

**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case no 2026-017521

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

Date: 01 April 2026

In the matter between:

NATHANIEL TSAKANE MAKHUBELE

Applicant

and

RONALD TSAKANE MABUNDA

First Respondent

MHLAVE INVESTMENT HOLDINGS (PTY) LTD

Second Respondent

**SHERIFF OF THE HIGH COURT, SOWETO WEST
(MAUREEN CIBE)**

Third Respondent

SHERIFF OF THE HIGH COURT, WESTONARIA

Fourth Respondent

JUDGMENT

DU PLESSIS J

Introduction

[1] This judgment concerns another urgent court application by Mr Makhubele in long-running litigation regarding the immovable property situated at Erf 1[...], N[...] Street, P[...] N[...], Soweto (“the property”). The present application is brought by Mr Nathaniel Tsakane Makhubele (“the applicant”), in person, on an urgent basis, and invokes section 18 of the Superior Courts Act 10 of 2013 (“the Act”).

[2] Aside from urgency, the central question is whether the applicant is entitled, under section 18, to obtain relief that would, in effect, circumvent the interim regime created by the order granted by Mia J on 13 February 2026 and restore the earlier orders granted by Tebeile AJ and Wanless J. The crisp question is whether section 18 of the Act can be used in the manner contended for by the applicant, given what Mia J decided and given the status of those earlier orders.

[3] For the reasons set out below, the answer to the question is no. The application falls to be dismissed with a punitive costs order. I am also compelled, given the applicant's egregious litigation history in the urgent court, to impose procedural controls on any further litigation he may seek to initiate in this Division, as sought for in the third respondent's counter-application.

[4] Before I can proceed to the merits, however, I need to deal with the recusal application brought by Mr Makhubele.

Recusal application

[5] A day before the hearing, Mr Makhubele lodged a complaint with the Judicial Service Commission (JSC) on the same grounds advanced in a leave-to-appeal application concerning a judgment I delivered in a separate application he brought against WITS University in March 2025. I struck an urgent application from the roll for lack of urgency. That application remains pending and is a matter for those proceedings.

[6] After lodging the complaint and on the day of the hearing, he submitted a recusal application in this matter. Prior to submitting the application, he had already written to the Acting Deputy Judge President requesting that the matter be allocated to a different judge. Only after he did not receive a satisfactory response did he file the recusal application with me. I rejected the application for the reasons explained below.

[7] The test for recusal is objective. *President of the Republic of South Africa v South African Rugby Football Union*¹ clarified the test for recusal, which I quote in full:

“[48] It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.”

[8] Judges are assumed to be impartial. Since this is fundamental to judging and a judge’s duty, the presumption is not easily overturned. The litigant who seeks to displace it must clearly present the facts they rely on, which, when viewed objectively, would give rise to a reasonable suspicion of bias.

[9] Mr Makhubele’s stated reason appears to be that I struck a previous urgent application from the roll due to lack of urgency, and that he is unhappy with the judgment. During his oral address, he said he bore no personal ill will and felt no animosity from me when he previously appeared. His only complaint concerns the content of the judgment, which is a matter to be addressed in those proceedings, not in a recusal application in an unrelated matter.

¹ [1999] ZACC 9; 1999 (4) SA 147; 1999 (7) BCLR 725.

[10] His grounds for recusal do not meet the legal test set out above. An alleged mistake or oversight in a previous judgment does not serve as proof of bias. Similarly, the fact that a complaint has been made to the JSC does not, on its own, create a reasonable apprehension of bias. Nor does the complaint imply the judge has a personal interest in the outcome of the case before them. The complaint relates to a separate judgment, and its merits are unaffected by the outcome here. If merely lodging a complaint were enough to justify recusal, any litigant could disqualify any judge simply by filing one. This would undermine the duty of judges to preside over cases assigned to them, promote forum shopping, and weaken the administration of justice.

[11] Furthermore, writing to the Acting Deputy Judge President to request the reallocation of a matter already assigned to a sitting judge is in itself procedurally improper and irregular. The assignment of cases is an administrative and judicial function vested in the Judge President and those acting under his authority.² Once a matter has been allocated, a litigant has no standing to approach the court's administration to reverse that allocation. Doing so interferes with the orderly distribution of judicial work and effectively attempts to choose one's judge by indirect means. The recusal application that followed was filed only after that improper attempt had failed and cannot be viewed independently of it. No reasonable, objective, and informed person would see that sequence of events as evidence of a genuine concern of bias. Rather, it exhibits the traits of a litigant intent on avoiding a particular judge.

