



**IN THE LAND COURT OF SOUTH AFRICA
HELD AT RANDBURG**

Case number: 2025 – 168480

Before: The Honourable Acting Judge Montzinger

Hearing: 24 November 2025

Delivered: 12 March 2026

(1)	REPORTABLE: Yes ☐ / No ☐
(2)	OF INTEREST TO OTHER JUDGES: Yes ☒ / No ☐

In the matter between:

MASOTHA HEZEKIA NGWENYA

First Applicant

DUNGEZULA DANYELA NZIMA

Second Applicant

ZAKHELE VILAKAZI

Third Applicant

and

GROW AND MORE (PTY) LTD

First Respondent

MARTHINUS HERMANUS STAPELBERG

Second Respondent

VAN SCHALKWYK STAPELBERG

Third Respondent

Summary: Extension of Security of Tenure Act 62 of 1997 (ESTA) – urgent application in terms of Rule 34 of the Land Court Rules – long delay in the bringing of urgent application – ESTA occupiers' rights to access to education for their children, access to water and the right to renovate dilapidated mud structures, the right to grazing of livestock. Disputes of fact - principles governing interdicts in the context of ESTA occupiers.

ORDER

The interim interdict granted by this Court on 18 September 2025 is hereby confirmed subject to the variations set out below.

1. The forms and services prescribed by the rules of this court be dispensed with and the matter is heard as one of urgency in terms of Rule 34.
2. The First to Third Respondents and anyone acting on their instructions, are interdicted and restrained from preventing or obstructing the school bus authorised by the Department of Education from entering Farm 412 Kolwani, Amsterdam, to collect and return the school-going children of the Applicants at their homesteads.
3. The first respondent is directed to restore the applicants' access to potable water within 30 days of this order, by one or more of the following means:

- 3.1 Reconstructing and rendering operational the existing borehole previously used by the applicants for potable water;
 - 3.2 As an alternative to 3.1, installing alternative water infrastructure capable of providing potable water to the applicants' homesteads;
 - 3.3 Further in the alternative to 3.1 and 3.2, arranging the delivery of water tanks containing potable water sufficient for the domestic needs of the applicants and their households.
4. The restored water supply, as foreshadowed in 3.1 to 3.3 above, must provide potable water that is separate and distinct from any water sources used by animals on the farm, and must be maintained thereafter at the first respondent's expense.
5. Pending full compliance with the provisions of paragraphs 3 and 4 (including sub-paragraphs), the first respondent shall forthwith, from the date of this order, ensure that temporary water tanks containing potable water are available to the applicants, sufficient for their domestic needs.
6. The First to Third Respondents and anyone acting on their instructions, are interdicted and restrained from interfering with the Applicants' rebuilding or repairing their existing dwellings on the same footprints of the current structures, to the extent reasonably necessary to ensure the habitability and safety of those dwellings, provided that the Applicants shall not use brick material to effect such rebuilding or repairs.
7. The First to Third Respondents, and anyone acting on their instructions, are interdicted and restrained from interfering with the applicants' exercise

of their existing grazing rights, being 20 hectares each for the First and Second Applicants and 9 hectares for the Third Applicant, together with their respective vegetable gardens.

8. For the avoidance of doubt, the order in paragraph 7 above does not authorise or extend grazing rights beyond the demarcated areas described above.
9. Each party to pay their own costs.

JUDGMENT

Montzinger AJ:

Introduction

[1] This matter involves an urgent application brought in terms of Rule 34 of the Land Court's Rules. The applicants are three families who live in separate homesteads on Farm 412 Kolwani, Amsterdam, Mpumalanga Province. The first respondent is the owner of the Kolwani farm while the second and third respondents are its directors. I will collectively refer to the first to third respondents as "the respondents". The fourth respondent is the Minister responsible for the Department of Land Reform and Rural Development. The Minister did not participate in the proceedings.

[2] The applicants approached the court on motion. In substance, the applicants seek mandatory interdictory relief aimed at securing: (a) access for a school bus to enter the Kolwani farm to collect and drop off the kids residing at the various homesteads; (b) access to water and relief addressing the applicants' complaint

that they are compelled to obtain and drink water from the same source also used by the livestock; (c) permission to rebuild (or replace) brick houses or mud structures on the same foundations as the ones they currently occupy; and (d) restoration of the “*status quo ante*” in relation to cropping and grazing land by their livestock as well as access to boreholes for clean drinking water.

[3] The applicants contend that they are occupiers as envisaged in the Extension of Security of Tenure Act 62 of 1997 (“ESTA”), and also labour tenants as envisaged in the Land Reform (Labour Tenants) Act 3 of 1996 (LTA). While, the ESTA occupier status of the applicants is not denied, the respondents do deny the Labour Tenancy claims of the applicants. However, this matter is approached from the common cause position that the applicants, and the families they represent, are all ESTA occupiers.

[4] On 18 September 2025, and in accordance with the practice in this court in dealing with urgent applications read with Land Court Rule 34, I granted an order in the form of a *rule nisi* that substantially corresponded with the relief claimed for in the notice of motion. The *rule nisi* order operated as an interim interdict pending the return date which was on 24 November 2025. Pursuant to directions issued with the *rule nisi* order, answering and replying affidavits, with extensive annexures, were filed by the parties.

[5] The application is opposed by the respondents. In broad terms, the opposition is on four bases. First, the respondents dispute urgency. Second, various points *in limine* are raised, which according to the respondents if sustained is fatal to the application. The *in limine* points include a criticism of material non-disclosures in the founding affidavit by the applicants, that there are various disputes of fact

which cannot properly be resolved on the papers that are material to the relief sought, and that the application is an abuse of process. Third, and in any event, apart from the *in limine* points, the respondents contend that no case for interdictory relief has been made out either on the facts or the law.

[6] Against this summary introduction, in the next section, I provide a contextual overview of the history and circumstances of the applicants' occupation and their relationship with the successive owners of the Kolwani farm.

The relationship between the parties

[7] The first applicant, Mr Ngwenya, is 58 years old and was born on the Kolwani farm in 1967. His father lived as a farm worker on the farm while his mother worked as a domestic. Initially, the first applicant's parents worked without monetary remuneration and were compensated by rations of maize and permission to keep livestock. Initially, as a child of ten years old and later as an adult, he also worked on the farm in various capacities, including as a field worker, stock handler and plumber. The first applicant represents the *Ngwenya* family, while the second and third applicants represent the *Nzima* and *Vilakazi* families respectively.

[8] The second and third applicants also have a similar story to that of the first applicant. Both of their families support the relief and have a multi-generational personal connection to the Kolwani farm. At least the second and third applicants' parents are buried on the farm and as a result the Kolwani farm holds great personal significance for all the applicants and their families.

[9] Over the years the farm changed ownership several times. Initially it was owned by a Mr J.Z. Moolman (known to the applicants as “*Ngondla*”), thereafter managed and/or owned by Ms Sarie Swart (known to the applicants as “*Gadlanga*”), and later, around 1997, by Elands Spruit Trust under the management of a farmer known to the families as “*Sikenkula*”¹. Under Elands Spruit Trust and “*Sikenkula*”, the *Ngwenya*, *Nzima* and *Vilakazi* families were allowed to reside on the farm, to keep livestock, and to cultivate designated portions of arable land. They were also permitted, at least according to the applicants, to rebuild their homesteads, consisting of mud structures. The applicants also had access to a borehole for clean drinking water. The school bus was permitted to enter the farm and to collect the children at or near their homesteads for transport to the local school.

