REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT

Case Number: A03/2025

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: YES

[redacted]

09 Feb 2026
DATE

SIGNATURE

In the matter between:

MATSAMO MALL (PTY) LTD	Appellant
and	
BUHLE BUYEZA INDUSTRIAL PRIMARY COOPERATIVE LIMITED	First Respondent
MATSAMO TRIBAL AUTHORITY	Second Respondent
VELI WILSON MABUZA N.O.	Third Respondent
KLEINTJIE SAMUKELO MAGAGULA N.O.	Fourth Respondent
GIVEN MLUNGISI MHLONGO N.O.	Fifth Respondent
SIBONANI SIBHOBHO MHLONGO N.O.	Sixth Respondent
MDUDUZI WONDERBOY SHONGWE N.O.	Seventh Respondent
DUDU CHRISTINA NKUNA N.O.	Eighth Respondent
NOMATHEMBA GABISILE MHLONGO N.O.	Ninth Respondent
BONGEKILE FORTUNITE ANWAR N.O.	Tenth Respondent
SYLVIA SIBONGILE SITHOLE N.O.	Eleventh Respondent

SIMANGELE PROMISE SITHOLE N.O.	Twelfth Respondent
MONDAY BHOKO SHONGWE N.O.	Thirteenth Respondent
THE MAGISTRATE (MS USINGA), TONGA	Fourteenth Respondent
BUHLE BUYEZA AGRICULTURAL COOPERATIVE LIMITED	Fifteenth Respondent
BUHLE BUYEZA AGRICULTURAL PRIMARY COOPERATIVE LIMITED	Sixteenth Respondent
BUHLE BUYEZA FARMERS ASSOCIATION	Seventeenth Respondent

***Coram*:** RATSHIBVUMO AJP, MAYET & NSIBANDE AJJ
Heard: 17 October 2025
Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for the hand-down of the judgment is deemed to be 10h00 on 09 February 2026.

Order:

(1) The appeal upheld with no order as to costs.

(2) The order of the court *a quo* is set aside and replaced with the following: The review is dismissed with costs.

JUDGMENT

MAYET AJ

Introduction

[1] Nestled on the eastern edge of Mpumalanga, near the town of Malelane, within sight of the Lebombo hills, stands Matsamo Mall, a shopping centre. During its development in 2021, an interdict was unearthed. The interdict, issued in 2016 by Magistrate Phiri, preserved the agricultural designation, prohibited development activities, and permitted the demolition of structures on the land where the Matsamo Mall was being developed (Phiri Interdict Order).

[2] An application to rescind the Phiri Interdict Order was instituted under section 36 of the Magistrates' Courts Act 32 of 1944 (Magistrates' Courts Act). On 30 March 2021, Magistrate Usinga granted the rescission and set aside the interdict (Usinga Rescission Order).

[3] On 21 May 2021, the First Respondent brought a review application before the High Court alleging that Magistrate Usinga lacked jurisdiction to grant a *declaratory order* and that she committed gross irregularities in the proceedings.[1] The review application was not instituted by the Fifteenth Respondent, the party that had obtained the Phiri Interdict Order in 2016, but by the First Respondent, which is a separate juristic entity.

[1] Vol 1 pp1 at para 18 pp14; para 23-26 pp19.

[4] The review lay dormant for an extended period until the High Court resurrected it through judicial case management on 6 June 2023.[2]

[5] On 3 September 2024, the High Court, *per* Roelofse AJ (court *a quo*), set aside the Usinga Rescission Order.[3] The setting aside of the Usinga Rescission Order had the effect of restoring the Phiri Interdict Order.

[6] This appeal is with leave of the court *a quo,* and it is against the whole judgment and order delivered *ex tempore* by the court *a quo*.

Postponement Application

[7] When the appeal was heard, members of the First Respondent appeared in person, led by Mr. Solomon Mabuza (Mr. Mabuza). Mr. Mabuza identified himself as the Chairperson of the First Respondent since its registration. He made a fervent request for a postponement until 2 December 2025, citing financial constraints that had resulted in a lack of legal representation and stated that the First Respondent was in the process of securing a financial donation.

