



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Not Reportable
Case No: 2359/2024**

In the matter between:

KEDIBONE GLORIA SEBESHO

Applicant

and

ORETETSE CAROLINE LEKALAKE

First Respondent

LEKALAKE FAMILY

Second Respondent

BAROLONG BOO RATSHIDI TRIBAL COUNCIL

Third Respondent

MAHIKENG LOCAL MUNICIPALITY

Fourth Respondent

STATION COMMANDER: SAPS MMABATHO

Fifth Respondent

Coram: Petersen ADJP

Date enrolled: 22 January 2026

Judgment reserved: 22 January 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14h00 on 26 January 2026.

Summary: Practice - Applications - Application to strike out - First and Second Respondents sought to remove portions of the Applicant's replying affidavit, claiming they introduced "new matter" or were irrelevant - Striking Out Application Dismissed - The disputed paragraphs in the Applicant's replying affidavit relevant and serves to directly respond to allegations raised in the First and Second Respondents' answering affidavit.

Practice - Applications - Application for Referral to Oral Evidence - Applicant requested a hearing of oral evidence under Uniform Rule 6(5)(g) to resolve factual disputes that could not be settled on paper - Rule 30/30A Application by First and Second Respondents' - Respondents' challenge to the procedural validity of the request for oral evidence rejected - Referral to Oral Evidence granted.

ORDER

1. The respondents' application to strike out is dismissed.
2. The respondents' application in terms of Rule 30 and 30A is dismissed.
3. The main application is referred for the hearing of oral evidence in terms of Rule 6(5)(g) on the following issues:

3.1 The authenticity and veracity of the Land Allocation Certificate (Annexure "OCL4").

3.2 The historical allocation and boundaries of Stand No. 1[...] and Stand No. 1[...]2, Ramosadi Village, including whether the Third Respondent allocated Stand No. 1[...]2 to the First Respondent's late husband; and whether the Applicant's late grandparents donated a portion of Stand No. 1[...] to the First and/or Second Respondents.

3.3 The existence and extent of any encroachment by the First and/or Second Respondents onto the Applicant's land.

4. Uniform Rule 35 shall apply to discovery for the purpose of the hearing.
5. The costs of both interlocutory applications are reserved for determination by the court hearing the oral evidence.

JUDGMENT

Petersen ADJP

Introduction

[1] This Court is seized with two interlocutory applications arising from a dispute concerning the alleged encroachment by the first and second Respondents ("the respondents") onto the applicant's property, Stand No. 1[...], Ramosadi Village, Mahikeng. In the main application, the applicant seeks an order for the eviction of the First and Second Respondents from Stand No. 1[...], Ramosadi Village in terms of Section 4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act').

Background

[2] The applicant and first Respondent hold contiguous customary land allocations within the same tribal settlement. The applicant alleges that there is a physical encroachment from the first respondent's allocation onto her own.

[3] While the applicant contends that the first respondent tacitly admitted to this encroachment in 2021 by suggesting the applicant demolish the structures herself, the respondents have since filed an answering affidavit denying any such encroachment. Furthermore, a dispute has arisen regarding the history of the land's allocation. The first respondent claims to have occupied the land since 1969, following an allocation to her late husband by Kgosi Tiro Molema. The

applicant, in a replying affidavit, introduced testimony from her aunt, Mrs. Maikecwane, regarding a disputed donation of land made by the applicant's grandparents to the respondents.

The two interlocutory applications

[4] This Court is seized with two interlocutory applications, albeit that both have not been set down with the main application for adjudication. The first is an application by the respondents to strike out certain portions of the replying affidavit of the applicant. The second is an application by the applicant for the referral of the matter to oral evidence in terms of Uniform Rule 6(5)(g), which the respondents oppose under Uniform Rule 30A as an irregular step.

[5] At the hearing of the application on 22 January 2026, Adv Scholtz for the application sought direction from this Court on the conduct of the application, since the two interlocutory applications he opined had to be considered before the merits of the application. Essentially, I understood him to propose that the application be case managed and be postponed for the interlocutory applications to be considered since same were not enrolled by the respective parties. Mr Bayford on the contrary opined that the application could be considered as a whole, with this Court adjudicating the interlocutory applications and the merits of the main application. The advanced age of the parties who sought closure on this matter, was proffered as a basis by Mr Bayford for disposing of the application as whole.

[6] After engaging the legal representatives for the parties, consensus was reached that notwithstanding non-compliance with the Rules for setting down of the interlocutory applications, the matter be heard on the interlocutory applications. The logic underscoring this pragmatic approach proposed by the

Court is that the application for referral of the matter to oral evidence and the outcome of that application would determine the further conduct of the matter, whether to continue adjudication on the papers in the ambit of application proceedings; or referral of the matter to oral evidence akin to action proceedings.

