



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MTHATHA**

CASE NO: 3536/2024

In the matter between:

MANDOBANDILE MDLAZI

First Applicant

NONENE GIGI

Second Applicant

and

KT MCHASA SECONDARY SCHOOL

First Respondent

NTOMBEKHAYA QUWE

Second Respondent

JUDGMENT

PITT AJ

Introduction

[1] This is an urgent application in which the applicants seek the following relief:

PART A

- “1. *That the applicants be and are hereby granted leave to bring this application as one of urgency dispensing with normal processes in terms of rule 6(12) of the Uniform Rules of Court.*
2. *That the applicants’ failure to afford the respondent a 72 hours’ notice of proceedings in compliance with the General Law Amendment Act be and is hereby condoned, should it be said to be applicable.*
3. *That pending the finalisation of the relief sought in Part **B** of the Notice of Motion an order along the following lines be made:*
 - 3.1 *That the applicants be and are hereby granted leave to intervene as applicants in this matter and respondents in the eviction proceedings.*
 - 3.2 *That the operation and/or execution of the court order issued on 30 September 2025 be and is hereby suspended and/or stayed.*
 - 3.3 *That the respondents be and are hereby interdicted and/or restrained from demolishing the applicants’ homes, dwellings and/or structures built near KT Mchasa Secondary School, in the district of Tsolo.*
 - 3.4 *That the respondents be directed to pay costs only in the event of opposition otherwise costs thereof should be costs in **Part B**.*
 - 3.5 *That the court grants such further and/or alternate relief as may be required by the interests of justice.”*

[2] The relief sought in part A as mentioned above is to be followed by part B, in which the applicants seek to launch proceedings for rescission, variation or setting aside of the order of 30 September 2025. When approached by the applicant on 13 October 2025, the court issued a directive that the applicants must serve the papers on the respondents on or before 10h00 on 14 October 2025, and that the matter will be heard at 1530 on 14 October 2025. The

respondents oppose the application and filed an answering affidavit. The applicants did not file a replying affidavit.

[3] Briefly, the deponent to the founding affidavit, Mr Madobandile Mdlazi (Mr Mdlazi”), sketches as background the following facts. He is the grandson of the late Magigaba and Nokiki Mdlazi, who died a few decades ago. While they were alive, these grandparents were married and were given permission to occupy the land in question by the then Department of the Interior for the Transkei Government. The land was allotment number 426, and it measures 4 acres. Various other families were also given permission to occupy different pieces of land in the same vicinity. A few decades later, meetings were held between the community members and the Department in which it was resolved that there was a need for the establishment of a government school for the benefit of their children. A resolution was taken to allocate a piece of land for the establishment of a school. Mr Mdlazi’s family was one of the families which agreed to release portions of their land for the establishment of the school, giving rise to the KT Mchasa School, the first respondent. Afterwards, the land was earmarked and later fenced, then the school was built within the boundary of the fenced yard. The fencing still exists and has not been damaged nor encroached upon.

[4] During 2020, the Mdlazi family allocated a portion of their land to the second applicant, Nonene Gigi (“Ms Nogigi”) after having followed all the processes and complying with notifying the traditional authority, which sanctioned and approved the allocation. In the recent years, the school principal and a member of the School Governing Body (SGB) started having ‘*some qualms with the Mdlazi family*’. They contended that the homes of the

applicants which had been there for ages before the establishment of the school were built on the school premises. Mr Mdlazi denied any wrongdoing and contended that the school premises exist independently from their homes. He also alleged that the Depart of Education built the school from a portion of the land donated by their forefathers. Also, he contends that the Department should be involved to resolve the disputes relating to the borders as they are aware thereof, and that a meeting should be held with the community and traditional authority to resolve the dispute. This did not occur, and instead the school instituted proceedings for their eviction and demolition of their homes.

[5] Mr Mdlazi alleges further that on 11 October 2025 he and his wife arrived home from North West Province and found a document on the dressing table. Upon enquiry, he was informed that the document was left with his daughter on 1 October 2025 by a person said to have been sent by the court. He read the document and found it to direct their eviction and demolition of his home. He consulted his legal representatives and consulted with them on 13 October 2025, where it was brought to his attention that it was actually a court order for his eviction and demolition of his home.

[6] *Mr Matotie* submitted on behalf of the applicants that it was not just and equitable to grant the eviction and demolition order because:

- a. The applicants never received notice of the proceedings.
- b. The applicants were never served with a notice envisaged in section 4(2) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 (“the Act”), informing them of their rights and informing them that an application for their eviction would serve for hearing on 30 September 2025.

