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**THE REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION, CAPE TOWN)**

**Case No.: 2025-229199**

In the matter between:

**C[...] B[...] C[...] N.O.**

(in his capacity as trustee of

the C[...] Family Trust I[...])

First Applicant

**ALAN JEFFREY THORNTON N.O.**

(in his capacity as trustee of

the C[...] Family Trust I[...])

Second Applicant

**JUDITH ANN FRASER N.O.**

(in her capacity as trustee of

the C[...] Family Trust I[...])

Third Applicant

**MICHELLE MAURITZ N.O.**

(in her capacity as trustee of

the C[...] Family Trust I[...])

Fourth Applicant

C[...] B[...] C[...]

Fifth Applicant

and

L[...] C[...]

Respondent

Summary:

Urgent Application - Interim Relief - Reasonable Conditions -  
Imposed by the Court - Exercise of Wide Discretion -  
Mandamus of Limited Duration Only - Application Granted.

Coram:

Wille, J

Heard:

11 December 2025

Order:

12 December 2025

Reasons Requested:

22 January 2026

Reasons Delivered:

2 February 2026

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## REASONS

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**WILLE, J:**

### **INTRODUCTION**

[1] The applicants sought a *mandamus* for only a very short time. The court had a discretion to determine the duration of the interdictory relief sought, together with the conditions to be imposed in connection with that relief.<sup>1</sup>

[2] Because the relief granted was to endure for a very short time only, it did not, as a matter of pure logic, finally determine the rights of any party to this application. In addition, the respondent had the right to revisit the relief granted on good cause shown.<sup>2</sup>

[3] The application presented to me was urgent, and the final argument continued into the late hours of the night. Part of the argument was heard in the morning, but because of numerous urgent matters to be dealt with throughout the day, the final arguments were stood down until later in the evening. This is important because during this intervening time, the respondent's legal representatives submitted an open tender to my registrar for my consideration.<sup>3</sup>

[4] This tender effectively amounted to a capitulation by the respondent regarding her continued occupation of the property, save for the conditions to be attached to the interim *mandamus*. It is trite that a court has a wide discretion to attach conditions to interdictory relief of this nature, considering the interaction of the various requisites for an interim interdict.<sup>4</sup>

### **THE RELIEF SOUGHT**

[5] In summary, the applicants sought interim relief requiring the respondent to temporarily vacate the former matrimonial home so that the applicants could overhaul and upgrade the home automation system. This relief was sought, *inter alia*, because of several

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<sup>1</sup> The interdictory relief was to endure for a period of four months only.

<sup>2</sup> *Andalusite Resources (Pty) Ltd v Investec Bank Limited and Another* 2020 (1) SA 140 (GJ) at paras 16 to 24.

<sup>3</sup> The tender.

<sup>4</sup> *Shoprite Checkers Ltd v Blue Route Property Managers (Pty) Ltd* 1994 (2) SA 172 AT 184 F-G.

complaints by the respondent (at the respondent's instance) regarding the malfunctioning of this home automation system and other general security concerns raised by her.<sup>5</sup>

### **THE OPPOSITION BY THE RESPONDENT**

[6] Regrettably, the respondent adopted a shotgun approach to the opposition of the application and cast her net as wide and far as possible to oppose the very limited duration of the relief sought against her.<sup>6</sup>

[7] The respondent contended that the application was, in essence, an eviction application. This in the context of the limited duration and strict conditions imposed in connection with this limited relief. The applicants sought an interim *mandamus* that the respondent temporarily vacate the property for a specific purpose and for that purpose only.<sup>7</sup>

[8] A complaint is levelled by the respondent to the effect that the applicants failed to comply with the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998.<sup>8</sup>

[9] The respondent was and could never have been in unlawful occupation of the former matrimonial home. The fifth applicant has a legal relationship with the other applicants in terms of which he has a right to occupy the property, and the respondent's right to reside there is a *sui generis* right as his spouse as part and parcel of his spousal duty of support towards her.<sup>9</sup>

[10] As a matter of pure logic, the respondent's rights to reside in the property will only come to an end upon divorce (if this is even granted) when she is no longer the spouse of the fifth applicant. The applicants did not seek in any manner or form to terminate any of the respondent's rights in this connection (nor were they able to do so), and thus no eviction that

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<sup>5</sup> Th home automation system shall be referred to as the "system".

