

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

CASE NO: 9938/2024

DATE 4/10/2024 SIGNATURE... [redacted]

In the matter between:

MOGALAKWENA LOCAL MUNICIPALITY

Applicant

and

TEBOGO MADIBANA

First respondent

THABANG MALULEKA

Second respondent

HEROLD MAEBA

Third respondent

EZEKIEL KUKUDI

Fourth respondent

REBONE CONCERNED AND AFFECTED

COMMUNITIES ORGANISATION

Fifth respondent

**MEC: DEPARTMENT OF AGRICULTURE AND
RURAL DEVELOPMENT, LIMPOPO**

Sixth Respondent

JUDGMENT

GAISA AJ

INTRODUCTION

[1] This is an urgent application brought by the Mogalakwena Local Municipality (*the applicant*) seeking interdictory relief to prevent the first to fifth respondents from unlawfully demarcating and allocating stands, and erecting structures on the Remaining Extent of the farm Steil Loop 403 LR. The applicant also seeks authorisation to demolish unoccupied structures and remove building materials.

[2] The first to fifth respondents oppose the application, raising various points *in limine*, including objections regarding urgency, the applicant's locus standi, and the non-joinder of the alleged unlawful occupiers and the MEC for Cooperative Governance, Human Settlements, and Traditional Affairs (COGHSTA). The respondents further contend that the application should have been brought under

the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998* (PIE Act).

[3] The matter raises significant issues about how land earmarked for development should be protected from unlawful occupation and the appropriate legal processes to be followed when preventing such occupation.

FACTUAL BACKGROUND

[4] The applicant, Mogalakwena Local Municipality, is the caretaker of the Remaining Extent of the farm Steil Loop 403 LR under a Memorandum of Agreement concluded with the Department of Agriculture and Rural Development, represented by the sixth respondent. Clause 3.4 of the Agreement mandates that the applicant ensures no unlawful occupation occurs on the property.

[5] The applicant alleges that, as of August 2024, several rudimentary structures have been erected on the property, but no persons are currently residing there. This assertion is supported by the affidavit of Mr. Ntsoane, the legal advisor to the Municipality, who confirmed that upon inspection of the property, the structures were found to be uninhabited. Mr. Ntsoane's affidavit further details the steps taken by the Municipality to monitor the situation and prevent any unlawful occupation. He verifies that the Municipality placed a public notice at a local school—an area

accessible to the community—informing the public of the upcoming court proceedings. Despite these efforts, no individuals have come forward to claim ownership of or residence in the structures.

[6] This evidence from Mr. Ntsoane is critical to rebutting the respondents' claims that there has been unlawful occupation since July 2024.

POINTS IN LIMINE

[7] The respondents raise several preliminary objections:

7.1. Urgency:

The respondents argue that the applicant delayed bringing the application, despite knowing about the land invasion as early as July 2024. They further argue that there is no legal basis for a “*semi-urgent*” application, as South African law does not recognise such a concept.

7.2. Locus Standi:

The respondents argue that the applicant, as caretaker, lacks the legal standing to initiate these proceedings. They claim that the applicant's

role is limited to informing the landowner and local police of any unlawful occupation, and only the landowner or the police have standing to approach the court.

7.3. **Non-Joinder:**

The respondents contend that the alleged unlawful occupiers should have been joined to the proceedings, as they have a direct interest in the matter. They also argue that the MEC for COGHSTA should have been joined as a party, given that the MEC has an interest in the orderly development of housing in the region.

LEGAL ANALYSIS

[8] Urgency

8.1. The principle of urgency is governed by Rule 6(12) of the Uniform Rules of Court. Urgency exists when an applicant would not be able to obtain substantial redress if the matter were heard in the ordinary course. In this case, the applicant seeks to prevent imminent unlawful occupation of land that would complicate future eviction processes, delay

development, and lead to significant financial and administrative burdens.

8.2. The respondents argue that the applicant delayed bringing this application and that “*semi-urgency*” is not recognised in law. While it is true that the Rules of Court do not recognise “*semi-urgency*” as a legal concept, the court must assess each case on its facts to determine whether urgency exists. In ***East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd***¹ the court noted that urgency must be determined based on the harm that would result if the relief is not granted.

8.3. In the present case, Mr. Ntsoane’s affidavit confirms that the structures erected on the property are uninhabited and that the purpose of this application is to prevent unlawful occupation before it occurs. Although the applicant did not act immediately upon the erection of the structures in July 2024, the applicant has monitored the situation and only approached the court when it became apparent that unlawful occupation was imminent.

¹ (2011) JOL 28244 (GSJ)

8.4. In ***Nelson Mandela Metropolitan Municipality v Greyvenouw CC***² the court held that urgency is not solely determined by the speed with which a party approaches the court but also by the nature of the relief sought and the potential harm to the applicant. Given that allowing occupation would complicate future eviction processes and delay the development plans, the court finds that the urgency of the matter is sufficiently established.

