IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 211/06

In the matter between:

THULANI MATSEBULA	**APPLICANT**
VS	
ALFRED BOY BOY MNDZEBELE	**1st RESPONDENT**
JABU MNDZEBELE	**2nd RESPONDENT**

CORAM: **MAMBA AJ**

FOR APPLICANT: **MR MABUZA**

FOR RESPONDENTS: **MR MABILA**

Judgement 30/01/06

[1] This is an application by the applicant one Thulani Matsebula for a spoliation order.

[2] **The** applicant states in paragraph **5** of his founding affidavit that "At all times relevant to this application, and on 3rd January, 2006 I was in peaceful and undisturbed possession of the property listed in prayer 3 of the Notice of Motion and I was lawfully exercising such possession on behalf of Thumma Investments (Pty) Ltd, until I was dispossessed thereof by the Respondents and three men whose full and further particulars are unknown to me."

[3] Mr Mabila for the respondent has attacked the applicant's application by raising a point in limine that as the applicant had possession of the movables in question as an agent or on behalf of Thumma Investments (pty) Ltd, applicant has no **locus standi** to bring this application. The company, so the argument went, had possession and the application should have been brought by the Company and not the applicant in his name.

[4] It is trite law that the person who has the **locus standi** to bring an application for a mandament van spolie is the person who had the actual legal possession of the movables despoiled or removed from her/his possession. This is also the case in matters relating to occupation of immovables.

[5] In the case of **MULLER V MULLER 1915 TPD 28,** a messenger of court armed with a writ of attachment came and attached about 200 bags of mealies which were in the possession of the respondent. The messenger, however, did not take the mealie bags away but left them under attachment and in the custody of the Respondent. The appellant, who was a brother to the respondent came and removed some of these bags from the respondent without the consent of the respondent who told the appellant that he was now holding the bags not as owner but on behalf of the messenger of court who had attached them. The appellant removed the mealie bags regardless.

[6] The respondent successfully applied for a spoliation order in the Magistrate's Court.

[7] On appeal the appellant argued that the respondent had no locus standi to bring the application inasmuch as he was exercising such possession or was possessing the maize bags on behalf of another person, the messenger of court.

[8] At page 30-31 **WESSELS J** (as he then was) had this to say:

> "Now it is quite clear that, though our spoliation order has its roots in the Roman Law, it is really derived from Canon Law, and the Canon Law did not require the same formality that the Roman Dutch Law required in regard to possessory interdicts. We have to do then with the CANON LAW and with a mandament van spolie as obtained in the old Dutch courts, where recourse was to a spoliation order - the possessory mandate which lies upon every person who has the actual legal possession of a movable. It does not matter whether a person holds a thing for himself or whether he holds a thing as an agent for another. The whole object of the law in granting a spoliation order is to restore the parties to the position in which they were before violence took place, before unlawful taking away of possession took place. The object of the law is to prevent people from taking the law into their own hands and so causing disturbance of the peace and also to protect a person who has a possessory right; and, therefore, a spoliation order can be obtained as well by an agent as it can by the owner of the property." The appellant's contention was dismissed. In casu, the respondent's objection is also dismissed.

[9] By its very nature and for the objects for which it was designed and the wrongs or ills it was aimed

or designed to curb, an application for a spoliation order is a speedy and summary remedy - it restores the parties to the status quo ante before any adjudication or inquiry into the merits of the dispute between the parties.

[10] Any act or circumstance whereby people take the law into their own hands and become judges in their own cause constitutes a breach of the peace or has the potentiality to lead to such breach. It therefore warrants an urgent or speedy-remedy .

[11] It has been argued on behalf of the respondents that the applicant has delayed in bringing this application to court, regard being had to the fact that the acts complained of allegedly took place on the 3/1/06 and the application was filed on the 25 day of January, 2006 and that this delay demonstrates that the case is not urgent. There was, however, another application based on the same cause of action which was filed by the company herein against the respondents a week ago and was dismissed principally because it, **inter alia,** lacked the necessary averments to sustain it. This is common cause between the parties and they have specifically addressed me on this issue too.

[12] I have no doubt in my mind that this application is as urgent today as it was on the 3rd day of January 2006 when the acts complained of were allegedly committed.

[13] In the other and or earlier application referred to hereinabove the applicant was Thumma Investments (Pty) Ltd and not the present applicant. The cause of action and subject matter were the same. The result was that the application was dismissed without there being a judicial determination of any issue of either fact or law. The papers simply lacked the necessary averments to justify any of the orders sought. The objection based on **Res judicata** must fail.

[14] In sum, the three (3) points raised in limine are dismissed.

MAMBA AJ