

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

Not reportable
Case no 1914/2025

In the matter between:

MALUTI-A-PHOFUNG LOCAL MUNICIPALITY

Applicant

and

KING LETSITSA SIKA LUCAS MOLOI

1st Respondent

[ID No. 6[...]]

DAVID MPHATSISI MOLOI N.O.

2nd Respondent

[In his official capacity as co-trustee of the Bakhelokoe Royal
Trust Motawana, I[...]]

PATRIC MOLOI N.O.

3rd Respondent

[In his official capacity as co-trustee of the Bakhelokoe Royal
Trust Motawana, I[...]]

KING LETSISTSA MOLOI N.O.

4th Respondent

[In his official capacity as co-trustee of the Bakhelokoe Royal
Trust Motawana, I[...]]

ESIAH THABO TSHABALALA N.O.

5th Respondent

[In his official capacity as co-trustee of the Bakhelokoe Royal
Trust Motawana, I[...]]

LEWA JOSEPH MORAJANE N.O.

6th Respondent

[In his official capacity as co-trustee of the Bakhholokoe Royal Trust Motawana, I[...]]

NAZARETH BAPTIST CHURCH

7th Respondent

FERDIE VAN ZYL

8th Respondent

HENNIE AND BESSIE FOURIE t/a NAT SNOETJIES

9th Respondent

**THE ILLEGAL PERSONS (OCCUPIERS) OCCUPYING THE
IMMOVABLE PROPERTY SITUATED AT FARM 131 (REMAINING
EXTENT OF PORTION 0, PORTION 88 AND PORTION 105)
DORPS GRONDEN VAN HARRISMITH, FREE STATE
PROVINCE, ALSO KNOWN AS 'PLATBERG NATURE
RESERVE'**

10th Respondent

Neutral citation: *Maluti-A-Phofung Local Municipality v KLSL Moloï and Others*
(1914/2025) [2025] ZAFSHC 171 (10 June 2025)

Coram: Van Zyl J

Heard: 8 May 2025

Delivered: 10 June 2025

Summary: Urgent application – lack of averments to explain lapse of time – self-created urgency – removed from the roll with costs.

ORDER

1. The application is in toto removed from the roll.

2. The applicant is ordered to pay the costs of the application, with counsel's fees on Scale B.

JUDGMENT

Van Zyl, J

[1] This is an urgent application in terms whereof the applicant is seeking the following relief:

- '1. That this application be heard as an urgent application in accordance with the provisions of Rule 6(12) and that the requirements pertaining to service and time periods be dispensed with;
2. That First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Respondents [hereinafter collectively referred to as "**the Respondents**"] be ordered to vacate the immovable property situated at **FARM 131 (REMAINING EXTENT OF PORTION 9, PORTION 88 AND PORTION 105) DORPS GRONDEN VAN HARRISMITH, FREE STATE PROVINCE, ALSO KNOWN AS "PLATBERG NATURE RESERVE"** [hereinafter collectively referred to as "**Platberg Nature Reserve**"] *ante omnia* or immediately;
3. That, in the event that the Respondents fail or neglect or omit to comply with the order referred to in paragraph 2 *supra*, the Sheriff of this Court and his/her Deputy be authorised and mandated to execute this Order and to evict the Respondents from the Platberg Nature Reserve immediately, and to obtain assistance or support of the South African Police Services to assist him/her in the execution of this Order, if necessary;
4. That the Respondents be interdicted and prohibited from entering the Platberg Nature Reserve after they have been evicted from the Platberg Nature Reserve as provided for and envisaged in paragraph 2 *supra*;
5. That this order be served on the Respondents and published in the following manner. . .

6. That the Respondents are entitled to remove and take with them all their movable property situated at Platberg Nature Reserve upon their eviction from the Platberg Nature Reserve, including but not limited to livestock, cattle, sheep, goats, chickens and domesticated animals, but excluding game such as zebra, impala, bles buck and/or oribi;
7. That the Respondents be ordered to pay the costs of this application jointly and severally, the one to pay the other to be absolved *pro tanto*, on the scale as between attorney and client, alternatively as between party and party [Scale C], only in the event of opposition;
8. That such further and/or alternative relief be granted to the Applicant . . .'

