REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025-132793

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

06/03/2026
DATE SIGNATURE

MUSTAFA MOHAMED N.O.	First Applicant/ First Intervening Party
JOHAN FRANCOIS ENGELBRECHT N.O.	Second Applicant/ Second Intervening Party
JOHN NGOATLANA MZIMBA N.O.	Third Applicant/ Third Intervening Party

[In their capacities as the duly appointed joint liquidators of Africa Consult (Pty) Ltd previously known as Toro Ya Africa Consultants (Pty) Ltd (in liquidation) (Reg. No: 2003/011055/07) Master's Ref No. M000333/19]

and

SEKGOBO MORRIS MOTAUNG (Registration No. 855743)	First Respondent
THE REGISTRAR OF DEEDS, PRETORIA	Second Respondent

NORTH-WEST HOUSING CORPORATION	Third Respondent
TORO YA AFRICA (PTY) LTD	Fourth Respondent
PARK VILLAGE AUCTIONEERS	Fifth Respondent

In Re:

CASE NO: 2025-132793

In the matter between:

SEKGOBO MORRIS MOTAUNG	Applicant

and

THE REGISTRAR OF DEEDS, PRETORIA	First Respondent
NORTH-WEST HOUSING CORPORATION	Second Respondent
TORO YA AFRICA (PTY) LTD	Third Respondent
PARK VILLAGE AUCTIONEERS	Fourth Respondent

and

MUSTAFA MOHAMED N.O.	First Intervening Party
JOHAN FRANCOIS ENGELBRECHT N.O.	Second Intervening Party
JOHN NGOATLANA MZIMBA N.O.	Third Intervening Party

[In their capacities as the duly appointed
Joint liquidators of Africa Consult (Pty) Ltd
Previously known as Toro Ya Africa
Consultants (Pty) Ltd (in liquidation)
(Reg. No: 2003/011055/07)
Master's Ref No: M00033/19]

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 10:00 on 6 March 2026.

J U D G M E N T

<u>TEFFO, J</u>:

<u>Introduction</u>

[1] The first respondent launched an *ex parte* application on an urgent basis in this Court under the above-mentioned case number in terms of which he sought an order that the second respondent be interdicted from registering the property on Erf 3[...], Zone 9, Ga-Rankuwa ("*the property*") to any person other than him and that he be authorised to transfer the property into his names ("*the main application*").

[2] On 26 August 2025 this Court granted the urgent application and interdicted the second respondent from registering the property to any person other than the first respondent. The court further issued a rule *nisi* returnable on 22 October 2025 calling upon the respondents to show cause why the order should not be confirmed.

[3] Before me is an application by the joint liquidators of Africa Consult Co (Pty) Ltd previously known as Toro Ya Africa Consultants (Pty) Ltd ("*Toro*") (in liquidation) ("*the applicants*") seeking leave to intervene in the main application and anticipate the return date issued by this Court on 26 August 2025. They further seek to oppose the relief sought in the main application in terms of Rule 6(8) of the Uniform Rules of Court on an urgent basis and/or a

reconsideration of the order granted on 26 August 2025 in terms of Rule 6(12)(c) of the Uniform Rules of Court.

[4] The application is only opposed by the first respondent.

<u>The parties</u>

[5] The applicants are Mustafa Mohamed N.O. (the first applicant), Johan Francois Engelbrecht N.O. (the second applicant) and John Ngoatlana Mzimba N.O. (the third applicant). They will be referred to collectively as the liquidators.

[6] The first respondent is an adult male person who is currently residing at the property. He was the applicant in the main application. For the sake of convenience in this application, he will be referred to as Mr Motaung.

[7] The second respondent in this application and the first respondent in the main application is the Registrar of Deeds, Pretoria. He has been cited in his official capacity. He will conveniently be referred to as the "*Registrar*".

[8] The third respondent in this application and the second respondent in the main application is the North-West Housing Corporation. It is an entity of the State responsible for the development and sale of the properties in the North-West Province of South Africa. It will conveniently be referred to as the "*Housing Corporation*".

[9] The fourth respondent and third respondent in the main application is Toro Ya Africa (Pty) Ltd. Where necessary it will be referred to as "*Toro*".

[10] The fifth respondent and fourth respondent in the main application is Park Village Auctioneers. They will be referred to in this application as the auctioneers.

