



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal Case No:A168/2020

In the matter between:

**PERSONS WHOSE IDENTITIES ARE
UNKNOWN TO THE APPLICANT AND WHO
HAVE THREATENED AND ARE THREATENING
TO UNLAWFULLY OCCUPY LAND MARKED AS:
THE REMAINDER OF TOWN LANDS OF
ORANJEVILLE 1124**

Appellant

and

METSIMAHOLO LOCAL MUNICIPALITY

Respondent

CORAM: MATHEBULA, J *et* DANISO, J *et* VAN RHYN, AJ

HEARD ON: 25 OCTOBER 2021

DELIVERED ON: 25 JANUARY 2022

JUDGMENT BY: VAN RHYN, AJ

INTRODUCTION.

- [1] On 20 May 2020, the respondent in this appeal, Metsimaholo Local Municipality, launched an urgent application (as the applicant) under case

number 1631/2020 against unknown persons who have threatened and were threatening to unlawfully occupy and enter land described as the “Remainder of Townlands of Oranjeville 1124”, Heilbron (“the land”), Free State Province.

[2] In the court *a quo* the matter was heard as one of urgency and the non-compliance with the provisions regarding time periods, service and forms was dispensed with in terms of the provisions of rule 6(12). The following interim order was granted on an *ex parte* basis on 3 June 2020:

“2. A Rule *Nisi* is issued calling upon the Respondents to show cause, to this Honourable Court on 6 August 2020 at 09h30 as to why the First Respondents should not be interdicted and restrained from:

2.1 Entering or being upon land marked as the remainder of Townlands of Oranjeville 1124 for purposes of unlawfully occupying or invading the land;

2.2 Erecting, attempting to erect or completing to erect any structure on the land;

2.3 Bringing building materials onto the land;

2.4 Intimidating, harassing, assaulting or in any way interfering with the applicant or any or its employees when ensuring compliance with the Order;

2.5 Inciting and encouraging other persons to settle on the land and/or erect structures on the land for the purpose of unlawfully occupying and/or invading the land.

3. Authorising the applicant, duly assisted by the Sheriff and insofar as is necessary, the South African Police Services “(SAPS)” to give effect to the provisions of this Order by:

3.1 Forthwith removing any person found to be in breach of this Order;

3.2 Removing and/or demolishing any vacant and/or unoccupied structure erected on the land at the time of granting of this Order;

3.3 Removing and/or demolishing any new structure erected on the land since the granting of this Order;

- 3.4 Removing any possessions or structures including building materials associated with the unlawful occupation and/or invasion of the land;
- 3.5 To take all reasonable steps in order to give effect to this Order.
4. The provisions of prayers 2 and 3 shall operate as an interim Order pending a final Order being made on the return date of the Rule *Nisi*.
5. Service of the Order be effected by the Sheriff by, *inter alia* erecting notice boards with the Order pinned thereto at various places on the land easily visible to the Respondents.
6. Any interested party wishing to anticipate the return day be granted leave to do so on 24 hours' notice to the Applicant's attorney.
7. The Respondents to pay the Applicant's cost, in the event the Respondents oppose Part A of this application."

[3] A notice of opposition was filed by a group of people, represented by M J Mokoena, and referred to as the "first respondents" in the heading of the said notice. This group is the appellant in the appeal at hand. The appellant, however, specified in their answering affidavit, that neither the deponent to the answering affidavit, M. J. Mokoena, nor any of the members who he represents are part of either the first or the second respondent as cited in the application. The *rule nisi* was extended to 8 October 2020 when the application was heard by Raikane AJ.

[4] At the hearing of the opposed application, a point *in limine* disputing the *locus standi* of the appellant to oppose the application for confirmation of the *rule nisi* was argued. The court *a quo* held that the appellant lacked standing to oppose the confirmation of the *rule nisi*. Due to the appellant's failure to apply for leave to intervene the application was dealt with as if unopposed. The *rule nisi* was confirmed. This appeal, with leave granted by the court *a quo* to appeal to the full bench, emanates from the judgment and order confirming the interim order.

THE RESPONDENT'S APPLICATION IN THE COURT A QUO.

