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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION: BHISHO**

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

DATE: 10 FEBRUARY 2026

SIGNATURE:

CASE NUMBER: EL800/2024

In the matter between:

**ILLEGAL LAND GRABBERS and would be
UNLAWFUL OCCUPIERS OF THE FARM 1[...]
EAST LONDON RD, EASTERN CAPE**

Applicant

And

AGRICULTURAL RESEARCH COUNCIL

First Respondent

NOMANDLA NDABENI N.O.

THE SHERIFF OF THE HIGH COURT

Second Respondent

NATIONAL COMMISSIONER OF POLICE

Third Respondent

BUFFALO CITY METROPOLITAN MUNICIPALITY

Fourth Respondent

Summary: *Rescission application – 31(2)(b) – link-Rule 42(1)(a) Uniform Rules of the Court. 28 November 2024 -order granted in absence unjustifiable. Good cause and reasonable explanation proved. Application -granted. No order as to costs.*

RESCISSION JUDGMENT

NTLAMA-MAKHANYA AJ

[1] This is an application for rescission of the judgment granted by this Court on 28 November 2024 against the unlawful occupiers of Farm 1[...] in East London.

[2] The Applicants submitted that they were not before Court when the Order was granted and thus, they could not defend themselves.

[3] The First Respondent opposed the application and submitted that the Applicants were aware of the legal proceedings because they were in court and represented by an Attorney and the same Counsel.

[4] The First Respondent who was the Applicant in an application for a *rule nisi* that was issued on the 10th of May 2024 against the Applicants in this current application was granted an order in the following terms:

[1.1] Declaring the conduct of the [Applicants] of invading, grabbing, occupying, deforesting and erecting structures and buildings in the [First Respondent's] Farm known as 1[...], East London RD, Eastern Cape, under Title Deed Number: T6127/1994 (the Farm) to be unlawful.

[1.2] Interdicting the [Applicants] and any other persons from unlawfully invading, grabbing, occupying, deforesting and erecting structures and building buildings in the First Respondent's Farm.

[1.3] Interdicting and compelled the [Applicants] and any person occupying the farm through or under them to demolish and /or remove any unlawfully erected and/or constructed structure on the Farm.

[1.4] Ordering the [Applicants] to vacate the Farm on or before Wednesday 26 February 2025, and not to return thereafter

[1.5] Ordering that in the event that the [Applicants] do not vacate the Farm on or before the 26th February 2025 the Sheriff, alternatively, his duly appointed deputy together with such assistance as he deems appropriate is authorised to evict the Applicants from the Farm.

[1.6] Compelled the Third Respondent (National Commissioner of Police) to arrest and remove any of the Applicants who remain in unlawful occupation of the Farm on the 26th of February 2025.

[2] This order is not applicable to Ms Yandisa Sawula and all the Respondents whose confirmatory affidavits have been filed in this application, (author's emphasis).

[3] The Order granted by this Court on the 18th February 2020 (Annexure "A" hereto) under case Number: EL54/2020 is applicable to Ms Yandisa Sawula and all the Respondents who appears in the confirmatory affidavits.

[4] Applicant is permitted to serve the final order on the First Respondent in the following manner:

4.1 that the Sheriff must serve upon the unidentified invaders in the manner set forth in Rule 4(10) of the Uniform Rules of the Court by handing the copies of the application to those invaders who are present when this order is executed.

4.2 In the event that the Sheriff is unable to establish a name and the names of the invaders, that the Sheriff is ordered to serve the order and the application by affixing a copy thereof to a notice board to be erected at the entrance to the Farm.

4.3 By affixing copies of the order any available tree structure and or building of the Applicant situated on the Farm.”

[5] It was this Order that became the subject of this application. It is also imperative that I give a brief background on this matter.

Background

[6] The Applicants are identified as Illegal Land Grabbers and Would Be Unlawful Occupiers of the Farm 1[...], East London RD, Eastern Cape. In addition, they had unlawfully occupied the said 1[...] Farm in February 2024.

