



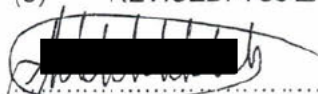
IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG

CASE NO: LANC2025-160566

Before: Honourable Acting Judge Ntshalintshali

Heard on: 02 December 2025

Delivered on: 19 January 2026

(1)	REPORTABLE: Yes ☒ / No ☐
(2)	OF INTEREST TO OTHER JUDGES: Yes ☒ / No ☐
(3)	REVISED: Yes ☒ / No ☐
	
Date: 19 January 2026	

In the matter between:

TAAG TRUST

Applicant

and

**UNKNOWN OCCUPIERS OF PORTION 5
OF THE FARM DE WET STROOM, NR
3309 NEWCASTLE, KWAZULU-NATAL**

Respondents

ORDER

1. *Rule Nisi* issued by this court on the 09 September 2025 is hereby confirmed.
2. It is declared that the construction of the structure or dwelling on Portion 5 of farm De Wet Stroom Nr. 3309, Newcastle KwaZulu-Natal without the consent of the Applicant or person in charge is unlawful.
3. The Respondents is/are interdicted from allowing anyone to take up occupation of the relevant partial structure on the farm or from taking occupation thereof herself/ himself/ themselves.
4. The Respondents is/are prohibited and restrained from enabling or assisting unauthorized person from continuing with the construction of the existing partially constructed structure on portion 5 of the farm De Wet Stroom Nr. 3309, Newcastle KwaZulu-Natal without the expressed permission of the applicant or person in charge.
5. The demolition order is not granted.
6. No order as to costs.

JUDGMENT

NTSHALINTSHALI AJ

Introduction

[1] This is an application for an interdict where the Applicant seeks an order declaring the construction or continued construction of a brick and mortar structure on portion 5 of the farm De Wet Stroom, Nr. 3309, Newcastle KwaZulu-Natal (the farm) unlawful. In addition, interdicting the Respondents from allowing anyone to take up occupation of the relevant partial structure on the farm. Further, the Applicant seeks other ancillary relief specified in the Notice of Motion. The application is opposed by the Respondents.

[2] This Court issued an interim order on the 10 September 2025:

- 2.1. Preventing the Respondents from carrying on erecting or continuing to build any structure on the farm.
- 2.2. Taking occupation of the relevant partial, alternatively recently completed structures on portion 1 of the farm.
- 2.3. Allowing anyone to take occupation of the relevant partial, alternatively recently completed structure on portion 1 of the farm.

Parties

[3] The Applicant is the Taag Trust duly registered with the Master of the High Court with registration number IT59/95 and is duly represented by Mr Casparus Albertyn Jourbet who is a trustee of the Applicant. The Applicant is the registered owner of the farm known as portion 5 of farm De Wet Stroom Nr. 3309, Newcastle KwaZulu-Natal and he became an owner on or about year 2008. At the time he acquired the farm, the Respondents were already on the farm.

[4] The Respondents are the Unknown Occupiers of Portion 5 of the farm De Wet Stroom, Nr 3309 Newcastle, KwaZulu-Natal. Buyile Lither Ngcobo (Ms Ngcobo), a female pensioner currently residing on the farm deposed to the answering affidavit. She resides on the farm together with members of her family.

Background of facts

[5] Ms Ngcobo came to the farm together with her family in the year 1983 at the time it was called Imbizana farm and the person in charge was Mr Piennar who allocated them grazing area for their livestock. At all material times, Ms Ngcobo and her family were reported to be residing on the farm as occupiers and occupy at least a total of 13 structures consisting of mud structure as well as brick and mortar.

[6] In May 2025, the Respondents commenced constructing a brick structure without the consent of the Applicant. On 07 July 2025 as well as on 21 July 2025, the

Applicant sent the security company to address this issue and inform the Respondents to desist with the construction of the structure. On both occasions, the Respondents refused to halt the construction.

[7] On 07 July 2025, the Applicant dispatched correspondence to the Respondents by sheriff calling them to stop immediately with the construction of the unlawful structure and to demolish it. The sheriff in his return of service confirms that they refused to accept service and threatened him with physical violence.