[10] In or about 2014 the farm was acquired by Klein Vrystaat Boerdery (Pty) Ltd, whose directors were Mr Marthinus Hermanus Stapelberg (the second respondent) and Mr Van Schalkwyk Stapelberg (the third respondent). These are the same individuals who are also the directors of Grow and More (Pty) Ltd, the first respondent in this application, who acquired the Kolwani farm from Klein Vrystaat Boerdery during 2022, via an internal transaction.

[11] At various points between 2016 and 2019 the respondents-initiated negotiations aimed at relocating the *Ngwenya*, *Nzima* and *Vilakazi* families as well as the *Majola* family to alternative land. This alternative land was the farm Sarashof which is adjacent to the Kolwani farm and is also owned by the first respondent. The offers for relocation included for the State to purchase Sarashof

¹ This is Mr Van Oudtshoorn to who reference will be made later

from the first respondent for transfer of ownership to the families as well as financial support. There were also alternative offers that the families relocate to Sarashof while ownership remained with the first respondent, with the applicants' families being granted continued access to larger grazing and cropping areas and permission to erect brick houses. Further in the alternative offers were also made that each family accept a monetary payment to relocate elsewhere. The applicants were assisted at different times by attorneys instructed by the Department of Rural Development and later by Legal Aid. In any event the applicants rejected these offers, expressing concerns *inter alia* about competing land claims on Sarashof, the alleged unsuitability of the land for cultivation and grazing, lack of water, and their desire to remain on what they regard as their ancestral homes. The *Majola* family did accept a relocation offer from the first respondents, although they did not relocate to the Sarashof farm.

[12] It seems that since 2015/2016 and thereafter, the relationship between the applicant families and the respondents deteriorated. The respondents allege a pattern of misconduct by the family members of the applicants that include fence-cutting, unauthorised grazing of the applicants' cattle in cultivated fields, hunting with dogs in the nature reserve, interference with game and commercial operations, and harassment of the respondents' staff and family members. Some of the alleged conduct culminated in protection order proceedings in the Magistrates' Court at Amsterdam town under the Protection from Harassment Act. The applicants, for their part, allege that the respondents have used security measures, unilateral decisions regarding the nature and extent of their continued tenure and malicious conduct to render their continued occupation on the Kolwani

farm intolerable in an attempt to exert pressure on them to accept the relocation offers.

[13] The manifestations of the deterioration of the relationship between the parties and the actions taken by the respondents relate to four issues that became the subject of this application. They relate to the school bus access for the children at the homesteads, the conditions of the structures the applicants' families occupy, access to water and lastly the extent of the grazing of the applicant families' cattle.

[14] In respect of the school bus access it is common cause that for many years the school bus entered the farm along an internal gravel road to collect children from the homesteads to take them to school. In 2023, the first respondent's representatives decided to deny the bus entry to the farm, raising concerns about damage to the road, the impact on the nature reserve, the behaviour of children towards the dogs, and safety and security.

[15] Regarding the conditions of the structures, the applicants alleged that they occupy mud structures which are severely dilapidated and in danger of collapsing. They further allege that the respondents have refused to allow them to rebuild their houses on the existing foundations, whether using mud or brick, and that attempts at renovation are met with surveillance by a drone and instructions to cease work. The respondents deny that they have ever refused reasonable maintenance or repair of the existing structures, stating that they have only objected to the erection of new brick and mortar houses within the nature reserve area, particularly given the envisaged relocation and the nature-reserve status of the property.

[16] With regard to access to water the applicants allege that there was a borehole equipped with a hand-pump which supplied potable water to the families. The applicants allege that the borehole was destroyed or disabled by or at the instance of the respondents after the relocation negotiations between the parties failed, leaving them no option but to draw water from a surface stream or well used by the livestock on the farm, which they describe as undignified and a health hazard.

[17] In respect of grazing of their cattle, the applicants contend that they are entitled to grazing land on the farm as this was the position granted by the previous owners who allocated them land for their cattle to graze. The applicants assert that since the first respondent bought the property, it has attempted to limited the applicants' grazing of their cattle as allowed by the previous owner.

[18] What I have set out in the preceding paragraphs provides a bird's eye view of the relationship between the parties and the context in which the relief should be considered. Next, I turn to consider whether the applicants have made out a case for urgency.

Urgency

[19] The respondents submit, *in limine*, that the applicants have failed to comply with the requirements of urgency as they have not adequately set out grounds why the matter is urgent. Further, if the matter is urgent, then the applicants have certainly created their own urgency. Also, according to the respondents, the applicants have failed to demonstrate why they cannot obtain substantial redress in due course.

[20] In support of the challenge to lack of urgency or that urgency is self-created, the respondents point out that the relief sought relates to disputes that have been brewing for years. The dispute about the bus entering the farm dates back to at least 2023. The water issue also has a long history dating back to at least 2017/2018, and the applicants have drawn water from the current source used by the animals for several years and they cannot now rely on that situation to create urgency. Furthermore, that the allegations regarding the need to renovate the dilapidated mud structures are exaggerated and in some respects fabricated. In respect of the grazing issue the response is simply that the respondents have not changed the applicants' rights in respect thereof. In addition, the respondents also contend that the applicants have been legally represented over time. Therefore, the contention as a justification for the delay, that the applicants had financial constraints and did not receive sound legal advice to institute the proceedings earlier is therefore implausible.

[21] For the applicants' part they accept that the disputes have a long history but argue that urgency arises from the ongoing and daily nature of the infringements of their dignity they suffer. They contend that every school day that the children are required to rise at 04h00, walk 8 km in the dark and in inclement weather to the R65, and arrive at school fatigued, constitutes a fresh impairment of the children's right to basic education and their safety. Furthermore, every day that the families draw drinking water from the same source used by animals, in circumstances that are undisputedly undignified, gives rise to a fresh violation of their dignity and bodily integrity. The housing conditions are not a once-off harm but a continuing risk, the prospect that the unsound mud dwelling may collapse cannot be addressed retrospectively by a judgment in the future.

Urgency: The legal principles

[22] Rule 34 fulfils, in this Court, the same function that Uniform Rule 6(12) fulfils in the High Court Divisions, adapted to the Land Court's processes. Under Rule 34(1) the Court may, in urgent applications, dispense with any provision of the Rules and dispose of a matter at such time, place and in such manner as it considers just. That wide discretion is constrained by Rule 34(2) that requires an applicant in the founding affidavit to set out explicitly both the circumstances which render the matter urgent and the reasons why substantial redress cannot be obtained at a hearing in due course. The fact that Rule 34(3) to (6) provides additional mechanisms, such as approaching the Judge President for the appointment of a presiding judge and seeking directions on truncated time-limits, does not relax the substantive requirements.

