



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: A23 /2025

In the matter between:

CITY OF CAPE TOWN

Appellant

and

JOHANNES MICHAEL VAN ROOYEN

First Respondent

**ALL PERSONS WHO ARE ATTEMPTING TO
UNLAWFULLY OCCUPY ERVEN 1212,1213,
1215 AND 21168 MITCHELL'S PLAIN**

Second Respondent

Neutral Citation: *City of Cape Town v Johannes Rooyen and Another* (Case No A23/2025) ZAWCHC... (30 October 2025)

Corum: DA SILVA J, LEKHULENI J et NJOKWENI AJ

Heard: 25 July 2025

Delivered Electronically on: 31 October 2025

Summary: Appeal- Appellant applied for an *ex parte* anti-intrusion interdict against the first and second respondents. Second respondents are ‘persons unknown’. Interim interdict granted against both respondents. Court a quo dismissing application on return date, finding, inter alia, that the interdict is too wide and is against an unknown class of persons, and that the City had carried out an eviction – Appeal Court finding that the second respondent is an identifiable group that is ascertainable. Appeal upheld - Court a quo order set aside. The appellant did not carry out an eviction. Interim order confirmed.

JUDGMENT

LEKHULENI J: (DA SILVA-SALIE J et NJOKWENI AJ concurring)

1. Introduction

[1] This is an appeal against the whole judgment and order handed down by the Nthambeleni AJ, on 15 January 2024, in which the Court dismissed an application to make an anti-intrusion interim interdict (rule nisi) final on the return date. In dismissing the interim order, the Court made extensive findings that significantly impact the appellant and all other landowners' ability to obtain anti-land-intrusion interdicts.

[2] Aggrieved by that decision, on 12 April 2024, the appellant (‘the City’) applied for leave to appeal the whole judgment and order of the Court a quo to the full Court of this division. The Court a quo dismissed the appellant’s application for leave to appeal on 31 July 2024, finding that there were no prospects of success on appeal. The Court a quo also found that the appellant failed to meet the requirements for a final interdict. The Court dismissed the application for leave to appeal with costs, including counsel's costs on a party-and-party scale. Discontented by this order, the City petitioned the Supreme Court of Appeal (‘the SCA’) in terms of section 17(2)(b)

of the Superior Courts Act 10 of 2013. On 15 October 2021, the SCA granted the City leave to appeal to the full court of this division.

Factual background

[3] To fully comprehend the pertinent issues that must be determined in this appeal and the view I take in this matter; it is necessary to set out in brief the factual background which underpins the reasons for the order that I propose hereunder. On Saturday, 5 September 2022, at approximately 08h30 in the morning, the Anti-Land Invasion Unit of the City (ALIU) received a call from its emergency call centre indicating that a land invasion was underway at the City's property in respect of Erf 1212, 1213, 21168 in Mitchell's Plain. The ALIU officers also received a call from the local Ward Councillor, Elton Jansen, reporting the ongoing land intrusion.

[4] The ALIU officers were promptly dispatched to the properties. Upon their arrival, they found four partially built and unoccupied structures. They dismantled the incomplete structures in question. The unlawful intruders identified themselves to the ALIU officers as the Khoi-San group, and their leader was identified as Mr Van Rooyen, the first respondent. The ALIU officers observed approximately 30 to 40 people at the property. According to the City, the four incomplete structures that were dismantled were vacant and contained no personal belongings. The structures were dismantled in a manner that allowed for the preservation and reuse of the building materials. The City emphasised that no person was evicted from their homes nor were homes demolished.

[5] The dismantled building materials were successfully removed from Erf 1212, the site from which the structures were originally built. They were kept in safe custody in the storage facility of the City's ALIU. After the incomplete structures were removed, some of the invaders, following the first respondent's direction, moved into two dilapidated buildings on the property. These buildings appear to be abandoned homes. Occupiers in these structures were not evicted. The City stated that while the ALIU officials were still at the scene, approximately at 10h00am, the first respondent made a phone call wherein he indicated that they needed to get every Khoi-San

person in Cape Town to descend on Erf 1212 and occupy all vacant erven surrounding Erf 1212. The surrounding vacant erven owned by the City are described as Erf 1213, 1215, and 21168.

[6] Approximately 30 minutes later, another 30 people arrived at the site. Given the increased number of potential occupiers who subsequently arrived, the City called for additional assistance, particularly from Metro Police TRU, the unit specialising in crowd management.

[7] On the same day, the City approached the Court urgently. It sought an *ex parte* interim interdict, *inter alia*, to restrain the respondents from unlawfully occupying Erfs 1212, 1213, 1215 and 21168 Mitchells' Plain. On 5 March 2022, a rule nisi was granted by Justice Mangcu-Lockwood restraining and interdicting the respondents from unlawfully occupying, erecting, or completing structures at Erf 1212, 1213, 1215, and 21168 in Mitchell's Plain, with the return date set for 25 May 2022. In addition, the Court ordered that its order shall not be construed as an eviction order and shall not entitle the City to demolish any occupied structures at the properties as at the date of the order, or to use the provisions of this order for evicting occupiers under the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act').

[8] The Court granted substituted service of the order. The Court ordered that service of the order shall be effected on the respondents by the Sheriff by reading the contents of the order by a loudhailer at each of the erven making up the properties in English and Afrikaans. The Court also ordered that the Sheriff must serve the order by affixing a copy of the order in English and Afrikaans to notice boards that the applicant or the Sheriff will erect on each erven making up the properties. In addition, the Court directed that the order be served by the Sheriff or by the applicant delivering it on the SAPS at the nearest Police Station having jurisdiction over the properties, namely the Strandfontein Police Station, who shall serve it upon the respondents. The Court also ordered that the respondent may anticipate the return date with 48 hours' written notice to the applicant's attorneys of record.

[9] The application was accordingly served, and the rule nisi was subsequently extended on three occasions. Subsequent thereto, on 12 April 2022, the respondent instituted an urgent *mandament van spolie* application and anticipated the interim order. The application was set down for hearing on 14 April 2022. The crux of the respondents' application was that they had been unlawfully evicted from the property and sought an order restoring their possession of the property. The respondents claimed that they were unlawfully evicted from Erf 1212 and contested the assertion that the structures on the property they occupied were partially built. The basis of the dispute was that the respondents had been residing in these structures for 6 weeks when they were evicted and the structures dismantled. The respondents also alleged that they received consent from a counsellor in the area to reside on that property.

