



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

Case number: LanC 2025 – 154050

Before: The Honourable Acting Judge Montzinger

Hearing: 19 September 2025

Delivered: 15 December 2025

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

Date: 15 December 2025

In the matter between:

GYSBERTUS JOHANNES JOUBERT

First Applicant

JOHANNA ALETTA JACOBS HATTINGH

Second Applicant

and

VICTORIA MKHONZA

First Respondent

**UNKNOWN OCCUPIERS OF PORTION 1 OF THE
FARM WELGEVONDEN NR, 93, REGISTRATION
DIVISION, H.T., UTRECHT, KWAZULUL NATAL**

Second Respondent

Summary: Extension of Security of Tenure Act 62 of 1997 (ESTA) – urgent application under rule 34 of the Land Court Rules – two brick structures erected at occupier’s homestead on farm – Civil procedure – standing and authority – authority to institute proceedings can be challenged substantively on affidavit and is not only impeachable via rule 7(1) of the Uniform Rules - grant of rule *nisi* with interim relief does not finally determine urgency - principles governing interdicts against persons unknown – Remedies – interdict and demolition – in ESTA context demolition not automatic; court must adopt cautious, justice-and-equity-based approach – appropriate remedy.

ORDER

1. Insofar as the application relates to the first brick structure commenced in or about 2023 at the first respondent’s homestead (“the 2023 structure”), the application is struck off the roll for lack of urgency. This is without prejudice to the applicants’ right to set the matter down to determine that relief in the ordinary course in respect of that structure.
2. In respect of the second August 2025 brick structure at the first respondent’s homestead (“the 2025 structure”), the following *interim relief* is granted:
 - 2.1 The first respondent, and any person acting under or through her, including her son, Mr Philani Khoza, are interdicted and restrained from:
 - 2.1.1 Continuing with any construction of, or further building works on, the second 2025 structure; and

2.1.2 Allowing any person to occupy the second 2025 structure, or occupying it themselves,

pending the outcome of any further proceedings contemplated in paragraphs 3 and 4 below, or the lapsing of this order in terms of paragraph 5.

3. The demolition of the second 2025 structure is stayed on the terms set out in paragraphs 4, 5 and 6 below.

4. The applicants and the first respondent, acting through their respective legal representatives, are directed to engage in good faith with one another for a period of 30 (thirty) calendar days, from 19 January 2026, with a view to reaching agreement on the future of the second 2025 structure and any conditions that should govern its completion, alteration or demolition.

5. If no written agreement is concluded within the 30-days period referred to in paragraph 4:

5.1 Either the first respondent may, within 15 (fifteen) calendar days thereafter, institute proceedings in a competent court seeking an order authorising the continuation and completion (or regularisation) of the second structure; and/or

5.2 The applicants may, within the same 15-day period, supplement these papers and set the matter down seeking demolition of the second structure and/or any other appropriate relief.

6. The interim interdict in paragraph 2 (with sub-paragraphs) shall:
- 6.1 Remain in force pending the final determination of any proceedings instituted in terms of paragraphs 5.1 and 5.2; and
- 6.2 Lapse if no proceedings are instituted by either party within the time periods stipulated in paragraphs 5.1 and 5.2.
7. The relief granted in paragraphs 2 to 6 shall bind the first respondent and any person acting under or through her, including Mr Philani Khoza. No further relief is granted against the “Unknown Occupiers of Portion 1 of the Farm Welgevonden” beyond the extent, if any, to which they act under or through the first respondent.
8. Each party shall pay its own costs in these proceedings.

JUDGMENT

Montzinger AJ:

Introduction

[1] This is an urgent application concerning the erection of two brick structures at the homestead of the first respondent on Portion 1 of the Farm Welgevonden No. 93, Registration Division H.T., Utrecht, KwaZulu-Natal (“the farm”). The applicants seek to prevent further construction and occupation of those structures and to secure their demolition. On 5 September 2025 I issued a rule *nisi* with interim relief and directions for the filing of papers. The matter also came before me on the return day.

[2] The first applicant, is a farmer who concluded a sale agreement in 2017 to purchase the farm from the second applicant. The first applicant took occupation the same year the sale agreement was concluded. While, transfer is still pending the second applicant remains the registered owner of the farm.

[3] The first respondent, Ms Nomusa Victoria Mkhonza, is a 67-year-old pensioner who has resided on the farm since the 1990s and heads the homestead on the Welgevonden farm at which the impugned structures are situated. She claims to be a labour tenant, but for purposes of this application relies primarily on her and her family's status as occupiers under ESTA¹. The second respondents are cited as the "unknown occupiers of Portion 1 of the farm Welgevonden", described as other family members or persons occupying the homestead. They are not individually identified in the papers.

