FORBES MARUVA GOKA
and
CHIPO JUDITH GOKA
versus
THE MINISTER OF TRANSPORT & INFRASTRUCTURAL DEVELOPMENT
and
DNMZ CONSULTING ENGINEERS (PVT) LTD

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE 9, 12, 14 & 19 May 2025

Urgent Chamber Application

H. Muromba with J. Makanda, for the applicants
M. Chimombe with L. Nobiri and A Chakanyuka, for the 1st respondent

MAMBARA J: This is an urgent chamber application for a*mandament van spolie* interdict. The first and second applicants, Forbes Maruva Goka and his wife Judith Goka (the "applicants"), are registered owners of Stand 260B Hopley Township, Harare, measuring 4 000 m². The first respondent is the Minister of Transport and Infrastructural Development ("the Ministry") and the second respondent is DNMZ Consulting Engineers (Private) Ltd (together "the respondents"). The applicants claim that, on or about 23 August 2022, the Ministry purchased from them a portion of their land. The agreement of sale purported to acquire only 555 m² of the applicants' property for the Mbudzi Road interchange project. The applicants allege that they accepted payment of US$251 070 for that 555 m² portion, then excised and fenced off the remaining land. On 22 April 2025, according to the applicants, they discovered that the respondents had entered onto a portion of the fenced remainder, which was never subject to any sale and commenced construction works. The applicants contend that this was done without their consent or lawful process, resulting in unlawful dispossession of their land. They seek a final spoliation order to restore the *status quo ante* and costs of suit.

The respondents deny any unlawful spoliation. They assert that the government in fact acquired 2 150 m² of the applicants' land including the site of the house and paid full compensation, and that the applicants duly and wilfully vacated that portion. It is further argued that the figure "555 m²" in the sale documents was a clerical error. On this account, by April 2025 the applicants no longer owned or possessed the area on which the works were

proceeding, so there was no forcible dispossession (spoliation) of land owned by them. The respondents also raise preliminary objections: they say the matter is not urgent, the draft order is defective, and they complain of material non-disclosure by the applicants. They accordingly ask that the application be dismissed on those grounds, with costs.

The main issues for decision are whether the applicants have made out a case for a spoliation order. The applicants stand or fall by their founding affidavit. The court must also address the effect of any material non-disclosure and the balance of convenience, including the importance of the Mbudzi Interchange project to the national interest.

Order Sought

The applicants seek an order in the following terms (as set out in their draft):

1. The respondent and all those claiming title, occupation or possession through them shall upon service of this order grant and surrender vacant possession of the remainder of the applicants' property being stand number 260B Hopley Township of Hopley, held under Deed of transfer 3113/2018 save for the acquired 555 square metres.
2. The respondent and or any entity claiming title, occupation and possession through the respondent, be and is hereby interdicted from accessing or anyhow interfering with the applicant's peaceful occupation of the applicants' property being stand number 260B Hopley township of Hopley, held under Deed of Transfe3113/2018 save for the acquired portion measuring 555 square metres.
3. Should the respondent or any person or entity claiming title, occupation or possession through the respondents not comply with paragraph (2) above, the Sheriff of Zimbabwe be and is hereby authorized and empowered to enlist the services of the Zimbabwe Republic Police to evict the respondents from the mentioned property.
4. The respondents shall pay cost of suit on a legal practitioner scale.

In substance, the applicants ask that the court restore possession of their land to them, by preventing the respondents from remaining on the disputed portion of Stand 260B (the tract beyond the 555 m² purchased area). As stated in their founding affidavit, the applicants contend that unless the respondents are compelled to stop the construction activities, the applicants will suffer irreparable harm as their land will be taken without compensation. The applicants are willing to sell that part of the land to the Ministry if it is willing to acquire it. They submit that

the balance of convenience favours granting the relief to maintain and restore the *status quo ante*. The respondents oppose these prayers.

