office or consulting'. When they eventually saw their attorney they were informed that the time within which an appeal could be lodged had expired. They brought an application for a stay of the judgment concerning their eviction before the magistrate's court on 23 May 2012 (that is one day before the date by which they were required in terms of the judgment to vacate the property). The magistrate was persuaded that it would be fair to grant a stay of judgment until 4 July 2012, being the date by which the applicants indicated that they would bring proceedings in the High Court to set aside the transfer of the property.

[13] It is neither necessary, nor appropriate to express any view on whether the magistrate was correct in granting the stay order. Even were the grant of the order susceptible to criticism or attack, those considerations would not derogate from the legality and effectiveness of the order because it was within the magistrate's power to make it; see s 62(2)

of the Magistrates' Court Act 32 of 1944. The order stands until and unless it is competently set aside.

[14] It also bears mention that the applicants had in any event during the course of the proceedings in the magistrate's court brought parallel proceedings in the High Court, in October 2011, in case no. 21315/2011, in which they sought relief setting aside the transfer of the property out of their names. The respondent delivered answering papers in those proceedings, which included a report from a well-known handwriting expert setting out in detail why the expert had concluded that the signatures on the power of attorney were probably executed by the same persons who had executed signatures on other documents that had undisputedly been signed by the applicants. The applicants did not reply to the respondent's answering papers in case no. 21315/2011 and took no steps to set their application down for hearing. For reasons that will become apparent shortly, it needs mentioning that the respondent gave as his address for the service of documents in case no. 21315/2011, the offices of Thabiet Conrad at 1 Mostert Street, Cape Town. It was also apparent from the notice of opposition, however, that the respondent's personal address (and he acted in person) was at 22 Albemarle Street, Hazendal, Athlone. In their application for a stay the applicants indicated that they would withdraw proceedings in case no. 21315/2011 'if necessary' so as to be able to prosecute the fresh proceedings that they intended to institute by 4 July. As at 5 November 2012, those proceedings had not been withdrawn despite the institution of the fresh proceedings to be described below.

[15] The applicants did not properly motivate in the proceedings for a stay of ejectment why they required until 4 July to institute the High Court proceedings. Those proceedings were after all predicated on allegations they had made as early as April in the previous year

and essentially indistinguishable from those advanced in case no. 21315/2011, which they had failed to prosecute to any conclusion and persist in leaving in abeyance.

[16] The effect of the stay order granted by the magistrate was that the respondent was prohibited from enforcing the judgment that he had obtained in his favour until at least 4 July. I think it may be inferred, notwithstanding the absence of any express provision to that effect in the stay order, that if the contemplated High Court proceedings had been instituted by that date, the stay would remain in effect pending the determination of those proceedings. If the effect were not to be implied as a provision of the stay, the grant of the stay order would have been senseless. An interpretation that would give sensible effect to the stay order is obviously to be preferred over one that does not.

[17] The applicants procured the issue of papers in an application launched under case no. 12750/2012 in the High Court on 4 July 2012. In that application they sought orders nullifying the transfer of the property to the respondent and to the latter's successor as registered title holder, one Chris Jan Louw and declaring the 'sale agreements' entered into between them and the respondent to be cancelled. (The contractual arrangement between the respondent and his successor as registered title-holder preserved the respondent's rights as 'lessor' against the applicants.) These were plainly the fresh proceedings contemplated in the stay application. The supporting affidavit deposed to by the first applicant on 4 July stated that the respondent's 'principal office' was at 22 Hazendal Street, Athlone. (That address appears to be a misrendered version of the respondent's actual address at 22 Albemarle Street, Hazendal, Athlone.) The notice of motion, however, provided for service on the respondent at 'c/o Thabiet Conrad, 1 Mostert Street, Cape Town'.

[18] A copy of the papers in case no. 12750/2012 was handed up during the hearing. It was not apparent from the papers how, or in what manner they had been served. It was also

not evident from the papers on what basis the respondent's service address was given therein as 'c/o Thabiet Conrad'. It will be recalled that that address had been nominated by the respondent in earlier proceedings as his address for the service of documents, but such nomination, of course, would apply only to those proceedings. It did not constitute a choice of *domicilium citandi* in other proceedings.

[19] In response to questions directed by me to her counsel at the hearing as to when the application in case no. 12750/2012 had been served, the first applicant made an affidavit averring that she had served the application herself on 4 July at 1 Mostert Street. The affidavit did not set out any particulars of the service, such as the time at which it was effected, the manner in which it was effected, and, if served on a person, rather than merely being attached to the door or left in a post-box, the identity of the person concerned and the nature of the person's connection to the premises. The purported service was non-compliant with the prescribed procedures in a number of respects. The most the applicants were able to say was that the respondent had become aware of the application in case no. 12750/2012 by 9 July at the latest when he launched his application for a reconsideration of the order made by Henney J.