[4] In the notice of motion the applicants seek, first, condonation for non-compliance with the rules and enrolment of the matter as an urgent application. Substantively, they seek (either as final relief or, alternatively, as interim relief) to interdict the first and second respondents from erecting or continuing to build any structure on the farm. Furthermore, to interdict the respondents from taking occupation of the partially constructed structure or allowing anyone else to do so. Also, for the court to direct them to demolish the structures within five days and remove all building materials; and, failing that, to authorise the sheriff to demolish the structures at the respondents' cost. The applicants also seek costs in the event of opposition.

¹ Extension of Security of Tenure Act, 62 of 1997

[5] The factual background is broadly common cause, although there are material disputes. The first respondent has long resided at a homestead comprising a brick house and a number of older mud-and-pole structures. She claims that she and her late husband historically had nearly thirteen rooms to accommodate their extended family. Many of these structures were allegedly destroyed by heavy rain. The first applicant allege that when he arrived in 2017 there were at most six structures and that the first respondent occupied a three-bedroom brick house, and that only she and one grandchild lived there.

[6] During the winter of 2023, the first respondent says she sent her son, Mr Philani Khoza, to seek permission from the first applicant to build a three-room brick house (“the 2023 structure”) to replace the dilapidated mud houses. She avers that permission was granted, that the first applicant attended to the homestaed in 2024 and expressly consented to the construction of the 2023 structure and gave permissions that she could replace the mud houses with brick and cement structures.

[7] The applicants’ version differs. The first applicant confirms that it was rather the first respondent that personally approached him in 2023, but that she sought permission only to replace a small, dilapidated one-roomed kitchen building, referred to as an *“inkhukhu”*, and that he consented to a similar small kitchen and nothing more. He denies that permission was sought or given for a three-room house. When he attended the homestead in 2024 he says he discovered a larger brick house under construction. He instructed that work stop and, according to him, construction ceased when the walls were only a few layers of brick high.

[8] In August 2025 the situation allegedly escalated. According to the first applicant the first respondent commenced building a second three-room house (“the 2025 structure”) on the foundation of a house that had collapsed after heavy rain. The first respondent candidly admits that she did not obtain permission for this structure, saying she assumed the 2023 consent covered it, and avers that when the first applicant told her on 25 August 2025 to stop, she instructed the workers to cease construction and has since then not proceeded further with construction.

[9] The first applicant alleges that from 21 August 2025 his wife observed truckloads of bricks being delivered near the homestead and that, despite her insistence that they not be off-loaded, an unknown male associated with the respondents instructed the driver to off-load them. On 23 August 2025 the first applicant visited the site at the homestead and found what he describes as a large five-room house (the 2023 structure) nearing completion and foundations for a second house (the 2025 structure). He says he informed the first respondent and the men present that they had no permission to build and had to stop, but they responded aggressively, asserted that the land belonged to them and indicated that construction would continue regardless. A letter of demand was thereafter served by the sheriff in the last week of August 2025, warning the respondents to desist and inviting engagement.

[10] On 3 September 2025 the applicants’ attorney, Ms Sanette Viljoen, accompanied by private security officers visited the homestead to deliver and explain the notice of motion to the respondents. In a supplementary affidavit on behalf of the applicants, it is alleged that Ms Viljoen encountered two unknown

men² who were actively mixing concrete and laying bricks, notwithstanding the attorneys' letter and this Court's directions. She states that, after the directions³ and notice of motion were translated into isiZulu, the first respondent and the men indicated that they would ignore the Court's directives and continue building. Photographs taken on that day allegedly show how the roof trusses and corrugated sheeting had been installed on the 2023 structure and the walls, window frames and door jambs of the 2025 structure had progressed to several layers of bricks, with additional roofing sheets stockpiled nearby

[11] On the strength of these developments the applicants assert that both structures were being erected unlawfully, without consent or meaningful engagement, and in a manner that undermines the rule of law and their constitutionally-protected property rights. They rely on the second applicant's ownership and the first applicant's status as "person in charge" as furnishing the clear (or at least *prima facie*) right required for interdictory relief, and emphasise that if the structures are completed and occupied the applicants will have to undertake protracted and costly eviction proceedings. In argument they relied in particular on *Daniels*⁴ and *Basfour*⁵, contending that those decisions confirm that even ESTA occupiers may not demolish and rebuild or erect new dwellings without meaningful engagement and that self-help of the kind alleged here is impermissible⁶.

² Who is regarded to be covered by the citation of the second respondent.

³ By this time no directions were issued by the court, as the *rule nisi* was only granted on 5 September 2025.

⁴ *Daniels v Scribante and Another* (CCT50/16) [2017] ZACC 13; 2017 (4) SA 341 (CC); 2017 (8) BCLR 949 (CC) (11 May 2017)

⁵ *Basfour 3327 (Pty) Ltd v Thwala and Others* (1008/2023) [2025] ZASCA 105 (18 July 2025)

⁶ *Daniels*: paras 61 - 65

[12] The relief is opposed on several grounds. The first respondent maintains that construction of the 2023 structure commenced at that time with the first applicant's knowledge and consent and that it replaced the unsafe mud structures and that her household is simply seeking adequate shelter at the homestead where they have long lived. She asserts that any failure to obtain fresh consent for the 2025 structure was an honest mistake, that construction of that structure has ceased, and that demolition would cause severe financial prejudice given that she has used her pension money to fund the works.