[10] The City opposed the respondents' application and denied that the respondents were in peaceful and undisturbed possession of the property for a period of six weeks, as alleged, or that they were in possession of the property at all. The City asserted that it patrolled the area biweekly. The first time that the City received any complaint in respect of the property was on the morning of 5 March 2022. Moreover, the City alleged that the demolished structures were partially built and unoccupied. Given the dispute raised by the respondents in this regard, the City attached photographs to dispel the respondents' assertions. According to the City, the photographs depict none of the demolished structures as capable of human habitation, as they were evidently under construction. It was, accordingly, the City's position that no person had been evicted from the property.

[11] The application was heard on 14 April 2022 by Carter AJ. Carter AJ gave an *ex tempore* judgment and dismissed the respondents' *mandament van spolie* application. Carter AJ found that the respondents had not made out a proper case for peaceful and undisturbed possession of the property. The Court also found that the City had not unlawfully despoiled the respondents through their conduct on 5 March 2022. The Court also ordered the City to return the building materials for the demolished structures to the respondents by 19 April 2022.

[12] After an exchange of several correspondence between the City and the respondents' legal representatives, the building materials of the respondents were

eventually delivered to the respondents on 25 April 2022. On 10 May 2022, the ALIU officers of the City conducted a scheduled walkabout at the property. They noted a renewed attempt by the respondents to invade the property, notwithstanding the interim interdict. The respondents used the building material which had been delivered to them on 25 April 2022. The respondents attempted to repair the roof of a second dilapidated, unoccupied building using the building materials on site.

[13] The City avers that the ALIU officers removed the material used to repair the roof of the second dilapidated building and, in doing so, acted in accordance with the interim order it had secured in respect of the property. No persons were removed from the premises, and the respondents continued to reside in the dilapidated building.

[14] Subsequent thereto, certain of the respondents who had been identified as occupiers in the *mandament van spolie* application, namely Michelle Hugus, Miche Hughes, Shanaas Adams and Andiewine Merino, together with eight other unknown applicants, instituted a second urgent application. The foregoing application was set down for hearing before Honourable Binns-Ward J on 24 May 2022. In that application, the applicants sought a broad range of relief against several respondents. The respondent sought a second spoliation order regarding the events that occurred on 10 May 2022. At the hearing of the referenced application, Binns-Ward J struck the matter from the roll for lack of urgency. The main application eventually appeared before Nthambeleni AJ, who gave judgment on 15 January 2024, dismissing the City's application with costs and found that the City had carried out an eviction.

Issues to be decided

[15] From the judgment of the Court a quo and from the respective heads of arguments of the parties, this Court is enjoined to determine five disputed issues, namely:

15.1 Whether the Court a quo was correct in its finding that the City conducted an eviction of the respondents on 5 March 2022.

15.2 Whether anti-land invasion interdicts are impermissible in law?

15.3 Whether the City can obtain an anti-land invasion interdict against one named and the other unnamed persons attempting to unlawfully occupy land that it owns?

15.4 Whether the Court a quo was correct in its finding that the City failed to meet the requirements for a final interdict?

15.5 Whether the Court a quo was correct in finding that the City failed to place all material facts before the Court that granted the *ex-parte* application on 5 March 2022?

Discussion

[16] For completeness, I propose to deal with these disputed issues in a sequential manner.

Did the City carry out an eviction of the respondents on 5 March 2022?

[17] As foreshadowed above, the Court a quo found that the City had carried out an eviction. The Court held that since it had found that an eviction had been carried out, it was incumbent upon the City to have placed before the Court hearing the *ex parte* application, that it had carried out an eviction. Ms Pillay, counsel for the appellant, submitted that there are insurmountable difficulties with this finding. Ms Pillay argued that the City's case before the Court a quo was to secure a final order in respect of a rule nisi granted to it, restraining the respondents from intruding on the properties.

[18] Counsel submitted that it was common cause that the persons who attempted to construct structures on the properties were not removed from the properties but continued to reside in the dilapidated building on the properties. Ms Pillay further submitted that, in the circumstances, it could not be found that the City had carried out an eviction. Ms Pillay further contended that the lower court committed two critical errors: it failed to consider the evidence provided by the City and overlooked a binding order previously issued by this court, as articulated by Carter AJ in the spoliation application.

[19] Mr Murphy, on the other hand, the legal representative of the respondents, submitted that the City evicted four families in Erf 1212 on 05 March 2022. Mr Murphy argued that, from the photographs provided by the City, if considered reasonably, demonstrate that these homes were not being erected on the morning of 5 March 2022. Mr Murphy argued that the City did not engage with any of the families, generally or regarding alternative accommodation, whether temporary or emergency. Counsel submitted that, from the objective facts, there was an eviction without a Court order.

[20] According to Mr Murphy, the City proceeded with the eviction of the families and subsequently requested an *ex-parte* interim order from the urgent Court. In this request, the families and the first respondent were characterised as violent invaders posing a threat to the property in its entirety. The City approached the Court without fully disclosing the eviction. Mr Murphy argued that the Court a quo was correct in its finding in this regard.

[21] From the objective facts, it is common cause that the City sought to secure a final order in respect of a rule nisi granted to prevent the respondents from intruding upon the City's property. Furthermore, it is common cause that the people who attempted to erect structures upon the erven in question were not removed from the property but continue to reside in the dilapidated building on the property. The City's version was that it removed incomplete and unoccupied structures, and that the respondents immediately thereafter moved and occupied an already occupied, dilapidated building on the same property. The City asserted that those currently occupying the dilapidated building will be cited in a separate eviction application which complies with the PIE Act.

[22] If the respondents' version is accepted that they were evicted from the premises, it follows that their remedy would have been to seek restitution. It is common cause that on 12 April 2022, the respondents anticipated the rule nisi issued by the Court on 5 March 2022 and launched a *mandament van spolie* application seeking restitution. The respondents complained that they were unlawfully evicted from the property. Carter AJ determined that the respondents did

not establish that they were in peaceful and undisturbed possession of the property. Their application that they were despoiled was dismissed.