Factual Background

The salient facts common to the parties are as follows. The applicants are the owners of Stand 260B of Hopley Township registered under Deed of Transfer No. 3113/2018), a 4 000 m² property in Harare. On 23 August 2022, the Zimbabwean Government, acting through the Ministry, acquired a portion of that property. The parties entered into a written agreement. The agreement expressly describes the land acquired as 555 square metres including certain improvements. This acquisition was for the purpose of constructing a road interchange, the Mbudzi Interchange now renamed the Trabablas Interchange on Stand 260B. The applicants received an offer of compensation from the Ministry in the sum of US$251 070 for the 555 m² portion. Forbes Goka swore in an affidavit that he and his wife *"unconditionally accept[ed] the offer of payment of the sum of USD 251 070.00 for the acquisition of a portion of [their] property measuring 555 square metres by the Government of Zimbabwe through the Ministry of Transport and Infrastructure Development"*. That compensation has apparently been paid and the applicants moved out of the property. The ministry proceeded to demolish all the improvements on that land and commenced the construction works.

After the sale, the applicants removed the 555 m² portion from their holdings. In particular, the applicants fenced off the remainder of the land (approximately 4 000–555 = 3 445 m²) which remained in their possession. The applicants continued to occupy the balance property and use it for farming purposes. According to the founding affidavit, this occupation was peaceful and undisturbed from 2023 until April 2025.

On 22 April 2025, the applicants discovered that workers acting on behalf of the respondents had entered the fenced remainder of Stand 260B and begun clearing and earthworks in anticipation of the interchange construction. The founding papers allege that this portion of the land was *not* part of the sale, and that the applicants had explicitly informed the Ministry that the fenced portion was their own. No eviction order or any court process had been served. The applicants claim that at that point they were forcibly dispossessed of their property by the respondents "mafia style". The first applicant immediately sought legal advice and filed this urgent application on 7 May 2025. The gravamen of their claim is that the respondents are constructing on land which was never lawfully theirs, and they must be interdicted to restore possession of that land.

The respondents' case differs markedly. In their opposing papers and at the hearing they deny any wrongful invasion of a privately held portion. They contend that a significant portion of the land beyond the 555 m² was in fact lawfully acquired by the first respondent through earlier transactions. The first respondent points to valuation reports and other documents showing that 2 150 m² of Stand 260B were acquired and compensated for. In particular, the respondents assert that the figure "555 m²" in the official agreement was a mistake: it represented only the superficial area of the homestead, the house, staff quarters, etc, whereas the true extent of land acquired was 2 150 m². According to the first respondent, the applicants were paid in full for 2 150 m² and they duly and wilfully vacated possession of that area. If correct, this means that by April 2025 the applicants no longer had possession of the land where the works were carried out. The respondents assert that the applicants were fully compensated and had parted with that portion of the property, so any access by the respondents to build the interchange is lawful and not "self-help."

There is thus a key factual dispute about what land was actually sold and who was in possession. The applicants say they owned and occupied all the fenced portion and only sold 555 m², whereas the respondents say 2 150 m² were sold and the applicants left. As noted above, the parties' papers include: the sale agreement, three valuation reports (from two private valuers and a government valuer), correspondence between the parties' attorneys, and the answering and opposing affidavits. I also note an apparent clerical error: the valuation reports describe 2 150 m², while the signed sale documents show only 555 m². I will not order rectification of the documents, but observe that this inconsistency underscores the uncertainty. My task is to determine whether, on the undisputed and disputed facts, the applicants are entitled to spoliation relief.