[23] Therefore, the general principles that have developed under Uniform Rule 6(12), in respect of urgency, apply with equal force in this Court, when an applicant approaches the court urgently.

[24] As Fagan J held in *IL & B Marcow Caterers*², the indulgence of an urgent hearing is justified only where "sufficient and satisfactory" grounds are shown, including an explanation why ordinary time-periods will not provide substantial redress, and with due regard to the prejudice to the respondent and to other litigants whose cases are displaced on the roll. Urgency is assessed objectively and mere importance to the applicant does not suffice, and self-created urgency

² *IL & B Marcow Caterers (Pty) Ltd v Greatermans SA Ltd and Another; Aroma Inn (Pty) Ltd v Hypermarket (Pty) Ltd and Another* 1981 (4) SA 108 (C) p 112 - G

will generally not warrant departure from the ordinary procedures³. Although delay is relevant, it is not determinative and is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course⁴.

[25] It is obvious that there has been a long delay, in the launching of the application. Approximately 6 to 7 years in respect of the water issue alone. However, my discretion in treating the matter as urgent takes into consideration the contentions by the applicants that their rights as provided for in the Constitution and ESTA are being continuously infringed. In the context of our Constitutional dispensation it cannot be that an applicant is denied recourse by a court merely because there was a long delay in the launching of proceedings, in particular where the infringing of constitutional rights like dignity, right to access to housing and basic education, on a continuous basis, is implicated. I find support for this approach by extrapolating similar sentiments from the Constitutional Court judgments of *Informal Traders*⁵, *Moko*⁶ and *Mtolo*⁷.

[26] However, even if I am criticised for trying to read too much into the above-mentioned judgments to establish a principle to assist vulnerable ESTA

³ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2019] ZACC 27; 2019 (9) BCLR 1104 (CC) (3 July 2019) paras 6 - 9

⁴ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011); [2012] JOL 28244 (GSJ)

⁵ *South African Informal Traders Forum v City of Johannesburg; South African National Traders Retail Association v City of Johannesburg* [2014] ZACC 8; 2014 (4) SA 371 (CC); 2014 (6) BCLR 726 (CC)

⁶ *Moko v Acting Principal, Malusi Secondary School* [2020] ZACC 30; 2021 (3) SA 323 (CC); 2021 (4) BCLR 420 (CC)

⁷ *Mtolo and Another v Lombard and Others* (CCT 269/21) [2021] ZACC 39; 2022 (9) BCLR 1148 (CC) (8 November 2021)

occupiers, where they have simply delayed too long, according to the respondents, I in any event decide to exercise my discretion in hearing the matter for the reasons that I will expand on hereafter.

Why the matter is urgent

[27] The complaint regarding the school bus is not merely that the bus was stopped in 2023 to collect the children. It is that, at the time the application was launched in September 2025, eight children were, on an ongoing basis, required to walk a considerable distance in the early hours of the morning on farm and public roads, in all weather conditions, to access basic education. The principal's letter of August 2025 is explicit both as to the physical strain and the adverse educational consequences this situation had on the children.

[28] In relation to the water issue, the respondents do not dispute that the families are currently drawing drinking water from a source shared with the farm's livestock. This is certainly less dignified and less safe than access to for example a properly equipped borehole. The respondents' defence is that they are not responsible for the destruction of the borehole that was supplying the applicants and that they cannot be compelled to incur further expense or to sink new boreholes in circumstances where the families resist relocation. Whatever the outcome on the merits, however, the factual position that human beings are compelled to drink from an animal-used source is objectively undignified and implicates section 10 of the Constitution as well as the right to basic water services contemplated in ESTA. That position is not static in a legal sense. Each day that it persists compounds the affront to dignity and the risks to health.

[29] Similarly, the allegations regarding the state of the mud structures are forward-looking rather than backward-looking. The applicants state that the mud structures are already in a serious state of disrepair and may collapse at any time, and that their attempts to maintain or rebuild them have been refused or obstructed. The respondents dispute the extent and cause of deterioration but do not seriously contest that the structures are fragile and vulnerable to weather damage, nor can or do they dispute that, in the instance of a dwelling collapsing and injury is suffered, no court order can reverse the possibility of physical harm.

[30] In the context of this matter, I am of the view that “substantial redress” cannot be equated with the abstract availability of similar relief at some future date. It must take account of the qualitative impact of the delay in the interim period. To use but one example: even if the court on the ordinary roll 12 months from now orders that a bus may enter the farm, such an order could not repair the educational prejudice suffered by the children on a daily basis until that time. Nor can a later order fully compensate for years of compromised dignity arising from the water and housing conditions.

[31] I am also mindful of the particular institutional context of the Land Court. While this Court is not immune from resource constraints, it does not face the same volume pressures as the busier divisions of the High Court. Its jurisdiction is focused on land, tenure and reform matters, and the litigants appearing before it, are often vulnerable farm occupiers (as is the case in this matter) and labour tenants whose access to persistent and well-resourced legal representation is limited.

[32] Furthermore, by the time the matter was argued on 24 November 2025 the respondents had had sufficient time to place a comprehensive answering affidavit of some 200-plus pages before the court, with voluminous annexures and detailed legal submissions. They have not, in their heads of argument or oral submissions, indicated any specific respect in which the truncated time periods prevented them from presenting material evidence or argument that would otherwise have been available. Whatever prejudice may have existed when the *rule nisi* was granted was substantially cured by the opportunity to file answering papers, heads of argument, and to argue the matter fully on the return day.

[33] In the result, I am satisfied that the applicants have, albeit not with ideal fullness, set out sufficient circumstances rendering the matter urgent and have demonstrated cogent reasons why substantial redress in due course would not be adequate in respect of the relief that they seek.

Remaining preliminary issues

[34] The application therefore falls to be considered on its merits, but first I turn to the remainder of the *in limine* points also raised by the respondents.

Disputes of fact and the *Plascon-Evans* approach

[35] The respondents submit that the application cannot properly be determined on the papers because there are material and irresolvable factual disputes. As articulated in argument, the disputes said to be material include: (a) the nature and extent of any permission given by the prior owners for cropping and grazing; (b) what, if any, permission was given by the previous owner, Mr van Oudtshoorn, regarding repairs or the erection of structures; (c) whether there is a need to repair

existing structures or erect new ones; (d) whether the respondents, instead of the Department of Education, are entitled to transport school children from the homesteads to the bus pick-up/drop-off point as an alternative to the school bus entering the farm; and (e) who sabotaged the boreholes.

[36] In motion proceedings where final relief is sought, disputes of fact are approached in accordance with the well-known principles in *Plascon-Evans*⁸, which lay down guidance on how a court should resolve factual disputes. However, the respondents' *in limine* objection that there are irresolvable disputes of facts fails for two related reasons. First, several of the "disputes" identified are either not disputes at all, or they are disputes only as to degree or detail rather than the existence of the right or entitlement said to be interfered with.

[37] On cropping and grazing, the respondents' own version records that each homestead may have a small vegetable garden and that specified grazing areas were allocated by the erstwhile owners, including a grazing area of approximately 60 hectares which was shared between the first and second applicants and another family, with the *Vilakazi* family having their own area. Therefore, the existence of some cropping and grazing entitlement is, on the respondents' own version, not in issue.