[20] The respondent's affidavit does not disclose when he became aware of the application. It is evident that the reason he does not seem to have regarded the date of service as significant is because he considered - incorrectly, in my view - that the stay expired on 4 July, irrespective of the commencement of High Court proceedings against him before that date. He also appears to have regarded any service that was effected on him as ineffectual because of its non-compliance with the rules of procedure. He was, however, at pains to stress in his written argument that proceedings against him in case no. 12750/2012 could not be said to have commenced until service of the papers issued by the registrar had been

effected. In this regard he cited *Mame Enterprises (Pty) Ltd v Publications Control Board* 1974 (4) SA 217 (W) and *Tladi v Guardian National Ins Co Ltd* 1992 (1) SA 76 (T). The determination of the relevant point in both those cases turned on the interpretation of the legislation in point in the matters.

[21] During the preparation of this judgment I discovered that Van der Byl AJ recently distinguished those two judgments in *BHP Billiton Energy Coal South Africa Ltd v Minister of Mineral Resources and Others* 2011 (2) SA 536 (GNP). The existence of the judgment in *BHP Billiton* is, of course, something that the applicant's counsel should have drawn to my attention during argument. Had he done so, the argument at the hearing would have taken on a quite different character to that which obtained on my assumption that the approach in *Mame* and *Tladi* was applicable.

[22] The issue in *BHP Billiton* was whether an interdict granted *pendent lite* on condition that review proceedings be 'initiated' by 25 January 2006 had lapsed because the review application issued on that date had not been served by the sheriff by that date. The fifth respondent contended that an application for review issued on 25 January 2006 but not served on the first, second and fourth respondents by the sheriff by that date did not constitute a commencement of review proceedings necessary to satisfy the condition. The fifth respondent's counsel argued the contention relying on the judgment in *Tladi*.

[23] It is convenient to quote van der Byl AJ's discussion and rejection of the argument, at para. 24 of the judgment in full:

> As to the first of these issues, it was contended on behalf of the fifth respondent that an application can only be initiated when it is properly served by the sheriff, as provided by the provisions of rule 4.
> I have been referred to the decision in *Tladi v Guardian National Insurance Co Ltd* 1992 (1) SA 76 (T), in which it was held that the requirement that, in the context of s 14(3) of the Motor Vehicle Accidents Act 84 of 1986, for leave to bring a claim for compensation after it had become prescribed in

terms of s 14(1) of the Act, 'application is [to be] made' within the prescribed period, requires of an applicant 'not only to issue his application and file it with the Registrar but also to serve it' (at 80b).

In my opinion the circumstances of that case are distinguishable from the circumstances in this matter, insofar as the applicant was required in terms of a court order to 'initiate', as opposed to the requirement in that matter, in terms of a particular legal provision, to make application within a prescribed period, proceedings not later than a particular date.

It has been held in various cases, for differing reasons, that an action commences when the summons is issued. *R v Bradshaw* 1925 CPD 53 at 55; *Marine and Trade Insurance Co Ltd v Reddinger* 1966 (2) SA 407 (A) at 413D – E; *Labuschagne v Labuschagne; Labuschagne v Minister van Justisie* 1967 (2) SA 575 (A) at 584A – D; *MV Jute Express v Owners of the Cargo Lately on Board the MV Jute Express* 1992 (3) SA 9 (A) at 16F.

Applications on the other hand may, depending on the kind of application, commence in various ways. I can, however, on the analogy of actions, see no reason why an application cannot be regarded as having commenced when lodged or filed with (or issued by) the registrar. The lodging, filing or issuing of an application by an applicant can, in my opinion, by no means be of no consequence. I can see no reason why the issue of an application or the lodging or filing of the application papers with the registrar should not be regarded as the initiation of the proceedings envisaged in the application.

The service of an application is merely a further step, as in the case of actions, to get the respondent involved in the litigation (*Marine and Trade Insurance Co Ltd v Reddinger* 1966 (2) SA 407 (A) at 413D – E). To hold that application proceedings can only be regarded to have been commenced on service of the papers would not only create an incomprehensible difference between the commencement of actions and the commencement of applications, but would also be decidedly harsh, unjust, unreasonable and glaringly absurd, as an applicant clearly would ordinarily have no power over the service of his, her or its application.

