IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

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

SIGNATURE DATE: 14 June 2026

Case No. 2026-124157

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION	First Applicant
OCCUPIERS OF CHIEF ALBERT LUTHULI INFORMAL SETTLEMENT IN CLOVERDENE (THE "N12 SETTLEMENT")	Second Applicants

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY	First Respondent
EXECUTIVE MAYOR, EKURHULENI METROPOLITAN MUNICIPALITY	Second Respondent
CITY MANAGER EKURHULENI METROPOLITAN MUNICIPALITY	Third Respondent
MINISTER OF POLICE	Fourth Respondent
MINISTER OF DEFENCE AND MILITARY VETERANS	Fifth Respondent

JUDGMENT

WILSON J:

1 On 12 June 2026, I granted interim relief restoring around 570 individuals and their families (‘the occupiers”) to a property near Cloverdene in Benoni. The property is apparently known interchangeably as either the Chief Albert Luthuli informal settlement or as the “N12 settlement”. I interdicted and restrained the respondents from demolishing any structure erected at the settlement until the final determination of the applicants’ prayers for final interdictory and declaratory relief permanently restraining the occupiers’ removal from the settlement without a court order. I directed the first respondent, Ekurhuleni Municipality, to erect temporary structures which will house the occupiers while their application for final relief is heard; that the dwellings be capable of being dismantled in the event that the application for final relief is unsuccessful; and that the construction of the dwellings commence by no later than 17 June 2026 and be complete by 30 June 2026. I allowed that these dates could be varied on application to me on good cause shown. I interdicted and restrained the respondents from preventing or interfering with any steps the occupiers might take to re-occupy the N12 settlement in the meantime, whether or not the temporary structures have been completed. I directed the second respondent, the Mayor, and the third respondent, the City Manager, to report back to me by 15 July 2026 on the progress they have made in implementing my order. I retained supervisory jurisdiction to oversee the implementation of my order. I directed the Ekurhuleni Municipality, the Mayor and the City Manager to pay the costs of the application for interim relief, jointly and severally.

2 I indicated at the time I made this order that my reasons would be issued in due course. These are my reasons.

The N12 settlement

3 The N12 settlement is located in Highway Park, near Cloverdene in Benoni. Its approximate boundaries are Puttfontein Road on the western side, Benoni Road on the eastern side, the N12 highway on the southern side and Chief Albert Luthuli Extension 3 on the northern side. Until 6 May 2026, most if not all of the occupiers lived at the N12 settlement in temporary dwellings provided to them as a result of the order of the Constitutional Court in *Pheko v Ekurhuleni Metropolitan Municipality* 2012 (2) SA 598 (CC). In that matter, the Constitutional Court held that the Ekurhuleni Municipality had evicted the occupiers illegally from land in Bapsfontein, under a directive declaring a local state of disaster, which required the evacuation of the Bapsfonetin informal settlement. The court held that the directive was not enough to authorise the occupiers' removal without a court order, which had not been obtained. However, instead of directing that the occupiers return to land at Bapsfontein from which they had been removed, the Constitutional Court ordered that the occupiers be provided with land and amenities "in the immediate vicinity of Bapsfontein" (*Pheko*, paragraph 53). That land and those amenities were provided at the N12 settlement, which, despite being 20km away from Bapsfontein by road, appears to have been acceptable to the occupiers. The land and amenities were to be provided pending the provision of permanent housing, and the steps taken to provide that housing were to be reported to the Constitutional Court in terms of its order.

4 Just under 800 individuals and their families were relocated to the N12 settlement in 2011, but the permanent accommodation never materialised. Predictably, the N12 settlement grew, as the Bapsfontein residents were joined by others seeking a home there. It appears from the papers that the number of dwellings at the N12 settlement increased from just under 800 in 2011 to just under 2000 on 6 May 2026.

The May 2026 evictions and demolitions

5 Notwithstanding the municipality's failure, over a period of 15 years, to provide permanent accommodation to the occupiers, the least the occupiers could have expected was that they would be allowed to live at the N12 settlement with a degree of tenure security, safe from the kind of violent action that triggered their relocation. But it was not to be. Between 6 and 15 May 2026, the applicants say that security officers, police officers and members of the armed forces acting on the respondents' instructions evicted all of the occupiers and demolished their dwellings. Nobody suggests that a court order authorised this action. The respondents instead purported to act on the authority of a Presidential proclamation which put into action an initiative known as "Operation Prosper", and on the authority of a document from the Gauteng Department of Agriculture and Rural Development ("GDARD") which, they said, declared the N12 settlement unfit for human habitation.

