

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 164788/2025

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

24 April 2026

DATE

SIGNATURE

In the matter between:

Sefako Makgatho Health Science University

Applicant

and

Leokeng Communal Property Association

First Respondent

The Sheriff: Ga-Rankuwa

Second Respondent

South African Police Services: Ga-Rankuwa

Third Respondent

Heard: on 9 March 2026

Judgment: 24 April 2026

This judgment was handed down electronically by circulation to the parties' representatives by email. The time and date for hand-down is deemed to be 24 April 2026.

JUDGMENT

JANSE VAN RENSBURG AJ:

INTRODUCTION

- [1] This matter comes before me on the return day of a rule nisi issued on 13 September 2025, following an urgent application brought by the Applicant, Sefako Makgatho Health Science University ("the University"), seeking interim relief against the First Respondent, the Leokeng Communal Property Association ("the LCPA").
- [2] The rule nisi granted interim interdictory relief pending the final determination of the application. The University now seeks confirmation of the rule nisi, making the interim order final.
- [3] The LCPA opposes the confirmation, while the Second and Third Respondents (the Sheriff and the South African Police Services, Ga-Rankuwa) do not oppose the relief sought, as no substantive relief is sought against them.
- [4] The application is brought in two parts. Part A, heard on an urgent basis, sought interim relief to allow the University access to repair and maintain its water pipelines situated on the LCPA's property. Part B, now before this Court, calls upon the LCPA to show cause why the interim order should not be made final, with costs.

FACTUAL BACKGROUND

- [5] The salient facts, drawn from the affidavits, are largely common cause, though disputed in certain respects.
- [6] Portion 216 of the remaining extent of the Farm Klipfontein originally formed part of the land owned by the University, then known as the Medical University of South Africa (MEDUNSA).
- [7] A land claim was lodged by the Leokeng community with the Commission on Restitution of Land Rights on 3 April 1998. Ownership of the property vests in the LCPA pursuant to the restitution process.
- [8] The LCPA took physical possession of its portion of the land during or about 2021. Prior to that, and immediately after transfer, the land was vacant, and the University enjoyed uninterrupted access to its bulk water infrastructure.
- [9] The University's bulk water supply is provided by Rand Water. The higher-pressure water pipeline infrastructure forming part of the University's water supply system is located on the LCPA's property. This infrastructure has historically supplied water to the University's campus, serving students and staff, which is not disputed by the LCPA.
- [10] The water pipeline is dependent on for the supply of drinking water, irrigation, sanitation and related non-negotiable water consumption. Several water pipe bursts have occurred.

[11] During May 2025, a water pipe burst occurred. The University was granted access by the LCPA to carry out repairs. Several meetings occurred between the parties, discussions included conditional access and addressing LCPA demands. The LCPA maintains certain promises were not kept. The LCPA asserts that the pipe bursts which continued to recur, causing ongoing damage and flooding on LCPA land.

[12] On the 11th of September 2025, a major pipe fault occurred, leading to a critical water shortage on the University campus. The University commenced urgent discussions with members of LCPA and requested that its contractors be given access to attend to the repairs. This request was denied by LCPA.

[13] On 12 September 2025, the University launched an urgent application. On 13 September 2025, the Court granted an interim interdict in the following terms:

13.1. Interdicting the LCPA from refusing the University's contractors access and permission to repair, install, and maintain the water pipelines on LCPA property.

13.2. Authorising the University to enter the LCPA's premises solely for purposes of repairing and maintaining its water pipelines for the benefit of students and staff.

13.3. Interdicting the LCPA from threatening, assaulting, or preventing the University's contractors from performing such duties.

13.4. The Sheriff and SAPS were authorised to assist.

[14] Since or about 6 October 2025 the LCPA barricaded the eastern entrance, this entrance is used not only by contractors for pipeline access but also by approximately 3 000 University staff, students, and contractors daily and by the Dorothea Faith Mission Church.

[15] The University contends this barricading contravenes the interim order and that the intersecting roads/paths have historical shared usage predating LCPA ownership.

ADMISSIONS MADE BY THE RESPONDENT (LCPA)

[16] The LCPA, through its answering affidavit, made the following express or implicit admissions:

- 16.1. The water pipe infrastructure is located on the LCPA's property, which belongs to the University.
- 16.2. The University derives water for its students and staff from a pipe situated on the LCPA's property.
- 16.3. The LCPA is duly established under the Communal Property Associations Act 28 of 1996.
- 16.4. The property (Portion 216 of the remaining extent of Farm Klipfontein) was the subject of a valid land restitution claim by the Leokeng community and is now lawfully owned by the LCPA.
- 16.5. The University and LCPA are neighbouring properties sharing a border.

- 16.6. The LCPA permitted the University access to repair burst pipes on multiple occasions prior to the interim order, including in May 2025.
- 16.7. The University requested access to repair the pipe which had burst.
- 16.8. The LCPA, does not explicitly deny that the University requested that it's contractors be given access to attend to the repairs of the pipeline.
- 16.9. It is furthermore not denied by LCPA that it denied or refused the request by the University to be given access.
- 16.10. The LCPA has blocked or restricted certain access routes (e.g., the gravel road/eastern entrance) as a response to unresolved grievances.

[17] The following facts are common cause, or not meaningfully disputed, on the papers:

- 17.1. The LCPA is the lawful registered owner of Portion 216 of the remaining extent of Farm Klipfontein pursuant to a valid land restitution claim and the provisions of the Communal Property Associations Act.
- 17.2. The University is the owner and operator of the bulk water pipeline infrastructure that runs through the LCPA's property and supplies the University campus from Rand Water.
- 17.3. The pipeline is essential for the University's operations and the provision of water to students and staff; recurring bursts have caused water shortages and necessitated repairs.
- 17.4. No formal servitude has been registered in favour of the University in respect of the pipeline or the intersecting access roads/paths.
- 17.5. The parties' properties share a border and have historically intersecting access routes/entrances, including from the M17 road/eastern entrance, with usage arrangements predating the LCPA's possession in 2021.