- [5] The respondent, as owner of the land in question, brought an urgent application for an interdict and order to restrain unidentified persons cited as “first respondent” from unlawfully occupying and/or invading the land. The application was brought in two parts, “Part A” and “Part B”. The proceedings in the court *a quo* as well as in respect of this appeal only relates to part A. Part B of the application relates to a different area referred to as Sasolburg North; Welgelegen 58 including other properties belonging to the respondent and concerns unknown persons cited as the “second respondent”. At the time of this application in the court *a quo*, the country was under national lockdown level 4 in terms of section 3 of the Disaster Management Act of 2002 to combat the spread of Covid-19.
- [6] On 25 May 2020 it came to the attention of officials in the employment of the respondent that an invasion of the land is in progress. The land was vacant prior to the invaders starting to erect structures on the land. Officials from the respondent, accompanied by members of SAPS, visited the site on 25 May 2020. The invaders were led by one Mr Masiya of Metsimaholo Community Association (“MCA”) and one “Lerato”, a member of the Economic Freedom Fighters (“EFF”). An inspection of the land revealed that about ten completed structures and approximately 20 incomplete structures had already been erected.
- [7] In the area where no structures had been erected, it was marked into sections which were allegedly allocated to individuals for building new structures. The completed structures were locked and no occupants could be traced at the time of the inspection. The respondent appended photographs to the founding affidavit of the structures already erected as well as the area cleared for purposes of building structures. Poles were planted for the demarcation of stands. Building materials as well as partially constructed structures can be seen on the photographs. An RDP housing development scheme is situated adjacent to the land being invaded.
- [8] The respondent contended that during June 2020, the construction of the majority of the structures had not yet been finalized and were not occupied.

Accordingly, the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of land Act 19 of 1998 (“PIE Act”) are not applicable. The respondent however feared, given the invaders’ alleged absolute lack of respect for authority, a mass orchestrated invasion and occupation of its’s property with associated inevitable harm will follow if the unlawful invasion, building of further structures and occupation continued unabated. The respondent launched the application as a pre-emptive and preventative step against the impending illegal land invasion and occupation and in anticipation of a mass invasion. Such invasions were increasing during the national lockdown period. Any of the occupiers of the already constructed structures, were in any event invited by the respondent to present themselves to court and explain their personal circumstances including how and when they came to occupy the land in question.

- [9] Notwithstanding engagement by the officials of the respondent, the invaders and trespassers became annoyed and did not want to co-operate in any way. Apart from being in direct violation of the then current lockdown restrictions the ongoing land invasion was unacceptable to the respondent, as the area had been earmarked for future development of housing.

GROUND FOR THE APPEAL AND APPELLANTS’ ARGUMENTS.

- [10] The appeal is against the finding of the court *a quo* that the appellant did not have *locus standi* to oppose the application on the basis that the appellant had neither entered an intention to oppose nor applied for leave to intervene. In granting the final order and authorising the respondent and the SAPS to summarily evict those who are unlawfully occupying the land in question and to demolish their homes, the order, in the appellant’s reading thereof, adversely affects their constitutional right not to be evicted arbitrarily from their homes. The order will allow the respondent to evict them without having to follow the exacting protective requirements in terms of the PIE Act.
- [11] Furthermore, the order adversely affects the appellant’s constitutional right to have access to adequate housing and thus has the potential to affect the

appellant's interest in having a secure place to live. Appellant, with reference to seven (7) identified individuals contend that the land had been occupied by people since 2017. It is denied that, at the time of the urgent application, the majority of the homes on the land in question were only partially constructed and unoccupied. The appellant denies that any "impeding invasion" of the respondent's property was imminent or that the appellant or any of the other occupiers or invaders mobilised any group of people for an accelerated occupation or for a "mass unlawful invasion" of the land. On behalf of the appellant, it is argued that the problem with the order is that itself makes no distinction between those invaders or occupiers who occupied the land prior to the granting of the order and those invaders or occupiers who did so subsequent to the granting of the rule *nisi*.

[12] The appellant argues that the failure to bring an application for leave to intervene was not raised by the respondent at the hearing of the matter in the court *a quo*, but *mero motu* by the court. Relying on **Fischer and Another v Ramahlele and others**¹ the appellant contend that, on the basis that our system of civil procedure, litigation is party driven and a court should confine itself with the issues brought before it by the parties, it was not open to the court to decide an application on issues, legal points or facts that did not emerge from the papers and were not raised by the parties themselves.