[13] She also challenges the first applicant's standing and authority to litigate on behalf of the second applicant, pointing to the absence in the founding papers of a signed resolution by the second applicant and to the fact that the second applicant's confirmatory affidavit was unsigned and uncommissioned. The first respondent also took issue with the first applicant's wife's confirmatory affidavit that appeared for the first time in reply. In respect of urgency she argues that the 2023 structure has been under construction since 2023 with the applicants' knowledge, that any harm could have been addressed by ordinary motion proceedings, and that in relation to the 2025 structure work stopped once she was told to do so. She asks that the application be dismissed or, at least, that any demolition be stayed and that the parties should pursue an amicable resolution of the dispute between them.

[14] In reply the first applicant persists that he granted permission in 2023 only for the replacement of a one-room kitchen and denies any consent for a three-room house. He also denies any consent for the 2025 structure. He disputes the relevance of labour-tenancy and asserts that he is duly authorised

as a person in charge, contending that any challenge to his authority ought to have been brought under rule 7 of the Land Court Rules⁷. He maintains that the rapid progress of the structures during 2025 justified resort to the Court on an urgent basis.

[15] Against that background, the principal issues are: (i) whether the applicants have standing and, in particular, whether the first applicant has authority to institute these proceedings on behalf of the second applicant; (ii) whether the application is sufficiently urgent, distinguishing between the 2023 and 2025 structures; (iii) whether the requirements for interdictory relief have been met in relation to each structure; (iv) whether relief can competently be granted against the “unknown occupiers”; and (v) what form of relief is just and equitable.

The applicants’ standing and authority

[16] It is common cause that the second applicant is the registered owner of the farm, while the first applicant resides on and manages the farm pursuant to the 2017 sale agreement, although transfer has not yet been effected. The founding papers are sparse on the precise terms of the interim arrangements as no agreements or supporting documents were provided, but on the uncontested allegations the first applicant lives on the property, exercises day-to-day control over the farming operations and regulates occupiers’ use of the land. The first respondent herself says she sent her son to request his consent in 2023. There is also no reason to gainsay the second applicant’s ownership as reflected in the records of the deeds office. I am therefore satisfied that both applicants have

⁷ The rule is substantially the same as Uniform Rule 7

standing to seek interdictory relief: the second applicant as owner, and the first applicant as person in charge and lawful possessor.

[17] As to authority, the law is clear that a deponent need not be authorised to depose to an affidavit. What must be authorised is the institution and prosecution of the proceedings⁸. The question is whether the party on whose behalf the matter is brought has in fact authorised the litigation.

[18] In this matter the respondents did, on the papers, put in issue the first applicant's authority to act on behalf of the second applicant. That challenge was largely neutralised by the filing of a duly signed and commissioned confirmatory affidavit by the second applicant, which satisfies me that she authorised the first applicant and the attorneys of record to act in her name. The applicants are accordingly properly before the Court.

[19] I do not, however, accept the allegation and counsel's submission that the respondents' challenge to authority was ineffective because it was not mounted by way of a rule 7(1) notice and that, absent adherence to that rule, there is no challenge at all. As the Western Cape Division held in *Clackson Power*⁹, rule 7(1) is a procedural mechanism to dispute an attorney's mandate, but it is not the only means by which authority to institute proceedings may be questioned. A court is entitled, and indeed obliged, to have regard to a substantive challenge raised on affidavit and to insist that authority be properly pleaded and substantiated, even where rule 7(1) has not been invoked, all the more so in urgent proceedings

⁸ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) para 19; See also *Masako v Masako and Another* (724/2020) [2021] ZASCA 168 (3 December 2021)

⁹ *Minister of Water and Sanitation v Clackson Power (Pty) Ltd and Another* 2024 (5) SA 280 (WCC)

where an automatic stay may be impractical. Litigants should not assume that failure to follow the rule 7(1) procedure insulates them from an authority challenge. Therefore, if authority is pertinently attacked on the papers and not adequately addressed, an application may yet fail for want of proof that the proceedings were duly authorised.

Urgency

[20] Rule 34 fulfils, in this Court, the same function that rule 6(12) fulfils in the High Court, adapted to the Land Court's processes. Under rule 34(1) the Court may, in urgent applications, dispense with any provision of the Rules and dispose of a matter at such time, place and in such manner as it considers just. That wide discretion is constrained by rule 34(2), which, in terms materially identical to rule 6(12)(b), requires an applicant in the founding affidavit to set out explicitly both the circumstances which render the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course. The fact that rule 34(3)–(6) provides additional mechanisms, such as approaching the Judge President for the appointment of a presiding judge and seeking directions on truncated time-limits, does not relax these substantive requirements. The general principles that has developed under rule 6(12) apply with equal force in this Court.