I am accordingly satisfied that the applicant indeed initiated the review proceedings in question at the time it was issued by or lodged or filed with the registrar, being a first step in a process to commence the proceedings.

[24] Upon a consideration of the Appellate Division authority cited by the learned acting judge, I am persuaded that his reasoning cannot be faulted, with respect. The result is that the question of the lawfulness of the execution of the writ of ejectment against the applicants on 5 July 2012 falls to be determined by the import of the wording of the stay order made by the magistrate.

[25] It is well established that a judgment, and thus also an order of court, falls to be construed in the same manner as any other jural document; see *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A), at p.304E-H. At the place cited Trollip JA stated:

> The basic principles applicable to construing documents also apply to the construction of a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules. See *Garlick v Smartt and Another*, 1928 AD 82 at p. 87; *West Rand Estates Ltd. v New Zealand Insurance Co. Ltd.*, 1926 AD 173 at p. 188. Thus, as in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, it was common cause that in such a case not even the court that gave the judgment or order can be asked to state what is subjective intention was in giving it (cf. *Postmasburg Motors (Edms.) Bpk. v Peens en Andere*, 1970 (2) SA 35 (NC) at p. 39F - H). Of course, different considerations apply when, not the construction, but the correction of a judgment or order is sought by way of an appeal against it or otherwise - see infra. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the court's granting the judgment or order may be investigated and regarded in order to clarify it; for example, if the meaning of a judgment or order granted on an appeal is uncertain, the judgment or order of the court a quo and its reasons therefor, can be used to elucidate it. If, despite that, the uncertainty still persists, other relevant extrinsic facts or evidence are admissible to resolve it. See *Garlick's* case, supra, 1928 AD at p. 87, read with *Delmas Milling Co. Ltd. v Du Plessis*, 1955 (3) SA 447 (AD) at pp. 454F - 455A; *Thomson v Belco (Pvt.) Ltd. and Another*, 1960 (3) SA 809 (D).

To the authorities mentioned by the learned judge of appeal in *Genticuro* might be added the relatively recent reiteration and clarification of pertinent principle by Harms DP in *KPMG Chartered Accountants (SA) v Securefin Ltd and Another* 2009 (4) SA 399 (SCA), at para. 39.

[26] The magistrate who made the stay order did not give a reasoned judgment. The note endorsed on the case file by the magistrate (annexure GBA16 at p. 409 in the papers before me) recorded the following:

> '*Application to have the warrant of ejectment stayed. OPI*
> *Digitally recorded.*
> *Judgment: Warrant of ejectment is stayed until 4/7/12.*
> *No order as to costs*'

[27] In the absence of a reasoned judgment by the magistrate, one needs to have regard to the context in which the order came to be made to determine its proper meaning. The respondent produced his own transcript of the mechanical recording of the proceedings at

which the order was made. The applicants have not suggested that the transcript is not accurate. The transcript reflects the arguments of the parties and what the magistrate actually said in court at the conclusion of the proceedings. It is apparent from what the magistrate is recorded as having said that the order endorsed in writing on the record, as quoted above, was no more than an acceding to the terms of applicants' application. The magistrate in fact did not read out the order made in court in the terms that he endorsed it on the record. He concluded the proceedings by making the following statement:

> Yes, I'm not going to give a long technical judgment pertaining to this application before me. Suffice to say the following. Having heard argument from both Mr Lawrence and Mr Bloemberg and having a look at the papers before me I am of the view that you hold the balance between the applicants' request and the opposition of Mr Bloemberg. Fairness demands from this court to have this stay of warrant of ejectment stayed (sic). The application is granted, I make no orders of cost (sic).

[28] It is clear therefore that the magistrate granted the applicants' application. The notice of application in the stay proceedings is not in the papers before me, but the supporting affidavit is. In the affidavit the second applicant in the proceedings before this court states that the applicants seek protection of their occupation of the property '*pending the outcome of the proceedings in the High Court (which we intend instituting by 4 July 2012), and we seek no cost* (sic) *against any of the respondents, unless they oppose this application'*. It is also evident from the transcript of the address by the applicants' counsel in the stay application, Mr *Lawrence*, that the applicants sought the stay pending the determination of proceedings to be instituted in the High Court by 4 July to attack the transfer of the property. In the circumstances described above I am satisfied that the contemplated proceedings were indeed instituted in the High Court within the time period contemplated by the magistrate's stay order; and that the execution of the writ of ejectment on 5 July was thus unlawful, because it occurred contrary to the stay order.