[13] Furthermore, even had the respondent raised the absence of an application for leave to intervene in either the papers or at the hearing of the application or even if this court conclude that the court *a quo* did not err in considering this issue *mero motu*, the appellant contends that the absence of an application for leave to intervene does not affect the appellant's *locus standi* for a number of reasons. These reasons are the following:

13.1 If the court *a quo*'s finding in this respect is premised on the assumption that no notice to oppose had been filed necessitating an application for leave to intervene, then the fact that a notice of intention to opposed had

¹ 2014 (4) SA 614 at [13] and [14].

been filed, would mean that there was no need for an application for leave to intervene.

13.2 If an application for leave to intervene was the only procedure through which the appellant could properly be before court, then the court *a quo* erred on the law on two grounds;

13.2.1 Firstly, it is settled law that the courts should be “...hesitant to dispose of cases on standing alone where broader concerns of accountability and responsiveness may require investigation and determination of the merits.”² It is equally settled that in cases involving constitutional rights, such as this one, in general a less restrictive approach to standing should be followed.³

13.2.2 Secondly, the choice of procedure with which to oppose the matter (either with a notice of intention to oppose or an application for leave to intervene) is simply irrelevant to the question of *locus standi*. Whether a party has standing to oppose the relief sought, is a substantive and not a technical question. One has standing to oppose an application if one has a substantive interest (a sufficient interest) in the relief sought in the sense that the relief sought affects one’s rights or interests adversely or has the potential to affect one’s rights or interests.⁴

RESPONDENT’S ARGUMENTS.

[14] In this appeal, the principle of mootness formed the primary submission by the respondent in that the order interdicting and restraining the unlawful occupation of State-owned land was granted on 3 June 2020, confirmed on 8 October 2020 and has served its purpose. Appealing the order is

² Giant Concerts CC v Rhinaldo Investments (Pty) Ltd and Others (CCT 25/12) [2012] ZACC 28; 2013 (3) BCLR 251(CC) (29 November 2012) at [34].

³ Ngxuza and Others v Permanent Secretary, Department of Welfare, Eastern Cape and Another 2001(2) SA 609 (E) at 618E- 619F.

⁴ Zulu and Others v eThekweni Municipality and Others 2014 (4) SA 590 (CC).

meaningless. The matter has become moot and merely academic and the appeal may be dismissed on this ground alone.⁵ In addition, it is not the appellant's case that its members are prejudiced by the existence of the court order. The appellant failed to identify any of its rights being affected by the court order and hence the need to appeal the order.

[15] A further argument on behalf of the respondent concerns the question regarding the citation of the appellant in this appeal. The appellant described themselves as the "Oranjeville Community" or the "Oranjeville Development Forum" in the answering affidavit. In the heading of this appeal, the appellant is described as "Persons whose identities are unknown to the applicant and who have threatened and are threatening to unlawfully occupy land marked as: the remainder of Townlands of Oranjeville 1124". With reference to the concession made by the appellant in its answering affidavit in the following terms: "It is denied that either I, or any members of the Oranjeville Community or the Oranjeville Development Forum are part either of the first or the second respondent as cited...", the respondent argues that the court *a quo*'s finding that the appellant lacked the necessary *locus standi* cannot be faulted. Yet, in the appeal the appellant is cited as a party whom they explicitly deny being part of. The respondent argues that the finding by the court *a quo* that the appellant had no direct and substantial interest in the matter and therefore lacked the necessary *locus standi* to oppose the interdict sought, is correct and was based on the uncontested facts placed before court.

[16] In addition, the appellant had no *locus standi* in the court *a quo* on the ground that the Oranjeville Development Forum is not a legal persona and as such cannot sue or be sued. In any event, *ex lege*, the Oranjeville Development Forum has no authority and legal standing to represent the people who invaded the land in question during May 2020.

APPLICABLE LEGAL PRINCIPLES AND DISCUSSION.

⁵ National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs 2000 (2) SA 1 (CC) at para 21 footnote 18. "A case is moot and are therefore not justiciable if it no longer presents an existing or live controversy which should exist if the court is to avoid giving advisory opinions on abstract positions of law."

