



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case number: LanC 117/2025

Before: The Honourable Acting Judge Montzinger

Hearing: 27 August 2025

Delivered: 27 November 2025

(1) REPORTABLE: Yes ☐ / No ☒
(2) OF INTEREST TO OTHER
JUDGES: Yes ☐ / No ☒

Date: 27 November 2025

In the matter between:

MONA GLEN FARMING (PTY) LTD

Applicant

and

AYANDA NZIMANDE

First Respondent

THULAWAZI JOHANNES NZIMANDE

Second Respondent

FELUMUSA NZIMANDE

Third Respondent

PETRUS THANDAZANI KUNENE

Fourth Respondent

Summary: Interim Interdict involving ESTA occupiers and their Zulu cultural rights involving a structure they regard as their *uMsamo* (an ancestral shrine) – Demolition and reconstruction of rondavel structure without the owner’s consent – Meaningful engagement – Self-help – requirements for an interim interdict – Just and equitable remedy – Moulding of the terms of the interdict to preserve cultural practices.

ORDER

1. The rule *nisi* issued on 5 August 2025 is confirmed and an interim interdict is therefore issued in the following terms:
 - 1.1. An amendment of the notice of motion is granted and the names of the second to fourth respondents are substituted with their correct names as they appear on the face of the issued order.
 - 1.2. The first to the fourth respondents (“the respondents”) be and are interdicted and restrained from effecting alterations to any of the structures depicted on annexure “A”, attached to this order, or from constructing a new structure in the area where the structures depicted in annexure “A” are situated, on the farm Mona Glen, Richmond, KwaZulu-Natal.
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- 1.3. The respondents are further interdicted from taking any of the actions in paragraph 1.2 either directly or indirectly and/or personally and/or through third parties, not joined in these proceedings.
- 1.4. The respondents be and are interdicted and restrained from taking occupation of any of the structures depicted on annexure “A” situated on the farm Mona Glen.
- 1.5. The provisions of paragraph 1.4 of this order shall not operate as an eviction order and shall not apply to the third respondent, who claims to currently occupy one of the existing structures depicted on annexure “A”.
2. The interim interdict granted in paragraphs 1.2 – 1.4 above, shall operate pending the finalisation of an action or application to be instituted by the applicant for a declaration of rights and any related relief arising from the issues in dispute. The applicant shall institute such proceedings within 14 (fourteen) days from the date of this order, failing which the interim interdict shall lapse and be of no further force or effect.
3. It is further ordered that:
- 3.1. In the event that the respondents, or any other members of the Nzimande family, require to undertake any further cultural ceremonies in respect of the *uMsamo* at the Sikhwama Nzimande homestead as depicted on annexure “A”, or in respect
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of any of the structures depicted, prior to the finalisation of the future proceedings to be instituted by the applicant, the following procedures shall apply and be followed by them:

- (i) Written reasonable notice of such intended ceremony, inclusive of the reasons therefore and the nature of the ceremony shall be given to the applicant, by handing it to Mr Greg Walsh or emailing it to the attorneys of the applicant at the address specified in the notice of motion.
- (ii) The applicant shall, within a reasonable time and as circumstances permit, indicate its consent or refusal thereof.
- (iii) In the event of refusal, the respondents shall then approach this Honourable Court for appropriate relief, with proper notice to the applicant prior to request an order or appropriate relief from the Court prior to undertaking any such ceremony.

4. All issues of costs are reserved for determination by the court hearing the future proceedings referred to above.

JUDGMENT

Montzinger AJ:

Introduction

[1] This matter concerns an application by Mona Glen Farming (Pty) Ltd (“the applicant”), the registered owner of the farming enterprise known as Mona Glen, situated near Richmond in KwaZulu-Natal, for interdictory relief against the first to fourth respondents who are all members of the Nzimande family. According to the applicant, the respondents are long-standing residents on the farm and, on the applicant’s version, are at least “occupiers” as contemplated in ESTA¹.

[2] The application was launched on 31 July 2025 as an urgent application. In the notice of motion the applicant sought a *rule nisi* calling upon the respondents to show cause why, pending the finalisation of an action for a declaration of rights and related relief, they should not be interdicted from: (a) effecting alterations to existing structures, or constructing any new structure, and (b) taking occupation of any of the existing structures previously occupied by a Mr Senzo Calvin Nzimande (“Senzo”)².