Background

[11] In terms of a deed of sale concluded by and between the Housing Corporation and Mr Motaung on 22 April 2002, the Housing Corporation sold and Mr Motaung purchased the property for the sum of R17 775,00 (seventeen thousand seven hundred and seventy-five rand). Mr Motaung also took occupation of the property.

[12] He alleges that pursuant thereto, he made two payments to the Housing Corporation for the purchase price in the amounts of R1 000,00 on 10 September 2007 and R16 700,00 on 10 June 2008 respectively.

[13] In terms of annexure MM5, an extract from the database of the Registrar, the same property was purchased by Toro on 4 October 2006 and registered into its name on 22 November 2007.

[14] Africa Consult Co (Pty) Ltd, previously known as Toro was placed in final winding-up by a special resolution which was later converted to a compulsory winding-up order by the court. Toro, during its existence *inter alia* conducted various developments of local housing units (RDP housing) for government institutions. It also acted as a contractor on various developments. It acquired various pieces of land which were either developed and/or rezoned, sub-divided and thereafter sold or sold prior to development.

[15] All the developments conducted by Toro showed remarkable losses and caused institutions such as the Industrial Development Corporation ("*IDC*") to lose investments made in the developments with Toro to the tune of more than R300 000 000,00 (three hundred million rand).

[16] This prompted the liquidators to approach the North-West High Court to *inter alia* approve the enquiries in terms of sections 417 and 418 of the Companies Act 61 of 1973 ("*the old Companies Act*") to ascertain the *modus operandi* of Toro and investigate the extent of its losses suffered when conducting the developments and the reasons thereof. The liquidators also sought an order declaring Toro unable to pay the debts in terms of section 388 of the old Companies Act. The order was eventually granted on 9 May 2024.

[17] During the enquiries and when administering the estate of Toro, it came to the attention of the liquidators that Toro concluded various agreements for the sale and purchase of the erven and that the various erven which included amongst others, the property which forms the subject-matter of this application, were registered in the names of Toro.

[18] The liquidators have by way of administration steps taken, sold the property to Tshidumo Projects.

[19] Mr Motaung alleges that in May 2025 he learnt that various immovable properties in Zone 9, Ga-Rankuwa were to be auctioned. He later saw an advertising Billboard on one of the streets indicating that immovable properties in the area were to be auctioned. He later learnt from the members

of the Steering Committee that was established to enquire and resolve the issue, that his property was also enlisted to be auctioned.

[20] Mr Motaung further alleges that he contacted an official of the auctioneers, Ms Debbie Scholes, and requested the details about the auction. Ms Scholes informed him that the auctioneers were only acting as agents on instructions of Zenande Trust. On 27 May 2025 Ms Scholes referred him to an official of Toro whom he attempted to contact without success.

[21] He avers that on 19 July 2005 while at his residence, he was approached by three persons who informed him that they had purchased the property on auction and gave him a month to vacate the property.

[22] This led to the launching of the main application.

<u>The liquidators' case</u>

[23] The liquidators raise the following issues in this application:

23.1 That this application is urgent.

23.2 They request leave to intervene in the main application.

23.3 In the event they succeed with the application to intervene, they seek anticipation of the return date and reconsideration of the main application. They rely on the provisions of Rule 6(8) and Rule 6(12)(c) of the Uniform Rules of Court.

23.4 They further request the *rule nisi* to be discharged and that the main application be dismissed.

[24] They contend that the basis for the intervention, the request for the *rule nisi* to be discharged, and the main application dismissed is the following:

(a) that Mr Motaung is not the registered owner of the property.

(b) They as representing the insolvent estate of Toro are the registered owners of the property which ownership has been in existence for almost 18 years.

(c) In terms of insolvency law, they validly and legally sold the property on auction.

(d) The urgent *ex parte* application launched by the applicant should never have been launched on an *ex parte* basis and was never urgent.

(e) The main application as it stands suffers from various material and patent defects.

[25] They also deal with the requirements for an interdict.

Discussion

Urgency

[26] In dealing with urgency the liquidators contend that they have launched this application because the main application was never served on them and the order of 26 August 2025 only came to their attention through an e-mail sent by the auctioneers. They claim that the immovable properties resorting within Toro in liquidation have been sold in a group to a third party for such

developer to commence with the developments in those properties. They assert that if one property does not form part of the developments, the whole intended development may collapse.

[27] They claim that it is a *fait accompli* that a new purchaser could cancel the agreement in respect of all the properties if this property in question poses to be an issue.