- c. The respondents did not have standing to institute eviction proceedings as they are not the owners of the land and no connection with the land occupied by them. Even if there was a connection, ownership rights would vest with the Department of Education and not with the respondents.
- d. The respondents did not have a right nor a power to institute eviction and demolition proceedings, but the executive authority of the Department of Education would have such powers. Therefore, the Member of the Executive Council of the Department of Education (“the MEC”) would have the powers. The school is a public school under the authority of the Department of Education.
- e. The second respondent, Ntombekhaya Quwe, who is described in the papers as the chairperson of the SGB of the school, did not have any capacity to institute the proceedings on behalf of the Department of Education and on behalf of the school. The same applied to the SGB in terms of authorising Ms Quwe to represent the Department of Education and the school.
- f. The Department of Land Affairs and Agrarian Reform was not joined as a party to the proceedings, especially because this Department knows the borders of the land which belongs to the Department, and this would help to resolve the land disputes in the area.
- g. Although cited as a party, the local municipality was not asked to avail accommodation to the occupiers who might become homeless after their homes are demolished. It was also not required to issue a report on the personal circumstances of the occupiers, including their capacity to obtain alternative land or accommodation consequent upon the

demolition of their homes. The role of municipalities in eviction proceedings is to prevent homelessness.

[7] Mr Mdlazi alleges that if they had received notice of the application, they would have attended court and opposed the granting of the eviction and demolition order sought against them. He alleges further that the land in question is occupied by various persons who live there with their children, and that they have no alternative accommodation should they be evicted from their homes, which is their only place of residence. The same applied to Ms Gigi should she become homeless.

[8] The applicants also allege that the respondents did not make out a case for the order of eviction, and that the order was granted in error because the court was furnished with incorrect information. Had the court been provided with the above facts, it would not have granted the eviction and demolition order. Mr Mdlazi also contends that they were not in wilful default by not opposing the proceedings. They were not served with the notice of the proceedings. *Mr Matotie* pointed the court to the notice of set down for the proceedings, which was only served on NZ Mtshabe Inc. The applicants in this application were not served with the papers. Rather, there is nothing that suggests that they were served with the papers. This supports their contention that had they been aware of the application on 30 September 2025, they certainly would have opposed the application.

[9] *Mr Mngunyana*, on behalf of the respondents, flatly disagreed with the last submissions and argued that the main application, which gave rise to these proceedings, is not before court and does not form part of this application. He even argued that he does not have those papers in his brief and that the court

should not have any regard to the papers in the main application. The present application bears the same case number as the main application in which the eviction and demolition of the applicants' property was ordered. The applicants mention in their papers that this application is for the stay of the order obtained in the main application. *Mr Mngunyana* also complained that the applicants did not make specific reference to the papers in the main application in this application, and therefore the papers in the main application must be disregarded. The file relating to the main application is the same as the interlocutory application, which the contents of the main application were a part of. The court therefore does not understand nor accept that Counsel was briefed to oppose an application in which he appeared in the main application, which bears the same case number as the interlocutory application without the papers in the main application.

[10] In support of the issue of urgency, *Mr Matotie* submitted that the matter was urgent because the order dated 30 September 2025 specified that the applicants must demolish any structures constructed on the property within ten days of the court order being granted. *Mr Mngunyana* argued differently that the matter is not urgent and that the applicants created their own urgency.

[11] *Mr Mngunyana* referred the court to *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd*¹, an unreported judgment of the South Gauteng Division. In this case, it was held that it is natural to see harm as the equivalent of urgency, since without harm or some threat there would never be a need to bring an urgent application. He contended further that in that case, it was held that the notions of harm and lack of substantial redress in due course

¹ [2011] ZAGPJHC 196.

should be kept separate, and the test for urgency should not be obscured by a confusion between the two. He pointed out further that it was also held more specifically that it is important to note that the rules require absence of substantial redress, which is not the equivalent to the irreparable harm that is required before the granting of an interim relief. The court held that:

“It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case.”

[12] The court accepts what was submitted in respect of the above case. However, it finds application in favour of the applicants. The facts which the applicants rely on for urgency support the urgency of the relief they seek. According to the applicants, the urgency was informed by the ten-day period within which they were to demolish their structures on the land in question after the respondents obtained the order on 30 September 2025. If the applicants had approached the court in due course on the normal role of cases, the ten-day period within which they had to demolish their homes would have come and gone, and they would have been homeless and/or in contempt of the order.

[13] While making their respective submissions, Counsel for the respondents indicated that had the applicants approached them subsequent to the order being granted on 30 September 2025, instead of coming to court on this application, they may have entertained an indulgence to stay the eviction and demolishing of the houses to a further date to accommodate the applicants. *Mr Matotie* then asked the question why the respondents opposed the application if that was their attitude. This suggests an element of compromise from the respondents on the terms of the eviction and demolition order.

[14] The test for intervening as a party is, according to *Ansari and Another v Barakat and Others*² as follows:

“[9] A party seeking to intervene in proceedings can either do so in terms of rule 12 of the Rules of Court, or in terms of the common law³.