[2] The eviction application was issued on 14 April 2025 and served upon the respondents on 15 April 2025 and 16 April 2025, respectively, excluding the seventh and eighth respondents. No return of service in respect of the seventh respondent is available and the eighth respondent vacated the house in which he resided prior to service upon him. Service was also effected upon certain other persons who were apparently present at the Platberg Nature Reserve when the sheriff effected service on the respondents and which persons now form part of the tenth respondent. The date of appearance reflected on the Notice of Motion and on the said returns of service is 8 May 2025

[3] On 25 April 2025 the applicant issued an urgent *ex parte* application, which was enrolled for 2 May 2025. On 2 May 2025 Van Rhyn, J issued an order in accordance with the provisions of section 5(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998, which indicated that the application was to be heard on 8 May 2025. The said Order which was duly served upon the respondents, except upon the seventh and eighth respondents. Service was again also effected upon certain other persons who were apparently present at the Platberg Nature Reserve when the sheriff effected service on the respondents. The date of appearance reflected on the said returns of service is 8 May 2025

[4] The first to sixth respondents are opposing the application and filed an answering affidavit. The seventh respondent is also opposing the application and also filed an answering affidavit. At the commencement of the hearing Mr Botes, who

appeared on behalf of the applicant, indicated that I do not presently have to deal with the seventh respondent, since the applicant and the seventh respondent agreed that the application in respect of the seventh respondent will be postponed *sine die*, with the applicant tendering the wasted costs occasioned by the postponement. Since the eighth respondent left the house which he previously occupied, Mr Botes also indicated that no relief is being sought against him anymore. With regard to the ninth respondent, Mr Botes indicated that the applicant is also no longer seeking an order against the said respondent, since they indicated that they will vacate the property freely and voluntarily.

The founding affidavit

[5] The Municipal Manager of the applicant deposed to the founding affidavit.

[6] Although Mr Botes indicated that the applicant is no longer seeking relief against the seventh, eighth and ninth respondents, I will continue to refer to the parties as referred to in the founding affidavit.

[7] According to the applicant it is the registered owner of the immovable property situated at the Farm 131 (Remaining Extent of Portion 0, Portion 88 and 105) Dorps Gronden van Harrismith, Free State Province, also known as 'Platberg Nature Reserve', held by virtue of Title Deeds T[...] and T[...] ('the Nature Reserve').

[8] In the founding affidavit the applicant avers that the first to tenth respondents 'either reside in the Nature Reserve, or occupy the Nature Reserve and conducting business from the Nature Reserve'. Further, according to the applicant, the application is one for 'the eviction of the respondents from the Nature Reserve, as provided for and envisaged in the Prevention of Illegal Eviction from and Unlawful Occupation Land Act 19 of 1984', which Act I will hereinafter refer to as 'PIE'.

[9] It is the applicant's case that the respondents are in unlawful and illegal occupation of the Nature Reserve, as provided for in section 1 of PIE. The respondents occupy the Nature Reserve without the applicant's express or tacit consent. The applicant avers that the first respondent declared himself as the King of

the Bakhelokoe Nation in South. The second, third, fourth, fifth and sixth respondents are the co-trustees of the Bakhelokoe Royal Trust Motowana, I[...], hereinafter referred to as 'the trust'.

[10] According to the applicant the respondents have hijacked the Nature Reserve and regard it as their property.

[11] The previous entrance at the Nature Reserve consisted of a brick and mortar building with a thatched roof. The said entrance was recently destroyed by a fire. The first to sixth respondents are in the process of constructing a new entrance gate at the Nature Reserve, comprising of two steel gates and a self-made tent which is occupied by 'guards'. The first to sixth respondents demand an entrance fee to be paid by members of the public who visit the Nature Reserve. Attached to the founding affidavit as annexure 'F' is a copy of a receipt issued for the payment of such an entrance fee. I will return to this receipt later in the judgment.