6 Operation Prosper is an initiative of the President of the Republic, in terms of which he authorised the deployment of 550 members of the South African Defence Force to "prevent and combat crime and maintain and preserve law and order within Gauteng Province". On the face of the Operation Prosper

notice triggering the deployment upon which the municipality relied, the armed forces were to return to their barracks by no later than 30 April 2026. This begs the question of what soldiers were doing in the N12 settlement on 6 May 2026. But I need not consider that issue. Nothing in the notice, or in the documents from GDARD placed before me, authorised the demolition of the N12 settlement. Nor could it have done so, since evictions from and demolitions of a person's home may only take place where authorised by an order of court made after considering all the relevant circumstances (section 26 (3) of the Constitution, 1996).

7 As best as I can tell, the ostensive purpose of the operation was in fact to locate and arrest illegal miners who may have been operating in the settlement, and to seize their equipment. But the respondents do nothing on the papers to explain how that objective justified the wholesale demolition of the settlement and the eviction of its inhabitants.

8 During and after the demolition and eviction, the first applicant, the South African Human Rights Commission (SAHRC), sought redress for the occupiers. The SAHRC facilitated the compilation of a list of the occupiers, and asked that the respondents justify their conduct. On 12 May 2026, the municipality produced a document titled "Activation of Operation Prosper – N12 Settlement 6 May 2026 To-date (sic)". The document made clear that the respondents' activities at the settlement went substantially beyond the mere detection and prevention of crime. The document records that the municipality's purpose was to "verify" how many of the occupiers of the N12 settlement were originally relocated from Bapsfontein. On the face of the

document the “verification” appeared to involve the demolition of all the dwellings at the settlement, after which those who claimed to occupy the settlement in terms of the Constitutional Court’s order would be invited to verify themselves. I have my doubts about whether this was ever the municipality’s true purpose. On a conspectus of all the facts, it seems to me that the “verification” was probably a hastily arranged reaction to the SAHRC’s investigation rather than a planned component of the police action at the settlement.

9 Be that as it may, at the time the document was compiled, 606 structures at the settlement had been destroyed, including dwellings occupied by at least some of the 223 “verified households” identified as originating from Bapsfontein at the time the document was produced. The stated intention appears to have been to provide alternative accommodation to the “verified households”, but to no-one else. In the end, though, it appears from the papers that even the “verified households” are presently homeless.

10 Notwithstanding this self-evident admission that the municipality had evicted and destroyed the homes of the very people that the Constitutional Court had directed it to accommodate, on 22 May 2026, the City Manager wrote to the SAHRC denying that any illegal evictions had taken place. He averred that the municipality’s activities were limited to co-operating with police and defence force crime fighting operations, the destruction of “unoccupied” structures, and other structures used by illegal miners, the arrest of illegal miners themselves, and the seizure of their equipment.

The urgent application

11 The SAHRC interpreted the 22 May 2026 letter as a complete denial of any responsibility to those whose homes had been destroyed. Its attempts to negotiate with the respondents having failed, the SAHRC placed an urgent application for relief substantially in terms of the order I granted on my urgent roll for 9 June 2026. On 8 June 2026, the Mayor, the City Manager and the municipality filed their answering affidavits. The matter was stood down to 12 June 2026 to allow the SAHRC time to reply.

12 The SAHRC's founding affidavit confirms that, by 15 May 2026, virtually the entire settlement had been destroyed and that its residents – some 2000 people and their families – had been excluded from it. During argument, Mr. Georgiades, who appeared with Ms. Kakaza for the applicants, confirmed that the occupiers cannot return to the settlement without a court order. Anticipating the version that no evictions had actually taken place, the founding affidavit is supported by affidavits from the occupiers describing how they were evicted and their homes were destroyed, and from functionaries of the SAHRC who witnessed the evictions.

