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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 041948/2025

050558/2025

(1) REPORTABLE: ~~YES~~ / NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO

(3) REVISED: ~~YES~~ / NO

DATE: 10 December 2025

SIGNATURE

In the matter between:

**DUMAKUDE, MXOLELENI & 37 OTHERS
APPELLANTS**

1ST to 38TH

and

**CLARENDON HEIGHTS BODY CORPORATE & 6 OTHERS
RESPONDENTS
THE CITY OF JOHANNESBURG
RESPONDENT**

1ST to 7TH

8TH

**SOUTH AFRICAN POLICE SERVICE HILLBROW
RESPONDENT**

9TH

And in the matter between:

**ONUOHA, EKENE MARSHAL & 3 OTHERS
APPELLANTS**

1ST to 4TH

and

**RAPID RESIDENTIAL PROPERTY (PTY) LTD & 3 OTHERS
RESPONDENTS**

1ST to 4TH

THE CITY OF JOHANNESBURG

5TH RESPONDENT

SOUTH AFRICAN POLICE SERVICE HILLBROW

6TH RESPONDENT

Heard: 1 December 2025

Delivered: 10 December 2025

JUDGMENT

WINDELL J (YACOOB AND WANLESS JJ concurring):

Introduction

[1] This is an appeal in terms of section 18(4) of the Superior Courts Act 10 of 2013. The appeal was initially set down for hearing before a Full Court during the week of 3 to 7 November 2025. In preparation for the hearing the Deputy Judge President directed that the record be finalised by 20 October 2025 and that heads of argument be filed by 27 October 2025. The appeal did not proceed in that week for reasons unconnected to

the merits or the appeal and was re-enrolled before a differently constituted Full Court for 26 November 2025.

[2] When the matter returned to court on 26 November 2025, it emerged that the appellants (the unlawful occupiers) had not filed heads of argument as required by the directive of the Deputy Judge President. Instead, heads of argument were only uploaded on the day of the hearing, together with an application filed shortly before the hearing seeking leave to adduce further evidence on appeal. The respondents, Clarendon Heights Body Corporate and associated entities, objected to the lateness of that application and indicated that they intended to oppose it.

[3] At the hearing on 26 November 2025, Mr M Mlanga appeared as senior counsel for the appellants together with his junior, Mr L. Mhlanga, and sought leave for the late heads of argument to be accepted. Mr Mlanga informed the court that he practiced in the Eastern Cape under the National Bar Council of South Africa, but when he was requested to verify that he was on the roll of legal practitioners, or to produce his letters patent, he was unable to do so. Mr Mhlanga, who appeared as his junior, indicated that he was not in a position to argue the matter. A postponement was requested to allow Mr Mlanga to obtain proof of his status, and the matter was accordingly postponed to 1 December 2025.

[4] On the return date, Mr Mlanga did not appear. The court was informed, by way of a letter dated 1 December 2025 from the Legal Practice Council, that he was not enrolled as a legal practitioner, and the appeal accordingly proceeded with Mr Mhlanga representing the appellants. For the avoidance of any doubt, Mr Mhlanga did so ably

and there was no disadvantage evident to the appellants which could be attributed to Mr Mlanga's absence.

[5] It is against that background, and following the procedural difficulties described above, that this court now considers the appeal under section 18(4), together with the appellants' application to adduce further evidence.

Background

[6] The dispute concerns the occupation of Clarendon Heights, a sectional title building at [...] B[...] Street, Hillbrow. In March 2025 the respondents instituted urgent proceedings in terms of section 5 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE), alleging that the building had been taken over and managed without the authority of the body corporate, that rental payments were being collected by persons other than the registered owners, and that contractors and management were being denied access. The respondents further alleged that these circumstances resulted in what is colloquially referred to in urban housing matters as a "building hijack", accompanied by serious security and safety concerns affecting residents and the property.

[7] An urgent rule nisi was granted on 1 April 2025 by Kuny J authorising service of the section 5(2) notice and interdicting the occupiers from interfering with the respondents' business, staff and contractors pending the hearing of the section 5(1) eviction relief. The eighth respondent, the City of Johannesburg (the City), was directed to file a report on the availability of temporary emergency accommodation (TEA) and engagement with the occupiers.

[8] When the matter came before Fisher J on 22 April 2025, the interim interdictory relief was confirmed. Fisher J postponed the section 5(1) application and directed the occupiers to file affidavits containing verified personal circumstances with supporting documents by 19 May 2025. The City was instructed to conduct an occupancy audit and file a report on vulnerability, TEA availability and relocation planning.