Oral Argument Summary

Mr. *Muromba*, counsel for the applicants submitted that this urgent application is properly brought and that the applicants stand to lose an irreplaceable asset if relief is not granted. He began by stressing urgency: an applicant for a spoliation interdict must act swiftly upon dispossession. The applicants sprang into action ten days after first discovering the invasion (22 April 2025 to 7 May 2025), which he argued was timely given the circumstances. He pointed out that there had been negotiations and attempts to clarify the situation with the Ministry including letters of 4 November 2024 and 5 March 2025 before litigation, and that once it was clear that the first respondent claimed a right to the land, the applicants immediately

instructed counsel to protect their rights. He submitted that spoliation applications are inherently urgent, and noted that the applicants treated the matter with appropriate diligence.

On the issue that the provisional order was defective**,** Mr. *Muromba* conceded that the draft order was originally prepared in Form 26 (for a provisional order) for convenience. Since a final order was sought, he applied to amend it so that it properly reflects the final mandament order format.

Turning to the merits, Mr. *Muromba* submitted that the applicants have satisfied the requirements of *mandament van spolie*. He reiterated the factual position in the founding papers: only 555 m² of the land was ever sold to the government, and the remainder has been in the applicants' uninterrupted possession. He said the applicants fenced off all portions beyond the 555 m², a fact conceded in the respondents' opposing affidavit, and wrote to the respondents to assert that the rest of the property was theirs. He described how on 22 April 2025 the first respondent suddenly dispatched contractors onto the fenced area without permission. He argued that this act was clearly forcible dispossession of the applicants' peaceful possession.

Mr. *Muromba* further addressed the valuation reports and compensations. He pointed out that the respondents' own evidence confirms the purchases of the applicants' land. Importantly, he noted, the respondents' valuation reports indicate payments for 2 150 m², but the applicants were told only 555 m² had been sold. He argued that even if the valuation numbers are correct, the applicants could not have believed they were giving up more than that little portion. They immediately claimed the remainder after the works began. In his submission, at the time of the intrusion the applicants still had possession of the disputed portion, and no lawful eviction or court process had occurred. He invoked the principle that an alleged purchaser with only an "offer letter" has no right to take possession by force. The applicants were "senior citizens" who acted promptly to preserve their rights. Finally, he argued that the balance of convenience favoured granting relief: if construction proceeded unchecked, the applicants would lose their land and the *status quo* would be destroyed. He contended that it would be contrary to fairness to let the respondents carry on by self-help. He submitted that the applicants have a clear right to their property by registration and undisturbed occupation, a well-founded apprehension of imminent loss, and no alternative remedy, entitling them to spoliation relief.

Mr. *Chimombe,* counsel for the first respondent opposed the application in limine and on the merits. On urgency, he submitted that ten days' delay was inordinate in this case. The

applicants themselves say they became aware of the works on 22 April 2025, so an urgent application ought to have been filed sooner if truly necessary. He referred the court to the well – trodden tests set in the case of *Kuvarega v Registrar-General 1998 (1) ZLR 188 (H*) on timing, arguing that this 10-day gap was not "immediate" action. He concluded that the requirements for jumping the queue were not met.

On the issue of the defective draft order, *Mr. Chimombe* explained that the applicants had incorrectly tried to invoke a provisional order form, Form 26, per Rule 60(11) of the High Court Rules, 2021 even though no ex parte provisional order was sought. The order should be a final order as stated in their founding papers.

The crucial thrust of his argument was on the real factual picture. He emphasized that the applicants' founding affidavit is materially incomplete. The first respondent's own inquiry revealed that the applicants had in 2001 sold 1 700 m² of their land to one Mr. Nyatsoma. The Ministry then contracted to buy that land from Mr. Nyatsoma. These background facts were never disclosed in the founding affidavit; they only came out in the answering affidavit and argument. Counsel contended that the effect of these facts is that the applicants never had undisputed possession of the 2 150 m² in issue. Instead, the first respondent actually purchased 2 150 m² including the house and improvements and paid the agreed purchase price. The figure "555" in the sale documents was merely a clerical error, referring only to the footprint of the homestead. In reality, the Ministry compensated the full extent of 2 150 m² and the applicants were paid and duly and wilfully vacated that land. Because of this, the applicants were not in peaceful and undisturbed possession of the disputed portion at the time of the alleged invasion.