[10] A party seeking leave to intervene must prove that:

- (a) he or she has a direct and substantial interest in the subject matter of the litigation which could be prejudiced by the judgment of the court; and
- (b) that the application is made seriously and is not frivolous, and that the allegations made by the applicant to constitute a *prima facie* defence to the relief sought in the main application⁴.

The test to be applied in determining whether or not a *bona fide* defence to the main application has been demonstrated is the same as the one that applies to warding off summary judgment.⁵

[15] With regards to the 72-hour notice, it was conceded by both parties that since there is no nominal respondent before the court by way of the MEC for Education or any other stay organ, there was no need to consider this relief. The court therefore does not pronounce on this relief.

² (5530/2011) [2012] ZAKZDHC 1 (16 January 2012).

³ *Minister of Local Government v Sizwe Development* 1991 (1) SA 677 (TkGB) at 678 H; *Ex parte Sudurhavid: In re Namibia Marine Resources v Ferina (Pty) Limited* 1993 (SA) 737 (NmHC) at 741 g; *Shapiro v SA Recording Rights Association Limited (Galeta Intervening)* 2008 (4) SA 145 (W) at 150 a -b para 10 and 11.

⁴ *Registrar of Banks v Regal Treasury Private Bank Limited (under curatorship) and Another (Regal Treasury Bank Holdings Limited Intervening)* 2004 (3) SA 560 W (at 573 e-f). *Registrar of Banks v Regal Treasury Private Bank Limited (under curatorship) and Another (Regal Treasury Bank Holdings Limited Intervening)* 2004 (3) SA 560 W (at 573 e-f).

⁵ *Ex parte Moosa: In re Hassim v Harrop-Allin* 1974 (4) SA 412 T (at 416 G-H).

[16] Although the relief of the applicants intervening as parties in this application, and there being no express opposition thereto, was not dealt with in argument, I find that the facts put forward by the applicants support this relief. Also, having heard the parties and having read the papers, I am of the view that the applicants have on a balance of probabilities met the requirements for them to intervene as applicants in this application and as respondents in the main application. The applicants have also made out a case for the stay of the operation of the court order of 30 September 2025. The applicants have also shown on a balance of probabilities that they may well have a *bona fide* defence to the main application. That should be determined in the rescission application, which is part B.

[17] Mr Mdlazi identified himself in the founding affidavit as one of the persons who is ‘*in occupation of my home established near KT Mchasa Secondary School together with my wife and four children who are persons in lawful occupation and possession of pieces of land situated near or adjacent to KT Mchasa SS.*’ He further described himself and his family as persons who will be adversely affected by the ramifications of eviction and demolition in the outcome of these proceedings. In the main application, there are no persons identified by the respondents. *Mr Matotie* argued that the respondents’ case in the main application is defective in that it refers to the first respondent in the main application as being unidentified. This is despite reference being made in the founding affidavit in the main application to one Madiba. In defence, *Mr Mngunyana* submitted that the respondents were not sure that this was the proper name of this Madiba, and that he was therefore still unidentifiable by this name.

[18] On the version of the applicants, they stand to lose their only places of residence and will be left homeless if the order in the main application is not stayed. They also allege that they have children who reside with them on the land in question. Further, the applicants do not have alternate accommodation should their homes be demolished and they be evicted from the property. Our Constitution guarantees every person the right to housing. This includes the right not to be evicted from one's home or residence. Section 4(2) of the PIE Act also provides for certain constitutional prerogatives which a court must consider when faced with an application for eviction.

[19] *Mr Matotie* submitted that the section 4(2) notice which the respondents placed reliance on for the order of 30 September 2025 did not comply with the provisions of section 4(2) in this regard. *Mr Mngunyana* was at pains to convince the court otherwise, even though he did not want to refer to the actual notice in the main application. This suggests that the applicants may have a triable case in the main application, and that the respondents will have to prove their case after it has been fully ventilated. The court finds this a very important aspect not to be overlooked when considering the rights of the applicants to being heard, especially when their constitutional right to housing is affected. It is in the interests of justice that this is considered. For these reasons, the application succeeds.

Order

Accordingly, the court makes the following interim order:

1. The applicants are granted leave to bring the application as one of urgency.

2. The applicants are granted leave to intervene as applicants in this matter and as respondents in the eviction proceedings.
3. The operation and/or execution of the court order issued on 30 September 2025 is hereby suspended and/or stayed.
4. The respondents are interdicted and/or restrained from demolishing the applicants' homes, dwellings and/or structures built near KT Mchasa Secondary School in the district of Tsolo.
5. The costs of the application will be costs in part B of the application.

DV PITT

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicant : *Adv Matotie*

Instructed by : SR MHLAWULI &
ASSOCIATES

MTHATHA

Counsel for the Respondents : *Adv Mngunyana*

Instructed by : L MTHAMBO ATTORNEYS

MTHATHA

Heard on : 16 OCTOBER 2025

Date judgment delivered : 23 OCTOBER 2025