[9] The occupiers did not file supplementary affidavits by the date directed. Instead, on 23 June 2025, the occupiers uploaded TEA forms without supporting affidavits or confirmatory evidence. The City filed no report.

[10] On 22 July 2025 Snyman AJ heard the urgent eviction application in terms of section 5 of PIE. Written reasons were delivered on 25 July 2025.

The Orders of the Court a quo

The Main Judgment

[11] In the main judgment delivered on 25 July 2025, Snyman AJ granted an eviction order against the occupiers in terms of section 5 of PIE. The judgment confirmed that the occupation was unlawful and that control of the building had been taken over. The court noted the respondents' uncontested evidence that the building was being managed outside the control of the body corporate, that funds were being collected unlawfully, that contractors, agents and plumbers had been denied access, and that threats and acts of violence had occurred when attempts were made to enter or maintain the building. The property had deteriorated significantly, municipal utilities had been interfered with, and insurers had threatened to withdraw risk cover.

[12] Snyman AJ held that the interim interdicts and protection orders previously granted were not complied with. In addition, the occupiers did not comply with Fisher J's direction to file supplementary affidavits setting out their personal circumstances, supported by documentation, to enable the City to assess vulnerability and temporary accommodation requirements. Despite multiple opportunities, no such affidavits were filed. Only TEA forms were uploaded, without affidavits attesting to circumstances. The court found that the occupiers had therefore failed to place personal and household information before the court as required in PIE eviction matters. The only material before the court was the respondents' evidence, which described ongoing safety concerns and a serious risk to persons and property.

[13] In those circumstances Snyman AJ granted the eviction order. The occupiers were directed to vacate within 48 hours.

[14] The occupiers applied for leave to appeal. On 14 August 2025 that application was dismissed. The petition to the Supreme Court of Appeal (SCA) was lodged on 22 August 2025 and remains pending.

The Section 18(3) Judgment

[15] On 30 September 2025 the respondents applied for execution of the eviction order pending appeal. On 3 October 2025 Snyman AJ granted the section 18(3) relief.

[16] The court found that exceptional circumstances existed, including the unlawful management of the building, safety risks, loss of control, deterioration of infrastructure and the threat of insurance cover being withdrawn. The court held that irreparable harm would be suffered by the respondents if execution was suspended, referring to the ongoing risk of fire or injury, unlawful tapping of water and electricity, inability to maintain utilities, and continuing rental diversion.

[17] Snyman AJ also considered whether anything before the court suggested prospects of success on appeal. He held that no basis for such prospects had been demonstrated. The occupiers had not complied with Fisher J's directives, had not filed the required affidavits setting out personal circumstances with supporting documents, and had placed no new material before the court that could alter the factual findings in the main judgment. In those circumstances, the court found no indication that an appeal would reasonably succeed.

[18] In relation to harm to the appellants, the court a quo found that no evidence was placed before it demonstrating homelessness, vulnerability, or any circumstance amounting to irreparable harm. Despite having been given express opportunity to do so under the Fisher order, the appellants filed no supplementary affidavits and provided no supporting documentation. In the absence of primary evidence, the contention that they would suffer irreparable harm if evicted remained speculative. The court held that they had accordingly failed to establish that they qualified for temporary emergency accommodation or that eviction would cause irreparable harm.

[19] The court therefore declared that the eviction order was to remain operative pending appeal. The appellants then exercised their automatic right of appeal in terms of section 18(4), giving rise to the matter now before this court.

Application to Adduce Further Evidence on Appeal

[20] Before turning to the merits of the appeal, it is necessary to consider the application brought by the appellants to adduce further evidence. The evidence consists of an affidavit purporting to set out personal circumstances of certain occupiers, together with confirmatory affidavits filed by some but not all of the individuals referred to. The material is substantially a conversion of the TEA forms, previously uploaded on 23 June 2025, into affidavits.

[21] The admission of evidence on appeal is an exceptional indulgence.¹ In *De Aguair*² the SCA explained as follows:

¹ *De Aguair v Real People Housing (Pty) Ltd* 2011 (1) SA 16 (SCA) (“*De Aguair*”).

² *Supra* paras 9-12.