[8] The application for postponement was anticipated and opposed. The Appellant submitted written heads of argument, contending that the First Respondent had failed to comply with the Rules of Court and the Practice Directives, and that the postponement was a delay tactic. The Appellant also mentioned that the First Respondent had failed to comply with a prior cost order and was in a precarious financial position.

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[2] Vol 3 para 38 pp 190 (Opposing affidavit).
[3] Vol 5 pp 409.

[9] After considering the arguments, the postponement was refused with no order as to costs. It is necessary to record the reasons for the ruling because they bear on the conduct of the litigation and the appeal cost order.

[10] A postponement of litigation proceedings is not a right.[4] The key factors to be taken into account when applications for postponements are made have been set out by the Supreme Court of Appeal (the SCA) in *Lion Match Company (Pty) Ltd v Commissioner, South African Revenue Service.*[5] Chief among these is the duty to show good cause.

[11] The First Respondent's postponement application was premised on the expectation that the First Respondent would be granted financial assistance within the next two to three weeks. This was advanced as a good cause by the First Respondent. Other than the mention of a "donation", no details were provided regarding the nature or reliability of the source of such funding.

[12] In *Ngcobo v Union & South West African Insurance Co Ltd,*[6] it was held that requests for withdrawals or postponements due to lack of funds will be at the peril of the party making such a request if not done timeously. Even if meritorious, the First Respondent's financial constraints would not, on their own, warrant a postponement, particularly one requested at such a late stage.[7]

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[4] *National Coalition for Gay & Lesbian Equality & others v Minister of Home Affairs & others* 1999 (3) SA 173 (C) at 181D, 1999 (3) BCLR 280 (C) at 287E; *The National Police Service Union & others v The Minister of Safety & Security & others* 2000 (4) SA 1110 (CC), 2001 (8) BCLR 775 (CC) at paras [4]–[5].
[5] *Lion Match Company (Pty) Ltd v Commissioner, South African Revenue Service* (1047/2023; 1067/2023) [2025] ZASCA 112; 2025 (6) SA 448 (SCA) (28 July 2025) at para 74-75.
[6] 1964 (1) SA 42 D at p 44.
[7] *National Police Service Union and Others v Minister of Safety and Security and Others* 2000 (4) SA 1110 (CC); 2001 (8) BCLR 775 (CC) at para 4.

[13] This Court was cognizant of the long history of this matter, dating back to 2016. The chronology of the litigation demonstrates a pattern of non-compliance with the Rules of Court and the Practice Directives by the First Respondent. The First Respondent's erstwhile attorney of record withdrew two days before the appeal hearing without filing the heads of argument, notwithstanding that the matter had been enrolled well in advance.

[14] In *Lekolwane & another v Minister of Justice & Constitutional Development*,[8] the Constitutional Court held that a postponement will not be granted unless the court is satisfied that it is in the interests of justice to do so. In the absence of substantive justification, this Court held that the interests of justice demanded that the appeal should proceed. A cost order against the First Respondent would be futile as the basis advanced for the postponement was, after all, due to the First Respondent's inability to fund the litigation. For this reason, the Court made no order as to costs.

Issues for determination

[15] This appeal turns on whether the court *a quo* correctly upheld the review on the ground that the Usinga Rescission Order constituted impermissible declaratory relief, and whether the First Respondent was entitled to institute the review. This characterisation is decisive of this appeal in that if that order was not a declaratory relief, it ought not to have been disturbed.

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[8] *Lekolwane & another v Minister of Justice & Constitutional Development* [2006] JOL 18699 (CC) at para 17.

Background facts

[16] The Matsamo Tribal Authority (Second Respondent) holds statutory jurisdiction over land designated under Proclamation No. 1853, promulgated on 29 November 1957. Matsamo Mall is located on Portion 45 of the Farm Schoemansdal 581 JU, within the jurisdiction of the Matsamo Tribal Authority ("the property").