[38] Similarly, in relation to repairs and maintenance of the mud structures at the homesteads. The respondents repeatedly state that they have not refused reasonable maintenance and repairs to the existing mud structures, if required. Their objection is to brick and mortar construction. On the respondents' version,

⁸ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A)

therefore, the applicants' entitlement to do repairs and maintenance is not genuinely disputed.

[39] In respect of the school transport for the children, it is common cause that the respondents have resisted the school bus travelling on the internal farm road and justified its resistance by proposing alternatives to the bus collecting and dropping the children. There is no dispute that makes the resolution of this issue impossible.

[40] The question of who sabotaged the borehole infrastructure may appear to present a dispute of fact. However, that issue, even if accepted in the respondents' favour in terms of *Plascon-Evans*, does not by itself dispose of whether the applicants, as occupiers, have a right not to be denied access to water and whether the respondents' conduct amounts to a denial or deprivation of access to water.

[41] For these reasons, the asserted disputes do not render the matter incapable of determination on the papers. To the extent that any of the disputed matters prove material to a particular item of relief, the court is able, employing *Plascon-Evans*, to decide the application on the admitted facts together with the respondents' version.

A case made out in reply

[42] The respondents further submit that the applicants impermissibly made out their case in reply and that this offends the general trite principle that an applicant must stand or fall by the case made in the founding affidavit. A replying affidavit

is not the place to introduce a new cause of action or to shift the case the respondent must meet.

[43] According to my assessment, the general rule is not offended. In the present matter the relief sought remains that set out in the notice of motion. To the extent that there are additional averments in reply, much of it is directed at answering the respondents' version and addressing matters raised in the answering affidavit. In any event, and as a matter of approach, the proper remedy for genuinely new matter introduced in reply is ordinarily that it be disregarded. Since the respondents did not file a further affidavit or insist on filing a response to the alleged new matter, I shall in any event decide the matter, as far as possible, on the basis of the case made out in the founding papers read with the admissible responses thereto.

Abuse of process and "dirty hands"

[44] The respondents contend that the applicants' recourse to urgent proceedings and by obtaining an order in the form of a *rule nisi*, constitutes an abuse of process to obtain a tactical device to derail or delay the possible relocation of the applicants. Consequently, the applicants are accused of having approached the court with unclean hands.

[45] On the papers it is apparent that there has been a long history of animosity between the parties. Even accepting that there has been contested and protracted efforts to relocate the applicants, that does not, without more, establish that this application is an abuse. The applicants' position is that they do not intend

to relocate and that the respondents' conduct amounts to constructive eviction. It follows that the present application is directed at alleged ongoing interferences with rights they claim as occupiers. As to the allegations of "dirty hands", the papers reflect serious allegations and counter-allegations. At this stage, it is neither appropriate nor necessary to resolve issues of fault or moral blame as a bar to the adjudication of the parties' rights.

[46] Finally, insofar as the respondents rely on alleged non-disclosures to impugn the granting of the rule *nisi order*, it bears emphasis that there were no facts disclosed during the filing of the further affidavits which if known at the time the application was first considered would have prevented me from granting the *rule nisi order*.

THE MERITS

[47] I now turn to consider whether the applicants are entitled to the interdicts sought in the notice of motion. First, a brief exposition of the legal requirements an applicant seeking final relief must establish.

The legal framework – requirements for final interdict

[48] It is trite law, as per *Setlogelo*⁹, that an applicant who approaches a court on motion for the grant of a final interdict must establish three requisites, all of which must be present. These requirements are: (a) a clear right on the part of the applicant; (b) an injury actually committed or reasonably apprehended; and (c) the absence of any other satisfactory remedy.

⁹ *Setlogelo v Setlogelo* 1914 AD 221 at 227

[49] As for a clear right, an applicant must prove the right it seeks to protect on a balance of probabilities. Whether an applicant has such a right is a substantive law question, but whether it has been established is an evidential question¹⁰. The right must thus exist in law (encompassing the broad range of rights recognised by both common law and statutory law) and must be proved in fact, substantiated with evidence. Where the clear right is disputed the court employs the approach as laid down in *Plascon-Evans*¹¹ to resolve the dispute.

[50] A particular difficulty arises where the applicant establishes a clear right, but the respondent also asserts a competing right that is itself recognised in law. In the context of ESTA, this tension frequently manifests between an occupier's statutory and constitutional rights on the one hand, and the landowner's right to property protected by section 25 of the Constitution on the other.

[51] The Constitutional Court has addressed this tension in various judgments, but the most significant is the landmark judgment of *Daniels*¹² where the question was whether an ESTA occupier had the right to make improvements to her dwelling to render it habitable, without the consent of the owner. Ultimately, the approach sanctioned by the law is therefore one of balancing. As was stated in the *Port Elizabeth Municipality*¹³, the courts are called upon "*to balance competing interests in a principled way and promote the constitutional vision of a caring society based on good neighbourliness and shared concern*". The task is

¹⁰ *Equistock Properties 8 (Pty) Ltd and Another v Oosthuizen and Others* (738/2023; 739/2023) [2025] ZASCA 6 (29 January 2025) par 17

¹¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) 634-5; *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) para 55; *Thint (Pty) Ltd v National Director of Public Prosecutions*; *Zuma v National Director of Public Prosecutions* [\[2008\] ZACC 13](#); [2008 \(2\) SACR 421](#) (CC) para 8-10

¹² *Daniels v Scribante* 2017 (4) SA 341 (CC)

¹³ *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC)

to "balance out and reconcile the opposed claims in as just a manner as possible, taking account of all the interests involved and the specific factors relevant in each particular case". Section 6(2) of ESTA itself expressly provides for the balancing of the rights of the owner and ESTA occupier without prejudice to the rights contained in section 5 of ESTA.

[52] The second requirement for a final interdict is that the applicant must demonstrate an injury actually committed or reasonably apprehended, that is, an actual or threatened invasion of the right that has been established. In *V & A Waterfront Properties*¹⁴ the Supreme Court of Appeal, clarified the meaning of "injury" in the context of interdict proceedings. Ultimately, the legal position, as per *V & W Waterfront Properties*, is that the "injury" does not necessarily have to entail physical harm or pecuniary loss and that the term designates something actually done which is prejudicial to, or interferes with, the applicant's right. To prove the necessary injury or harm, it is enough to show that a right has been invaded; the fact that physical means were employed or physical consequences sustained is incidental¹⁵. Further, the injury must be of a continuing nature, or there must be a reasonable apprehension that it will be repeated¹⁶. The test in regard to the injury requirement is objective and the question is whether a reasonable man, confronted by the facts, would apprehend the probability of harm¹⁷.