[12] I have no personal interest in this litigation and harbour no ill will towards Mr Makhubele. I approach this matter with an open mind. A reasonable, objective and informed observer, in possession of the true facts, would not apprehend otherwise. The recusal application is accordingly dismissed.

Backgro

[13] I now turn to the merits of the urgent application. The dispute has involved multiple rounds of litigation between entities associated with the applicant and

² In this case, the senior judge on Urgent Court duty, who allocated all the even numbers on the roll to me.

respondents over several years. Tebeile AJ granted an order on 4 December 2025 directing the Sheriff to give the applicant vacant possession of the property within five days, in light of the prolonged litigation. Wanless J later granted a coercive contempt order on 26 January 2026, requiring the Sheriff to fully comply with Tebeile AJ's order within 48 hours or face 60 days' imprisonment, which ultimately resulted in the eviction of the first and second respondents on that date.

[14] During January 2026, the first and second respondents (Mabunda and his company) were in occupation of the property. On 26 January 2026, they were removed due to the execution of earlier orders. On 13 February 2026, Mia J granted an order restoring possession and occupation.

[15] Before the matter was heard by Mia J in the urgent court, it was before Fisher J on 4 February 2026. The applicant brought a recusal application based on previous complaints lodged with the Judicial Service Commission against Fisher J (and, according to the third respondent, six other judges in this Division). The matter was then later scheduled for hearing before Mia J.

[16] Mr Makhubele appealed Mia J's order and states that lodging the appeal suspends the order, thereby requiring the sheriff to execute it again.

[17] The third respondent disputes that Mr Makhubele launched an appeal and launched a counter-application to strike the matter for want of urgency and to declare him a vexatious litigant. They indicated to the court that there is no pending leave to appeal, as it has not been filed due to noncompliance with the Rules of the Court. An email from "Court Online" confirms the following:

This is to inform you that a document has been rejected as follows: Case Title:
RONALD TSAKANE MAKHUBELA v. SHERIFF OF THE HIGH COURT SOWETO
WEST # 2026-017521 # MRNDMOCHAKICIV0061021ND
Case Number: 2026-017521
Name of Document: Leave to Appeal Date and Time: 2026/03/12 15:18

Reasons for rejection: RONALD TSAKANE MAKHUBELA v. SHERIFF OF THE
HIGH COURT SOWETO ----- WEST # 2026-017521 #
MRNDMOCHAKICIV0061021ND

--- pls upload the judgment and reapply for a date.

[18] Based on this communication, I accept that, factually, there is no pending leave to appeal and, therefore, no order is suspended. Even if there was a valid pending appeal, the order would not be suspended for reasons set out below.

Mia J's order

[19] Various applications and counter-applications were placed before Mia J in the urgent court during the week of 9–13 February 2026. What matters for present purposes is not so much the content, but the character and effect of the order she made on 13 February 2026.

[20] In broad terms, Mia J did not grant the urgent relief on the basis of want of urgency and/or merit as then framed. At the same time, appreciating the long-winded history and the escalating nature of the dispute, she made an order designed to bring the litigation under judicial control. In particular, she consolidated the applications and counter-applications under case numbers 2026/017521 and 2026/006488 and referred them to the Judge President for case management and determination. She also directed that the planned rescission applications to the Tebeila AJ and Wanless J orders be instituted by the stipulated dates.

[21] Pending the determination or finalisation of those applications, she granted interim relief restoring possession and occupation of the property to the first and second respondents, and interdicted the applicant and the Sheriff from taking any further civil, criminal or administrative steps against the first and second respondents and their legal representative. Costs were reserved for determination in the case-managed process.

[22] Properly understood, the order of Mia J did not aim to overturn, modify, or definitively resolve the earlier merits orders of Tebeile AJ and Wanless J. Instead, it

established a temporary “holding” arrangement while ensuring that all related disputes, including any challenges to those previous orders, would proceed in an orderly and supervised manner under the direction of the Judge President.

[23] It is this order that Mr Makhubele argues is suspended by the alleged pending leave to appeal.

The legal framework

[24] Section 18 of the Act regulates the operation and execution of a court order pending an appeal or application for leave to appeal. It provides, in relevant part (own emphasis):

“(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.”

[25] The distinction in sections 18(1) and 18(2) between final orders and interlocutory orders is therefore critical. Final orders are automatically suspended upon the filing of a leave-to-appeal application or an appeal. Interlocutory orders are not. The classification of an order as final or interlocutory depends on whether it has the effect of disposing definitively of the rights and obligations of the parties. A case-management order that creates an interim regime pending the finalisation of further proceedings, as the order of Mia J did, falls squarely within the interlocutory category and is not automatically suspended.