[17] In 1997, the Matsamo Tribal Authority granted the right to occupy the property to the Seventeenth Respondent, the Buhle Buyeza Farmers Association ("Farmers Association"), for the purpose of cultivating sugar cane. In 2006, the Matsamo Tribal Authority amended the right to occupy to make provision for the Farmers Association to operate a fodder feed lot.

[18] It is alleged that the Farmers Association was converted into the First Respondent and that the right of occupancy was automatically transferred to the new cooperative entity. This assertion is, however, not supported in law and in fact.

Right to Occupy

[19] Rights to occupy are rooted in communal and statutory land governance frameworks. Under customary law, rights to occupy are personal and attached to the individual or entity. They do not confer ownership and are not commodities. To ensure that all allocations comply with community customs and constitutional principles, such rights may not be transferred or ceded without the

explicit consent of the authority responsible for granting them.[9] A valid right to occupy is therefore dependent on the existence of consent from the Matsamo Tribal Authority and the identity of the rights holder.

[20] The appeal record included a confirmatory affidavit issued by the Matsamo Tribal Authority, which attests that the right to occupy was conferred exclusively on the Farmers Association for agricultural purposes. It states further that neither the Farmers Association nor any individual member thereof was authorised to transfer or assign such right to a third party or to modify the purpose or use for which it was allocated, without the prior written consent of the Matsamo Tribal Authority.

[21] The appeal record also contained a resolution from the Farmers Association dated 12 February 2016, which affirmed that the right to occupy was transferred back to the Matsamo Traditional Council in exchange for new land designated for the Farmers Association as compensation. A supporting affidavit from the Chairperson of the Farmers Association confirmed this position. On relinquishment, the right to occupy reverted to the Matsamo Tribal Authority.

[22] In summary:

[1] The primary right vests in the Matsamo Tribal Authority by virtue of the Proclamation.

[2] The Matsamo Tribal Authority granted a secondary right to occupy to the Farmers Association.

[9] *Council for the Advancement of the South African Constitution and others v Ingonyama Trust and Others* 2021 (8) BCLR 866 (KZP) at para 34.

[3] Upon relinquishment, the secondary right falls away, and the land reverts to the Matsamo Tribal Authority's control.

[4] Unless the Matsamo Tribal Authority reallocates the right, no other entity acquires the right to occupy.

[23] The secondary right to occupy, being an allocation made under the authority vested by the Proclamation, reverted to the primary authority. The right to occupy, therefore, remained vested at its source: with the Matsamo Tribal Authority.

The Phiri Interdict Order

[24] On 16 November 2015, the Buhle Buyeza Agricultural Co-Operative (Fifteenth Respondent) secured a *rule nisi* on urgent basis, ordering *inter alia* the Matsamo Tribal Authority as well as "*any person in charge of the building site*" [the Appellant] to refrain from *inter alia* debushing and/or erecting structures at "*Mzinti"*, a communal grazing area "*administered*" by the Fifteenth Respondent, *pending the consideration and approval of an application by the [Appellant] for a right to occupy the land.*" The Fifteenth Respondent obtained this order despite not being the holder of any recognised right to occupy. On 7 June 2016, Magistrate Phiri granted a final interdict.

[25] The Fifteenth Respondent was the litigant in whose favour the Phiri Interdict Order was granted, not the First Respondent. This misalignment between asserted entitlement and legal entitlement lies at the heart of the Phiri Interdict Order.

[26] The Matsamo Tribal Authority's confirmatory affidavit, included in the record, stated that none of the entities, namely Buhle Buyeza Industrial Primary Cooperative Limited (First Respondent), Buhle Buyeza Agricultural Cooperative Limited (Fifteenth Respondent), Buhle Buyeza Agricultural Primary Cooperative Limited (Sixteenth Respondent), as well as Mr. Solomon Mabuza, were members of the Farmers Association, the only entity that in 1997 and 2006 was granted the right to occupy, nor were they affiliated with it or granted any right to occupy the property.