Mr. *Chimombe* said the applicants' attempt to now fence off any land beyond what was sold is legally untenable, since they no longer had title or possession over it. He pointed to the valuer's reports attached as annexures, each confirming that 2 150 m² was measured and compensated. In short, he argued, the applicants were paid for everything, and yet they subsequently fenced land that was not theirs and hindered lawful construction. He maintained that the applicants consented to leave by accepting the compensation. Having left, they cannot complain of dispossession.

On the balance of convenience, Mr. *Chimombe* highlighted the national importance of the interchange project. Work had begun with the knowledge of the applicants; the project was set to be completed before the end of this month, May 2025. He submitted that halting the works now would jeopardize a major infrastructure development. By contrast, any harm to the applicants could be measured in money. He said the court should lean against an order that

would effectively halt a public works programme, given the evidence that the applicants had already been compensated.

In sum, the applicants' counsel asked for immediate injunctive relief to protect their land, while the respondents' counsel argued that the relief was not justified: urgency was contested, the applicants had already left the site, and the balance of convenience favoured the road project.

Legal Analysis

To grant a spoliation order, the applicants must satisfy the requirements of *mandament van spolie*: they must show on a balance of probabilities that they were in peaceful and undisturbed possession of the property and that the respondents forcibly or wrongfully deprived them of possession. The court's role is only to protect possession, not to adjudicate on title or compensation. I must also be mindful of the fact that no man is allowed to take the law into his own hands, as the law sternly prohibits self-help.

However, before considering those requirements, I must address the preliminary rules governing applications of this nature.

In any urgent or ex parte relief context (such as spoliation), the applicant owes the court an "utmost good faith" duty to place all material facts on record. The law is clear that if an order is to be granted ex parte, and material facts that would have influenced the decision were omitted, whether wilfully, negligently or in good faith, the court may refuse to grant the order sought. Courts have emphasized that urgent applications marred by material non-disclosures should be discouraged. Judges cast a dim view on litigants who pull the wool over the court's eyes. Similarly, the law requires the applicant for an injunction (especially without notice) to make full and frank disclosure of all relevant facts, positive and adverse. See *Document Support Centre (Pvt) Ltd* v *Mapuvire HH 117/06*

Here the respondents allege that the applicants' founding affidavit omitted key transactions, such as the sale to Mr. Nyatsoma, and misstated the area acquired by the first respondent. The applicants eventually admitted in argument that they had failed to disclose these facts to their legal advisors. That admission is damning: an application must stand or fall by its founding affidavit". The applicants effectively "supplemented" their case only after hearing from the respondents. This contravenes the general rule that an applicant may not save a deficient founding case by relying on answering papers. In light of authorities such as *Moven Kufa & Anor* v *The President of the Republic of Zimbabwe and 9 Ors*, CCZ-22-17, the founding affidavit sets out the case the other party must meet, and introducing new facts later is

impermissible. The admitted omission here – whether deliberate or negligent – is precisely the kind of non-disclosure that undermines the very foundation of the application. Accordingly, the application faces serious difficulty from the outset: it falls to stand or fall on the incomplete founding papers.

The principle that an application stands or falls by its founding papers is long-established in Zimbabwean procedure. An applicant cannot build a case in reply or in argument that was not foreshadowed in the founding affidavit. This rule exists to give the respondent notice of all allegations so they can address them. In *Keavney* v *Msabaeka Bus Services* 1996 1 ZLR 605 (S) the Supreme Court (MCNALLY JA) cited South African authorities: a litigant may not plead one issue in the papers and then try to canvas another at the trial. Failure to disclose the *real* facts may suggest incompetence or an "afterthought" to avoid onus

In the present matter, the applicants' founding affidavit asserted only that the government purchased 555 m² of the 4 000 m². It was never amended to say they had already sold the rest to a third party. To allow the application to succeed now, with the fuller story only emerging in answering papers, would violate this rule. The first respondent's counsel correctly observed that the fact of the 1700 m² sale was only disclosed in the answering affidavit, and that the applicants were not candid. These omissions are material: they go to the very right the applicants claim. Therefore, in terms of the stand-or-fall doctrine, the applicants' case as pleaded is considerably weakened.