[21] As Fagan J held in *IL & B Marcow Caterers*¹⁰, the indulgence of an urgent hearing is justified only where “sufficient and satisfactory” grounds are shown, including an explanation why ordinary time-periods will not provide substantial redress, and with due regard to the prejudice to the respondent and to other

¹⁰ *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd and Another* 1981 (4) SA 108 (C) p 112 - G

litigants whose cases are displaced on the roll. Urgency is assessed objectively and mere importance to the applicant does not suffice, and self-created urgency will generally not warrant departure from the ordinary procedures¹¹.

[22] Against that framework it is necessary to explain why the grant of a rule *nisi* does not dispose of the issue of urgency on the return day. A court hearing the matter on the return day is empowered to revisit, and if necessary overturn, an earlier, largely *ex parte* assessment that the matter warranted urgent enrolment.

[23] A rule *nisi* is, by its nature, a conditional order that operates on an interim basis and is generally granted without the respondent being heard. Our courts have long recognised¹² that this procedure is well suited to situations where immediate protection is claimed but the respondent must still be afforded a proper opportunity to answer and to contest every aspect of the case, including urgency. The rule *nisi* mechanism enables an application to be brought before court more speedily than ordinary processes permit and, in a proper case, allows for interim relief while the respondent remains entitled on the return day to challenge both the merits and the procedural basis of the order.

[24] Rule 34 of this Court's Rules reinforces that position. A respondent is expressly entitled, under rule 34(4)(b), to "*dispute the urgency of the case*", and the Court is obliged then to reconsider urgency on the return date, but this time in the light of a complete record. Therefore, the existence of the interim order

¹¹ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2019] ZACC 27; 2019 (9) BCLR 1104 (CC) (3 July 2019) paras 6 - 9

¹² *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A); and *Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission* 1982 (3) SA 654 (A); and *Victoria Park Ratepayers' Association v Greyvenouw CC and others* (511/03) [2003] ZAECHC 19; [2004] 3 All SA 623 (SE) (11 April 2003) par 8

does not insulate the applicants from a revisit of the issue of urgency. Every element of their case, including whether the 2023 and 2025 structures respectively justify urgent intervention, remains open for determination.

Urgency: the first (2023) structure

[25] On the respondents' version, the first of the contested brick structures was commenced with in 2023. The first applicant accepts that he became aware of construction of a brick structure during 2024, visited the homestead, and instructed that construction cease. He did not, however, approach a court at that time. On his own version the incomplete structure remained on the land throughout 2024 and into 2025.

[26] The applicants' explanation for urgency in relation to the 2023 structure is essentially that, if relief is not granted urgently, the structure will be completed and occupied and their property and constitutional rights will thereby be infringed, necessitating costly eviction proceedings in the future. They also invoke the "inherent urgency" of spoliation. The difficulty is that the facts of this complaint has existed since at least 2023 or at best for the applicants, 2024, when the first applicant first intervened on site. At that stage the applicants elected not to approach the court. No attempt is made in the founding papers to explain why proceedings were not instituted then.

[27] Whatever prejudice the applicants now face in relation to the first structure is in significant measure a function of their own delay. They could, in the ordinary course, still seek substantive relief on proper papers and after proper notice. The possibility of occupation of the structure does not mean that substantial redress

in due course is unavailable. The court seized with such proceedings could, if appropriate, grant orders preventing occupation or ordering demolition.

[28] I accordingly find that, in relation to the 2023 structure, the applicants have failed to establish that they cannot obtain substantial redress in due course. The urgency is self-created. The urgent relief sought in respect of the 2023 structure must for that reason be refused without prejudice to the applicants' right to approach a court in the ordinary course for appropriate relief.

Urgency: the second (August 2025) structure

[29] The position is materially different in respect of the second structure commenced with during August 2025. On the first respondent's own version, she commenced construction of this structure during August 2025, on the foundation of a previous dwelling that had collapsed. She candidly acknowledges that she did so without seeking specific consent from the first applicant, relying instead on her understanding that earlier permission had been granted in 2023.

[30] The founding and supplementary affidavits indicate that the second structure progressed rapidly. The applicants acted within days of first learning of the new construction activity. On any version, the second structure was a fresh construction undertaken without prior engagement with the first applicant.

[31] In these circumstances, the risk that the 2025 structure would be completed and occupied before the applicants could obtain relief in the ordinary course, is not fanciful. While the respondent has since stopped construction, this only occurred after the application was launched. On these facts I am satisfied that, as regards the 2025 structure, the applicants have demonstrated that they may

well be denied substantial redress at a hearing in due course if urgent relief is not granted.

Interdictory relief: Legal Framework

[32] Interdicts generally take on the nature of two formats. Interim or final. For an interim interdict a litigant must establish a *prima facie* right (even if open to some doubt), a reasonable apprehension of irreparable harm if the interim relief is not granted, that the balance of convenience favours the grant of interim relief, and that there is no adequate alternative remedy¹³. A litigant seeking a final interdict must show a clear right; an injury actually committed or reasonably apprehended, and the absence of any other satisfactory remedy¹⁴.

