



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

Case no: 2765/24

REPORTABLE

In the matter between:

RIEDWAAN WILLIAMS

APPLICANT

and

THE CITY OF CAPE TOWN

FIRST RESPONDENT

SHALENE SCHREUDER NO

SECOND RESPONDENT

NAWAAL SANGER

THIRD RESPONDENT

RAMEEZ LEWIS

FOURTH RESPONDENT

ZIYAAD LEWIS

FIFTH RESPONDENT

ATHRAA KENNEMEER

SIXTH RESPONDENT

THE DEEDS REGISTRAR, CAPE TOWN

SEVENTH RESPONDENT

Coram: BHOOPCHAND AJ

Heard: 9 October 2025

Delivered: 6 November 2025

Summary: Application for an interim interdict pending final relief premised upon section 1 of the Prescription Act 68 of 1969. Applicant in possession and occupation of a property for almost four decades, owned by the City of Cape Town. The property was sold in a delayed instalment sale to the original occupant and purchaser. Verbal agreement between the original occupant and the Applicant that he would pay the instalments and municipal service charges and take the transfer on full payment. The original occupant died in 2021. City wants to transfer the property to the Executor of the estate for onward transfer to the heirs of the deceased. Applicant risks losing the property if interdict delaying transfer not granted. Applicant's substantive case in part B of the application is tenuous. Factors taken into consideration by the Court to grant an interdict in these circumstances. Justice must not be rushed where rights, however imperfect, deserve a hearing before being extinguished.

ORDER

- 1 Pending the relief sought in Part B of this application, the First and Seventh Respondents are restrained from transferring Erf 2[...] in the municipality of Cape Town held under title deed 5[...] to the Second, and/or Third, and /or Fourth, and /or Fifth, and /or Sixth Respondents.
- 2 Costs are to stand over for later determination.

JUDGMENT

Bhoopchand AJ :

[1] The Applicant applies, pending the relief sought in part B of his notice of motion for an interim interdict restraining the Respondents from transferring the immovable property, Erf 2[...], held under title deed number 5[...], also known as 1[...] N[...] Close, Tafelsig, Mitchells Plain (‘the property’) to either the Second, Third, Fourth, Fifth, and/or Sixth Respondents. In Part B, the Applicant sought orders declaring that the rights and title to the property are awarded to Applicant pursuant to the provisions of section 1 of the Prescription Act, Act 68 of 1969 (‘the Prescription Act’). Following the content of the First Respondent’s (‘the City’) answering affidavit, the Applicant included a prayer that the City is estopped from denying that the Applicant is entitled to claim ownership of the property. If the declaratory orders in part B are granted, the Applicant seeks transfer of the property to him under section 33(1) of the Deeds Registries Act 47 of 1937 (‘the Deeds Registries Act’)

[2] The Applicant is a 68-year-old illiterate pensioner. The City is the owner of the property. The City sold the property to Faldela Lewis (‘Lewis’) on 19 May 1988, with the transfer delayed until payment. Lewis died on 21 August 2021 without taking transfer of the property. The Third to Sixth Respondents are the heirs of Lewis’s estate. None of the Second to Sixth Respondents filed answering affidavits. The Seventh Respondent, the Registrar of Deeds, filed a report.

[3] The Applicant alleges that during 1988, he was approached by Lewis to take possession of the property, pay the instalments under the deed of sale, and settle the monthly municipal charges and taxes accruing against the property. Lewis undertook to transfer the property to the Applicant once the full purchase price was paid. The purchase price of R12 910, inclusive of interest, would be paid in instalments of R46.88 per month commencing on 1 July 1988 and continuing for a period of 30 years. If the purchase price was settled or reduced

by at least ten per cent, the City could require Lewis to transfer the property to her name. Lewis was to assume possession and occupancy of the property pursuant to the deed of sale on 1 May 1988.

[4] The Applicant accepted Lewis's offer and took possession of the property with his wife and two children.¹ He paid the monthly instalments until the purchase price had been settled and continues paying the municipal charges. He claimed that Lewis had never resided on the property. The Applicant attempted to contact Lewis over the years but was unsuccessful. In May 2012, he approached the City's Mitchells Plain housing branch to explain his agreement with Lewis. He was advised to submit a petition to prove that he had been living on the property. The Applicant attached the petition he compiled from his neighbours on 6 June 2012, confirming his long-term occupancy of the property with members of his family. He has maintained occupancy of the property for 37 years to date. The City officials did not respond after he had submitted the petition.

