**REPUBLIC OF SOUTH AFRICA**

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

Case Number: 108060/2025

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

**26/09/2025**
DATE

SIGNATURE

In the matter between:

| | |
|---|---|
| **TRANSTECH SHIPPING AND LOGISTICS (PTY) LTD** | First Applicant |
| **TRANSTECH LOGISTICS LIMITED** | Second Applicant |

and

| | |
|---|---|
| **BENNIE KEEVY *N.O.*** | First Respondent |
| **MHLOPHEKI ABBEY DLAVANE *N.O.*** | Second Respondent |
| **THE MASTER OF THE HIGH COURT JOHANNESBURG** | Third Respondent |

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**JUDGMENT**

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Mahosi, J

*Introduction*

[1] This is an urgent application for *mandament van spolie*. The applicants seek an order for the immediate return of certain specified and unspecified assets ("contentious assets"). Additionally, they seek a declaration that they will not be liable for any removal or storage costs incurred by the respondents or any third parties as a result of the dispossession. The application is opposed.

*The parties*

[2] The first applicant is Transtech Shipping and Logistics (Pty) Ltd, a company with limited liability, registered and incorporated in terms of the Companies Act of the Republic of South Africa. The second applicant is Transtech Logistics Limited, a company duly registered and incorporated in terms of the laws of Malawi.

[3] The first and second respondents, Bennie Keevy *N.O.* and Mhlopeki Abbey Dlavane *N.O.*, are cited in their capacity as the appointed liquidator of Trans-Tech Logistics (Pty) Ltd (in liquidation) (“Trans-Tech”), which is related to the applicants/deponent being the sole director of the second respondent. The third respondent, the Master of the High Court, is cited as an interested party and no relief is sought against him.

*Background facts*

[4] The relevant background is largely common cause. Transtech-Tech Logistics (Pty) Ltd (in liquidation) was placed under provisional liquidation on 12 June 2024 and finally liquidated on 22 August 2024. The respondents were appointed as joint liquidators.

[5] On 03 and 04 July 2025, the respondents, acting on the strength of a notarial bond registered in favour of a creditor, Hollard Insurance Company Limited, attended the premises of the first applicant. They informed Varaidzo Pamela Nkonjera, the director of the first applicant, that they intended to remove all vehicles and trailers. Despite Varaidzo Pamela Nkonjera's protestations that

the assets belonged to the applicants and other third parties, the respondents proceeded to remove the assets for storage at an auctioneer's premises.

[6] Following correspondence from the applicants' attorneys demanding the return of the assets (save for certain listed spare parts) and the respondents' refusal to return all assets, this application was launched.

*The issues for determination*

[7] The issues for determination, as crystallised from the papers and heads of argument are whether:

7.1 the application is urgent?

7.2 the applicants have standing to act on behalf of unspecified third parties?

7.3 the application qualify as a true spoliation application?

7.4 there are genuine factual disputes that prevent granting final spoliation relief?

7.5 the application is an abuse of process justifying a punitive costs order?

*Submissions of urgency*

[8] The applicants contend that the matter is urgent for several reasons. In essence, they allege that the seized assets are essential for their day-to-day operations and income generation; they fear liability to third parties if the assets are sold or damaged; they believe the respondents intend to sell the assets imminently, and if sold to innocent third parties, any future court order would be rendered ineffective; and a spoliation applicant must act reasonably promptly.

[9] The respondents oppose urgency. They argue that the applicants have failed to substantiate the alleged commercial urgency. Their criticisms include, inter alia, that the applicants provided no details of their turnover, fleet size, or the quantum of potential loss to contextualise the harm. Further, they failed to identify the unspecified "other assets" or explain how their absence impacts the

business. Crucially, on 15 July 2025, the respondents tendered the return of all contentious assets, except for three trucks and a van ("the retained assets") - a tender rejected by the applicants..

