



IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT]

Case No: 2025-1999871; and
2025-200031

In the matter between:

BULELWA ZONDANI AND 262 OTHERS
NTOMBENTLE WITTBOOI AND 181 OTHERS

First Applicant
Second Applicant

And

MEMBER OF THE EXECUTIVE COUNCIL,
DEPARTMENT OF HUMAN SETTLEMENT: EC
BUFFALO CITY METROPOLITAN MUNICIPALITY
RED ANT SECURITY AND EVICTION SERVICES

First Respondent
Second Respondent
Third Respondent

JUDGMENT

MAJIKI J

Introduction

[1] On 31 October 2025, this court made an order dismissing two applications brought by the applicants. These are the reasons for the order. The applications were heard together, by mutual agreement. The dispute concerns the applicants' occupation of the low-cost houses at the Reeston Housing Project, also known as Better Life, Reeston, East London. The applicants in the *Ntombentle Wittbooi* (*Wittbooi*) matter seek an interim interdict against the respondents from illegally and forcefully evicting the applicants, assaulting and molesting them, or maliciously injuring their property. The applicant did not indicate the return date. In *Bulelwa Zondani* (*Zondani*) the applicants seek that a *Rule Nisi* be issued, returnable on 25 November 2025, which seeks a declaration that the applicants' eviction is unlawful. Furthermore, an order interdicting the physical eviction of the applicants. The respondents oppose the application.

Background

[2] In the *Wittbooi* matter, according to the applicants, they were forcefully and violently removed by the respondents from the houses they had been in peaceful and undisturbed possession of, since 16 October 2025. In the *Zondani* matter, the applicants aver that they have been in occupation of the houses for more than five years and were being evicted by the respondents without a court order and without complying with the provisions of the Prevention of Illegal Eviction from and Occupation of Land Act, 1998 (PIE Act).

[3] The main deponent on behalf of the respondents is the Head of the Department of Human Settlements (the department). He states that, amongst others, he is responsible for the efficient management and administration of the department, including the proper use and care of State property. The City Manager of the Buffalo City Municipality (the municipality) aligned the municipality with the said response. The primary basis of the respondents' opposition is that, the applicants were interdicted from occupying the houses, the houses have not been certified for proper human habitation, construction is still going on as well.

The respondents offered temporary accommodation to the applicants, fenced 30-square-meter units at Mtsotso Settlement, in Mdantsane, Ward 12. The offer still stands.

[4] The applicants in the *Wittbooi* matter do not address these issues in their replying affidavit, adopting a stance that they are irrelevant to their case. They state that an alternative accommodation tender was not extended to them. In the papers, the number of available structures is not specified, and it is stated that not everyone would be accommodated. However, they would be willing to listen to the tender. The replying affidavit in the *Zondani* matter challenges the authority of the deponent to sign the answering affidavit. Furthermore, they state that they were not cited in the interdict application referred to by the respondents. The respondents have not furnished evidence of incomplete units. There is no construction going on in the area and the respondents never offered them alternative accommodation.

Applicants' case: Wittbooi matter

[5] The summary of the applicants' case in the *Wittbooi* matter is that, since 2021, the 182 applicants had been in occupation of the applicants' specified houses in the Reeston Project. That establishes their *prima facie* right. Mr Mdolomba from the department and Mr Sinethemba Bam from the municipality, together with the members of Red Ant Security and Eviction Services (Red Ants), forcibly and violently removed them. In that process, they damaged their property. They caused them irreparable harm by assaulting them, pointing a firearm at them and beating the applicants' dogs. Among the respondents, there are eight elderly people, some of whom suffer from hypertension and diabetes. There is also a child-headed family of 4 children led by their 20-year-old sibling. The respondents switched off the electricity and water meters. They banned the residents in the area from walking in groups of three or more.

[6] The applicants will suffer irreparable harm if the respondents continue with the wrongful and unlawful activities. The applicants are low-income earners; they would not be able to replace the property that the respondents are damaging. The schoolchildren are preparing for their examinations. Some people had to be taken to the hospital after the experience with the respondents. They have no other remedy.

On 17 October 2025, their legal representative phoned Mr Handi, the head of legal services at the municipality and Mr Mdolomba in the deponent's presence, enquiring if the respondents obtained a court order to authorise the evictions. Mr Handi said they did not. Mr Mdolomba declined the call.

[7] Concerning the balance of convenience, it favoured the granting of the order because the applicants had been violently taken out of their residences and the respondents violated their well-being. The matter is urgent, the evictions started on 16 October 2025. The applicants attached a picture of household goods outside, stating that it depicted their situation.