I turn to the inconsistent valuation and sale documents. The valuation reports all assess compensation on 2 150 m² of land, whereas the offer and sale agreement in the founding papers speak of 555 m². This discrepancy was acknowledged by the respondents as a clerical error. Without resolving this anomaly definitively, it suffices to note that it generates uncertainty. The court should not attempt to rectify the contracts in this spoliation application, no application for rectification is before me. I merely observe that the papers do not square. If anything, it suggests that the applicants knew their title or occupation was not properly reflected in the documents they signed. But whatever the explanation, the rule still applies: the applicants must prove their case on the founding papers as they stand.

Having dealt with procedure, I now consider the merits of the spoliation claim. As noted, the two core requirements are (1) applicant's possession of the property and (2) forcible or unlawful deprivation of that possession by the respondent. I will address each in turn, together with the balancing exercise required of spoliation relief.

It is common ground that the applicants held title to Stand 260B and peacefully occupied the whole area except the 555 m² sold. Until April 2025, their possession was uninterrupted. However, the respondents challenge whether that continued through the relevant period. They claim the applicants had already surrendered legal possession of 2 150 m², including the site of the house, by accepting payment and vacating. If true, the applicants would not have had possession of the disputed land on 22 April 2025. This is a critical factual issue.

The principle from *Nino Bonino* v *De Lange 1906 TS* 120 is instructive: *"No one is permitted to depose another forcibly or wrongfully against his consent of possession of property…"*. In other words, the spoliation remedy protects a possessor. If the possessor consents to leave, there is no *ex iniuria* to remedy. Here, the respondents' version is that the applicants consented (implicitly) by taking payment for 2 150 m² and leaving that land. The applicants do not deny receiving compensation but maintain it was only for 555 m². The discrepancy is disputed. If the respondents' account is correct, the applicants voluntarily vacated the entire area in question, so they were no longer in possession at the time the respondents moved in. In that case, the basic requirement of possession fails: one cannot claim spoliation of something one no longer owns or occupies.

Zimbabwean case law echoes this position. For instance, in *Dodhill (Pvt) Ltd and Anor* v *Minister of Lands rural resettlement & Anor*, HH 40/2009, BERE J emphasized that even a prospective purchaser (or lessee) who has not obtained vacant possession is not entitled to evict the occupier on his own. He stated: *"Although the applicant is entitled to occupy the land, he is not entitled to evict the former owner… It is now settled law that a lessee who has not acquired vacant possession cannot evict anyone from the property."*. By analogy, if the applicants have already parted with what was supposedly purchased, they cannot now claim to still occupy it. Whether or not the full 2 150 m² was legally sold, the fact remains that the applicants fenced off a portion and later "voluntarily" abandoned it, according to the respondents' case. The law requires that at the time of alleged dispossession, the applicant must have been in *actual* possession of the thing disposed of. Here, because of the compensation and the purported exit, that is in doubt.

In short, the applicants' own conduct may have precluded peaceful possession. Even accepting the applicants' narrative that only 555 m² was sold, it appears they fenced off only the unsold balance and then insisted the rest was theirs. If, instead, 2 150 m² was sold and they knew it, their act of fencing could be seen as trespass. Either way, there is at least a dispute whether the applicants had the requisite possession on 22 April 2025. I am unable to find as a

fact (on the papers) that they did. And as noted, on application proceedings the facts must be resolved on the affidavits without oral evidence save in exceptional circumstances. The point here is that the respondents have cast doubt on the peaceful possession element, and the applicants must still prove it. So far, they have not convincingly done so.

