



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)**

Case Number: 2025-200976

- (1) Reportable: No
(2) Of interest to other Judges: No
(3) Revised:

13 March 2026

Signature

Date

Ex Parte Application of:

LOUIS MAKGOTHI MOTLA

Applicant

And

DR JS MOROKA MUNICIPALITY

First Respondent

WINNIE LETHUBE MASHABELA

Second Respondent

RIVER RUN INVESTMENT (PTY) LTD

Third respondent

MLN CONTRACTORS (PTY) LTD

Fourth Respondent

REGIONAL LAND CLAIMS COMMISSIONER

Fifth Respondent

NATIONAL LAND CLAIMS COMMISSIONER

Sixth Respondent

JUDGMENT

LESO AJ,

INTRODUTION

1. The applicant brought an urgent *ex parte rule nisi* application seeking various orders from this Court.
2. The applicant seeks that the matter be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and that condonation be granted for the non-compliance with the prescribed forms and time periods for service.
3. The applicant further seeks an interim interdict restraining the execution of provision 12 of a settlement agreement, which was previously made an order of this Court, pending the finalisation of the dispute.
4. In addition, the applicant seek an order directing the first, second, third, and fourth respondents to refrain from:
 - 4.1 Exhuming the remains buried at the gravesite located on **Farm Valschfontein No 33, Remaining Extent of Portion 48, Dr JS Moroka Municipality, Mpumalanga Province.**
 - 4.2 Conducting any further development on the area where the grave is situated.
5. The applicant further seeks the issuing of a *rule nisi*, calling upon all interested parties to show cause on a date to be determined by this Court why the interim relief granted should not be made final.
6. The applicant proposed that service of the rule nisi be effected as follows:
 - 6.1 By the Sheriff upon the second, third and fifth respondents;
 - 6.2 By electronic mail upon the first and fourth respondents; and
 - 6.3 By hand delivery upon the sixth respondent.
6. The applicant seeks no order as to costs.

BACKGROUND

8. On 24 November 2025, Winnie Lethube Mashabela (the second respondent in this *ex parte* application) instituted an urgent application in this Court seeking an interdict restraining MLN Contractors from constructing, erecting, or causing to be constructed any building structures on Portion 48 of the Farm Valschfontein 33JS, situated within the Dr JS Moroka Local Municipality in the Mpumalanga Province.

9. The interdict was to operate as an interim order pending the finalisation of dispute KRP 12 0219 before the Commission on Restitution of Land Rights, and a rule nisi was issued with a return date of 20 November 2025.

10. In that urgent application, the Dr JS Moroka Local Municipality opposed the application and filed an answering affidavit. The second respondent in that matter filed an answering affidavit together with an application for postponement.

11. MLN Contractors was cited as the second respondent, the Department of Land Reform and Rural Development, cited as the fifth respondent, and the Minister and Commission on Restitution of Land Rights filed notices to abide. Louis Makgothi Motala, the applicant in this application, was not a party to those proceedings.

12. The applicant in the earlier proceedings, Winnie Lethube Mashabela, and the respondents therein subsequently reached a settlement agreement in order to resolve the dispute. The settlement agreement was signed by the parties and was subsequently made an order of court. (my emphasis)

13. I do not repeat the contents of the settlement agreement in full for the sake of brevity.

14. Louis Makgothi Motala now approaches this Court in an *ex parte* application against the Local Municipality as the first respondent and Winnie Lethube Mashabela as the second respondent, together with the other cited respondents.

15. The first respondent filed the notice of opposition and appeared in court to argue costs on the basis that they were dragged to court without any merit, while the third and the fourth respondents made some concessions and agreed to the draft order with the applicant as follows:

1. The respondents may not relocate the grave situated on the Third Respondent's property, being Portion 48 of Erf 93 Siyabuswa-E Township, pending the resolution of the dispute between the Applicant and the Second Respondent.
2. In the alternative, the Applicant would institute appropriate legal proceedings against the Second Respondent to adjudicate the dispute.
3. Final approval regarding the relocation of the grave would be subject to the approval of the First Respondent, the Dr JS Moroka Local Municipality.
4. The parties recorded that the grave had always been respected and left undisturbed by the Third and Fourth Respondents and that this position would continue pending the finalisation of the dispute.
5. Each party would pay its own costs.
6. In those proceedings, the Court dealt with both urgency and the merits, as the issues were interlinked.

URGENCY

16. The applicant avers that around April 2025, he noticed pins placed around an area near the grave site of his late grandfather, marking the area for development. It later became apparent to him that the area had indeed been earmarked for construction purposes.
17. The applicant approached a person later identified as Mr Naidoo, informing him that the area contained the grave of his late grandfather and requesting that no construction take place on that site.
18. Discussions between them continued until approximately October 2025, during which time construction appeared to be temporarily halted.
19. The applicant states that during that period, and without the knowledge of his family, the Mashabela family approached Mr Naidoo claiming that the grave belonged to their family and that they had instituted an application interdicting the construction.

20. Subsequently, a settlement agreement was concluded between the construction company and the Mashabela family. The applicant further states that on 16 February 2026 his legal representatives informed him that there was a need to bring an urgent application. On the same day, the applicant avers that he had a telephone conversation with Andres Mashabela, a relative of the second respondent, in an attempt to resolve the impasse.

21. The applicant contends that the application is urgent because development is anticipated to continue on the portion of land where the grave is situated. He avers that the imminent exhumation of the remains for development purposes would prejudice the Motala family, who claim an ancestral connection to the grave.