'9. In terms of s 22(a) of the Supreme Court Act 59 of 1959 this court (and a high court) is afforded power - ... on the hearing of an appeal to receive further evidence, either orally or by deposition before a person appointed by such division, or to remit the case to the court of first instance, or the court whose judgment is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as to the division concerned seems necessary;

10. These provisions have been the subject of judicial scrutiny on innumerable occasions over the years and although the requirements have not always been formulated in the same words, the basic tenor of the various judgments throughout has been to emphasise the court's reluctance to reopen a trial: in the interests of finality, the court's powers should be exercised sparingly and further evidence on appeal should only be admitted in exceptional circumstances.

11. It is incumbent upon an applicant for leave to adduce further evidence to satisfy the court that it was not owing to any remissness or negligence on his or her part that the evidence in question was not adduced at the trial. Furthermore, inadequate presentation of the litigant's case at the trial will only in the rarest instances be remediable by the adduction of further evidence at the appeal stage.'

[22] The principles in an application to adduce evidence on appeal are well-established. A party must show: (1) that the further evidence could not, with reasonable diligence, have been produced at the hearing;³ (2) that the new evidence is material and weighty, and would probably influence the result; and (3) that the application is bona fide and not intended to fill gaps or repair a deficient case.⁴

³ See *S v De Jager* 1965 (2) SA 612 (A) at 615 and *Road Accident Fund v Le Roux* 2002 (1) SA 751 (W) at 753H-J.

⁴ See *Colman v Dunbar* 1933 AD 141 at 161-162.

[23] The evidence sought to be introduced was plainly available long before the main hearing. Fisher J's order of 22 April 2025 placed the occupiers on express terms to deliver supplementary affidavits by 19 May 2025, setting out personal circumstances with supporting proof. No affidavit was filed. Instead, TEA forms were uploaded without attestation. The same material could have been placed before Snyman AJ at the eviction hearing, before leave to appeal was sought, and again when opposition was delivered in the section 18(3) proceedings. It was not. The explanation advanced — that the occupiers were awaiting the City's engagement — does not meet the diligence requirement.

[24] The evidence is also not shown to be decisive. The affidavit does not cover all affected households; several units are dealt with without confirmatory affidavits from their occupiers; and allegations of homelessness are stated in broad conclusory terms without documentary verification, or other properly supportive evidence. Importantly, the evidence does not address the central basis on which execution was granted: ongoing unlawful conduct within the building, risk to residents, non-compliance with court orders, and the imminent loss of insurance cover. The evidence does not undermine those findings.

[25] The inference is unavoidable that the application seeks to regularise material that could and should have been filed earlier. That is the very purpose for which evidence on appeal may not be admitted. The requirements are not met, and the application falls to be dismissed.

The section 18(4) appeal

[26] An appeal under section 18(4) is a narrow enquiry. The issue is not whether the underlying eviction order was correct, but whether the court a quo was entitled to order execution pending appeal. Section 18 marks a deviation from the common law rule that the noting of an appeal suspends execution. The default position under section 18(1) is suspension, and section 18(3) permits departure only where strict statutory requirements are met.

[27] In *Knoop NO and Another v Gupta (Execution)*,⁵ the SCA reaffirmed that execution pending appeal will only be granted in truly exceptional cases. The default position remains, and a court may depart from this only where compelling facts justify doing so. The enquiry is fact-specific and requires circumstances outside the ordinary course. Similarly, in *Incubeta Holdings (Pty) Ltd v Ellis*,⁶ the court held that execution pending appeal is granted sparingly. The applicant for execution bears the onus to prove exceptional circumstances, irreparable harm to itself if the order is suspended, and that the respondent will not suffer irreparable harm if execution proceeds. These authorities show that the statutory requirements operate cumulatively, and that failure to satisfy any one of them is fatal to the grant of execution pending appeal.

Exceptional Circumstances

[28] As highlighted above, execution pending appeal is extraordinary relief and will be granted only where circumstances go beyond the ordinary operation of the suspension rule. The court a quo found such circumstances present. On the evidence before it, the

⁵ 2021 (3) SA 135 (SCA) para 46.

⁶ *Incubeta Holdings and Another v Ellis and Another* 2014 (3) SA 189 (GSJ) para 16-22.

building had been taken over and run without the authority of the body corporate; rentals were being collected by persons with no lawful entitlement to do so; contractors and agents were obstructed or threatened; and municipal services were interfered with. The situation was indicative of a building hijack, with ongoing safety, management and structural risks. On that factual foundation, the court concluded that the circumstances were exceptional.