Assuming, for argument's sake, that the applicants were in possession on 22 April 2025, was that possession wrongfully taken? The respondents deny any force or wrong. They say the applicants agreed to leave. However, even accepting the respondents' account that the applicants vacated on payment, it remains questionable whether that surrender was lawful. The applicants argue, and I accept, that no formal court order evicting them was obtained at that time. Under our law, even if the respondents had title, they should have resorted to lawful eviction proceedings to dislodge the occupiers. Absent a court order or consent, any physical takeover could amount to "self-help." As GUBBAY CJ remarked in *Botha & Another* v *Barret* 1996 (2) ZLR 73 (S), "No one is permitted to depose another forcibly or wrongfully against his consent of possession… If he does so, the court will summarily restore the *status quo ante*…". Moreover, PATEL J, (as he was then), in *Forester Estate (Pvt) Ltd v M.C.R Vengesayi and Anor*, HH 19-10 noted that an offer letter or compensation alone does not give an automatic right of occupation; the State must evict through due process, otherwise the offeree has "no self-executing right". In light of these authorities, if the applicants still occupied a part of the land, the respondents' entry without an eviction order would be considered forcible.

On the other hand, if the applicants truly did vacate, then there was no dispossession to rectify. Vacation is inconsistent with continued possession.

The respondents contend this is the case: that the applicants left the land they were paid for, and what followed was mere construction on vacant, state-owned land. The applicants strongly dispute this. However, the opposing papers highlight that the applicants' claimed "invasion" was on a portion they knew the State had paid for. This is effectively a contested factual issue. Spoliation remedy generally does not hinge on title – even a non-owner in possession can claim it. But it does require the disruption to be wrongful. The respondents say it was not wrongful, because the applicants had no remaining possessory right. Given the admissions about compensation and fencing (and the outstanding question whether the applicants actually remained in occupation), it is unclear whether the deprivation was against the applicants' consent. If the land was truly theirs and they told the respondents not to touch it, then entry was unlawful. If they had given up those rights, then no wrongful act occurred. The papers leave this tangled. The benefit of doubt must go to the respondents on the

completeness of the plaintiffs' case, especially since the plaintiffs' own evidence, the founding affidavit, did not spell out the underlying title history.

The *mandament van spolie* is an interim, possessory remedy. Even if the two requirements above are met, the court retains a discretion whether to grant relief, taking into account the balance of convenience. That balance involves weighing the harm to the applicant if relief is refused against the harm to the respondents and public interest if relief is granted. Notably, the respondents emphasise that the Mbudzi Interchange is of national importance and near completion. Continuing the project is in the public interest, whereas any delay might cause substantial inconvenience or economic loss. The applicants stress that their land will be destroyed and taken without compensation if the works continue; this is a personal hardship, but it is compensable in damages if found unlawful later. The law encourages courts to consider public interest in such cases. Here the respondents pointed to construction already having begun and a projected completion date, before the end of this month, May 2025. The applicants are said to be senior citizens whose inconvenience could conceivably be addressed by compensation and they are willing to engage the 1st respondent in respect of that aspect.

In *Streamsleigh Investments (Pvt) Ltd* v *Autoband (Pvt) Ltd*, SC43-14, the Supreme Court reiterated that spoliation only looks at whether possession was lawfully taken, not the merits of ownership. Yet even a *mandament van spolie* is not granted automatically where it would undermine other compelling interests. Here, the first respondent argued the harm to the national project outweighs the applicants' private interest. Unless the applicants can show an unequivocal right to possession of the disturbed land, the court should hesitate to interdict the interchange's progress. Balancing the parties' positions, the factors – particularly the apparent consent of the applicants, having accepted payment, and the pressing public need – tip strongly against granting the spoliation order.

