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**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

High Court Case No.: 557/2025

**REPORTABLE**

In the matter between:

**THE KNYSNA MUNICIPALITY**

Applicant

**And**

**ALL PERSONS IN OCCUPATION OF  
OR ENTERING UPON ERVEN 3[...],  
3[...]<sup>2</sup>, 3[...]<sup>3</sup>, 3[...]<sup>4</sup>, AND 5[...], SEDGEFIELD  
SITUATED IN SMUTSVILLE. KNYSNA**

Respondent

Coram: Kusevitsky J

Heard: 28 April 2026

Delivered: June 2026

The judgment is handed down electronically by distribution to the parties' legal representatives by e-mail. The date that the judgment is deemed to be handed down is **4 June 2026**

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**ORDER**

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1. The application is postponed to a date to be arranged before Kusevitsky J. pending the finalization of the process as described in paragraphs 3, 4 and 5 below.
2. The order and judgment including the entire application is to be served on *The Western Cape Minister of Local Government, Environmental Affairs and Development Planning* and the Minister of Human Settlements.
3. The Respondents are to compile a list of all the occupiers on the aforementioned erven as at 24 October 2025. The list is to include the name and ages of the occupiers, the date upon which they took occupation on the aforesaid erven; women headed households and any disabled persons. Furthermore,
  - 3.1 The list should be a composite joint list ("the joint list") of all the occupiers on the erven, to be compiled jointly by the legal representatives for the Respondents.
  - 3.2 The joint list is to be accompanied by an affidavit which will provide a summary of the exact number of occupiers, including the total amount of households located on the said erven.
  - 3.3 The joint list should be filed by **Friday, 12 June 2026**.
4. Upon receipt of the joint list, the Applicant is to provide a report and a list of emergency temporary alternative accommodation to those occupiers who require same by **31 July 2026**.
5. The report on the provision of emergency alternative accommodation should be done in consultation with the relevant governmental departments including the Western Cape Minister of Local Government, the Minister of Human Settlements and/or

any other governmental department under whose jurisdiction the said erven may fall.

6. It is recorded that Legal Aid has come on record for certain of the occupiers. Those Respondents, should they so wish, are to file their answering affidavit by **12 June 2026**.

7. Paragraphs 2 and 3 of the interim order granted on 24 October 2025 is amended as follows:

7.1 The Respondents, except for those who have been listed on the joint list, are restrained from entering onto the erven listed and set out in Annexures A and B of the notice of motion. For the sake of clarity, the joint list is a compilation of occupiers who have been on the said erven as at 24 October 2025.

7.2 The Respondents, other than those listed on the joint list and who already occupy existing structures, are restrained from entering upon any new unlawfully erected structures.

8. A final order is granted in the following terms:

8.1 The Respondents are restrained from erecting any structure and/or further structures on the erven as set out in annexures A and B.

8.2 The Respondents are restrained from damaging and/or removing any property belonging to the Applicant found thereon.

8.3 The Respondents are restrained from assaulting and/or threatening any of the Applicant's officials in general and specifically when attending meetings with the Applicant and/or members of the Smutsville community.

9. Pending the return date to be determined, paragraph 7 and the sub-paragraphs thereof shall operate as an interim interdict.
10. The Applicant is ordered to provide ablution facilities on the erven pending the resolution and relocation of the Respondents pursuant to paragraph 5 above.

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## JUDGMENT

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### KUSEVITSKY J

[1] This was an urgent application issued on 22nd of October 2025 by the Knysna Municipality (“the Municipality”) against the Respondent. The relief sought is as follows:

- “1. Condoning the Applicant’s non-compliance with the ordinary rules of court relating to time and service and that the matter be heard as one of urgency;
2. The Respondents are restrained from entering onto the erven listed and set out in “Annexure A and Annexure B, annexed hereto (the notice of motion), and removing or damaging any property of the applicant found thereon;
3. The Respondents are restrained from entering the unlawfully erected structures erected on the erven set out and listed in Annexure A and Annexure B’
4. The Respondents are restrained from erecting any structure(s) on the erven listed and set out Annexure A and Annexure B annexed hereto;
5. The Applicant or any of its assignees including the Sheriff of the court are hereby authorised to demolish and remove all structures erected by the Respondents on the erven set out in Annexure “A” and “B”;
6. The Respondents are restrained from assaulting and/or threatening any of the Applicant’s officials in general and also specifically when attending meetings with the Respondents and/or members of the Smutsville community;
7. Service of this Order shall be served on the Respondents by publishing and displaying it on prominent places of erven 3[...], 3[...], 3[...], 3861, 3[...], and 5[...] Sedgefield, Smutsville in Knysna, as well as on the main entrance to the Applicant’s principal office in [...] C[...] Road, Knysna;
8. ...”

[2] On 24 October 2025, the matter served before Fortuin J, who granted interim relief in terms of prayers 2, 3, 4 and 6 of the notice of motion. The court failed to grant the Applicant or any of its assignees, including the Sheriff of the court, an order to demolish and remove all structures erected by the Respondents on the said erven as per paragraph 5 of the relief sought. A *rule nisi* was issued, calling upon the Respondents intending to oppose the application to show cause, if any, on Friday 28 November 2025 why the order should not be made final.

[3] On 28 November 2025, the matter served before Slingers J, who extended the interim order pending finalization of the matter and postponed it for hearing to 28 January 2026 for the Respondents to apply for and show proof of application for legal assistance.