[26] The applicant's submissions treat the order of Mia J as if it were a final merits determination on the lawfulness of the earlier orders of Tebeile AJ and Wanless J, and on who is ultimately entitled to occupy the property. This is not correct.

[27] As already explained, Mia J's order had a dual purpose. It partly disposed of the urgent relief as then formulated and partly established an interim case-management and possession regime pending the resolution of rescission and related proceedings by or under the authority of the Judge President. The latter component is clearly interlocutory. Therefore, the default position under section 18(2) applies: the operation and execution of the order are not halted by simply filing a leave to appeal.³

[28] Even if one were to assume in the applicant's favour that section 18(1) applies to the Mia J order, the suspension would only affect the operation and execution of *her* order itself. It does not transform or amplify the earlier orders of Tebeile AJ and Wanless J, nor does it render any subsequent occupation of the property per se unlawful. Most importantly, it does not entitle the applicant to entirely new substantive relief, namely the eviction and occupational rental orders he now effectively claims in this application. Section 18 concerns the existing order under appeal, not the grant and creation of new rights.

[29] Similarly, the premise that the Mia J order "was and remains incapable of lawful operation" pending appeal is legally incorrect. Section 18(1) provides for suspension upon *the institution of an application* for leave to appeal or an appeal. It is a valid court order until it is set aside. It does not retrospectively invalidate steps lawfully taken under the order before any suspension came into effect. In any event, the order did not purport to set aside the earlier orders. It merely created a temporary case-management regime.

[30] There are other shortcomings in the application that will only be discussed briefly here. For instance, Mr Makhubele's attempt to obtain a declaration that the

³ *Mambafula v Alred Nzo District Municipality* [2024] JOL 66349 (ECM).

earlier orders of Tebeile AJ and Wanless J “remain operative” is legally unnecessary and misleading. Those orders remain binding until set aside on appeal or rescinded. What the Mia J order did was to regulate, on an interim basis, how those earlier orders might be acted upon pending properly constituted rescission and related proceedings. Section 18 does not empower this Court to re-characterise or prioritise those earlier orders in the manner suggested.

[31] Furthermore, the applicant impermissibly uses section 18 as a vehicle to obtain substantive new relief in the form of a detailed eviction order with enforcement mechanisms, occupational rental and costs orders, which go far beyond anything contained in the Mia J order. That is not the function of section 18. If the applicant wishes to enforce earlier orders or obtain fresh eviction relief, he must do so by appropriate substantive proceedings, subject to the constraints already imposed by prior case-management orders and the vexatious-proceedings declaration discussed below.

[32] Lastly, the application reveals an internal inconsistency. On the one hand, the applicant claims that the Mia J order is suspended and cannot be enforced, but on the other hand, he seeks an order under section 18(3) to make his own fresh eviction order operate despite any appeal. Section 18(3) is usually used by a party who has succeeded at first instance and wants to preserve the operation of a favourable order while an appeal is pending. The applicant appears to be trying to use it to replace an interim arrangement he does not favour with a different order.

[33] For all these reasons, the section 18 argument cannot be upheld, as there is no pending appeal. Even if there were, the order is interlocutory and not automatically stayed. Even if stayed, section 18 does not create new rights, which ultimately means that the relief sought far exceeds what section 18 authorises.

Counter-application: vexatious litigant

[34] As mentioned, the third respondent brought a counter-application requesting that the applicant be declared a vexatious litigant, and that procedural controls be

imposed on future litigation he seeks to initiate. The counter-application is properly before this Court on the urgent roll.

[35] The applicant is no stranger to the courts in this division and to litigation. His prior litigation history has been the subject of judicial scrutiny, culminating in a declaration of vexatiousness under the Vexatious Proceedings Act,⁴ when, on 6 March 2023, Vermeulen AJ declared the applicant and associated entities vexatious litigants in terms of section 2(1)(b) of the Act.⁵

[36] The judgment documents a pattern of conduct spanning more than eight years: repeated applications for rescission, leave to appeal, urgent stays, interlocutory applications, recusal motions, and repeated interdict applications, all aimed at a single judgment issued in 2015 and all ultimately dismissed. Vermeulen AJ concluded that the applicant had “persistently and without any reasonable ground” initiated legal proceedings, and that the purpose was to delay and obstruct the enforcement of a final, confirmed judgment.