[7] I must first mention that the Fourth Respondent requested to be excused from the proceedings as they had prepared an Affidavit in response to paragraph 7 of the Court Order dated 28 November 2025. That Order required the Fourth Respondent to file a report on alternative measures to find accommodation for affected parties. The affidavit was submitted before this Court. On the other hand, the Applicants alleged that they were only provided with it in the morning before the commencement of these proceedings. Without argument, the Fourth Respondent was released from the

proceedings after his quest was granted. The Second and Third Respondent were not in appearance.

[8] In addition, there was an existing Court Order that was granted on the 18th of February 2020 against a group of Squatters that invaded Farm 1[...]. It also turned out that the Order was issued against Ms Yandisa Sawula and all the Respondents that submitted confirmatory affidavits against their removal from the Farm. In this case, the Applicants, as alleged, were not part of the group that was ordered to be removed from Farm because they were not in Court.

[9] The First Respondent is a registered state institution within the executive sphere of government with a specific and functional mandate to carry out high level research for the economic well-being of the country. The First Respondent submitted that the Order that was issued in February 2020 was not executed due to COVID-19 Pandemic and stands not to be challenged. Yandisa Sawula was not cited in this application and was not in court. In February of 2024, the Applicants unlawfully grabbed, invaded and occupied Farm1[...] that belong to the First Respondent. Amongst other unlawful activities they did was to deforest, erected and built structures on the Farm. On the 03rd of March 2024, the Applicants were issued with the Notice by the Sherriff to move out of Farm 1[...] on 15 March 2024. The Sherriff had affixed the notice at the main entrance of the Farm. On 09 May 2024 an application was launched by the First Respondent for a *Rule Nisi* and an interim order was granted on 10 May 2024.

[10] It was confirmation of the *rule nisi* which was foundational to the Order that was granted on the 28th of November 2024 which then led to this application.

Legal Framework

[11] The scope and requirements of the principles of rescission in terms of Rule 31(2)(b) are constantly evolving as determined by the merits of each case. Rule 32(1)(b) reads as follows:

(b) A defendant may within 20 days after acquiring knowledge of such judgment apply to court upon notice to the plaintiff to set aside such judgment and the court may, upon good cause shown, set aside the default judgment on such terms as it deems fit.

[12] It is worth mentioning that Rule 32(1)(b) is not to be read in isolation of Rule 42 which provides:

1 The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary an order or judgment:

(a) erroneously sought or erroneously granted in the absence of any party affected thereby.

(b) in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefore upon notice to all parties whose interests may be affected by any variation sought.

(3) The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed, (author's emphasis).

[13] The Rules are intertwined with each other because they encompass the application of the principles of rescission relating to an order that was granted in the absence of the affected party. Let me reiterate, these Rules are interdependent because they are constituted by grounds that must co-exist for the success of the rescission application. The affected party must (i) show the existence of the order granted against

him; (ii) sought rescission of the order that was granted in his absence and (iii) was erroneously granted. In addition, these are not mere grounds that may flow into a 'hollow ring'. They require a high standard of proof relating to the establishment of whether the applicant has a (i) genuine defence, (ii) reasonable explanation on non-appearance to defend the alleged claim against him and (iii) any merited good cause for the prospects of success in the main application. It is in this instance that courts are endowed with authority to exercise their judicial discretion and take all the relevant factors and consider whether to grant the application. The significance of these grounds was summarised by Mbha JA in *Rossiter v Nedbank*¹ who held:

“The law governing an application for rescission under Uniform rule 42(1)(a) is trite. The applicant must show that the default judgment or order had been erroneously sought or erroneously granted. If the default judgment was erroneously sought or granted, a court should, without more, grant the order for rescission.”²

[14] The Applicants in this matter alleged that they were absent during the initial stages of the legal processes. The content of these grounds entails an intense analysis in balancing the interpretation of competing rights. The reasonableness of the alleged claim is a test against which the Applicants must satisfy the Court that the order was granted in their absence. It is against this background that Courts, as the last line of defence in the protection of competing rights must exercise caution as Madala J in *Soobramoney v Minister of Health (KwaZulu-Natal)*³ held:

“The Constitution is forward-looking and guarantees to every citizen fundamental rights in such a manner that the ordinary person-in-the-street, who is aware of these guarantees, immediately claims them without

¹ [2015] ZASCA 196.