[4] On 28 January 2026, the matter served before Deputy Judge President Goliath, who again postponed the matter to 28 April 2026 referring the matter to the opposed motion roll ("the Goliath order"). The parties were also directed to, *inter alia*, approach Legal aid or a private legal practitioner for legal representation by 9 February 2026 and further directed that the parties were to engage in an informal dispute resolution ("ADR") process to amicably resolve the dispute. The rule was accordingly extended to 28 April 2026 and the notice of the informal dispute resolution process to be published by the Applicant in the terms as provided for in the court order.

[5] On the return day on 28 April 2026, two legal representatives for the respondents came on record. The first was Adv D Trietsch, together with Adv Reinecke, representing six households and the second, Mr L Van Wyk from the George Legal Aid Board. At the time of the hearing of the matter, the Court had not yet had sight of the Legal Aid Boards answering affidavit. During submissions made, Mr Van Wyk indicated that their office had received approximately sixty applications for legal aid pursuant to this matter. Consultations with these community members ("occupants/respondents") proved a logistical challenge. He sought condonation for the late filing of the answering affidavit deposed to by one of the Respondent's, Ms Cordell Maarman. In the condonation affidavit, he stated that a consultation had

taken place with about twenty-two of the Respondents on the 16<sup>th</sup> of April 2026 after a local gym had kindly made their premises available to them for consultation. They were provided with a make-shift desk, and the Respondents had to wait in line in order to provide their instructions. The Respondents contend that the Applicant would suffer no material prejudice by the delay in contrast to the Respondents who would face a gross injustice and potential homelessness in a disaster zone if their version was not placed before court.

[6] Similarly, an application for condonation for the late filing of the answering affidavit of the six households that Ms Trietsch was representing was sought. She explained the practical difficulties that was encountered in firstly, trying to arrange personal consultations with the some of the Respondents. This proved a challenge because of their socioeconomic hardships and logistical barriers given their indigent circumstances and the substantial geographical distance between them and their counsel. This was also exacerbated by the Respondents daily commitments of commuting to work and school, and mandatory attendances in local clinics via public transportation. A further aspect which compounded their difficulties were the torrential rainfall and subsequent flooding which caused extensive damage to the Respondents' dwelling, and this necessitated emergency repair work and restoring their homes to basic habitability, which made it impossible for them to consult and provide legal instructions timeously.

[7] The Applicant, represented by Mr van der Schyff, vehemently opposed any further postponement, indicting that there had been compliance with the Goliath order. He submitted that the Respondents had had ample opportunity to obtain legal representation given the various postponements and crucially, there had been attempts at mediating the matter as directed in the Goliath order, but that this had proved unsuccessful.

[8] In this regard, he referred to the compliance affidavit of the instructing attorney, Ms Harker wherein she states that two dispute resolution meetings were held on 9 February 2026 and 4 March 2026 respectively. In terms of the minutes of the first meeting, the Applicant reiterated that the land in question was designated for housing development for the Smutsville community; that budgetary constraints have resulted in a scaled -down project; that phase 2 remained viable, and the continued

or renewed occupation of the land would prejudice and increase cost. At the meeting according to minutes, the Respondents through Adv Trietsch and Adv Reinecke reiterated the procedural deficiencies in the Applicant's founding papers; requested further information regarding the housing development including budget implications and projected timelines and crucially raised the fact that the affected community was experiencing severe economic hardship; that they lacked basic services at the current site and their reluctance to vacate the land without viable alternatives.

[9] The Respondents proposed certain sites as potential relocation sites for consideration. At the following meeting of the 4<sup>th</sup> March 2026, where the purpose of the meeting as indicated in the minute was to consider and record the Municipality's feedback regarding the availability and sustainability of alternative land for a possible relocation of the Respondents, the Applicant merely recorded the following: available municipal land is already allocated to housing projects; certain land is privately owned; and the remaining land is unsustainable due to regulatory or environmental constraints.

[10] Instructive to note, it was not the Applicant who proposed alternative sites, but the Respondents. The Applicant simply recorded *inter alia* that municipal project sites could not be repurposed outside existing development frameworks and considering the Municipality's position, no consensus was reached regarding alternative relocation of land. As a result, and in light of this, the Respondents ostensibly elected to terminate their participation in the meeting, and the ADR process engagement was terminated.

[11] Mr van der Schyff submitted that it was crucial that the matter be finalised, given the fact that the Applicant would lose the proposed budget allocation for the proposed building of low-cost houses on the erven and this budget would be lost unless an urgent order was granted in the terms sought. I will deal more fully with the Applicant's submissions in due course.

[12] The Court indicated that it did not have the Applicant's replying affidavit even though Mr van der Schyff contended that same had been filed three days prior.<sup>1</sup> In any event, he argued that it simply contained one or two denials and was paucal, given the lack of defences raised by the Respondents. The Court was also concerned that no housing report had been filed by the Municipality, given that the Applicant was essentially seeking the eviction of hundreds of people. Mr van der Schyff contended that this application was not an eviction since no occupiers were on the erven and as a consequence, a housing report was not necessary as would be contemplated in accordance with the Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998 ("PIE"). The Court non-the-less advised the parties that it would contemplate postponing the matter in order for the application to be served on the Western Cape Minister of Local Government in order to obtain their input with regard to the availability of alternative land, and for the parties to compile a list of all of the occupiers on the erven as at the date of service of the application. The Applicant was of the view that this was not necessary since this was not an eviction and that the Court could adjudicate the matter as it stood, but that it would have no option but to agree if the Court considered that a housing report on the availability of alternative emergency housing was necessary.

