SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF THE JUDGMENT DELIVERED

FROM: The Registrar, Supreme Court of Appeal

DATE: 10 June 2021

STATUS: Immediate

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Blendrite (Pty) Ltd and Another v Moonisami and Another (Case no 227/2020)
[2021] ZASCA 77 (10 June 2021)

Today the Supreme Court of Appeal upheld an appeal from the KwaZulu-Natal Division of the High Court, Durban (per Chetty J). Mr Moonisami brought a spoliation application against Blendrite (Pty) Ltd and two others. He is one of two listed directors of Blendrite. The other party against whom the application was brought was Global Network Solutions (Pty) Ltd. Global hosts the server and email addresses of Blendrite. It took no part in the application or the appeal. Mr Moonisami and the other listed director fell out. The latter, having assumed control of Blendrite, claims that Mr Moonisami resigned as a director. This is hotly denied. Blendrite then instructed Global to terminate Mr Moonisami's use of the network and his email address. It is this act which Mr Moonisami says amounts to spoliation of a non-corporeal in his possession. The court a quo held that this was the case and granted a spoliation

order. It also granted Blendrite leave to appeal.

The Supreme Court of Appeal traced the origins of spoliatory relief. The *mandament van spolie* requires only the factual proof of prior possession and the unlawful deprivation of possession, in other words without agreement or recourse to law. It is aimed at preventing self-help. The respective rights of the parties to possession are not evaluated until possession has been restored. With corporeal things, both movable and immovable, possession is relatively straightforward to prove. But our law also recognises that *quasi*-possession of certain incorporeals is also protected by the remedy. Here, too, the legal right to possess the incorporeal is of no moment. It is the factual *quasi*-possession prior to deprivation which must be proved. As such, talk of 'rights' of possession are best avoided.

The classic case where the remedy applies to incorporeals relates to servitudes. *Quasi*-possession is shown by the factual use of the servitude. The right to do so is of no moment until restoration takes place. More recently *quasi*-possession of the supply of services to immovable properties such as water or electricity has been protected, but in limited circumstances only. A distinction is drawn between services supplied as an incident of possession of corporeal property and those supplied by virtue of a personal right such as contract. It is only the former to which the *mandament van spolie* applies. As such, any quasi-possession must be shown to have arisen as an incident of possession of the immovable property occupied by the *quasi*-possessor.

Mr Moonisami, in his capacity as director, had access to Blendrite's server and an email address hosted by Global at the instance of Blendrite. His use of these did not arise as an incident of possession of corporeal property on his part. As such the Supreme Court of Appeal held that this was not protected by the *mandament van spolie*. Since the High Court erred in finding that it was protected, the appeal was upheld with costs of two counsel where so employed and the order on the spoliation application set aside and substituted by one dismissing the application with costs of two counsel where so employed.