[23] Additionally, Carter AJ dismissed the respondent's *mandament van spolie* application on the basis that the respondents had not made out a proper case that they were in peaceful and undisturbed possession of the property. Simply put, Carter AJ found that the respondents were not unlawfully evicted. Notwithstanding, the Court ordered the return of the materials to the respondents. The respondents did not appeal against that decision.

[24] Clearly, at the time that the application for the confirmation of the rule nisi was heard by the Court a quo, the question whether there had been an unlawful despoilment of the property had already been determined by Carter AJ. It was therefore impermissible for the Court a quo to revisit that issue. The Court a quo was bound by Carter AJ's decision. In short, the issue relating to the alleged eviction was *res judicata* and could not be purged by the Court a quo. In my view, the Court a quo erred in finding that the City carried out an eviction.

[25] The question of whether there had been any unlawful eviction or despoilment had been determined when the matter was anticipated. The respondents' right not to be evicted without a Court order was decided by Carter AJ, who found that they were not in actual possession of the land in question. In other words, at the time when the respondents were allegedly removed from Erf 1212 without a Court order, they did not occupy the property in a manner contemplated by PIE. They therefore did not enjoy the protection accorded under that Act.

[26] The Court a quo was bound by Carter AJ's decision and had only to determine whether a final interdict restraining the respondents from invading the appellant's property should be granted. Even if I were to accept the respondents' version that there was an eviction, such a finding, in my view, is not borne out by the objective facts. It must be stressed that from both affidavits of the City and the respondents, it was common cause that the people who attempted to construct structures on the impugned properties were not removed from the properties in question but continued to reside in the dilapidated building on the City's property.

[27] Despite the dismissal of the *mandament van spolie* application, the respondents who sought to construct structures on the property remain in residence within the dilapidated buildings on the site. The City explained in its *ex-parte* application that it had removed structures which were unoccupied and in the process of being constructed and some of the people who we're intending to occupy the property moved into the two dilapidated buildings on the property. No one was evicted from their home nor were any homes demolished. Accordingly, it could not be found that an eviction had been carried out by the City. In my view, the finding of the Court a quo that an eviction occurred is not borne out by the objective facts and must be interfered with.

Whether anti-land invasion interdicts are impermissible in law?

[28] The Court a quo found that anti-land-invasion interdicts are impermissible, as they authorise arbitrary evictions without Court oversight going forward and would usurp the powers of the Courts. The Court also found that such orders abdicate the constitutionally ordained role of the Courts in deciding when evictions should happen and if so, how they are to be regulated within the confines of the law. The Court also found that such interdicts permit the City to decide when and how to remove people from the property, and that such orders transgress the basic principles of the rule of law.

[29] It is common cause that the City's ownership of the impugned properties is not in dispute. The respondents did not challenge the City's ownership. The City has a right to protect its properties. A landowner is entitled to protect its property from being intruded upon by way of seeking an interdict. The interdict dismissed by the Court a quo was intended to protect the clear right of ownership that vests in the City. The City contended that the respondents' conduct, if allowed to continue unabated and in the absence of a Court order, will render it unable to utilise the properties in furtherance of its mandate, *inter alia*, to provide housing to its Citizens.

[30] Significantly, in his sworn evidence before the South African Human Rights Commission, the first respondent stated that they are repossessing land for their

people (the Khoi-San community). The first respondent further noted that on 5 March 2022, they repossessed a piece of land in Strandfontein to accommodate about 12 families who were completely destitute and had nothing. The repossession of the land in question was Erf 1212, 1213. Mr Van Rooyen also stated that he was given a mandate to get land for his people and that is what he did.

[31] This repossession of land led the City to apply for an anti-intrusion interdict against the respondents. The first respondent seems to proceed from the assumption that these erven belong to the Khoi-San people by virtue of an alleged historical dispossession. I appreciate the respondents' plight; however, if the respondents are allowed to continue repossessing land as they do, they are likely to slow down, or even halt, the orderly planning and development of housing and the provision of other services that the City is constitutionally mandated to provide.

[32] The City has a constitutional obligation to realise housing rights progressively, subject to available resources. Self-help of this nature cannot be tolerated. The City has a responsibility to identify beneficiaries for the housing opportunities in a fair and equitable manner in accordance with its allocation.

[33] Importantly, for as long as the City's properties remain threatened by unlawful occupation, the City's plans to develop the area and realise the rights to housing for its citizens are accordingly at risk. The Court a quo's finding that interdicts of this nature usurp the Court's power is erroneous and unsustainable. Anti-intrusion interdicts are granted by the Courts exercising judicial oversight in deserving cases. Such interdicts aim to prevent further unlawful invasions. Crucially, such interdicts can only be granted where the requirements of a final interdict have been established.

[34] The order that the City sought did not authorise evictions. It explicitly prohibited the City from evicting any person or demolishing any occupied structures after the order was granted. The purpose of the order was to protect a constitutionally entrenched right to property. The Court's power is not usurped by granting an anti-land intrusion interdict, nor does granting such an order undermine constitutional protection. The Court a quo's finding that the order the City's sought

empowered it to evict without judicial oversight is completely misplaced and untenable. The City approached the Court to protect its rights. Ownership of land is protected by several common law remedies available to owners, including a prohibitory interdict, which the City sought.

[35] In *Chief Lesapo v Northwest Agricultural Bank and Another*,¹ Mokgoro J pointed to some of the consequences that section 34 and the rule of law seek to avoid when she stated:

‘The right of access to Court is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalized mechanism to resolve disputes, without resorting to self-help. The right of access to Court is a bulwark against vigilantism, and the chaos and anarchy which it causes. Construct in this context of the rule of law and the principle against self-help in particular, access to Court is indeed a cardinal importance. As a result, very powerful considerations will be required for its limitation to be reasonable and justifiable’ (footnote omitted)

[36] Furthermore, the effect of the Court a quo’s finding that there is a fundamental conceptual, legal and constitutional difficulty with anti-land-intrusion interdicts effectively precludes any landowner from seeking to protect its property from intrusion by way of an interdict. This finding, with respect, is at variance with the right envisaged in section 25, read with section 34, of the Constitution. In the absence of an anti-land invasion interdict, the owner will not have recourse against the arbitrary deprivation of his property. If the City is denied the right to approach the Courts for relief in similar circumstances, it would be denied the rights of access to the Court as envisaged in the Constitution. Expressed differently, the City, as the owner of the land, has the right to free and undisturbed possession and not to be deprived of possession without a Court order.²

[37] In summary, courts are routinely faced with urgent applications concerning mass land invasions that significantly affect both state-owned and private land. Addressing these issues is crucial for upholding property rights and ensuring the rule

¹ 2000 (1) SA 409 (CC) at para 22.