[13] The Court also indicated that the Applicant's interim rights would be preserved. The matter stood down for the Court to craft an appropriate order, given the import of the matter and the impact of any proposed order on the hundreds of people who were present in court. The Court reassured the Respondents present that no order for the demolition of their homes would be made on that day.

[14] I have since had an opportunity to consider the matter and the submissions raised. I did not consider a mere Order being made to be appropriate in the circumstances without giving the reasons therefore, given the import of the matter and the serious implications thereof. I am also mindful that the parties might want to fully ventilate the matter, especially in light of the Applicant's contention that it is not necessary for the Applicant to provide a Housing report to provide temporary emergency housing to the Respondents. As will be evident hereunder, the case law

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<sup>1</sup> It was stated that the Reply was filed on caselines, but it is evident that this is not a caselines matter and so it could not have been. The one page Replying affidavit has in the meantime been obtained and indeed does not take the matter any further.

and the Applicant's ultimate concession that this would indeed be required, fortifies the Order which I propose to make.

#### The application for Condonation

[15] I have considered the reasons provided by the Respondents and their legal representatives for the late filing of their answering papers. The Court will also take judicial notice of the devastating impact of the weather that has impacted the affected areas of the Southern Cape region and surrounds. The Court is also mindful of the indigent circumstances that the Respondents find themselves in. Mr van der Schyff during his submissions argued that the Respondents had been afforded ample opportunity to obtain legal representation. What Mr van der Schyff unfortunately miss is this – a Respondent or Respondents who are classified as illegal occupiers of land, more so State land, in my view, cannot be expected to be held to the same strict standards of compliance as an otherwise sophisticated litigant respondent. Courts, as have rightly been done in this instance, must give such Respondents the leniency, within reason, to obtain legal representation in order for their rights to be fully protected and ventilated throughout the litigation process in order to give full effect to constitutional imperatives of equality before the law. The Applicant's criticism is therefore unwarranted and condonation is accordingly granted.

[16] It is perhaps apposite to note that since the hearing of the matter, a further devastating storm had encompassed the Southern Cape region with devastating consequences to the community.

#### The relief sought

[17] The Applicant seeks confirmation of the interim order including final relief that it be permitted to demolish the dwelling structures erected by the Respondents on the aforesaid erven as provided for in paragraph 5 of the notice of motion.

[18] For the sake of completion, I will provide a summary of the background which precipitated this application.

[19] On 19 August 2025, a Municipal Manager in the employ of the Applicant met with the local residents of the Smutsville community to address them on the Provincial Government cuts in respect of the Smutsville low-cost housing project. Ostensibly, the Western Cape Provincial Government had initially earmarked a budget of approximately R33 million for a low-cost housing development in the Smutsville area situated in the Knysna District. They say that due to circumstances beyond the Applicant's control, this budget was drastically slashed by the Western Cape Provincial Government, leaving an actual budget of approximately R 8 million earmarked for the Smutsville project. The Applicant contends that this news was not well received by the community. The following day, 20 August 2025, violent protests erupted in the area, which followed because of the meeting. A Smutsville community member also ostensibly called a municipal officer employed by the Applicant, advising that certain members of the local community had started invading the erven, and that they were in the process of clearing the land to erect informal dwelling structures.

[20] Violent protests continued, which included the burning of tyres and blocking public access to streets in the immediate vicinity. Law enforcement officials were accordingly called to protect the Applicant's assets situated on Erf 5[...], Sedgefield, and to prevent the land invasion which was taking place.

[21] The Municipality contends that at the meeting, the community members were clearly dissatisfied with the announcement as evidenced by their 'angry verbal responses'. Then on 20 August 2025, they had received communication from a Smutsville resident that Respondents had taken it upon themselves to enter certain erven to clear the vegetation on the vacant land. This was done ostensibly with a view to unlawfully erecting informal dwellings. This presented a major problem for the Applicant they say, as it has a housing waiting list comprising of approximately 800 families for the earmarked area, whereas the latter area could currently only accommodate approximately 207 sites.

[22] They aver that it was therefore crucially important that the sites be protected to prevent an unlawful invasion where residents ultimately "*jump the queue*" for

housing. The Applicant contends that each time that officials of the Applicant attempt to address members of the Smutsville community regarding the status of the housing projects in the area, that it is followed by an intense community uprising resulting in public unrest in the area, causing damage to the Applicant's assets situated on erf 5[...] Sedgefield, and further attempts to invade certain of the aforementioned erf.

[23] The Applicant contends that the situation appears to have calmed down, with calm restored, but decided nonetheless to proceed with the restraining order, although conceding that the conduct appeared to have ceased on 22 August 2025. The Applicant contends that after its law enforcement team revisited the Smutsville area around 20 October 2025, they had noticed that the Respondents had erected additional informal structures since they had last left the area on the previous day. They also mentioned an additional informal structure being erected on erf 5[...], which is designated as the area behind U-Save Store, as well as an additional three structures on certain other of the erven, 'along with a tent', bringing a total of six structures in the Langkrug area in Smutsville. They reported that one informal dwelling structure had already been erected on Erf 5[...] situated behind the U-Save shop in Oestervanger street, Smutsville,

### Interdict

[24] The Applicant contends that in seeking the relief sought, that it has no alternative remedy other than to approach court since the low-cost housing project is scheduled to proceed on the cited erven, except on a lower scale, given the reduction of the budget. They argue however that if the land is unlawfully occupied, the Applicant would face protracted litigation to have the informal and unlawful occupiers of the land removed therefrom, therefore to the prejudice of both the Applicant as well as those members of the community who have been legally earmarked for housing. Consequently, they say, should the land be invaded and informal structures erected as alleged, the Applicant would not be able to execute its constitutional mandate to provide housing as planned. This contention is quite extraordinary. In sum, the consequence of the Applicant's assertion is that rights to human dignity may be forgone and ignored because the court process takes too long. At the risk of stating the obvious, it can never be, in a constitutional democracy,

that an applicant and no less an Organ of State can cloak itself with self-serving powers to trample on and ignore the human rights and dignity of its citizens whom it is meant to protect and which rights it is meant to uphold.