[9] **Locus Standi**

9.1. The respondents argue that the applicant lacks locus standi because it is merely a caretaker of the property. However, as highlighted in the Caretaker Agreement, clause 3.4 specifically tasks the applicant with ensuring no unlawful occupation occurs. This duty is not limited to notifying the landowner and the police, as the respondents suggest, but also involves actively preventing unlawful occupation.

9.2. In ***Beinash v Wixley***³ the court emphasized that a party has legal standing when they have a direct and substantial interest in the outcome of the litigation. In this case, the applicant, as caretaker, is directly responsible for managing the property and preventing unlawful

² 2004 (2) SA 81 (SECLD)

³ 1997 (3) SA 721 (SCA)

occupation, which gives it both the legal standing and the obligation to seek court intervention.

[10] **Non-Joinder**

10.1. The respondents contend that the alleged unlawful occupiers and the MEC for COGHSTA should have been joined to the proceedings. The court must therefore apply the test for joinder: whether a party has a direct and substantial interest in the subject matter of the litigation.⁴

10.2. **Alleged Unlawful Occupiers**

10.2.1. The affidavit of Mr. Ntsoane is critical in addressing the issue of non-joinder. He confirms that, based on inspections, no individuals are currently residing in the structures on the property. Despite the fifth respondent's claims of unlawful occupation, no names or affidavits from these alleged occupiers have been provided by it. The respondents have failed to identify any individuals who would have a direct and substantial interest in the outcome of these proceedings.

⁴ *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A)

10.2.2. Furthermore, the applicant placed a public notice at a local school, informing the community about the proceedings. No individuals have come forward to claim an interest in the property, further undermining the respondents' argument that there are identifiable unlawful occupiers who should have been joined.

10.2.3. In *Judicial Service Commission v Cape Bar Council*⁵ the court held that joinder is not necessary if the outcome of the litigation does not directly affect the absent party's legal rights. Since no individuals have been identified as residing in the structures, the court can make an effective order without their joinder.

10.3. **MEC for COGHSTA**

10.3.1. The respondents argue that the MEC for COGHSTA should have been joined due to its interest in housing and land issues in the region. However, the role of the MEC in this matter is indirect. The primary dispute concerns the prevention of unlawful occupation, and the applicant's role as caretaker does not

⁵ [2012] ZASCA 115; 2012 (11) BCLR 1239 (SCA); 2013 (1) SA 170 (SCA); [2013] 1 All SA 40 (SCA)

necessitate the involvement of the MEC. In ***Bengwenyama Minerals (Pty) Ltd v Genorah Resources (Pty) Ltd***⁶ the court held that an indirect interest in the matter does not require joinder.

10.3.2. Therefore, the non-joinder of the MEC does not prevent the court from granting effective relief.

10.4. Conclusion on Non-Joinder

Based on the evidence provided by Mr. Ntsoane and the applicant's reasonable efforts to notify potential interested parties, the failure to join the alleged unlawful occupiers and the MEC for COGHSTA does not affect the validity of these proceedings and the order of this court. The applicant has taken reasonable steps to ensure that any interested parties were informed, and no prejudice arises from the non-joinder.

⁶ [2010] ZACC 26; 2011 (4) SA 113 (CC); 2011 (3) BCLR 229 (CC)

CONCLUSION

[11] The court finds that the applicant has successfully established the requisite urgency and demonstrated its legal standing to bring this application. The respondents' claims of unlawful occupation have not been substantiated, and no specific individuals have been identified as having a direct and substantial interest in the proceedings. The affidavit of Mr. Ntsoane, the legal advisor for the Municipality, confirms that the structures on the property are uninhabited, and the applicant seeks to prevent future unlawful occupation.

[12] The non-joinder of the alleged unlawful occupiers and the MEC for Cooperative Governance, Human Settlements, and Traditional Affairs (COGHSTA) does not render the application defective, as their involvement is not necessary to resolve the dispute. The court is satisfied that no party's substantial legal rights are prejudiced by their exclusion.

[13] Accordingly, the application should be granted on an urgent basis, and the requested interdictory relief is appropriate to protect the applicant's interests and prevent future unlawful occupation of the property.

ORDER

1. The matter is enrolled as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.
2. The first to fifth respondents are interdicted and restrained from:
 - 2.1 Unlawfully demarcating and allocating stands on the Remaining Extent of the farm Steil Loop 403 LR; and
 - 2.2 Erecting any structures or allowing any occupation on the said property.
3. The applicant is authorised to demolish and remove unoccupied structures and building materials from the Remaining Extent of the farm Steil Loop 403 LR. The applicant is to retain the materials for collection by their owners, if claimed.
4. The fifth respondent is ordered to pay the costs of this application on a party-and-party scale, including the costs of **one counsel on Scale B**.

**GAISA N**

ACTING JUDGE OF THE HIGH COURT
LIMPOPO DIVISION, POLOKWANE

APPEARANCES

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DATE OF HEARING : 25 September 2024
DATE OF JUDGEMENT : 4 October 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 4 OCTOBER 2024.