[28] It was submitted in the heads of argument filed on their behalf that the estate of Toro (in liquidation) will not obtain substantial redress in due course because by then the purchaser of the erven would have cancelled the sale leaving the estate with a massive loss.

[29] It was further submitted that the creditors require payment of their claims and have been held up by the irregular interdict granted in favour of Mr Motaung in the main application. They claim that the administration of the estate cannot be concluded whilst the interdict is still in existence and neither can the sale transaction be finalised.

[30] Furthermore, it was submitted that the situation is aggravated by the fact that Mr Motaung is not the lawful owner of the property and no case has been made for the interdict against the sale and transfer of the property. They assert that Toro has been the owner of the property since October 2006, the property rights and the right to ownership of the estate is trampled by the interdict which should never have been granted. They contend that for this reason the interdict must be urgently discharged to ensure that the estate rights are restored.

[31] It appears from the papers that Mr Motaung filed his replying affidavit outside the time frames that were given. The respondents sought an order to strike out the replying affidavit in that it was filed late.

[32] The intervention application and the answering affidavit to the main application were served on Mr Motaung's legal representatives by email on 30 September 2025 at 09:35. In terms of the notice of motion for the intervening application, Mr Motaung was required to notify the liquidators' attorneys in writing on/or before 30 September 2025 by close of business at 16:00 of his intention to oppose the application; and then file his affidavit in answer to the allegations made in the intervening application on/before 2 October 2025 at 10:00.

[33] The so-called replying affidavit by Mr Motaung is dated 3 October 2025. There is no indication as to when it was filed. At the time I heard the matter, it was already filed. It is important to note that when I heard the application all papers were filed and the issues were fully ventilated. I do not find any valid reason to strike out the replying affidavit of Mr Motaung as alluded to by the liquidators.

[34] I note from the replying affidavit of Mr Motaung that the urgency of the intervention application was not challenged. The allegations made regarding the urgency thereof remain uncontested. Consequently, I find that the application is urgent.

<u>Should the liquidators be allowed to intervene in the main application</u>?

[35] The liquidators contend that they have a substantial and direct interest in the subject-matter of the main application and the outcome thereof. They should therefore be allowed to intervene in these proceedings for the following reasons:

(a) not only was Toro cited as the third respondent in the main application, Toro is also the registered owner of the property in question.

(b) They have by way of administration steps taken, sold the immovable property to a purchaser/developer who has not been joined in these proceedings.

[36] In reply, Mr Motaung contends that the main application was not instituted against the liquidators (the intervening parties). He claims that the liquidators lack *locus standi to intervene* in these proceedings. Mr Motaung further contends he would not have initiated an action against the purchaser of the property who was not known to him. He concedes that he learnt of the liquidators from the auctioneers but avers that the information was hearsay and it has now been confirmed by the liquidators.

[37] Rule 12 of the Uniform Rules of Court provides that any person entitled to join as a plaintiff or liable to be joined as a defendant in any action may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a plaintiff or defendant. The court may upon such application make such order, including any order as to costs, and give such directions as to further procedure in the action as to it may seem meet.

[38] Our courts have held that a party is entitled to intervene as a plaintiff or defendant in an action where:

(a) it has a direct and substantial interest in the right that is the subject-matter of the action, which could be prejudiced by the judgment of the court. The interest must be such that the intervenor's joinder is either necessary or convenient. But the possibility that a legal interest exists is sufficient, and it is not necessary for the court positively to determine that it exists.

(b) The allegations made by the intervening applicant constitute a *prima facie* case or defence. It is, however, not necessary for the intervenor to satisfy the court that it will succeed in its case or defence. It is sufficient for the party seeking to intervene to rely on allegations which if they can be proved in the main action would entitle it to succeed. In assessing the intervenor's standing, then, the court must assume that the allegations it advances are true and correct; and

(c) the application is made seriously and is not frivolous.[1]

[39] It is common cause between the parties that Mr Motaung is not the registered owner of the property. The registered owner of the property is Toro in liquidation. He concedes in his papers that when he enquired about the auction of the property from Ms Scholes of the auctioneers, he was referred to Zenande Trust whom he was not successful in reaching for information. Had

[1] *Peermont Global (KZN) (Pty) Ltd v Afrisun (KZN) (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and Others and a related matter* [2020] 4 All SA 226 (KZP) at para 18 and the cases cited herein

he managed to contact Zenande Trust, he would have found information about the liquidation of Toro which was only cited as a party not in liquidation in the main application.