¹⁴ *V&A Waterfront Properties (Pty) Ltd and Another v Helicopter and Marine Services (Pty) Ltd and Others* [2006] 3 All SA 523 (SCA); 2006 (1) SA 252 (SCA)

¹⁵ *V & A Waterfront* par 21

¹⁶ *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA) paras 21 - 21

¹⁷ *Minister of Law and Order v Nordien* [1987 \(2\) SA 894](#) (A) at 896. See also *Janit v Motor Industry Fund Administrators (Pty) Ltd* [\[1994\] ZASCA 110](#); [1995 \(4\) SA 293](#) (A) at 304, *End Conscription Campaign v Minister of Defence* [1989 \(2\) SA 180](#) (C) at 208I-209C

[53] The third and final requirement is that there must be no other ordinary or satisfactory remedy available to the applicant. Ultimately, the question is always whether the alternative remedy, if it exists, would (i) be adequate in the particular circumstances¹⁸, (ii) be ordinary and reasonable¹⁹, (iii) is a legal remedy²⁰, and (iv) grant similar protection than an interdict²¹. However, even where an injury may be capable of pecuniary evaluation and compensation, the court will grant an interdict if the injury is a continuing violation of the applicants' rights²².

The merits – Overarching narrative of constructive eviction

[54] Having addressed the applicable legal framework, I now turn to the merits of the applicants' case. However, before undertaking that exercise, it is instructive to consider the broader factual matrix within which the individual complaints must be understood.

[55] The applicants contend that, following their refusal to accept the respondents' various offers to relocate to the Sarashof farm, a series of events unfolded which collectively have rendered their continued occupation of Kolwani farm almost intolerable. They characterise these events as a form of constructive eviction as it amounted to an intentional curtailment of rights they have always enjoyed. These events also had the effect of altering their living conditions designed to coerce them into abandoning their ancestral home and accepting relocation on

¹⁸ *Berg River Municipality v Zelpy 2065 (Pty) Ltd* 2013 (4) SA 154 (WCC) at [44]– [51] – with reference to the authorities relied on.

¹⁹ *Martin v Kiesbeampste Newcastle Afdeling* 1958 (2) SA 649 (D) 654.

²⁰ *Hotz and Others v University of Cape Town* [2016] 4 All SA 723 (SCA), 2017 (2) SA 485 (SCA)

²¹ *Crystal Holdings (Pty) Ltd v Regional Land Claims Commissioner* [2008] 1 All SA 243 (N) paras 87–91.

²² *Crystal Holdings supra* with reference to *Wynberg Municipality v Dreyer* 1920 AD 439.

the respondents' terms. There are several factors which, on the papers before the Court, lend considerable support to the constructive eviction characterisation.

[56] First, the timing of events. It is common cause that negotiations for the applicants to relocate to Sarashof commenced in or around 2016 and continued through various iterations until at least 2024. The applicants consistently refused these proposals. While the respondents assert that the approval for a nature reserve existed much earlier, it is not entirely clear from the record when the approval was actually obtained. It seems to me the best indicator is that the respondents only seriously started to give effect to any nature reserve approval during 2020. The claim of a nature reserve protection and its development clearly became more apparent after it was obvious that the applicants would not voluntarily relocate to Sarashof or relocate voluntarily off the Kolwani farm.

[57] Second, and most tellingly, is the affidavit evidence of Ms Dorentia Stapelberg. In her confirmatory affidavit filed in support of the protection order proceedings, Ms Stapelberg, who describes herself as the Manager of the first respondent, recalls an incident in 2015 involving Meluzi Nzima, connected to the second applicant. Regarding the incident, she stated in 2024:

"That was the first incident I remembered and from that day these people was causing trouble and created havoc. We as management decided after many months of consideration these people will be better off elsewhere." [underlining added]

[58] This statement by Dorentia Stapelberg is revealing. It means that as early as 2015, a year after acquiring the farm, the respondents' management made a

decision that the applicant families *"will be better off elsewhere."* What followed this decision is a timeline of events that objectively made the applicants' lives on Kolwani farm progressively more difficult: (i) the destruction or sabotage of the borehole in 2017, (ii) the refusal to allow the school bus access from 2023, (iii) the refusal to permit repairs to the mud structures or to build new structures, and (iv) the use of herbicides near the applicants' dwellings and crops. The inference is irresistible that these were not isolated incidents or the reasonable exercise of ownership rights, but rather a coordinated effort to implement the 2015 management decision by making conditions so intolerable that the applicants would have no choice but to leave.

[59] Third, the affidavit of Mr Louis van Rheede Van Oudtshoorn, in support for the respondents' opposition, provides independent corroboration of the rights that the applicants assert. Mr van Oudtshoorn farmed with his father on Kolwani farm before it was sold to Klein Vrystaat Boerdery during 2014 and subsequently the first respondent. In his affidavit Mr Van Oudtshoorn confirms each of the rights that the applicants now seek to enforce. This evidence is particularly compelling because Mr van Oudtshoorn has no interest in the current dispute.

[60] Viewing these three considerations together, a clear picture emerges. The applicants enjoyed certain established rights under the Van Oudtshoorn ownership. Ultimately, the first respondent acquired the farm with an intention to develop it as a nature reserve and commercial farming operation and pursued the relocation of the applicants. When the applicants refused, a decision was made that they *"will be better off elsewhere,"* and a series of actions followed that systematically undermined the applicants' ability to live with dignity on the farm.

This constitutes, in substance if not in form, an attempt at constructive eviction, an unlawful attempt to circumvent the protections afforded to occupiers under ESTA by making their continued residence untenable.

[61] With this overarching context and framework in mind, I turn to consider each category of relief sought by the applicants.

School Bus Access

[62] As foreshadowed, the applicants are occupiers in terms of ESTA. Section 6(1) of ESTA provides that an occupier has the right to reside on and use the land on which he or she resided and to have access to such services as had been agreed upon with the owner or person in charge, "*whether expressly or tacitly.*" Section 6(2)(f) of ESTA goes further and provides that balanced with the rights of the owner or person in charge, includes the right "*not to be denied or deprived of access to educational ... services*".

[63] The evidence establishes that, for a substantial period, the learner transport arrangement functioned by way of the school bus entering the farm to collect learners. The applicants' evidence is supported by the letters from the school principal in August 2023 and 2025. Furthermore, Mr van Oudtshoorn confirms that the bus entered the farm even before the respondents acquired it, albeit that it was not by written agreement and was initially not with consent. That confirmation is relevant because it demonstrates that the arrangement is neither novel nor inherently infeasible. It is an incident of the occupation that had become established in practice. The right to have the school bus access the farm to collect children to attend school therefore falls squarely within the concept of "*services*"

as had been agreed upon" as envisaged in section 6(1). Furthermore, the right to have the bus enter the farm and collect the children at the homesteads is binding on the respondents as successors in title in terms of section 24 of ESTA²³.

[64] The respondents do not dispute that the learners must get to school. Their resistance is based on the maintenance costs of the road, security, safety, and the fact that they offered alternatives to the bus collecting the children on the farm. Those considerations are not irrelevant, and the respondents do have a legitimate interest in regulating access to their property and in ensuring safety on the farm roads. But that does not equate to an entitlement to impose a solution that, in effect, denies access to education where a workable solution exists. At this juncture it is necessary to point out that the right to education is enshrined in section 29 of the Constitution and immediately realisable²⁴. Any impediment to children accessing education must therefore be subjected to rigorous scrutiny. I am therefore satisfied that the applicants have established a clear right.