13 Jane Mmabatho lived at the N12 settlement for 15 years. She was relocated there from Bapsfontein. Her home was destroyed with her furniture still in it. Much of her furniture has been damaged. Her most important documents, including those confirming her relocation from Bapsfontein, have been lost. She has been left homeless, together with the eleven other people living with her, including her six grandchildren. Ceroline Mphuthi, also a former resident of Bapsfontein, is 71 years old. Her home was destroyed in front of her. She

now sleeps “outside”, by which I understand her to mean that she lives on the open veld. David Mtshali, a legal officer at the SAHRC, visited the informal settlement on 8 May 2026. He “observed distraught residents who were trying to salvage whatever remained of their belongings”. On 18 May 2026 he “personally observed that several occupiers” had “no shelter and were exposed to the cold weather as well unsafe conditions. These conditions were dire and consistent with recent demolitions and displacement”. Photographs annexed to the founding papers depict obviously well-tended flowerbeds and gardens arranged around empty spaces or rubble. Each empty stand sits next to a pole holding what looks like a fuse-box, electricity meter or other mechanism meant to supply services to the dwelling that no longer exists.

14 The respondents do not place any of these facts in serious dispute. Ekurhuleni’s answering affidavit is deposed to by Njabulo Zulu, the municipality’s “Divisional Head, Specialised Legal Services”. Mr. Zulu does not allege that he personally witnessed the operation which the applicants say resulted in their eviction and the demolition of their homes. Nor does he refer to a confirmatory affidavit from anyone who alleges that they are in a position to dispute what the applicants say happened at the settlement after 6 May 2026. This court has in the past strongly disapproved of municipal legal advisers attesting to facts of which they can have no personal knowledge, or purporting to answer a case based on facts clearly beyond their ken (see *Millu v City of Johannesburg Metropolitan Municipality* [2024] ZAGPJHC 419 (18 March 2024), paragraph 45). It appears that this disapproval has yet to filter through to those responsible for drawing papers on the municipality’s behalf.

15 I nevertheless accept that, in the context of this urgent application, it would have been acceptable for Mr. Zulu to rely upon hearsay, provided that the grounds on which he believed the hearsay to be true were set out. But Mr. Zulu's affidavit falls woefully short of that standard. The contents of his affidavit, Mr. Zulu says, are based on "discussion with colleagues from the relevant departments of the City of Ekurhuleni Metropolitan Municipality and its legal representatives" and "information obtained from the officials and legal representatives of the Municipality". He refers to confirmatory affidavits, but none of those confirmatory affidavits contains an eyewitness account of what happened at the N12 settlement after 6 May 2026 which challenges the direct evidence of eviction and demolition contained in the founding affidavit. If Mr. Zulu was told that no illegal evictions took place by anyone in a position to say so, that person's eyewitness evidence is entirely absent from the papers.

16 Mr. Zulu's affidavit alleges that no illegal evictions took place at all, and that the municipality participated in a crime-fighting operations after 6 May 2026, directed in the main at illegal miners who, he says had "infiltrated" the N12 settlement. He says that "most if not all" of the N12 settlement's previous residents no longer live there because they had been chased away by illegal miners. He alleges that the vast majority of those actually living at the settlement are not those who were relocated there in terms of the Constitutional Court's order in *Pheko*. He also denies that any of the occupiers were actually living at the N12 settlement immediately prior 6 May 2026. But he also accepts that some 223 out of 325 who presented themselves for "verification" after their homes were demolished turned out to have been able to prove that they were originally resident at Bapsfontein. Mr. Zulu says these

individuals “have consented to be relocated” to permanent housing in Mayfield, and will be assisted to do so. Mr. Zulu’s affidavit does not engage with the list of the occupiers which appears annexed to the answering affidavit. Nor does he attempt to explain why either the country’s premier human rights institution or the 570 individuals named on the list of occupiers would say the occupiers were evicted if not a single one of them was. Mr. Zulu does not address the evidence of wanton destruction contained in the photographs and eyewitness evidence annexed to the founding affidavit.

The test for interim relief

17 It was against this background that I had to decide whether the applicants could obtain interim relief. The test for the grant of interim relief is well-known. I must be persuaded that the applicants have a *prima facie* right to the order they seek in their application for final relief, which will be enrolled in due course. There is room for me to entertain some, but not “serious”, doubt about that right, while still granting the relief (*Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189). The applicants, or those in whose interests they act, must have suffered, or reasonably apprehend, irreparable harm if the interim relief is not granted, and there must be no effective remedy other than an interim interdict to prevent or ameliorate that harm.