[12] The respondents, therefore, control access to the Nature Reserve and prohibit officials of the applicant to enter the Nature Reserve. The first respondent to sixth respondents designed a banner or notice which was attached to the main entrance of the Nature Reserve prior to it being destroyed by fire, which banner depicted the first respondent's 'reign' of the Nature Reserve.

[13] The second to sixth respondents (the trust) enter into 'lease agreements' with third parties, *inter alia*, to dump waste such as blood, contaminated meat and hair on the Nature Reserve. A copy of such a 'lease agreement' entered into and concluded between the trust and a third party is attached to the founding affidavit.

[14] The respondents harvest timber from the Nature Reserve, which timber is marketed and sold to the open market. A photograph depicting a vehicle removing timber from the Nature Reserve, is attached to the founding affidavit.

[15] The respondents furthermore manufacture charcoal from the trees which are harvested on the Nature Reserve, which charcoal is sold to the public. A photograph

is attached to the founding affidavit which photograph, according to the applicant, depicts the area in which the charcoal is manufactured.

[16] The respondents keep cattle and domesticated animals on the Nature Reserve, which is not permitted. They furthermore conduct hunting activities at the Nature Reserve, which is also not permitted.

[17] The respondents do not maintain the Nature Reserve, but exploit the natural resources provided for at the Nature Reserve. Two photographs which, according to the applicant, depict the extent of the general neglect of the Nature Reserve, are attached to the founding affidavit. There are furthermore two areas on the Nature Reserve that can be defined and described as heritage resources, namely graves and remnants of a botanical garden. These areas are protected by virtue of the National Heritage Resources Act, No. 25 of 1999. The remainder of the Nature Reserve falls within the ambit of the National Environmental Amendment Act 107 of 1998, the purpose of which act is to protect the environment and to limit any illegal or unlawful use of property which falls within the ambit of this act. These acts are being transgressed by the respondents.

[18] The seventh respondent developed an extensive compound at the Nature Reserve, a photograph of which is attached to the founding affidavit. This development is to enable the seventh respondent to conduct its religious ceremonies and related activities.

[19] Various other dwellings have been unlawfully erected or constructed in the Nature Reserve, depicted on photographs attached to the founding affidavit.

[20] The eighth and ninth respondents (previously) occupied dwellings on the Nature Reserve without the applicant's consent.

[21] According to the applicant the respondents have no valid right in law to occupy the Nature Reserve or to conduct any business activities on the Nature Reserve. By virtue of the respondents' illegal and unlawful occupation thereof, the applicant has no control over the Nature Reserve. According to the applicant it is in the public

interest to grant an order in terms of which the respondents are evicted from the Nature Reserve, as provided for in s 6(1)(b) of PIE.

[22] The applicant concedes that upon their eviction the respondents will be entitled to remove and take with them all their movable property situated at the Nature Reserve including, but not limited to livestock, cattle, sheep, goats, chickens and domesticated animals. They, however, have no right to remove and take with them any game, such as zebra, impala, blesbuck or oribi.

[23] In respect of the requirements of s 4 of PIE, the deponent to the founding affidavit avers that 'I accept for purposes hereof that the respondents are in occupation of the Nature Reserve for a period of more than six months'.

Urgency of the application

[24] With regard to the urgency of the application, the applicant set forth the following at paras 56 to 59 of the founding affidavit:

'56.