[3] On 5 August 2025, after perusing only the founding papers, Cowen DJP issued directions in terms of rule 34(3)(b)³. Having been satisfied that the allegations, if established, may render the matter urgent, the Court granted prayers 2.1 and 2.2 of the notice of motion *ex parte* as an interim order in the form of a *rule nisi*, pending the hearing set down for 27 August 2025. The directions also regulated the filing of answering and replying affidavits and heads of argument.

¹ Extension of Security of Tenure Act 62 of 1997.

² Who is not joined as a respondent.

³ Land Court rules.

[4] The answering affidavit is deposed to by Mr F Nzimande, the third respondent. He avers that he is an occupier residing at Mona Glen and that he is duly authorised to depose to the affidavit on his own behalf as well as the fourth respondent, who filed a confirmatory affidavit. The first and second respondents did not oppose the application or depose to answering or confirmatory affidavits. Where reference is made further in this judgment to the “respondents”, it means the third and fourth respondents. Where reference is made to the first to fourth respondents, I will make use of the identifier the “Nzimande family”.

[5] The first to fourth respondents’ names were incorrectly cited. The notice of motion refers to the third respondent as Botwa Nzimande and the fourth respondent as Mvigelwa Nzimande, while in the answering affidavit, the third respondent identified himself as Felumusa Nzimande and the fourth respondent as Petrus Thandazani Kunene. There is, however, no dispute that the third and fourth respondents are the individuals contemplated by the applicant in the notice of motion. I therefore granted an amendment in the form of a substitution to reflect the correct names⁴.

[6] The dispute centres on a cluster of rondavel-type structures on a portion of the Mona Glen farm referred to by both sides as the “Sikhwama homestead”⁵. On the applicant’s version, those structures were erected by Senzo, son of the late Mr Sikhwama Nzimande. Senzo and his immediate family resided at the homestead until, in June 2023, he concluded a written settlement with the

⁴ The second respondent is substituted with Thulawazi Johannes Nzimande (also known as Saad Nzimande). The third respondent is substituted with Felumusa Nzimande (also known as Botwa Nzimande). The fourth respondent is substituted with Petrus Thandazani Kunene (also known as Mvigelwa Nzimande).

⁵ Identified on annexure B to the notice of motion as the “Senzo Nzimande structures”

applicant in terms of which he agreed to vacate the farm with his family against payment of R25 000 and the right to all building materials from his then residence. The settlement agreement, on which the applicant relies, records, in effect, that once Senzo and those occupying through him had vacated, the structures could be demolished and the materials removed.

[7] The applicant further alleges that following separate protection order proceedings in 2023, brought at the instance of certain members of the Nzimande family, it undertook not to demolish Senzo's former structures without a court order. The interim protection order was thereafter withdrawn on that basis. According to the applicant, Senzo's homestead has stood vacant and unused since his departure, in 2023, with no lawful occupant, and it was intended that the unused structures be demolished.

[8] The respondents present a materially different picture. In the answering affidavit the third respondent states that, after Senzo's imprisonment in 2018 for the death of his father, a family decision was taken that he (the third respondent) should move from the main Nzimande family homestead, also on the Mona Glen farm, to the Sikhwama homestead as the male figure in that household. The third respondent claims to have resided there anyway permanently since about 2018, and says that other family members, particularly two daughters of the late Sikhwama, visit frequently and stay over on weekends and holidays. The Sikhwama homestead, he says, includes a structure used as the *uMsamo*⁶, a

⁶ *uMsamo* in Zulu culture is a sacred ancestral shrine or altar within the homestead that functions as the primary point of contact between the living family and its ancestors (*amadlozi/amathongo*). It is both a physical space and a spiritual institution around which many Zulu domestic, ritual, and moral practices are organised.

sacred space for communication with the ancestors, which is central to the spiritual and cultural life of that branch of the family.

[9] The respondents recount that a major hailstorm in November 2024 damaged the *uMsamo* structure. They say that, after temporary repairs and continued use for rituals, a traditional healer advised in July 2025, following a serious illness of a grandchild, that the *uMsamo* had to be rebuilt urgently in more durable materials to restore spiritual harmony. The family resolved to rebuild the fallen structure. They assert that the demolition of the damaged rondavel on 29 July 2025 was an integral part of that rebuilding exercise and not the construction of a “new” homestead.