[25] Furthermore, at the hearing of the matter, counsel for the Applicant was asked to indicate why the founding affidavit was silent on ostensibly when this low-cost housing project was meant to start. The application is completely silent in this regard and so too regarding when this budget was ostensibly allocated, when it was reduced and when it will ostensibly fall away if the land is not immediately cleared of the occupiers. These are all important factors to consider, *if*, the Applicant wishes to rely on this as a basis for the relief sought. As will be shown, despite the repeated and vociferous contention argued at the hearing of the matter by Mr Van der Schyff, this is not the case advanced on the papers.

[26] They further contend that they have a real right to the erven in question and that they would suffer irreparable harm if the land were unlawfully taken over by the Respondents. The Applicant would then lack the resources to meet its obligations. They also contend that they have no other alternative, reasonable and suitable remedy open to it other than to obtain the relief sought in anticipation of an imminent land invasion and destruction to the Applicant's assets since '*any other legal action would take too long to prevent the land invasion.*'

### Urgency

[27] On the question of urgency, the Applicant contends that the matter is extremely urgent in that the Respondents have clearly set about erecting the unlawful dwellings at a pace, which means that any normal court process would not stop the Respondents immediate unlawful conduct. It says they do not have an alternative reasonable, suitable and practical remedy. They aver that there is no prejudice to the Respondents as they are simply embarking on unlawful self-help and not being ordered to do anything other than obey the laws of the land as they are ordinarily compelled to do.

[28] Finally, the Applicant avers that the Respondents are invading the land and that no-one has been granted the right to trespass thereon or occupy the land. It states that they have no alternative other than to approach the court since the low-cost housing 'is scheduled to proceed on the cited erven except on a lower scale given the reduction.' Again, as I have indicated above, no details are given about this imminent plan to build the low-cost housing. They further contend that they have no alternative reasonable and suitable relief other than to obtain the relief in anticipation of an imminent land invasion.'

### The Respondents' contention

[29] On 13 April 2026, the six households represented by Advocate Trietsch filed their answering affidavit. In it, they raise, *inter alia* to their personal circumstances, what can only be described as points *in limine*. The first related to the assertion that annexures to the founding affidavit were not annexed to the application when it was served on the Respondents. Furthermore, no evidentiary proof of the somewhat 800 people contended to be on the waiting list, was provided, nor was any evidence provided of the ostensible damage to the Applicant's assets and/or property on Erf 5[...]. In reply, the Applicant admits that the annexures to the application were not served on the Respondents but contend that the parties are now legally represented and have the option to follow the court rules should they require copies thereof or feel aggrieved by this. Again, this is an astounding assertion. If a court orders that an application be served on a party, the entire application together with its annexures, which forms part of the evidentiary body of the application, given these are not action proceedings, should be served on that party. It is not for an applicant to decide what part of the pleadings it should serve and what to omit, nor does an applicant have the discretion to determine what is material and relevant and what is not. It seems to me as though the serving of the papers on a designated marginalised group of persons in the manner ordered has seemingly entitled the Applicant to cut-corners. Whilst one might argue that it was done as a matter of expedience, the tone of the replying affidavit suggests otherwise and that Applicant was of the view that it was entitled to do so. Where an application where the relief sought has severe, onerous and life changing consequences, and especially where the respondents are potentially unsophisticated and/or marginalised members of society, compliance

should be supreme, lest it is assumed that the designation of a respondent is not worthy of proper compliance or entitles a party to a relaxation of the rules. As I have stated, the opposite is imperative.

[30] The next assertion was the contention that the relief sought was not competent. The Respondent states that there are approximately 70 individuals comprising women, minor children, elderly, disabled, and women-headed households that occupy the erven.

[31] The deponent, Ms Catherine Akoledowo set out her personal circumstances as well as that of five other families. Most of the personal circumstances are similar. I highlight but two. She stated that she is 41 years of age, the sole breadwinner for her family and married to a foreign national who does not possess a valid work permit. Her household includes two minor children aged 10 and 8. She indicated that due to their financial standing, the family did not qualify for a traditional bank home loan, and the monthly income was allocated towards essential expenses, which included groceries, basic household necessities, medicine, clothing, and schooling for the children.

[32] Another household is that of Mr. Eugene Avery, a 48-year-old disabled male who was medically boarded and unemployed. He has been on the waiting list since 2009, and his household includes his two children and two minor grandchildren who reside with them. Another household consists of Ms. Frendolene Baartman, who is disabled and unemployed. She has been on the waiting list for years without placement. Her household includes three minor children aged 8, 12, and 17.

[33] She averred that the Respondents represent a deeply established community, with the majority having occupied the Smutsville property for over a decade, with the oldest resident aged 75 years. She states that most of the people that had moved to the location had done so due to the unaffordability of previous rentals or the absolute necessity of proximity to employment opportunities and essential urban resources.