² *City of Ekurhuleni Metropolitan Municipality v Unknown Individuals Trespassing and Others* [2023] 2 All SA 670 (GJ) para 38.

of law. In such cases, Courts normally grant anti-land intrusion interdicts provided that the requirements for interim or final interdicts have been established. The applicant is the owner of the impugned properties. As owner, the applicant is entitled to the exclusive use of its property and to provide housing in terms of its constitutional obligations. This is a right not lightly to be interfered with by a Court, even where a statute authorises this.³

[38] In my view, unlawful invasion of property results in a deprivation of property under section 25(1). The preamble of the PIE Act underscores the provisions of section 25(1) of the Constitution. It acknowledges that no one may be deprived of property except in terms of law of general application and no law may permit arbitrary deprivation of property. The preamble also recognises that no one may be evicted from their home, or have their home demolished without an order of Court made after considering all the relevant circumstances.

[39] Evidently, the rule nisi that was granted by the Court on an *ex-parte* basis is in accord with what the law requires of the City. As correctly pointed out by the appellant's counsel, a judgment that seemingly prohibits any person from seeking an anti-land-intrusion interdict effectively authorises self-help and the sort of lawlessness that the Constitutional Court has cautioned explicitly against.⁴

Was the second respondent correctly cited?

[38] The Court a quo found that the order sought by the City is against an unknown and unidentified class of persons, and that the citation of the second respondent was impermissibly wide so that it was akin to a decree and was unenforceable. The Court also found that the order purports to have a coercive effect against persons who had no notice that it would be sought and who were not even cited, yet their interest was clearly implicated by the order in clear breach of the constitutional principle of legality. Even under the common law, the court a quo reasoned, the order is invalid for non-citation. In addition, the Court found that the order against unknown or unidentified persons, or against the public at large, as

³ *Modderklip Boerdery (Pty) Ltd v Modder East Squatters and Another* 2001 (4) SA 385 (W) at 390H-I.

⁴ *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 46 CC at para 92.

described in the second respondent in this matter, is akin to a decree and is not an enforceable order.

[39] I will shortly return to consider these findings; however, I must stress the fact that Mr Van Rooyen, the leader of the Khoi-San group that sought to occupy the land in question, was cited as the first respondent. He is a natural person, and there was nothing wrong with the citation of Mr Van Rooyen as the first respondent. His citation was not disputed. The first respondent was the one who directed his group to occupy the land owned by City. In my opinion, the City ought to have been entitled to an interdictory relief against him. Notwithstanding, the Court a quo dismissed the City's application against the first respondent without substantive reasons. It is my firm view that the Court a quo erred in this regard. I turn to consider the citation of the second respondent.

[40] An order of Court is operative only against persons to whom the order is addressed. Only they are guilty of contempt of Court for failing to observe its terms.⁵ And if the right of an applicant, established by a Court order, is again invaded by someone who is not a party to the original proceedings, the applicant's only remedy is to sue the new transgressor afresh.⁶ Failure to identify defendants or respondents offends against the notion that a Court order operates only inter partes.⁷

[41] There is a plethora of authorities dealing with the citation of unidentified or unnamed persons. As demonstrated below, our Courts have frowned on granting orders and/or interdicts against unnamed persons. The reason being that any Court order issued by a Court must be capable of enforcement, particularly because wilful non-compliance will result in an application for contempt of that order.⁸ In *City of Cape Town v Various Occupiers and Another*,⁹ the Court observed that limiting the interdict to named applicants was proper. The Court also noted that Courts should generally not grant interdicts against unnamed persons, as it would be impossible to

⁵ *Kayamandi Town Committee v Mkhwaso and Others* 1991 (2) SA 630 (C) at 635E.

⁶ *Kayamandi Town Committee v Mkhwaso and Others* 1991 (2) SA 630 (C) at 635H.

⁷ *Kayamandi Town Committee v Mkhwaso and Others* 1991 (2) SA 630 (C) at 635H.

⁸ *National Department of Public Works v Fani and 77 Others Collectively referred to as residents of Farm Greydel (Airport Park)] and Another* (2024) ZASCA (43) (8 April 2024).

⁹ 2024 (5) SA 407 (WCC) para 31.

know who had been interdicted and who had not. I agree with the views expressed by that court in this regard.

[42] The Court a quo relied on *Kayamandi Town Committee v Mkhwaso and Others*,¹⁰ in which the applicant's town committee sought to evict 150 squatters from land earmarked for residential development. The applicant named nine respondents and alleged that it was impossible to identify all persons residing on the stands. The applicant obtained a rule nisi calling upon 'any persons occupying the applicant's premises without the applicant's permission' to show cause why they should not be evicted. It was ordered that the Sheriff would effect service of the order by leaving a copy of the rule nisi and supporting documentation at each dwelling on the affected land.

[43] On the return day, the Court ruled that an order having a generalised (legislative) effect is fundamentally objectionable. The Court observed that a failure to identify defendants or respondents would seem to be destructive of the notion that a Court's order operates only *inter partes*, not to mention questions of locus standi *in iudicio*.¹¹ The court also found that an order against respondents not identified by name (or perhaps by individualised description) in the process commencing action, or (in very urgent cases, brought orally) on the record, would have the generalised effect typical of legislation. It would be a decree and not a Court order at all.¹²

[44] Similar sentiments were echoed in *Illegal Occupiers of various Erven, Phillipi v Monwood Investment Trust Company (Pty) (Ltd) & Others*,¹³ ('Monhood'), where the Court found that the respondents had not taken adequate measures to identify the persons occupying their land. The Court emphasised the need to grant an effective judgment. One of the difficulties in granting judgment in favour of the respondent on appeal in *Manhood* was the concern that it would be rendered nugatory. This was so because the respondents had not persuaded the Court how an order could be rendered effective if granted against a group of people, which, on

¹⁰ 1991 (2) SA 630 (C).

