

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 018528/26DATE: 04-02-2026

DELETE WHICHEVER IS NOT APPLICABLE
 (1) REPORTABLE: NO
 (2) OF INTEREST TO OTHER JUDGES : NO
 (3) REVISED

SIGNATURE

DATE: 4 February 2026

10 In the matter between

SIFISO FRED LUKHELE & OTHERS

Applicants

and

HUMAYL PROPERTIES (PTY) LTD & OTHERS

Respondents

J U D G M E N T E X T E M P O R E

WILSON, J: This is an application to reconsider an order I granted in urgent court last Friday, 30 January 2026. That order restored the first to third applicants in the main
 20 spoliation application to possession of property they say is their home at 5 Silverfern Close, Fernbrook Estate, Randburg.

The spoliation application was initially set down for noon on 30 January. As I informed counsel for the applicant when the matter was ultimately called, set-downs after

10am in urgent court are only justified where the urgency arises on the day in which the application is heard. All other matters ought to be set down to be heard by the urgent judge at 10am.

The night before, on 29 January, I had given directions that the matter be called at 10am and I directed that the applicants inform the respondents that the matter will be heard at 10am and not at noon. I am satisfied that the notice setting the application down at 10am was
10 transmitted electronically to the respondents that evening. However, in the reconsideration application the respondent's attorney avers that he did not receive the notice of set-down until 09:50 on 30 January – that is, ten minutes before the matter was called.

On the papers before me there is no reason to doubt that version and I am accordingly constrained to accept that the respondents only received notice that the matter would be heard at 10am and not at noon, ten minutes before the matter was called. In those circumstances it
20 seems to me to be in the interests of justice to reconsider the order that I granted, in light of the answering affidavit that the respondents have now filed.

Accordingly, I will reconsider the matter in terms of Uniform Rule 6 (12) (c). The authorities on my function in reconsidering one of my own orders are clear. I must give

the order I would have given had I had the benefit of evidence and argument from the respondents.

There were two components to my order. The first was the spoliation relief, which effectively restored the applicants to the property. The second was an order directing the applicants to ensure the reconnection of the electricity to the property.

The order directing the reconnection of electricity to the property appears at paragraph 4.3 of my order. The
10 remainder of the order deals with an interdict against eviction and the restoration of the applicants to the property.

I deal with the electricity relief first. At paragraphs 43 and 48 of their answering affidavit, the respondents make it clear that the electricity supply to the property was, at least on their version, disconnected by Eskom. Eskom had apparently contacted the respondents to inform them of a problem with the property's account, and had sent its own employees to the property to disconnect the applicants' electricity supply.
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There is nothing on the papers before me that would lead me to reject that version. On the ordinary rules applicable to deciding applications for final relief on affidavit, I am required to accept an allegation that is reasonably substantiated, and that is clear and creditworthy

on its face.

For those reasons I do not think my order directing the reconnection of the electricity to the property can survive reconsideration. The version is that the respondents did not disconnect the electricity, Eskom did, and there is nothing inherently improbable or uncreditworthy or vague about that version.

The defence in the spoliation application is somewhat different. The applicants say that they were
10 violently evicted. The respondents' version on the papers is that the first applicant was not present at the time the second and third applicants vacated. It is in fact alleged that the first applicant is not resident on the property at all. It is alleged that the second and third applicants vacated the property of their own volition, taking their belongings with them.

The history of this matter is a long and winding road of litigation in the Magistrate's Court and in this court, in which the applicants have fought tooth and nail to hang
20 on to occupation of the property. Mr. Cassim, who appeared for the respondents, said that the applicants have conducted themselves in bad faith with the sole intent of living at the property rent free for as long as possible.

There was an application for back-rent in the Magistrates' Court, which was granted by default. A

rescission application directed at that judgment was refused. An appeal against the refusal of that rescission was then launched, which, as I understand it, has not been finally resolved. There is also an eviction application pending against the applicants in this court.

Against those background facts, all of which are common cause, I am asked to accept that on the date that the applicants say the eviction took place, the second and third applicants spontaneously decided, without coercion, to
10 leave the property, because they were fed-up with the situation.

