IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

Appeal case no: AR296/2024

In the matter between:

MARK TREVOR GEORGE **APPELLANT**

and

BEHEER SINGH **FIRST RESPONDENT**

MANO SINGH **SECOND RESPONDENT**

ETHEKWINI MUNICIPALITY **THIRD RESPONDENT**

Coram: P Bezuidenhout, Mngadi and Mossop JJ

Heard: 29 August 2025

Delivered: 17 October 2025

ORDER

On appeal from: KwaZulu-Natal Division of the High Court, Durban (Masipa J, sitting as the court of first instance):

1. The appeal is upheld and the judgment of Masipa J, delivered on 3 July 2023, is set aside and is replaced with the following order:

'The rule nisi issued on 27 January 2022, save for the relief claimed in paragraph 2.4, is confirmed against the first, second and third respondents.'

2. The respondents shall pay the appellant's costs, jointly and severally, the one paying, the other to be absolved, in respect of:

(a) The proceedings before Masipa J;

(b) The application to the Supreme Court of Appeal for leave to appeal; and

(c) On appeal, with the costs on appeal to include the costs of senior counsel, where so employed, and which costs may be taxed on scale C.

JUDGMENT

Mossop J (P Bezuidenhout and Mngadi JJ concurring):

Introduction

[1] On 3 July 2023, Masipa J discharged a rule nisi with costs that had been granted to the appellant against the respondents on 27 January 2022. I shall refer to the order granted on 27 January 2022 as 'the order'. An application by the appellant for leave to appeal the discharge of the order was subsequently refused by the learned judge and the appellant consequently applied to the Supreme Court of Appeal for leave to appeal, which application was granted on 27 March 2024. That appeal is now before us.

The issues

[2] Central to this appeal is the Grosvenor Hotel (the hotel), a venerable establishment located at Soldier's Way in the heart of the old central business district of the city of Durban.

[3] The respondents have presented an argument both before the court a quo and this appeal court that what this matter really concerns is the illegal supply of electricity to the hotel and the third respondent's obligation to ensure that this does not occur. The appellant, however, does not dispute that the hotel is not entitled to receive electricity for free through illegal electrical connections, nor does he dispute that the third respondent is entitled to conduct inspections to ascertain whether electricity is being unlawfully acquired by the hotel. Rather, what this appeal does concern is the

behaviour of the respondents when conducting the inspections that the third respondent, on all versions, is entitled to carry out.

[4] The appellant alleges that in carrying out inspections of the hotel's electricity supply, the respondents behaved unlawfully and in a destructive and boorish fashion, occasioning physical damage to the hotel and intimidating both his employees and his patrons. The order sought by the appellant before the court a quo, in the form of a rule *nisi*, was accordingly framed in the following terms:

'2.1 THAT the Respondents or any other person acting through or under them are hereby interdicted and restrained from threatening, insulting, intimidating, assaulting, or causing any harm physical or otherwise of whatsoever nature to the Applicant or his staff, or patrons at the Grosvenor Hotel, situated 1[...] S[...] Way, Durban, Kwa Zulu Natal.

2.2 THAT the Respondents or any other person acting through pr under them are hereby interdicted and restrained from causing any damage or harm to the Grosvenor Hotel, situated at 1[...] S[...] Way, Durban, Kwa Zulu Natal.

2.3 THAT the Respondents or any other person acting through or under them are hereby interdicted and restrained from interfering with the operation of the Grosvenor Hotel situated at 1[...] S[...] Way, Durban, Kwa Zulu Natal.

2.4 The Respondents are interdicted and restrained from entering the Grosvenor Hotel without a court order/

2.5 The First and Second Respondents to pay the costs of suit on the attorney and client scale, jointly and severally, the one paying the other to be absolved.

2.6 The Third Respondent is to pay costs in the event of it opposing the relief sought in this application.'

[5] Mr *Pillemer SC*, who appears for the appellant, at the commencement of his address to us, honed his argument down to a principal point, namely whether it had been established before the court a quo that the appellant had a reasonable apprehension of harm.[1] If that point was answered in the affirmative, so it was submitted by Mr *Pillemer*, the decision to refuse the confirmation of the interdict was incorrect and the appeal, consequently, should be allowed. The converse argument would obviously also apply: if there was no reasonable apprehension of harm, the

[1] The requirements for the granting of a final interdict are well known: a clear right, an act of interference or a reasonable apprehension of injury, and no other remedy: *Setlogelo v Setlogelo* 1914 AD 221 at 227.

appeal must fail. Whether that requirement was properly established requires a thorough consideration of the facts pleaded.