[29] The applicants have thus established that they were indeed despoiled of the property upon the execution of the warrant of ejectment at the instance of the respondent. It is well established that in the face of a spoliation the court requires restoration of the despoiled property to person despoiled thereof before it will go into the merits of the contesting rights involved in the underlying dispute : *spoliatus ante omnia restituendus est.* As Cameron JA observed in *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metro Municipality and Others* 2007 (6) SA 511 (SCA), at para. 21, '*Even an unlawful possessor - a fraud, a thief or a robber - is entitled to the mandament's protection. The principle is that illicit deprivation must be remedied before the Courts will decide competing claims to the object or property.*' Thus, that there might indeed much substance in the respondent's complaints about the manner in which the applicants have conducted themselves in the litigation referred to earlier, that would not afford any basis in the circumstances to deny them the spoliatory relief that they obtained from Henney J. As the stay order remains in effect, it cannot be found that anything that has come to light in the time that has intervened since 6 July that would justify setting aside the spoliatory relief granted by Henney J.

[30] On 13 July 2012, the learned judge varied the order originally made by deleting the costs order and making the spoliatory relief provisional and subject to a rule *nisi*. With respect, I do not think that was necessary or appropriate. In my respectful view, the indicated course in the circumstances would have been simply to give directions for the exchange of further papers for the purpose of enabling a reconsideration in terms of rule 6(12)(c) upon completed papers. This is because it is only at this stage, pursuant to the hearing on 5 November, that the reconsideration contemplated in terms of the rule actually occurs and that any setting aside or variation of the order falls to be made. The procedure provided for in terms of rule 6(12)(c) is not reconcilable with that entailed on the return day of a rule. To avoid any future confusion as to the import of the relief obtained by the applicants in the light

of the reconsideration that has taken place, I shall reformulate the order in case no. 13008/12. In so doing, I shall take the opportunity to remove the wording in the orders of 6 and 13 July describing the applicants' use and occupation (i.e. possession) as 'rightful'. This is appropriate because, as explained earlier, the granting of spoliatory relief does not entail any investigation or pronouncement upon the merits of the dispute concerning the possession of the property. Whether their 'use and occupation' is or was 'rightful' is not a relevant consideration in these proceedings.

[31] Irrespective of the merits of the various cases that are, and have been, the subject of litigation between the parties, I have sympathy for the position of the respondent in the face of the quite unacceptable manner in which the litigation has been conducted by the applicants. Having regard to the history in this regard, including their conduct in conduct of the current litigation in terms of rule 6(12)(c), the excuses offered by the applicants that they have been let down by their various legal representatives, even if to some extent factually well-founded, have exhausted any capital they might have been able to draw on to obtain any further indulgences from the court. How to deal with the consequences of the applicants' conduct in this regard is, however, not a matter to be addressed in the current proceedings. The respondent will have to seek any redress to which he might be entitled by doing what he can to ensure that proceedings in case no. 12750/2012 are brought to the earliest possible conclusion. There are procedures that are available to assist defendants and respondents in matters in which plaintiffs or applicants do not prosecute proceedings *bona fide* or with efficiency to achieve an escape from the potential tyranny of litigation.

[32] I think that it would be appropriate, having regard to the background of the this matter to direct that any issues of costs in the respondent's application in terms of rule 6(12)(c), as well as in the initially determined spoliation proceedings, stand over for determination by the

court which decides the application in case no. 12750/2012. The applicant has been represented by attorneys appointed by the Law Society to act *pro bono* and the respondent has acted in person. I am not aware of the basis on which the applicant's counsel was instructed. It is thus altogether clear that there are any costs considerations.

[33] In the result the following orders are made:

1. The spoliatory relief granted by Henney J in terms of the orders made on 6 July 2012 and 13 July 2012 is confirmed. The deletion in terms of the order made on 13 July 2012 of the costs order made on 6 July 2012 is also confirmed.

2. So as to give effect to the provisions of paragraph 1, the order of the court in case no. 13008/2012 is hereby reformulated in terms of rule 6(12)(c) to read as follows:

   The respondent is directed forthwith and *ante omnia* to restore possession of the property at 6 Northumberland Close, Parklands, Tableview, Cape Town, to the applicants, and to that end to provide them with the necessary keys to the premises.

3. The costs, if any, of the proceedings in terms of rule 6(12)(c), as well as in the initially determined spoliation proceedings, shall stand over for determination by the court which decides the application in case no. 12750/2012.

A.G. BINNS-WARD
Judge of the High Court