[5] In February 2022, the Applicant consulted with an official at the City's Human Settlements Office in Parow and restated his position. By this time, he had learnt of Lewis's demise. He approached the Community Law Centre in Athlone for assistance. The Community Law Centre communicated with the Human Settlements Department on 7 March 2022. The Applicant asserts that both the City and Lewis knew he had continuously possessed the property. Based on this, he claims that he should be granted the rights and title to the immovable property.

[6] The Applicant considered it important to emphasise that Lewis's actions were inconsistent with the conditions set forth in the deed of sale. Clause 12 of the deed of sale stipulated that Lewis was required to occupy the property for a

¹ The Applicant claims that he has occupied the property since 1986.

period of five years. During this time, she was prohibited from leasing, mortgaging, assigning, or pledging the property without obtaining prior written consent from the City. Pursuant to Clause 13 of the deed of sale, Lewis and her successors in title were prohibited from transferring the property within five years to any party not approved by the City, unless the property had first been offered to the City. The Applicant contends that Lewis was not authorised to offer him the property and claims that the City failed to investigate any breaches by Lewis during the first five years. The City should have cancelled the deed of sale.

[7] In March 2022, the Applicant received a letter from the City demanding that he vacate the property, which was bequeathed to the Third to Sixth Respondents under Lewis' will. The Applicant attached a copy of the email from the City's conveyancers, who are in the process of transferring the immovable property, and once they obtain the power of attorney from the City, they will proceed with the transfer. He could not allow that to happen.

[8] The Applicant applied for an interim interdict to restrain the transfer of the property to the Second to Sixth Respondents. He asserted a *prima facie* right of possession with respect to the property. He had occupied the property as the owner for more than thirty years. He had paid the purchase price and the City's municipal charges. Not once did the City take any legal steps to have him evicted, but it has allowed him to continue living there as if he were the owner.

[9] His apprehension of irreparable harm stems from the City's intention to transfer the property to the Executor of Lewis' estate. If the property is transferred, it could be sold on by Lewis' appointed heirs. The consequence is that he would lose everything which he spent on maintaining and improving the property and servicing the municipal charges. He contends that he would be unable to recover any of these costs through the deceased's estate.

[10] The Applicant contends further that the balance of convenience tilts in his favour and refers to the circumstances he has raised in his affidavit. Finally, he concludes that he has no other satisfactory alternative remedy to secure his position and prevent transfer of the property. He contends that no monetary claim could compensate him for the loss he would suffer if he lost possession of the property.

The City's answer

[11] The City's answer was provided by the Director of Human Settlements, Lawrence Valeta ('Valeta'). He explained that the City owns housing units developed with national and local government funds, which were historically sold to purchasers on a loan/instalment basis. These included rental stock and homeownership units built for sale. The City and the purchasers entered into and concluded a deed of sale, paid a small deposit and agreed to pay the balance of the purchase price over a period of between twenty and thirty years. A loan account, like a mortgage bond, was created in respect of the outstanding capital and interest. The loan account is billed for monthly insurance and administration charges. The purchaser is entitled to transfer the property to their name once the loan account has been paid in full. The City owns about 11,000 of these delayed transfer loan properties, where ownership must still be passed to the purchasers under the relevant deed of sale.

[12] Valeta confirmed that Lewis purchased the property on 19 May 1988 on a delayed transfer basis. The City remains the owner of the property. On 12 February 1993, Lewis applied to take transfer of the property as per clause 3(f) of the deed of sale. The 10% was calculated at R1218.40. There is no record of the payment being received. The City considered that Lewis was unable to pay the amount. Following a letter written on behalf of the Applicant, the City

advised him on 9 June 2004 that any agreement made between him and Lewis concerning the alleged sale of the property was a private matter between the parties and that the Applicant should seek legal assistance if he wished to pursue the matter further.

