



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 132142/2023

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 15 AUGUST 2025

SIGNATURE

In the matter between:

FOXTAIL PROPERTIES (PTY) LTD

Applicant

and

LPI INTERNATIONAL (PTY) LTD

First Respondent

SWAT FIREARMS CENTRE CC

Second Respondent

RUBICON INTERNATIONAL GROUP

HOLDINGS (PTY) LTD

Third Respondent

RUBICON PROPERTY MANAGEMENT (PTY) LTD

Fourth Respondent

ALL KNOWN UNLAWFUL OCCUPIERS

Fifth Respondent

Summary: *Application for leave to appeal launched by parties other than those in the main application – Intervention – no application for leave to intervene and no evidence placed before court – Leave to intervene refused - Appeal in any event moot and without prospects of success – Leave to appeal refused – Attorney having launched application for leave to appeal on behalf of prospective intervening parties without powers of attorney – failure to advance reasons why costs not to be awarded de bonis propriis. Costs ordered against attorney*

ORDER

1. The application for intervention is refused.
 2. The application for leave to appeal is refused.
 3. Jordaan Attorneys Inc is ordered to pay the costs of the applicant in the main application in respect of the above two applications on the scale as between attorney and client, including the costs reserved on 8 August 2025.
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J U D G M E N T

**(IN THE APPLICATIONS FOR LEAVE TO INTERVENE AND FOR
LEAVE TO APPEAL)**

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 15 August 2025.

DAVIS, J

Introduction

[1] On 30 January 2025 this court ordered the eviction of LPI International (Pty) Ltd (as first respondent), Swat Firearms Centre CC (Swart CC) (as second respondent), Rubicon International Group Holdings (Pty) Ltd (as third respondent), Rubicon Property Management (Pty) Ltd (as fourth respondent) and all other persons who, through or by virtue of these respondents, occupied certain immovable property in Gauteng, from that property.

[2] At all relevant times a certain Mohamed Yaseem Adam (Mr Adam) represented the second, third and fourth respondents and Miriam Bibi Adam (Mrs Adam) represented the first respondent. These respondents had, after Mr and Mrs Adam became aware of the application, delivered their notice of opposition during October 2024 already. Their answering affidavits were however only delivered on 28 January 2025 (being the initial day that the matter had been set down for hearing).

[3] In the answering affidavit deposed to by Mr Adam, he identified four natural persons who he alleged were employees of SWAT CC and who were also occupiers of the property.

[4] The order granted on 30 January 2025 excluded persons occupying the property for residential purposes.

[5] The order of 30 January 2025 gave the unlawful occupiers against which it was directed 20 days to vacate the premises. By 27 February 2025, all the respondents had removed all their movable property and had vacated the property. Since that date none of the respondents or their employees had returned to the property and it became vacant. It has since then been secured by the applicant in the main application. The order in the main application had therefore run its course and any appeal against it has become moot.

[6] On 5 March 2025 however, Jordaan attorneys Inc delivered an application for leave to appeal on behalf of Agra Holdings 333 (Pty) Ltd (Agra) and “other alleged unlawful occupiers and natural persons”. It later appeared that the “other unlawful occupiers” referred to, were SWAT Guns House (Pty) Ltd, represented by its sole director Mr Adam, who also claimed to personally be an unlawful occupier. Agra and these other occupiers purported to be the first and second intervening parties.

[7] There was no formal application for leave to intervene at this juncture, but in the application for leave to appeal it was alleged that leave to intervene which had been requested at the hearing of the main application, should not have been refused.

[8] I shall deal with the various aspects pertaining to the applications for leave to intervene and leave to appeal separately and thereafter deal with the costs issue. Unfortunately, I shall also have something to say about the conduct of the legal practitioners who had moved these applications.

Ad the application for leave to intervene in the appeal process

[9] The application for leave to intervene in the appeal process appears to have its origin in the initial application to intervene in the main application. As set out in the reasons for judgment, at the hearing of the main application Adv Köhn argued that he represented parties who wished to intervene in that matter. He could (or would) not identify those parties and neither was any formal or substantive application for leave to intervene presented to the court, let alone any affidavit from any such prospective intervening party.

[10] In an affidavit delivered by Mr Jordaan, practicing as Jordaan Attorneys Inc in respect of the issue of *de bonis propriis* costs raised at the initial hearing of the application for leave to appeal (with which I shall deal later), the said attorney stated that he had on 30 January 2025 received instructions from persons (who he referred to also as “the clients”) to intervene in main application.