¹¹ At 634H.

¹² At 634I.

¹³ [2002] 1 All SA 115 (C).

the respondent's own version, were in constant motion. The Court found that one will not find the same group of people at any given moment, for they are in transit.

[45] However, in *Communicare v Persons whose identities are unknown to the applicant but who unlawfully occupy the remainder of the Consolidated Farm Bardale No 451, Division of Stellenbosch, better known as Fairdale & Others*,¹⁴ Rogers AJ, as he then was, had to determine whether the first and second respondents were properly cited. The first respondent's citation appears from the name of the case. The second respondent was described as 'the persons intending to unlawfully occupy the property'. In that matter, the applicant brought an application to evict persons already occupying the property and to interdict anyone else from occupying the land. A rule nisi was granted, calling upon the second respondent to show cause why final interdictory relief should not be granted, as well as other ancillary relief.

[46] Rogers AJ referred to the *Kayamandi* and *Monwood* cases but did not believe that these cases should be regarded as laying down an inflexible rule that an application directed at unnamed respondents is always impossible. In his view, our procedural law will be sadly lacking if that were the case. The learned justice stated as follows:

'Nevertheless, I do not believe that this case should be regarded as laying down an immutable rule that an application directed at unnamed respondents is always impermissible. It seems to me that our procedural law will be sadly lacking if that were the case. What is an owner to do where his land is illegally occupied by persons whose identities he cannot ascertain?... The persons in occupation of land can be viewed as an ascertainable group even though their names might not be known. Through the process of service more information concerning the identities of the group may become known...' ¹⁵

[47] The Court concluded that there was an identifiable group of persons properly before the Court, against whom an effective order could be made. After considering the matter, the Court proposed making an order that the first respondent vacate the

¹⁴ (CPD case no.7970/03).

¹⁵ At para 9.

Fairdale by 16 January 2004, and that, if they did not do so, the eviction order be carried out from 19 January 2004.¹⁶ However, the Court cautioned that one had to be careful in framing the order to ensure that it did not purport to bind a wider range of persons than had been properly drawn into those proceedings.¹⁷

[48] In *City of Cape Town v Yawa & Others*,¹⁸ the applicant sought an eviction order against the first to eighteenth respondents, who were identified by name and, who were alleged to be unlawfully occupying erf 18332, Khayelitsha, Cape Town.¹⁹ The applicant sought a similar relief against the nineteenth respondent, described as *the other occupiers, unknown to the applicant, who unlawfully occupies Erf 18332, Khayelitsha*. In addition, the applicant sought an interdict restraining the twentieth respondent described as *the persons intending to unlawfully occupy Erf 18332, Kayelitsha*, from erecting and/or occupying any structure of makeshift dwelling for the purpose of unlawfully occupying or residing on the erf.²⁰

[49] The Court found, with reference to the twentieth respondent, that this was not an identified or identifiable group against whom an effective order could be made. There was also no prospect that they would be identified during the proceedings. The Court found that the persons who comprise the twentieth respondent, namely persons intending to unlawfully occupy the erf, are not in any real sense an ascertainable group. In the Court's view, the identity of the members of the twentieth respondent would also change from day to day.²¹ The Court observed that some of those currently intending to occupy the land may decide not to do so. The Court accordingly dismissed the application for an interdict in respect of the twentieth respondent.²²

[50] The golden thread that flows from these decisions and others is that the citation of a group in a generalised manner has the potential for creating uncertainty and can be prejudicial. In the *Monwood* case, the Court noted that parties in legal

¹⁶ At para 42.

¹⁷ At para 43.

¹⁸ 2004] 2 All SA 281 (C).

¹⁹ At p. 1.

²⁰ P.2.

²¹ P.5.

²² P.8.

proceedings must be clearly identified. The Court noted that there are serious difficulties when the applicant lacks the requisite details of the respondents. Notwithstanding, it is worth noting that the citation of occupiers as an unknown group occupying a particular property has become standard in our jurisprudence. The names of cases coming before the Constitutional Court and the SCA attest to this.²³

[51] In part, this is understandable where the occupiers refuse to permit their own access or where the occupants of the building have, on an urgent basis, launched an application to stave off eviction, and the instructing attorney seeks to protect the collective rights of numerous occupiers.²⁴

[52] I have considered the decisions discussed above, however, in my view, in a constitutional dispensation, the need to enforce Court orders is paramount for vindicating the authority of the Courts. Equally critical is safeguarding landowners' rights to their property, ensuring protection against arbitrary deprivation. This protection is a fundamental constitutional right that the Courts must jealously guard to ensure that landowners are not arbitrarily deprived of their properties. It is unfathomable to contemplate how our constitutional principles could permit a situation in which property stand on the precipice of unlawful occupation, and in such circumstances, the interdictory orders designed to safeguard property in terms of section 25 of the Constitution from illegal invasion are not granted simply because the identities of the respondents remain unknown.

[53] This troubling reality is particularly pronounced when the applicant has provided a compelling and reasonable explanation for the challenges encountered in identifying the respondents. This, in my view, offends the owners' constitutional rights to ownership and to peaceful, and undisturbed possession of the property which cannot be justified in an open and democratic society based on human dignity, equality and freedom, except for in terms of the law of general application.

[54] It is the harsh reality that the ever-increasing phenomena of land invasions are generally carried out by large groupings of people who are, in the main,

²³ *Mtshali & Others v Masawi & Others*, at para 190.

²⁴ *Mtshali & Others v Masawi & Others*, at para 190.

unidentified. The courts must adopt a pragmatic approach to such matters, failing which the rule of law will give way and acquiesce to anarchy and self-help. To require each unlawful occupant to be identified and then served would be to ignore the urgency that characterises the need for legal assistance to counter unlawful land invasions.

[55] To this end, the Courts, in my view, must balance the tension of rights between those of the owner and the enforcement of interdict against unnamed persons. Crisply, in balancing the right to enforce an interdict with the right to own property, the starting point should always be that interdicts against land invasion must be granted against named respondents where possible and that this ought to be the general rule particularly because Court orders must be capable of enforcement. To this end, I share the views expressed by the respondent's counsel, Ms Pillay, that attendant thereon, a Court must commence the inquiry by determining why it was not possible to cite the names of the respondents and assessing the reasonableness of that explanation.