- [17] The deponent to the appellant's affidavit stated that he, as the elected chairperson of the Oranjeville Development Forum, represents those members who reside on the land referred to in part A of the application. The application was opposed on the basis that "...all on whose behalf I depose to this affidavit, had at various times since 2017 moved on to the land that the first respondents have allegedly threatened or are threatening to occupy. All of them are currently living on that land and have their homes there and have done so for varying periods of time." It is therefore denied that any imminent invasion of the land existed during May 2020. According to the appellant at least 80 people were already living on the land in question on 25 May 2020.
- [18] In the replying affidavit the respondent averred that, on the basis that the appellant's members have been living on the land since 2017 or at least long prior to May 2020, they do not form part of the trespassers or group of land invaders who were in the process of clearing the area and erecting structures, The argument that the appellant does not have a direct and substantial legal interest in the matter and therefore no legal standing was therefore raised in reply. The issue regarding the appellant's legal standing was also raised in the heads of argument filed by the respondent prior to the hearing of the matter on the return day.
- [19] The Constitutional Court in **Port Elizabeth Municipality v Various Occupiers**⁶ held that while the Constitution is strongly supportive of orderly land reform, it does not purport to effect transfer of title by constitutional *fiat*, nor does it sanction arbitrary seizure of land, whether by the State or by landless people.⁷ If an individual is dissatisfied with any aspect of an organ of State's conduct or its policy, the appropriate (lawful) response is to approach the courts. It is not to resort to self- help. Under the rule of law, a founding principle of the Constitution, courts are to make orders which discourage land invasions and queue jumping. Preferential treatment obtained through self-help conduct is contrary to the rule of law and constitutional democracy and must be rejected.

⁶ 2005 (1) SA 217 (CC).

⁷ At [20].

[20] The appellant opposed the relief sought in the court *a quo* and entered opposition through a notice of intention to oppose as the “first respondent”. However, the first respondent in the application is cited as: “persons whose identities are unknown to the applicant and who have threatened and are threatening to unlawfully occupy land marked as: the remainder of town lands of Oranjeville 1124.” On their own version they neither threatened nor were they threatening to unlawfully occupy the land but were already occupying it, some for a considerable period of time prior to May 2020. The appellant argues that the order sought and granted affected them as it related to the land on which they live. They therefore have a direct and substantial interest in the proceedings and thus possess the necessary *locus standi*.

LOCUS STANDI TO CLAIM RELIEF.

[21] Traditionally the South African courts adopted a restrictive attitude to the question of whether a person who approaches the court for relief has the right to do so. In **Coetzee v Comitis and others**⁸ Traverso J held that the matter of legal standing, requiring a person who approaches the court to have an interest in the sense of being personally adversely affected by the wrong alleged, have changed since the inception of the Constitution. Section 38 of the Constitution provides:

“Anyone listed in this section has the right to approach a competent Court, alleging that a right in the Bill of Rights has been infringed or threatened, and the Court may grant appropriate relief, including a declaration of rights. The persons who may approach a Court are:

- (1) anyone acting in their own interest;
- (2) ...
- (3) anyone acting as a member of, or in the interest of, a group or class of persons;
- (4) anyone acting in the public interest...”⁹

[22] Cameron J aligned himself with the approach to standing in constitutional cases as adopted in **Ferreira v Levin NO and Others; Vryenhoek and Others v**

⁸ 2001 (1) SA 1254 (CPD).

⁹ At 1262 B-D.

Powell NO and Others¹⁰ and held as follows in *Beukes v Krugersdorp Transitional Local Council and Another*:¹¹

“This approach seems to me to be appropriate not only to the Constitutional Court, but to all Courts that are called upon to adjudicate constitutional claims. It seems to me further that a broad approach should be taken not only to who qualifies as having standing under s 7(4)(b), but to how that standing may be evidenced. In the present case, the founding papers proceed explicitly from the averment that the applicant as well as the listed persons live in ‘white areas’ and that they are for this reason affected unfairly by the TLC’s discriminatory rates policy. From this it seems to be plain that the group or class of persons as a member of whom and in whose interest the applicant is acting are those ratepayers of Krugersdorp within the TLC’s authority who do not enjoy the benefit of ‘flat rate’ municipal charges. It would run counter to the spirit and purport of the interim Constitution to require that persons who identify themselves as members of a group or class as a member of whom and in whose interests a litigant act, should reiterate with formalistic precision the complaint with which they associate themselves”.¹²