[27] The record also included an affidavit from the Department of Agriculture, Land Reform and Rural Development, which indicated that, following a comprehensive investigation into the claims submitted by Mr. Mabuza and/or the cooperatives established by him, it was established that the various entities do not hold any rights regarding the property. Furthermore, correspondence dated 19 December 2018 indicates that the members of the First Respondent do not align with the identified members of the Farmers Association.

[28] The foundation of the right to occupy is anchored in an incontrovertible administrative fact: the Matsamo Tribal Authority granted occupation to the Farmers Association, and to no other. The First Respondent could only acquire the right to occupy the property with the consent of both the Matsamo Tribal Authority and the Farmers' Association.

[29] On 12 November 2018, the First Respondent's erstwhile attorney informed the Department of Agriculture, Land Reform and Rural Development and the Nkomazi Local Municipality that the First Respondent was the rightful occupant. No mention was made of the Phiri Interdict Order.

[30] The Appellants, unaware of the Phiri Interdict Order, procured all the necessary statutory land use rights and authorisations to develop a shopping centre on the property and were only notified of the existence of that order on 23 October 2019 when the Municipal Planning Tribunal of the Nkomazi Local Municipality imposed upliftment in the execution of the approved Shopping Centre land use rights.

[31] It is apparent from the record that the Phiri Interdict Order had been sought and obtained in circumstances where the Fifteenth Respondent lacked *locus standi* and where material facts had not been properly placed before the court.

Usinga Rescission Order

[32] The Usinga Rescission Order was granted pursuant to an application brought in terms of section 36 of the Magistrates' Courts Act.

[33] Section 36 reads:

> **36. What judgments may be rescinded.**
> (1) The court may, upon application by any person affected thereby, or, in cases falling under paragraph (*c*), *suo motu*—
> (*a*)rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;
> (*b*)rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties;
> (*c*)correct patent errors in any judgment in respect of which no appeal is pending;
> (*d*)rescind or vary any judgment in respect of which no appeal lies.

[34] As explained by Harms, section 36 of the Magistrates' Courts Act authorises rescission in defined circumstances, which include instances where it was legally

incompetent for the court to have made such an order, if there was an irregularity or the order was without legal foundation or if the court was unaware of facts, if known to it, would have precluded it from a procedural point of view from making the order.[10]

[35] The reasons underpinning the Usinga Rescission Order indicate that the Magistrate Usinga confined the inquiry to whether the Phiri Interdict Order had been competently and lawfully granted. To this end, the Usinga Rescission Order:

[1] Identified the holder of the right to occupy and the *locus standi* of the parties before the court;

[2] Examined the non-joinder of essential parties;

[3] Analysed the Phiri Interdict Order within the statutory framework; and

[4] Rescinded the Phiri Interdict Order as having been erroneously granted in circumstances falling within section 36.

[36] The judgment underpinning the Usinga Rescission Order points out that the only lawful and enforceable right to occupy issued in respect of the property was to the Farmers Association and that the Matsamo Tribal Authority confirmed that no lawful right to occupy had ever been issued to the First Respondent, Fifteenth Respondent or Sixteenth Respondent.

[37] The identification of the holder of the right to occupy was not made for purposes of determining rights, but solely to determine whether the Fifteenth Respondent

[10] Civil Procedure in the Superior Courts at B42.4.

had the right to seek the interdictory relief. This identification was necessary to determine whether the Phiri Interdict Order had been competently and lawfully granted to the legal holder of the right to occupy. After examining the evidence, Magistrate Usinga concluded that the only lawful and enforceable right to occupy the property was issued to the Farmers Association.

[38] Magistrate Usinga was not seized with a dispute concerning substantive rights in land but whether the Phiri Interdict Order was granted as a result of a misrepresentation as to the true identity of the holder of the lawful and enforceable right to occupy. Since the Fifteenth Respondent was unable to establish: membership of the Farmers Association; authority to act on its behalf; any independent occupational right or any derivative entitlement from the Matsamo Tribal Authority, Magistrate Usinga found that on the facts and evidence, misrepresentations, alternatively erroneous assumptions had been made regarding the identity and authority of the Fifteenth Respondent. Judgments erroneously sought or granted are rescindable under section 36.[11]