- 17.6. The LCPA initiated and both parties participated in engagements and meetings since at least 2020 concerning co-existence, security, water access, community benefits, and pipeline maintenance.
- 17.7. The LCPA has granted the University access to repair its pipelines, on previous occasions which predate the 11 September 2025 pipeline burst and interim order.
- 17.8. An interim interdict was granted by the Court on 13 September 2025 in the terms set out above.

[18] From the LCPA's answering affidavit, it is evident that the LCPA has no qualm about the pipeline being on its property, but what the LCPA wants is that it be granted access to the pipeline¹ owned by the University. The allegation by the LCPA in this regard reads as follows: *'It should be recorded that in all the engagements with the Applicant regarding access to water, the First Respondent's position has always been that it connects water supply from water pipe owned by the Applicant since the infrastructure is already on the property. The First Respondent was willing to pay costs, and expected the Applicant to also install the water meter which can be used to charge the First Respondent (water usage).'*

LEGAL PRINCIPLES AND APPLICATION

[19] The requirements for a final interdict are well-established: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of an alternative remedy².

¹ To obtain water for the community;

² Setlogelo v Setlogelo 1914 AD 221, and the requisites stated therein have often been restated;

[20] A party seeking to establish a clear right so as to justify a final interdict is required to establish, on the balance of probability, facts and evidence which prove that he has a definite right in terms of substantive law³. A clear right is a right that has been clearly established.

[21] The University is the owners of the pipeline infrastructure, a fact admitted by the LCPA⁴. The pipeline's historical placement on what was University land, now LCPA property post-restitution, does not extinguish the University's proprietary interest in the infrastructure.

[22] The owner of movable or fixed infrastructure (such as pipelines) retains the right to protect and maintain it even when it is situated on another's land, unless a contrary agreement or some other instrument provides otherwise. The land claim and subsequent ownership of the property did not extinguish the University's ownership of the pipeline.

[23] The LCPA's claim of no servitude is unpersuasive. The pipeline's existence predates LCPA's ownership, and access has been granted previously. Denying it now constitutes unlawful interference, warranting protection

[24] The University has established a clear right worthy of protection.

[25] The second requisite for obtaining a final interdict is proof of an injury actually committed or reasonably apprehended, proof of some act actually done showing

³ **Edrei Investments 9 Ltd (In Liquidation) v Dis-Chem Pharmacies (Pty) Ltd 2012 (2) SA 553 (ECP)** at 556C;

⁴ The LCPA makes the allegation at paragraph 2.30 that: '*water pipe owned by the Applicant*';

interference with the applicant's rights, or of a well-grounded apprehension that acts of the kind will be committed by the respondent⁵.

[26] Injury is evident, the burst on 11 September 2025 caused immediate water shortage, necessitating emergency measures at significant cost. The LCPA's refusal and subsequent barricade (post-interim order) prevented repairs and access, affecting 5,500 people and causing ongoing harm.

[27] The LCPA's prior barricades, which is admitted, and demands indicate a reasonable apprehension of continued interference.

[28] This constrains the University's operational capacity and duties, constituting irreparable harm

[29] The final requisite for the grant of a final interdict is proof that there is no other satisfactory remedy available to the applicant and must allege and establish, on a balance of probability, that he has no alternative legal remedy⁶.

[30] The parties have entered into negotiations and held meetings which did not yield a positive outcome. These negotiations and meetings in any event are not legal remedies and this is borne out by the authorities.

⁵ **V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others 2006 (1) SA 252 (SCA)** at paras [21], see also Erasmus Superior Court Practice RS 28, 2025, D6-20.

⁶ **Francis v Roberts 1973 (1) SA 507 (RA)** at 512E where the court held: 'a remedy which is available through the normal processes of the law, such as a claim for damages'.

[31] In **Hotz and Others v University of Cape Town 2017 (2) SA 485 (SCA)** at para [36] Wallis JA held that:

“The fact that one of the parties, or even the judge, may think that the problem would be better resolved, or can ultimately only be resolved, by extra-curial means, is not a justification for refusing to grant an interdict... the alternative remedy must be a legal remedy, that is, a remedy that a court may grant and, if need be, enforce, either by the process of execution or by way of proceedings for contempt of court.”

[32] I cannot find, nor was I directed to an existing remedy ‘with the same result’ for the protection of the applicant.

[33] The LCOPA did not show cause why the interim order should not be made final and it follows that the university is entitled to a final interdict and I grant the following:

ORDER:

1. The rule nisi is confirmed.
2. The First Respondent is interdicted from refusing to grant the contractors of the Applicant access and permission to repair, install, and maintain water pipelines belonging to the Applicant, which are situated on the First Respondent's property.
3. The Applicant is authorised to enter the premises of the First Respondent solely for purposes of repairing and maintaining the water pipelines which belong to it, for the use and benefit of students and staff of the Applicant.
4. The First Respondent is interdicted from threatening, assaulting and preventing contractors of the Applicant from performing duties relating to

the repairs, installation, and maintenance of the water pipelines for the benefit of students and staff of the Applicant.

5. The First Respondent is ordered to pay the costs, which costs shall include the costs of the urgent application on the 13th of September 2025, on scale B.Judgment



JANSE VAN RENSBURG AJ
JUDGE OF THE HIGH COURT
PRETORIA

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