[37] Section 2(1)(b) of the Act empowers courts to prevent further legal action by an individual who persistently and without reasonable cause initiates proceedings against another. When deciding on such a declaration, the court examines the pattern of litigation. Isolated incidents would not justify such a declaration, nor would persistent litigation that has merit. This is because the Act aims to curb persistent and unfounded legal actions, thus safeguarding the courts’ effectiveness and protecting innocent litigants from abuse of process and associated costs. Such a declaration intends to uphold the integrity of the judicial system by preventing the misuse of court procedures. Courts have inherent powers to halt frivolous and vexatious proceedings, since such actions undermine the administration of justice. The Constitutional Court confirmed in *Beinash v Ernst and Young*⁶ that the provision constitutes a justifiable limitation of the right of access to courts in terms of section 34 of the Constitution, since it serves to protect bona fide litigants from abuse and to

⁴ 3 of 1956.

⁵ *M T Makhubele Enterprises CC and Others v Business Partners Limited* [2023] ZAGPPHC 1666.

⁶ 1999 2 BCLR 125 (CC) in par 21.

preserve the effective administration of justice. I am satisfied on the facts set out below that the section 2(1)(b) requirements are met.

[38] The current application precisely follows the pattern identified by Vermeulen AJ. It is a new urgent application concerning the same property, involving largely the same parties, aiming to overturn orders that the applicant dislikes, and attempting to bypass the structured case-management arrangements already established by Mia J and directed to the Judge President. The fact that this is done through the urgent court, with all the disruption and upheaval it causes, makes the abuse considerably more serious. I am convinced that the criteria under section 2(1)(b) are satisfied and that a declaration is appropriate.

[39] Additionally, in accordance with paragraph 4.2 of the Mia J order, the applicant is barred and restrained from pursuing any further civil, criminal, or administrative proceedings against the first and second respondents and their legal representative. The current application clearly represents a civil step directed precisely at that. This further reinforces a declaration.

[40] The urgent roll is not a forum for serial litigation intended to weaken existing case-management arrangements. The current use of the urgent court is vexatious and abusive, justifying both a punitive costs order and the implementation of structured procedural controls.

[41] Restricting an order to litigation concerning this specific property would prove inadequate. The history of this matter, combined with the Vermeulen AJ order in another case, demonstrates that the applicant does not restrict his abusive litigation to a single case or particular parties. He shifts between cases, employing the same tactics whenever it benefits him. The only effective response is a division-wide oversight mechanism that requires proper judicial scrutiny before any proceedings commence. I recognise that this is a considerable step, but I view it as proportionate given the well-documented pattern of litigation across multiple cases and different judges within this division.

The way forward

[42] The order of Mia J already provides for the cases concerning this property to be referred to the Judge President for case management and determination. A copy of this judgment will be referred to the Judge President to enable him to give such further directions as he may consider appropriate, including the appointment of a dedicated case manager for all matters concerning this property.

[43] Furthermore, considering the applicant's declaration as a vexatious litigant and the ongoing misuse of the court, as detailed in this judgment, it is necessary to strengthen the existing procedural safeguards. Any future applications or interlocutory steps the applicant intends to initiate in this Division must, before enrolment, be approved through the office of the Judge President (or a person delegated by him) in accordance with the procedure outlined in the order below.

Conclusion

[44] The applicant has failed to establish any basis for the declaratory and section 18 relief sought. His attempt to characterise the interlocutory order of Mia J as incapable of lawful operation and to deploy section 18 as a mechanism for obtaining fresh urgent eviction relief is fundamentally at odds with the structure of the Act and with the status of the underlying orders.

[45] In the exercise of this Court's discretion, having regard to the applicant's litigation history and the abusive features of this application, a punitive costs order is warranted. Attorney-and-client costs are to be awarded where a litigant's conduct is vexatious or constitutes an abuse of court process. Those criteria are met here in full measure.

Order

[46] The following order is made:

1. The application and counter-application are enrolled on the urgent roll.
2. The application is dismissed. The applicant is ordered to pay the third respondent's costs on the attorney and client scale.

3. The applicant is declared a vexatious litigant in terms of section 2(1)(b) of the Vexatious Proceedings Act 3 of 1956.
4. Pending further written direction from the Judge President or a judge designated by him, no new application or interlocutory step which the applicant or any entity acting at his instance shall be enrolled, on the urgent roll or otherwise, unless:
 - a. the applicant has first submitted a written request to the office of the Judge President, supported by an affidavit of not more than three pages, seeking written leave to institute or take the proposed step; and
 - b. the Judge President, or a judge designated by him, has granted such leave in writing.

WJ du Plessis

Judge of the High Court, Gauteng Division,
Johannesburg

Date of hearing:	24 March 2026
Date of judgment:	1 April 2026
For the applicant:	In person
For the third respondent:	LCM Morland instructed by Warrener de Agrela and associates.