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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2026-051451

DATE: 19 March 2026

In the matter between:

THABO SAMUEL MAKHOROLE

Applicant

and

**JUKSKEI VIEW EXTENSION 17 & 18
RESIDENTS ASSOCIATION**

First Respondent

ELGARU (PTY) LIMITED

Second Respondent

RAMASIMONG SIMON RAMOTSOELA

Third Respondent

RABELANI LUSUNZI

Fourth Respondent

Neutral Citation: *Makhorole v Waterfall View HOA and Others (2026-051451)*

[2026] ZAGPJHC --- (19 March 2026)

Coram: Adams J

Heard: 11 March 2026

Delivered: 19 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 19 March 2026.

Summary: Civil procedure – urgent application – for an interim interdict, pending appeals of CSOS Orders as contemplated in section 56(2) of the

Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act) – the CSOS orders dismissed applicant's attempts to have building of boundary wall declared lawful – counter-application by Homeowners' Association for an order authorising the demolition of the boundary wall –

Urgent application opposed on the basis that it lacks urgency (not considered) – no *prima facie* right for the purposes of interim relief (accepted) - no irreparable harm and the balance of convenience (both upheld) –

Application for interim interdictory relief dismissed with costs.

Counter-application succeeds.

ORDER

- (1) The applicant's urgent application is dismissed with costs.
- (2) The applicant shall pay the first and the second respondents' costs of this opposed urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.
- (3) On the Counter-Application: -
 - (a) The first respondent is authorised to proceed with the demolition of the boundary wall erected by the applicant at Unit 3[...], W[...] V[...] Estate, M[...].
 - (b) The first respondent shall give the applicant not less than twenty calendar days' written notice of the date on which demolition will commence.
 - (c) The first respondent, the second respondent and any contractor appointed by them are permitted to enter the applicant's property for the purpose of carrying out the demolition.
 - (d) All costs of the demolition, including: the costs incurred on 5 March 2026; and the costs of the demolition to be carried out pursuant to this order, shall be for the account of the applicant. The first and/or second respondents are authorised to add these costs to the applicant's levy account and to recover them in accordance with the first respondent's rules.
 - (e) If it is not possible to demolish the applicant's wall without also demolishing the original pre-cast concrete panel wall against which it is built, the costs of reinstating that pre-cast wall shall also be for the applicant's account, and the first and/or second respondents are authorised to add these costs to the applicant's levy account.
 - (f) Should the applicant interfere with the demolition by obstructing the contractors or the first or second respondents or their officials in

carrying out the demolition pursuant to this order: (i) The South African Police Service and/or the Sheriff of this court are directed and authorised to assist the first and second respondents and their contractors in carrying out the demolition by taking all reasonable steps necessary to prevent such interference, including but not limited to physically restraining the applicant; and (ii) The South African Police Service and/or the Sheriff are authorised and instructed to restrain the applicant and, if necessary, remove him from the estate and deny him entry for the duration of the demolition.

- (4) The applicant shall pay the first respondent's costs of the counter-application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This is an opposed urgent application by the applicant, an 'in person' lay litigant, for interim interdictory relief against the first respondent and the second respondent. The first respondent is Jukskei View Extension 17 and Extension 18 Residents Association NPC – the Homeowners' Association administering and governing the development known as 'Waterfall View'. The second respondent is the managing agent of the first respondent. The third and fourth respondents are neighbours of the applicant, cited as interested parties. No substantive relief is sought against them.

[2]. Pending the final adjudication of appeals lodged in this Court against two orders issued in terms of s 56(2) of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), the applicant seeks an order, on an urgent basis, interdicting the demolition of a boundary wall, which, according to the first and the second respondents, have been illegally erected by the applicant.

[3]. In sum, in this urgent application, the applicant seeks an interim interdict restraining the first and second respondents from demolishing a boundary wall he has constructed at his property in Waterfall View Estate, Midrand. The relief is sought pending the final determination of two appeals he has lodged in this Court against orders of the Community Schemes Ombud Service (CSOS).

[4]. The first and second respondents oppose the application. They have also preferred a counter-application against the applicant, seeking an order authorising them to proceed with the demolition of the boundary and for costs in relation to such demolition.

[5]. The issue to be decided in this urgent application is therefore whether the applicant has demonstrated that he is entitled to an interim interdict on an urgent basis. Conversely, the further question to be considered by me is whether the first and second respondents have made out a case for the relief sought by them in the counter-application. These issues are to be decided against the facts as set out in the paragraphs which follow.

[6]. The matter has a lengthy and an unfortunate history, marked by acrimony between neighbours and a persistent failure by the applicant to comply with the established rules of the estate. The applicant commenced construction of a boundary wall in September 2023. Construction was halted by the first respondent. Two separate applications to the CSOS followed, both dismissed. Appeals to this Court were noted, but little to no progress was made in prosecuting them until the eve of the scheduled demolition.

[7]. The demolition was scheduled for 5 March 2026. On that day, contractors attended the property to commence demolition. According to the answering affidavit, which I accept, the applicant physically obstructed the contractors, spraying them with chemicals and throwing bricks. The demolition could not proceed. Later that day, the applicant launched this urgent application.