<sup>6</sup> This despite the tender made by her attorney during the hearing.

<sup>7</sup> For the urgent upgrading and overhauling of the home automation system to the former matrimonial home.

<sup>8</sup> PIE.

<sup>9</sup> Baker v Baker 2021 JDR 0038 (KZD) at para [6].

required compliance with the provisions of PIE was presented before me for consideration and this shield remained challenging to understand.<sup>10</sup>

[11] The next very technical point raised by the respondent is the shield in the form of an alleged non-joinder. The respondent contends that there are some other adult occupants who reside on the property who are not cited in this application and who will also need to vacate the property for the remedial work to be carried out on the property.<sup>11</sup>

[12] These occupants are the fifth applicant's and the respondent's two adult children and two staff members who work for the fifth applicant. This challenge is difficult to understand as the fifth applicant had made arrangements with his staff members regarding their continued service with him and their alternative accommodation during the period in which the property will be uninhabitable due to the remedial work being carried out thereon.<sup>12</sup>

[13] In addition, the parties' adult children do not reside at the property. To the extent that these adult children may require accommodation for this limited period of time, the fifth applicant has tendered to pay for their limited accommodation needs (if any)<sup>13</sup>

[14] The next highly technical shield advanced by the respondent was that the trustees of the Trust (which owns the immovable subject property), needed to specifically resolve that the application be brought urgently in the *resolution* that was signed by all the trustees. This shield is likewise very challenging to understand. I say this because this is a matter of procedural law, and the trustees are not required to pass a resolution, defining in specific terms, the precise legal nature of the proceedings authorised by the trust, nor the precise procedural manner in which they are to be launched. This must be so as a matter of pure logic, as otherwise it would mean that during the course of any litigation by any juristic entity,

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<sup>10</sup> VM v BL 2021 JDR 3345 (GJ) at para 18 – 20.

<sup>11</sup> I say remedial work because some urgent security repairs had to be done save for upgrading the system.

<sup>12</sup> This was not the subject of any challenge by the respondent.

<sup>13</sup> This too, was not the subject of any dispute by the respondent.

as the litigation between the parties evolved and different strategies evolved and developed, new and fresh resolutions would have to be obtained *ad nauseam*.<sup>14</sup>

[15] The next technical shield raised goes to the core of the counter-application launched by the respondent. This shield is equally devoid of any substance or merit. I say this because the complaint is that the trustees of the Trust acted *ultra vires* the specific provisions of the trust deed when they resolved to launch the application on behalf of the Trust.<sup>15</sup>

[16] Belatedly, and in response to the CFT's application, the respondent delivered a counter-application to set aside a portion of the resolution by the trustees of the CFT that authorized the fifth applicant to launch the application. The point raised was that the trustees of the CFT had acted *ultra vires* the CFT's trust deed.<sup>16</sup>

[17] This was also a red herring. I say this because, under the trust deed, the trustees have the widest powers and authority to administer the CFT to achieve its objects, which include the maintenance of any assets and doing all things considered necessary or desirable in the interests of the CFT and its beneficiaries.<sup>17</sup>

[18] There are a few more highly technical shields raised by the respondent. The respondent contends that the CFT is the *alter ego* of the fifth applicant and he has *de facto* control of the CFT. What this has to do with anything is challenging to understand to say the least. The startling allegation is then made that the fifth applicant is waging a vendetta against the respondent to gain a tactical advantage over her in the pending divorce action. This is in the context of the pleadings in the divorce action, in which the respondent's occupation of the property is not in dispute.<sup>18</sup>

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<sup>14</sup> There is simply nothing defective about the resolution passed by the trustees of the Trust.

<sup>15</sup> The C[...] Family Trust (CFT).

<sup>16</sup> This should never have been raised in the form of a counter - application.

<sup>17</sup> The remedial work is to maintain an asset of the CFT.