This application is urgent for the following reasons:

56.1 The Respondents hijacked the Nature Reserve and are stripping the Nature Reserve of its natural resources, including but not limited to timber and wildlife;

56.2 The Respondents established a charcoal manufacturing plant at the Nature Reserve, which causes a serious environmental risk, including but not limited to veld fires which may spread to the neighbouring farms causing substantial damage;

56.3 Livestock theft occurs regularly in the surrounding farms adjacent to the Nature Reserve, which livestock, such as cattle and sheep, are moved to and kept on the Nature Reserve;

56.4 Two important communication service towers are situated at the Nature Reserve. The purpose of the aforementioned towers is to monitor the petrol/diesel pipeline running from Kwazulu-Natal to Gauteng, as well as to protect the farming community in the area. The towers are equipped with repeaters which is a vital component for communication between farmers and the security clusters in an emergency. The Respondents highjacked the aforementioned telecommunication towers, removed the batteries and repeaters and disallow the service providers access thereto;

56.5 The Respondents harvest timber from the Nature Reserve, which constitutes a real and imminent danger of substantial injury or damage to any person or property if the Respondents are not forthwith evicted from the Nature Reserve;

56.6 The Applicant has lost control over the Nature Reserve, by virtue of the Respondents' illegal and unlawful occupation thereof. The likely hardship to the Applicant if an order for the Respondents' eviction is not granted, exceeds the likely hardship to the Respondents against whom the order is sought. It is therefore in the public interest to grant an order for the eviction of the Respondents, as provided for and envisaged in the Notice of Motion.

56.7 The Applicant has no other effective remedy at its disposal, as provided for and envisaged in section 5(1)(c) of the Act; and

56.8 The Respondents contravene the relevant legislation, referred to in paragraphs 44 and 45 *supra*, which in itself cannot be tolerated any longer.

57.

The Applicant will, for obvious reasons, not be afforded substantial redress in due course if this application is not heard on an urgent basis.

58.

The Nature Reserve constitutes a public heritage site, which must be protected and preserved at all costs. The Respondents have no right in law to continue with their illegal and unlawful activities at the Nature Reserve.

59.

The Applicant receives no benefit or advantage as a result of the respondents' illegal and unlawful occupation of the Nature Reserve. The Applicant is therefore duty-bound and responsible to approach this Court on an urgent basis so as to restore law and order. The Respondents have no right to take the law into their own hands and to remain in occupation of the Nature Reserve any longer.'

The answering affidavit

[25] The answering affidavit filed on behalf of the first to sixth respondents was deposed to by the first respondent, who is also the fourth respondent in his capacity as one of the trustees of the trust.

[26] According to the first to sixth respondents the Bakholokoe Kingdom are the custodians of the land on which the Nature Reserve is situated, given the history of the property.

[27] The first to sixth respondents do not deal with the merits of the application in their answering affidavit, but mainly rely on two points, on the basis of which they submit that the application should be dismissed with a punitive costs order. The two points are firstly that the applicant did not make out a proper case for urgency and secondly, the applicant's non-compliance with the provisions of PIE. In respect of urgency the first to sixth respondents point out, *inter alia*, that the applicant admits that the respondents have been in occupation of the Nature Reserve for more than six months, but does not indicate the date on which the alleged 'highjacking' of the Nature Reserve by the defendants occurred.

Replying affidavit

[28] No replying affidavit was filed on behalf of the applicant.

Legal principles in respect of urgency

[29] In *Nelson Mandela Metropolitan Municipality & Others v Greyvenouw CC & Others* 2004 (2) SA 81 (SE) the court pronounced as follows, para 34:

‘In this case, the first applicant did not drag its feet. It undertook efforts to resolve the problem that it had found at Crazy Zebra by notifying the owners of their alleged non-compliance with the law, by attending a meeting in an effort to resolve the problem and when that failed, by requiring an undertaking. When that was not forthcoming, it investigated further so that it had evidence of the level of noise emanating from the Crazy Zebra. In my view it approached its statutory duty of safeguarding the rights and interests of rate-payers in a responsible manner by seeking to persuade the respondents to comply and only then approaching the Court for relief. In these circumstances, it cannot be said that the first applicant has been dilatory in bringing the application. There is consequently no merit in this point.’