² Ibid para 16.

³ 1997 (12) BCLR 1696 (CC).

further ado – and assumes that every right so guaranteed is available to him or her on demand. *Some rights in the Constitution are ideal and something to be strived for. They amount to a promise, in some cases, and an indication of what a democratic society aiming to salvage lost dignity, freedom and equality should embark upon.* They are values which the Constitution seeks to provide, nurture and protect for a future South Africa.” [...] In its language, *the Constitution accepts that it cannot solve all of our society’s woes overnight, but must go on trying to resolve these problems. One of the limiting factors to the attainment of the Constitution’s guarantees is that of limited or scarce resources,*”⁴ (author’s emphasis).

[15] I am persuaded by Madala J because the principle it developed is of direct relevance to the matter at hand to ensure the interpretation of the of two Rules: 31(2)(b) and 42(1)(a) is exercised with cautiousness. These Rules had set the bar high to ensure that legitimate reasons are presented before the Court. They are of further significance because they are a bedrock against which to ensure finality and prevention of any form of endless litigation. It is in this regard that the Applicants were required to bring concrete grounds and not flimsy reasons for rescission of the Court Order. The weight that is attached to the application of the rules of rescission requires their interpretation through the lens of the Constitution 1996. The Applicants, therefore, had to justify the rationality of the alleged non-appearance in Court for the success of the application.

[16] With this in mind, this Court is to determine whether:

[14.1] the alleged non-appearance was justified.

[14.2] there was a reasonable explanation for non-appearance; and

⁴ Ibid paras 42-43 (footnotes omitted).

[14.3] *bona fide* defence existed for non-appearance.

[17] I am therefore enjoined to consider whether the application to rescind should or not be granted.

Issues in Dispute and Parties Submissions

[18] In this case, the First Respondent obtained a Court Order against any party that was in unlawful occupation of 1[...] Farm on the 18th of February 2020.

[19] Before this Court, the Applicants submitted that the order of this Court dated the 28th of November 2024 was granted in their absence. They were not properly served with the Notice to move out of the Farm and only became aware of the Order through word of mouth. They were also excluded from the initial legal process that involved Yandisa Sawula and other Respondents that had confirmatory affidavits submitted before the Court then. Secondly, they were affirmative that paragraph 2 of the said Order was also not applicable to them which reads as follows:

“This Order is not applicable to Yandisa and all the Respondents that submitted their confirmatory affidavit.”

[20] They further emphasised that since they were not in Court, the implementation of the Order had dire consequences for them. They contended that its enforcement did not distinguish between them and Yandisa Sawula and all other Respondents that submitted confirmatory affidavits against their removal from the Farm. This meant, as they submitted, the enforcement of the Order did not spare them from its effects and destruction of their property. The direct or indirect enforcement of the Order subjected them to inhuman and cruel treatment.

