

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, NORTHERN LOCAL DIVISION

JUDGMENT

Case no: HC-NLD-CIV-ACT-OTH-2020/00049

In the matter between:

**ASSER HAIMBODI**

**PLAINTIFF**

and

**DAVID IMMANUEL**

**1<sup>ST</sup> DEFENDANT**

**HELAO NAFIDI TOWN COUNCIL**

**2<sup>ND</sup> DEFENDANT**

**Neutral Citation:** *Haimbodi v Immanuel* (HC-NLD-CIV-ACT-OTH-2020/00049)  
[2022] NAHCNLD 107 (06 October 2022)

**CORAM:** MUNSU AJ

**Heard:** 24 May 2022, 28 June 2022.

**Delivered:** 06 October 2022

**Flynote:** Civil Procedure - Mandament van spolie - Requirements - Applicant must allege and prove peaceful and undisturbed possession and deprivation of possession.

**Summary:** The plaintiff instituted action seeking an order directing the first defendant to remove the barrier created on a portion of land occupied by the plaintiff. The plaintiff's case is that the land in dispute was ceded to him and that he leases it

from the second defendant. The plaintiff was in the process of developing the land when the first defendant put up the barrier in order to prevent the plaintiff from having access to the land. The plaintiff claims that he is entitled to relief of the *mandament van spolie*.

The first defendant defended the action and maintained that he acquired the said piece of land from the Traditional Authority. He argued that the plaintiff did not make out a case for the relief sought.

*Held*, that in spoliation proceedings, an applicant must allege and prove peaceful and undisturbed possession of the property in question and an unlawful deprivation of that possession by the respondent.

*Held*, that although the plaintiff did not specifically follow the words required to be alleged in spoliation proceedings, his pleadings sufficiently informed the first defendant of the case he had to meet.

*Held*, that there was no suggestion that the manner in which the plaintiff pleaded his case was prejudicial to the first defendant's case.

*Held*, that the pleadings disclose a cause of action and the first defendant, duly represented by a legal practitioner, did not raise an exception to the plaintiff's particulars of claim.

*Held*, that the plaintiff made out a case that he is the rightful occupant of the land in dispute which he leases from the second defendant, which occupation the first defendant did not dispute. This, coupled with the first defendant's actions of preventing the plaintiff from accessing the land shows that the plaintiff was visibly in possession of the land.

*Held*, that as a result of the actions by the first defendant, the plaintiff has been prevented from proceeding with his construction on the land and continues to suffer damages.

*Held*, that in protecting his interests, the first defendant did not invoke the aid of the law but resorted to self-help.

In the result, the first defendant was ordered to remove the barrier he created.

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### ORDER

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1. The first defendant is ordered to remove the fence erected and the heaps of sand placed around the portion of land measuring approximately  $\pm 1934$  metres squared occupied by the plaintiff at erf 323 Ohangwena Proper, Helao Nafidi, Ohangwena Region, Republic of Namibia, within 30 days of this order, failure of which the Deputy Sheriff of this Court is authorised to remove the said fence and the heaps of sand at the first defendant's cost.
2. Costs of suit.
3. The matter is removed from the roll and considered finalised.

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### JUDGMENT

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**MUNSU AJ:**

Introduction

[1] The plaintiff instituted action seeking an order directing the first defendant to remove the fence erected on a portion of erf 323 allegedly occupied by the plaintiff. The said portion of land is situated within the town boundaries of the second defendant.

[2] The first defendant defended the action on the basis that he acquired the said piece of land from the Oukwanyama Traditional Authority before the second defendant

was proclaimed as a local authority. On that basis, he is not prepared to accede to the plaintiff's demands.

[3] It is common cause that the entire piece of land referred to as erf 323 Helao Nafidi (the land in dispute) was proclaimed as part of the second defendant.

#### Parties and representation

[4] The plaintiff is Mr. Asser Haimbodi, a self-employed adult male residing in Ondangwa, Republic of Namibia.

[5] The first defendant is Mr. David Immanuel, an adult male, residing in Ohangwena Region, Republic of Namibia.

[6] The second defendant is the Helao Nafidi Town Council established in terms of the Local Authorities Act 22 of 1992 with its principal place of business situated at B1 road between Omafo and Ohangwena, Ohangwena Region, Republic of Namibia. It is cited due to the interest it may have in the matter and no relief is sought against it.