Applicants' case: Zondani matter

[8] According to the 262 applicants in the *Zondani* matter, they have been staying at Reeston for more than five years. From 16 October 2025, onwards, they were being evicted by the third respondent, on the instructions of the first and second respondent, without being authorised by the order of the court. Red Ants used excessive force during the evictions. That was done without complying with the provisions of the PIE Act. The eviction was arbitrary and grossly unreasonable. Elderly people and children have been evicted. The main deponent lived with a minor child, the eviction affected the said child negatively and caused the child physical and mental harm. All affected children were unable to attend school, and there is a risk that they may not be able to complete their final examinations. They cannot eat or bathe. The court, as the minor guardian of all minors, must consider the best interests of the children. The respondents have not offered them alternative accommodation, emergency housing, or temporary housing. There has been no attempt at mediation. The respondents acted *malafides*, they ran away from their duty to identify the applicants' needs.

Respondents' case

[9] According to the respondents, the applicants never resided in the area in question. In 2020, the department contracted Uphahla Construction (Pty) Ltd for the construction of 840 low-cost houses. The project was to be finalised in March 2020, but due to the conduct of the applicants and others, the contractor is still on site.

There was an approved list of intended beneficiaries, who had met the department's means test selection criteria. In 2020, the applicants and others sought to forcefully invade and occupy the partially completed houses.

[10] The department had to seek an urgent interim interdict against the above-stated interference. In March 2022, the interdict was confirmed. The service of the final order was made to various respondents personally or by placing the order in the most conspicuous places inside the construction site. The department has been, through the court order, in charge of the project until 14 October 2025, when a report was received indicating that the applicants had started to behave in the same manner prohibited in the urgent interim and final orders. The department, the municipality and Red Ant arranged that the final order be executed on 16 October 2025.

[11] The occupancy certificates are a mandatory requirement in terms of section 14(4)(a) of the National Building Regulations and Building Standards Act 103 of 1977. Before the occupation of completed houses, the municipality must inspect and issue certificates certifying the structure, stormwater, gas installation, soil poisoning, electrical and plumbing compliance. None of the applicants has been issued with those certificates. The area is not safe; construction is still ongoing, and safety wear is compulsory.

[12] The respondents deny any acts of violence, according to the deponent, he saw the applicants resisting the execution of the final order. They had not yet settled, they were still moving in. The services of Red Ant were procured to assist in the execution of the court order. The final order permitted the sheriff to seek the assistance of members of the South African Police Service, if needed. That would not be achieved solely with the help of the police. Noteworthy, the order omitted the word 'police', which seems to have been an error, but it is correctly stated in the affidavit.

[13] Regarding irreparable harm, no harm would be suffered if they accepted the offer for an alternate remedy. The balance of convenience also does not favour the granting of the order. The approved beneficiaries would have to wait for a long time to be allocated houses. The project would be delayed further, and the contractor's

costs would escalate. There is no provision for such in the department. The applicants have not established the application of the provisions of the PIE Act.

Issues for determination

[14] The issue that required determination was whether the applicants had made a case for the granting of an interdict, whether they had established the application of the provisions of the PIE Act, and whether they had been in occupation of the houses and proved the requirements of *mandament van spolie*.

Analysis

[15] Regarding the authority of the head of the department to depose to the answering affidavit, in *Ganes and Another v Telecom Namibia Limited*¹, Streicher JA said the following:

“[19] The deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. It is the institution of the proceedings and the prosecution thereof which must be authorised. In the present case the proceedings were instituted and prosecuted by a firm of attorneys purporting to act on behalf of the respondent... It must, therefore, be accepted that the institution of the proceedings were duly authorised.”

[16] When the matter was heard, all the papers had been filed. Above that, there was no return date in the *Wittbooi* matter, all the issues were fully ventilated. However, even if the matter was approached based on its presentation for interim relief, the applicants still had to meet the requirements for interim interdict. In *National Council of Societies for Prevention of Cruelty to Animals v Openshaw* ² the court stated:

¹ [2004] 2 All SA 609 (SCA).

² *National Council of Societies for Prevention of Cruelty to Animals v Openshaw* (462/07) [2008] ZASCA 78; [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA) (30 May 2008).

“[20] An interdict is not a remedy for past invasion of rights but is concerned with present or future infringements. It is appropriate only when future injury is feared.⁵ Where a wrongful act giving rise to the injury has already occurred, it must be of a continuing nature or there must be a reasonable apprehension that it will be repeated. The requisites for the right to claim an interim interdict are:⁶

(a) A prima facie right. What is required is proof of facts that establish the existence of a right in terms of substantive law;

(b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;

(c) The balance of convenience favours the granting of an interim interdict;

(d) The applicant has no other satisfactory remedy’ (footnotes omitted)”.