[56] In assessing the reasonableness of an applicant's explanation, the Court may have regard to, *inter alia*, the following non-exhaustive list of factors:

- (a) the reasonableness of the reasons given by the applicant for not citing named respondents.
- (b) the urgency with which the matter has to be brought, and the consequences of a landowner having failed to have instituted the claim with the requisite promptitude by reason of seeking to ascertain the names and identities of the respondents
- (c) the competing rights at stake for both the landowner and the respondents. The potential infringement of the landowner's property rights and rights of access to Courts requires careful consideration in this regard, with due regard to the fact that unlawful land incursions often escalate with remarkable haste and result in the arbitrary deprivation of landowners' rights.
- (d) The consequences of dismissing an application on the basis that unnamed respondents were not cited.
- (e) whether the respondents may be viewed as an ascertainable group, even though their names may not be known.

- (f) If an order is to be granted, how it will be served on the respondents so that the terms of the order are made clear to those affected by it.

[57] The present matter concerns the competing interests between an owner's right to property, as entrenched in section 25 of the Constitution, and unknown persons who threaten to occupy land unlawfully. In my view, in addition to the domestic cases discussed above, it is instructive for this Court to briefly examine foreign jurisprudence, particularly decisions from the United Kingdom, on how Courts have handled cases involving unnamed or unidentified persons, as this could help us better understand and address the issue at hand. Section 39(1)(c) of the Constitution provides that when interpreting the Bill of Rights, a Court, tribunal or forum may consider foreign law.

[58] In *Birmingham CC v Afsar*,²⁵ the High Court of Justice, Queen's Bench Division, had to determine a claim for injunctions to restrict protests outside a primary school that aimed to teach about LGBT issues. An interim relief was granted against protesters following an *ex parte* application against four respondents. The fourth respondent was 'Persons Unknown'. The fourth defendant was a group of unidentified individuals who had been sued with a view to preventing them from taking part in the protests, organised by the first to third defendants, which were the subject of the claim.²⁶

[59] At the start of the claim, the fourth defendant was designated as 'Persons Unknown'. In the interim judgment, the Court concluded that this was too wide a description and limited the injunction it granted to a group designated as 'Persons Unknown seeking to express opinions about the teaching at Anderton Park Primary School'.²⁷ After reviewing a number of authorities and the decision of the Court of Appeal in *Canada Goose UK Retail Ltd and another v Persons Unknown and another*,²⁸ the Court stated as follows:

²⁵ (No 3) [2019] EWHC 3217 (QB).

²⁶ At para 10.

²⁷ At para 10.

²⁸ [2020] EWCACiv 303.

‘As I understand the law, in principle, a protestor could be subject to a final injunction against persons unknown, prohibiting participation in a protest, if (a) the originating process contained a description of “*Persons Unknown*” that was in line with the requirement of identifiability, (b) the person (i) fell within that description at the outset, or (ii) came within it later, as a “Newcomer”, (c) the person was duly served with the proceedings, by a method prescribed by the CPR, or by an alternative method authorised under CPR 6.15, and (d) it was at the outset and remained, at the time of judgment impossible or at least impracticable to identify the person and join them as a named defendant. *Proof that a specified individual fell within these criteria might be difficult in practice, but that would not be a principled objection to the grant of an order.*’²⁹ (emphasis added)

[60] In *Cameron (Respondent) v Liverpool Victoria Insurance Co Ltd (Appellant)*,³⁰ the Supreme Court of the United Kingdom referred to the general rule that proceedings may not be brought against unnamed parties.³¹ Having observed that English judges had allowed some exceptions to the general rule, the Court stated that the jurisdiction to grant actions and orders against unnamed wrongdoers has been regularly invoked, particularly in the context of internet abuse, trespasses and other torts committed by protestors, demonstrators and paparazzi.³² After reviewing a number of cases, the Court distinguished two categories of unnamed persons and stated:

‘In approaching this question, it is necessary to distinguish between two kinds of case in which the defendant cannot be named, to which different considerations apply. *The first category comprises anonymous defendants who are identifiable but whose names are unknown. Squatters occupying a property are, for example, identifiable by their location, although they cannot be named.* The second category comprises defendants, such as most hit and run drivers, who are not only anonymous but cannot even be identified. The distinction is that in *the first category the defendant is described in a way that makes it possible in principle to locate or communicate with him and to know without further inquiry whether he is the same as the person*

²⁹ At para 24.

³⁰ [2019] UKSC 6.

³¹ At para 9.

³² At para 10.

described in the claim form, whereas in the second category it is not.³³ (emphasis added)

[61] In summary, the Court found that, in the case of first category, defendants who are anonymous but identifiable, can be served with the application or any other originating process, if necessary by substituted service such as, in the case of anonymous trespassers, attaching copies of the documents to the main door or placing them in some other prominent place on the land where the trespassers are to be found, and posting them if practical through the letterbox.³⁴ However, in the case of the second category defendant, service is conceptually impossible. So, such a person cannot be sued under a pseudonym or description.³⁵

[62] These cases, in my view, point to the fact that respondents who are anonymous but identifiable can be served with the application or any other originating process, if necessary, by various forms of substituted service. In this regard, I find the approach opined by Rogers AJ, as he then was, on point and in sync with the cases discussed above, particularly the first category identified in *Cameron (Respondent) v Liverpool Victoria Insurance Co Ltd (Appellant)*.³⁶ The persons in occupation of land or who attempt to occupy land can be viewed as an ascertainable group even though their names might not be known.

[63] Moreover, as the full Court found in *Mtshali & Others v Masawi & Others*,³⁷ ideally where the identity of the persons is not easily identifiable at the time of the bringing the application, an applicant should seek an order that the sheriff is required to obtain the identity of all persons who are in occupation of the building or attempting to occupy the building so that there is certainty as to who in fact is affected particularly as others may come in later to claim that they fall within the affected group.

³³ At para 13.

³⁴ At para 15.

³⁵ At para 26.

