

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



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

Case No. 116218/2024

(1) REPORTABLE: ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO

(3) REVISED

DATE: **3 March 2026**

SIGNATURE:..

In the matter between:

**THOSE PERSONS IDENTIFIED IN ANNEXURE A TO
THE NOTICE OF MOTION WHO ARE CURRENTLY
OCCUPYING NO. [...] S[...] STREET, HOMELESS
SHELTER AT CORNERS OF E'SKIA MPHAHLELE
EAST, S[...] AND E'SKIA MPHAHLELE WEST**

FIRST APPLICANT

**THOSE PERSONS WHO ARE UNLAWFULLY
OCCUPYING NO. [...] S[...] STREET, HOMELESS
SHELTER AT CORNERS OF E'SKIA MPHAHLELE
EAST, S[...] AND E'SKIA MPHAHLELE WEST**

SECOND APPLICANT

And

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

RESPONDENT

In re:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

APPLICANT

And

**THOSE PERSONS IDENTIFIED IN ANNEXURE A TO
THE NOTICE OF MOTION WHO ARE CURRENTLY
OCCUPYING NO. [...] S[...] STREET, HOMELESS
SHELTER AT CORNERS OF E'SKIA MPHAHLELE
EAST, S[...] AND E'SKIA MPHAHLELE WEST**

FIRST RESPONDENT

**THOSE PERSONS WHO ARE UNLAWFULLY
OCCUPYING NO. [...] S[...] STREET, HOMELESS
SHELTER AT CORNERS OF E'SKIA MPHAHLELE
EAST, S[...] AND E'SKIA MPHAHLELE WEST**

SECOND RESPONDENT

JUDGMENT

MILLAR J

- [1] This is an application for leave to appeal against an order granted for the eviction of some 466 persons residing at No. [...] S[...] Street Homeless Shelter in Pretoria. The application came before me in the unopposed court.
- [2] When the matter was called, of the 466 affected persons, approximately 30 persons were present in court. They were unrepresented. Lawyers for Human Rights (who had previously represented all 466) had withdrawn some months before and had taken no part in the proceedings when a *rule nisi* had been issued on 19 September 2025, calling upon the affected persons to show cause why they should not be evicted or on 14 November 2025 when the matter came before me.
- [3] Of the 30 persons who were present, less than 10% of the total affected persons, I was informed that they did not object to the eviction *per se* but rather to what would happen to them once they had been evicted. The original order sought by the City of Tshwane had been simply for their eviction and removal from the property.
- [4] Mindful of the rights of the affected persons, the order that was ultimately granted accommodated their concerns with regards to where they were to be relocated as well as the risk of subsequent homelessness should they be evicted from the shelters to which they would be relocated in due course. I do not intend to repeat the contents of the order that I made save to state that I am of the view the order in its totality considered the rights of all affected persons and had sufficient safeguards to ensure that once they were evicted from No. [...] S[...] Street, their situation could only be improved and not worsened.
- [5] The grounds upon which the application for leave to appeal were advanced, were that *inter alia*, the court failed to have regard to all relevant circumstances (s 26(3) of the Constitution read together with s 4(7) of the PIE Act), ignored the jurisprudence of the Constitutional Court by failing to have regard to the fact that

temporary emergency accommodation should be suitable and available where eviction would lead to homelessness.

- [6] The application for leave to appeal also sought, without any evidence, to impugn the proposed alternative accommodation. It was also predicated on the basis that the court erred in accepting the word of the City on any aspect with regards to the proposed alternative accommodation.
- [7] I do not intend to deal with each and every ground. The application for leave to appeal was brought after the order had been granted. Lawyers for Human Rights were nowhere to be seen to assist either the court or the city or the affected persons when the matter was called in court. However, once the order was granted, they placed themselves on record again and now sought to impugn the process that had occurred in their absence. During the hearing of the application for leave to appeal, I indicated the court's displeasure at what I regarded as opportunistic conduct on their part in this regard.
- [8] It suffices to state that I am of the view, having regard to the process before the court and the court's engagement with the affected persons and subsequent order of 14 November 2025, that all affected persons were treated with sensitivity and dignity and their concerns addressed and reflected in the order that was made. I am of the view, were this application for leave to appeal to have been disposed of on purely on these aspects, that properly considered, no other court would have come to a different conclusion and the application would have been dismissed.
- [9] However, having regard to s 17(1)(a)(ii) of the Superior Court's Act¹ there is "*some other compelling reason why the appeal should be heard.*" This reason finds voice in the circumstances of the affected persons as well as the conduct of Lawyers for Human Rights.