[10] A further area of sharp dispute is the extent to which the parties have engaged with each other and whether the Nzimande family⁷ has consent to affect any construction. The applicant states that, after observing persons cleaning around Senzo’s vacant structures from about 21 July 2025, it caused a letter, dated 22 July 2025, to be delivered only to the first respondent. In that letter only the first respondent was reminded that the buildings formed part of the applicant’s property, and he was warned not to take occupation or interfere with the structures. An undertaking was demanded not to do so, failing which urgent interdict proceedings would be instituted.

[11] On 25 July 2025 the second respondent apparently sent a WhatsApp message advising the applicant that the brothers intended to hold a cultural function in December 2025 at the “Sikhwama” residence and to “sort out” the

⁷ This presumably includes the first to fourth respondents

large rondavel which had been damaged by hail. Mr Walsh, on behalf of the applicant, replied the same day, thanking the second respondent for the information but expressly stating that no permission was given for repairs, that no one was allowed to work on the structures, and that any cultural function had to take place where the family was currently living.

[12] The applicant alleges that, notwithstanding this communication, and having ceased activity briefly, the Nzimandi family thereafter resumed their activity of construction of the damaged structures at the Sikhwama homestead. On 28 July 2025 people again cleaned the area and on 29 July 2025 one of the structures was in the process of being demolished. On 30 July 2025 building materials were delivered to the site. This prompted the urgent application of 31 July 2025. After the Court issued directions and an interim order, the applicant presented evidence, in a supplementary affidavit, that the Nzimande family persisted in digging foundations and continue construction over the weekend of 2 – 3 August 2025, despite having been served with the application papers, the Court's directions and a further warning letter from its attorneys.

[13] The Nzimande family, for their part, characterise the 25 July 2025 WhatsApp exchange as an attempt at “meaningful engagement” as contemplated in *Daniels v Scribante*⁸ and s 6(2)(dB)⁹ of ESTA. They say the applicant's refusal of consent, without any proposal of reasonable alternatives, did not extinguish their right as occupiers to improve or re-erect an existing structure at their own cost to render

⁸ 2017 (4) SA 341 (CC)

⁹ (2) *Without prejudice to the generality of the provisions of section 5 and subsection (1), and balanced with the rights of the owner or person in charge, an occupier shall have the right-(dB) to take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family*

it suitable for dignified occupation and for the exercise of their cultural and religious practices. The family assert further that the demolition of the hail-damaged rondavel and the intended rebuilding constituted precisely such an improvement, that their actions were lawful, and that to restrain them would unjustifiably infringe their constitutional rights to dignity, housing, culture, religion and family life.

[14] A further dispute concerns the legal significance and reach of the 2023 deed of settlement concluded between the applicant and Senzo. The applicant relies on that agreement as the primary basis for its asserted right to demolish the structures once Senzo and those occupying through him, at the Sikhwama homestead, had vacated and says the Nzimande family are now unlawfully frustrating that agreed outcome. The respondents, however, challenge both the factual premise that the homestead was vacated and the legal premise that Senzo could, in law or under *isiZulu* custom, waive or extinguish the rights of the wider Nzimande family, particularly in respect of the *uMsamo* and the ancestral homestead. They suggest that the applicant's choice to contract with Senzo, and not with the late Sikhwama's eldest daughter or other elders, reflects a disregard for women's status in the family and for *izithakazelo*¹⁰.

[15] Against this factual and cultural matrix, the applicant contends that it seeks no more than temporary interdictory relief to preserve the status *quo* pending a future action for a declaration of rights concerning, among others, (a) the applicant's entitlement to act in accordance with the deed of settlement, including demolishing the structures and providing the materials to Senzo; (b) the

¹⁰ This is traditional Zulu term used to identify a person's clan, family history, and ancestral heroes.

competing rights of Senzo and the Nzimande family in respect of the *uMsamo* at the Sikhwama homestead; and (c) the continued occupation of the Sikhwama homestead by the third respondent or other members of the Nzimande family.

[16] The respondents in turn maintain that the relief sought is, in substance, final in effect, as it would enable the applicant to demolish the Sikhwama homestead without any adjudication of their underlying rights, and that the applicant has not met the requirements for the relief that they seek.

Issues to be determined

[17] In broad terms, the dispute on the return day raises both procedural and substantive questions. For present purposes, the issues that arise on the papers and argument may be formulated as follows:

- (i) Whether the matter is urgent.
- (ii) Whether, properly construed, the relief sought in prayers 2.1 and 2.2 of the notice of motion is interim and preservative, or whether, as the respondents argue, it is final in substance and that the Court should apply the test for a final interdict.
- (iii) Depending on the proper characterisation of the relief, whether a case has been made out for an interdict.