[65] In respect of the harm. It is certainly ongoing. On the evidence, learners are required to traverse a substantial distance on foot to reach the pick-up point at the R65, with predictable consequences for their safety and learning. This is not merely inconvenience. It is a continuing impairment of the right not to be denied access to educational services.

[66] In practical terms, there is no satisfactory alternative remedy that will secure immediate and consistent access for the children to have access to education. A

²³ The section provides that: (1) *The rights of an occupier shall, subject to the provisions of this Act, be binding on a successor in title of an owner or person in charge of the land concerned.*

²⁴ *Governing Body of the Juma Musjid Primary School v Essay NO2011* (8) BCLR 761 (CC) paras 36 - 37

claim for damages is illusory and repeated attempts to negotiate have not resolved the issue. The respondents' alternative offers do not appear to me will create a stable arrangement. Also, the alternative offers have the difficulty that the respondents can withdraw it at any time unilaterally. The applicants will benefit from a more permanent solution.

[67] Balancing the children's best interests and right to education against the respondents' legitimate property and security interests, the appropriate relief is not an unqualified right of entry by the bus at any time and in any manner. The respondents' concerns about road maintenance costs and damage are not persuasive, as the concerns are overstated and there are in any event patent difficulties with the respondents' claim that the road would be damaged, as the road is used daily by other heavy vehicles for farm operations.

[68] I am therefore, satisfied that a case has been made out for an interdict to compel the respondents to permit school bus access to collect and drop off the children.

Access to Water

[69] Water is fundamental to human life and dignity. Section 27(1)(b) of the Constitution provides that *"everyone has the right to have access to sufficient ... water."* Section 6(2)(e) of ESTA also includes the right *"not to be denied or deprived of access to water"*, balanced with the rights of the owner/person in charge. The phrase *"not to be denied or deprived"* is significant. It imposes a negative obligation: an occupier may not be denied access to water that they

previously had. Once the applicants established a right to access water that right could not simply be extinguished by the respondents' inaction.

[70] In *Mshengu*²⁵ the High Court considered the right of farm dwellers to access to water. The court held that section 6(2)(e) of ESTA grants farm dwellers a right not to be deprived of access to water, and that these rights places obligations on landowners to act reasonably and in good faith when municipalities seek to provide water services on private land.²⁶ While that case concerned the obligations of municipalities, the underlying principle applies equally here. A landowner cannot simply abandon farm occupiers to conditions without access to clean water.

[71] Returning to the merits. Once again, the evidence of Mr van Oudtshoorn is determinative. He confirms that under his father's ownership, the applicants' families had access to water from a borehole located on the farm. The applicants' families used this borehole for decades for drinking water and domestic purposes. The respondents concede that when they acquired the farm in 2014, there was a functional borehole, with an electrical pump. They further concede that in or around 2015, due to changes in the internal layout of the farm related to the alleged nature reserve development, the electrical pump was replaced with a handpump. The respondents therefore did not dispute the applicants' pre-existing access to water right. This means that on the papers at least the following is common cause: (i) historically the applicants had access to water by virtue of a

²⁵ *Mshengu and Others v Msunduzi Local Municipality and Others* (11340/2017P) [2019] ZAKZPHC 52; [2019] 4 All SA 469 (KZP) (29 July 2019)

²⁶ *Mshengu supra* Par 53

borehole; (ii) that borehole is no longer operational; and (iii) the applicants currently draw water from a source shared with animals.

[72] The respondents seek to meet the water complaint primarily with a dispute of fact. They allege sabotage of the borehole by an unknown person and deny responsibility. In my view, that does not answer the case the applicants advance as the issue, for purposes of the interdictory relief, is not who destroyed the borehole. The decisive issue is whether the applicants, as occupiers, are being denied or deprived of access to potable water in circumstances where, historically, access existed and where the current position is plainly inconsistent with dignified human habitation.

[73] In any event the sabotage narrative is not convincing for various reasons:

[73.1] First, it defies logic and common sense. Why would the applicants deliberately destroy their only source of clean drinking water, knowing that this would leave them with no alternative but to drink water from fountains and dams used by livestock?

[73.2] Second, the chronology is telling. The borehole was destroyed in 2017, the same period during which relocation negotiations had commenced or was ongoing and, according to Ms Stapelberg's affidavit, management had already decided the applicants "*will be better off elsewhere.*" The timing strongly suggests aspersions being directed rather to the respondents to make conditions intolerable.

[73.3] Third, the applicants' subsequent conduct is inconsistent with them destroying the borehole. Since 2017, the applicants have consistently

sought restoration of access to clean water. They raised this issue with Legal Aid South Africa, with the Department of Land Affairs, and ultimately in these proceedings. If they had been responsible for destroying the borehole, one would expect them to have remained silent on the issue or to have sought to conceal their role. Instead, they have been vocal and persistent in demanding that access to water be restored.

[73.4] What is most telling is the respondents' response to the alleged "sabotage." If the respondents genuinely believed that the applicants had destroyed valuable farm infrastructure, one would expect them to have reported the matter to the police and laid criminal charges; or instituted civil proceedings for damages. The respondents did none of these things. The respondents simply left the borehole destroyed and forced the applicants to resort to drinking water from sources shared with the livestock. This inaction speaks volumes. It suggests that the respondents were not genuinely aggrieved by "sabotage" but were content, perhaps even pleased, that the borehole had been rendered inoperable, as this furthered their objective of making the applicants' living conditions untenable.

[74] As a result, even on the respondents' version, the applicants have been left without dignified access to water for years. ESTA does not permit an owner to meet an occupier's entitlement to water by pointing to a lack of fault, while the occupier continues to drink from an animal water source. I am therefore satisfied that a clear right has been established.

[75] The harm is ongoing and obvious. The continued absence of a reliable supply of potable water, and the need to obtain water from a source used by animals, is a continuing invasion of the applicants' rights and dignity, with an objectively reasonable apprehension of health consequences.

[76] No other satisfactory remedy is apparent. The applicants cannot secure potable water by their own means without access to infrastructure on the farm. The right sought to be protected is immediate and continuing. The respondents argue that even if the applicants have a right to water, the appropriate remedy is unclear. They point out that there were multiple homesteads and only one borehole and suggest that installing a borehole at each homestead would be unreasonably burdensome. This objection mischaracterises the relief sought. The applicants do not seek a borehole at each individual homestead. They seek restoration of access to clean water.

[77] The most obvious and appropriate remedy, indeed, the one that would restore the status *quo ante*, is for the first respondent to provide the applicants access to water. Whether that is achieved by repairing the borehole or some, sinking a new borehole, installing tanks, or another practicable method, is a matter of implementation. What is not negotiable is that a supply of potable water must be made available.

[78] Although, the *rule nisi* provided that the fourth respondent, in the alternative, had to provide water to the applicants, no response was received from the Minister, and the respondents also did not make this alternative order the focus of their defence. In any event, even if it could be asserted that the Minister carry some responsibility to provide the applicants with access to water, it does not

absolve the first respondent of its obligations. As the owner of the land on which the applicants reside, and as the entity that has benefited from the applicants' families' occupation over many years, the first respondent bears responsibility for ensuring that the applicants are not deprived of access to water.