[7] The plaintiff is represented by Mr. Nyambe while the defendant is represented by Mr. Enkali.

#### The pleadings

[8] The plaintiff alleges in his particulars of claim that he is the rightful occupant of the land in dispute measuring approximately  $\pm 1934$  m<sup>2</sup>. He alleges that a certain Mr. Edward Nashipili was awarded rights over the land in dispute by the Oukwanyama Traditional Authority. Upon proclamation of the second defendant as a local authority, it acquired ownership of the land in dispute and recognised the said Mr. Edward Nashipili as the person to whom the Oukwanyama Traditional Authority had awarded rights over the land and entered into a lease agreement with him.<sup>1</sup>

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<sup>1</sup> The second defendant being the lessor and Mr. Edward Nashipili as the lessee.

[9] The plaintiff further alleges that in terms of para 4 of the lease agreement, Mr. Edward Nashipili was not allowed to alienate the right of occupation without the written consent of the Chief Executive Officer (CEO) of the second defendant and which consent was not to be withheld unreasonably.

[10] It is alleged that on 26 April 2017, and by way of a letter addressed to the CEO, Mr. Edward Nashipili ceded his occupancy rights over the land in dispute to the plaintiff.

[11] The plaintiff further alleges that on 21 April 2017, he entered into a deed of sale with Mr. Edward Nashipili in terms of which he acquired rights over the land in question subject to payment of compensation to Mr. Edward Nashipili in the amount of N\$ 480 000. The Deed of Sale was attached to the particulars of claim.

[12] The plaintiff further alleges that he effected payment to Mr. Edward Nashipili as agreed.

[13] Furthermore, the plaintiff alleges that the second defendant accepted the surrender and cession agreement and entered into a lease agreement with the plaintiff over the land in dispute.

[14] Moreover, the plaintiff alleges that on 29 July 2017, the second defendant, in writing, approved his building plan over the land in dispute.

[15] It is the plaintiff's allegation that the lease agreement between him and the second defendant is renewable annually.

[16] The plaintiff further alleges that on 28 October 2018, the first defendant in an unlawful, intolerant and unbearable manner occupied and took possession of, and erected a fence around and caused heaps of sand to be deposited onto the land in dispute.

[17] Furthermore, the plaintiff alleges that the first defendant's conduct has inconvenienced, interrupted and prevented him from proceeding with developing the

land and advancing the works which were being carried out at the time of his unlawful occupation.

[18] Moreover, the plaintiff alleges that at the time of the first defendant's unlawful occupation, he had contracted services of Chulula Investment CC to clean and prepare the land for construction amongst other activities and expended an amount of N\$15 000 for that purpose. He also expended an amount of N\$4 232.50 to the second defendant for an application for approval of the building plan.

[19] The plaintiff alleges that he pays the applicable monthly levies to the second defendant over the land in dispute.

[20] The plaintiff further alleges that he has always known the first defendant as his neighbour and occupier of a portion of land adjacent to the land in dispute although he does not know the title the defendant holds over it.

[21] Furthermore, the plaintiff alleges that the first defendant has no rights whatsoever recognised by the second defendant over the land in dispute. He alleges that, if the first defendant contends that the land in question belongs to him, he has not made any attempt whatsoever to challenge the second defendant's title.

[22] The plaintiff alleges that despite demand, the first defendant has refused to vacate the land and has persisted in unlawfully disturbing the plaintiff's occupation and possession of the land in dispute. He prays for an order directing the first defendant to remove the barrier put up at the land in dispute.

*First defendant's plea*

[23] The first defendant pleads that the second defendant erroneously recognised the rights held by Mr. Edward Nashipili over the land in dispute. He pleads that the rights over the land in dispute were awarded to him by the Oukwanyama Traditional Authority in 1995.

[24] First defendant further pleads that, subsequent to the lease agreement entered into between the second defendant and the plaintiff, he registered a dispute with the second defendant during 2017; however, the dispute has not been resolved.

[25] On the issue of the erected fence and the piles of sand deposited onto the land in dispute, his pleaded case on the one hand does not deal with the allegation by the plaintiff and on the other hand is inconsistent with his evidence in court. In his plea, he denies depositing sand on the land in dispute. On the issue of the fence, his plea is as follows:

‘In amplification of his denial, First Defendant pleads that he has been in occupation over the property since 1995 and has during his occupation effected certain improvements to the property. First Defendant as the holder of such rights is entitled to improve the property as is necessary, which improvements include the erecting of fences, etc.’