[6] Before doing so, it is appropriate to note that Mr Pillemer initially distanced himself from the relief claimed in paragraph 2.4 of the order, referred to above, and ultimately abandoned any reliance on the relief claimed in that paragraph.

The parties, ownership of the hotel and the dispute

[7] The first and second respondents are related to each other, the second respondent being the nephew of the first respondent. The first respondent is now an elderly gentleman and is apparently assisted in managing his business enterprises by his nephew.

[8] One of those business enterprises is the hotel. The first respondent is its owner but, in a transaction concluded in 2019, he let the hotel to the appellant (the lease agreement). Having taken occupation of the building through the lease agreement, the appellant continues to operate it as a hotel. However, since concluding the lease agreement, the appellant and the first respondent have fallen out with each other and the consequence has been a flurry of litigation between them, some initiated in the magistrates' court and others in the high court. The principal dispute relates to the alleged cancellation of the lease agreement by the first respondent, which is claimed by the first respondent, but which is vigorously disputed by the appellant.

[9] Before considering the relief claimed by the appellant in the court a quo, it is necessary to mention the facts that led up to the granting of the order.

The appellant's version of events

The events of 20 October 2021

[10] While the events that led to the granting of the order on 27 January 2022 had their direct origin in the events of 26 January 2022, events which I will consider shortly, there was an earlier incident that was dealt with extensively in the appellant's founding affidavit in the court a quo. This related to an incident that occurred approximately three months earlier, on 20 October 2021.

[11] I pause for a moment at this juncture to mention that the first and second respondents, who were represented by Mr *Kissoon Singh SC* and Mr *Collingwood*, strongly urged us not to pay any heed to this earlier event, arguing that the events of 20 October 2021 were a separate and distinct occurrence that had no bearing on the events of 26 January 2022. I do not lose sight of this objection, and I shall consider its validity later in this judgment, but I believe that it is at least necessary at this juncture to mention what the appellant claims occurred on 20 October 2021 in order to form an appreciation of the appellant's case and how it is framed.

[12] On 20 October 2021, a cohort of approximately 30 people, referred to hereafter as 'the first inspection team', descended upon the hotel to perform an unannounced inspection of the supply of electricity to it (the first inspection). The first inspection was notionally initiated by the third respondent, but there is evidence in the appeal record that the reason, and the impetus, for the first inspection had come from the first respondent. On 3 May 2021, an internal email of the third respondent that forms part of the appeal record revealed the allegation that:

'Owner of 16 Soldier Way [Grosvenor Hotel] reporting of illegal connections and illegal wiring in meter room, shops down stairs are also illegal connection.'

[13] Thus, it would appear that the urging for the first inspection emanated from the first respondent. The first inspection team was made up of employees of the third respondent, the first and second respondents, as well as a contingent of uniformed private security guards.

[14] The appellant alleges that the persons who conducted the first inspection behaved in an appalling fashion. On being challenged by the hotel manager upon their arrival at the hotel, the members of the first inspection team indicated that they had no identification cards, nor did they have a job card authorising their ingress into the hotel to enable them to check its electrical connections. A job card issued by the third respondent is apparently a necessary prerequisite for such an inspection to occur.

[15] The appellant, who was not present at the hotel at the time of the first inspection, was contacted telephonically by the hotel manager and advised of what was transpiring. He instructed his manager that until identification was produced, the

first inspection team was not to be permitted to access the hotel premises. Upon being told this by the hotel manager, the first inspection team promptly ignored her request that they leave the hotel premises and proceeded to enter the hotel.

[16] Apprised of this further development, the appellant contacted a manager at the third respondent, Mr Anele Sithole (Mr Sithole), and enquired whether what was occurring at the hotel was an authorised inspection sanctioned by the third respondent. Mr Sithole apparently informed the appellant that it was not an authorised inspection. The inspection was, said Mr Sithole, 'irregular'. He then called upon the appellant to provide him with the names of the persons who were part of the first inspection group.