Condonation for the late filing of the heads of argument of the applicant

[7] It is common cause that the heads of argument of the applicant were delivered out of time. Mr Bayford took no issue with the lateness of the heads of argument, with an intimation that the allowing same would not be opposed.

[8] I do not propose to traverse the trite authorities on condonation. The application for condonation for the late delivery of the heads of argument was accordingly granted.

The application to strike out

[9] The respondents seek to strike out various paragraphs of the replying affidavit of the applicant (specifically paragraphs 26.6, 26.7, 39.3, 41.3, 56.1-56.3, 58.1, 63-66, 68.3, and 71.1-71.4, on the grounds that they are scandalous, vexatious, irrelevant, or constitute an attempt to introduce "new matter".

[10] The requirements for a successful striking out application were articulated in *Beinash v Wixley*¹. It is trite that a court will only grant such an order if: (1) the matter is indeed scandalous, vexatious, or irrelevant; and (2) the applicant for the strike-out will be prejudiced if the matter is not removed.

¹ *Beinash v Wixley* (457/95) [1997] ZASCA 32; 1997 (3) SA 721 (SCA); [1997] 2 All SA 24 I (A); (27 March 1997).

[11] Furthermore, it is a well-established principle that an applicant must make out their case in the founding affidavit and cannot bolster a weak case through new allegations in the replying affidavit.

[12] The respondents contend that the applicant has impermissibly used the replying affidavit to augment her cause of action with new evidence that should have been in the founding affidavit. The respondents argue this information was available at the time of the founding affidavit and its late introduction is prejudicial as they cannot respond once pleadings are closed.

[13] It is clear that whilst the respondents cast their net quite wide on the alleged offending paragraphs of the replying affidavit of the applicant, they specifically object to paragraphs 26.7 and 56.3, which contain new evidence regarding the applicant's aunt, Mrs. Maikewane, and her alleged knowledge of a "disputed donation" of land. The respondents further take issue with the paragraphs describing the specific measurements of the stand and the extent of the encroachments.

[14] The applicant argues that the first and second respondents' application to strike out portions of the replying affidavit is without merit. The applicant's response focuses on two main categories: scandalous/vexatious/irrelevant matter and the introduction of "new matter".

[15] As to paragraph 26.6 of the replying affidavit, the applicant counters, on trite authority, that "scandalous" matter is abusive or defamatory, "vexatious" matter is intended to harass or annoy, and "irrelevant" matter does not apply to the case at hand. To this end, the applicant submits that the paragraph is neither abusive nor defamatory. The applicant argues that the content is relevant because it establishes the basis upon which the applicant's late grandparents originally

donated the land to the respondents. The applicant maintains that the paragraph simply amplifies the existing issue regarding the donated land.

[16] As to the respondents claim that paragraphs 26.7, 56.3, and 91 constitute "new matter" that should not be in a replying affidavit, the applicant counters that, paragraph 26.7 was written in direct response to the respondents' denial of the donation and encroachment found in their own answering affidavit. The argument then goes that it is trite law that if a respondent's affidavit reveals new facts, the applicant is permitted to enlarge upon those facts and set up additional grounds for relief arising from them. The applicant posits that the disputed paragraphs seek to controvert the claim of the respondents' that a neighbour introduced the parties in 1972; and that the applicant was simply expanding on allegations introduced in paragraph 35 of their answering affidavit by the respondents' themselves.

[17] As to the issue taken by the respondents with the paragraphs describing the specific measurements of the stand and the extent of the encroachments, the applicant argues that the encroachment was already clearly depicted in pictures (Annexures FAl(a) through FAl(h)) attached to the original founding affidavit. The applicant posits that no new cause of action was introduced in the replying affidavit in that the measurements provided in the replying affidavit only served to amplify what was already shown in the pictures.

[18] In my view, the disputed paragraphs in the replying affidavit serve to controvert allegations introduced in the answering affidavit by the respondents themselves, particularly regarding the historical allocation of the land and the introduction of parties by a neighbour in 1972. The evidence of the applicant's aunt, Mrs. Maikecwane, and her alleged knowledge of a "disputed donation" of land is clearly in reply to the demarcation of the land.

[19] In my view, the application to strike out lacks merit as the information and evidence introduced in the replying affidavit is relevant to the factual issues. To my mind, the introduction of the material in the replying affidavit of the applicant, would in the ordinary course be relevant to the issue of whether it adds to any factual disputes which cannot be resolved on the papers in motion proceedings.

[20] The application to strike out is accordingly dismissed.

The Rule 6(5)(g) application: Referral to oral evidence

[21] It is unsurprising, with this Court having dismissed the application to strike out, that the applicant seized with the triad of papers, constituting the founding affidavit, the answering affidavit and the replying affidavit is faced with a conundrum, which she could not have anticipated.