18 Finally, the balance of convenience must favour the grant of an interim interdict. It has long been held that the stronger the *prima facie* right, the less the balance of convenience need tilt in the applicants’ favour. In other words, a relatively weak *prima facie* right may be compensated for by a balance of convenience firmly in the applicants’ favour, and a very strong *prima facie* right

can make up for a balance of convenience adverse to the applicants. This is little more than common sense. Apparently weighty cases in the main claim ought to be heard out even if it puts the opposing parties to a great deal of trouble. Even weak but still arguable cases ought nonetheless to be entertained if they cause relatively little trouble to those who have to defend them (*Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton* 1973 (3) SA 685 (A) at 691E-G).

The municipality's submissions

19 Mr. de Heus, who appeared for the municipality, the City Manager and the Mayor, did not attempt to advance the municipality's claim that no illegal evictions took place. He quite correctly accepted that the claim could not be sustained on the papers. In my view, the municipality's claim that there were no illegal evictions is wholly untenable. But I need not go that far. The question was simply whether the applicants had put up a *prima facie* case that the evictions and demolitions of which they complained actually happened, and whether, if they had, the respondents had thrown any serious doubt upon that case. As should be obvious by now, the applicants' claim that the respondents illegally evicted 2000 people between 6 and 15 May 2026 is both compelling and substantially unanswered. The applicants – even those who did not arrive at the property from Bapsfontein, or cannot prove that they did – plainly have a very strong *prima facie* right to re-occupy the N12 settlement, and to an interdict against further evictions.

20 Mr. de Heus argued, however, that this did not mean that everyone on the list of occupiers necessarily had the right to re-occupy the property. He argued

that their claims should be subject to verification by the municipality. I rejected that contention. The list of occupiers was compiled by the SAHRC. The list was first sent to the municipality on 19 May 2026. Other than the unsupported blanket claim that no illegal evictions took place, there is no suggestion that the list of occupiers is inauthentic. It was plainly compiled in good faith by the SAHRC itself. I have been given no reason to believe that the occupiers named there are not exactly who they say they are – people who have demonstrated, at least *prima facie*, that they were evicted from their homes at the N12 settlement, and who have the right to go back there. In any event, it seems to me that an open-ended "verification" process would simply delay the urgent relief the occupiers desperately need. I am also unable to understand how, given that their documents may have been destroyed during the demolition of their homes, the occupiers can realistically be expected to provide documentary evidence of their identity or previous residence.

21 During argument, Mr. Georgiades submitted that, in the event that the municipality required assurances that a person who wished to re-occupy the settlement really was a person named on the list of the occupiers, the assurance of the SAHRC should be more than enough. Mr. de Heus made no submissions to the contrary, and I accept Mr. Georgiades' submission. To the extent that the municipality will be prejudiced by persons who are not on the occupiers' list re-occupying the settlement under cover of those who are on the list, this prejudice is dwarfed by the prejudice a municipally-run verification process would cause to those whose legitimate claims would be delayed or denied by its implementation. I am also driven to conclude, on the facts before me, that the municipality has an incentive to refuse to "verify" as many of the

occupiers as possible in order to promote its version that no illegal evictions took place. I am not prepared to allow the municipality to act on that incentive.

22 Mr. de Heus next submitted that an interdict against the destruction "of any formal or informal dwelling, hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, whether occupied or unoccupied, except in terms of an order of court" was too broad. Mr. de Heus accepted that, in light of the Supreme Court of Appeal's decision in *City of Cape Town v South African Human Rights Commission* 2024 (5) SA 368 (SCA), even vacant or incomplete dwellings require an order of court before they can be destroyed (although that order, depending on the circumstances, may not need to be sought under the Prevention of Illegal Eviction from, and Unlawful Occupation of, Land Act 19 of 1998). He instead submitted that the breadth of the anti-demolition interdict would stifle the respondents' attempts to combat illegal mining.