(iv) Whether, on the application of ESTA, the Constitution and the principles in *Daniels v Scribante*¹¹ and related authorities, the respondents were entitled, without an court order, to rebuild the hail-damaged structure at the Sikhwama homestead as an *uMsamo* structure at their own cost, notwithstanding the applicant's refusal to grant consent; or whether such conduct amounts to impermissible self-help that should be restrained by an interim interdict.

[18] It is to these issues that the remainder of the judgment will turn.

Urgency

[19] As to urgency, the time-line is largely common cause. Following information that the first respondent intended to take over vacant structures at the Sikhwama homestead (previously occupied by Senzo and his family), the applicant's attorneys sent the warning letter of 22 July 2025. After that letter, activity ceased briefly. On 25 July 2025 the second respondent's WhatsApp message foreshadowed repairs to the large rondavel at the Skhwama's homestead for cultural purposes, to which Mr Walsh immediately responded refusing consent and recording that nobody was permitted to work on the houses. On 29 July 2025 one of the structures was in the process of being demolished and on 30 July building materials were delivered. Furthermore, on 2 – 3 August 2025 foundations were being dug and construction commenced, notwithstanding service of the papers and a further letter. The founding affidavit was signed on 30 July 2025

¹¹ 8 *supra*

and the application launched on 31 July 2025. In those circumstances I do not accept that urgency is self-created or that the applicant could be afforded substantial redress in the ordinary course.

The nature of the relief

[20] The respondents also assert that the relief is in substance final, that there is no certainty that the contemplated declaration of rights action will ever be instituted, and that the test for a *final* interdict must therefore be applied.

[21] Notwithstanding, how the relief is framed in the notice of motion, the Court must assess the relief and determine whether the interdict would in effect be temporary or final in nature. An interim interdict is a protective remedy designed to preserve the *status quo* pending the final determination of the parties' rights in subsequent proceedings. The practical effect of an interim interdict is therefore not to grant the applicant the relief ultimately sought, but to maintain the factual and legal position so that the eventual adjudication of rights is not prejudiced by irreversible developments or unlawful conduct in the interim.

[22] In this case the interdict does not authorise demolition of any structure. It restrains further alterations, new construction and occupation of the structures at the Sikhwama homestead pending the finalisation of court proceedings, that will ultimately provide clarity on the parties' rights in respect of the Sikhwama homestead. I am satisfied that the effect of the relief, if granted as prayed for, is preservatory rather than dispositive in nature. It puts the brakes on a dynamic situation so that the parties' competing proprietary, statutory and cultural rights

can be adjudicated in due course. If the applicant were to default in instituting the promised action, the interim order could not be left to subsist indefinitely and will lapse. The test for interim interdicts is therefore applicable.

The legal framework governing interim interdicts

[23] The principles applicable to interim interdicts are well established. The foundational requirements were articulated in *Setlogelo*¹² and have been consistently affirmed and refined in later authorities, including *Webster*¹³ and *Gool*¹⁴. Under our current constitutional dispensation, these principles continue to govern the inquiry, albeit infused with constitutional values, as confirmed by the Constitutional Court in *National Treasury*¹⁵.

[24] A court considering whether to grant an interim interdict must consider four requirements. The first is that the applicant must establish the existence of a *prima facie* right, though open to some doubt. The right need not be proved on a balance of probabilities. It is sufficient if the applicant places before the court evidence which, if accepted, establishes a right deserving of protection pending final determination.

[25] The second requirement is a well-grounded apprehension of *irreparable harm* to the applicant if interim protection is not afforded. The apprehension must be objectively reasonable. The question is whether a reasonable person in the

¹² *Setlogelo v Setlogelo* 1914 AD 221

¹³ *Webster v Mitchell* 1948 (1) SA 1186 (W)

¹⁴ *Gool v Minister of Justice* 1955 (2) SA 682 (C)

¹⁵ *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC)

position of the applicant, confronted with the same facts, would foresee the likelihood of harm that cannot adequately be remedied by an award of damages or some other remedy at final determination. Harm is “irreparable” in this context if waiting for final relief would leave the applicant in a position that cannot meaningfully be restored.