[11] As an explanation why no formal application for leave to intervene was presented to the other parties or to the court at the time, the attorney stated in his affidavit as follows: *“A formal joinder application and papers were not yet prepared and the draft papers received from the clients were not in order for submission, as they were drafted by them. Counsel and I only had partial sight of those documents and were not prepared to submit them without properly considering the position”*.

[12] Accordingly, at the hearing of the main application, not only was there no application for intervention before the court, but the attorney and his counsel, despite having known the identity of their clients, refused to divulge their identities to the court. This failure or refusal also made it impossible for the applicant to answer to the supposition (and it cannot be put any higher than that), that these clients might also have been in occupation of the property. One must also bear in mind the context of the matter, namely the frustration caused by the other parties represented by Mr and Mrs Adam at the time, not only to the

applicant, but to the liquidators who had sold the property to the applicant. The oral request for leave to intervene was accordingly refused.

[13] The only change in circumstances from the oral, but fatally defective, application for leave to intervene in the main application, to the similarly oral and unsubstantiated attempt at intervention in the application for leave to appeal, is that the proposed intervening parties have now been identified.

[14] There was still no formal application for leave to intervene and there was no evidence of the proposed intervening parties' direct or substantial interest in the order, apart from their own citation as unlawful occupiers. There was no evidence, neither on oath or even otherwise, that they had been in occupation of the property, either at the time of the order of 30 January 2025 or any time thereafter. There was also no response to the allegation (on oath) that the property has been vacated since 27 February 2025.

[15] The response by attorney Jordaan to the issue is vague in the extreme. In a letter from the applicant's attorney dated 10 March 2025, Mr Jordaan, who has purportedly been acting for the proposed intervening parties since the delivery of the application for leave to appeal on 5 March 2025, was alerted to the fact that the property had been vacated on 27 February 2025. Attorney Jordaan did not respond to this letter, but stated the following in his affidavit resisting the risk of a *de bonis propriis* costs order: *"Although the efficacy of correspondence cannot be placed in question, the same was considered at the hearing of the application for leave to appeal. However, one should not place the blame for clients' instructions at the door of an attorney having done his duty to inform the clients of the legal position and the prospects of success. The prospects did not include having knowledge of all events which occurred since 27 February 2025 at which time the applicant indicates that the property is now completely vacant"*.

[16] Attorney Jordaan further sought to absolve himself by stating that he had only consulted on 22 February 2025 prior to the launching of the application for leave to appeal on 5 March 2025 but said nothing about why the letter of 10 March 2025 had not been responded to. He also failed to explain why, faced with the risk of a personal costs order, he had no further consultations with his clients since the receipt of the said letter or since the receipt of the “mootness affidavit” on 17 July 2025 or since the initial hearing of the application for leave to appeal on 23 July 2025, which had been postponed to accommodate counsel and to allow him time to deliver his affidavit regarding the issue of costs *de bonis propriis*.

[17] To sum up, there was no application for leave to intervene at the hearing of the main application and neither were the proposed intervening parties identified. There was still no application for leave to intervene at the initial or postponed hearings of the application for leave to appeal and, although the proposed intervening parties have now been identified, there was no evidence upon which a court could exercise its discretion to allow them to intervene or not. Insofar as Adv Köhn has orally and without any evidentiary backing contended that the proposed intervening parties should be allowed to intervene because of a possible interest in the matter, that oral application is refused.

[18] As already stated, I shall deal with the liability for the costs of this abortive application later but, in addition to the haphazard fashion in which this application has been moved, I need to add the following at this juncture already, which may have an impact on the scale of costs: both in the affidavit by Attorney Jordaan and in oral argument by Adv Köhn, the point was made that the proposed intervening party had too little time to prepare documents to intervene. This contention must fail due to the fact that the apparent principal motivator for intervention was Mr Adam. He had known about the main application and the impending eviction of the respondents, including SWAT CC, for more than three

months prior to the hearing of the main application. In circumstances where he had deposed to an affidavit on behalf of SWAT CC, he cannot claim that SWAT Guns House (Pty) Ltd, whom he also represents, had only a day or two to intervene. A contention that when wearing one hat he had three months' notice, but when he wears a different hat, he only had two days, is simply without foundation.

Ad the application for leave to appeal

[19] Once the application for leave to intervene, such as it was, is refused, then there is actually no application for leave to appeal before the court but, to do justice to the arguments advanced, and because the notice of application for leave to appeal invoked the refusal of the first oral application for leave to intervene as one of its grounds, I shall deal therewith.

