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SELLERS SHOULD NOT TAKE MATTERS INTO THEIR OWN HANDS

Spoliation applications are becoming a common occurrence. The application is brought by a party who feels that he has been unlawfully deprived of his peaceful possession or occupation of property. There is a principle in law that nobody, even if he is "in the right" has the right to take the law into his own hands and disturb another's possession or use of property.

This was the issue in the case of *Mutale and Another v Forte and Others* (2021/46077) [2021] ZAGPJHC 573, where Mr. and Mrs. Mutale occupied a property with the consent of the seller in terms of the sale agreement. Upon return to South Africa, the Mutales discovered that they could not access the property due to the locks being changed. The seller claimed that he cancelled the sale agreement due to non-compliance.

The Mutales approached the court with a Mandament van Spolie application.

The court found that Mutales had not abandoned the property and satisfied the requirements for a spoliation application. The court, therefore, made a spoliation order in favour of the Mutales, on the grounds that their undisturbed occupation of the property had unlawfully and wrongfully been deprived by Mr. Forte in denying them access to the property. A seller can therefore not take the law into his own hands, and any disputes in terms of the sale agreement must be resolved by following the correct legal route.