[8]. With that brief factual background in mind, I now turn to deal with the applicant's application for interim interdictory relief. In that regard, the requirements for an interim interdict are well established. An applicant must show: (a) a *prima facie* right, even if open to some doubt; (b) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) that the balance of convenience favours the granting of interim relief; and (d) that the applicant has no other satisfactory remedy. See *Setlogelo v Setlogelo*¹; *Webster v Mitchell*². The applicant bears the onus of satisfying all four requirements. Failure to establish any one of them is fatal to the application.

[9]. In *National Treasury and Others v Opposition to Urban Tolling Alliance and Others*³, the Constitutional Court affirmed the continued applicability of the *Setlogelo* test, albeit with due regard to constitutional principles, including the separation of powers and the principle of legality.

[10]. The correct approach to follow in determining whether a *prima facie* right is established was set out in *Webster v Mitchell*⁴ as follows:

'[T]he right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie established though open to some doubt" that is enough.

... The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to "some doubt". But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.'

¹ See *Setlogelo v Setlogelo* 1914 AD 221.

² *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.

³ *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC).

⁴ *Webster v Mitchell* 1948 (1) SA 1186 (W).

[11]. Where an applicant establishes a clear right, the requirement of irreparable harm may be relaxed. However, the first requirement – a *prima facie* right – remains foundational.

[12]. The applicant bears the onus of establishing each of the requirements for interim interdictory relief on the papers. For the reasons that follow, I find that he has failed to do so.

[13]. The applicant contends that his *prima facie* right arises from four sources: his ownership of the property; the approvals granted and relied upon; the statutory right of appeal under section 57 of the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act); and the entitlement under section 57(3) to apply for a stay of an order pending appeal.

[14]. I am unable to accept this submission. The approvals upon which the applicant relies were vitiated by procedural irregularities of his own making. The CSOS adjudicator, in the first application (CSOS 9175 GP 23), found as a fact that the applicant had failed to obtain the written consent of one of his neighbours. This was an essential requirement of the Architectural Guidelines of the association. The applicant knew this, yet he failed to secure it. He delegated the task to estate management, but the responsibility remained his. The adjudicator found, correctly in my view, that the approval was therefore invalid and unenforceable.

[15]. The CSOS adjudicator further found that the applicant had deviated from the approved plans. On his own version, a variance of some 5cm occurred. Deviation from an approved plan, without seeking amendment or further approval, is a material breach of the Architectural Guidelines. The first respondent was entitled, in terms of paragraph 4.4 of the Guidelines, to issue a stop order. That stop order was lawfully issued.

[16]. The second CSOS application (CSOS 3406/GP/24), brought against the third respondent, was dismissed as being without substance. The adjudicator found that the relief sought fell outside the scope of the CSOS Act.

[17]. The applicant has noted appeals against both orders. However, noting an appeal does not, in and of itself, create a right to preserve the *status quo*. Section 57(3) of the CSOS Act expressly provides that a person who appeals may apply to the High Court to stay the operation of the order appealed against. The applicant has not done so. He has had ample opportunity. He was informed of this remedy in the CSOS order itself, and repeatedly by the respondents. He chose not to utilise it.

[18]. The appeals themselves appear to have little prospect of success. The first appeal was filed out of time, and the applicant has only recently applied for condonation. The grounds of appeal are vague and, in some respects, have shifted between the notice filed in June 2025 and the heads of argument filed in March 2026. More fundamentally, the appeals are directed at questions of fact, whereas section 57 permits an appeal only on a question of law. The factual findings of the CSOS adjudicator – that consent was lacking, that deviation occurred, that the stop order was valid – are findings of fact, binding on appeal unless shown to be irrational or unsupported by the evidence. No such showing has been made.

[19]. I am therefore not persuaded that the applicant has established a *prima facie* right to the preservation of the wall. To the contrary, the wall appears to be unlawful. The applicant's ownership of the property does not entitle him to maintain an unlawful structure upon it. His statutory right of appeal does not, without more, entitle him to a stay of the underlying order. And he has not invoked the remedy specifically provided for that purpose.

[20]. As regards irreparable harm, the applicant argues that demolition will cause irreparable harm: the wall will be permanently destroyed, the appeals rendered academic. This submission misses the point. The harm must be to a

right. If the wall is unlawful, its demolition is not harm; it is the lawful consequence of the applicant's own conduct. The appeals will not be rendered academic; they will be determined on their merits in due course. If the applicant succeeds (which I consider unlikely), other remedies, such as an order for reinstatement or damages, may be available. The harm is not irreparable in the sense required for interdictory relief.

[21]. Moreover, the applicant has contributed substantially to his own predicament. He built the wall without proper consent. He deviated from the approved plans. He ignored stop orders. He failed to prosecute his appeals. He failed to apply for a stay. He waited until the very day of demolition to launch these proceedings, and then only after physically obstructing the contractors. Any urgency is self-created. A litigant cannot create his own urgency and then rely on it to obtain relief.