[21] On the other hand, the First Respondent dismissed the contention that the Applicants were not in Court on that day. He substantiated his submission and stated that the Applicants appeared in Court because they were represented by an attorney and the same Counsel. Secondly, there were no distinctive groups as all invaders were ordered to move out of Farm 1[...]. Thirdly, the Applicants did not have legal standing to have brought the matter before the Court because of their appearance in Court in the initial stages of the legal process. Fourthly, the Applicants were issued with Notices by the Sheriff that were affixed at the main entrance of the Farm and incomplete structures and for them to move out of the Farm on 15 March 2024. At the same, the Sheriff's return of service was clear that the Notices were affixed at the gate of the Farm. Further, the Applicants could not, pursuant to the 2020 Order ride at the back of those already evicted and attempt to bring the matter through the back door and plead non-awareness of the proceedings at the time. It is trite to mention that the Applicants were in occupation of Farm 1[...] in February 2024. Hence, the First Respondent submitted that the Applicants did not live on the Farm longer than 6 months as required by the PIE Act. They occupied the Farm in February 2024 and in turn, after attempts to have them move out of the Farm failed, an application for a *rule nisi* was filed on the 09th of May 2024 and granted on 10 May 2024. The First Respondent further submitted that Applicants failed to explain why they have not obtained alternative accommodation almost a year after the order was granted. They were untrustworthy because they concealed these factors from the court and that is why an eviction order was granted on 28 November 2024. The matter therefore lacks urgency and self-created because the Applicants were given until end of February 2025 to vacate the Farm.

[22] With the afore-factors, to what extent do they address the main legal principles in the determination of this application?

Analysis

[23] This Court is not to deal at length with complexity of factual issues that emanated from this matter. It will limit itself to the principles of rescission as they relate to the

Order granted by this Court on the 28th of November 2024. Thus, it appears that there were several attempts to resolve the impasse between the parties as they were explicitly stated in a judgment dated 04 March 2025 delivered by Mngqandi AJ. In addition, the Applicants were blanketly put under one Umbrella without distinguishing each one from the other. It is also worth mentioning, with no bearing on this rescission application for now, the Fourth Respondent's brief submission to be excused from these proceedings, indicated that the Order granted by Malusi J on 21 November 2025, for the Fourth respondent to submit a plan for alternative accommodation of the Applicants, its Officials did go to the Farm to get their details. Thus, the exercise was fruitless because they could not find any people that were in its occupation.

[24] This matter dealt with complex issues that required this Court to balance the competing rights between the rights of lawful landowners *vis-à-vis* unlawful occupiers of the land. This matter placed this Court in an invidious position of being the last line of defence to eliminate any form of lawlessness against the further interests of the plight of people in dire situation for access to adequate housing within the broader framework of accessing land.⁵ This Court acknowledges the challenges faced by the state to equally balance these competing interests. Thus, despite the acknowledgement, with the standards set high for ordinary citizens to ensure compliance with the Rules, it is also required to fulfil the aspirations of the Constitution in ensuring the establishment of a "just society". Yacoob J in *Government of the Republic of South Africa v Grootboom*⁶ expressed it in no uncertain terms that:

"The issues here remind us of the intolerable conditions under which many of our people are still living. The respondents are but a fraction of them. It is also a reminder that unless the plight of these communities is alleviated, people may be tempted to take the law into their own hands in order to escape these conditions. The case brings home the harsh reality that the Constitution's promise of dignity and equality for all remains for many a distant dream. People should not be

⁵ See section 26(1) of the Constitution.

⁶ 2000 (11) BCLR 1169 (CC).

impelled by intolerable living conditions to resort to land invasions. Self-help of this kind cannot be tolerated, for the unavailability of land suitable for housing development is a key factor in the fight against the country's housing shortage.”⁷

[25] It is against this backdrop that this Court acknowledges further that ‘the judiciary cannot itself correct all the systemic unfairness to be found in our society. ... yet it can at least soften and minimise the degree of injustice and inequity which the eviction of the weaker parties of inequality of necessity entails’.⁸ In the context of this case, the discretion to be exercised by this Court whether application for rescission should be granted will serve as a pathway for the determination of its merits at the main trial. Alternatively, to endorse the non-appearance as a willful disobedience of the court processes that undermine the principles of law that should contribute to social change.