[13] On 26 November 2012, the Applicant was again advised that if he wished to acquire the property, he should approach the legal owners and make an offer to purchase it from them. The letter concluded by stating that all monies would have to be paid in full for the property to be transferred from the City to Lewis. A simultaneous transfer to the Applicant could then be arranged.

[14] On 26 November 2020, the Department of Human Settlements produced a short memorandum that summarised the City's interactions with the Applicant and Lewis over the years. The City asserted that the Applicant was consistently advised that the City could not transfer the property into his name and that he should approach Lewis to take transfer, if that were their intention. The City considered itself bound by the deed of sale as the only valid and binding agreement.

[15] On 29 November 2023, the Department of Human Settlements wrote to the Executor to inform her of the City's position. The City informed the Executor that it had appointed an attorney to attend to the transfer and registration of the property. It also informed the Executor that the housing loan had been settled, and the property would be removed from the City's insurance scheme with effect from the date of registration of the transfer. The City requested that the monthly instalments be paid until the transfer is registered. The City contended that there was no legal basis to interdict the transfer of the property, and the City opposed the relief sought in both Part A and Part B of the application.

[16] The City contended that the alleged oral agreement between the Applicant and Lewis was not in writing and therefore contrary to the provisions of section 2 of the Alienation of Land Act 68 of 1981. The City alleged that Lewis' tenancy of the property commenced in about 1982 and that she was living on the property when she applied to purchase it in 1988. The City claimed it did not have a record that the Applicant personally paid each instalment as alleged, but denied that the Applicant had acquired ownership of the property by way of acquisitive prescription. The City argued that if the Applicant had the right to request the transfer of the property or wished to enforce the supposed purchase agreement with Lewis, there were sufficient chances to settle the issue and formally document it with the deceased. Since the Applicant did not do this, they have no legal right to stay on the property. Therefore, the Executrix, representing the deceased's estate, is entitled to exercise the contractual rights to the property.

[17] The City contended that there was no legal basis to interdict the transfer of the property. The City's answer to the Applicant's averments motivating why interim relief should be granted was largely a denial, alleging finally that the Applicant had sufficient time over the years to resolve the issue of ownership.

The Applicant's reply

[18] In reply, the Applicant noted that none of the other Respondents, specifically the Executor and the third to sixth Respondents, raised any objections. He argued that their lack of opposition showed they had no interest in the property. The Applicant also criticised the City for not providing confirmatory affidavits from its sources of information. Although the City knew he had been living on the property since at least 2004, it took no action to enforce the deed of sale with Lewis or evict him for unlawful occupation. He

further mentioned that he had contacted the City as early as 1995 to request permission to renovate the property. In 2013, he sought to settle arrears with the City and submitted documents to the Ombud for consent. He denies that the deceased ever occupied, paid for, or maintained the property, and claims legal entitlement to transfer through acquisitive prescription.

The Registrar of Deeds

[19] The Registrar of Deeds has submitted a report confirming that the property is registered in the name of the City. However, in paragraph 2.2, the Registrar notes an apparent inconsistency by stating that the erf is unregistered and held under general plan TP 10432, while also referencing the parent property. Additionally, the Registrar affirms that there are no interdicts, attachments, or insolvency orders recorded against the property or its registered owners. The Registrar further indicates that there is no objection to granting the order requested in part B of the application. Any act of registration will be subject to compliance with all relevant statutory provisions and the Deeds Office requirements.

ASSESSMENT

[20] The Applicant requests an interim interdict to prevent the First and Seventh Respondents from transferring the property currently in his possession, pending the determination of ownership in part B of his application. Upon review of the Applicant's founding documents, it is evident that the remedy sought is of an interim nature. Although the Applicant alludes to final relief in his replying affidavit and focuses much of his written argument on obtaining it, he has not established a case for such relief in his founding affidavit.² The

² *Zondo and Another v Uthukela District Municipality and Another* (D631/2014) [2014] ZALCD 32; (2015) 36 ILJ 502 (LC) (5 August 2014) at para 2

application for interim relief was neither withdrawn nor amended to request final relief under part B. The First Respondent accurately interprets the Applicant's heads of argument as seeking final relief.