[34] Further points raised were the following: The submission was that temporary residential accommodation must be provided to the Respondents as they would be rendered homeless should they be evicted from the property. They further contend that the necessary housing report from the Municipality was not before court to ascertain whether alternative accommodation would be made available to the occupiers if they were evicted or whether such alternative accommodation was adequate and constitutionally compliant.

[35] The Respondent contends that the Applicant is not a private landlord but exercises public powers and has the executive authority of an organ of state which is the custodian of nationally owned land. They have constitutional and statutory obligations on how such land is used and managed to achieve service delivery, including housing and land reform obligations. The Respondent further contends *inter alia* that in January 2026, the Knysna District was declared a disaster area owing to bad weather conditions that had ravaged the area.

[36] The Respondent also denied the characterization of events as being violent protests which had emanated because of the meeting. She claims that the purported aggression is simply exaggerated to justify an eviction without providing alternative accommodation, violating the PIE Act and the legal prescripts as contained in *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*<sup>2</sup>. She contends that the community's frustration arose from years of municipal inertia and unexplained budget cuts, not isolated incidents. There has also been no meaningful dialogue due to the Applicant's refusal to engage substantively with the Respondents over time.

[37] The Respondent states that the Applicant has completely failed to address or provide any alternative accommodation for the Respondents, many of whom include children, the elderly, disabled persons. They contend that under the PIE Act and the *Grootboom*<sup>3</sup> judgment, that no eviction can be granted if it renders individuals homeless without temporary emergency accommodation. They say that in the

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<sup>2</sup> 2012 (2) SA 104 (CC); 2012 (2) BCLR 150 (CC); [2011] ZACC 33

<sup>3</sup> *Government of the Republic of South Africa and Others v Grootboom and Others* [2000]; 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)

Western Cape, proposed “safe spaces” or transit camps are inadequate, especially for vulnerable groups, as they often lack basic services and dignity contrary to Section 26 of the Constitution. They maintain that the budget cut from R33 million to R8 million is self-inflicted and the Applicant cannot use that to evade providing relief in what is a humanitarian crisis exacerbated by the January 2026 disaster declaration. It was finally contended that the court stay any eviction until temporary emergency accommodation is secured and a just and equitable inquiry is conducted.

[38] At the hearing of the matter, Ms Trietsch submitted that she had done an inspection-in-loco together with Ms Reinecke of the erven but found that it was impossible to delineate where the exact properties were located. She confirmed that the occupiers lived in dire conditions and that they did not have any running water nor ablution facilities.

[39] The other answering affidavit was deposed to by Ms Cordell Marjorie Maarman. She was represented by Legal Aid. At the hearing of the matter, Mr Van Wyk stated that given the late filing of the answering affidavit for the reasons that were advanced earlier, he could only provide the answering affidavit in respect of Ms Maarman. He averred that it would in all probability be a timeous and at the end of the day, fruitless exercise if all sixty to seventy persons were to depose to answering affidavits, since all their contentions in opposition to the application would essentially be the same, other than their personal circumstances.

[40] Ms Maarman is an adult female residing at U[...] Pine Valley, Smutsville, Sedgefield. She opposes the relief on the basis that the structures in question were already occupied at the time that the application was launched and argues that the relief sought constitutes an eviction in substance.

[41] The Applicant is therefore required to comply with the provisions of the PIE Act, which it has failed to do. She furthermore denies that a portion of the land was vacant at the time, as residential structures were already erected and occupied. While she admits that the residents were informed of the budget cuts, she disputes that any meaningful engagement was held between the residents of Smutsville and

the Applicant and that no structures were erected during August 2025 on the erven as alleged.

[42] She says that to her recollection, no new planned housing sites were built or developed over the last 20 years. Furthermore, no subsidized housing developments were made available, with or without a budget. She contends that this has led to the community erecting their own housing developments over the last few years, examples of which are areas known as Groenvallei, Corona Valley, and Lankgewag, which areas she says were ultimately provided with services such as water and electricity.

[43] She further states that according to an article published in the Knysna-Plett Herald, a local newspaper outlet, during or about 2021, it indicated that the area and erven around the U-Save Precinct, where she currently resides, was purchased for this exact reason. She says that the Applicant had received a grant for the sum of R2 539 860 from the Department of Human Settlements and paid the outstanding amount of R360 140.00 to purchase the property.

[44] She argues that the budget cut from R33 million to R8 million is self-inflicted and that it could not be used to evade its constitutional duties. Structures were erected due to the Applicant's lack of housing developments. She says on Applicant's own version, they do not have the resources to develop a housing project. Alternatively, for the last 20 years, the Municipality has failed to provide any sort of housing development in that area. She has twice applied for a housing subsidy and is hopeful that she is on the waiting list.

[45] She finally contends that there are close to 92 structures on the erven, but that no further structures were erected after 22 October 2025. She says if the order were to be granted to demolish the structures on the land, she would lose her home. She has been in this property for more than six months, and all her earthly possessions are in her home, which is currently under threat of being demolished. In total, she

says that according to her estimation, more than 90 families would be affected by any order that would be granted.

### Discussion

[46] At the start of these proceedings, counsel for the Applicant maintained that this was not an eviction since there were no people living on the erven. These were merely structures that had to be demolished. He averred that the belated legal representation, which, he contended the Applicant did not intend taking issue with, was simply 'kicking the can further down the line' since the Respondents had no defence and that the Applicant was entitled to its relief.