³⁶ [2019] UKSC 6.

³⁷ 2017 (4) SA 632 (GJ).

[64] In the present matter, the Court a quo found that the order sought by the City was akin to an interdict against the public at large, as it prohibited all persons from unlawfully occupying the property. This finding, in my view, is profoundly flawed and cannot be correct. The persons attempting to occupy the land fall into the first category and have been identified. They are being led by the first respondent. Some of them filed an application for a *mandament van spolie* twice and are currently occupying the depilated building.

[65] In addition, the target group sought to be interdicted by the City was clear: it was those people who were attempting to unlawfully occupy four different properties in Mitchell's Plain on 5 March 2022. This is an identifiable and ascertainable group of people. The City's evidence was that the City's ALIU officers were informed that a land intrusion was underway on its property and that when they arrived at the scene, the unlawful intruders identified themselves as a Khoi-San group from Mitchells Plain and their leader was identified as Mr Van Rooyen, the first respondent. The Khoi-San group from Mitchells Plain, under the leadership of the first respondent, purported to occupy the land in question.

[66] It is my firm view that the City proffered a reasonable explanation for why the second respondent could not be named: namely, that the matter was of such urgency that the application was heard and granted on a Saturday, the same day it was brought. Furthermore, within such a limited time, the City was not in a position to identify the second respondent by name; the situation was transient and fluid, with ongoing attempts at occupation, and it was therefore impossible to identify who was engaged in the unlawful conduct. The evidence before the Court was that, despite the City's attempts to engage, it has not been able to obtain the names, identities, and other details of any of the respondents, save for the first respondent, who identified himself as the leader of the group. Its ALIU officials were genuinely concerned that seeking any information about the identities of those engaging in unlawful conduct, such as intruding on the impugned property, would have inflamed an already hostile and volatile situation.

[67] Most importantly, the first respondent, who is the leader of the second respondent (the people who intended to intrude on the property), knew the names of

the people who wanted to occupy the premises. In fact, when the ALIU officers arrived at the scene, they found 30 people led by the first respondent. The first respondent asserted that on 5 March 2022, the City made no meaningful effort to engage with the Khoisan families. According to him, the City's ALIU officers began tearing their homes down. Mr Van Rooyen is the leader of the Khoi-San group that sought to invade the property. He deposed to the answering affidavit in his capacity as a member of the Mitchells Plain Aboriginal Council. Mr Van Rooyen also deposed to a further affidavit on behalf of the second respondent. According to him, he was tasked to find land for these people. He has tried his utmost to support the Khoi-San community of Mitchells Plain.

[68] Concerningly, Mr Van Rooyen did not provide the names of any other family members, other than those already occupying the dilapidated building on the property, who are not a target of the application. In my view, in a case like this, where an application is brought on notice, it is instructive for Courts to consider the information tendered by the respondents in their answering affidavit. For example, when the respondent provides information about their names and identities in the answering affidavit, the Court may use this information to refine the order concerning the specified individuals. Furthermore, to ensure the effective identification of unnamed individuals, video footage showing those identified as unlawful occupiers or those attempting to occupy land may be utilised to provide a clearer delineation of the group involved.

[69] Simply put, the Court a quo could have carefully delineated its order to a specific group, in this case, the Khoi-San group of Mitchells Plain led by the second respondent, purporting to invade the City's property to ensure that the order does not purport to bind a wider range of people than have been properly drawn into these proceedings. In addition, to ensure the enforceability of the order, the Court ought to have considered measures that could be put in place to ensure that people seeking to occupy the property are aware of any order it grants. For instance, by having noticeboards on the property and directing the City to ensure that the Court order is displayed on those noticeboards which it checks on a regular basis. I now turn to consider whether the Court a quo was correct in finding that the

Did the appellant meet the requirements for a final interdict?

[70] The quo found that the City had not met the requirements for interdictory relief, effectively because it had an alternative remedy, a remedy of counter spoliation or eviction. The requirements of a final interdict are well established in our law. For the City to obtain a final interdict, it had to establish: (a) a clear right to the relief sought; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy available to it.³⁸ To this, it must be added that where a wrongful act has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated.³⁹ Whether the apprehension is reasonable is a factual, objective inquiry.⁴⁰

[71] As foreshadowed above, the City had to establish a clear right to obtain a final interdict. A clear right must be on a balance of probabilities.⁴¹ Whether the applicant has a right is a matter of substantive law, and whether the right is clear is a matter of evidence. To establish a clear right, the applicant had to prove facts which, in terms of the substantive law, establish the right relied on.⁴²

[72] On the facts of this matter, the City has demonstrated a clear right to the relief sought. First, it is the owner of the properties. It has the right to ensure that no unlawful conduct occurs thereon and that it can utilise the properties in the manner intended, that is, for the progressive development of housing and provisions of other services that the City is mandated to provide in terms of the Constitution. Second, it is entitled to secure this objective through the Courts. Third, it is obliged in law to take all steps necessary to protect the properties, ensuring that the development of housing and the provision of services are not frustrated, in accordance with its Constitutional obligations.

³⁸ *Setlogelo v Setlogelo* 1914 AD 221; See also *City of Cape Town v Those persons attempting and/or intending to settle on the erven in District Six the details of which are identified in Annexure A to notice of motion* (7349/2021) [2021] ZAWCHC 98 (19 May 2021) at para 21.

³⁹ *NCSPCA v Openshaw* 2008 (5) SA 339 (SCA) at para 20.

⁴⁰ *Minister of Law-and-Order v Nordien* 1987 (2) SA 894 (A) at 896G-I.

⁴¹ *Masstores (Pty) Ltd v Pick n Pay Retailers (Pty) Ltd* 2017 (1) SA 613 (CC) para 8.

⁴² *Diepsloot Residents & Landowners Association v Administrator, Tvl* 1993 (3) SA 49 (T).