[26] The third requirement concerns the *balance of convenience*. The court must weigh the prejudice that the applicant will suffer if interim relief is refused against the prejudice the respondent will suffer if the interdict is granted. This assessment considers the relative strength of the parties’ cases as they appear on the papers. The stronger the applicant’s prospects of final success, the less heavily the balance must tip in its favour, and conversely¹⁶. Where both sides invoke constitutional rights, or where the respondent alleges that the interdict will significantly impair its lawful interests, the balancing exercise must be undertaken with particular care.

[27] The fourth requirement is the *absence of a suitable alternative remedy*. An interim interdict is an extraordinary remedy and should not be granted where other adequate remedies, whether judicial or otherwise, exist to protect the applicant’s rights. The availability of other remedies is relevant to this inquiry.

[28] Ultimately, even where all four requirements appear to be met, the court retains a *judicial discretion* whether to grant the interdict. This discretion is not unbounded. If an applicant fails to establish at least one of the requirements, the court has no discretion and relief should be refused. But where they are satisfied,

¹⁶ *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D)

the court must consider all relevant circumstances to determine whether the interdict sought is just and equitable. The requirements must not be applied mechanically; they are interrelated and must be assessed holistically in the light of the evidence as a whole.

Evaluation

A Clear or *prima facie* right

[29] On the applicant's version, which must be taken together with such parts of the respondents' version as are not genuinely disputed, the applicant has at minimum, a *prima facie* right deserving of interim protection. As registered owner of the farm, it holds constitutionally protected property rights under s 25 of the Constitution, including the right not to be arbitrarily deprived of control over the construction of structures and occupation on its land. The rights on which the applicant relies are in fact, clear rights.

[30] The respondents, for their part, rely on s 6 of ESTA and the rights to dignity, housing, culture and religion as per the Constitution. That these are important rights is beyond dispute. *Daniels v Scribante*¹⁷ confirms that ESTA occupiers may, at their own cost, effect improvements reasonably necessary to bring their homes to a standard consistent with human dignity.

[31] *Daniels v Scribante* does not, however, clothe occupiers with a free-standing entitlement to ignore procedures and resort to self-help. The judgment rather

¹⁷ *Daniels v Scribante* - paras 13 - 58

emphasises meaningful engagement between occupier and owner¹⁸ before taking action and warns that where engagement results in a stalemate the dispute must be resolved by a court and that the occupier cannot resort to self-help¹⁹.

[32] I do not need, at this interim stage, to pronounce finally on the validity and effect of the June 2023 deed of settlement the applicant concluded with Senzo, or on the intricate questions of isiZulu custom and succession within the Sikhwama line. Those issues will properly be ventilated in the declaratory proceedings that will presumably follow. What matters now is that the applicant has shown rights, proprietary, contractual and procedural, which are seriously asserted, and not frivolous, and which may well be upheld when all the evidence is presented.

Injury and apprehension of harm

[33] The applicant complains of both actual and apprehended injury. The demolition of one of Senzo's structures has already occurred. Construction of a new brick-and-pole structure on the same site began after service of the application papers and the court's directions and continued even after the *rule nisi* order was issued. On any view this alters the factual and legal landscape as a new or reconstructed structure, particularly if occupied, may generate additional ESTA or entitlements that did not exist when Senzo occupied the structures of the homestead. The applicant is entitled to be concerned that, if the process runs

¹⁸ *Daniels v Scribante* - paras 62 - 64

¹⁹ *Daniels v Scribante* - par 65

its course unchecked, it will face a far more complex and costly eviction or dispute in the future.

[34] The respondents say there is no harm because they seek merely to rebuild an existing *uMsamo* structure, not to expand the footprint, and because the real harm would be the applicant's envisaged demolition of the Sikhwama homestead. That mischaracterises the nature of the relief sought. The applicant is not asking for permission to demolish the Sikhwama homestead. It seeks only to prevent further unilateral demolition and building, and to prevent occupation of structures that were always vacant, pending a court's determination of who may lawfully do what. If the respondents are ultimately vindicated, a properly authorised rebuilding or construction can occur. If the applicant is vindicated, allowing the construction to continue would result in an irreversible situation. The apprehended harm to the applicant is therefore real and not speculative.

Alternative remedy and self-help

[35] The respondents contend that the applicant had alternatives: the parties could have attempted further engagement, a court application in the normal course, or reliance on criminal or ESTA remedies. That submission overlooks both the conduct actually adopted and the constitutional injunction against self-help on either side. The applicant did not respond with counter-self-help (for example by demolishing the structures itself), but rather approached this Court. The SAPS has on the evidence, been either conflicted (given the second respondent's employment there) or unwilling to intervene in the dispute. A

damages action would not prevent the accrual of unwanted rights or undo the construction. Further for the applicant to wait for an outcome of future proceedings while building and occupation at the Sikhwama homestead continue would, in the interim, allow what the applicant contends is unconstitutional conduct that will continue unchecked.