The application for leave to appeal itself

[20] The application for leave to appeal is a rather substantive document but, as I shall indicate, none of the aspects raised therein, have any reasonable prospects of success on appeal.

[21] The first topic dealt with in the application is that of eviction of persons who occupy the property for residential, as opposed to commercial purposes. In this regard it is argued that the court had erred in having ordered the eviction of such persons without the processes of the PIE Act¹ having been followed.

[22] At the hearing of the main application, the applicant therein freely acknowledged that the prescribed PIE processes had not been followed and therefore limited its application to occupiers who fall outside the PIE Act. Accordingly, such occupiers were excluded from this court's order. There is

¹ Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

therefore no relief against which an objection or an appeal can be raised on the basis of non-compliance with the PIE Act. Arguments raised under this topic are baseless and without foundation.

[23] An ancillary argument was presented in the application for leave to appeal to the effect that there is “uncertainty” as to which occupiers were excluded from the court’s order. Again, this argument is without foundation. Mr Adam has, in his already aforementioned answering affidavit, identified those occupiers by name. Apart from the consequential absence of “uncertainty” as contended for, none of these occupiers sought leave to appeal (or intervention). In addition, these occupiers have already, without any intervention by the sheriff, left the property on 27 February 2025. If this point had any legs, it has already become moot.

[24] The next topic was that, despite the applicant being the lawfully registered owner of the property, there is a dispute pending relating to that ownership, not by the respondents, but by another party. That dispute has been dragging on since 2022 without any real pursuit thereof by the respondents or Mr Adam. This issue has sufficiently been dealt with in the main application, with reference to the additional evidence of the liquidators of the applicant’s predecessor. There is nothing new or of any substance raised in the application for leave to appeal which would indicate any reasonable prospects of success on appeal.

[25] The next topic was one where the court was accused of having breached the *audi alteram partem* rule by not having allowed unidentified intervening parties the opportunity to be joined in the main application. I have already dealt with this aspect above. There is no reasonable prospect that a court of appeal would find that undisclosed parties should have been allowed to intervene in the circumstances of this case.

[26] The next topic addressed in the notice of application for leave to appeal was that “*should annexures 8.1 and 8.2 be gleamed (sic) where the municipal property value is recorded ... the property rates are recorded to be R50 516.00 ...*”. The point is then made that “*there is no indication of a penalty and/or failure to provide and/or apply for zoning for a shooting range. These costs only relate to property rates for the owner’s account*”. This point is spurious in the extreme, to say the very least. The application only referred to the first pages of these annexures. The second pages of annexures 8.1 and 8.2 respectively, expressly indicate a calculation and imposition of penalties under the heading “non-permitted use”. This contention is therefore also without foundation.

[27] As a last-ditch attempt, it was yet again argued in the application for leave to appeal that an “extremely short time” had been given for the prospective intervening parties to deliver their application for leave to intervene. This is, again, not factually true and I have already dealt with this aspect earlier. In addition, one should note that not only had Mr Adam had sufficient time and opportunity to deliver papers, but he had not, in his answering affidavit on behalf of the respondents, identified the prospective intervening parties, including those he subsequently claimed to represent.

[28] In these circumstances, I fail to find any reasonable prospect that another court, on appeal, would find that previously undisclosed parties should have been entertained or allowed to intervene in the main application.

[29] In all of the above premises, I find that there is no reasonable prospect of success on appeal, as contemplated in section 17(1)(a)(i) of the Superior Courts Act². The purported intervening parties have also not made out any other grounds

² 10 of 2013.

as to why it would be in the interests of justice, that leave should be granted, as contemplated in section 17(1)(a)(ii) of the Superior Courts Act.

De Bonis Propriis Costs

[30] Although the proposed intervening parties have now been identified (simply by having their names added to the heading of the application for leave to appeal) they have not formally made any application to court. They have not delivered a notice to apply for leave to intervene, nor has any deponent deposed to any affidavit on their behalf.

[31] Counsel for the applicant therefore contended that a costs order cannot be granted against a non-party. This appears to be correct³.

[32] This, as already indicated, raised the issue of whether the attorney who had launched the application for leave to appeal, should not be ordered to pay the costs *de bonis propriis*.

[33] Costs *de bonis propriis* may be ordered against a person who, in a representative capacity, institutes action without reasonable prospects of success or who causes unnecessary costs to another party or due to “unreasonable conduct”⁴.