#### The evidence

[26] Both the plaintiff and the first defendant testified in support of their respective cases. They did not call further witnesses.

#### Plaintiff's testimony

[27] The plaintiff confirmed his pleaded case under oath. Mainly, he testified that the land in dispute was ceded to him by Mr. Edward Nashipili in return for compensation in the amount of N\$ 480 000. The said Mr. Edward Nashipili was recognised by the second defendant as the person to whom the Oukwanyama Traditional Authority had awarded rights over the land in dispute.

[28] Upon declaration of the second defendant as a local authority, ownership of the land in dispute devolved onto the second defendant. The second defendant and Mr. Edward Nashipili entered into a lease agreement. Mr. Edward Nashipili ceded his rights over the land to the plaintiff. The second defendant approved the cession of rights over the land and approved the plaintiff's building plan. The second defendant entered into a lease agreement with the plaintiff renewable annually. The plaintiff pays

applicable monthly levies to the second defendant. It was at the stage when the plaintiff began to develop the land in dispute that the first defendant put up the barrier in the form of a fence and heaps of sand in order to prevent the plaintiff from accessing the land in dispute.

#### First defendant's testimony

[29] The first defendant testified that during 1992, he was awarded lawful occupation rights over the land in question by the Oukwanyama Traditional Authority. He then gave a portion thereof to Mr. Edward Nashipili to use for business purposes.

[30] He testified that during 2010, Mr Edward Nashipili sold the land in dispute to the plaintiff. According to him, he was unaware of the sale and same was done unlawfully without his authorisation.

[31] The first defendant further testified that it came to his attention in 2018 that the plaintiff intended to erect some structures on the land in dispute. The first defendant made various attempts to prevent the plaintiff from entering the land in dispute by putting over a fence and heaps of sand.

#### Submissions by the plaintiff

[32] Mr. Nyambe submitted that the plaintiff's claim is based upon a written lease agreement in terms of which the plaintiff leases the land in dispute from the second defendant. He submitted that the plaintiff has an incorporeal right that gives rise to possession. It was further submitted that by virtue of the lease agreement, the plaintiff has the right to access to, and use of the land in dispute. Mr. Nyambe further submitted that, in short, the plaintiff seeks a *mandament van spolie* against the first defendant.

[33] Furthermore, it was submitted that the first defendant is not the lawful owner of the land in dispute and that he has dispossessed the plaintiff of the land unlawfully, hence, the remedy of restoration of possession of the land sought by the plaintiff.



[34] Mr. Nyambe further submitted that the first defendant's defence of customary land rights cannot be entertained by this court. It was argued that the first defendant's claim amounts to a legal issue that he ought to prosecute or litigate against the dispossessors, being either the government of the Republic of Namibia or the second defendant.

[35] Mr. Nyambe concluded his submissions in the following terms:

'The 1<sup>st</sup> defendant has admittedly unlawfully deprived the plaintiff of undisturbed and peaceable possession. He has not produced any grain of evidence to establish that any (sic) title from the legal owner to authorize him to despoil the plaintiff of possession. The 1<sup>st</sup> defendant has admittedly taken the law into his own hands to enforce non-existing rights. As such he should be ordered to comply with the plaintiff's relief and pay punitive costs for his deliberate action.'

#### Submissions by the first defendant

[36] Mr. Enkali submitted that the plaintiff's pleadings do not make out a case either for eviction or spoliation. According to him, the plaintiff merely seeks an order for the removal of the fence placed in front of the disputed portion of erf 323. Counsel made reference to the matter of *Neis v Kasuma*<sup>2</sup> wherein Parker, AJ held as follows:

'I hold that no amount of evidence can prove that which has not been alleged. Logic and common sense dictate that no evidence can prove that which does not exist. First defendant could not have been dragged to court to meet that which is not pleaded'.

[37] It was submitted that the plaintiff did not make out a case for the removal of the fence. This is so because the first defendant held a customary land tenure over the land in dispute before it was proclaimed as town land. It was further submitted that the first defendant's right to occupy the land in dispute preceded any right the second defendant could have transferred to any other party. Relying on the matter of *Kashela v Katima Mulilo Town Council*<sup>3</sup> it was submitted that the proclamation of the disputed

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<sup>2</sup> *Neis v Kasuma* (HC-MD-CIV-ACT-CON-2017/00939) [2020] NAHCMD 502 (4 November 2020).