[36] Conversely, if the respondents were of the view that the applicant's refusal of consent was unreasonable and that their *uMsamo* could lawfully be rebuilt notwithstanding such refusal, *Daniels v Scribante* requires them to use judicial recourse by approaching a court, not by unilaterally demolishing and rebuilding the structure on the basis of a short inconclusive WhatsApp exchange.

Balance of convenience and weighing of rights

[37] The remaining question is where the balance of convenience lies, given the serious constitutional and cultural interests engaged on both sides. On the one hand, the respondents emphasise the centrality of the Sikhwama homestead *uMsamo* to the spiritual life of that branch of the Nzimande family, and the spiritual leader's instruction that the fallen *uMsamo* be rebuilt urgently in more durable materials following the child's illness. On the other, the applicant emphasises its property and safety concerns, the history of conflict between the parties, and the risks of allowing building to proceed in defiance of express instructions and without a court order.

[38] In my view the decisive consideration is not which side's rights are weightier in the abstract, that is for the main case, but which course better preserves the

possibility of a just and orderly determination in due course. To allow construction and new occupation of the structures to take place would effectively reward a form of self-help, and risk embroiling the parties (and this Court) in further urgent skirmishes. To restrain further work and possible occupation, by contrast, does not extinguish the respondents' religious or cultural claims.

[39] I am mindful that interim restraint may be experienced by the respondents as a serious interference with their ability to tend to the *uMsamo* in the manner they believe necessary. That is why any order must be narrowly tailored. It should not prohibit all ritual activity or access to the homestead. Within those limits, the respondents remain free to hold ceremonies and to utilise existing spaces, provided they do not contravene the clear terms of this Court's order.

[40] Weighing the competing prejudice in this way, I am satisfied that the balance of convenience favours maintaining the status *quo* rather than allowing the respondents' building project and future occupation to proceed. The third respondent claims to be in occupation of one of the structures at the Sikhwama homestead, while the applicant disputes that claim. It is not possible to resolve this issue on the papers, so the safe approach is to accept for purposes of this matter that the third respondent does reside in one of the structures at the Sikhwama homestead, but that no one else is allowed to take occupation of any of the structures until the anticipated court proceedings are finalised or until such time that the interim order may lapse.

A just and equitable order

[41] On the papers there is no real dispute that what the Nzimande family has identified as the *uMsamo* structure is regarded by them as their ancestral shrine or altar and that it functions as the primary point of contact between the living and their ancestors. The family's evidence that rituals are conducted there, including prayers, offerings and the burning of *impepho*²⁰ and that these are central to the spiritual life and governance of the family was not challenged. The applicant cannot dispute the depth of the family's cultural and religious beliefs, and to some extent recognises them, although it has a different perspective in how it practically works out in respect of the Nzimande family. The Court accepts both the sincerity and the gravity of the Nzimande family's concern that a compromised *uMsamo* is believed to have consequences not only for the descendants of the late Mr Sikhwama, but for the broader Nzimande lineage.

[42] These beliefs and practices fall squarely within the protective ambit of the Constitution: the rights to dignity (s 10), freedom of religion (s 15), language and culture (s 30), and the rights of cultural, religious and linguistic communities (s 31). ESTA itself requires that occupiers' rights be exercised with due regard to their human dignity and family life, and that a just and equitable balance be struck between occupiers' rights and those of the owner. The Constitutional Court in *Hattingh v Juta*²¹ emphasised that ESTA "*enjoins that a just and equitable balance be struck*" between these competing interests, infusing the inquiry with justice and equity. *Daniels v Scribante* likewise recognises that the rights

²⁰ a sacred herb burned as a spiritual incense to communicate with ancestors, cleanse negative energy, and purify spaces

²¹ *Hattingh and Others v Juta* (CCT 50/12) [2013] ZACC 5; 2013 (3) SA 275 (CC); 2013 (5) BCLR 509 (CC) (14 March 2013) – par 32

conferred by ESTA must be interpreted generously in the light of constitutional values²², while at the same time insisting that the rights of the owner are not rendered nugatory²³.