[33] In the present matter the notice of motion is framed in the alternative. The applicants seek final interdictory and mandatory relief, failing which interim relief pending future proceedings. However, in light of my finding on urgency in respect of the 2023 structure it would be inappropriate to express any view on the viability of an interdict. I therefore consider the interdict sought only in respect of the 2025 structure.

Interdict in relation to the second (2025) structure

The right asserted

[34] As indicated, the second applicant is the registered owner and the first applicant is the person in charge and possessor of the Welgevonden farm. Ownership and lawful possession are rights protected both at common law and

¹³ *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189-1190.

¹⁴ *Setlogelo v Setlogelo* 1914 AD 221

under section 25 of the Constitution. The applicants are entitled to regulate the use of the farm and to insist that additional residential structures are not erected without adherence to the law that balances owners' rights with the security of tenure and dignity rights of occupiers under ESTA.

[35] The first respondent is an ESTA occupier and, on her version, may also be a labour tenant. For present purposes it is unnecessary to decide the latter, since it is common cause that she enjoys at least the protection conferred by ESTA. She has resided on the farm since the early 1990s and her right to occupy her existing homestead is not in issue.

[36] As foreshadowed, the applicants rely, *inter alia*, on the recent decision of the SCA in *Basfour*, in which an ESTA occupier demolished two mud structures used as a storeroom and for traditional ceremonies and commenced building a new brick-and-mortar structure on the same foundation, without engaging with or obtaining consent from the farm owner. The SCA in *Basfour* held that even where improvements are contemplated, the Constitutional Court's judgment in *Daniels* does not entitle occupiers to erect a new structure without engagement with the owner or the person in charge, and that the absence of such engagement rendered the structure unlawful. The court declared the new structure unlawful and ordered its demolition.

[37] The respondents in turn also rely on the *Daniels* judgment, for a different reason, arguing that the Constitutional Court held that ESTA confers on occupiers the right to make improvements to their dwellings, at their own cost, in order to bring them up to a standard consistent with human dignity, and that an owner's consent is not a precondition to that right.

[38] In my view the applicants' reliance on *Daniels* and *Basfour* is, in broad outline, correct. Those authorities do not entitle ESTA occupiers to unilaterally erect new or additional dwellings wherever they choose on a farm without prior engagement with the owner or person in charge; nor do they authorise self-help in the face of a dispute. The mentioned authorities rather recognise a right to make improvements that are reasonably necessary to render an existing dwelling habitable in line with human dignity, subject to meaningful engagement¹⁵. *Basfour* confirms that where an occupier erects a new structure on a different footprint, or converts a non-residential structure into a substantial new dwelling, without engagement with the owner, such conduct is unlawful and may warrant demolition¹⁶. Further, a court has a discretion to order demolition after taking into account all the facts¹⁷.

[39] At the same time, the applicants' submission that any unilateral commencement of construction by an ESTA occupier is *per se* an abuse of rights is overstated. *Daniels* makes clear that in appropriate circumstances an occupier may proceed with reasonably necessary improvements, subject to the duty to engage and, where disagreement persists, to seek the court's assistance.

[40] On the papers it is common cause that there was no meaningful engagement prior to the commencement of the construction with the second structure. The first respondent commenced building a substantial new three-roomed brick dwelling in August 2025. The applicants were not consulted and construction proceeded at pace. This conduct constitutes an unlawful interference with the

¹⁵ *Daniels*: paras 61 - 65

¹⁶ *Basfour*: paras 24 - 26

¹⁷ *Basfour*: par 27

applicants' rights as owner and person in charge. Consistently with *Daniels* and *Basfour*, it cannot be justified as a mere improvement of an existing dwelling.

[41] I accordingly find that the applicants have at least a *prima facie* right, open to little if any doubt, to restrain further construction of the 2025 structure and to prevent occupation.

Injury and apprehension of harm

[42] The injury is both actual and reasonably apprehended. The second structure has already altered the physical use of the land. If completed and occupied, it will entrench a new dwelling and potentially introduce additional occupiers, with attendant implications for land use and future eviction or tenure proceedings. The longer construction and possible occupation are allowed to continue unchecked, the more entrenched the infringement becomes and the more complex and intrusive any subsequent remedy will be. The threat of harm to the applicants' rights is real and ongoing.

Alternative remedy

[43] The respondents submit that an ordinary application, or action, would suffice, and that the first respondent is willing to engage and to seek formal permission for the second structure. That is precisely what *Daniels* envisages. In my view, however, without an interim prohibition on further construction or occupation, such engagement and future proceedings would take place against a moving target, with the 2025 structure becoming *de facto* permanent. An interim interdict is therefore appropriate to stabilise the situation and to create space for engagement and, if necessary, further proceedings.

[44] The requirements for interim relief in relation to the second structure are accordingly met.