<sup>3</sup> *Kashela v Katima Mulilo Town Council* 2018 (4) NR 1160 (SC).

land as town land did not affect the first defendant's rights over the land and same still persists.

### Evaluation

[38] It became clear during evidence that the land in dispute is part of erf 323 occupied by both the plaintiff and the first defendant. However, the plaintiff occupies the portion which was previously occupied by Mr. Edward Nashipili. This is the portion he is leasing from the second defendant. There is no doubt that the parties are aware of the portions each occupy.<sup>4</sup>

[39] In his pleadings, the plaintiff did not specifically allege that he seeks a spoliation remedy nor did he allege that he was in peaceful and undisturbed possession of the land in dispute. It was only in the heads of argument that the plaintiff mentioned that he seeks a spoliation remedy.

[40] It is trite that in spoliation proceedings, an applicant must allege and prove peaceful and undisturbed possession of the property in question and an unlawful deprivation of that possession by the respondents.<sup>5</sup>

[41] The plaintiff submitted that the relief he seeks is clearly set out in his particulars of claim. Briefly, he alleged that he is the rightful occupant of the land in dispute; that the first defendant in an unlawful, intolerant and unbearable manner occupied and took possession of the land in dispute by erecting a fence around and placing heaps of sand on the land; that the conduct of the first defendant has inconvenienced, interrupted and prevented him from proceeding with construction on the land; that despite demand, the first defendant has refused to vacate and persists in his disturbing and unlawful occupation of the land in dispute.

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<sup>4</sup> According to the plaintiff, the second defendant is aware of the demarcation or square metres of erf 323. However, his portion measures  $\pm 1934\text{m}^2$ . The first defendant testified that members of the second defendant mentioned that erf 323 'was marked by camera or airplane'. Together with his erstwhile counsel, the plaintiff and members of the second defendant had a site visit of erf 323. He also mentioned that there were talks to divide erf 323. However, it is not clear what became of such discussions.

<sup>5</sup> See *New Era Investments (Pty) Ltd v Ferusa Capital Financing Partners CC* (SA 87-2016) [2018] NASC (6 July 2018).

[42] In his testimony, the plaintiff made it clear that he is not seeking an order evicting the first defendant from the adjacent portion of land that he occupies. He related that he merely seeks an order directing the first defendant to remove the barrier he created.

[43] This matter went through trial and the issues between the parties were ventilated some of which are common cause. It is clear from the plaintiff's pleaded case and testimony that he does not predicate his claim on ownership. He alleged that he is the rightful 'occupant' of the land in dispute and that the first defendant 'unlawfully occupied' the land, hence the relief sought - being an order directing him to remove the barrier he created. I am of the view that although the plaintiff did not specifically follow the words required to be alleged in spoliation proceedings, his pleadings sufficiently informed the first defendant of the case he had to meet. There was no suggestion that the manner in which the plaintiff pleaded his case was prejudicial to the first defendant's case. The pleadings discloses a cause of action and the first defendant, duly represented by a legal practitioner, did not raise an exception to the plaintiff's particulars of claim which appears to support my conclusion that the first defendant was well aware of the allegations to which he pleaded.

[44] The first defendant claims that he holds customary land rights over the land in dispute. I am mindful of what was said in *Kashela v Katima Mulilo Town Council*<sup>6</sup> that the ceasing of land as communal land does not necessarily result in the occupier of that land losing the protection given by Schedule 5(3) of the Constitution.

[45] In *Fredericks and Another v Stellenbosch Divisional Council*<sup>7</sup> the following was said:

'In any event the law is clear. Where a litigant seeks a spoliation order, a *mandament van spolie*, the court will not concern itself with the merits of the dispute...it matters not whether the applicant acquired possession secretly or even fraudulently.'<sup>8</sup>

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<sup>6</sup> *Kashela v Katima Mulilo Town Council* 2018 (4) NR 1160 (SC).

<sup>7</sup> *Fredericks and Another v Stellenbosch Divisional Council* 1977 (3) SA 113 (C).

<sup>8</sup> See also *Tulela Processing Solutions (Pty) Ltd v Southern Africa Railways CC* (HC-MD-CIV-MOT-GEN-EXP-2021/00100) [2021] NAHCMD 209 (6 May 2021).