Independently of the substantive merits, the applicants' non-disclosure of material facts in their founding affidavit is a serious defect. Zimbabwean courts have gone so far as to dismiss applications outright where key facts were withheld. *N & R Agencies and Anor* v *Ndlovu and Anor*, HB 198/11 states that an order obtained by non-disclosure is vulnerable to being set aside. In that case the applicant's earlier failed litigation history was not disclosed. The judge warned that urgent applications characterised by material concealment or dishonesty will attract adverse consequences. In the present case, the applicants' counsel frankly acknowledged that the founding affidavit was not drawn out with full wisdom – a diplomatic way of saying

significant deeds were omitted. They attempted to explain it as an oversight, but it cannot be cured now. The founding affidavit is the foundation of their case.

As authority confirms, an application must succeed or fail on what is pleaded in the founding papers. Any attempt to rely on the answering affidavit or oral argument to make out the case is improper. The respondents rightly pointed out that the bulk of the applicants' case on possession and title was only revealed after the initial papers. Thus, the applicants have not fairly presented their true case for the court's assessment on the written record. In these circumstances, especially given the ex parte nature of *mandament* proceedings, I must view the application with caution.

Given the above, the strong guiding principle is that the applicants must succeed on their founding affidavit alone. I examined that affidavit against the respondents' rebuttal. The respondents' contentions, if believed, destroy the key elements of the spoliation case. Confronted with this, the applicants have not demonstrated a clear right to be protected.

Mandament van spolie does not require proof of absolute ownership, only possessory right. But the applicant must at least show that he has the right to remain in possession undisturbed. Here the applicants have not demonstrated such a "clear right" over the disputed portion distinct from the general title. In spoliation law, a "right" often means entitlement to remain in possession pending proper process. If the respondents are correct that the applicants have already been compensated for that land, the applicants' rights ceased with the sale. They therefore had no proprietary or possessory interest to assert.

The first respondent's evidence suggests exactly that: that the applicants have been compensated and duly and wilfully vacated the land. Even if the 2 150 m² figure is disputed, the valuation reports and correspondence suggest the State proceeded as if the applicants had no continuing interest in the work site. By accepting payment, the applicants should have known their rights were at least in question. One simply cannot have it both ways – accept compensation for one's land and then claim a right to occupy it. The applicants never exhibited a document showing retention of possession. For this reason, too, a clear right to spoliation is lacking.

In summary, the applicants have not proved the two foundational requirements: their supposed prior possession is undermined by their own conduct, and the dispossession may not have been wrongful at all. Without proving these elements, *mandament van spolie* cannot lie. This analysis is sufficient to dispose of the application against the applicants.

Disposition

In the result, the application must be dismissed. The applicants have not demonstrated a lawful entitlement to the relief. They have not shown that the respondents forcibly deprived them of their continued possession – since they, in effect, vacated the land on receiving payment. Crucially, the applicants' founding affidavit suffered from material omissions and a factual inconsistency, which fatally undermines their case. An application for an interdict (even a spoliation interdict) cannot proceed when the applicant has withheld key facts that were essential to the case it needed to make. The courts must be vigilant against attempts to mislead by omission.

Furthermore, even considering all facts in the respondents' favour, there is no clear right on the applicants' part to the area in dispute – they had been paid to give it up. The balance of convenience also disfavours the applicants: their claim for loss of their land, while regrettable, is counterbalanced by the imminent completion of a major interchange which serves the public interest. The law cannot be stretched to favour self-help in situations where the occupant has been compensated and national projects are at stake.

It follows that the respondents have successfully resisted the spoliation claim. Due to the competing interests between the parties and the lack of clarity on the papers each party shall pay its own costs.

In the result, it is ordered as follows;

1. The application is dismissed.
2. Each party shall bear its own costs.

MAMBARA J: ……..

Kantor & Immerman, applicants' legal practitioners
Civil Division, legal practitioners for the 1st respondent