[17] The appellant conveyed Mr Sithole's request to the hotel manager and requested her to obtain the names of those involved. One of the inspectors, a Mr Andre Roberts (Mr Roberts), then became aggressive and began shouting at the hotel manager. Mr Roberts proclaimed loudly that the third respondent had the right to inspect the hotel. The hotel manager's cellular telephone was snatched from her hand, and she was sworn at. When the person who took her cellular telephone was told that the South African Police Service (SAPS) had been summoned to attend the hotel by the hotel manager, the cellular telephone was handed back to her.

[18] The hotel apparently has its own security service provider. A single security guard was on duty when the first inspection team arrived and, on his own, he was powerless to prevent their entry into the hotel. The appellant consequently contacted the central administration of the hotel's security service provider and requested that more security officials be sent to the hotel because of what was occurring there.

[19] The first inspection team then dispersed over the multiple floors of the hotel and was accompanied when doing so by the second respondent. Some members of the first inspection team entered the hotel bar unconventionally by breaking down the door to the ladies' toilet. Upon gaining entry to the newly refurbished bar, the bar counter was damaged by them, and they ripped cables out of the electrical distribution board. A locked liquor cabinet was broken open, and some liquor was taken. Wiring that connected to the cash desk was cut. All this was done in the presence of patrons in the bar, of which there were estimated to be about 20. Every room on every floor of

the hotel was entered by the first inspection team members. Where cables were found, whether lawful or not, they were simply cut.

[20] The extra security summoned by the appellant then arrived at the hotel. The person in charge of it was Mr Tofara Maredza (Mr Maredza). He managed to round up most of the members of the first inspection team and confined them to the reception area of the hotel. The second respondent objected to this and shouted that he was the owner of the building (he is not) and proclaimed that he could 'break down' the building if he wanted to and that no one would be able to stop him if he chose to do so.

[21] Mr Maredza subsequently compiled a detailed report of what occurred. In that report, he stated that the single security guard had reported to him that there was:
'… a riot onsite of people claiming to be from the ETHEKWINI Municipality electrical department and about another 30 unidentified people forcefully entered the building.'

[22] Mr Maredza stated further that upon his arrival at the hotel, he asked for the person in charge of the first inspection team to show him her identity card. She indicated that she had left it in her motor vehicle in order to prevent her from being issued with a parking fine by the Metro Police. Two Metro Police members then arrived at the hotel. Mr Maredza asked for, and was given, their names. The Metro Police officers apparently authorised the continuation of the inspection. The first inspection team accordingly continued cutting cables and ultimately left the hotel with all the cables that they had cut.

[23] Mr Maredza noted that the second respondent was present and that he proclaimed that he was the owner of the hotel and that he was:
'… owed R1 300 000 by Grosvenor Hotel and he will do as he pleases.'

[24] Having cut all the cables that they could, the inspection team was surprised, according to Mr Maredza, by the fact that there was still a supply of electricity to the hotel. This, he explained, was because the hotel runs on solar power, a fact confirmed

by the appellant.[2] The SAPS did later arrive, Mr Maredza explained, and they recommended that the appellant lay a charge at a SAPS station. The entire inspection took about two and a half hours in all and was a harrowing ordeal, according to the appellant and his employees.

[25] The appellant theorised that the first inspection had been provoked and orchestrated by the first and second respondents. His theory was that it was an attempt by them to interfere with his running of the hotel because of the ongoing dispute over the validity of the lease agreement.

[26] As a consequence of these events, the appellant brought an urgent application before this court (the first application), interdicting the respondents from the conduct just described and of which complaint was made. The first and second respondents opposed the first application which, at this juncture, for some unexplained reason, remains unresolved.

[27] Significantly, given the later attitude adopted by them, the first and second respondents stated in their answering affidavit in the matter under appeal that:

'… we have delivered answering affidavits.'

This was a reference to the fact that they had delivered answering affidavits in the first application.

The events of 26 January 2022

[28] On 26 January 2022, another unannounced inspection occurred at the hotel, again notionally at the behest of the third respondent (the second inspection).

[29] A second inspection team presented itself at the hotel on that day and demanded access to it. Mr Roberts, who was present during the first inspection, was again present, as were the first and second respondents. Upon the arrival of the second inspection team, the appellant, who, again, was not physically present at the

[2] This is a disputed issue. While the respondents agree that there are solar panels on the roof of the hotel, they allege that there are no storage batteries to retain the electricity generated by the solar panels. Nothing turns on this and determining this dispute has no relevance to the appeal.

hotel, was now able to observe what was occurring there through cameras mounted in the hotel that were linked to his cellular telephone handset.