[46] Because of its aim of restoring peace and order and discouraging self-help, the spoliation remedy does not investigate the merits of any of the parties' interests in the property. Neither of the parties is allowed to raise the question of rights at all.<sup>9</sup> Defences based upon the merits such as that: the respondent is the owner of the property; the respondent has a stronger claim to the property; the applicant's control was illegal or unlawful; the balance of convenience favours the respondent; the respondent was entitled to commit spoliation; the respondent has a counterclaim etc. are not allowed against the spoliation remedy.<sup>10</sup>

[47] In any event, there are contradictions in the first defendant's claim of ownership over the land in dispute. In his plea to the plaintiff's particulars of claim, he states in para 4 that he was awarded rights over the land in dispute during the year 1995. However, in his testimony, he asserted that he was awarded such rights during the year 1992. The year 1995 is repeated more than twice in his plea while the year 1992 was also repeated more than twice in his evidence. He did not offer any explanation for the difference between his pleaded case and his testimony.

[48] Despite being aware that the land in dispute was ceded to the plaintiff with the approval of the second defendant who is acknowledged as the owner, the first defendant made it clear in cross-examination that he 'cannot' take action against the second defendant. This is surprising because it is the second defendant that is exercising rights of ownership over the land in dispute. He also made it clear that he will not go back to the traditional authority for assistance in the matter because they already gave him documents in this regard. The court is not privy to the documents he was referring to. He did not take the matter any further other than his mere say so that he was awarded rights over the land by the Oukwanyama Traditional Authority. There is no counterclaim against the second defendant and or the plaintiff over the land in dispute.

[49] In his plea, the first defendant denied having placed heaps of sand onto the land in dispute, however, in his testimony, he confirmed to have done so. Further, in his plea, the reason advanced for erecting the fence, ostensibly, was for purposes of

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<sup>9</sup> See van der Walt *et al* 2002, *Introduction to the Law of Property*, 4<sup>th</sup> Ed, Juta & Co. at page 231.

<sup>10</sup> *Ibid* at page 235.

effecting improvement to the land in dispute. It was only in his testimony in court that he admitted that he erected the fence and deposited piles of sand onto the land in dispute in order to prevent the plaintiff from carrying out his construction.

[50] Even if his mere say so claim is to be accepted; that he was awarded occupancy rights over the land in dispute by the traditional authority and that he is the one that awarded occupancy rights to Mr. Edward Nashipili, he did not plea nor testify about the circumstances or conditions which were attached to that arrangement. This is quite important because the plaintiff acquired occupancy rights from the very same person that the first defendant claims to have allocated the portion of land. It is not clear whether his conduct entails the reversal of the rights he claims to have awarded to Mr. Edward Nashipili.

[51] Suffice to mention that the court's observations in para 47 - 50 hereinabove in no way suggest that the first defendant may not have a valid claim of customary land rights over the land in dispute. They are observations necessitated by the manner in which the matter was presented.

[52] It is common cause that the land in dispute was proclaimed as town land upon the declaration of the second defendant as a local authority. It is also common cause that the plaintiff leases the land in dispute from the second defendant. The said lease agreement commenced on 30 August 2018. However, back in July 2017, the second defendant in writing approved the plaintiff's building plan over the disputed land. It is not in dispute that the plaintiff pays applicable monthly levies to the second defendant over the disputed land. The plaintiff compensated Mr. Edward Nashipili who initially held rights over the land in dispute in the amount of N\$ 480 000.

[53] It is required from an applicant in spoliation proceedings to establish that he or she was in peaceful and undisturbed possession of the thing in question at the time he or she was deprived of possession. <sup>11</sup>

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<sup>11</sup> See *Wylie v Villinger* (A 42/2012) [2012] NAHCMD 69 (13 February 2013); *Shiningeni v Ondonga Traditional Authority* (HC-MD-CIV-ACT-GEN-2020/00587) [2021] NAHCMD 108 (3 March 2021).

[54] In the matter of *Anton Kazaronda Kandjima and Another v David Kakero*<sup>12</sup> the applicants were members of a Church of which the respondent was Archbishop. Before the dispute, an elder in the Church would keep the key. He would open the Church in the morning and close it again after about 22h00 in the evening depending on when the last activity for the day was finished. All the members of the Church thus had access to the Church to conduct religious activities ranging from prayer, worship, bible study, offering services, to receive blessing and choir practice. The respondent (who now kept the key) was aware of that. The applicants were seeking restoration of their right to access to, and use of the Church (building) for legitimate worship-related and other church activities. The court held that whether one's right to access to, and use of, property could give rise to 'possession' depends upon the facts of the particular case, including whether such right to access to, and use of, the property has been in pursuit of one's enjoyment of one's constitutional right, and such 'right to use' the property cannot be described as 'mere right to use the property'.