- [23] An enquiry into standing is an enquiry into whether the matter which has been brought before court is justiciable. Section 38 of the Constitution contemplates a broad approach to standing whenever allegations that a right, guaranteed by Chapter 2 of the Constitution, has been infringed or is threatened are at stake.¹³ The requirement of procedural justiciability is based on the principle that it is not the function of the courts to determine academic or hypothetical issues. This includes issues of standing, ripeness and mootness. Ripeness concerns the question whether the claim has been brought too early in the sense that the right in issue has not yet been infringed or threatened. The issue of whether a matter is moot arises when the judgment of the court will have no practical effect. Standing enquiries relate to whether the person who has claimed relief has the right and interest to do so or is the correct person to be before the court.
- [24] The question whether, at the hearing of the appeal, the issues are of such a nature that the judgment or order sought will have no practical effect or result,

¹⁰ 1996 (1) SA 984 (CC).

¹¹ 1996 (3) SA 467 (WLD).

¹² At 474E-H.

¹³ *Ferreira v Levin* at [165].

the appeal may be dismissed on this ground alone was not addressed by the appellant in their heads of argument. In his reply, Mr Brand who appeared on behalf of the appellant, argued that if the matter has become moot there was no reason for the respondent to oppose the appeal.

[25] The interim order was granted and confirmed to prevent and stop the imminent land invasion and erecting of structures during May and June 2020. The order sanctioned the respondent, assisted by the Sheriff and members of SAPS to remove any person found in breach of the order and sanctioned the demolition of any vacant and/or unoccupied structures erected on the land. (emphasis added) The order furthermore sanctioned the removal and/or demolition of any new structures erected on the land since granting of the order (emphasis added). No time frame was included within which period the order will be valid or within which period the removal of trespassers or the demolition of structures may be carried out. Even though the purpose of the urgent application was to stop the invasion of the area and bring a halt to the building of structures at the time during May-June 2020, for as long as the order stands, any invaders of the land may be restrained and removed from occupying the land. In my view, the appeal is therefore not moot.

[26] Section 25(1) of the Constitution provides that “no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property” and consequently the occupation of another’s property would constitute an arbitrary deprivation of property which is not permitted in terms of the Constitution. land invasions are indisputably unconstitutional. Nevertheless, these invasions should not be ignored as they are symptomatic of a severe need for adequate housing in the close vicinity of economic opportunities.

[27] Prior to 1994 there were conflicting decisions as to whether an association could claim relief in the interest of its members. Section 38 (e) of the Constitution now clearly provides that an association may act in the interest of its members when the provisions in the Bill of Rights has been infringed.¹⁴ Associations have been allowed to litigate on behalf of a group of persons

¹⁴ South African Association of Personal Injury Lawyers v Heath 2000 BCLR 1131(T).

without having to establish that the members of the group are members of the association¹⁵; in the public interest and in their own interest where the relief claimed would promote the objects of the association.¹⁶ Mr Mokoena deposed to the affidavit on behalf of the members of the Oranjeville Community Forum in his capacity as the elected chairperson. The resolution adopted by the Oranjeville Community Forum establishing his mandate to depose to the affidavit on behalf of its members is appended to the answering affidavit. A second resolution signed by a number of members who reside on the “land in question” is also appended to the answering affidavit. I am of the view the appellant does have legal standing to represent the members of its association.

[28] The appellant’s contention that even though they are not part of the invasion or attempted invasion that occurred during May and June 2020, the order granted by the court *a quo* may negatively impact upon them as it relates to the property on which they live, is however deserving of further scrutiny. The appellant places reliance on the principles enunciated in **Zulu and Others v eThekweni Municipality and Others**¹⁷ for their argument that the question whether a party has standing to oppose relief sought is a substantive and not a technical question. The contention is that the relief sought by the respondent affects the rights of the appellant’s members or their interests adversely or has the potential to affect their rights or interests. The **Zulu** case concerns an appeal against a high court’s refusal to grant the appellant (the “occupiers”) leave to intervene in proceedings in which they had not been cited and where an interim order had been granted which allegedly affected their rights in that it related to the land that the occupiers had been living on.

