



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 12 February 2026

Case No. 2026-018528

In the matter between:

SIFISO FRED LUKHELE

First Applicant

ETHEL PLAATJIES

Second Applicant

VUYO PLAATJIES

Third Applicant

and

HUMAYL PROP LIMITED

First Respondent

JUNAID EBRAHIM

Second Respondent

MARTHINUS JOHANNES KAPP

Third Respondent

KAPP INCORPORATED ATTORNEYS

Fourth Respondent

**THE STATION COMMANDER
DOUGLASDALE POLICE STATION**

Fifth Respondent

JUDGMENT

WILSON J:

- 1 On 4 February 2026, I made an order restoring the applicants to possession of a property they leased and occupied for residential purposes in the Fernbrook Estate, Maroeladal, Randburg. I found that the applicants had been unlawfully evicted from that property by a representative of the first respondent, Humayl, which had leased the property to them.
- 2 The respondents now seek leave to appeal against my order. The applicants seek interim execution of the order under section 18 of the Superior Courts Act 10 of 2013.
- 3 I deal with each application, in turn, below.

The application for leave to appeal

- 4 Humayl's defence to what was essentially a spoliation application was that the first applicant did not live at the property, and so could not have been evicted from it, and that the second and third applicants agreed to leave the property when Humayl's representative, a Mr. Munchy, came to the property with other employees of Humayl and functionaries of Eskom on 24 January 2026. Eskom was there to disconnect the electricity supplied to the property. The respondents' version on the papers was that the second and third applicants quit the property of their own volition, the second applicant having expressed frustration with the first applicant's conduct in relation to the property.
- 5 In my judgment *a quo* I rejected that version as far-fetched, in light of the material common cause facts. Those facts were that the parties had been locked in a protracted dispute about the applicants' occupation of the property

for at least several months. There was a rental dispute in the Magistrates' Court and there is a hotly contested eviction application pending in this court. It was plainly unrealistic to suggest that the applicants would have suddenly quit the property of their own volition having fought so hard for so long to remain there.

6 In any event, I found that, even if the respondents' version is taken at face value, I could not conclude, as the applicable law requires, that the second and third applicants' vacation of the property was free, voluntary and informed (see, generally, *Occupiers, Berea v De Wet* 2017 (5) SA 346 (CC)). On the respondents' version, the second applicant left the property having had an angry altercation with the first applicant, in which she said "I am leaving this premises with my son [the third applicant]. I had enough of your nonsense and I will not take the fall for you." This did not seem to me to be consistent with a considered, informed decision to waive the applicants' constitutional right to stay at the property unless ordered by a court to leave it.

7 Mr. Cassim, who appeared for the respondents, could not really gainsay this. He emphasised what the respondents regard as the applicants' bad faith, repeatedly referred to the first applicant has a "building hijacker", and emphasised the rental and other arrears said to have been run up on the lease. But none of this bore on the question of whether the second and third applicants consented to leave the property in the required legal sense. Even on the respondents' version, that inference cannot reasonably be drawn.

8 Were it otherwise, any spontaneous decision to leave one's home taken in the heat of the moment in the presence of a landlord's representative against the

background of a tenancy dispute would ground an inference of consent. Obviously, that cannot be. There is no prospect that a court of appeal would conclude that the decision allegedly made to quit the property in this case was free, voluntary and informed.

9 It is the respondents' version that the first applicant no longer resides at the property because the records of a credit reference agency dug up by the respondents' attorney specifies a different address for him. I regarded that version as improbable in my judgment *a quo*, given that there is an eviction application pending against the first applicant in which his residence at the property is acknowledged, and given also that he has fought tooth and nail to retain possession of the property in those proceedings. There mere fact that a different address appears on the records of an organisation with no direct knowledge of or involvement in the dispute is of no moment. Mr. Cassim could not persuade me that there was any prospect that a court of appeal would decide otherwise.

10 For all these reasons, the application for leave to appeal stands no prospects of success, and will be dismissed.

Interim execution

11 Subsections 18 (1) and (3) of the Superior Courts Act 10 of 2013 permit the execution of a final order granted at first instance pending any appeal against it, provided that three jurisdictional requirements have been met. These requirements are that there are exceptional circumstances justifying such execution; that the applicant for interim execution will suffer irreparable harm

if interim execution is not permitted; and that the respondent will suffer no irreparable harm if it is.

12 In this case there are clearly exceptional circumstances, in that the respondents' prospects of success on appeal are very weak (see *Zero Azania (Pty) Ltd v Caterpillar Financial Services SA (Pty) Ltd* 2024 (2) SA 574 (GJ), paragraph 13).

13 It seems to me that the applicants are suffering irreparable and ongoing harm in that they have been deprived of possession of a property they occupied as their home suddenly and without due process of law. Every day that this situation is allowed to continue constitutes irreparable harm. The very purpose of the spoliation proceedings that resulted in the order I granted was to promptly reverse an unlawful act of dispossession while a background dispute about the applicants' right to occupy the property is determined. It would be perverse indeed if the respondents were permitted to short-circuit that process by keeping the applicants out of the property while pursuing a meritless appeal based on the fanciful suggestion that the applicants spontaneously abandoned that dispute.

14 There can be no irreparable harm to the respondents in executing my order pending appeal. If, against all appearances, the proposed appeal is pursued further and succeeds, the applicants will have to leave the property. In any event, if the eviction application the respondents are presently pursuing against the applicants has the merit Mr. Cassim claims, then the respondents' true remedy seems to me to lie in the pursuit of that application. During argument Mr. Cassim informed me that the documents relevant to that

application have been exchanged, and that the registrar has been asked to allocate a date for the hearing of the application. On the lead times currently applicable to opposed motions in this court, the respondents can presently expect to be allocated a date on or shortly after 1 June 2026 – long before any appeal against my order would be heard.

Costs

- 15 The costs of the application for leave to appeal will follow the result.
- 16 In the interim execution application, the relief originally sought extended to an order holding the respondents and their attorney in contempt of court, and an order restoring the electricity supplied to the property. The contempt relief has nothing to do with the interim execution of my order. I specifically declined to order the reconnection of electricity to the property, for the reasons given in my judgment *a quo*. There is no cross-appeal against that order. Nor is there any basis for the electricity to be reconnected under the guise of the interim execution of an order I never made.
- 17 The wide-ranging and inappropriate relief sought in the application for interim execution significantly and understandably widened the scope of the respondents' answering papers, resulting in the creation of wholly irrelevant factual and legal disputes. The respondents should not have to bear the costs of opposing relief that should never have been claimed in the first place. Each party will pay their own costs in the interim execution application.

Order

- 18 For all these reasons –

- 18.1 The application for leave to appeal is dismissed with costs.
- 18.2 The application for interim execution succeeds, to the extent that, notwithstanding the noting of any further applications for leave to appeal or appeals against my order of 4 February 2026, the applicants are forthwith to be restored to occupation of the property at 5 Silverfern Close, Fernbrook Estate 959 Inchanga Road, Maroeladal, Randburg.
- 18.3 The application for interim execution is otherwise dismissed.
- 18.4 Each party will pay their own costs in relation to the application for interim execution.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 12 February 2026.

HEARD ON: 11 February 2026

DECIDED ON: 12 February 2026

For the Applicants: L Mbhalati
Instructed by Q Sato Attorneys

For the Respondents: N Cassim SC
Instructed by Kapp Attorneys