[43] In this context, the parties were invited in argument to address a possible form of order which, while upholding the interim interdict that it would not have the effect of functionally extinguishing the Nzimande family's ability to tend to the *uMsamo* and to perform rituals there pending the envisaged declaratory proceedings, to the extent that they can conduct such rituals in a damaged structure. In response to the court's query the applicant proposed an order in terms of which the Nzimande family would be required to give three months' written notice, with reasons, of any intended ceremony at the *uMsamo*, to which the applicant would respond within ten days, failing which the respondents could approach a court for appropriate relief. In response the respondents objected that a three-month lead time is excessive and would render their rights illusory, and that a requirement to furnish "reasons" is inconsistent with the nature of a constitutionally protected cultural practice²⁴.

[44] The starting point is that, in deciding whether to confirm an interim interdict, the Court is not engaged in a mechanical "all-or-nothing" exercise. An interdict is, by its nature, an equitable remedy; even where the jurisdictional requirements are met, the grant and the terms of the order remain a matter of judicial discretion.

The classic formulation in *Setlogelo* has repeatedly been applied subject to this

²² *Daniels v Scribante* - par 13 - 58

²³ *Daniels v Scribante* - par 61

²⁴ I point out the exchange regarding a proposed order was raised during argument. The applicant's counsel then prepared a draft order to which the respondents' counsel responded with instruction. The information surrounding the parties' exchange on the proposed order was not placed before the court under oath, but I was presented with the information without any objection.

understanding. The Constitutional Court has stressed, in various contexts, that courts are required to “*mould*” remedies that are just and equitable in the light of all the circumstances, particularly where constitutional rights on both sides are implicated. In *Port Elizabeth Municipality*²⁵ the Court made it clear that, in land-related disputes (although in the context of PIE), the court “*is called upon to go beyond its normal functions and to engage in active judicial management*”²⁶. This certainly includes the process, crafting just and equitable orders even if those precise forms of relief were not clearly spelled out in the pleadings. Such an approach is now well-established in eviction and land-tenure matters, and underpins the characterisation of this Court as, in effect, a court of equity²⁷.

[45] It follows, in my view, that there is a sound legal basis for this Court, having found that an interim interdict is in principle justified, to refine and qualify that interdict so as to minimise unnecessary impairment of the respondents’ constitutionally protected cultural and religious practices. In my view this is properly located under the “balance of convenience” leg of the interim-interdict and in the Court’s overarching equitable discretion. The applicant has demonstrated a *prima facie* right and reasonable apprehension of harm if unilateral construction works and new occupation are allowed to proceed. But the respondents have likewise shown that a blanket prohibition on any use of the *uMsamo* would impose a significant, possibly irreparable, spiritual and cultural burden. A just and equitable balance requires that the interim order be drawn in

²⁵ *Port Elizabeth Municipality v Various Occupiers* (CCT 53/03) [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC) (1 October 2004)

²⁶ par 36

²⁷ See preamble to the Land Court Act, 6 of 2023

a way that protects the applicant from the harm it fears, without doing more collateral damage to the respondents' rights than is strictly necessary.

[46] As regards the proposed process for the parties to engage to use the *uMsamo* I accept the respondents' criticism that a blanket three-month notice period is excessive. Many rituals arise in response to recent events and are not scheduled in advance. A three-month lead time risks rendering their rights to practice culture and religion effectively hollow. At the same time, the applicant is entitled to reasonable prior notice of any intended activity, with sufficient detail to obtain advice, and a fair opportunity to engage or to seek urgent relief if necessary. In my view, written reasonable notice is required if any spiritual ritual is necessary to be held. The reasonableness of the notice will depend on the circumstances of the situation. The notice should contain the reasons therefore and the applicant should respond as soon as reasonably practical.

[45] Properly understood, the interim interdict does not grant or confer a veto power upon the applicant over the exercise of the Nzimande family's right to attend at and use the *uMsamo* for rituals, to the extent, as previously stated, that the Nzimande family still intend to do so, considering the damaged status the structure is in.

[46] The general position is that a court may not grant relief not asked for or decide issues not presented to it for decision²⁸. However, the true rule is that a court may not, in motion proceedings, grant relief that is both outside the case made on the papers and prejudicial to a party who has had no opportunity to deal

²⁸ *Fischer and Another v Ramahlele and Others* (203/2014) [2014] ZASCA 88; 2014 (4) SA 614 (SCA); [2014] 3 All SA 395 (SCA) (4 June 2014)

with it. Where, as here, the factual and legal issues underpinning the relief are squarely raised on the affidavits; where both parties were invited to address the proposed order; and where the order fashioned does not introduce a new cause of action but merely tailors the interdict to give effect to constitutional and statutory rights relied on by both sides, our law recognises that a court may and indeed should “mould” the order to do justice between the parties. This is consonant with the “just and equitable” standard that governs remedies in land-rights matters, and with the general principle that in constitutional litigation courts have a wide discretion to craft appropriate relief that effectively vindicates rights while respecting the interests of all concerned.