[29] These circumstances are not typical of ordinary eviction litigation. The matter involved unmanaged safety risks, unlawful control of the premises, and the breakdown of lawful administration of a residential building. The factual basis for exceptional circumstances was thus clear and undisputed.

Irreparable Harm to the Respondents

[30] The harm relied upon by the respondents was not speculative. The building's insurance cover had already been cancelled following persistent unmanaged risk and loss of control over access, security and maintenance. Maintenance access was obstructed, and the property continued to deteriorate physically and structurally. Rental payments were being collected unlawfully and diverted away from the body corporate, undermining the financial sustainability of the scheme. There was also ongoing danger to lawful residents, service providers and contractors attempting to enter the building.

[31] These are irreversible consequences. They cannot later be remedied by an award of costs or a successful appeal. Once a residential building has deteriorated to the point where it is uninsured, structurally compromised or at serious risk of fire, that position cannot simply be restored. The welfare and safety of residents and the

structural integrity of the building are, in those circumstances, matters that cannot be adequately protected by ex post facto relief.

[32] These findings justified the court a quo's conclusion on exceptional circumstances and irreparable harm to the respondents.

Irreparable Harm to the Appellants

[33] The third requirement under section 18(3) is that the respondents must satisfy the court, on a balance of probabilities, that the appellants will not suffer irreparable harm if the eviction order is executed pending the outcome of the appeal. The enquiry does not involve deciding whether the eviction order was correctly granted. It concerns only whether immediate execution, before the appeal process is exhausted, may result in harm that cannot later be undone.

[34] That question cannot be answered reliably where the court lacks information about vulnerability, the presence of children or elderly persons, income levels or whether temporary accommodation is available. In *Port Elizabeth Municipality v Various Occupiers*⁷ the Constitutional Court noted that courts must approach eviction with sensitivity of homelessness. In *Changing Tides*⁸ the SCA emphasised that eviction cannot be ordered in the absence of a full factual record concerning vulnerability and alternative accommodation. And in *Berea*⁹ the Constitutional Court held that eviction must be preceded by adequate investigation into personal circumstances and the

⁷ 2005 (1) SA 217 (CC) paras 36–37.

⁸ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) paras 32-34 and 41-41.

⁹ *Occupiers of Erven 87 & 88 Berea v De Wet N.O and Another* 2017 (5) SA 346 (CC) para 48, 52-55, 57-60. See also *Occupiers of Saratoga Avenue v City of Johannesburg Metropolitan Municipality and Another* 2012 (9) BCLR 951 (CC) paras 36-40, 96-104.

municipality's role. These authorities are relevant here solely to the extent that the third section 18(3) requirement demands a factual basis to exclude irreparable harm.

[35] If the court is unable to determine whether households may be rendered homeless, it cannot be satisfied that no irreparable harm will arise should eviction proceed now. In the interim context, where consequences may be irreversible, caution is required.

[36] The difficulty is that the evidentiary foundation needed to make that assessment was not available when the section 18(3) order was granted and remains absent at this stage. Paragraph 5 of the Fisher order directed the occupiers to file supplementary affidavits by 19 May 2025 setting out personal circumstances with supporting documentation. No affidavits were filed. Instead, TEA forms were uploaded without verification or confirmatory evidence. They do not constitute sworn evidence.

[37] In addition, the Fisher order imposed a parallel obligation on the City. Paragraph 7 required it to file an affidavit reporting on its assessment of the occupiers and the availability of temporary emergency accommodation. The report had to identify households, record vulnerability and income, indicate whether TEA existed and where it was located, and attach documentation showing steps taken. No report was filed.

[38] The City was required to report even if information was incomplete. Nothing prevented it from stating that some information was lacking, that assessments could not be finalised, or that TEA was unavailable or oversubscribed. None of that information was placed before the court.

[39] The result is an evidentiary gap relevant only to this stage of the litigation. The court has no verified basis on which to evaluate hardship, homelessness risk or relocation feasibility. In eviction matters under PIE, particularly where section 26 rights are implicated, a court must have sufficient information to ensure that interim execution will not cause irreversible harm. That information is absent.

[40] At this point, that this lack emanates at least partly from the occupiers' non-compliance is not the focal point. That is a serious issue and may feature prominently should the merits of the eviction order be litigated further. However, the present question is confined to whether execution should proceed pending appeal. In the face of uncertainty as to hardship, the court cannot find that irreparable harm will not occur. The consequences of a wrongful eviction cannot later be reversed.