[26] In this matter, the First Respondent dismissed and argued that the Applicants failed to prove their non-appearance in Court and the subsequent result of the 28th of November 2024 was justified. He substantiated his contention and stated that the Applicants claim that they were not in Court was null and void because they did appear and were represented by the same Attorney and Counsel. They, therefore, did not have a legal standing to bring this matter before Court for a rescission of the Order. He concretised his arguments that the non-appearance connoted a complete disregard of the legal proceedings. Simply put, the Applicants had consciously taken a decision not to defend their case and became an “annoyance” that needed to be removed Farm 1[...]. In addition, the Applicants failed to comply with the requisites of Rule 31(2)(b) and to ‘show good cause and reasonable explanation as soon as they became aware of the judgment which could have enabled the court to determine whether to set aside the judgment as it deems fit’. The content of Rule 32(1)(b) is to show a genuine and *bona fide* defence of the alleged claim. This, therefore, raises the question whether:

⁷ Ibid para 2.

⁸ Sachs J in *PE Municipality* para 38.

- (i) there was a reasonable explanation for the Applicants to have absented themselves from appearing in Court on 28 November 2024?
- (ii) Did the Applicants know that the application was directly brought against them?
- (iii) Did the Applicants intentionally failed or refrained from appearing in Court?

[27] These questions are important in the light of the transformative aspirations in the Constitution that seek to eliminate poverty; inequality, landlessness and issues of access to adequate housing which are central to South Africa's maturity democracy. They are of further importance because of the implications of the undefended *rule nisi* which leaves the Court with no opportunity to assess and balance the value of the evidence that was led. Does it mean the Courts should graciously dismiss an application without considering all the relevant factors relating to non-appearance in the matter? Does it also mean that non-appearance 'shuts the doors' of litigation and eliminates any opportunity for the people without a roof over their heads to state the merits of their case at the main trial? These questions are motivated by Sachs J in *Port Elizabeth Municipality v Various Occupiers*⁹ on his analysis of what constitutes as 'home' as held:

"... a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent and hostile world. Forced removal is a shock for any family, the more so for one that has established itself on a site that has become its familiar habitat."¹⁰

[28] The significance of a 'home' which is foundational to this application as contextualised by Sachs J is a direct response to the First Respondent's argument that

⁹ 2004 (12) BCLR 1268 (CC), *PE Municipality*.

¹⁰ *Ibid* para 18.

the Applicants failed to prove the application of section 4 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act). The said section provides:

(1) [...]

(2) [...]

(3) [...]

(4) [...]

(5) [...]

(6) If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

(7) If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women.

[29] Both parties conceded that the Applicants had not lived on the Farm for a longer period as required by the PIE Act. The Applicants started occupying the Farm with effect from February 2024. During this period, the First Respondent, as submitted, did engage with the Applicants to move out of the Farm from the 15th of March 2024. The Applicants did not move out of the Farm on the said date. This led to the filing of an application for a *rule nisi* which was granted on the 10th of May 2024. The latter Order was confirmed on the 28th of November 2024, which has now become the subject of these proceedings.

[30] I am of the view that irrespective of the period within which the Applicants occupied the Farm, I found it disconcerting that the First Respondent would narrow the interpretation and effects of the *rule nisi* order and its confirmation on 28 November 2024. It is explicit in that Order that it was exclusive of Yandisa Sawula and her Group. Further, should the Applicants (Respondents in that matter) fail to move out of the Farm, the First Respondent will have to amass resources to ensure their eviction from the Farm. This Court is not to reproduce the content of that Order, thus, as the Applicants argued, its enforcement had huge implications for them. Nugent JA in *Pitelli v Everton Gardens Project*¹¹ held that an ‘order might not be appealable because it is capable of being rescinded in terms of Rule 42(1)(a) or common law.’¹² Thus, in the circumstances of this case, an uncertainty was constituted because of the non-distinction between the parties that were in default of non-appearance in Court and those that had an existing order to be executed against them. I am persuaded by Nugent JA that an order is not appealable until its finality to eliminate any irreparably harm that may be prejudicial to the Applicants. The Applicants brought to the attention of this Court the Constitutional Court judgment in *Zulu v Ethekewini Municipality*¹³. That judgment held:

“it is evident from Rule Nisi that the Applicant’s continued occupation of the property would amount to their eviction because they would be precluded from either returning to their homes after a

¹¹ [2010] ZASCA 35.