[30] The hotel manager again requested that the second inspection team provide her with their identification cards and proof that the second inspection was authorised by the third respondent. According to the appellant, her request was ignored, and no such identification or authorisation was presented. As a consequence, access to the hotel was again denied by the hotel manager. The second inspection team then tried to forcefully enter the hotel by attempting to break through a locked metal security gate, but they were unable to do so. They then, according to the appellant, apparently employed step ladders to scale the perimeter of the property to gain access through the windows of the hotel.

[31] When he realised that the second inspection was underway, and apparently fearing a repetition of what occurred during the first inspection, the appellant swiftly contacted his attorney and advised her of the events unfolding at the hotel. His attorney, in turn, immediately contacted the first respondent's attorney telephonically and, upon ending the telephone call, addressed an email to him recording what they had just discussed. Referring to the first and second respondents, the appellant's attorney recorded in her email that:

'Both your client and Mr Mano Singh are amongst those people, as has been captured by my client's camera footage. Not only did they try to break the gates, but they have used ladders to gain access through windows. This is unacceptable behaviour.

My client is happy to facilitate access but the unknown persons have refused to provide any identification or any notification of an alleged transgression by my client. My client will gladly facilitate entry if some identification and reason for an inspection is produced.'

[32] The appellant's attorney went on to state further that:

'It is very suspicious that the Municipality is behaving in this manner. My client is powered by solar power, as has been set out in detail in his interdict papers that was deposed to last year. That said, my client has contacted the police, his security company and he has been advised to refuse access, if there is no identification produced. Seeing as your client and mano (sic) Singh are in the thick of this invasion on my client, perhaps you can get a message to them to inform the said intruders to produce identification.'

[33] The appellant again contacted the third respondent and enquired whether what was occurring at the hotel was an authorised inspection. He was apparently advised that the third respondent had no knowledge of the second inspection that was underway.

The first and second respondents' version of events

[34] The first and second respondents have adopted a curious approach to the first inspection in their answering affidavits. They have declined to respond to the extensive allegations made about those events by the appellant in his founding affidavit, other than to tender a general denial. Their explanation for this is that the appellant is allegedly attempting:

'… quite unfairly and improperly, to utilise an earlier incident to justify the relief he claims in this matter.'

[35] Thus, the first and second respondents decided that they should:

'… specifically refrain, for reasons already set out, from dealing with each of the allegations in the paragraphs under reply, reserving the right of the first respondent and myself to do so at a later stage, in an appropriate forum, should the need to do so arise.'

[36] I cannot conceive of a more appropriate forum than the court a quo, or a more clamant need to respond, more so when what occurred at the first inspection was specifically raised and placed before that court in some detail. The first and second respondents, accordingly, did not respond to, or deal with, the allegations made by the appellant in his founding affidavit regarding the first inspection. They resolutely adhered to their view that the events of 20 October 2021 and 26 January 2022 were separate and distinct from each other and that it was their respectful submission:

'… that the earlier incident should not be considered by this Honourable Court for the relief claimed in this matter for reasons which are set out below.'

[37] As regards the second inspection, the first and second respondents, and the third respondent for that matter, deny that their conduct on that day entitles the appellant to any relief. They appear to deny that they entered the hotel as alleged by the appellant but contend that they entered an electricity meter room that is common

to the hotel and other independent, commercial enterprises situated on the ground floor of the hotel. This they achieved by allegedly going through a fast food outlet known as 'Honchos Fast Foods' (Honchos). An affidavit from a shop owner of another shop called 'Cell Shop' confirms that he observed this. There was, however, no affidavit from the proprietor of Honchos stating that this is what occurred.

The third respondent's version

[38] The third respondent highlights the scourge of electricity theft and its economic consequences in its answering affidavit. The deponent, a Mr Zola Shabalala (Mr Shabalala), confirmed that an internal job card is a prerequisite for an inspection occurring.

[39] Several inspections, other than the two inspections in October 2021 and January 2022, apparently also occurred in May 2021, and illegal electrical connections were discovered and removed. Mr Shabalala submitted, through a report prepared by a firm of consulting engineers, that the illegal connections were linked to the hotel.