[30] The judgment of *Schweizer Reneke Vleis (Mkpy) (Edms) Bpk v Minister van Landbou & Andere* 1971 (1) PH F11 (T) is considered to be the *locus classicus* on self-created urgency, where the following was stated at F11 – 12:

‘Volgens die gegewens voor die Hof wil dit vir my voorkom dat die applikant alreeds vir meer as ‘n maand weet van die toedrag van sake waarteen daar nou beswaar gemaak word. Die aangeleentheid het slegs dringend geword omdat die applikant getalm het en omdat die tweede respondent, soos die applikant lankal geweet het, of moes geweet het, van die besigheid in Schweizer-Reneke geopen het. Die applikant mag gewag het vir inligting van die eerste respondent soos in die skrywe aangevra maar dit was geensins nodig vir die doeleindes van hierdie aansoek, wat op die nie-nakoming van die *audi alteram partem*-reël gebaseer is, om so lank te wag om die Hof te nader nie. Al hierdie omstandighede inaggenome is ek nie tevrede dat die applikant voldoende gronde aangevoer het waarom die Hof op hierdie stadium as a saak van dringendheid moet ingryp nie. Ek is dus, in omstandighede, nie bereid om af te sien van die gewone voorskrifte van Reël 6.’

[31] In *Tukela v Minister of Public Works* [2017] ZALCPE 29 the Court referred to the aforesaid *Schweizer Reneke Vleis*-judgment and held as follows at paras 14 – 15:

‘[14] It is trite that an Applicant cannot create his or her own urgency by delaying bringing an application. This Court will not come to the assistance of an applicant who has delayed approaching the Court. See *National Police Services Union & Others v National Negotiating Forum & Others* (1999) 20 ILJ 1081 (LC) at 1092 paragraph [39] where Van Niekerk, AJ (as he then was) stated the following:

“The latitude extended to parties to dispense with the rules of this court in circumstances of urgency is an integral part of a balance that the rules attempt to strike between time-limits that afford parties a considered opportunity to place their respective cases before the court and a recognition that in some instances, the application of the prescribed time-limits or any time-limits at all, might occasion injustice. For that reason, rule 8 permits a departure from the provisions of rule 7, which would otherwise govern an application such as this. But this exception to the norm should not be available to parties who are dilatory to the point where their very inactivity is the cause of the harm on which they rely to seek relief in this court. For these reasons, I find that the union has failed to satisfy the requirements relating to urgency.”

[15] I am in light of the afore-going of the view that the Applicant has created her own urgency by the substantial delay. I am of the view that the application falls to be struck of the role.’

[32] In *Director of Public Prosecutions (Western Cape) v Midi Television (Pty) Ltd t/a E TV* 2006 (3) SA 92 (C) the aforesaid principle was stated as follows at para 47:

‘The next question to determine is whether the matter was urgent or that an urgency was self-created. It is correct that an applicant cannot create its own urgency by delaying bringing the application until the normal rules can no longer be applied.’

[33] Arising from and connected to the aforesaid principle, is the consequent obligation on an applicant in an urgent application to explain all periods of delay for purposes of making out its case for urgency. The relevant principle applicable to condonation applications in this regard is consequently *mutatis mutandis* applicable to an urgent application. In *High Tech Transformers (Pty) Ltd v Lombard* (2012) 33 ILJ 919 (LC) the importance of a reasonable and acceptable explanation for a delay was accentuated at para 25 of the judgment:

‘[25] . . . Condonation is not merely for the asking as was duly pointed out by the court in *NUMSA & another v Hillside Aluminium* [2005] 6 BLLR 601 (LC):

“[12] Additionally, there should be an acceptable explanation tendered in respect of each period of delay. Condonation is not there simply for the asking. Applications for condonation are not a mere formality. The onus rests on the applicant to satisfy the court of the existence of good cause and this requires a full, acceptable and ultimately reasonable explanation. ... Nevertheless, to do justice to the aims of the legislation, parties seeking condonation for non-compliance are obliged to set out full explanations for each and every delay throughout the process.” (My emphasis.)

Consideration of the urgency

[29] The first step which the applicant took in respect of the eviction application which is evident from the founding affidavit, was the Municipal Manager’s deposing to the said affidavit on 24 April 2025 and the issuing of the application on the same date.

