## Introduction: Nino Bonino v de Lange

Lease agreement (contract) between Antonnino Bonino and Klaas de Lange:

- Lange is the owner of the premises

- Bonino can lease the billboard room within lease conditions - but he broke conditions so De Lange barred the door.

Bonino took De Lange to court **Mandemant van Spolie**

Court ruled this was spoliation as "**a man cannot take the law into his own hands and dispossess another**" His remedy is to **enforce his rights through the courts**

- MVS used restores the status quo to before De Lange took law into his own hands

## What is Possession?

| Corpus | Animus |
|---|---|
| - Physical Possession: Is there sufficient and effective physical control? | - The mental attitude of possession. Four elements: Possessor: |
| - This means that the strongest corporeal relationship exists. | 1. Must have capacity to form legal intention |
| - Does not need to be continuous: You control a car if you have the keys. | 2. Must be aware of the fact that they are exercising physical control (*vd Walt*). |
| - Does not need to be excersised personally: you control your car if chauffer takes it as agent | 3. Intention must be directed towards exercising control over the thing **for themselves**. |

## What is Possession? (cont)

4. Specific intention regarding control must be established. (*Meyer*)

- *Animus Domini*: intention to own needed for acquisition of ownership

- *Animus Ex Re commodom acquirendi*: intention of securing benefit for *yourself* not as agent.

Largely depends on whether you want to gain or keep control. If you are trying to gain it, you intuitively do not have it

## Manament van Spolie

MVS is available when one has been unlawfully dispossessed of property and protects/restores **possession**

Speedy remedy in which the court does not consider who has a stronger claim to the thing/owns it.

The purpose of the remedy is to prevent self help and maintain peace and order. It is a temporary return to status quo while court decides on matter.

Facta Pro Banda:

1. Peaceful and Undisturbed Possession of Property

2. The respondent dispossessed the applicant by means of **unlawful self-help (spoliation)**

## Valid Defences to MVS

**1. Disprove Facto Probanda**

Not in Possession

- Did not have effective control (*Mbangi & Van Rhyn*)

- Did not have correct animus (*Meyer*)

Dispossession was not Unlawful self help (*Sillo*)

**2. Unreasonable delay in bringing the application**

If you wait long to bring case, court assumes you agree to being dispossession. MVS is supposed to be a quick remedy.

"Too long" depends on factual circumstances of each case.

**3. Counter-Spoliation**

Limited and reasonable amount of help allowed in defence of property should it occur in OG dispossession and not a new incidence. e.g. Thief snatches bag and you grab it back quickly. (*Mans & Ness*)

**4. Restoration Impossible**

Point of MVS is to return to status ho before spoliation. Not possible if they don't have the thing or if it is destroyed (*Tswelopele*).

## Ius Possessionis and Ius Possidendi

| Ius Possessionis | Ius Possidendi |
|---|---|
| Grants possessor right to protection against disopossession | The entitlement to demand control over a thing |

- Protected by law even if you have no rights to the thing.

- For other remedies (ie possessory action) you need to prove a right

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Published 29th May, 2022.
Last updated 30th May, 2022.


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## Invalid defences to MVS

Anything about the merits of the claim

Anything about having a stronger right to the thing

## Requirements for MVS

**Peaceful and Undisturbed Possession**

Did the applicant have effective physical control?

*Van Rhyn NO v Fleurbaix Farms*: Daily jog on someone else farm disturbed when gate was erected. Jog not "effective physical control" of road, thus gate was not spoliation.

Did the applicant satisfy mental element?

*Mbangi v Dobsonville City Council*: Town constantly demolished erected houses. Civic successfully used MVS. Also indicates that those in the process of dispossessing someone of a thing & cases in which possession is not yet an accomplished fact. MVS cannot be used.

**Unlawfully Deprived**

*Sillo v Naude*: Former tenants cattle sent to pound in terms of Pound Ordinance. Not spoliation because he invoked aid of law.

*George Municipality v Vena*: Should action exceed bounds of legal authority = spoliation. PISA did not necessarily allow removal wo court. Held that onus is on dispossessor to show actions w/o courts were covered by thestatute.

*Impala Water Users*: WUA suspended water as charge wasn't paid as allowed by National Water Act. Argued water was like *Sillo*. SCA held that WUA had onus of showing that dispossession fell within statute. What was unclear: Whether the water was unpaid as it was undecided what would be a reasonable price for the water. Thus this is spoliation.



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