[29] In **Zulu** the municipality contended that the interim order only related to invasions or attempted invasions that occurred or would incur after the grant of that order, with the result that the order sought and granted did not interfere with the entrenched rights of the occupants of the property prior to the grant of the order. It however transpired that subsequent to the hearing of the matter the

¹⁵ Highveldridge Residents Concerned Party v Highveldridge Transitional Local Council 2002 (6) SA 66 (T); Rail Commuter Action Group v Transnet Ltd t/a Metrorail (No1) 2003 (5) SA 518 (C).

¹⁶ National Coalition for Gay and Lesbian Equality v Minister of Home Affairs 2000 (2) SA 1 (CC).

¹⁷ 2014 (4) SA 590 (CC).

municipality relied on the interim order to demolish some of the occupiers' structures. On appeal the Constitutional Court held that the question to be determined, i.e., whether the high court was correct in refusing the occupiers leave to intervene, depended upon whether the occupiers had a direct and substantial interest in the proceedings and therefore had *locus standi*. That, in turn, depended on whether the order affected their rights or interests adversely or had the potential to adversely affect their rights or interests.

- [30] The Constitutional Court held that the order seemed wide enough to include the prevention of the continuation of such occupation and that the occupiers could be prevented from continuing to occupy the property and, to that extent, it was an eviction order. The high court thus erred in dismissing the application for leave to intervene and, that being the case, the appeal succeeded.
- [31] The occupiers in the **Zulu** matter however brought an application for leave to intervene in the proceedings in which the interim order had been granted. The application for leave to intervene was brought ahead of the return day of the *rule nisi* and was dismissed by the high court. Subsequent to granting the interim order and as a result of the demolition of two structures that had been occupied for some time, the two occupiers of the demolished structures brought an urgent application on the day following the granting of the interim order to prohibit further demolition of homes.
- [32] The municipality admitted that it had demolished structures and relied on the interim order authorizing it to do so. The municipality's case was not that the two occupiers whose structures had been demolished subsequent to the interim order being granted, had nothing to do with the occupiers, nor that the structures did not belong to them. It had impliedly accepted that the structures may have belonged to the occupiers, but relied upon the interim order for its authority to carry out the demolitions. The inconsistency in the municipality's contentions prior to and subsequent the granting of the interim order in respect of the authority to demolish the structures erected on the property, caused the Constitutional Court to overturn the order refusing the occupiers leave to intervene. The Constitutional Court granted leave to the occupiers to intervene

which in turn allowed them to anticipate the extended return day of the *rule nisi*.

- [33] In the present matter the appellant did not apply for leave to intervene after the granting of the interim order. The appellant filed a notice with the heading: “First Respondent’s Notice of Intention to Oppose”. However, in the answering affidavit, it is denied that the appellant “have threatened or are threatening to unlawfully occupy the land” or that the members of the Forum admit to being “invaders”, which is in direct contrast with the party cited as the first respondent by the respondent. Despite filing a notice to oppose the application, the appellant denies that its members in fact fall within the citation of the first respondent. The term *locus standi in judicio* not only refers to the capacity of a natural or juristic person to institute or defend legal proceedings, the term is also used to refer to the interest which a party has in the relief claimed or the right to claim the relief.
- [34] Even though Raikane AJ held that no notice to oppose the application was filed, the finding was clearly intended to refer to the unidentified persons cited as the first respondent. In her judgment, Raikane AJ refers to the answering and verifying affidavits delivered on 28 August 2020 by the appellant from which the court *a quo* concluded that the appellant lacks the necessary *locus standi* due to the concession made that the members do not form part of either the first or the second respondent as cited. The court *a quo* held that any person entitled to join as a plaintiff or liable to be joined as a defendant in any action, may on notice in accordance with the provisions of Rule 12 apply for leave to intervene at any stage of the proceedings. A person who has a legal interest¹⁸ must be joined, and is therefore generally entitled to join or liable to be joined within the meaning of the rule. Once a direct and substantial interest becomes apparent the proceedings should not continue in the absence of such a party.
- [35] The appellant’s contention that the court *a quo* faulted by disposing of the matter simply on a technical point that the appellant chose to oppose the application by way of a notice to oppose rather than an application for leave to

¹⁸ Bowring NO v Vrededorp Properties CC 2007 (5) SA 391(SCA) at para 21.

intervene is unduly restrictive and technical and does not accord with the more generous approach to standing that applies in matters such as these, is misplaced. If the appellant is correct in this argument, it would not have been necessary for the Constitutional Court to grant the application for leave to intervene in the **Zulu** matter.