[40] An affidavit was also delivered by Mr Roberts. He confirmed that he had participated in the inspections conducted at the hotel in May 2021 and that he found illegal electrical connections at that time. He also narrated his involvement in the inspections conducted in October 2021 and January 2022. He claimed to have exhibited his identity card and job card when commencing the inspections on 20 October 2021 and on 26 January 2022 respectively. He further claimed that during the course of both of those inspections, he discovered illegal electrical connections running from the electrical meter room to the hotel.

The judgment under appeal

[41] Masipa J heard the opposed application on 14 February 2023 and discharged the order in a written judgment delivered on 3 July 2023.

[42] In her judgment, the learned judge, after summarising the events of the first inspection, stated that:[3]

[3] Paragraph 16 of the judgment of the court a quo.

'The first and second respondents aver that the applicant's application is an abuse of process. This is because they aver that the applicant is using an earlier incident which occurred during October 2021 to justify the relief he seeks for an incident which occurred on 26 October 2022 and that the application should be dismissed with costs.'

[43] This is, obviously, not accurate: there was no incident on 26 October 2022. The first inspection occurred on 20 October 2021, and the second inspection occurred on 26 January 2022.

[44] There was a further obvious error in the judgment. The learned judge stated in her judgment that:

'I am of the view that the applicant has established a clear right which deserves protection, and which has been infringed by the respondents.'

[45] This was not what was intended to be said. The opposite was intended, because in her judgment in the appellant's application for leave to appeal, delivered six months later on 16 January 2024, the sentence narrated above was varied to read: 'has <u>not</u> established a clear right' (my emphasis).

[46] Masipa J made the following observation regarding the true nature of the case in her judgment:

'While the applicant suggests that his employees have been intimidated by the respondents and the crowd in the respondents' company, the case appears to be more about the illegal connection and the respondents accessing the premises to remove these.'

[47] The court a quo also found that there were fundamental disputes of fact on the papers and concluded that:

'The version of the applicant is untenable and far fetched (sic) to be accepted as true.'

[48] Finally, the court a quo found that there was an alternative remedy available to the appellant, namely the Protection from Harassment Act 17 of 2011 (the Act). Because of the existence of this remedy, the court a quo found that there was no need for the appellant to have approached the high court for relief. A final interdict could not, therefore, be granted.

Analysis

[49] In my view, the first and second respondents adopted a potentially dangerous strategy by declining to deal with the events relating to the first inspection. Their reason for doing so appears to be based upon the notion of relevance: they did not regard the events of 20 October 2021 as being relevant to the events of 26 January 2022.

[50] It is the function of the court, not the parties, to determine what is relevant and what is not. In determining whether information sought to be adduced in a dispute is sufficiently relevant, a court is required to apply a:[4]

'… blend of logic and experience lying outside the law. The law starts with this practical or common sense relevancy and then adds material to it or, more commonly, excludes material from it, the resultant being what is legally relevant and therefore admissible.'

[51] The parties may, and indeed must, make submissions on relevancy, but the court determines what is relevant. For a party to reserve the right to determine relevance for itself is to run the risk that the position adopted by the party is not consonant with the court's view of relevancy. The first and second respondents' counsel indicated before us that there was no need for the first and second respondents to deal with these allegations as they formed part of the earlier opposed motion dealing with the first inspection, which was still pending before this court.

[52] I do not share that view. In my view, the appellant was entitled to structure his application as he saw fit. It is true that in doing so, he mentioned the events of 20 October 2021 extensively. The first and second respondents, on their own version, had provided their explanation of what had occurred on that date when they acknowledged having submitted answering affidavits in the first application. Their version was, at the very least, known to the appellant, if not to the court a quo and, subsequently, to this appeal court. The first and second respondents could, in the circumstances, easily have summarised the submissions that they had made in the first application or could even have attached a copy of the answering affidavit to their answering affidavits in the second application. They did not do so. The allegations

[4] *R v Matthews and Others* 1960 (1) SA 752 (A) at 758A-B.

regarding the first inspection, and the specific allegations regarding their conduct, consequently, have not been meaningfully dealt with by the first and second respondents in the matter under appeal and must be approached with that realisation.