The “unknown occupiers” (second respondent)

[45] The applicants also seek relief against “Unknown Occupiers of Portion 1 of the Farm Welgevonden” as the second respondent, and the notice of motion seeks orders against “the First and Second Respondents” without differentiation, while the only clearly identified actors are the first respondent and her son, Philani Khoza. There is no identification of other specific occupiers, nor any attempt to link them individually to the impugned conduct. The “unknown occupiers” are nowhere particularised beyond a general statement that they are family members of the first respondent and that some unidentified males were seen off-loading bricks and mixing concrete.

[46] In *Johannes Rooyen*¹⁸ a Full Court of the Western Cape Division, sitting on appeal, dealt with the propriety of an anti-land-intrusion interdict granted against Mr Rooyen and a second respondent cited as “persons unknown”. The court *quo* had discharged the rule *nisi* on the basis, *inter alia*, that the interdict was impermissibly wide, directed at an “unknown class” of people and amounted in substance to an eviction. On appeal the Full Court accepted that our law recognises the competence of interdicts against persons unknown who threaten to occupy land unlawfully, provided that the class is described with sufficient precision to render its membership objectively determinable and to permit service and enforcement of the order. Lukhuleni J, writing on behalf of the Full Court,

¹⁸ *City of Cape Town v Johannes Rooyen and Another* (A23/2025) [2025] ZAWCHC 507 (31 October 2025)

refers to various authorities¹⁹ to conclude that orders against “persons unknown” are exceptional and will only be countenanced where²⁰ the class is described by reference to objective criteria so that it is in principle ascertainable who is bound and there is cogent evidence linking that class to an actual or imminent infringement.

[47] Applying the guidance in *Johannes Rooyen* and the authorities cited in that judgment, to the present matter, the second respondents as cited do not meet the threshold. They are described only as “unknown occupiers of Portion 1 of the Farm Welgevonden”, without any limiting reference to conduct. On that formulation, the class of respondents potentially includes every ESTA occupier and family member who happens to reside on the Welgevonden farm, irrespective of whether they have participated in or even know about the construction of the impugned structures. The evidence goes no further than to say that some unnamed men (*who “likely resort under the second respondent”*) instructed a driver to off-load bricks and were later seen mixing concrete.

[48] In addition, an order in the blanket terms sought, interdicting all “unknown occupiers” from erecting any structure anywhere on the Welgevonden farm and from taking or permitting occupation of “partial, alternately recently completed structures” would be both over-broad and opaque. As Lekhuleni J pointed out in *Johannes Rooyen*, and as the SCA stressed in *Ramahlele*²¹, courts must guard against interdicts that, under the guise of restraining unlawful future conduct, effectively operate as general injunctions against an undefined segment of the

¹⁹ *Fischer and Another v Persons Unknown* 2014 (3) SA 291 (WCC); *Ramahlele and Others v Fischer and Another* 2014 (4) SA 614 (SCA)

²⁰ *Johannes Rooyen*: par 56

²¹ *Ramahlele*: par 16

public, or as *de facto* eviction orders, without the procedural safeguards demanded by PIE and ESTA.

[49] On application of the foreshadowed principles, the applicants have not demonstrated that the vague class of “unknown occupiers of Portion 1” is an identifiable, ascertainable group of the kind contemplated in *Johannes Rooyen*, nor that a general order against them is necessary or justifiable on the evidence. The applicants are therefore not entitled to interdictory relief against the second respondents as an independent party described only as “unknown occupiers of Portion 1”. The appropriate course is to tailor the relief to those individuals who have been shown, on the papers, to be involved in or directing the contested construction. That is, the first respondent and those acting under or through her, including her son, Mr Philani Khoza.

Remedy: Demolition and just and equitable relief

[50] The applicants seek, in addition to prohibitory relief, a mandatory order that the first respondent demolish both structures in issue in this matter, failing which the sheriff may do so. As the interdict in respect of the 2023 structure may be determined sometime in the future, the following paragraphs will consider whether the demolition of the 2025 structure is justified in the circumstances. It is necessary to situate the demolition request in the broader law relating to demolition orders, and then to consider how that law must be applied in matters governed by ESTA²².

²² Extension of Security of Tenure Act 62 of 1997

[51] Our law distinguishes clearly between statutory demolition at the instance of a municipality under the Building Act²³, and neighbour-law demolition between private parties. In *Lester*²⁴ the SCA held that where a local authority proceeds under s 21 of the Building Act to demolish an illegal structure, the court enjoys virtually no discretion, and that once the jurisdictional fact of illegality under the Act is established, the magistrate “*has no latitude not to order the demolition*” and neighbour-law notions of equitable discretion cannot be imported into the statutory scheme. By contrast, the same judgment reaffirmed that in common-law encroachment disputes, *i.e.* where one neighbour’s building encroaches upon another’s land, courts have always exercised a remedial discretion. While demolition is the primary vindictory remedy, the court may, in an appropriate case, refuse removal and instead award compensation or fashion some other adjustment if that is the just and equitable outcome. The deciding factor, as *Lester* and also *Brian Lackey Trust*²⁵ explain, is the disproportionality of prejudice between the harm to the encroacher if demolition is ordered and the harm to (or loss of benefit by) the affected owner if the encroachment is allowed to remain.