[21] The City responded solely to the interim case and was taken aback by the Applicant's unexpected request for final relief in his heads of argument. All pertinent matters should be addressed within the affidavits, rather than being introduced during argument.³ The Court will address only the interim relief requested and will not rule on final relief not properly before it.

[22] No legal relationship exists between the Applicant and the City. The City acted as a conditional seller, transferring property to the late Lewis under an instalment sale or conditional sale agreement. Until the full purchase price was settled, the City maintained ownership of the property, effectively holding it as security until all instalments were completed. The City's decision to enter into these agreements reflects a policy choice to facilitate home ownership among historically disadvantaged communities, particularly in townships. The occupant is a purchaser in terms of a suspensive condition. Ownership and transfer are suspended until the full purchase price is paid. Possession and use are granted to the purchaser in the interim. The agreement is regulated by statute and informed by constitutional imperatives of housing, dignity, and equitable access to land.

[23] In two-part applications for reviews, constitutional challenges, and urgent interdicts, Part A relies on the merits of Part B, which underpins the Applicant's prospects of success. Pursuant to Rule 28, amendments to part B of an applicant's notice of motion are permissible. Applicants who foresee a potential substantial change in the relief sought under part B should draft the corresponding part A relief in neutral or adaptable terms, thereby avoiding

³ *Swissborough Diamond Mines v Government of RSA* 1999 (2) SA 279 (T) at 282 E-G and 324B

premature commitment to a specific formulation of part B that may subsequently require revision.

[24] The relief requested by the Applicant in Part A constitutes a restraining order against the transfer of the property. This relief is based on section 1 of the Prescription Act as well as the doctrine of estoppel, which prevents the First Respondents from disputing the Applicant's entitlement to claim ownership of the property. For the application to succeed as presented, the Applicant must meet the criteria for an interim interdict and, in doing so, demonstrate that section 1 of the Prescription Act is applicable. Section 1 pertains to the acquisition of ownership by prescription. It reads as follows:

‘Subject to the provisions of this Chapter and of Chapter IV, a person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for an uninterrupted period of 30 years or for a period which, together with any periods for which such thing was so possessed by his predecessors in title, constitutes an uninterrupted period of 30 years.’

[25] Section 18 of the Prescription Act states that:

‘The provisions of this Act shall not affect the provisions of any law prohibiting the acquisition of land or any right in land by prescription.’

[26] The Prescription (Local Authorities) Ordinance 16 of 1964 bars the Applicant from acquiring the property through acquisitive prescription as the City remains the registered owner of the property.⁴ The ordinance established that, after an uninterrupted period of 30 years of open possession, a person could become the legal owner of municipal land, and the municipality's rights would have been extinguished. This ordinance set a specific cutoff date for

⁴ See also section 3 of the State Land Disposal Act 48 of 1961, and section 5 of the City of Cape Town: Immovable Property By-Law, 2014

claims, requiring that prescription must have been completed by August 7, 1974. The Applicant only acquired possession of the property in about 1988. He cannot claim a right to ownership of the property through section 1 of the Prescription Act, read together with section 18 and the 1964 ordinance.

ESTOPPEL

[27] After filing his replying affidavit, the Applicant sought to amend his notice of motion a few days later to include a prayer declaring that the City is estopped from denying that the Applicant is entitled to claim ownership of the property. The Applicant alleged that the City treated him as the *de facto* owner by accepting instalment payments from him until he had paid the full purchase price, payments for municipal services, and approved the improvements he effected to the property. The Applicant thus relies upon a representation by the conduct of the City that he was the owner of the property. The actions taken by the City for nearly forty years led to a reasonable assumption that he was the legal owner of the property. The Applicant did not elaborate further on how the City's alleged representation could have misled him, or that he acted reasonably in construing the representation as an acknowledgement of his ownership of the property.⁵ Nor does he make any allegations about how he acted to his detriment.

[28] The doctrine of estoppel does not supersede the statutory requirements for title registration as stipulated by the Deeds Registry Act. The Applicant does not provide any proof that he was the person paying the instalments and the municipal charges. The fact that he alleges it and it is unchallenged by the City does not mean that estoppel can succeed. When the Applicant contacted the City about acquiring the property, the City told him on at least three occasions

⁵ *Gencor Holdings (Pty) Ltd t/a Concor Technicrete v Potgieter* 2004 (6) SA 491 (SCA)

that he should negotiate with the original purchaser. If he could provide proof of the private sale between him and the original purchaser, they would have no objection to performing a two-stage transfer - first to the original purchaser and then to the possessor. None of the City's actions could be construed as the City considering the Applicant as the *de facto* owner.