[8] On 29 July 2025 Legal Aid Newcastle sent a letter to Applicant's Attorneys, requesting permission for the Respondents to construct a 1 room on the farm, because the current room was dilapidated. On 07 August 2025, the Applicant through his Attorneys of record sent a response saying that the unlawful construction had already commenced in May before any consent was sought. The Applicant requested confirmation of the dilapidated homestead and indicated that it would be willing to consider allowing the new room under the following conditions:

- "1. The old dilapidated room is demolished;
2. The new room is the same size as the old room;
3. The new room is within the boundaries of the yard; and
4. Construction of the new room only start when the old room is completely demolished."

[9] On the letter, it was also indicated that if the conditions are not acceptable to the Respondents then unfortunately there will not be consent for construction of the new room. There were various attempts between the parties through their legal representatives to attempt to resolve the issue, however nothing came of it. The Respondents continued with the construction.

[10] On the 09 September 2025 the Applicant instituted an application for interdict on an urgent basis for an order directing the Respondents:

1. To stop the unlawful construction of the structure on the farm;

2. To stop the respondents from allowing anyone to take up occupation of the relevant partial structure on the farm and or to stop the respondents from taking occupation thereof himself/ herself/themselves;
3. An order directing the respondents to demolish the structure erected on the farm.

[11] This Court granted an interim order on 10 September 2025 by Judge Ncube and directions were given on 09 September 2025 as well as amended directions on 27 October 2025 for the parties to exchange pleadings and the hearing to be on the 02 November 2025.

The Law

[12] Section 6 of the Extension of Security of Tenure Act 62 of 1997 (ESTA) deals with the rights and duties of the occupier and it states:

“6. Rights and duties of occupier-

(1) Subject to the provisions of this act an occupier shall have the right to reside or and use the land on which he or she resided and when which he or she used on or after 4 February 1997 and to have access to such services as had been agreed upon with the owner or person in charge whether expressly or tacitly;

(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-

- (a) To security of tenure;
- (b) To receive bona fide visitors at reasonable times and for reasonable periods;

Provided that-

(i) the owner or person in charge may impose reasonable conditions that are normally applicable to visitors entering such land in order to safeguard life or property or to prevent the undue disruption of work on the land;

(ii) the occupier shall be liable for any act, omission or conduct of any of his other visitors causing damage to others while such

a visitor is on the land if the occupier, by taking reasonable steps, could have prevented such damage;

(c) To receive postal or other communication;

(d) To family life in accordance with the culture of that family: Provided that this right shall not apply in respect of single sex accommodation provided in hostels erected before 4 February 1997;

(dA) To bury a deceased member of his or her family who, at the of that person's death, was residing on the land on which the occupier is residing, in accordance with their religion or culture belief, if an established practice in respect of the land exists;

(dB) To take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family;

(e) Not to be denied or deprived of access to water; and

(f) Not to be denied or deprived of access to educational or health services.

(3) An occupier may not-

(a) Intentionally and unlawfully harm any other person occupying the land;

(b) Intentionally and unlawfully cause material damage to the property of the owner or person in charge;

(c) Engage in conduct which threatens or intimidates others who lawfully occupy the land or other land in the vicinity; or

(d) Enable or assist unauthorized persons to establish new dwellings on the land in question.

(4) Any person shall have the right to visit and maintain, or erect a tombstone on, mark, place symbols or perform rites on, his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.

(5) The family members of an occupier contemplated in section 8 (4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or culture belief, subject to any reasonable conditions which are not more onerous than those prescribed and that may be imposed by the owner or person in charge."

[13] It is not in dispute that the Respondents are occupiers in terms of ESTA and therefore derive their rights from that Act. However, Ms Ngcobo contends that a section 16 notice in terms of the Land Reform (Labour Tenants) Act 3 of 1996 (LTA)

was served to the Department of Agriculture, Land Reform and Rural Development ("Department") for her family to be declared labour tenants by her late mother. She contends further, that such application has not been dealt with by the Department and have not yet been referred to court. This said contention is irrelevant and cannot be used as a legal defence in these proceedings.

[14] At the core of this application lies a determination of whether a structure erected on a farm without prior engagement and consent of the owner of the farm is lawful, if so, whether consequential relief by way of demolition is just.