[17] In *Spur Steak Ranches LTD v Saddles Steak Ranch*³ the court confirmed that these requirements must be considered together to decide whether the Court should exercise its discretion in favour of granting interim relief. The prospects of success in the main application also influence whether interim relief should be granted. This will tip the balance in determining the overall balance of convenience.

[18] Regarding *prima facie* right, proof of facts for purposes of interim relief is to the effect that the right can be prima facie established, even if it is open to some doubt. In an application for interim relief, acceptance of the applicant’s allegations is not sufficient, in the same way, the weighing up of probabilities of conflicting versions is not required. The proper approach is as follows: -

(i) to consider the facts as set out by the applicant together with any undisputed facts set out by the respondents;

(ii) to decide whether, concerning the inherent probabilities and the ultimate onus, the applicant could on those facts obtain final relief; and

³ *Spur Steak Ranches LTD v Saddles Steak Ranch* 1996 (3) SA 706 at 714 – B - H.

(iii) to consider then the facts set up in contradiction by the respondents, and if they raise significant doubt on the applicant's case, the interim relief cannot be granted.

[19] The existence of an interdict against interference with unrolling the department's plan to build low-cost houses and later allocate them to identified beneficiaries is not in dispute. The applicants said that the said order did not apply to them, their names do not appear in the order. The undisputed evidence of the respondents is that the order was served by placing it in conspicuous places on the site. The order was also obtained against all people unlawfully occupying the units in the housing project. In their own version, they were in the area when the order was obtained. They are not in the list of the approved beneficiaries. Any attempt to occupy the houses violates the interdict. The respondents would then be entitled to effect the order against them. The respondents' evidence contradicting theirs, stating that the occupation was interdicted and successfully stopped, raises serious doubt regarding their occupation and subsequent eviction.

[20] Regarding the substance of the application for interdict, the applicants, in their version, have already been removed from the units. They alleged assault and damage to their property, among others. However, there is no allegation of a threat of future conduct. According to the principle in *National Council of Societies for Prevention of Cruelty to Animals*, *supra*, the interdict is not available to them.

[21] Regarding the absence of alternative relief, the respondents stated that they had tendered alternative accommodation. The tender was still available. According to the applicants, they would have been willing to hear the respondents in that regard, but they denied that the tender had been made. During the hearing, it was a fact that such a tender was on the table. In that light, there is an alternate remedy for all the applicants that would meet the set criteria, including the children and the elderly.

[22] The occupation is also central in determining whether the applicants were in peaceful and undisturbed possession of the property, a requirement for a final relief based on an action for spoliation. In such cases, the approach to factual disputes is governed by the principle set out in *Plascon Evans Paints Ltd v Van Riebeeck Paint*

(Pty) Ltd⁴. A court should grant the applicant's final relief if the facts presented by the respondent, when read with the facts admitted by the applicant, justify the order. That would be so in instances where the denial by the respondent of the fact alleged by the applicant may not be such as to raise a real, genuine, or bona fide dispute of fact as well. Alternatively, the denials are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.

[23] It is trite that for the applicants to succeed in a spoliation application, they must prove that they were in peaceful and undisturbed possession and the respondents wrongfully dispossessed them. Their version is that they were in the premises, at least, when the final order referred to by the respondents was obtained. The respondents' version is that the occupation was intercepted successfully. In that case, when the court order had always interdicted them from occupying the units, it cannot be that they were in peaceful and undisturbed possession of the units. There is a dispute regarding whether they indeed were in possession of the units.

[24] The issue of possession also ties in with whether the provisions of PIE Act apply in the applicants' circumstances. According to the respondent, the department was always in charge of the premises, armed with the court order. When a decision was taken to effect the court order and that process was embarked on, the applicants were still in the process of taking occupation. They had not settled, nor was their possession complete. Upon applying the *Plascon Evans* principle, the applicant failed to satisfy the requirements of *mandamus van spolie* and that the provisions of the PIE Act are applicable.

[25] Finally, reasons are also provided as to why the application for leave to file a supplementary affidavit with the evidence of footage contained on a USB in the *Wittbooi* matter was unsuccessful. No explanation was tendered in the affidavit as to why the said application was made at that late stage. The court had no basis to consider the said application.

⁴ *Plascon Evans Paints Ltd v Van Riebeeck Paint (Pty) Ltd* 1984 (3) SA 620 at 634H to 635.

B. MAJIKI

JUDGE OF THE HIGH COURT

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