[52] That neighbour-law approach was recently restated in *Bet-el Faith Mission*²⁶, where a church sought the demolition of its neighbours’ garage encroaching onto its erf. The court accepted that encroachment is an unlawful interference with property rights and that removal is the primary remedy²⁷, but held further that

²³ National Building Regulations and Building Standards Act 103 of 1977

²⁴ *Lester v Ndlambe Municipality and Another* (514/12) [2013] ZASCA 95; [2014] 1 All SA 402 (SCA); 2015 (6) SA 283 (SCA) (22 August 2013)

²⁵ *Trustees of the Brian Lackey Trust v Annandale* [2003] 4 All SA 528 (C) at para [45] – [55] & [57]

²⁶ *Bet-el Faith Mission v Motthamme and Others* (5306/2017) [2020] ZAFSHC 6 (16 January 2020)

²⁷ *Phillips v South African National Parks Board* 2010 JDR 0480 (ECG) at par 24. See also: *Trustees, Brian Lackey v Annandale* 2004 (3) SA 281(CPD) at 292; *Fedgroup Participation Bond Managers (Pty) Ltd v Trustees of the Capital Property Trust* 2015 (5) SA 290 (SCA) at paras (21)

where encroachment is the only problem, the Court has a discretion to either order the removal of the encroachment or to award damages and compensation²⁸. The deciding factor being the disproportionality between removal and the damage or inconvenience suffered by the landowner²⁹. The judgment further emphasised that the encroaching owner's own conduct (good faith, knowledge of illegality, response to warnings) weighs heavily in this balance, and that courts are especially reluctant to condone conduct that persists in the face of clear statutory or municipal directions³⁰.

[53] The present matter does not involve a municipality relying s 21 of the Building Act and is there no attempt to invoke the specific public-law powers that *Lester* held to be non-discretionary. Rather, the applicants seek to restrain and undo building works undertaken by an ESTA occupier on a farm, on the basis that those works were carried out without consent or meaningful engagement and encroach upon their private property rights. That places this case squarely in the neighbour or private law category for remedial purposes, even if aspects of illegality under the Building Act may also be present. It follows that this Court retains the full, equitable discretion recognised in the cases referred to and that demolition is not automatic merely because unlawfulness is established. It must be justified as a just and equitable remedy on the facts.

[54] In addition, the dispute arises within the statutory and constitutional framework of ESTA whose preamble records that many South Africans lack

- (33); *Rand Waterraad v Bothma* 1997 (3) SA 120 (0) at 130 F -138 G; *Lester* at paras 21 - 23

²⁸ *Lester* at par [22]

²⁹ *Lester* at par [22]; *Rand Waterraad v Bothma*, 1997 (3) SA 120 (O), at 138; *Phillips v South African National Parks Board, Brian Lackey Trust* at par [23]

³⁰ *Beth-El Faith Mission* par [36]

secure tenure and are vulnerable to unfair eviction, and that the Act seeks to promote long-term security of tenure while recognising the rights, duties and legitimate interests of owners. Section 5 of ESTA guarantees to both occupiers and owners fundamental rights, including dignity and security of the person. Section 6(1), in turn, confers on an occupier the right to reside on and use the land on which an occupier resides after 4 February 1997, while s 6(2), “balanced with the rights of the owner or person in charge”, confers, *inter alia*, the right to security of tenure and also expressly to take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family. The Constitutional Court in *Daniels and Hattingh*³¹ has interpreted these provisions as requiring a just and equitable balance between occupier and owner and as infusing “justice and equity” into every enquiry about the exercise of rights under ESTA. That approach was also taken in *Basfour* where the SCA made a finding that it was just and equitable in the circumstances of that case that demolition be ordered³².

[55] *Basfour* is particularly instructive because it operates precisely at the intersection of ESTA and demolition. Far from establishing a rule that demolition automatically follows a finding of unlawfulness, *Basfour* is authority for the proposition that, in an ESTA setting, demolition is the product of a fact-sensitive discretion, guided by justice and equity.

[56] These principles sit alongside the more general constitutional jurisprudence under ESTA and PIE that insists on a contextual, humane approach to measures

³¹ *Hattingh and Others v Juta* (CCT 50/12) [2013] ZACC 5; 2013 (3) SA 275 (CC); 2013 (5) BCLR 509 (CC) (14 March 2013)

³² *Basfour*: par 30

that may undermine a vulnerable occupier's security of tenure. Demolition of a dwelling, or of a structure intended to enhance an occupier's home, is often, in substance, a partial eviction or a serious curtailment of the protection ESTA was enacted to secure. It will almost always entail the destruction of improvements funded from scarce household resources in an attempt to secure a more habitable and dignified home. That reality requires courts, in ESTA matters especially, to be more circumspect before granting demolition orders than in ordinary neighbour-law cases between relatively powerful landowners. The court must meaningfully weigh the impact on the occupier's dignity and security of tenure against the landowner's property and management interests, and it must be alive to the structural inequality and power imbalance that typically characterise the relationship between farm owners and ESTA occupiers.