[41] That concern is heightened by the 48-hour time-frame in the original order. Short notice in an inner-city context involving multiple households carries a real risk of abrupt displacement, disruption to schooling or employment, and immediate loss of shelter. Harm of that kind cannot be remedied by the outcome of an appeal or by a costs award.

[42] On the material before this court, the respondents have not discharged the burden of demonstrating that the appellants will not suffer irreparable harm if eviction proceeds pending the outcome of the petition and any further appeal. The third requirement in section 18(3) is therefore not met.

[43] It follows that the section 18(3) execution order cannot stand and must be set aside.

Conclusion

[44] The court a quo was correct in identifying exceptional circumstances and in accepting that the respondents faced real, ongoing harm arising from the unlawful occupation and loss of control of the building. However, the section 18(3) enquiry has three cumulative requirements. Even where exceptional circumstances are shown and irreparable harm to the respondents is established, execution may only be granted if the applicant also proves that the appellants will not suffer irreparable harm if the order operates pending appeal.

[45] In this matter the evidentiary basis for the third requirement was absent. The absence of affidavits containing verified personal circumstances of the occupiers, the failure by the City to file the report required by Fisher J, and the fact that eviction was ordered to occur within 48 hours, rendered it impossible to determine whether immediate execution might result in displacement or homelessness. In those circumstances, caution must prevail. The default position under section 18(1), that the noting of an appeal suspends the order, must apply.

[46] The eviction order accordingly remains suspended pending the outcome of the petition to the SCA and any further appeal that may follow. The interim interdicts previously granted remain operative to regulate access, security, utilities and management of the building, and to safeguard the interests of both parties while the litigation proceeds.

Costs

[47] A further issue arises regarding the wasted costs of appearance on 26 November 2025. As recorded earlier, the matter could not proceed because a person representing himself as counsel for the appellants was unable to produce proof of enrolment or letters patent. The Legal Practice Council subsequently confirmed that he was not enrolled as an advocate and not authorised to practise. The result was that the respondents, the court and the public resources dedicated to that day were put to waste.

[48] A request was made on behalf of the respondents that the wasted costs for 26 November be borne *de bonis propriis* by the attorney representing the appellants. That request cannot be determined without giving the attorney concerned an opportunity to respond. Procedural fairness requires that a personal costs order may only be considered once the practitioner has been notified of the possibility of such an order and has been afforded the opportunity to explain the circumstances giving rise to the wasted hearing.

[49] The attorney for the appellants will therefore be directed to file an affidavit within the time period stipulated below, explaining why a personal costs order in respect of the wasted costs of 26 November 2025 should not be made against him. The respondents will be afforded an opportunity to reply. The issue of such wasted costs will then stand over for determination on the papers unless otherwise directed.

[50] The application to adduce further evidence was filed belatedly, without any explanation for the delay. It sought to introduce material available earlier, and required

the respondents to respond on short notice. In those circumstances, it is appropriate that the appellants bear the costs of that application. The appeal itself has succeeded and costs must follow the result.

[51] In the result the following order is made:

1. The application to adduce further evidence on appeal is dismissed with costs, on Scale B.
2. The appeal in terms of section 18(4) of the Superior Courts Act 10 of 2013 is upheld.
3. The order of Snyman AJ dated 3 October 2025 granted in terms of section 18(3) is set aside.
4. In terms of section 18(1) of the Superior Courts Act, the section 5 eviction order granted on 25 July 2025 is suspended pending the outcome of the petition to the Supreme Court of Appeal and any further appeal.
5. The interim interdicts regulating occupation, access, utilities, security and management of the building shall remain in force pending final determination of the appeal or further order of court.
6. The attorney acting on behalf of the appellants is directed, within 10 days of this order, to file an affidavit setting out reasons why a personal costs order *de bonis propriis* should not be made against him in respect of the wasted costs occasioned by the appearance on 26 November 2025. The respondents may

deliver a reply within 10 days thereafter. The issue of such wasted costs is postponed for determination on the papers.

7. Save for the costs postponed under paragraph 6, the respondents shall pay the costs of the appeal on Scale B.

L WINDELL

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 10 December 2025.

Appearances

For the appellants: Lucky Mhlanga

Instructed by: Precious Moleya Attorneys Inc.

For the respondent: Leon Peter

Instructed by: Vermaak Marshall Welbeloved Inc.
Attorneys

Date of Hearing: 1 December 2025

Date of Judgment: 10 December 2025