[73] If allowed to continue as the respondents propose, the respondents are likely to slow down or bring the City's progressive housing development process to a grinding halt. Land invasion is inimical to the systematic provision of adequate housing on a planned basis.⁴³ This will deprive many residents to realise the right to housing. Fourth, the respondents, under the leadership of the first respondent, may have complaints about the way the City is delivering housing for the Khoi-San community in Mitchells Plain; however, they are not entitled to take the law into their own hands.⁴⁴

[74] Concerning the injury actually committed or reasonably apprehended, the applicant had to establish on a balance of probabilities that there are grounds for a reasonable apprehension that its rights will be detrimentally affected. From the given facts, it is evident that the Khoi-San group of Mitchells Plain, under the leadership of the first respondent, have attempted to occupy the properties owned by the City to the prejudice of the City. The City had a reasonable apprehension of an injury being the unlawful occupation of its property.

[75] On the third requirement of having no alternative remedy, the Court a quo held that the City had not met the requirements for interdictory relief because it had an alternative remedy, namely a remedy of counter-spoliation or eviction. This finding in my view, cannot be correct. As correctly observed by Ms Pillay, in the reasoning of the Court a quo, a landowner will never be able to obtain interdictory relief to protect an unlawful occupation of land that it owns. This, in my opinion, is against an owner's right to property as envisaged in the Constitution. As an owner of a property, the City has the right to ensure that no unlawful conduct occurs thereon. It is entitled to secure this objective through the Courts by seeking interdictory relief if there is a risk of illegal occupation.

[76] Significantly, it is crucial to distinguish between anti-land-intrusion interdictory relief, counter-spoliation, and evictions. Counter-spoliation and evictions are remedies which are permitted after an occupation has occurred. Once the act of

⁴³ *Government of the Republic of South Africa and Others v Grootboom* 2001 (1) SA 46 CC at para 92.

⁴⁴ *City of Cape Town v Those persons attempting and/or intending to settle on the erven in District Six the details of which are identified in Annexure A to notice of motion (7349/2021)* [2021] ZAWCHC 98 (19 May 2021) at para 22.

spoliation is completed and the spoliator has perfected possession, the window within which to invoke counter-spoliation is closed.⁴⁵ In other words, the remedy is available where the occupier already has actual possession of the land. In contrast, anti-land-intrusion interdicts are aimed at limiting further encroachment. It is a remedy aimed at prospective conduct. In my opinion, the City satisfied all the requirements for an interdict and Court a quo's finding in this regard was wrong.

Did the City place all material facts before the Court a quo?

[77] It is trite that an *ex parte* applicant must disclose all material facts that might influence the Court in determining the application. If the applicant fails in this regard and the application is nevertheless granted in provisional form, the Court hearing this matter on the return day has a discretion, when given the full facts, to set aside the provisional order or confirm it. In exercising that discretion the latter Court will have regard to the extent of non-disclosure; the question whether the first Court might have been influenced by proper disclosure; the reasons for non-disclosure and the consequences of setting the provisional order aside.⁴⁶

[78] Mr Murphy submitted that the Court a quo was correct in finding that the City had carried out an eviction. According to Mr Murphy, the City was required to place all relevant evidence of its conduct before the urgent Court. It was submitted that had the first Court been informed that the City conducted an eviction, the interim order would not have been granted. In my view, for all the reasons enunciated above, I am of the view that all the facts were placed before the Court that granted the *ex parte* order when the order was sought and granted. The City asserted that it removed incomplete and unoccupied structures, and it did not construe this as an eviction because it did not remove persons from the property.

[79] Most importantly, the City disputed that it had evicted any person from the property and therefore could not allege on oath that an eviction had occurred when in truth, and in fact, that was not the case. From the discussion foreshadowed above,

⁴⁵ *City of Cape Town v The South African Human Rights Commission and Others* (1337/2022; 368/2023) [2024] ZASCA 110 (10 July 2024) para 6.

⁴⁶ *Phillips v National Director of Public Prosecutions* 2003 (6) SA 447 para 26.

I am of the view that the City met all the requirements of a final interdict and that the Court a quo erred in its finding that the City had alternative remedies, namely, evictions and counter-spoliation.

[80] I am also persuaded that the City has no alternative satisfactory remedy, since it has no other remedy which is: (a) adequate in the circumstances; (b) ordinary and reasonable; (c) lawful; and (d) affords similar protection.⁴⁷ It is unrealistic for the City to content itself with subsequent eviction proceedings for new land invaders. The City has a constitutional right to protect its property so that it can discharge its obligations in terms of section 152 of the Constitution.

[81] It is perhaps apposite to remind ourselves that section 73(1) of the Local Government: Municipal Systems Act,⁴⁸ places a general duty on municipalities to give effect to the provisions of the Constitution and to give priority to the basic needs of the local community; promote the development of the local community; and ensure that all members of the local community have access to at least the minimum level of basic services.⁴⁹ Demonstrably, the Court a quo erred in dismissing the rule nisi, and that decision must be set aside.

Order

[82] Given all these considerations, I would propose the following order:

1. The appeal is hereby upheld.
2. The order of the Court a quo dismissing the interim interdict is hereby set aside.
3. The interim interdict is hereby confirmed.
4. The interdict shall apply against the first and second respondents specifically those occupying the dilapidated building in the impugned property as well as

⁴⁷ *City of Cape Town v Those persons attempting and/or intending to settle on the erven in District Six the details of which are identified in Annexure A to notice of motion (7349/2021)* [2021] ZAWCHC 98 (19 May 2021) at para 30.

⁴⁸ 32 of 2000.

⁴⁹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) at para 26.

all persons led by the first respondent who attempted to occupy erf 1212, 1213, 1215, and 21168 on 5 March 2022 and on 10 May 2022.

5. The City is directed to place copies of this Court order at visible and prominent places in the said erven that are accessible to the properties and would reasonably come to the attention of the respondents.
6. The City is directed to erect visible noticeboards on each erf and to ensure that this order is displayed in both English and Afrikaans on those noticeboards.
7. The City is directed to check the notice Boards on a regular basis to ensure that the order remains displayed.
8. This Order shall not be construed as an eviction order. It shall not entitle the City to demolish any occupied structures at the date of this order or to use the provisions of this order for purposes of evicting occupiers from the property save for under the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act 19 of 1998.
9. No order is made as to costs.

LEKHULENI

COURT

I agree and it is so ordered:

JD

JUDGE OF THE HIGH

COURT

I agree:

G DA SILVA SALIE

JUDGE OF THE HIGH

P NJOKWENI
ACTING JUDGE OF THE HIGH

COURT