¹² Ibid para 27.

¹³ 2014 (8) BCLR 971 (CC).

temporary absence or because they would be kicked out of their homes to prevent them from continuing to occupy the property. This means to this extent, that part of the interim order is an eviction order.”¹⁴

[31] It is deduced from *Zulu* judgment that the effects of *rule nisi* will linger over the heads of the Applicants, whilst the application for rescission was still to be finalised. Further, the effects of paragraph 2 of the Order were clear and unambiguous because it was not applicable to Yandisa Sawula and other Respondents with confirmatory affidavits. In addition, paragraphs 3 and 4 have sealed the non-reference of the Order on Yandisa Sawula and Respondents with confirmatory affidavits in the 2020 Order. It is worth mentioning that paragraph 4 went further and operationalised the execution of the order against the Applicants.

[32] The Order of the 28th of November 2024 had major consequences for the Applicants who were not before the Court because there was no evidence of them having submitted affidavits in support or against that application. An affidavit is a founding document to the content of the factual evidence relating to the dispute without which, it would constitute an uncertainty regarding the pleadings or issues in contention. This Court is of the view that the Applicants could not be put in the ‘same basket’ as Yandisa Sawula and her group because the Order itself was clear in that regard. This Court acknowledges that although it may exercise its discretion to consider the matter without affidavits,¹⁵ in the context of this case, there were no affidavits that were filed that could have bound them to the outcome of the application. In the circumstance, the granting of an order in default of non-appearance, the Applicants did not misplace the route to follow in filing for rescission of the Order.

[33] The First Respondent lodged a scathing attack against the filing of the rescission application. On the other hand, he did not place before this Court any evidence that the

¹⁴ Ibid para 25.

¹⁵ See Bands AJ in *Cibi v Public Service Commission* [2022] ZAECKMHC at para 19.

removal of Applicants from Farm 1[...] will prevent any future invasions except for the adoption of “my land and I can do with it whatever way I want approach”. This approach is limiting and views the Applicants as unworthy of protection that needed to be ‘sent bulldozers or sledgehammers’¹⁶ for their removal from the Farm. This Court is conscious of the fact that the scales are not balanced between the rights of lawful owners *vis-à-vis* unlawful occupiers. They are both to suffer prejudice, thus, their context should be holistically considered without one adopting an ‘individualistic’ approach’ as Sachs J in *PE Municipality* held that ‘we are not islands unto ourselves.’¹⁷ The latter is a concept that was conceptualised by Mokgoro J in *S v Makwanyane*¹⁸ through the lens of the principle of ‘*ubuntu*’ as the Judge held:

“generally, *ubuntu* translates as *humaneness*. In its most fundamental sense, it translates as *personhood* and *morality*. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation. In South Africa *ubuntu* has become a notion with particular resonance in the building of a democracy. It is part of our “rainbow” heritage, though it might have operated and still operates differently in diverse community settings.”¹⁹

[35] This Court, with the principle of the gist of ‘*ubuntu*’ in mind, found it difficult that the First Respondent during oral argument viewed the Applicants as an unpleasant “annoyance” that needed to be automatically removed from Farm 1[...]. The Applicants found themselves faced by poverty, landlessness, unemployment with the elderly,

¹⁶ See *PE Municipality* (note 9 above) para 20.

¹⁷ *Ibid* para 37.

¹⁸ 1995 (6) BCLR 665 (CC).