[47] In court, it was evident that close to a hundred people were present, all of them ostensible occupiers of the erven and eager to know whether their homes would be demolished. The presence of these occupiers at court did not deter the Applicant at all. In fact, they were more determined to persuade Court that they were entitled to their relief, despite the presence of the occupiers. Mr Van der Schyff argued that the Applicant had complied with the Goliath order and had participated in the ADR process. He argued that just because there was no outcome, did not mean that there was no process. He argued that to entertain another postponement for the purposes of filing further papers or reports was fruitless. He averred that the answering affidavit by certain of the respondents evidenced one thing - that the best defence that they had was that they had no defence.

[48] Unfortunately for Mr van der Schyff, the matter is not that simple. In fact, the Court remarked that it seemed that the Applicant wanted to the Court to '*wish away*' or simply ignore the presence of the occupiers. That they persisted with such gusto and disregard for the constitutional and human rights of the occupiers indicated a glaring lack of appreciation of the legislation and the constitution. To my mind, intentionally and unlawfully so.

[49] The Full Bench in the matter of *South African Human Rights Commission and Others v City of Cape Town and Others*<sup>4</sup> (“Qolani”) dealt with a similar issue where the City of Cape Town, under the guise of counter-spoliation sought to demolish structures without the need of applying the provisions of the PIE act. I am of the view that this is precisely what the Applicant here, *in casu*, unlawfully so, seeks to do.

[50] I say this for the following reason. The issue in *Qolani* dealt with the legality of the City of Cape Town’s demolition of erected structures within its jurisdiction and whether the common law on counter spoliation, which it had relied on in defence of its action, passed constitutional muster. Here though, it is common cause that the Applicant is seeking a court sanction to, *inter alia*, demolish the occupiers’ home without more or judicial investigation or engagement. Mr van der Schyff argued that the land was unoccupied and that the order that the Applicant seeks is to prevent the occupiers from invading the land. Whilst this is one of the grounds of relief, it is not the primary motivation – the Applicant want to secure the property by preventing occupiers from invading the land and demolishing the existing structures despite approbating and reprobating the fact that the structures constitute the homes of the occupiers. On the Applicant’s own version, some six structures are occupied. In the ADR, it was known that occupiers were present on the erven. Yet on the day of the hearing, despite this knowledge, it indicated in its address and in its practice note, that it was persisting with the order of demolition, despite it not forming part of the interim relief granted by Fortuin J.

[51] On the Respondent’s version, there are in excess of seventy people occupying the various erven, most notable the area behind U-Save. What does the Applicant do with this information? It persists. In its service affidavit, it annexed various photographs<sup>5</sup> depicting compliance with the service of the notice of motion, together with annexures. We now know that the annexures were not annexed. The service affidavit deposed to by Lwandile Nkankula attorney of record for the Applicant indicates that the process was served and affixed to various premises throughout the Smutsville Community in the Knysna, Sedgefield district. There is no key to each

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<sup>4</sup> (8631/2020) [2022] ZAWCHC 173; [2022] 4 All SA 475 (WCC); 2022 (6) SA 508 (WCC) (15 July 2022). On 1 July 2020, Mr Qolani was forcefully dragged out of his informal structure in Khayelitsha by officials of the City of Cape Town and they thereafter proceeded to demolish his structure with crowbars.

<sup>5</sup> Marked as “A1 to A25”

photograph. Photos A3 and A4 depict poles, structures and homes with at least close to twenty people in the background facing the police officers. Photos A6, A11, A12, A20, A21 depict the affixing on complete structures. Some photos indicate the start of erection of structures<sup>6</sup>.

[52] In the service affidavit<sup>7</sup> of the interim court order of Fortuin J, Mr Nkankula confirmed that he, together with officers of the Applicant's Law enforcement department together with the South African Police Services duly addressed the illegal occupiers; asked the illegal occupiers to take copies of the court order after explaining the contents thereof to them; explained the contents again to individuals whom had questions; and confirmed that the court order was affixed on all illegal structures erected on the site as well as the U-Save building 'which photographs of the court order on the said site and illegal structures are attached as set-out in the attached schedule of service marked Annexure "SA1". Again, it is evident that complete structures are depicted in the photographs.<sup>8</sup> In fact, in some photographs, locks on doors are clearly depicted. In sum, it is clear that the occupiers of the erven were engaged with during the service of the application and interim order. Thus, for Mr van der Schyff to contend that there are no people that will be affected should a final order be granted is misguided and misleading, even on its own papers.

[53] At the hearing of the matter, I advised the Applicant that I was of the view that the application contained some serious deficiencies. Regarding the aspect of urgency, it did not indicate that building work was imminent or that bulldozers were at the ready to break ground which necessitated the urgent demolition and removal of illegal occupiers. Our courts are clear – if people are unlawfully occupying land, an application in terms of PIE should be sought and the process followed. This the Applicant failed to do, despite knowledge that many occupiers, and not just the six that it attempted to show, were present on the erven. To be clear, even if there was one structure with occupants, the application of PIE should have been employed.

[54] The City of Cape Town in *Qolani* accepted that where structures have been erected on the land and have been occupied as homes, then it would have to

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<sup>6</sup> A3, A8, A13, A18

<sup>7</sup> dated 25 November 2025

<sup>8</sup> Photos A10 to A20

approach the court in accordance with the provisions of PIE.<sup>9</sup> The City there had also argued that its ability to evict people from land unlawfully occupied is hamstrung in that when it seeks an eviction order, it must provide emergency accommodation for the persons in unlawful occupation and who are evicted.<sup>10</sup> In *casu*, here the Applicant avers that people should not be allowed to jump the proverbial queue as there is a waiting list and that self-help cannot be condoned. Mr Van der Schyff also contended, although this was not evident on the papers as to when or how this would occur, that if the order is not granted, then the Applicant will ostensibly lose the budget for it to commence with the housing project.