[22] It follows axiomatically that the applicant would now contend that several material disputes of fact have arisen that cannot be resolved on the papers alone. The applicant contends in this regard that there is a disagreement on the portion of land, "donated" to the respondents. Notably this emerged in the replying affidavit of the applicant. The applicant further contends that there are issues regarding the veracity and authenticity of a certificate dated 16 August 2023, which contradicts the respondents' claim that the stand was allocated in 1969. Lastly there is a disagreement over the date the applicant's grandmother was allocated Stand No. 1[...].

[23] The applicant argues that the correct legal procedure was followed by applying for an oral hearing *in limine* when she realised the conundrum brought about by the factual disputes on the papers. The applicant, mindful of the

overwhelming authority on referral of applications to oral evidence, correctly asserts that such applications should be made as soon as affidavits have been exchanged and it becomes clear that a dispute exists, rather than waiting until the end of arguments on the merits. The applicant relies on the cases of *Lombaard v Droprop CC and Others* and *Kalil v Decotex (Pty) Ltd and Another*² to support the timing of her application.

[24] The applicant further refutes the claim by the respondents' that the application for referral to oral evidence is a delaying tactic, submitting that Rule 6(5)(g) is intended to ensure a just and expeditious decision when a matter cannot be properly decided on affidavit. The oral evidence posits the applicant, is specifically sought to test the authenticity of the respondents' Land Allocation Certificate, which is date stamped 16 August 2023 but purportedly relates to an allocation in 1969; clarify discrepancies such as the signature of the "Stand Owner" being absent and the Identity Number of the signatory appearing to contradict the claimed 1969 allocation date; and the donation of the specific piece of land as alleged by the aunt of the applicant.

[25] The first and second respondent oppose the referral and have filed a cross-application in terms of Rule 30 and 30A to have the applicant's request declared an irregular step. They assert that the applicant's request for referral to oral evidence is an irregular step and a failure to comply with the Uniform Rules of Court. They further assert that the application for referral to oral evidence is intended to delay the finalization of the proceedings and to pre-empt an adverse outcome in the respondents' own "striking out" application. The respondents contend that the applicant's request is "misconstrued" because the applicant

² *Lombaard v Droprop CC and Others* (377/09) [20 IOJ ZASCA 86; 20 IO(5) SA I (SCA) ; [2010J 4 All SA 229 (SCA) (31 May 2010) and *Kalil v Decotex (Pty) Ltd and Another* (158/87) [1987] ZASCA 156; [1988] 2 All SA 159 (A) (3 December 1987).

simultaneously denies factual disputes in her replying affidavit while persisting with the relief sought in the notice of motion.

[26] In the *locus classicus*, *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd*³, the court clarified that motion proceedings are only appropriate where there is no real dispute of fact. If a genuine dispute exists that cannot be resolved on affidavit, the court must refer the matter for oral evidence or trial.

[27] I take cognisance of the fact that there are in fact significant discrepancies in the Land Allocation Certificate dated 16 August 2023, signed by a person whose Identity Number suggests a birth date (740301) inconsistent with an allocation in 1969, and lacks the signature or thumbprint of the "Stand Owner". This is exacerbated by the reference to evidence of the aunt of the applicant. There is clearly a direct conflict regarding the boundaries of Stand 1[...] and Stand 1[...]2 and the alleged "donation". This is not a "bald denial" but a substantial factual conflict.

[28] It being trite that Rule 6(5)(g) provides this Court with a discretion to refer a matter to oral evidence when an application cannot be properly decided on affidavit and given the direct conflict regarding the authenticity of the title/allocation documents and the physical extent of the encroachment, this matter cannot be justly resolved on the papers.

³ *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T).

Order

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

1. The respondents' application to strike out is dismissed.
2. The respondents' application in terms of Rule 30 and 30A is dismissed.
3. The main application is referred for the hearing of oral evidence in terms of Rule 6(5)(g) on the following issues:
 - 3.1 The authenticity and veracity of the Land Allocation Certificate (Annexure "OCL4").
 - 3.2 The historical allocation and boundaries of Stand No. 1[...] and Stand No. 1[...]2, Ramosadi Village, including whether the Third Respondent allocated Stand No. 1[...]2 to the First Respondent's late husband; and whether the Applicant's late grandparents donated a portion of Stand No. 1[...] to the First and/or Second Respondents.
 - 3.3 The existence and extent of any encroachment by the First and/or Second Respondents onto the Applicant's land.
4. Uniform Rule 35 shall apply to discovery for the purpose of the hearing.
5. The costs of both interlocutory applications are reserved for determination by the court hearing the oral evidence.

AH PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicant:

Adv H Scholtz

Instructed by:

Sethunyane Attorneys
Mahikeng

For the applicant:

Mr A E Bayford

Instructed by:

Legal Aid South Africa
Mahikeng