- [36] In my view the appellant failed to show that the order granted by the court *a quo* directly affects their rights or interests or has the potential to negatively impact upon their rights or interests. In **Giant Concerts CC v Rinaldo Investments (PTY) Ltd and Others**, Cameron J held as follows in explaining the establishment of standing by a party:

“[46] Standing is not a technical or strictly-defined concept. And there is no magical formula for conferring it. It is a tool a court employs to determine whether a litigant is entitled to claim its time, and to put the opposing litigant to trouble.

[47] Each case depends on its own facts. There can be no general rule covering all cases. In each case, an applicant must show that he or she has the necessary interest in an infringement or a threatened infringement. And here a measure of pragmatism is needed.”¹⁹

- [37] There is no evidence that the respondent breached the undertaking provided in the replying affidavit that people who occupied the land before the national lockdown will not be evicted by way of the order granted by the court *a quo*. The application was not aimed at those occupiers but “targeted at the recent land invaders as described in the founding affidavit”. The appellant will be able to seek declaratory relief and/or a prohibitory interdict in the event of any transgressions by the respondent and failure to adhere to and implement remedies under the PIE Act. The provisions of section 26(3) of the Constitution requires that prior to an eviction being granted or the demolition of a home being authorised, an order of court must be sought and that such order may only be granted after a consideration of all of the relevant circumstances.

- [38] Mr Brand’s submission that the implementation of the order as it stands may be detrimental to the appellant and any rephrasing of the order will not alleviate the

¹⁹ At [46] and [47].

possibility of potential harm to the members of the appellant, is without substance and purely speculative. The provisions of prayers 2 and 3 of the interim order was implemented on 3 June 2020 to stop the influx of invaders onto the land. It is not the appellant's case that any inappropriate evictions followed subsequent to the granting of the interim order, as was the case in **Zulu**. Even though the implementation of the order may be difficult²⁰ in that a distinction will have to be made between invaders of the land during May and June 2020 as opposed to any occupiers who had been residing on the land prior to May 2020, it is evident that the respondent has up until the hearing of the appeal been able to refrain from abuse or exploitation of the order which, in my view clearly distinguishes this matter from the facts in the **Zulu** matter.

- [39] I am furthermore of the view that the wording of paragraph 3.2 and 3.3 of the order granted by the court *a quo* provides sufficient protection to the appellant's members in that only the removal and/or demolition of any vacant and unoccupied structures erected on the land at the time of granting of the order as well as the removal and demolition of any new structure erected since the granting of the order have been authorised.
- [40] Clearly the appellant does have legal standing as envisaged in terms of the provisions of section 38(e) of the Constitution for opposing the application in the court *a quo*. Procedurally the appellant had to apply for leave to intervene as held by the Constitutional Court in **Zulu**. However, I am not convinced that the appellant made out a case that they have a direct and substantial interest in the outcome of the proceedings or a legal interest which will prejudicially be affected by the order granted by the court *a quo*. The appellant failed to buttress any averment pertaining to the possibility of infringements of their rights with facts that such rights are threatened and are in need of protection by the court.
- [41] I am satisfied that the finding of the court *a quo* that the appellant does not have *locus standi* cannot be faulted, therefore the appeal stands to be dismissed. I

²⁰ Unlawful Occupiers, School Site v City of Johannesburg 2005 (4) SA 199 at [31].

am of the view that no order as to costs should follow.

ORDER:

[42] **I would thus make the following order:**

The appeal is dismissed.

VAN RHYN. AJ

I concur.

MATHEBULA, J

I concur.

DANISO, J

It is so ordered.

On behalf of the Appellant:

ADV. D BRAND and ADV R OZOEMENA

Instructed by:

UFS LAW CLINIC

On behalf of the Respondent:

ADV T MOSIKILI

Instructed by:
INCORPORATED

MMI