*Evaluation*

[10] Rule 6(12)[1] of the Uniform Rules of Court governs urgent applications. An applicant must explicitly set forth the circumstances that it avers render the matter urgent. In this matter, the applicants have failed to establish sufficient grounds for this matter to be heard as one of urgency for four reasons.

[11] Firstly, the respondents' tender to return all assets except the retained assets is a pivotal factor. This tender, made weeks before the hearing and not genuinely disputed, removes the foundational urgency for the majority of the assets. The applicants' rejection of this tender suggests that their actual complaint relates to the retained assets, for which the urgency is poorly pleaded.

[12] Secondly, the applicants' allegations of commercial harm are conclusory and lack particularity. There are no supporting financial records, details of specific contracts jeopardised, or evidence from aggrieved clients. The respondents' evidence regarding the inoperability of the retained vehicles stands uncontroverted save for a bare denial, which is insufficient in motion proceedings. The applicants have not shown that the retention of four vehicles will cause irreparable harm that cannot be compensated by a damages claim in due course.

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[1] Rule 6(12) reads:

> "(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.
>
> (b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course."

[13] Thirdly, the fear of an imminent, irreversible sale is speculative. The respondents correctly point out the statutory safeguards in the liquidation process. The applicants have not alleged that the respondents have applied for or obtained permission to sell the assets. Fourthly, the alleged risk of liability to third parties is equally speculative. The applicants have not identified the third parties, and any claim would lie against the liquidators. The fear of liability for storage costs is without merit on paper.

[14] While it is true that a spoliation applicant must act promptly, the absence of any pleaded irreparable harm that cannot be addressed in the normal course renders the invocation of urgency unsustainable. The applicants have alternative remedies, such as a claim for damages, which can be pursued in the ordinary course. Consequently, the application lacks the requisite urgency.

[15] Considering my findings on urgency, it is strictly unnecessary to deal with the remaining issues in depth. However, for completeness, I will make brief observations. The applicants seek relief for unspecified third parties listed in an annexure. This is highly problematic. A party cannot pursue a substantive order on behalf of unidentified persons without a proper mandate. This aspect of the application is fundamentally flawed.

[16] The respondents contend that this is not an accurate spoliation application because the applicants have pleaded ownership and rights derived from loan agreements with third parties, rather than focusing solely on peaceful and undisturbed possession. The essence of the *mandament van spolie* is the restoration of possession before any inquiry into the merits of the parties' respective rights.[2] While an applicant may refer to ownership to contextualise possession, the remedy cannot be used to try ownership.

[17] The applicants' heavy reliance on registration documents and loan agreements risks conflating the issues. A spoliation order is concerned with the *factum* of possession, not the *right* to possess. On the papers, there appears to be a material dispute regarding the true nature of the possession, which may not be

[2] See: *Yeko v Qana 1973 (4) SA 735 (A)*

capable of resolution on these papers. This would be a further reason to dismiss the application, even if it were urgent.

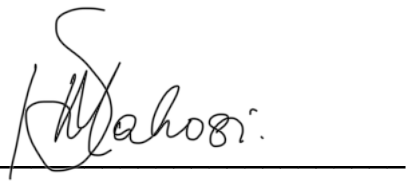
[18] The respondents seek a punitive costs order, arguing that the application is an abuse. Considering the applicant's rejection of the respondents' tender and the manner in which they approached the Court, I am persuaded that their application reaches the threshold of an abuse warranting a punitive costs order. There is no reason why Trans-Tech's estate should be burdened with costs.

*Order*

[19] Accordingly, the following order is made:

1. The application is struck from the roll for lack of urgency.

2. The applicants are ordered, jointly and severally, to pay the respondents' costs on the attorney and client scale.



**D. Mahosi**
**ACTING JUDGE OF THE HIGH COURT**
**JOHANNESBURG**

Date of Hearing: 22 July 2025
Date of Judgment: 26 September 2025

**Appearances:**

For the Applicants: Adv. K Potgieter
Instructed by: Klopper Jonker Incorporated

For the Respondents: Adv C van der Merwe
Instructed by: Charl van der Merwe Attorneys