[53] In coming to her decision, the learned judge recognised that the appellant relied heavily on the events relating to the first inspection to make his case for relief arising out of the second inspection. Indeed, she also mentioned the events relating to the first inspection extensively in her judgment. The learned judge, however, found that in meeting the case made out by the appellant, it was reasonable for the first and second respondents not to deal with any of the allegations relating to the first inspection because they formed the subject matter of the first application. She accordingly concluded that no reliance should be placed on the facts relating to the first inspection. That, with respect, is not a view that I share, and I fear that the court erred on this point.

[54] The facts pertaining to the first inspection were the very foundation of the appellant's belief relating to the second inspection, the relief that he sought and the apprehension that he claimed to experience. The word 'apprehension' has three possible meanings. Only two relate to the issues in this matter and need to be considered. The word can mean both the awareness and understanding of an event, and it can also mean a perception or a feeling of fear that something bad may happen.[5] The source of that apprehension must, of necessity, come into the equation when determining whether an alleged apprehension existed and, if it did, whether it was well-founded and reasonable. An apprehension does not exist in the ether, untethered to, inter alia, the occurrence of events.

[55] The appellant's case was that there was a link between the two inspections. Without explaining why there was no such link, and without specifically dealing with the detailed allegations made by the appellant, the first and second respondents simply declined to deal with those allegations that they claimed were not relevant to the appellant's case. Allegations made in affidavits must be answered and if they are

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[5] 'Editors of Collins Dictionary 'Apprehension' *collinsdictionary.com* https://www.collinsdictionary.com/dictionary/english/apprehension (accessed on 15 September 2025).

said to be worthless and of no direct significance, that must be stated and explained. If the allegations made are not dealt with, they are deemed to be admitted. As the appellant stated in his replying affidavit, the first and second respondents declined to deal with the allegations relating to the first inspection at their own peril.

[56] It seems to me that there was a connection between the two inspections. They were both conducted ostensibly by the third respondent and they both involved the first and second respondents. Both inspections, notionally at least, had the same objective. Both inspections were said by the management of the third respondent to be unauthorised. In my view, there was a clear link between the two inspections, and they evidenced a continuing pattern of conduct.

[57] It is so that an interdict is intended to regulate future, and not past, conduct. It follows that the conduct complained of must be ongoing.[6] However, a past infringement of a right may constitute evidence upon which a court may conclude that the intention to continue with the same type of behaviour has been established. In *Stauffer Chemicals Chemical Products Division of Chesebrough-Ponds (Pty) Ltd v Monsanto Company*,[7] Harms J stated that:

'… the basis of an interdict is the threat, actual or implied, on the part of a defendant that he is about to do an act which is in violation of the plaintiff's right and that actual infringement is merely evidence upon which the Court implies an intention to continue in the same course.'

[58] In *Sex Worker Education and Advocacy Task Force v Minister of Safety and Security and Others*,[8] Fourie J followed the line of reasoning adopted by Harms J when he stated that:

'As I have previously mentioned, proof of a past infringement of rights may constitute evidence upon which a court may imply an intention to continue in the same course.'

[59] As the first and second respondents did not properly address the allegations relating to the first inspection, it must be accepted that the appellant established the earlier infringement of his rights. Given the fact of the occurrence of two inspections

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[6] *Maeder v Perm-Us (Proprietary) Ltd* 1939 CPD 208 at 213; *Philip Morris Inc and Another v Marlboro Shirt Co SA Ltd and Another* 1991 (2) SA 720 (A) at 735B.

[7] *Stauffer Chemicals Chemical Products Division of Chesebrough-Ponds (Pty) Ltd v Monsanto Company* 1988 (1) SA 805 (T) at 809E-F.

[8] *Sex Worker Education and Advocacy Task Force v Minister of Safety and Security and Others* 2009 (6) SA 513 (WCC) para 50. See also *Phaleng-Podile v Dovey* [2022] ZAGPJHC 656 para 46.

and the accepted fact that the third respondent is obliged to root out the unlawful supply of electricity to buildings, it is entirely probable that the third respondent will conduct further unannounced inspections of the hotel. Although predating Harms J's judgment, the following was held in *Francis v Roberts*:[9]

'The injury with which this case is concerned is not the sort of injury which can be described as an injury which "has occurred once and for all". It is the type of injury which is quite capable of repeating itself time and again. The defendant also has not, even today, given an unequivocal undertaking that she will refrain from allowing the infringement to occur again. Furthermore, from the manner in which the defendant has defied the plaintiff's rights in the past, it cannot be said with any confidence that the plaintiff's fears that she will infringe his rights again are groundless. I do not think that this is a case where there is any obligation on the plaintiff to show, on a balance of probabilities, that if he is not granted an interdict the defendant will again infringe his rights. Moreover, I draw attention to the fact that proof by a plaintiff that the injury will again occur if an interdict is not granted, is not one of the essential requisites for the granting of an interdict laid down in *Setlogelo's* case, *supra*, and even if it might be a requirement in a certain class of case, this case is certainly not one of them.'