[30] I have already mentioned that the applicant pertinently indicated in its founding affidavit that it accepts that the respondents are in occupation of the Nature Reserve for a period of more than six months. However, the applicant did not take the court into its confidence by explaining what events preceded the issuing of the urgent application on 14 April 2025. The applicant did not present a shred of evidence as to how it came about that the respondents started occupying the Nature Reserve, when it happened and most importantly, when it came to the knowledge of the applicant.

[31] When I raised the aforesaid issues with Mr Botes, he tendered the ‘evidence’ from the bar that the applicable circumstances at the Nature Reserve only came to

the attention of the applicant when the applicant's attorney of first instance went to investigate the situation at the Nature Reserve and he was issued with the so-called receipt which I have already referred to earlier in my judgment, annexure 'F' attached to the founding affidavit. According to Mr Botes the receipt was issued in the first name of his attorney of first instance. On face value of the receipt, it was issued on 19 January 2025 in the amount of R50.00 or R80.00 (the figure is unclear). It also reflects the registration number of a vehicle.

[32] Not only has it not been alleged in the founding papers that that receipt was indeed issued to the applicant's attorney of first instance, but no background information is provided as to what prompted the attorney to have gone to the Nature Reserve to 'investigate' the situation and/or when the facts alleged in the founding affidavit, came to the knowledge of the applicant's attorney of first instance and/or the knowledge of the applicant itself. This is an entirely unexplained lacuna in the case of the applicant regarding alleged urgency considering that the applicant's own concession is that it accepts for purposes that the respondents are in occupation of the Nature Reserve for a period of more than six months already.

[33] Furthermore, there is not a single allegation as to what steps the applicant took or what occurred between 19 January 2025 (at the latest for the applicant), when the receipt was received and 14 April 2025 when the urgent application was issued. No attempt whatsoever was made to explain the relevant lapse of time. In this regard Mr Botes attempted to provide explanations and 'evidence' from the bar, which obviously cannot, in the absence thereof in the founding papers, be taken into consideration.

[34] In the circumstances I cannot but find that any urgency that may exist, is self-created urgency. No proper case for urgency has consequently been made out by the applicant.

[35] The application therefore stands to be removed from the roll.

[36] Due to my aforesaid finding, I deem it unnecessary to deal with the alleged non-compliance with PIE.

The position of the seventh respondent

[37] I have earlier in the judgment recorded that Mr Botes indicated to me that I need not deal with the defence of the seventh respondent at this stage, since the applicant and the seventh respondent have agreed that the application in respect of the seventh respondent, is to be postponed *sine die*, with the applicant tendering the wasted costs occasioned by the postponement. I enquired from Ms Ngubeni, who appeared on behalf of the seventh respondent, what her submission is what is to happen in respect of the seventh respondent should I find that the applicant failed to make out a proper case for urgency. She submitted that should I make such a finding, it should also pertain to the applicant and the seventh respondent, despite their agreement.

[38] I agree with the submission of Ms Ngubeni. I cannot allow the agreement between the applicant and the seventh respondent to stand in circumstances where the application is not accepted onto the urgent roll.

Order:

1. The application is in toto removed from the roll.
2. The applicant is ordered to pay the costs of the application, with counsel's fees on Scale B.

VAN ZYL J

Appearances:

For the Applicant:	FC Botes SC
Instructed by:	Niemann Grobbelaar Attorneys Bethlehem C/O Hendré Conradie Inc (HAT1/281(JHC/AB)) Bloemfontein E-mail: e-service@rossouws.com

For the First to Sixth Respondents: In Person
E-mail: lengolistooo@gmail.com
sikamoloi@gmail.com

For the Seventh Respondent: Adv T Ngubeni
Mncedisi Ndlovu & Sedumedi Attorneys.
Ilovo
C/O Poswa Attorneys
Bloemfontein
E-mail: Nigel.Masalla@poswainc.co.za
Feziwe@ndlovu-sedumedi.co.za
Thobani@ndlovu-sedumedi.co.za
Ayanda@ndlovu-sedumedi.co.za