INTERIM INTERDICT

[29] Against the foregoing backdrop, the Court turns to determine whether the Applicant has satisfied the requirements for an interim interdict. The requirements for the grant of an interim interdict are well known.⁶ The Applicant asserts that he has had the property as if he were the owner. A critical requirement of acquisitive prescription is that the possessor must have possessed the property "as if he were the owner thereof" (*nec precario*). The Applicant's entire claim rests on his oral arrangement with Lewis, the original occupant. His payment of instalments and charges was not an assertion of ownership against the City, but rather a performance of a contractual obligation under a private agreement with the original occupant. This demonstrates that he did not possess the property with the intention of being the owner but rather with permission from the original occupant.

[30] Neither was the Applicant's possession of the property 'adverse' to the rights of the true owner, which in this case is the City.⁷ The Applicant's payments on the loan arrangement and for services were a continuation of Lewis's obligations under the deed of sale. This is not adverse possession, but consensual possession derived from the contractual relationship. The execution

⁶ *Setlogelo v Setlogelo* 1914 AD 221, *Treasure Trove Diamonds Ltd v Hyman* 1928 AD 464, *Molteno Brothers v South African Railways* 1936 AD 321, *Webster v Mitchell* 1948 (1) SA 1186 (W), *Gool v Minister of Justice* 1955 (2) SA 682 (C), *City of Tshwane Metropolitan Municipality v Afriforum* [2016] ZACC 19; 2016 (6) SA 279 (CC); 2016 (9) BCLR 1133 (CC)

⁷ Cf: *Swanepoel v Crown Mines Ltd* 1954 (4) SA 596 (A) ownership of land cannot be acquired by acquisitive prescription if the possession was illegal or prohibited by statute

of the deed of delayed sale, along with the City's ongoing management of its property, served as a continuous impediment to the commencement of any potential prescription period.

[31] The Applicant was simply a substitute in an existing contractual relationship. The lack of a written agreement between the Applicant and Lewis means that he has no legally enforceable claim of ownership against Lewis' estate. Lewis was the person with whom the City had a contract and who therefore had a valid claim to the property. The Applicant has no direct contractual relationship with the City. His claim to ownership is not a vindicatory or quasi-vindicatory claim against the City. Any claim he has for recovery of his payments would be against the deceased's estate.

[32] The Applicant asserts that, should the property be transferred to the estate of the deceased and he subsequently obtains the relief requested in part B of his application, the property may already have been liquidated by the Second to Sixth Respondents. Consequently, he would forfeit all expenditures incurred in maintaining and enhancing the property, as well as payments made towards municipal accounts, which were undertaken with the understanding that he would ultimately acquire transfer of the property. He is concerned that he may not be able to recover his expenses from the deceased's estate. Given the weakness of his prescription claim, the Court hesitates to accept that the harm to the Applicant is genuinely irreparable. Most of the harm he faces is financial, and he has pointed out alternative remedies himself.

[33] The Court must balance the potential prejudice to the Applicant should the interdict be denied against any prejudice to the Second to Sixth Respondents should it be granted, notwithstanding that their interests have not been explicitly presented. The Applicant's claim arises from a verbal agreement and appears to reflect a misunderstanding of the law. In contrast, the heirs possess a valid claim

under the terms of the deceased's will, and the City is contractually obligated to transfer the property to them. Issuing an interdict would postpone the settlement of the deceased's estate and impede the rightful claims of the heirs. The City is merely carrying out its contractual and legal responsibilities. Preventing the transfer would disrupt its procedures and valid obligations.

[34] A Court would be hard pressed to grant an interim interdict to the Applicant in these circumstances. However, the Court cannot ignore the backdrop against which this application arises, i.e., township housing under the policy of separate development and the unusual facts that inform this application. Under section 25 of the Constitution, arbitrary deprivation of property is prohibited. If the City seeks to evict or dispossess without due process, the possessor may invoke constitutional protection, even if he is not the owner. Moreover, section 26 (right to housing) and section 34 (access to courts) bolster the claim for interim relief, especially if eviction would cause hardship or violate the Applicant's dignity. At this interim stage, this Court does not need to examine these rights in detail.