[15] The Respondents had no consent from the Applicant to erect or build a new structure. Ms Ngcobo avers that she did not know that she was supposed to get consent from the Applicant because previously consent was given by the previous land owner allowing them to build new structures on the farm.

[16] The Respondents admit that the people from Ithemba Security attended to their homestead and delivered letters telling them to halt the building of the structure on the farm.

[17] The Respondents aver that the reason for the building of the new structure is because the old structure is dilapidated. Further, Ms Ngcobo avers that due to the large number of her family members which is approximately more than 30 family members ranging different ages and genders who are sharing the various dilapidated rooms on the farm, there is a need for human dignity to be respected as well as the right to privacy be afforded to herself and members of her family.

[18] Ms Ngcobo avers that an incident happened in the year 2024, wherein one of the dilapidated structures collapsed, however does not provide any proof thereof.

[19] Ms Ngcobo avers that a letter was sent through her legal representatives to the Applicant on the 29 July 2025 where she was requesting consent.

[20] The Applicant responded on 07 August 2025 where it confirmed that the unlawful construction had already commenced in May 2025 before any consent was sought.

[21] The letter further recorded that several notices were served to stop construction and that the sheriff and farm security were met with aggressive behaviour and threats.

[22] The Applicant requested photographs of the old dilapidated homestead and indicated that it will be willing to consider allowing the new room on condition that:

1. The old dilapidated room is demolished;
2. The new room is the same size as the old room;
3. The new room is within the boundaries of the yard; and
4. Construction of the new room only start when the old room is completely demolished.

[23] The letter further recorded that should the Respondents refuse to accept these conditions it will unfortunately not consent to the construction of the new room.

[24] The Respondents responded to the proposed conditions and confirmed that they wish to upgrade a number of structures that are dilapidated.

[25] The Applicant indicated in the letter that in the event that the Respondents desire to erect permanent structures built of bricks and cement, proper consultation must first take place with it.

[26] On 18 August 2025, the Respondents' attorneys sent an email indicating only that they would take instructions and revert however, the Respondents' attorneys never reverted to the Applicant.

[27] The Applicants' attorneys on 02 September 2025, made further attempts to reach Legal Aid Newcastle but to no avail and while all these attempts were continuing the Respondents did not stop with the building of the structure.

[28] The Applicants' attorneys visited Legal Aid board, the Respondents' attorneys of record and were informed by the relevant attorney Mr Velemseni Zulu, that apparently despite the content of the letters the Respondents have not consented to the demolition of any of the existing buildings and that the new structure will simply be added. (confirmatory affidavit of Ms Viljoen is filed in a confirmation thereof).

[29] The Respondents' Counsel argued that according to *Daniels v Scribante and Another*¹ "a conclusion was drawn that in analysing this case an owner's consent cannot be a re-requisite when the occupier wants to bring her dwelling to a standard that conforms to conditions of human dignity".

[30] The Respondents further aver that the court in *Scribante* in paragraph 62 said although consent is not a requirement, meaningful engagement of an owner or person in charge is likely necessary.

[31] Counsel further submitted that based on the case law above, there was an attempt for meaningful engagement in this matter by the letter of the 29 July 2025 and subsequently on the 12 August 2025 however, the land owner refused to grant permission to the Respondents to upgrade their dwelling.

[32] In *Basfour*² Ncube J said:

'*Scribante* is no authority for the finding that the occupier can build new structures on the farm without the consent of the owner or person in charge. *Scribante* is concerned with the making of improvements on the existing structure, even in the case of improvements, *Scribante* requires a meaningful engagement between the occupier and the owner or person in charge. The occupier can proceed and effect improvements to the existing structure without consent of the owner or person in charge only after meaningful engagement and where the owner or person in charge unreasonable withholds consent.'³

[33] In this case the Respondents erected a structure without the consent of the land owner or person in charge, further to that the Respondents did not even engage the Applicant meaningfully. Ms Ngcobo only wrote 2 letters through her attorneys on 29 July 2025 as well as 12 August 2025 respectively requesting the landowner to grant her consent. The Respondents in this case insist that by writing the two letters to the Applicant after she had already commenced with the building of a structure, that constitute meaningful engagement.

¹ 2017 (4) SA 341 (CC) (*Scribante*).