¹ 10 of 2013.

- [10] When Lawyers for Human Rights first put themselves on record, before their withdrawal as attorneys of record, they represented all 466 of the affected persons. When the matter was heard by me, some 30 persons presented themselves at court. After the granting of the order and when Lawyers for Human Rights placed themselves on record once again, the City of Tshwane then delivered a notice in terms of rule 7(1) calling upon Lawyers for Human Rights to indicate the affected persons for whom they were now representing. In this regard, and on the day before the hearing of this application, they filed a “Community Resolution.”
- [11] The Community Resolution is signed by only 248 persons and thus of the original 466 persons, 218 remain unrepresented.
- [12] When the application for leave to appeal was first served, my Registrar addressed a letter to Lawyers for Human Rights bringing to their attention that the matter had been unopposed in court and judgment of the court in *Lee v Road Accident Fund*² and enquiring, whether they wished to consider this in any further steps they intended to take. The response to my Registrar was “*We kindly request that you inform the Honourable Judge Millar that our instructions are to proceed with the application for leave to appeal.*”
- [13] Having pinned their colours to the mast, the application for leave to appeal proceeded together with application for condonation. In view of the circumstances of this matter, I need say no more about the application for condonation other than that opposition to it was not seriously pursued. Counsel for the affected persons argued that since the 30 had physically appeared in court and had addressed the court and the court had taken account of what they had said, it could not be said that the application was unopposed or that the order granted in default of appearance.

² 2024 (1) SA 183 (GJ).

- [14] The City of Tshwane confined itself to opposing the application for leave to appeal and as I have indicated, absent the compelling reason which has arisen, which militates in favour of the granting of leave to appeal, I would have dismissed the application with punitive costs against Lawyers for Human Rights.
- [15] The compelling reason is this - with only 248 of the 466 affected persons before the court adamant that the application to be brought to protect their rights is an application for leave to appeal, if it were so (which I do not believe it is) and such leave were to be refused, this would mean that just over half of the affected persons would have no further recourse while the remainder who had neither attended at court on 14 November 2025 nor mandated Lawyers for Human Rights to bring an application for leave to appeal, would have a right to apply for rescission of the order made by me.
- [16] Given the plight of the homeless and the increasing numbers of the homeless, it is in my view necessary for a higher court to consider this situation and to give guidance to lower courts in this regard.
- [17] The legal consequences of an application for leave to appeal (whether meritorious or not) are different from those where there is no appeal and the recourse is an application for rescission - yet the affected persons (as a group) could find themselves treated differently in consequence of the rights afforded to them by the consequences of the two different processes.
- [18] In the circumstances, I make the following order:-

[17.1] Leave to appeal the order of 14 November 2025 is granted to the Supreme Court of Appeal.

[17.2] The costs of the application for condonation and the application for leave to appeal are to be costs in the appeal.

A MILLAR

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD ON: 27 FEBRUARY 2026

JUDGMENT: 3 MARCH 2026

COUNSEL FOR THE APPLICANTS: ADV. O MNGOMEZULU

INSTRUCTED BY: LAWYERS FOR HUMAN RIGHTS

REFERENCE: MS. L DU PLESSIS

COUNSEL FOR THE RESPONDENT: ADV. A NASE

INSTRUCTED BY: MAJANG ATTORNEYS INC

REFERENCE: MR. O PETER