[35] The Applicant's substantive claims based on acquisitive prescription and estoppel are legally tenuous. However, the Court cannot ignore that the Applicant has occupied the property for almost four decades and has paid the purchase price and municipal service charges during his tenure of possession. The City benefited from his payments and occupation. The estate of the original purchaser seeks to transfer the property he paid for. Denying him ownership now would unjustly enrich the heirs and deprive him of dignity. The Court accepts that it should tread carefully and adopt a cautious, constitutionally sensitive approach, recognising the human dimension of long-term occupation. The City has not exercised any of its rights under the deed of sale; instead, it has assisted the Applicant's possession of the property by approving the additions

he allegedly made to the property. The City has acquiesced or failed to act over decades. The possessor's belief in ownership, long-term occupation, and the City's acquiescence may support a *prima facie* right to remain, pending final determination of ownership. He has at least a *prima facie* right to possess the property until the issue of its ownership is resolved.

[36] If the property is transferred to the deceased's estate, the Applicant may lose possession, and the estate may dispose of the property. The estate does not have the property. The Applicant's long-standing occupation and investment may be lost. The harm to the Applicant may not be easily reversible, especially if third-party rights intervene. The estate can wait, whereas the Applicant risks losing his home. The City has no objection to a two-stage transfer if the Applicant can prove the agreement between him and Lewis. Thus, while the balance of convenience may not favour the applicant, it is not so adverse as to preclude interim relief. Preserving the status quo does not materially affect either the City or the Second to Sixth Respondents.

[37] Damages as an alternative relief may be inadequate given that the Applicant seeks ownership of the property. Damages would not restore possession. The applicant's claim is not purely financial. It is about recognition of long-standing occupation and the fairness of transfer. These circumstances, while not conferring title, raise serious questions of equitable entitlement and procedural fairness. The applicant faces irreparable harm if the property is transferred and he is evicted before his claim is adjudicated. The declaratory relief sought in part B may take time to get to adjudication.

[38] Although the balance of convenience favours the estate, the interests of justice require that the *status quo* be preserved. An interim interdict, though exceptional in the face of poor merits, may be justified where irreparable harm looms and the dispossession would truncate a decades-long relationship with the

property. Such judicial caution does not endorse the applicant's claim to ownership but affirms the principle that justice must not be rushed where rights, however imperfect, deserve a hearing before extinguishment. Accordingly, the interim interdict is granted pending final determination of the applicant's rights.

CONCLUSION

[39] The applicant sought an interim interdict to prohibit the transfer of the property he currently occupies into the deceased's estate until his claim to ownership is conclusively resolved. While his reliance on acquisitive prescription and estoppel may ultimately fail, he has demonstrated a *prima facie* right to pursue equitable relief arising from long-standing possession, payment of the purchase price, and the City's conditional willingness to facilitate transfer. The risk of irreparable harm is manifest. Transfer may extinguish his claim and disrupt his occupation. The balance of convenience favours preserving the *status quo*, and no satisfactory alternative remedy offers adequate protection. The requirements for interim relief are accordingly met.

[40] The Applicant has been represented by his attorney and advocate on a *pro bono* basis. They did, however, seek a costs order against the City if they prevailed with this application. On further reflection, the Applicant requested that the costs of this application stand over for later determination. The Court supports this stance, and it will be reflected in the order that follows.

ORDER

1. Pending the relief sought in Part B of this application, the First and Seventh Respondents are restrained from transferring Erf 2[...] in the municipality of Cape Town held under title deed 5[...] to the Second, and/or Third, and /or Fourth, and /or Fifth, and /or Sixth Respondents.
2. Costs are to stand over for later determination.

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down and delivered to the parties

by e-mail on 06 November 2025.

Applicant's Counsel:	J T Benade
Instructed by:	M S Nacerodien Attorneys
First Respondent's Counsel:	G Solik
Instructed by:	Diale Mogashoa Attorneys