[55] The court found that the applicants being members of the Church had the right in terms Article 21(1)(c) of the Constitution to use the Church for legitimate Church activities as they had been doing before being unlawfully deprived of possession thereof by conduct of the respondent. The court concluded that the applicant's access to, and use of, the church amounted to incorporeal rights and gave rise to 'possession'. The court further found that the applicants managed to establish that they were in undisturbed and peaceful possession of the Church and the respondent unlawfully deprived them of possession thereof. Consequently, the court concluded that the applicants were entitled to relief of the *mandament van spolie*.

[56] In this matter, the parties agree that the land in dispute belongs to the second defendant. This was admitted by the first defendant in cross-examination; however, he stated that the second defendant found him on the land. The plaintiff made out a case that he is the rightful occupant of the land in dispute which he leases from the second defendant. He pays applicable monthly levies over the land. At the time the first defendant put up the aforesaid barrier, the land had been ceded to the plaintiff for more than a year earlier. These circumstances, coupled with the first defendant's

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<sup>12</sup> *Anton Kazaronda Kandjima and Another v David Kakero* Case No: A 78/2011 [2011] NAHC 239 (09 August 2011).

actions of preventing the plaintiff from accessing the land shows that the plaintiff was visibly in possession of the land in dispute. The first defendant did not dispute that the plaintiff was in possession of the land in dispute. On the contrary, his case seems to be that the plaintiff was unlawfully in occupation or possession of the land to the detriment of the first defendant's rights.

[57] Spoliation is applied for in cases where a party seeks to restore possession of property of which it has been despoiled without a court order and when the applicant was in peaceful undisturbed possession of the property.<sup>13</sup> As a result of the actions by the first defendant, the plaintiff has been prevented from proceeding with his construction on the land in dispute and continues to suffer damages. There is no doubt that in asserting or protecting his interests, the first defendant did not invoke the aid of the law but resorted to self-help. In *Ntshwaqela v Chairman, Western Cape Regional Services Council*<sup>14</sup> it was confirmed that any act which effectively terminates the applicant's control can constitute spoliation, even if the respondent did not take control from the applicant.

[58] In *Fischer v Seelenbinder*<sup>15</sup> the Supreme Court stressed that, the underlying rationale of the *mandament* remedy is to discourage people from taking the law into their own hands in recovering possession, but, to rather invoke the aid of the law for this purpose.

### Conclusion

[59] I come to the conclusion that the plaintiff made out a case for spoliation and is entitled to relief of the *mandament van spolie*.

### Costs

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<sup>13</sup> See *Tulela Processing Solutions (Pty) Ltd v Southern Africa Railways CC* supra.

<sup>14</sup> *Ntshwaqela v Chairman, Western Cape Regional Services Council* 1988 (3) SA 218 (C).

<sup>15</sup> *Fischer v Seelenbinder* Case No. SA 31/2018 [2020] NASC 20 (8 June 2020).

[60] The general rule applicable to costs is well-established. It is that the successful party is awarded his or her costs. There is no reason why the defendant should not be ordered to pay the costs in this matter. However, there was no case made out for a punitive costs order.

Order

[61] In the result, it is ordered as follows:

1. The first defendant is ordered to remove the fence erected and the heaps of sand placed around the portion of land measuring approximately  $\pm 1934$  metres squared occupied by the plaintiff at erf 323 Ohangwena Proper, Helao Nafidi, Ohangwena Region, Republic of Namibia, within 30 days of this order, failure of which the Deputy Sheriff of this Court is authorised to remove the said fence and the heaps of sand at the first defendant's cost.
2. Costs of suit.
3. The matter is removed from the roll and considered finalised.

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D. C. MUNSU  
ACTING JUDGE



## APPEARANCES:

## PLAINTIFF:

M M Nyambe  
Of Mukaya Nyambe Inc.  
Ongwediva.

## FIRST DEFENDANT:

M Enkali  
Of Kadhila Amoomo Legal Practitioners  
Windhoek.