That approach applies to the circumstances of this matter.

[60] It furthermore seems to me, in the particular circumstances of this matter, to be perfectly proper for the appellant to draw the court's attention to the conduct that he complained of in both inspections and to suggest that there was a likelihood of a repetition of such conduct, should further inspections occur. If the first and second respondents disagreed with this proposition and disagreed with the description of their conduct during the first inspection, they were required to explain why that was the case. They chose not to do so. It must therefore be accepted, and it should have been accepted by the court a quo, that there was unacceptable conduct during the first inspection. I am accordingly of the view that the occurrences of the two inspections are not separate, discrete events that ought to be viewed in isolation from each other. The approach of the court a quo on this issue was accordingly incorrect in my view.

[61] Masipa J further observed in her judgment that whilst the appellant made the case that his employees had been intimidated by the respondents, what the case was

[9] *Francis v Roberts* 1973 (1) SA 507 (RA) at 513B-E.

really about was the illegal supply of electricity to the hotel and the respondents accessing the hotel to prohibit this from occurring. With the greatest of respect, that is precisely what the matter was not about. There was no counter application by the respondents and thus the issues were the claims by the appellant and the respondents' rebuttal of his claims.

[62] In this regard, the first point to be made is that the first and second respondents have no right themselves to access the hotel without the appellant's permission to do so. They correspondingly have no right to insist on being present when inspections are conducted. They do not possess whatever rights the third respondent possesses that permits it to gain access to premises for the purpose of inspections. The first and second respondents' involvement in the two inspections was explained by the third respondent on the basis that their presence was potentially necessary in order to secure access to the hotel. That appears to me to be a contrived explanation for them being present at both inspections. A lessor has no inherent right to access his property against the wishes of a lessee in occupation of that property.[10] If the lessor does so, he trespasses and a lessee in such circumstances is entitled to protect his rights by way of an interdict.[11]

[63] The second point to be made is that the appellant never suggested that inspections should not occur. Illegal connections to the electricity supply grid are forbidden by law and the appellant concedes that the third respondent is entitled to conduct inspections to determine whether this is occurring. Indeed, as the email written by the appellant's attorney on the day of the second inspection demonstrated, the appellant was quite prepared to allow the second inspection to occur once sufficient identity and authorisation was provided.

[64] Therefore, what the matter was truly about was the way that inspections are conducted and the need for there to be civility and lawful conduct by those carrying them out. The court a quo, accordingly, misdirected itself in construing what the issues were.

[10] *Soffiantini v Mould* 1956 (4) SA 150 (E) (*Soffiantini*) at 153E.
[11] Ibid at 153F.

[65] The court a quo further found that there were disputes of fact not capable of being resolved on the papers. It is so that there is a dispute over whether illegal electrical connections were found in the hotel. Following the approach prescribed in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,[12] I must accept the third respondent's version that illegal electrical connections were found in the electricity meter room. Expert reports were put up by the third respondent claiming this to be the case, but whether there was an unlawful supply of electricity to the hotel was not the issue that the court a quo was called upon to determine. Thus, even if it is accepted that there were unlawful electrical connections found in the electricity meter room, that did not give the respondents the right to act as they did. The relief claimed in the appellant's notice of motion directed the court a quo's attention to the issues before it. What was required to be determined, simply put, was the conduct of the respondents in carrying out their inspection.

[66] As was stated in *Soffiantini*:[13]

'It is necessary to make a robust, common-sense approach to a dispute on motion as otherwise the effective functioning of the Court can be hamstrung and circumvented by the most simple and blatant stratagem. The Court must not hesitate to decide an issue of fact on affidavit merely because it may be difficult to do so. Justice can be defeated or seriously impeded and delayed by an over-fastidious approach to a dispute raised in affidavits.'