² *Basfour 3327 (PTY) Ltd v Thwala and Others* (LCC160/2017) [2022] ZALCC 20 (*Basfour*).

³ *Ibid* para 29.

[34] I disagree with this averment. Meaningful engagement cannot be done after the Respondents have already commenced with an unlawful conduct, even if the Respondents states this was meaningful engagement, however it is the view of this Court that such was done in bad faith because while the Applicant was entertaining these negotiations the Respondents did not stop with the construction. Ms Ngcobo continued to build despite various letters informing her to stop building the structure therefore this argument cannot be accepted.

[35] Ncube J further said in *Basfour*:

‘even in the case of improvements the occupier does not have untrammelled right to effect improvements to a dwelling. He is entitled to effect improvements that are reasonably necessary to render his dwelling habitable in conformity with his right to human dignity.’⁴

[36] Ms Ngcobo was building a completely new structure not improving the one she claims was dilapidated, she further refused to even consider demolishing the dilapidated structure and then build one the same size as the previous demolished structure. On the contrary, Ms Ngcobo through her attorneys of record confirmed that she intends building more other structures in an attempt to upgrade other dwellings that are also dilapidated.

[37] In an unreported Judgment of this Court Meer AJP expressed herself in the following terms:

‘The applicant is not entitled to a general right to make improvements to his dwelling which the first prayer of his notice of motion seeks’. He is entitled to an order permitting improvements which are reasonably necessary to render the dwelling habitable in the exercise of his right to human dignity’.⁵

[38] Ms Ngcobo further relies on her application in terms of section 16 of the LTA which application has not yet been referred to the court by the Department. Ms Ngcobo

⁴*Basfour* supra n 2 para 30.

⁵*T.M Sibanyoni & Sibanyoni Family v Van Der Merwe & Any other person in charge of Farm 177, Vaalbank Protion 13 Hendrina, Mpumalanga and Others (LCC 119/2020) [2021] ZALCC 33* para 27.

avers that the portion of land on which she is building on is a subject of a claim for acquisition in the event she is successful in her claim for labour tenancy.

[39] It is important to note that the rights and duties of occupiers and land owners in terms of ESTA were determined in *Scribante*. The Constitutional Court held that an owner's consent cannot be a prerequisite when the occupier wants to bring the dwelling to a standard that conforms to conditions of human dignity.

[40] The Court further dealt with the issue of whether the occupier may effect such improvements in total disregard of the owner and it held as follows:

'That an occupier does not require consent cannot mean she or he may ride roughshod over the rights of an owner, the owner also has rights. The very enjoyment by an occupier of rights conferred by ESTA creates tension between that enjoyment and an owner's rights. The most obvious owners right that is implicated is the right to property under Section 25 of the Constitution if an occupier were to be entitled to act in an unbridled manner, that would mean an owner's rights count for nothing'.⁶

[41] Under section 5 of ESTA, an owner enjoys the exact same rights as does an occupier. The total disregard of an owner's property right may impinge on her or his right to human dignity, that would be at odds with section 5 (a) of ESTA. Unsurprisingly section 6 (2) of ESTA requires that an occupier's right to security of tenure be balanced with the right of an owner or person in charge.

[42] Although consent is not a requirement, meaningful engagement of an owner or person in charge by an occupier is still necessary it will help balance the conflicting rights and interests of occupiers and owners or person in charge. In this regard, I agree with the submissions of the *amicus curiae*, which argued for the need for meaningful engagement between an owner and occupier.

[43] In *Hattingh*⁷ Zondo J said:

⁶ *Scribante* supra n 1 para 61.

⁷ *Hattingh and Others v Juta* 2013 (3) SA 275 (CC).

'In my view the part of Section 6 (2) that says: 'balanced with the rights of the owner or person in charge' calls for the striking of a balance between the rights of the occupier on the one side and those of the owner of the land, on the other. This part enjoins that a just and equitable balance be struck between the rights of the occupier and those of the owner. The effect of this is to infuse Justice and equity in the enquiry'.⁸

[44] If engagement between an occupier and owner or person in charge give rise to a stalemate, that must be resolved by a court. The occupier cannot resort to self - help. In this case, even though Ms Ngcobo initiated meaningful engagement, she had already commenced with the building of the structure without seeking consent from the Applicant. When she realized that the engagement has reached a stalemate, she did not approach the court in order for the matter to be resolved there but opted to take the matter into her own hands and continued to build on the farm without consent.