[55] Firstly, the Court in *Qolani* correctly pointed out that the City's, (and any municipality) obligation to provide emergency accommodation does not arise from the demolition of structures or the eviction of persons, but from section 26(2) of the Constitution and the Constitutional Court judgment of *Grootboom*.<sup>11</sup>

[56] In *Qolani*, the debate also surrounded when, for purposes of a definition of a 'home', a structure would be construed as a place of dwelling; the question of whether an occupier was in peaceful and undisturbed possession of a structure even if it was not erected completely; and the progress of the erection of the structure, in other words was it from the installation of poles or to the completion of a roof. Whilst this is not a question that has to be answered in this case, it is relevant insofar as the Municipality's assertion that it is not required to apply the PIE act.

[57] Why is this necessary? It is the Applicant's case seemingly that the structures on the erven do not amount to occupied homes which would require them to apply the provisions of PIE. The court in *Qolani* when assessing when one occupied a place for possession stated that effective physical control must be exercised over the object which is the subject of the possessory claim. Effective physical control is context sensitive as the nature of the object, as well as its use and objectives would determine what manner of control is required to constitute physical control. In the circumstances, the construction of incomplete structures could very well amount to a

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<sup>9</sup> At para 34

<sup>10</sup> At para 35

<sup>11</sup> *Qolani* at para 35; *The Government of the Republic of South Africa and Others* 2001 (1) SA 46 (CC)

physical manifestation of the possession, as set out by *Yeko v Qana*, of the land with an intent to derive some benefit.<sup>12</sup> The court went on to state that there, both the City and the Province accepted that such structures would and could only be demolished and persons evicted therefrom in terms of a court in application of the provisions of PIE. Here, the Knysna municipality is under the misguided view that this does not apply to it.

[58] The Applicant approaches this court under a guise of an interdict, but what the eventual relief would amount to is counter spoliation. The court has stated that it appeared that the City there (in *Qolani*), uses the remedy of counter spoliation as a means of obtaining final relief which do not require judicial intervention. This is precisely the *modus* adopted by the applicant. It is of the view that it can circumvent the provisions of PIE by slipping in a relief for the demolition of homes, without judicial enquiry or intervention. The court has held that counter spoliation could never lawfully justify the eviction from occupied informal structures. When informal structures are occupied, the occupants must be dealt with in terms of PIE.<sup>13</sup>

[59] The Applicant in argument contends that the matter is urgent because of the budgetary constraints and that the budget may be lost. Yet it does not explain when the initial budget allocation of R 33 million was granted and why it failed to then implement the low-cost housing development. The Applicant fails to take the court into its confidence on this aspect, proceeds to make sweeping and generalised statements about a budget about to be lost and leaves the court to speculate.

[60] In fact, most of the reliance on this supposed urgency of a potential budget loss is not borne out by the papers. Most certainly, that was not the grounds relied upon for coming to court on an urgent basis. It is evident from the founding affidavit that the only aspect relating to urgency is contained in paragraphs 31 and 32 of the founding affidavit which deals only with the Applicant's assertion that the matter is urgent because of the Respondents alleged pace of erecting the unlawful dwellings and needing to stop same.

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<sup>12</sup> *ibid* at para 66

<sup>13</sup> *Ibid* at paras 83 to 88

[61] The Applicant finally contends that in reliance for its relief, that there would be no prejudice to the Respondents as they are simply embarking on unlawful self-help and not being ordered to do anything other than obey the laws of the land as they are ordinarily compelled to do. To this end, the court in *Qolani* reiterated the trite principle that self-help by way of taking the law into ones own hands is inconsistent with and undermines the Rule of Law which is one of the founding principles of our democracy.<sup>14</sup> However the court recognised that in limited circumstances, a party may take the law into her/her own hands by using the defence of counter spoliation against a wrongful disturbance of his/her peaceful and undisturbed possession. Self-help, *per se*, may not always be unconstitutional as the Constitutional Court has recognised, that if good reason exists, a party may have need to resort to self-help.

[62] With regard to a Municipality's constitutional obligations, the majority judgment, following *City of Johannesburg v Blue Moonlight Properties*<sup>15</sup> held:

'I acknowledge that the City operates within finite resources and must make difficult decisions about how to allocate those resources most effectively to meet the needs of its diverse population. However, a lack of resources cannot be accepted as an excuse in the present circumstances, because that is simply not the reasoning behind its failure to prioritise emergency housing. The availability of resources is evident. The City cannot hide behind the argument that it is providing social housing in the inner city by disregarding its crucial responsibilities in relation to emergency housing. Those whose needs are most urgent and whose ability to enjoy all rights is most in peril, must not be ignored. The City's commitment to long-term social housing plans should not come at the expense of addressing urgent concerns. This is particularly the case when one considers the applicable waiting lists prevalent in the applications for state-subsidized housing and the policies against queue-jumping. The right of access to adequate housing, especially in emergency situations, is a fundamental human right that demands immediate attention. This Court cannot ignore the City's failure to progressively realize its constitutional obligation in terms of section 26 as far as emergency housing is concerned.' ("Own emphasis")

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<sup>14</sup> Ibid at para 25

<sup>15</sup> *City of Johannesburg v Blue Moonlight Properties* 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA (CC) (1 December 2011). In this case, the Court identified the obligation to plan to provide housing in instances of emergency. Thus, it developed jurisprudence on the right to alternative accommodation as a shield against homelessness in addition to other existing housing programs.