[39] Magistrate Usinga found that the Department of Agriculture, Land Reform and Rural Development, a party with a direct and substantial interest, had not been cited in the applications that gave rise to the Phiri Interdict Order. Non-joinder of an interested party renders proceedings fatally defective.[12]

[40] Lastly, Magistrate Usinga analysed the statutory framework governing the land, including the procedures prescribed by the Interim Protection of Informal Land Rights Act, no. 31 of 1996, custodianship by the Department, and the role of the

[11] *F & J Electrical CC v MEWUSA obo E Mashatola and Others* [2015] ZACC 3 at para 27 approving *Tshabalala v Peer* 1979 (4) SA 27 (T) at 30D.
[12] Gordon v Department of Health, Kwa-Zulu Natal 2008 (6) SA 522 (SCA) at para 9.

Matsamo Tribal Authority and found that the Phiri Interdict Order unlawfully interfered with statutory land administration and municipal planning authority.

[41] Accordingly, the Phiri Interdict Order had been sought and obtained in circumstances where material facts regarding the identity of the holder of the right to occupy had not been properly placed before the court. Good cause having been established, Magistrate Usinga set aside the Phiri Interdict Order in terms of section 36 of the Magistrate's Court Act.

***Locus Standi* in review**

[42] The First Respondent was established in 2014, the year of its registration. Registration pursuant to the Co-operatives Act 14 of 2005 authorises the establishment of a new juristic entity but does not recognise or provide for a conversion process.

[43] The review was instituted by the First Respondent, yet the Phiri Interdict Order was obtained by the Fifteenth Respondent. The First Respondent was not a beneficiary of the Phiri Interdict Order, nor did it provide any legally cognisable right of occupation, use, or control over the property. The First Respondent did not demonstrate how it acquired a legal interest in the Phiri Interdict Order or how it was aggrieved by that order in a manner cognisable in review.

[44] *Locus standi* is not a mere procedural technicality. It is a jurisdictional prerequisite. As the Constitutional Court held in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd*[13], *locus standi* requires a real, direct and substantial

[13] 2013 (3) BCLR 251 (CC) para 33.

interest in the relief sought. It is the boundary that protects courts from becoming theatres of imagined entitlement.[14] The Constitutional Court held,

> "*[A]n own-interest litigant may be denied standing even though the result could be that an unlawful decision stands. This is not illogical. As the Supreme Court of Appeal pointed out, standing determines solely whether this particular litigant is entitled to mount the challenge: a successful challenge to a public decision can be brought only if 'the right remedy is sought by the right person in the right proceedings*."[15]

[45] Standing to institute review proceedings cannot be wider than standing to obtain the relief sought to be reviewed. Where a party lacked a legally cognisable interest to seek the original order, it cannot retrospectively acquire standing to defend, revive, or reinstate that order on review. In the present matter, the First Respondent's asserted interest in the review proceedings is founded on the same alleged right to occupy the property that informed the Phiri Interdict Order. Once it is accepted that such right only vested in the Farmers Association and not the First Respondent or the Fifteenth Respondent, then standing is absent both at the inception of the interdict proceedings and at the stage of review.

[46] In the absence of any evidential basis demonstrating that the First Respondent acquired a legal interest in the Phiri Interdict Order, standing to institute the review proceedings was not established. The court *a quo* did not engage with

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[14] *JDJ Properties CC and Another v Umngeni Local Municipality and Another* (873/11) [2012] ZASCA 186; [2013] 1 All SA 306 (SCA); 2013 (2) SA 395 (SCA) (29 November 2012) at para 17.
[15] *Giant Concerts supra* at para [34].

this threshold in any meaningful way although the First Respondent's *locus standi* was disputed.

Analysis

[47] The Usinga Rescission Order is susceptible to review only on limited grounds. Review lies where the magistrate lacked jurisdiction, acted *ultra vires*, or committed a gross irregularity in the proceedings. It does not lie merely because the reviewing court would have reached a different conclusion on the merits. Once the Usinga Rescission Order is correctly characterised as an exercise of statutory rescission jurisdiction under section 36 of the Magistrates' Courts Act, neither of the review grounds relied upon by the First Respondent is sustained. The court *a quo* was therefore not entitled, under the guise of review, to re-determine the correctness of the magistrate's reasoning or substitute its own view of the merits.