[45] The observation that are made by this Court from the photographs attached to these pleadings, are that it is clear that the structure that was built by the Respondents was an entirely new structure and was not an improvement of the existing structure.

[46] Further to that even if Ms Ngcobo was making improvements, she does not have unfitted rights to improve their existing dwellings, as *Scribante* makes plain, such improvements must be reasonable necessary to render the dwelling habitable in conformity with the rights to human dignity. As such, meaningful engagement is necessary before the Respondents resume with the construction of any structure so that the parties can determine what is reasonable and necessary. Since in this case the structure was erected without prior consent or meaningful engagement with the Applicant it follows that the building of the structure by the Respondents was unlawful.

Demolition Order

[47] What remains is whether it would be just to order the demolition of the structure.

[48] In the *Basfour*⁹ case (Supreme Court Appeal decision), the Judge said that:

⁸ Ibid para 32.

⁹ *Basfour 3327 (Pty) Ltd v Thwala and Others (1008/2023) [2025] ZASCA 105.*

'the court has a discretion whether to grant such a relief, which must be exercise after taking into consideration all the facts'.¹⁰

[49] In this case, it is clear from the papers how far the building had been constructed from the photographs attached to the founding affidavit. The building was constructed to the roof level.

[50] Ms Ngcobo avers that if the demolition order is granted she will suffer prejudice because she is a pensioner and that she used her pension money to build the structure. She further avers that the Applicant does not suffer any prejudice as a result of the structure being constructed because it is built within the parameters of the the Respondents' homestead.

[51] Ms Ngcobo avers further that the Applicant is not using that part where the structure is built for profit therefore will not suffer any prejudice if the structure remains.

[52] On the other hand, the Applicant does not explain in detail the hardships it would endure if such an order is not granted. In its papers, the Applicant was prepared to allow the construction of the structure on conditions that it laid out in its founding affidavit in paragraph 23 to 23.4. The Applicant has not shown any type of encroachment on its property which will inhibit it from continuing with its daily business.

[53] Having considered all the facts and the averments made by the Respondents relating to the significant hardship they will suffer if the demolition order is granted, I am of the view that it would not be just that the order for the demolition of the structure be granted in this case.

Costs

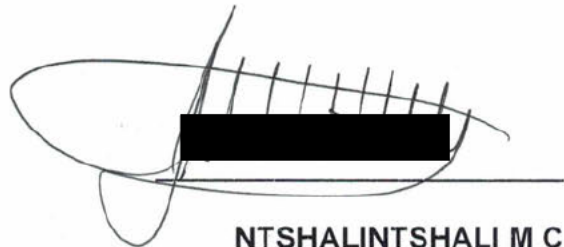
[54] The Applicant sought costs against the Respondents. The practice in this Court is not to award costs unless there are exceptional reasons why such an order should be made. In this case no exceptional reasons have been shown to exist, justifying a costs order.

¹⁰ Ibid para 27.

Order

[55] In the result, I make the following order:

1. *Rule Nisi* issued by this court on 09 September 2025 is hereby confirmed.
2. It is declared that the construction of the structure or dwelling on portion 5 of farm De Wet Stroom Nr. 3309, Newcastle KwaZulu-Natal without the consent of the Applicant or person in charge is unlawful.
3. The Respondents is/are interdicted from allowing anyone to take up occupation of the relevant partial structure on the farm or from taking occupation thereof herself/ himself/ themselves.
4. The Respondents is/are prohibited and restrained from enabling or assisting unauthorized person from continuing with the construction of the existing partially constructed structure on portion 5 of the farm De Wet Stroom Nr. 3309, Newcastle KwaZulu-Natal without the expressed permission of the applicant or person in charge.
5. The demolition order is not granted.
6. No order as to costs.

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NTSHALINTSHALI M C
Acting Judge of the Land Court

Appearances:

For the Applicant: Adv J Hemman

Instructed by: S Viljoen Attorneys

For the Respondents: Adv V Zulu

Instructed by: Legal- Aid- Newcastle