¹⁹ *Ibid* para 307, (footnotes omitted).

women, children and youth hard-hit by circumstances in which they found themselves. This Court acknowledges that there is no direct entitlement to a house.²⁰ Thus, the tone of the First Respondent's language use and classification of Applicants as "annoyance" was a deeply entrenched lack of recognition of the progress made so far since the attainment of democracy in addressing the divisions of the past on access to housing which continue to manifest themselves. The First Respondent endorsed the distinction between the "rich and the poor". Sachs J in *PE Municipality* dismissed this approach and held:

*"those seeking eviction should be encouraged not to rely on concepts of faceless and anonymous squatters automatically to be expelled as obnoxious social nuisances. Such a stereotypical approach has no place in the society envisaged by the Constitution; justice and equity require that everyone is to be treated as an individual bearer of rights entitled to respect for his or her dignity. At the same time those who find themselves compelled by poverty and landlessness to live in shacks on the land of others, should be discouraged from regarding themselves as helpless victims, lacking the possibilities of personal moral agency. The tenacity and ingenuity they show in making homes out of discarded material, in finding work and sending their children to school, are a tribute to their capacity for survival and adaptation. Justice and equity oblige them to rely on this same resourcefulness in seeking a solution to their plight and to explore all reasonable possibilities of securing suitable alternative accommodation or land,"*²¹ (authors emphasis).

[36] The First Respondent sought to 'bulldoze' the Applicants through the legal process and halt the consideration of the uniqueness of their plight at the main trial. The First Respondent functions within the framework of authority that is vested and transferred to the executive sphere of government in terms of section 97 of the

²⁰ See section 26 of the Constitution of the Republic of South Africa 1996, 'Constitution'.

²¹ *PE Municipality* (note 9 above) para 41.

Constitution. The transferred authority requires the executive to (i) administer any legislation entrusted to another; or (ii) any power or function entrusted by legislation to another member. From the point of view of this Court, it is quite intriguing that the First Respondent will use its resources to serve as a shield to 'stifle the wheels of justice' towards the determination of the merits of the dispute against which the executive would be absolved from its primary responsibility to help people in emergency. This may not be a large group of people who had a short stay at the Farm and legitimately requiring access to a roof over their heads. They were faced by a glaring and imminent demolition of their property without being distinguished from the enforcement of the 2020 Order and the 2024 Order that was of direct application to them due to their default on appearance. The plight of the Applicants was not 'self-created' as evidenced by Malusi J in his Order that required a plan that will make provision for an alternative accommodation for people in dire situations. The First Respondent's attempt to halt this matter proceeding to have its merits determined was a showing of financial and legal muscle to have the vulnerable people being thrown on the streets with no roof over their heads.

[37] Considering the conspicuous evidence and applicable legal principles, I am satisfied that the Applicants had demonstrated that the non-appearance in Court was reasonable. They had proved the fulfilment of the requirements of rescission in terms of Rules 31(2)(b) and 42(1)(a). Under the circumstances, I am of the considered view that the Applicants had a genuine and reasonable explanation for this Court to rescind the court order granted on the 28th of November 2024.

[38] Accordingly, the following order is made:

[38.1] The application for rescission of order dated 28 November 2024 is granted.

[38.2] There is no order as to costs.

Delivery: This judgment is issued by the Judge whose name appears herein and is submitted to the parties /legal representatives by email. Its date of delivery is deemed 10 February 2026.

**NTLAMA-MAKHANYA
ACTING JUDGE: MTHATHA
EASTERN CAPE DIVISION**

Date Heard: 29 January 2026

Date Delivered: 10 February 2026

Appearances:

Applicant: Advocate Z Madukuda

Instructing Attorneys: S. Mjaliswa Inc Attorneys
Old Union Street, East London

First Respondent: Advocate Baloyi

Instructing Attorneys: Maenetja Attorneys
Waterkloof, Pretoria

Second Respondent: No Appearance

Third Respondent: No Appearance

Fourth Respondent: Advocate Swartbooi (Released from Proceedings)

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