[40] I do not agree that the liquidators do not have *locus standi* to intervene in the proceedings. I am satisfied that there is a possibility that a legal interest exists by virtue of the fact that Toro in liquidation is the owner of the property that is the subject-matter of the main application. The liquidators therefore have a direct and substantial interest in the right that is the subject-matter of the main application which could be prejudiced by the order of court. Under the circumstances leave is granted to the liquidators to intervene as parties in the main application.

<u>Anticipation of the return date and reconsideration of the order of 26 August 2025</u>

[41] Rule 6(8) of the Uniform Rules of court provides that any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice.

[42] Uniform Rule 6(12)(c) provides that any person against whom an order was granted in such person's absence in an urgent application may by notice set down the matter for reconsideration of the order.

[43] The jurisdictional facts establishing the discretion provided are:

(a) the granting of the order in the absence of the party affected thereby.

(b) by way of urgent proceedings as intended under Rule 6(12).[2]

[44] The court has a wide discretion to redress the imbalance and injustices and oppression flowing from an order granted on urgency and in the absence of the other party.[3]

Shortcomings in the *ex parte* urgent application

[45] The liquidators contend that the founding affidavit in the main application does not address any grounds to have approached this Court on urgent and *ex parte* basis. In reply thereto, Mr Motaung claim that if the main application was brought in the ordinary cause, there was a likelihood of the property being registered in the office of the registrar to his prejudice.

[46] There is merit in the submission by the liquidators that nowhere in the founding affidavit in the main application does Mr Motaung address the reasons why the main application was brought *ex parte* and on an urgent basis. However, the application was eventually granted. Mr Motaung's reply in the replying affidavit regarding this issue is immaterial. It does not assist his case as he cannot make a case in the replying affidavit. I agree that the *ex parte* urgent application should not have been granted.

Non-joinder of the liquidators and the purchaser of the property

[47] The liquidators claim that Mr Motaung was aware from his version that Zenande Trustees instructed the sale of the property and that Toro was liquidated. Further that the liquidators who conducted its administration

[2] *Sheriff Pretoria North-East v Flink* [2005] 3 All SA 492 (T)
[3] *Chesterfin (Pty) Ltd v Contract Forwarding (Pty) Ltd and Others* 2002 (1) SA 155 (T) 162 overruled by *Contract Forwarding (Pty) Ltd v Chesterfin (Pty) Ltd* 2003 (2) SA 253 (SCA)

through the offices of Zenande were appointed. Furthermore, he should have known that the immovable properties were being sold pursuant to the insolvency of Toro.

[48] In the founding affidavit in the main application, Mr Motaung avers that Ms Scholes of the auctioneers informed him that the auctioneers were only acting as the agents on the instruction of Zenande Trust. He was also referred to the officials of Toro.

[49] The fact that he was aware that his property was enlisted amongst the immovable properties which were to be auctioned, should have led him to Zenande Trust as the auctioneers' official, Ms Scholes informed him according to his version that the auctioneers were acting on the instructions of Zenande Trust.

[50] Mr Motaung concedes that he learnt from the auctioneers that his property was put on sale and that the sale was directed through Toro. He further says he could not have brought the application against the person unknown to him. This also applies to the non-joinder of the purchaser of the property.

[51] Mr Motaung alleges that people approached him at his residence and informed him that they were the owners of the property and he must vacate the property. He never took their names and/or request information from them.

[52] From his own version, it is evident that he knew that Zenande Trust had instructed the auctioneers to put his property on sale. Furthermore, when

he launched the main application, he was aware that his property was sold. On his version, he should have ensured that Zenande Trust and the purchaser of the property were joined in the application.

The interdict

[53] The liquidators further contend that the relief sought by Mr Motaung in the main application is final in nature. Furthermore, they submit that in the founding affidavit none of the requirements for a final interdict were discussed.

[54] A reading of the notice of motion of the main application attest to the fact that the relief sought was not an interim interdict but a final one.

[55] The requirements for a final interdict are trite.[4] In order to succeed the applicant must establish such requirements. They are:

(a) a clear right.

(b) injury actually committed or reasonably apprehended; and

(c) the absence of similar protection by any other remedy.