23 I do not see how that follows. The relief sought and granted does not prevent the police, or even the army, from entering the N12 settlement, from seizing illegal mining paraphernalia they may otherwise be entitled to seize, or from arresting illegal miners that they may otherwise be entitled to arrest. The interim interdict does prevent the demolition of any structures used as dwellings, whether by illegal miners or otherwise. But Mr. de Heus was unable to point me to any authority that permits the destruction of a person's dwelling in order to prevent or punish illegal activity. Nor was he able to point me to anything that authorises the police, acting without a court order, to summarily

destroy any physical structure – whether or not it is a dwelling – simply because it is a site of illegal activity.

24 When the state unlawfully demolishes a home, it must generally rebuild that which it has destroyed (*Tswelopele Non-Profit Organisation and Others v City of Tshwane* 2007 (6) SA 511 (SCA) paragraphs 15 to 29). But Mr. de Heus submitted that an order for the reconstruction of the occupiers' temporary dwellings and amenities, at least pending their application for final relief, should not be granted. He did not submit that such relief was beyond the municipality's organisational or financial capacity to implement. Nor did he suggest that it would be impractical to reconstruct the dwellings in such a manner that would allow them to be dismantled in the event that the application for final relief fails. No such factual case was made out in Mr. Zulu's answering affidavit.

25 It was instead suggested that reconstruction cannot take place because GDARD had declared the N12 settlement unfit for occupation. I reject that submission. In the first place, the GDARD document placed before me (itself more than 7 years out of date) does not say in terms that the N12 settlement is unfit for occupation. Secondly, there is nothing on the papers that suggests that the land is objectively unable to sustain the reconstruction of the occupiers' dwellings, at least on a temporary basis while the applicants' prayers for final relief are determined. Third, even if GDARD had declared the settlement unfit for habitation, I would have to weigh that against the fact that the settlement was inhabited with the municipality's consent for 15 years before 6 May 2026, and that this consent was given in fulfilment of an order of

the Constitutional Court. Fundamentally, the question is really one of the balance of convenience. It seems to me that the inconvenience caused to the occupiers by their continued homelessness outweighs by some margin any inconvenience to the municipality caused by tolerating the temporary occupation of the N12 settlement in the face of GDARD's objections.

26 Accordingly, it seemed to me both that the applicants have a *prima facie* right to the relief they sought of the strongest kind, and that the balance of convenience was firmly in their favour. The harm caused by the occupiers' eviction and their continued homelessness was clear and plainly irreparable. There was no alternative remedy apparent on the papers.

The need for oversight

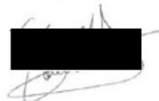
27 On the face of things, the respondents have committed a series of flagrant violations of the occupiers' constitutional rights. They have acted contrary to section 26 (3) of the Constitution, and in apparently callous disregard of the occupiers' rights to dignity entrenched in section 10 of the Constitution. They have caused unknown, and probably unknowable, injury to the occupiers' property and to each of the occupiers' rights to freedom and security of the person. They have acted without regard to the rule of law entrenched in section 1 (c) of the Constitution. The municipality may well be in contempt of the Constitutional Court's order in *Pheko*. The municipality appears to have learned nothing from what the Constitutional Court had to say in that case. The municipality has repeated the same egregious insults to the occupiers' dignity that it inflicted a decade-and-a-half ago. Mr. Georgiades submitted that

the respondents’ conduct as a whole was redolent of the Apartheid regime. On the facts as they presently stand, I cannot disagree.

28 It seemed to me that a *prima facie* case of such seriousness, involving the well-being of so many people, warranted the exercise of my supervisory jurisdiction, which is why I directed that the matter remain with me, that the City Manager be directed to submit a report on the steps taken to implement the interim relief, that both the City Manager and the Mayor be held personally responsible for taking the steps necessary to ensure that the relief is implemented, and that I continue to oversee their efforts to do so.

29 This was plainly a case in which a costs order against the opposing respondents was justified. The importance of the case warranted the taxation of counsel’s costs on scale “C”.

30 It was for these reasons that I granted my order of 12 June 2026.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 14 June 2026.

HEARD AND DECIDED ON: 12 June 2026

REASONS: 14 June 2026

For the Applicants: C Georgiades SC
N Kakaza
Instructed by the South African Human Rights Commission

For the First, Second and Third Respondents:	C de Heus Instructed by R Masilo Attorneys