[34] In the present matter, attorney Jordaan has unreasonably caused an application for leave to appeal to be launched, served, set-down and argued without delivery of any application for intervention by his clients. This was despite the fact that he, on his own version, has had sight of affidavits (or “papers”) prepared by his clients, which he considered insufficient to place before the court, since 30 January 2025. He had, nevertheless, forged ahead, without

³ Harms, *Civil Procedure in the Supreme Court*, at B-410.

⁴ Ibid.

making any attempt to put either those or any other affidavits before court or to alert his opponents as to the basis of his clients' case.

[35] What is even more shocking, is that the attorney had proceeded to act in this fashion without the necessary powers of attorney. The only powers of attorney which Jordaan had produced as annexures to his affidavit, were signed on 9 April 2025, that is more than a month after the application for leave to appeal had already been lodged on 5 March 2025.

[36] The last curious aspect about attorney Jordaan's conduct, is that in his affidavit resisting a costs order, he repeatedly stated that he has advised his clients of the risks of pursuing their (defective) application. He alleged that, at their instance, he still proceeded to do so. In doing so, he knowingly then caused the applicant unnecessary costs by continuing with unreasonable conduct without prospects of success⁵.

[37] I find that, in these circumstance, the proper course is to order costs *de bonis propriis* against the attorney. Having regard to the manner in which these costs have been incurred, I find no reason why the applicant should proverbially be "out of pocket" for any portion its costs. I also find that the conduct of attorney Jordaan merits and award of costs on a punitive scale.

The conduct of counsel

[38] Regrettably, I have to say something about the conduct of counsel. The conduct that concerns me relates to two issues. The first is one of non-disclosure to court and the second to improperly abandoning a brief.

⁵ See *Cooper v Master of the Supreme Court* [1998] 1 All SA 158 (N).

[39] The non-disclosure came about as follows: I repeatedly asked Adv Köhn on 30 January 2025 on whose behalf he acted and on whose behalf he contended leave to intervene should be granted. He disclosed no names and, as a reason for that non-disclosure, indicated that “apparently” an affidavit existed, but which was either not yet deposed to or not yet completed.

[40] It appears now from the evidence given by his instructing attorney, that not only had “draft papers” indeed existed, but that counsel had sight of them. In these “papers”, the clients would have identified themselves or have been identifiable. It was, however, deemed by the attorney to not be “in a proper form” as it had been drafted by the clients themselves. None of this was disclosed by counsel.

[41] Of additional concern, is that, when leave to intervene was initially sought, counsel had not yet even appraised himself of the papers in the main application. Admittedly, this might have been as a result of the lateness of his brief.

[42] The second aspect which caused embarrassment to the parties and inconvenience to the court however, was the following: when the issue of *de bonis propriis* costs was raised at the initial hearing of the application for leave to appeal on 23 July 2025, Adv Köhn indicated that his attorney would need time to deliver his affidavit. The court readily granted this opportunity and then enquired when counsel would be available for the continuance of the matter. As often happens with postponements of this nature, one counsel was not available on 5 and 6 August 2025 and the other indicated that he was not available on 7 August 2025. The matter was then postponed to 8 August 2025 to suit both counsel. They both confirmed in open court that they would be available on that date. Costs were reserved.

[43] On the postponement date of 8 August 2025, counsel for the applicants in the main application indeed appeared. Adv Köhn did not appear. He had sent a junior practitioner as a “devil”, with instructions to note a judgment. Adv Köhn was apparently busy with an urgent application before another court in another division. The junior had no instructions to argue the matter or to advance any submissions regarding the issue of costs, *de bonis propriis* or otherwise.

[44] I do not deem it apposite to make any pronouncements on the possible breaches of the Code of Conduct to which advocates are bound, but I direct that a copy of this judgment be sent to the Chairperson of the Pretoria Society of Advocates for further consideration or investigation. A copy will also be sent to Adv Köhn.

Order

[45] In the premises, an order is made in the following terms:

1. The application for intervention is refused.
2. The application for leave to appeal is refused.
3. Jordaan Attorneys Inc is ordered to pay the costs of the applicant in the main application in respect of the above two applications on the scale as between attorney and client, including the costs reserved on 8 August 2025.


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Dates of Hearing: 23 July and 8 August 2025

Judgment delivered: 15 August 2025

APPEARANCES:

For the Applicants:

Adv R de Leeuw

Attorney for the Applicants:

Schabert Potgieter Inc. Attorneys,
Pretoria

For the 1st – 4th Respondent:

No appearance

For the intervening parties:

Adv M Köhn (on 23 July 2025)

Attorney for the intervening parties:

Jordaan Attorneys Inc. Pretoria