INTERDICT

Prima Facie Right

22. The applicant alleges that the remains buried in the grave are those of his great-grandfather, Tsaru Phara, and that this fact is well known within the community.

23. He states that the Motala family would be directly affected by the exhumation of the remains as they revere the deceased as an ancestor and occasionally visit the grave to seek blessings. The applicant further avers that the land forms part of an area of cultural and traditional significance, including the location of an initiation school, and that development without consultation would disrupt these practices.

Apprehension of Harm

24. The applicant contends that the settlement agreement, as it stands, affords the respondents the right to relocate the grave at any moment, which places the rights of the Motala family at risk. He further states that the relocation of the remains to an unknown place would create uncertainty and distress regarding their ancestral traditions.

Balance of Convenience

25. The applicant submits that the relocation of the remains would be unacceptable within their cultural and ancestral traditions, and that such harm cannot be remedied.

He further submits that the respondents would suffer no prejudice as the development could be relocated to another area.

Absence of Alternative Remedy

26. The applicant contends that there is no satisfactory alternative remedy, as once exhumation occurs, the harm would be irreversible.

DISCUSSION

24. This matter concerns an *ex parte* application seeking an interim interdict relating to burial rights and land development. The applicant seeks an order interdicting the execution of provision 12 of the settlement agreement, which has already been made an order of this Court. The settlement agreement concluded by Winnie Mashabela provides that the parties will work jointly to relocate the grave located on the owner's land to a location elected by the applicant and approved by the municipality.

25. The applicant complains that the order granted under case number 2025-200976 considered only the wishes of the Mashabela family, whom he alleges are not related to the deceased

28. The applicant appears to rely on the existence of a pending matter instituted on behalf of the Magashwa community, which includes the Motala family, before the Land Claims Court under case number 023280-2026 or the draft order by agreement between the applicant and the third and fourth respondents as it is not clear from the papers which litigation is pending.

29. The question is whether the court should condone non-compliance with the rules in terms of the time frames and forms and whether the court can grant the interdict against the settlement agreement that had been made an order of court.

ON URGENCY

30. An applicant has to set forth explicitly the circumstances that he avers render the matter urgent. More importantly, the applicant must state the reasons why he

claims that he cannot be afforded substantial redress at a hearing in due course as stated in the case of East Rock Trading. The fact that the construction is underway and the signs that the graveside in dispute has been marked for the exhumation in terms of the settlement agreement will indeed prejudice the applicant because the location where the deceased body will be re-buried is not specified.

31. Rule 6(12) provides:

(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at hearing in due course.

32. Regard should be had to *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)*, in which the court stressed the requirement in rule 6(12)(a) that the procedure for dealing with urgent applications 'shall as far as practicable be in terms of these rules', and stated that rule 6(12) does not permit practitioners 'to select any day of the week and any time of the day (or night) to demand a hearing'

33. I am satisfied that the case for urgency has been made however, the court takes an issue with the fact that the applicant elected to file an *ex parte* application without having stated the reason why that route was followed.

Ex parte requirements

34. The Court notes that the applicant approached the Court *ex parte* without providing sufficient reasons why notice could not be given to the respondents. *Ex parte* proceedings are exceptional in nature and require full disclosure of all material facts.

They are ordinarily reserved for circumstances where giving notice would defeat the purpose of the application.

35. In this matter, the applicant has not explained why the respondents could not be served with the application papers. The applicant also did not provide sufficient information regarding the extent of the construction or the urgency of the alleged exhumation.

36. Bringing the application to the attention of the respondents could, in fact, have assisted the Court in determining the true status of the settlement agreement and the development activities. On the positive side, parties the third and fourth respondents responded positively by reaching an agreement with the applicant after being aware of the application.

LEGAL PRINCIPLES

37. Once a settlement agreement is made an order of court, it has the same force and effect as any other court order. In *Eke v Parsons 2015 (11) BCLR 1319 (CC)* the Constitutional Court held: *"Once a settlement agreement has been made an order of court, it is an order like any other. It changes the status of the rights and obligations between the parties and brings finality to the lis."*

38. The *Supreme Court of Appeal in Compensation Solutions (Pty) Ltd v Compensation Commissioner and Others (ZASCA 59)* similarly confirmed that settlement orders carry the full force of a court order. Accordingly, settlement orders are not easily reopened, as emphasised in *Moraitis Investments (Pty) Ltd v Montic Dairy (Pty) Ltd..... (SCA)*. An interdict against the execution of such an order can only be granted in exceptional circumstances where the requirements for an interdict have clearly been established. There are no exceptional circumstances for the interdict of the settlement agreement.

CONCLUSION

39. The Court accepts that the applicant approached the Court shortly after becoming aware of the settlement agreement on 16 February 2026 and subsequently filed this application on 26 February 2026.

40. Condonation be granted for the non-compliance with the prescribed time and forms of service, application is heard on an urgent basis. However, the applicant has failed to adequately justify the *ex parte* nature of the proceedings.

41. The applicant has also not demonstrated sufficient grounds to interdict the execution of a settlement agreement that has already been made an order of court.

42. On the issue of the costs order argued by the first respondent, the application was not served on them. The only document filed was not to oppose and therefore, they are not entitled to costs order.

ORDER

THE FOLLOWING ORDER IS MADE:

1. The application is enrolled and considered as one of urgency.
2. By agreement between the third and the fourth respondents the draft order marked "XY" is made an order of court.
3. Service of this order shall be effected by the sheriff to ALL the respondents.
4. No costs order.



JT LESO

Acting Judge of the High Court

Heard: 04 March 2026

Delivered: 13 March 202