[67] The court a quo found that the appellant's version of events was untenable and far-fetched. I cannot agree with this finding. In my view, there was nothing untenable in the version of events explained by the appellant regarding both inspections. As to what happened during the first inspection, the allegations made by the appellant were not directly and specifically addressed by the first and second respondents and therefore ought to have been accepted by the court. Moreover, any doubts that the court a quo had about those events should have been assuaged by the report of Mr Maredza, which was detailed and explained exactly what had occurred. The infliction of damage to property within the hotel during the first inspection was established by photographs attached to the founding affidavit. That there was uncouth and unnecessary conduct was also established through the unchallenged

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[12] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).
[13] *Soffiantini* at 154G-H.

evidence of the appellant and other persons there present in supporting affidavits. And I can find nothing far-fetched in the telling of the events relating to the second inspection.

[68] Finally, the court a quo found that there was an alternative remedy available to the appellant which he had not considered or explored. That was the Act. Even a cursory reading of the Act reveals that it is not applicable to the facts of this case.[14] This was, therefore, not an alternative remedy available to the appellant and this finding was not supported by counsel for the first and second respondents during argument before us.

Conclusion

[69] The requirements for a final interdict are well known and were stated at the beginning of this judgment. I am of the view that the appellant established a clear right and a course of ongoing, unacceptable conduct on the part of the persons who formed part of the third respondent's inspection teams, including the first and second respondents. Everyone has the right not to be threatened, insulted, or intimidated.[15] I would have thought that this was self-evident. Citizens are entitled to be treated with respect, and they are entitled to protect the integrity of the property that they possess. That is all that the relief claimed by the appellant sought to confirm. For too long in the past, many of our citizens were treated disrespectfully, especially by the authorities. Those days should now be behind us. In my view, the appellant had a clear right to the relief that he claimed.

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[14] The Act defines harassment in s 1 as meaning:
'Directly or indirectly engaging in conduct that the respondent knows or ought to know-
(a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably-
  (i) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
  (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
  (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
(b) amounts to sexual harassment of the complainant or a related person.'

[15] *Gupta and Others v Malema and Others* [2016] ZAGPPHC 64 para 14; *Korkie and Others v Ismail and Others* [2018] ZAECPEHC 37 para 27.

[70] I also conclude that the appellant established a reasonable apprehension of injury. A reasonable apprehension of injury is one that a reasonable person might entertain on being faced with certain facts.[16] An applicant seeking a final interdict, however, does not have to establish that the injury contemplated will definitely occur. All that need be established is that it is reasonable to apprehend that injury will result. In my view, the appellant established that.

[71] As there was no alternative remedy available to the appellant, I am therefore of the view that the appeal should be upheld and that the court a quo erred in declining to confirm the rule nisi. However, as mentioned earlier, the relief sought in paragraph 2.4 of the order sought by the appellant was abandoned before us by Mr *Pillemer*. That shall be reflected in the order that I now propose.

Costs

[72] I can conceive of no reason to depart from the principle that the successful party should have his costs. Something, however, needs to be said about the scale of the costs to be awarded. The proceedings before Masipa J were concluded before the introduction of Uniform rule 67A and that rule is of no application to proceedings before the Supreme Court of Appeal. However, by the time that the appeal came before us, rule 67A was in place. In my view, the costs of the appeal should therefore include the costs of senior counsel where so employed and should be permitted to be taxed on scale C.

Order

[73] I accordingly propose the following order:

1. The appeal is upheld and the judgment of Masipa J, delivered on 3 July 2023, is set aside and is replaced with the following order:

'The rule nisi issued on 27 January 2022, save for the relief claimed in paragraph 2.4, is confirmed against the first, second and third respondents.'

2. The respondents shall pay the appellant's costs, jointly and severally, the one paying, the other to be absolved, in respect of:

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[16] *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co Ltd and Another* 1961 (2) SA 505 (W) at 518A.

(a) The proceedings before Masipa J;

(b) The application to the Supreme Court of Appeal for leave to appeal; and

(c) On appeal, with the costs on appeal to include the costs of senior counsel, where so employed, and which costs may be taxed on scale C.

MOSSOP J

I agree:

P BEZUIDENHOUT J

I agree:

MNGADI J

APPEARANCES

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