<sup>18</sup> The extent of this alleged tactical advantage (even if it exists) is difficult to understand.

[19] But there is more. In addition, it is alleged that the conduct of the fifth applicant is *in terrorem* and vindictive. These allegations are made in a vacuum, with no facts to support them. These allegations were made in a last-ditch throwaway line.<sup>19</sup>

[20] Finally, an allegation is made, again in the form of a throwaway line, that the entire application was aimed at seeking some tactical advantage in the pending divorce action. What is of significance is that this alleged tactical advantage is not identified at all by the respondent. It is difficult to imagine what tactical advantage the fifth applicant would gain over the respondent in these limited circumstances.<sup>20</sup>

### **THE TENDER ON BEHALF OF THE RESPONDENT**

[21] The legal representatives of the respondent tendered the following draft order to resolve the matter, which was presented to the court during the urgent hearing.:

1. *The applicants are permitted for a period of four months commencing 1 March 2026 and ending 30 June 2026, or sooner in the event of the work referred to below being completed before then, to conduct an overhaul and upgrading of the home automation system at the property situated at [...] O[...] R[...], Silverhurst Estate, Constantia ("the property") in accordance with the quotation submitted by Sound Repairs and Installations CC t/a CAV (referred to in annexure "CBC4" to the founding affidavit of the applicants).*
2. *The applicants are permitted for a period of four weeks during the above period between 1 March 2026 and 30 June 2026, or sooner in the event of the work referred to below being completed before then, to repair the cracks and leaks to the roof of the property in accordance with the quotation submitted by MSK Construction (Pty) Ltd (annexure "CBC3" to the founding affidavit of the applicants).*

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<sup>19</sup> No context has been supplied, and no factual allegations have been made in support of these allegations.

<sup>20</sup> I am left in the dark as to what this alleged tactical advantage may be.

3. *For purposes of any of the above work and when required to do so, the respondent and the two children, M[...] and A[...] (“the children”), will temporarily vacate those parts of the property where the work is to be done and move to either other parts of the property alternatively to [...] O[...] R[...], Silverhurst Estate, Constantia (“the cottage on the property”) as and when required in accordance with the Works Program set out below.*
4. *The applicants will instruct the appointed contractors referred to above to provide the respondent with a Works Program on or before 13 February 2026 setting out the scope of work required, the various phases in which the work is to be done, and the dates by which the respondent and / or the children will be required to vacate the relevant sections of the property, move to other parts of the property or move to the cottage on the property, and the date by which all work will be completed and by when the respondent and the children will be permitted to return, so that all the required work will be done and completed in accordance with the aforesaid Works Program before 30 June 2026.*
5. *In the event of there being any dispute in respect of the Works Programme referred to above, including both the reasonableness and feasibility thereof and compliance therewith, such dispute will be referred to Nigel Session of NS Solutions Quantity Surveyors for adjudication and final determination by him.*
6. *The costs of the above work, any other work the applicants may consider necessary during this period, and any adjudication, if and when required, under paragraph 5, will be borne by the C[...] Family Trust (“the Trust”).*
7. *The respondent and the children will be permitted to resume their permanent occupation of the whole of the property by no later than 1 July 2026.*

8. *In the event that the applicants are unable to ensure compliance with this order, they will be permitted to apply to have it varied, on reasonable notice to the respondent.*
9. *It is recorded that during this period, the fifth applicant will be able to reside at any one of the following properties owned by the Trust or Basfour Trust:*
  - 9.1. *[...] R[...] Close, Silvertree Estate, Tokai.*
  - 9.2. *5[...] A[...], V & A Waterfront, Cape Town.*
  - 9.3. *C[...] V[...] Country House, Franschhoek, Western Cape.*
  - 9.4. *A[...] House, St Francis Bay, Eastern Cape.<sup>21</sup>*

#### **THE ORDER GRANTED**

[22] After hearing the various arguments, I granted the following order:

1. *The respondent is directed to vacate the property **on a temporary basis only**, being No. [...] O[...] R[...], Silverhurst Estate, Constantia, Cape Town (“the property”), by no later than **12h00 on Saturday, 28 February 2026**, to enable the completion of the overhaul and upgrading of the home automation system at the property and other repair work, commencing on **Monday 2 March 2026**.*
2. *The applicants (jointly and severally) are hereby compelled to hand back vacant occupation and possession of the property to the Respondent by no later than **12h00 on Wednesday, 1 July 2026**.*
3. *The fifth applicant is directed to contribute an amount of **R140,000.00** (such payment to be in advance and when required) to the respondent to obtain suitable alternative accommodation for the interim period between **12h00 on Saturday, 28 February 2026 and 12h00 on Wednesday, 1 July 2026**. (the interim period). The*

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<sup>21</sup> This draft order was sent by email to my registrar on 11 December 2025.

*fifth applicant is also directed to pay all such and any deposits that may be reasonably required by the landlord and/or by the respondent to enable her to secure and find alternative accommodation during the interim period. The fifth applicant shall also pay on presentation of invoice all the necessary and reasonable removal and associated costs to be incurred or actually incurred by the respondent to enable her to move to the alternative accommodation during the interim period.*

4. *The fifth applicant will continue paying such maintenance to the respondent as he is presently paying to the respondent. In addition, the fifth applicant shall pay all electricity, water, municipal, and levy accounts, plus the internet and domestic assistant costs, to the extent that the respondent incurs these expenses in the alternative accommodation during the interim period.*
5. *The trustees of the C[...] Family Trust (jointly and severally) are ordered to restore vacant occupation and undisturbed possession of the property to the respondent by no later than **12h00 on Wednesday, the 1<sup>st</sup> of July 2026.***
6. *The respondent's counter-application is dismissed.*
7. *There shall be no order as to the costs in respect of the application and in respect of the counter-application.<sup>22</sup>*

## **CONSIDERATION**

[23] The respondent is the party who complained about a host of issues requiring repair and remedial work to the property. She complained about the state of the home automation system and the lack of working lights when she got home.<sup>23</sup>

[24] The applicants acted reasonably and conceded that the works could commence later in February or at the start of March 2026. What was crucial was that the contractor required

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<sup>22</sup> I made certain further conditions to protect and benefit the respondent.

<sup>23</sup> These complaints surfaced in writing in the form of emails and WhatsApp messages.

a set date for the project to commence so that the planning phase could begin. The contractor was unable to plan because he did not know when the project would commence. Self-evidently, as clearly and precisely set out in the founding affidavit, there was a risk of complete system failure of the home automation system, and the longer the applicants delayed, the greater the risk.<sup>24</sup>

[25] The prejudice to the respondent is minimal, given the tender's content and the conditions I attached to the order granted. The respondent is the party who repeatedly complained that she does not like living at the property because she feels unsafe and insecure.<sup>25</sup>

[26] I was enjoined to weigh up the minimal prejudice to the respondent (if indeed any existed) against the prejudice to the CFT, who required some degree of certainty regarding the date of commencement for the remedial project.<sup>26</sup>

[27] The respondent did not challenge the necessity of the work to be done. The prejudice to the respondent (if any existed) was at most in the form of a very short-lived inconvenience compared with the extensive nature of the work required to be done at the property. This in circumstances where the respondent had herself demanded that the remedial work be undertaken.<sup>27</sup>

## **CONCLUSION**

[28] As mentioned, this matter was heard during the night of 11 December 2025. I considered the matter and granted the order the following morning on 12 December 2025. The respondent then filed a request for reasons on 15 December 2025 and an application for leave to appeal on 24 December 2025. This the respondent did without following the

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<sup>24</sup> This was not materially challenged by the respondent.

<sup>25</sup> In the respondent's tender she agreed to vacate the property.

<sup>26</sup> In view of the tender there was no prejudice whatsoever to the respondent.

<sup>27</sup> The balance of convenience clearly favored the applicants.

court's practice directives and without notifying my registrar. These are then the reasons for my order, with no order as to costs.<sup>28</sup>

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**E. D. WILLE**  
**CAPE TOWN**

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<sup>28</sup> I made no order as to costs in respect of the application or the counter - application.