[79] Consequently, the applicants are entitled to an interdict in respect of their right to access to water.

Renovation of mud structures

[80] The applicants seek to rebuild the mud or brick structures they currently reside in on the same foundations as their existing structures. The respondents' position is that they don't deny the applicants the opportunity to undertake reasonable maintenance and repairs on the residential mud structures. However, the respondents refuse to accede to bricks being utilised to rebuild the structures given the nature reserve status of the farm. Also, according to the respondents the level of deterioration in condition of the structures are not such that it requires renovation or improvements. Consequently, the respondents position is that the applicants have failed to establish a clear right to the relief.

[81] I am satisfied that the rebuilding with brick material issue is not clear enough for the court to adjudicate definitively. However, I interpose to briefly express my view on the issue of the 'adequacy' of the structures. I have great difficulty with the proposition that a landowner can prescribe what standard of accommodation is 'adequate' for an occupier. The Constitutional and statutory framework has shed a clear light on what constitutes 'adequate' housing in South Africa. To that end, section 26(1) of the Constitution provides that everyone has the right to have

access to 'adequate' housing. The Constitutional Court's judgments of *Grootboom*²⁷ and *Blue Moonlight*²⁸, and other academic sources and jurisprudence²⁹, confirmed that the right to adequate housing "*entails more than bricks and mortar*" and envisage a sense of permanence with '*adequate protection against the elements*'. It therefore seems to me that the material required to build a dwelling is not the standard to determine whether a structure is 'adequate', but that the test is rather whether the structure has a sense of 'permanence' and provide adequate 'protection against the elements' that would provide for a 'dignified' security of tenure. That should serve as the minimum standard, not a landowner's subjective conviction what 'adequate' is, especially in circumstances like this matter, where the landowner's objective is to construct the relocation or eviction of the occupiers.

[82] It follows from the foregoing that the applicants could make out a case that the right to security of tenure requires in their specific instance the building of structures constructed with bricks. However, notionally that issue is not before me, so I rather continue to only consider whether the applicants are entitled to an interdict at least in respect of the mud structures.

[83] Again, the evidence of Mr. Van Oudtshoorn is dispositive of the question whether the applicants have established a clear right to reconstruct or renovate

²⁷ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)

²⁸ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* 2012 (2) SA 104 (CC)

²⁹ Housing Act 107 of 1997; National Housing Code of 2009; United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 4, which include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; *habitability*; accessibility; location; and cultural adequacy; *Erasmus v Mtenje and Others* (LCC 202/2017) [2018] ZALCC 12 (12 June 2018); *De Jager and Another v Mazibuko* (LCC57/2020) [2020] ZALCC 7 (25 August 2020)

the mud structures. He confirms that under his father's ownership, the applicants had the right to undertake renovations to the mud structures. This was part of the agreed-upon conditions of their occupation. That right, like the other rights discussed above, is binding on the respondents as successors in title under section 24 of ESTA. Furthermore, section 6(2)(dB) of ESTA now makes express provision that an occupier can “...*take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family.*” Lastly, section 5 and 6 of ESTA entitle ESTA occupiers to occupy their dwelling under conditions that are consistent with human dignity

[84] That the applicants have a clear right is further supported by *Daniels*³⁰ that makes plain that ESTA occupiers are not to be left in conditions that undermine the habitability of their homes and thus their dignity. Improvements and repairs necessary for dignified living are part of the protective purpose of ESTA³¹.

[85] The photographs in the papers, including those relied upon by the respondents, show at least that the structures are rudimentary and, on any sensible approach, require repair and, in places, rebuilding to remain safe and habitable. Where ESTA occupiers are compelled, through refusal of permission or obstruction, to remain in dilapidated dwellings that are at risk of collapse or are otherwise unsafe, the harm is continuing. It is also reasonably apprehended that the harm will persist unless the court intervenes.

[86] On the status of the structures and whether they in fact requires renovation, the respondents attempted to raise a dispute of fact. However, there cannot be

³⁰ *Daniels v Scribante and Another* 2017 (4) SA 341 (CC); 2017 (8) BCLR 949 (CC)

³¹ *Daniels supra* paras 209 – 210; 212

any dispute about the status of the structures. The photographs serve as objective evidence. These are mud structures that have deteriorated over time and were damaged by a storm. The roofs leak and the walls are crumbling. The structures are, in the applicants' uncontroverted evidence, at risk of collapse. These are not dwellings that meet any recognisable standard of habitability or human dignity. To the extent that it may be said that a dispute exists about whether the structures are in such a state that they require renovation I reject the respondents' version as untenable³², as they don't live in the structures, the applicants and their families do. There is nothing to gainsay the applicants' claim of the status of the structures.

[87] Again, the invasion of the applicants' rights is ongoing. The applicants provide a particularly troubling account of the respondents' interference with their attempt to do repairs to the structures. They state that on multiple occasions when they have attempted to undertake repairs, a drone controlled by the respondents has flown over their homes, taking photographs. Shortly thereafter, the third respondent would arrive in his bakkie and demand that the work cease. This account given is added credence by the fact that the very photographs annexed as annexures by the respondents to show the condition of the structures, are drone photographs. This confirms that the respondents have indeed been conducting aerial surveillance of the applicants' homes. This conduct is a clear violation of the applicants' rights to privacy and dignity under section 5 of ESTA. It also supports the applicants' complaint that the respondents have been actively

³² by following the *Plascon-Evans* approach

preventing the applicants from maintaining their dwellings in a habitable state. This is precisely the conduct that ESTA prohibits.

[88] Lastly, the question of whether there is an alternative remedy. This is where the issue of meaningful engagement as confirmed in *Daniels* is also relevant³³. The respondents indeed rely on *Daniels* and suggest that there has “...*been no recent engagement or request to any alterations or maintenance to their houses.*” However, the respondents do not refuse maintenance and repairs to the mud structures and are also amenable to allow the applicants to replace dilapidated structures with structures of similar nature on the old foundations. However, the respondents insist that before any maintenance or repairs are done it must be preceded by a process of engagement.

[89] The concept of “meaningful engagement” generally means a process in which two or more parties talk and listen to each other meaningfully in order to achieve certain objectives³⁴. However, the evidence demonstrates that the applicants in fact did attempt to engage but the respondents simply refused. In a letter by the applicants’ attorney dated 12 September 2025 the issue was pertinently raised, and the respondents were reminded in that letter that the refusal to permit the applicants to rebuild their homes cannot be kept in abeyance any longer. The Human Rights Commission was also involved, and the building of structures was again raised.

³³ The issue of meaningful engagement can also fit under the requirement of whether a clear right has been established. Since, the applicants have established a clear right, I deal with it as an alternative remedy. In any event wherever one locates the meaningful engagement requirement I am satisfied that it does not create a bar to the relief that is being sought.

³⁴ *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* (2008 (3) SA 208 (CC) ; 2008 (5) BCLR 475 (CC) par 14–15.