The allegations in the answering affidavit do not come close to substantiating such a case. This is in the first place because the version the respondents put up is far-fetched and untenable in all the circumstances. On the ordinary principles applicable to fact-finding in applications for final relief, the version falls to be rejected.

Moreover, and in any event, the applicants' vacation of the property in the circumstances of this case
20 would have amounted to a waiver of their right to eviction only after a court order made after considering all the relevant circumstances. That right arises both from section 26 (3) of the Constitution, 1996, and from the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998. The onus was accordingly on the respondents to

show that the vacation of the property was free, voluntary and informed.

That this is the test for valid waiver of rights has been accepted by our courts since at least the 1920s. The test for waiver was formulated authoritatively in *Laws v Rutherford* 1924 AD 261, and was applied in the context of eviction in *Occupiers Berea v De Wet* 2017 (5) SA 346 (CC). There, a unanimous Constitutional Court held, at paragraph 32, that, to be legally effective, consent to removal from
10 one's home must be free and voluntary "with the full awareness of the rights being waived" in consequence.

Even if the respondents' version is taken at face value, this has not been established. The respondents do not say in their papers that, fully aware of the consequences of doing so, the second and third applicants freely and voluntarily decided to vacate their home, their occupation of which had been the subject of a protracted dispute for at least several months. Accordingly, I cannot find that the requirements for waiver or consent have been
20 met.

I need not draw any conclusions about the applicants' good or bad faith, and it may well be that the applicants are the disreputable individuals that Mr. Cassim suggests. It may well be that their occupation is in bad faith, and it may well be that they have no intention of

paying what is owed flowing from that occupation.

None of that is relevant. What is relevant is that the applicants are entitled to insist on removal from the property only after an order of court has been obtained, the court having considered all the relevant circumstances. There is no dispute in this case that there was no order of court. In fact, it is accepted that there is an application for one pending. In the absence of such an order the requirements for waiver had to be met, and for the reasons I
10 have given they were not met.

I turn to the position of the first applicant. It was suggested that the first applicant does not really live on the property. That proposition is advanced on two bases. The first is that the applicant is not there when the respondents come to visit, and the second is that in a credit bureau report annexed to the answering affidavit the applicant allegedly gave an address that was different from the address at the property.

Given the surrounding circumstances of this case, I
20 cannot conclude from either of those allegations that the first applicant does not live at the property. There is currently an eviction application pending against the first applicant which entails the acceptance on the respondents' part that he lives there. The records of the credit bureau and his absence on various occasions on which the

applicants have attended the property do not lead to the inference that he no longer lives on the property in those circumstances.

For all those reasons, upon reconsideration, I make the following order –

1. The forms, service and time periods prescribed in the Uniform Rules of the Court are dispensed with and the matter is heard as one of urgency in terms of Rule 6 (12) (c) of the Uniform Rules of Court.
2. The order of Wilson J made in this matter on 30 January 2026 is reconsidered, varied and replaced with this order.
3. The applicants' eviction on 24 January 2026, from the residential property known as 5 Silverfern Close, Fernbrook Estate 959 Inchang Road, Maroeladal, RANDBURG ("the Property") is declared unlawful in terms of section 26(3) of the Constitution, read together with section 8(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE").
4. The first and second respondents are directed to:

4.1. restore possession of the property to the applicants with immediate effect; and

4.2. ensure that the applicants are granted full and unimpeded access to the property and their possessions, with immediate effect.

10 5. The first to fourth respondents whether themselves, or through the agency of any other person, are, pending the finalisation of the eviction application brought by the first to fourth respondents before this court, interdicted and restrained from:

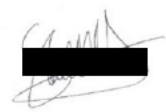
5.1. evicting, or attempting to evict the applicants from the property without a valid order of the court, executed by the Sheriff;

20 5.2 instructing, authorising, permitting, or facilitating any person to evict, or attempt to evict the applicants from the property; and

5.3. interfering with the applicants' peaceful and undisturbed possession of the property, including but not limited to: changing the

locks, disconnecting utilities, removing belongings, and/or intimidating the occupants.

6. The respondents are to pay the costs of this application.



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WILSON, J
JUDGE OF THE HIGH COURT
4 February 2026

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