[22]. The balance of convenience weighs heavily against the grant of an interdict. If the interdict is granted, an unlawful structure will remain in place, potentially for many months or years, pending the finalisation of appeals that appear to have little merit. The first respondent is entitled, and indeed obliged, to enforce its rules. The wall is an eyesore, built next to the original pre-cast wall rather than replacing it, creating an unsightly double wall. It detracts from the aesthetic uniformity of the estate. The longer it remains, the more it undermines the authority of the first respondent and the rights of other residents.

[23]. If the interdict is refused and the demolition proceeds, the applicant may suffer the loss of the wall. But this is a loss of his own making. He had ample opportunity to regularise the position. He could have applied for amended plans, sought neighbour consent through negotiation or, if necessary, legal proceedings, or applied for a stay. He did none of these things. The balance of convenience favours the restoration of legality, not the preservation of unlawfulness.

[24]. As for alternative remedy, the applicant indeed has one in that he could have brought an application to this court for a stay of the CSOS orders in terms of section 57(3). He was aware of this remedy. He chose not to pursue it. That failure is fatal to his claim for an interdict. An interdict is a remedy of last resort. Where another remedy is available and has not been utilised, an interdict will not be granted.

[25]. The applicant has failed to establish any of the requirements for an interim interdict. His application falls to be dismissed.

[26]. It follows, as a matter of logic, that the first respondent's counter-application should succeed. In my view, the first respondent has made out a clear case for the relief sought. The wall is unlawful. The CSOS has so found. The applicant has not appealed successfully, nor has he obtained a stay. The first respondent is entitled, in terms of its founding documents and the Architectural Guidelines, to remove unlawful structures and to recover the costs from the member responsible.

[27]. The history of this matter demonstrates that the applicant will stop at nothing to prevent demolition. He has already assaulted contractors. It is highly likely that he will do so again. In these circumstances, it is appropriate to authorise the sheriff and SAPS to assist in carrying out the demolition and to restrain the applicant if necessary. This is not a power to be granted lightly, but the facts justify it.

[28]. The costs of the demolition, including the abortive costs of 5 March 2026, must be borne by the applicant. He caused them. He is responsible for the wall. It is just and equitable that he pays.

[29]. In sum, I conclude that the applicant has failed to make out a case for interim interdictory relief. On the other hand, the first respondent has made out an unassailable case for the relief sought by it in the counter-claim. The

applicant's urgent application for interim interdictory falls to be dismissed and the first respondent's counter-claim should be succeed.

Costs

[30]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*⁵.

[31]. I can think of no reason why I should deviate from this general rule. The applicant should therefore be ordered to pay the respondents' costs of the opposed urgent application, as well as the costs relating to the counter-application.

Order

[32]. In the result, I make the following order:

- (1) The applicant's urgent application is dismissed with costs.
- (2) The applicant shall pay the first and the second respondents' costs of this opposed urgent application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.
- (3) On the Counter-Application: -
 - (a) The first respondent is authorised to proceed with the demolition of the boundary wall erected by the applicant at Unit 3[...], W[...] V[...] Estate, M[...].
 - (b) The first respondent shall give the applicant not less than twenty calendar days' written notice of the date on which demolition will commence.

⁵ *Myers v Abrahamson* 1951(3) SA 438 (C) at 455

- (c) The first respondent, the second respondent and any contractor appointed by them are permitted to enter the applicant's property for the purpose of carrying out the demolition.
 - (d) All costs of the demolition, including: the costs incurred on 5 March 2026; and the costs of the demolition to be carried out pursuant to this order, shall be for the account of the applicant. The first and/or second respondents are authorised to add these costs to the applicant's levy account and to recover them in accordance with the first respondent's rules.
 - (e) If it is not possible to demolish the applicant's wall without also demolishing the original pre-cast concrete panel wall against which it is built, the costs of reinstating that pre-cast wall shall also be for the applicant's account, and the first and/or second respondents are authorised to add these costs to the applicant's levy account.
 - (f) Should the applicant interfere with the demolition by obstructing the contractors or the first or second respondents or their officials in carrying out the demolition pursuant to this order: (i) The South African Police Service and/or the Sheriff of this court are directed and authorised to assist the first and second respondents and their contractors in carrying out the demolition by taking all reasonable steps necessary to prevent such interference, including but not limited to physically restraining the applicant; and (ii) The South African Police Service and/or the Sheriff are authorised and instructed to restrain the applicant and, if necessary, remove him from the estate and deny him entry for the duration of the demolition.
- (4) The applicant shall pay the first respondent's costs of the counter-application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	11 March 2026
JUDGMENT DATE:	19 March 2026 – Judgment handed down electronically
FOR THE APPLICANT:	In Person
INSTRUCTED BY:	In Person
FOR THE FIRST AND SECOND RESPONDENTS:	(Ms) L De Wet
INSTRUCTED BY:	HBGSchindlers Attorneys, Melrose Arch, Johannesburg
FOR THE THIRD and THE FOURTH RESPONDENTS:	No appearance
INSTRUCTED BY:	No appearance