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

Case No: 070505/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: YES

DATE: 14 May 2026

SIGNATURE:

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Applicant

and

GEORGE ASABA

1st Respondent

**OCCUPIERS OF ERF 1[...] PROCLAMATION HILL,
4[...] A[...] AVENUE, PRETORIA WEST**

2nd Respondents

JUDGMENT: EVICTION AND DEMOLITION APPLICATION

(The matter was heard in open court on 16 March 2026. Judgment was reserved and the written judgment was electronically submitted to the parties and uploaded onto the

electronic file of the matter in Caselines. The date of uploading of the judgment onto Caselines- 14 May 2026- is deemed to be the date of the judgment).

BEFORE: HOLLAND-MUTER J:

[1] The application concerns the eviction of people (the Second Respondents) occupying a building of the First Respondent to be demolished because the building was unlawfully erected. The City of Tswane Metropolitan Municipality (the Council) never approved any building plans for the erection of the building in question. The First Respondent erected the building without any approved plans by the council.

[2] The Council has a constitutional duty to promote a safe and healthy environment for its citizens and inclusive thereto is to approve every building plan within its jurisdiction and on completion issue an occupancy permit to certify the structure is fit for human occupation.

[3] The Council must see that minimum building standards are complied with to prevent the construction of unsafe buildings which may be dangerous for unsafe structures riddled with illegal electricity connections that can be a fire hazard. Section 4 of the National Building Regulations and Building Standards Act 103 of before any construction could commence.

[4] Section 21 of the Building Act grants the Council the right to approach the Court for an order that the unlawful erected building be demolished if satisfied that the erection is contrary the provisions of the Building Act. In **United Technical Equipment Co (Pty) Ltd v Johannesburg City Council [1987] 4 All SA 409 (1987) (4) 343 (T) at 348 J** it was held that "*the Council has not only a statutory duty but also a moral duty to uphold the law and see to due compliance with its town planning scheme A lenient approach could be an open invitation to members of the public to follow the course adopted by the applicant, namely to use land illegally with the hope that the use will be legalised in due course*". This was confirmed by the Supreme Court of Appeal in **Lester**

v Ndlambe Municipality and Another [2014] 1 All SA 402 (SCA) para 20 where it was held that "*The conclusion was that section 21 of the Building Act did not itself lend to an interpretation other than that there was no discretion not to order demolition of the building erected contrary to the provisions of the Act*".

[5] The property involved has a zoning certificate to be used for "one dwelling house" resulting that the Council cannot approve any other building plan other than a one dwelling house. The Council was therefore not entitled to approve any building plan submitted on behalf of the First Respondent to erect a **multi storey** structure on the erf situated at erf 1[...].

[6] It is common cause that the building in question is owned by the First Respondent and that it was erected (constructed) by the First Respondent and had it occupied by the Second Respondents at the behest of the First Respondent. It is further common cause that the First Respondent generates income from the second respondents for their occupation of the building because the First Respondent receives monthly rental income from the second respondents.

[7] It is further common cause that the building in question was constructed without the council's consent. The First Respondent's contention to this is that he did apply for permission from the Council and he simply anticipated that the Council would approve the submitted plans.

[8] It is further common cause that while the building was partly completed and still in the process of finalising the construction the rooms in the completed sections of the building were occupied by some of the Second Respondents and that the First Respondent was receiving rental income from those occupiers even before the building was completed. The only response to this allegation by the First Respondent was that those occupying (Second Respondents) "threatened" him to make available the rooms even before final completing thereof.

[9] There can be no argument that the Second Respondents were illegal occupiers making rental payments towards the First Respondent. It was an ongoing process that as further rooms/parts in the uncompleted building reached a state where occupation was possible, the First Respondent allowed the following Second Respondents to take up paid occupation despite that the building was not completed at all.

[10] It is further common cause that the construction of the building was illegal as no submitted building plans were approved by the Council even after construction started.

[11] The Council received complaints of alleged illegal construction taking place on the premises situated on Erf 1[...] at Proclamation Hill towards the west in Tswhane. It is common cause that this property is the subject of this application. An inspector of the Council visited the premises on 22 September 2022 who confirmed that the building in progress was erected unlawfully. There were no approved plans for the construction. A later inspection confirmed that the First Respondent ignored the Council's notices to seize building and even had illegal electricity connections made. The conduct of the First Respondent is that of a defiant person with no regard to the legal position regarding building operations. On both occasions the inspectors left notices with the constructors to seize construction but the First Respondent and his builders ignored these notices.

[12] On the First Respondent's own version in his answering affidavit in par [22] he states that he approached Mbiza Architectural Technologies during 2022 which then drafted a plan for submission to the Council. This stands in stark contradiction to par [4] of his affidavit where he states that during 2021 the occupiers started to occupy the structure after the Council approved a water and electricity connection. The Council denies this allegation.

[13] He further contradicts himself in par [9] of his affidavit that he was advised that he may start with construction once the plans were submitted to Council for approval.

This alleged submission of plans occurred one year after the first occupiers moved into the unfinished building.

[14] The First Respondent avers that he was under the impression that construction could start once the plans were submitted for approval. This could be an excuse for a novice builder but the First Respondent is no novice. He was involved in similar litigation with the Council on 25 February 2025 in **case no 2024/070674** where Kumalo J found that the First Respondent proceeded with construction of a similar multi story building without approval of the plans for the construction. He used the same architect (Mbiza) and commenced with construction when the plans were submitted for approval.

[15] The First Respondent is active in the construction field on his own version as he continued with his Mabopane construction and his defence that he thought construction may commence when the plans were submitted has no merit. This is further clear from the Kumalo judgment (*supra*). The argument that he was not aware of any notifications is similar not true because he received more than one notification regarding the illegal construction in this matter as well as in the matter before Kumalo J.