[56] The clear right to be proved is a right to which, if not protected by an interdict, irreparable harm would ensue.[5] Quite apart from the right to an interdict, the applicant should demonstrate a right that is threatened by an impending or imminent irreparable harm. An interdict is meant to prevent future conduct and not the past.

[4] *Setlogelo v Setlogelo* 1914 AD 221 at 227
[5] *OUTA* para 50 footnote 1

[57] The liquidators contend that Mr Motaung has no clear right since he is not the owner of the property. He is also not the title holder of the property. Toro in liquidation is the title holder and therefore the lawful owner of the property.

[58] In the replying affidavit Mr Motaung alleges that he has been in occupation of the property for more than a decade. He claims that he took occupation of the property through a deed of sale from the Housing Corporation. Further that under common law of contract, he became the purchaser and occupier. He further claims to have a clear right and a constitutional right to housing from which he cannot be unlawfully evicted without an order of court.

[59] Mr Motaung concedes that he is not the registered owner of the property. He therefore has no clear right to the property. As confirmed in *Herbert N.O. and Others v Sengu Municipality and Others*[6], a permission to occupy does not confer ownership on the holder of such document. The issue of eviction is not before court. In any event Mr Motaung cannot be unlawfully evicted from the property by the purchaser as the law precludes such unlawful eviction.

<u>Injury actually committed or reasonably apprehended</u>

[60] The liquidators submit that Mr Motaung will not suffer any harm if he is not the owner of the property. However, should the developer/purchaser decide to cancel the contract of sale, serious losses will be sustained by the *concursus creditorium* of Toro. They further claim that the property forms an

[6] 2019 (6) SA 231 (CC)

integral part of the intended development by the new purchaser. The intended purchaser could cancel all the agreements if the issue with this property persists.

[61] Mr Motaung claims to have made developments on the property.

[62] I agree with the liquidators that the harm to the estate is severe. Further that the constitutional right to property and ownership is unduly infringed by the interdict without justification. There is merit in the liquidator's submission that the prejudice and harm the estate suffers because of the interdict far outweighs that of Mr Motaung.

<u>Absence of similar protection by any other remedy</u>

[63] The liquidators contend that Mr Motaung has an alternative suitable remedy. Mr Motaung contends that the purchaser bought the property for R30 000,00 when the property value has gone up to R980 000,00 for which he cannot be satisfied by neither of the parties.

[64] There can be no doubt that Mr Motaung can take action against the people who received the funds he allegedly paid for the purchase price. He also has a claim for damages against the persons to whom the purchase price was paid.

<u>Conclusion</u>

[65] The allegations made in the liquidators' affidavit are largely not contested.

[66] A reading of the founding affidavit of the main application clearly shows that the requirements for the interdict were not dealt with all. It is therefore my view that the main application should not have succeeded.

[67] I am therefore persuaded that a proper case has been made for the intervention, reconsideration and anticipation of the return date.

<u>Costs</u>

[68] Mr Lotter for the liquidators sought costs on a punitive scale on the ground that the liquidators were ambushed by Mr Motaung in these proceedings. Further that the main application was never urgent. Mr Mabuse disagreed.

[69] Having considered the matter, I am not persuaded that the application justifies the award of costs on a punitive scale. It is my view that costs which include costs of counsel on scale B are fair and reasonable.

[70] Consequently, the following order is made:

1. The applicants/intervening parties' non-compliance with forms, service and time periods are condoned and this application is heard as one of urgency as provided for in Rule 6(12) of the Uniform Rules of Court.

2. The applicant/intervening parties are granted leave to intervene in the proceedings under the above-mentioned case number and as such allowed to anticipate the return date issued by the above honourable court under the above-mentioned case number and to

oppose the relief sought in terms of that application as provided for in Rule 6(8) of the Uniform Rules of Court, on an urgent basis, and/or for the honourable court to reconsider the order granted on 26 August 2025 as provided for by Rule 6(12)(c) of the Uniform Rules of Court.

3. That the rule *nisi* issued by the above-mentioned court on 26 August 2025 is discharged and the application (main application), is dismissed.

4. The applicant is ordered to pay the costs of the main application and the costs of the intervention application which costs include the costs of Counsel on scale B.

M J TEFFO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances

For the applicant	K M Mabuse
Instructed by	Odi Law Centre
For the intervening parties	G J Lotter
Instructed by	Willemse Potgieter & Babinszky Inc
Heard on	10 October 2025