Conclusion and order

[47] Evaluated holistically, the applicant has satisfied all four requirements for interim relief. There is therefore no residual discretion to refuse relief, save in respect of the precise manner in which the order is formulated. The Court’s remedial discretion is invoked not to deny the interdict but to mould its terms, consistent with the approach endorsed in *Fose v Minister of Safety and Security*²⁹, so that it vindicates the applicant’s rights while preventing undue or unnecessary infringement of the Nzimande family’s cultural and religious practices.

[48] For these reasons the following order is made:

²⁹ *Fose v Minister of Safety and Security* (CCT14/96) [1997] ZACC 6; 1997 (7) BCLR 851; 1997 (3) SA 786 (5 June 1997) – par 99 - 101

1. The *rule nisi* issued on 5 August 2025 is confirmed and an interim interdict is therefore issued in the following terms:
 - 1.1 An amendment of the notice of motion is granted and the names of the second to fourth respondents are substituted with their correct names as they appear on the face of the issued order.
 - 1.2 The first to the fourth respondents (“the respondents”) be and are interdicted and restrained from effecting alterations to any of the structures depicted on annexure “**A**”, attached to this order, or from constructing a new structure in the area where the structures depicted in annexure “**A**” are situated, on the farm Mona Glen, Richmond, KwaZulu-Natal.
 - 1.3 The respondents are further interdicted from taking any of the actions in paragraph 1.2 either directly or indirectly and/or personally and/or through third parties, not joined in these proceedings.
 - 1.4 The respondents be and are interdicted and restrained from taking occupation of any of the structures depicted on annexure “**A**” situated on the farm Mona Glen.
 - 1.5 The provisions of paragraph 1.4 of this order shall not operate as an eviction order and shall not apply to the third respondent, who claims to currently occupy one of the existing structures depicted on annexure “**A**”.

2. The interim interdict granted in paragraphs 1.2 – 1.4 above, shall operate pending the finalisation of an action or application to be instituted by the applicant for a declaration of rights and any related relief arising from the issues in dispute. The applicant shall institute such proceedings within 14 (fourteen) days from the date of this order, failing which the interim interdict shall lapse and be of no further force or effect.

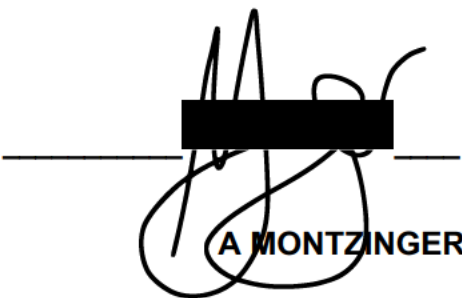
3. It is further ordered that:

3.1 In the event that the respondents, or any other members of the Nzimande family, require to undertake any further cultural ceremonies in respect of the *uMsamo* at the Sikhwama Nzimande homestead as depicted on annexure “**A**”, or in respect of any of the structures depicted, prior to the finalisation of the future proceedings to be instituted by the applicant, the following procedures shall apply and be followed by them:

- (i) Written reasonable notice of such intended ceremony, inclusive of the reasons therefore and the nature of the ceremony shall be given to the applicant, by handing it to Mr Greg Walsh or emailing it to the attorneys of the applicant at the address specified in the notice of motion.
- (ii) The applicant shall, within a reasonable time and as circumstances permit, indicate its consent or refusal thereof.
- (iii) In the event of refusal, the respondents shall then approach this Honourable Court for appropriate relief, with proper

notice to the applicant prior to request an order or appropriate relief from the Court prior to undertaking any such ceremony.

4. All issues of costs are reserved for determination by the court hearing the future proceedings referred to above.



A MONTZINGER
Acting Justice of the Land Court

Appearances:

Applicant's attorney:	Hay and Scott Attorneys A Kaufmann
Applicant's counsel:	Van der Walt SC
Third and Fourth Respondents' attorney:	Legal-Aid - PMB
Third and Fourth Respondents' counsel:	M Sikosana