[57] It follows that in ESTA disputes, when they come before court on an urgent basis on truncated papers, a demolition order should not be treated as an automatic or routine sequel to a finding that a structure was erected without consent or meaningful engagement. The party seeking demolition bears the onus to place clear, concrete facts before the court explaining why demolition, rather than a less drastic remedy, is necessary and proportionate in the particular circumstances. The applicant for example will have to present evidence regarding the stage of completion of the structure; its precise impact on the use and value of the land; whether it renders land unusable for its primary purpose; the availability (or lack) of alternative sites or arrangements; the occupier's conduct (good faith or bad faith, knowledge of unlawfulness, response to warnings or court orders); and whether compensation, regularisation, partial modification or some

other tailored remedy could adequately vindicate the owner's rights without needlessly destroying economically valuable improvements.

[58] In the present matter, the applicants have established, at least *prima facie*, that the 2025 structure was commenced without meaningful engagement and that this constitutes an unlawful encroachment upon their property rights. They have not, however, on these urgent papers, demonstrated why immediate demolition is the only, or even the most appropriate, way to vindicate those rights in the light of the first respondent's long-standing occupation, her advanced age and modest means, the substantial expenditure she has already incurred to create a more secure and habitable home, and the absence of any prior litigation or defiance of court orders comparable to that in *Basfour*. Against this backdrop, a cautious, incremental remedy is more consonant with the balancing exercise mandated by s 6(2) of ESTA, and with the constitutional imperative to infuse justice and equity into disputes affecting vulnerable occupiers' homes. The order I grant will cater for the foreshadowed approach.

Costs

[59] Neither side has been wholly successful. The applicants fail on urgency and relief in relation to the 2023 structure and do not obtain the immediate demolition they sought in relation to the 2025 structure. In matters of this nature, involving the intersection of property rights and constitutionally protected tenure rights, the default position is that each party should bear its own costs absent special circumstances. No such special circumstances are present here.

Order

[60] For these reasons, the following order is made:

1. Insofar as the application relates to the first brick structure commenced in or about 2023 at the first respondent's homestead ("the 2023 structure"), the application is struck off the roll for lack of urgency. This is without prejudice to the applicants' right to set the matter down to determine that relief in the ordinary course in respect of that structure.
2. In respect of the second August 2025 brick structure at the first respondent's homestead ("the 2025 structure"), the following *interim relief* is granted:
 - 2.2 The first respondent, and any person acting under or through her, including her son, Mr Philani Khoza, are interdicted and restrained from:
 - 2.2.1 Continuing with any construction of, or further building works on, the second 2025 structure; and
 - 2.2.2 Allowing any person to occupy the second 2025 structure, or occupying it themselves,

pending the outcome of any further proceedings contemplated in paragraphs 3 and 4 below, or the lapsing of this order in terms of paragraph 5.
3. The demolition of the second 2025 structure is stayed on the terms set out in paragraphs 4, 5 and 6 below.

4. The applicants and the first respondent, acting through their respective legal representatives, are directed to engage in good faith with one another for a period of 30 (thirty) calendar days, from 19 January 2026, with a view to reaching agreement on the future of the second structure and any conditions that should govern its completion, alteration or demolition.
5. If no written agreement is concluded within the 30-days period referred to in paragraph 4:
 - 5.1 Either the first respondent may, within 15 (fifteen) calendar days thereafter, institute proceedings in a competent court seeking an order authorising the continuation and completion (or regularisation) of the second structure; and/or
 - 5.2 The applicants may, within the same 15-day period, supplement these papers and set the matter down seeking demolition of the second structure and/or any other appropriate relief.
6. The interim interdict in paragraph 2 (with sub-paragraphs) shall:
 - 6.1 Remain in force pending the final determination of any proceedings timeously instituted in terms of paragraphs 5.1 and 5.2; and
 - 6.2 Lapse if no proceedings are instituted by either party within the time periods stipulated in paragraphs 5.1 and 5.2.

7. The relief granted in paragraphs 2 to 6 shall bind the first respondent and any person acting under or through her, including Mr Philani Khoza. No further relief is granted against the “Unknown Occupiers of Portion 1 of the Farm Welgevonden” beyond the extent, if any, to which they act under or through the first respondent.
8. Each party shall pay its own costs in these proceedings.



A. MONTZINGER
Acting Judge of the Land Court

Appearances:

Counsel for applicants:	Mr J G C Hamman
Attorneys for applicants:	Mr S Viljoen Attorneys
Attorney for respondents:	Legal Aid - Newcastle
Counsel for respondents:	Mr. T Netshivera