[63] In the context of PIE and with reference to Section 26 (3) of the Constitution, the court referred to the contentions raised by the Minister of Human Settlements, who pointed to the decision of *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC7; 2005 (1) SA 217 (CC) which emphasised the following:

[18] It is not only the dignity of the poor that is assailed when homeless people are driven from pillar to post in a desperate quest for a place where they and their families can rest their heads. Our society as a whole is demeaned when State action intensifies, rather than mitigates, their marginalisation. The integrity of the rights-based vision of the Constitution is punctured when governmental action augments, rather than reduces, denial of the claims of the desperately poor to the basic elements of a decent existence. Hence the need for special Judicial control of a process that is both socially stressful and potentially conflictual.' ("Own emphasis")

[64] There is an interim order in place prohibiting the Respondent from intimidation and violence against employees and assets of the Applicant. Violence can never be condoned. However, a citizen right to protest is also protected. Whilst it is so that the Applicant is obligated to secure its property, it should do so in a reasonable fashion without trampling on the rights of its citizens.

[65] In summary, it is my prima facie view that the Applicant is attempting to circumvent the Prevention of illegal and Unlawful Occupation of land Act, 19 of 1998 ("PIE"). Section 26(3) of the Constitution<sup>16</sup> provides that "No one may be evicted from their home, or have their home demolished, without an order of court made, after considering all the relevant circumstances. No legislation may permit arbitrary evictions." (Own emphasis).

[66] I am therefore of the view that the matter should be referred back to the Municipality, for it to provide proposals for alternative emergency accommodation. This must be done in conjunction with the provincial government, lest a repeat of the so-called ADR process occurs. The responsibility to ascertain and procure such emergency accommodation lie with the Municipality in such an instance, and not on the Respondents. This obligation is trite.

[67] I am also of the view that nothing prevents the Applicant from providing ablution facilities on the said erven pending the Respondent's relocation to alternative temporary emergency accommodation.

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<sup>16</sup> Constitution of the Republic of South Africa, 1996

[68] Given the above findings, the interim order will be amended to reflect and protect the rights of those occupants whose names will appear on the joint list of persons until the finalisation of the process of securing temporary alternative accommodation to those who qualify.

[69] In the circumstances, the following order is made.

## ORDER

1. The application is postponed to a date to be arranged before Kusevitsky J. pending the finalization of the process as described in paragraphs 3, 4 and 5 below.
2. The order and judgment including the entire application is to be served on *The Western Cape Minister of Local Government, Environmental Affairs and Development Planning* and the Minister of Human Settlements.
3. The Respondents are to compile a list of all the occupiers on the aforementioned erven as at 24 October 2025. The list is to include the name and ages of the occupiers, the date upon which they took occupation on the aforesaid erven; women headed households and any disabled persons. Furthermore,
  - 3.1 The list should be a composite joint list ("the joint list") of all the occupiers on the erven, to be compiled jointly by the legal representatives for the Respondents.
  - 3.2 The joint list is to be accompanied by an affidavit which will provide a summary of the exact number of occupiers, including the total amount of households located on the said erven.
  - 3.3 The joint list should be filed by **Friday, 12 June 2026**.

4. Upon receipt of the joint list, the Applicant is to provide a report and a list of emergency temporary alternative accommodation to those occupiers who require same by **31 July 2026**.
5. The report on the provision of emergency alternative accommodation should be done in consultation with the relevant governmental departments including the Western Cape Minister of Local Government, the Minister of Human Settlements and/or any other governmental department under whose jurisdiction the said erven may fall.
6. It is recorded that Legal Aid has come on record for certain of the occupiers. Those Respondents, should they so wish, are to file their answering affidavit by **12 June 2026**.
7. Paragraphs 2 and 3 of the interim order granted on 24 October 2025 is amended as follows:
  - 7.1 The Respondents, except for those who have been listed on the joint list, are restrained from entering onto the erven listed and set out in Annexures A and B of the notice of motion. For the sake of clarity, the joint list is a compilation of occupiers who have been on the said erven as at 24 October 2025.
  - 7.2 The Respondents, other than those listed on the joint list and who already occupy existing structures, are restrained from entering upon any new unlawfully erected structures.
8. A final order is granted in the following terms:
  - 8.1 The Respondents are restrained from erecting any structure and/or further structures on the erven as set out in annexures A and B.

- 8.2 The Respondents are restrained from damaging and/or removing any property belonging to the Applicant found thereon.
- 8.3 The Respondents are restrained from assaulting and/or threatening any of the Applicant's officials in general and specifically when attending meetings with the Applicant and/or members of the Smutsville community.
9. Pending the return date to be determined, paragraph 7 and the sub-paragraphs thereof shall operate as an interim interdict.
10. The Applicant is ordered to provide ablution facilities on the erven pending the resolution and relocation of the Respondents pursuant to paragraph 5 above.

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**D.S KUSEVITSKY**  
**JUDGE OF THE HIGH COURT**

**APPEARANCES**

**FOR APPLICANT**

**INSTRUCTING ATTORNEY**

**: ADV. J VAN DER SCHYFF**  
**: HARKER ATTORNEYS INC**  
**: MS L HARKER**

**FOR RESPONDENTS**

**: ADV. D TRIETSCH**  
**: ADV. REINECKE**  
**: ADV. L VAN WYK – LEGAL AID**