[16] The First Respondent further contradicts himself that he never received any notification regarding the unlawful construction by stating that he engaged with the unlawful occupiers about the Council's approach but he "feared" a back lash from the occupiers and was afraid they would "hijack" the building even before completion and he then had his attorney withdrew from acting on behalf of the unlawful occupiers.

[17] The occupiers received notice from the Council via the First Respondent and the section 4(2) notice in terms of The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("PIE") was delivered on site. Although they opposed the eviction (even when the First Respondent does not oppose such eviction), the occupiers were aware of that the building was not approved because the First Respondent addressed them on this issue. They have no defence against the

provisions of section 4(1) of the Building Act and have to take up their predicament with the First Respondent as their "landlord".

[18] It is clear from his answering affidavit that this construction was to earn an income as he charged these "illegal occupiers each R 500-00 per month. In the matter before Kumalo J he received R 2 000-00 per month from each occupier. What is clear from his operations is that he buys dilapidated houses, demolishes it and construct multi story buildings to rent out for income. This is what happened in the previous matter and the same happened in this matter. By doing this the First Respondent constructs buildings not approved by Council. This is to the detriment of Council who cannot issue the necessary occupation certificates. Council further alleges that the First Respondent is involved in at least two further illegal constructions in similar conditions as the one in this matter and the matter before Kumalo J supra.

[19] The First Respondent is a repeat offender in hijacking old buildings, restructuring it into multi story buildings and generate income from the illegal constructed buildings.

[20] Council rejected the submitted plans as the plans were contrary the zoning of the erf. The erf in this matter is not zoned for multi storey buildings and the First Respondent is aware hereof. His architect was informed during 2024 that the plans were not approved but construction continued.

[21] The last inspection revealed that there were illegal electricity connections and Council cannot determine any usage of electricity. This is an everyday problem for Council and income is jeopardised. Illegal electricity connections create a fire hazard endangering the people who occupy these structures.

[22] As in the previous matter the First Respondent admitted that they proceeded with the construction of the building without the approval of their plans by the Council. As stated supra the submission of plans does not accord one the right or permission to build.

[23] This court has to find on the facts that the First Respondent contravened the provisions of section 4(1) of the Building Act. The argument that the unlawful occupiers are prejudiced should the court order the demolition of the building is without any merit. They knew the occupation was unlawful and they cannot claim procedural benefit because of their own unlawful actions. The First Respondent tried to cover his unlawful actions by alleging his fear for the occupiers to "hijacking" the building. He must take the responsibility for his unlawful actions.

[24] In view thereof that there are no approved plans, the provisions of sections 4(1) and 21 of the Building Act is clear: the unlawful occupiers be evicted from the unlawful constructed building and the building is to be demolished. The relief sought for an interdict to refrain the First Respondent from erecting the unauthorised building on Erf 1[...] Proclamation Hill may have become moot because for lapse of time the First respondent ignored the served notifications from the Council and completed the building.

[25] Insofar as the building has not yet been completed, the Council has made a case for an interdict to restrain the First Respondent to continue erecting the unauthorised building on Erf 1[...] Proclamation Hill, 4[...] A[...] Avenue ("the venue" of the construction).

[26] The Council has met the requirements for a final interdict to be granted in that it has a clear right (in terms of the Constitution to enforce compliance with the law within its jurisdiction; there is an injury committed by the First Respondent to defy the Building Act and the continued defying thereof in particular the building regulations that the First Respondent may serve as an incentive for other to disregard building regulations; and the Council has no other satisfactory remedy to deter the First Respondent and therefore other prospective builders to follow the correct procedure when constructing buildings. The Council must prevent illegal structures which may cause serious harm to occupiers should fires erupt from illegal structures with no or insufficient fire hydrants, or

the use of inferior building material and/or plans not approved resulting in these to collapse.

COSTS:

[27] Costs is an issue within the discretion of the court. the customary rule is that costs follow success and that the scale of costs is normally on a party and party scale. The court may deviate from the normal rules depending the circumstances of the matter on trial.

[28] In this matter the First Respondent as an experienced builder who is a repeated defaulter or offender, should feel the brunt of the cost order. He is not only defying the building regulations in this matter but is involved in other similar matters as illustrated in the matter before Kumalo J.

[29] His conduct caused the unlawful occupiers to be in court while he adopts a Pontius Pilate attitude towards his "tenants". Under the circumstances he should carry the cost load.

ORDER:

1. The First Respondent is interdicted from continuing erecting the unauthorised structure (multi storey building) on Erf 1[...] Proclamation Hill, 4[...] A[...] Avenue ("premises");
2. The First Respondent and everybody occupying the premises through the First respondent, is evicted from the premises. The premises are to be vacated by everyone residing there at present within 30 days from date of this order handed down;

3. Should the premises not be vacated within the period stated in prayer 2 above, the Sheriff or anyone else authorised by the Council assisted by the Sheriff and/or South Africa Police Services may carry out the eviction within ten (10) days of the period referred to in 2 above;
4. The First Respondent is ordered to demolish the unauthorised structure built on the premises within 15 days of the premises having been vacated;
5. The First Respondent is to pay the costs of this application on a High Court Scale, including the costs of counsel of the applicant and the second respondents on Scale C of Rule 67A of the Uniform Rules of Court.

HOLLAND-MUTER J
Judge of the Pretoria High Court

Matter heard on 16 March 2026 Judgment handed down on 14 May 2026

Appearances:

Obo Applicant: Adv S D Mbeki

Obo First Respondent: Adv L Mhlanga

Obo Second respondents: Adv P Mafu