[90] Ultimately, the principle that the judgments of *Daniels* and *Basfour*³⁵ promote is that an occupier cannot resort to self-help. So, even if it can be said that the attempt at meaningful engagement is not convincing, I am satisfied that the applicants did engage with the respondents on the issue of reasonable renovations but that the parties could not come to an agreement. The applicants therefore acted in compliance with *Daniels* and *Basfour* approach and rather approached the court. Consequently, I am persuaded by the facts of the circumstances of this matter that there is no satisfactory remedy other than interdictory or mandatory relief regulating what may be done by the applicants to improve their living conditions.

Cropping and Grazing Rights

[91] Finally, the applicants seek confirmation of their rights to cultivate specific areas of land for crop production and to graze their livestock in designated grazing areas. Again, in accordance with section 6(1) of ESTA the phrase "*use the land*" certainly encompasses agricultural activities such as cropping and grazing. These are not incidental activities; they are often central to the livelihoods and food security of farm occupiers.

[92] The applicants' case is framed as restoration of the "*status quo ante*" relating to cropping and grazing land. Mr van Oudtshoorn's affidavit is again decisive in delineating what the position was, in that: (i) the *Vilakazi* family had a camp around the dwelling of approximately 9 hectares. The *Majola*, *Nzima* and *Ngwenya* families had a single camp around their dwellings, approximately 60

³⁵ *Basfour 3327 (Pty) Ltd v Thwala and Others* (1008/2023) [2025] ZASCA 105 (18 July 2025) par 65

hectares in total. Grazing was not permitted outside these two camps, and only a limited number of animals were allowed. Each homestead also had a small vegetable garden adjacent to the homestead.

[93] The *Nzima* family (second applicant) and *Ngwenya* family (first applicant) shared a grazing area of approximately 60 hectares with another previous occupier, Mr Majola, meaning each family was entitled to approximately 20 hectares. When Majola relocated, his portion, according to the respondents, should have reverted to the first respondent, but the first and second applicants have prevented this and continue to use the full area.

[94] The respondents do not dispute the Van Oudtshoorn evidence regarding the historical extent of the grazing and cropping rights. What they dispute is whether the applicants may continue to exercise these rights following the development of the nature reserve and the relocation of the *Majola* family. The respondents' primary argument is that the grazing areas in question now fall within the boundaries of the proclaimed nature reserve, and that continued agricultural use is incompatible with conservation objectives. Once again, this argument fails for similar reasons discussed above. The respondents cannot rely on their own development choices, made with full knowledge of the applicants' presence and rights, to retrospectively extinguish rights protected by ESTA.

[95] When the respondents acquired Kolwani farm in 2014, the applicants were residing there and exercising cropping and grazing rights. Those rights were protected by section 6(1) of ESTA and became binding on the respondents under section 24. The respondents then chose to pursue nature reserve development. If that development is genuinely incompatible with the applicants' continued

occupation, the respondents' remedy is to follow eviction or relocation procedures. The respondents may not bypass ESTA's requirements and procedures by simply declaring areas off-limits and asserting that their development plans take precedence.

[96] There is uncontroverted evidence that herbicides have been sprayed near their dwellings and crops, resulting in damage to their crops and the death of livestock. This conduct, if established, would constitute a serious interference with the applicants' use rights under section 6(1) of ESTA.

[97] The one area of complexity concerns the portion of grazing land that was previously used by the *Majola* family, who relocated in 2016. The respondents argue that this portion should have reverted to them and that the first and second applicants have unlawfully prevented them from taking control of it.

[98] On this issue, I agree with the respondents to a limited extent. When the *Majola* family relocated, the right to use that portion of the grazing area was extinguished. However, this does not mean that the land automatically became available for the respondents' unfettered use as the land was part of the grazing area historically designated for use by occupiers. The question is whether the first and second applicants are entitled to continue using the *Majola* portion, or whether a different arrangement must be negotiated.

[99] The appropriate resolution is that the first and second applicants are entitled to continue using the grazing areas that they historically used, their respective 20-hectare portions. The *Majola* portion, the remaining 20 hectares of the approximately 60-hectare grazing area, is not automatically available to the

respondents for other uses. Rather, any change in the use of that land should be subject to consultation with the remaining occupiers, as it forms part of the broader grazing infrastructure on which they have relied. However, I make no final order on this issue, as it was not fully ventilated in argument and may require further engagement between the parties.

[100] The applicants have established their rights to continue cropping and grazing as confirmed in the Van Oudtshoorn affidavit. The respondents will be interdicted from interfering with the applicants' exercise of these rights.

Conclusion

[101] For all the reasons set out above, the applicants have made out a case for final relief in the notice of motion. In respect of costs, there are no exceptional circumstances that warrant a departure from the general approach in this court that costs are not granted against the unsuccessful party.

Consequently, the following order is made:

The interim interdict granted by this Court on 18 September 2025 is hereby confirmed subject to the variations set out below.

1. The forms and services prescribed by the rules of this court be dispensed with and the matter is heard as one of urgency in terms of Rule 34.
2. The First to Third Respondents and anyone acting on their instructions, are interdicted and restrained from preventing or obstructing the school bus authorised by the Department of Education from entering Farm 412

Kolwani, Amsterdam, to collect and return the school-going children of the Applicants at their homesteads.

3. The first respondent is directed to restore the applicants' access to potable water within 30 days of this order, by one or more of the following means:
 - 3.1 Reconstructing and rendering operational the existing borehole previously used by the applicants for potable water;
 - 3.2 As an alternative to 3.1, installing alternative water infrastructure capable of providing potable water to the applicants' homesteads;
 - 3.3 Further in the alternative to 3.1 and 3.2, arranging the delivery of water tanks containing potable water sufficient for the domestic needs of the applicants and their households.
4. The restored water supply, as foreshadowed in 3.1 to 3.3 above must provide potable water that is separate and distinct from any water sources used by animals on the farm, and must be maintained thereafter at the first respondent's expense.
5. Pending full compliance with the provisions of paragraphs 3 and 4 (including sub-paragraphs), the first respondent shall forthwith, from the date of this order, ensure that temporary water tanks containing potable water are available to the applicants, sufficient for their domestic needs.
6. The First to Third Respondents and anyone acting on their instructions, are interdicted and restrained from interfering with the Applicants' rebuilding or repairing their existing dwellings on the same footprints of

the current structures, to the extent reasonably necessary to ensure the habitability and safety of those dwellings, provided that the Applicants shall not use brick material to effect such rebuilding or repairs.

7. The First to Third Respondents, and anyone acting on their instructions, are interdicted and restrained from interfering with the applicants' exercise of their existing grazing rights, being 20 hectares each for the First and Second Applicants and 9 hectares for the Third Applicant, together with their respective vegetable gardens.
8. For the avoidance of doubt, the order in paragraph 7 above does not authorise or extend grazing rights beyond the demarcated areas described above.
9. Each party to pay their own costs.


A MONTZINGER
Acting Judge of the Land Court

Appearances:

Counsel for applicants:	Adv B Lukhele
Attorneys for applicants:	Ledwaba Mazwai
Attorney for respondents:	Cox & Partners Inc Attorneys
Counsel for respondents:	Adv G Van der Walt SC