[48] The question is whether the court *a quo's* characterisation of the Usinga Rescission Order can only be determined by having regard to Magistrate Usinga's reasoning. Much ink was spilt about "declaratory relief". It is misplaced.

[49] A declaratory order is one that finally determines rights. By contrast, an incidental or ancillary finding is made solely for the purpose of deciding the relief properly before the court. The distinction is functional, not linguistic. The identification of a right-holder does not, without more, amount to declaratory relief. In the context of a rescission application under section 36, such identification is indispensable to determining whether the order sought to be rescinded was erroneously granted. The findings made by Magistrate Usinga fall squarely within this latter category.

[50] The Usinga Rescission Order performed a different and narrower function: it examined whether the legal holder of the right to occupy was properly before the court to ascertain whether rescission was appropriate relief. What it did was more modest and more necessary: it identified that the holder of the right to occupy was not the Fifteenth Respondent and the Phiri Interdict Order had erroneously been granted in circumstances where the Fifteenth Respondent lacked *locus standi* and where material facts had not been properly placed before the court

[51] Although the review application also alleged gross procedural irregularities, no such irregularities were identified in the conduct of the rescission proceeding or found by the court *a quo*, nor did any emerge from the record.

[52] A review court is permitted to intervene where the impugned decision is unlawful or procedurally unfair. Here, the opposite is true: the Usinga Rescission Order restored legality. The Usinga Rescission Order dealt with who had the right to be in the arena and whether the Phiri Interdict Order could lawfully remain in force. The Usinga Rescission Order corrected the misstep by rescinding the erroneously granted Phiri Interdict Order.

[53] The court *a quo* approached the matter on the basis that the Usinga Rescission Order purported to grant declaratory relief outside the Magistrates' Court jurisdiction. This approach ignored Magistrate Usinga's reasons; the procedural identity of the rescission; the jurisdictional nature of *locus standi*; and the corrective function of section 36. By fixating on formalism that mistook language for substance, the court *a quo* displaced the true juridical inquiry and missed an opportunity to restore procedural and jurisdictional integrity.

[54] It is trite that an order lacking a factual foundation cannot stand.[16] Judicial orders must be grounded on clear and substantiated facts. Where the factual foundation of an order collapses, the order cannot stand.[17] Once this is understood, the foundation *and reasoning* of the court *a quo* falls away. The review should have been dismissed.

[55] The appeal must therefore be upheld.

Costs

[56] The court *a quo* upheld the review on the wrong basis. None of the parties were responsible for this misconception. This Court had regard to the First Respondent's established inability to fund the litigation and the fact that the appeal was required to correct an error of law. Viewed in this light, it is only fair that in this appeal, no order as to costs should be made.

[57] The costs order in respect of the review application, by contrast, follows the result and reflects the substantive failure of the review itself.

Order

[58] In the result, I propose the following order:

[1] The appeal is upheld with no order as to costs.

[2] The order of the court a quo is set aside and replaced with the following: The review is dismissed with costs.

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[16] *Dadoo Ltd v Krugersdorp Municipal Council* 1920 AD 530 at 547.
[17] *The Maize Board v Temple Albert Hart* [2006] SCA 4 (RSA) at para 6.

[redacted]

N MAYET
ACTING JUDGE OF THE HIGH COURT

I agree, and it is so ordered.

[redacted]

TV RATSHIBVUMO
ACTING JUDGE PRESIDENT

I agree.

[redacted]

VM NSIBANDE
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Appellant:	Adv. CE Thompson
Instructed by:	WJ Bezuidenhout Inc.
C/O:	Seymore Du Toit & Basson Mbombela
For the First Respondent:	Adv. VE Kruger
Instructed by:	Kruger and Partners Inc. Mbombela

Date of hearing: **17 October 2025**

Date of judgment: **09 February 2026**