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

JUDGMENT

**Reportable
Case No: 22715/2023**

In the matter between:

THE CITY OF CAPE TOWN

Applicant

And

JAN PAUL MICHELS

First Respondent

ABSA HOME LOANS GUARANTEE

Second

Respondent

COMPANY (RF) (PTY LTD

NEDBANK LIMITED

Third Respondent

SB GUARANTEE COMPANY (RF) (PTY) LTD

Fourth Respondent

FIRSTRAND MORTGAGE COMPANY (RF) (PTY) LTD

Fifth Respondent

Coram:

DA SILVA SALIE, J

Heard on: 5 March 2026
Delivered on: 22 June 2026

Summary:

Local government – Municipal planning – Enforcement proceedings – Municipal land-use contraventions – Municipality seeking access to tenants for investigative purposes in anticipation of possible future eviction proceedings – No eviction-related relief sought in Part A – Distinction between present enforcement proceedings and future proceedings affecting occupation – Existing procedural mechanisms sufficient to secure citation and participation of occupiers if Part B instituted – Municipality not entitled to compel investigative access to lawful occupiers at present stage – Interdict restraining conclusion of further lease agreements pending determination of Part B granted.

ORDER

- [1] For the reasons aforesaid, I make an order as follows:
- [2] The applicant's application for access to the properties for purposes of engaging with or interviewing the tenants residing at the properties is refused.
- [3] The first respondent is interdicted and restrained, pending the final determination of Part B of the application, from entering into any new lease agreements or granting any new rights of occupation in respect of the properties.

[4] The costs of Part A are reserved for determination together with the remaining issues.

JUDGMENT

DA SILVA SALIE, J:

Introduction:

[1] This application forms part of ongoing enforcement proceedings arising from an order granted by Acting Justice Kantor on 28 March 2025 (“the Kantor Order”).

[2] The Kantor Order declared a range of building works undertaken by the first respondent at four residential properties in Milnerton to be unlawful and in contravention of the provisions of the National Building Regulations and Building Standards Act 103 of 1977 (“the Building Act”) and the City of Cape Town Municipal Planning By-Law (“the By-Law”). The properties are situated at 1[...] E[...] Street, 1[...] A[...] Street, [...] C[...] Road and [...] H[...] Street.

[3] The first respondent was afforded an election. He could either regularise the unlawful works through the City’s administrative processes, including the submission of proper plans and payment of penalties, or remove the unlawful building works and restore the properties in compliance with the last approved building plans for each property.

[4] Paragraph 9 of the Kantor Order further required that the City be granted access to the properties to inspect compliance.

[5] It is not in dispute that, notwithstanding that order, the unlawful structures remain in place, administrative penalties in respect of at least some of the properties have not been paid, and the process of regularisation has not been pursued or brought to finality.

[6] It is common cause that the properties are occupied by multiple tenants and that the first respondent conducts a rental enterprise from the properties. The present proceedings constitute Part A of a broader application. Part B is directed at further enforcement relief arising from alleged non-compliance with the Kantor Order, including demolition-related relief and such further relief as may be necessary. The City contends that some of that relief may ultimately have consequences for the continued occupation of the tenants, which contention lies at the heart of the present dispute.

Remaining issues in dispute

[7] At the hearing of this matter (Part A), the central dispute concerning access for the purposes of a building inspection had been resolved.

[8] On 17 March 2026, an order was granted by agreement regulating access to the properties for purposes of inspection in terms of paragraph 9 of the Kantor Order, including provision for entry to all structures and dwelling units and enforcement by the Sheriff in the event of non-compliance. In short, that order addressed the City's entitlement to inspect the properties.

[9] What remained in dispute were essentially two issues:

[9.1] The City persisted in seeking access to the properties for purposes of engaging with or interviewing the tenants residing there in order to identify them and engage with them for purposes of a future application to evict them in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (“PIE”);

[9.2] The City sought to restrain the expansion of further occupation by interdicting the first respondent from entering new leases pending the determination of Part B.

[10] The issues are therefore confined to whether access should be granted for tenant engagement and whether an interdict should issue restraining the conclusion of new leases.

Submissions by the City

[11] The City contends that should it ultimately seek demolition or other relief that may result in the removal of persons from their homes, it would be obliged to comply with the constitutional and statutory requirements applicable to eviction proceedings.

[12] The applicant submits that City officials require access in order to identify tenants, engage with them and, if necessary, join them as parties before proceeding with further relief in Part B. In support of that contention, it relied upon a number of authorities to which I return below.

[13] The City argues that those authorities establish that where relief sought may ultimately have the effect of evicting occupiers from their homes, a municipality must meaningfully engage with affected persons and, where appropriate, consider alternative accommodation before obtaining such relief.

[14] The City accordingly submits that access to the properties for purposes of identifying and engaging with the tenants is a necessary precursor to any future application for relief which may, in substance, amount to an eviction.

Submissions by the First Respondent

[15] Counsel for the first respondent argued that the City is not entitled to the relief because, first, there is no live eviction application before the Court; and secondly, the City would not presently be entitled to evict the occupiers because they occupy the properties with the consent of the first respondent. The argument follows that the City lacks statutory or common-law authority for pre-litigation entry into homes.

[16] The first respondent further contends that demolition and eviction are neither automatic nor inevitable consequences of the Kantor Order. He argues that further relief remains contingent upon compliance with the procedures contemplated by that order, including the obtaining of a further court order. The City, he submits, seeks entry into private homes not because any eviction proceedings have been instituted, but solely to gather information for possible future proceedings.

[17] It is accordingly argued that eviction-related relief is premature. The Kantor Order contemplates a further order and affords opportunities for regularisation. Until that stage is reached, the first respondent submits that the City is not entitled to invoke PIE-based obligations.

Discussion

[18] In ***City of Johannesburg Metropolitan Municipality v K2016498847 (Pty) Ltd 2022 (3) SA 497 (GJ)***, ***Ekurhuleni Metropolitan Municipality v Sibanda 26108/17 [2022] ZAGPJHC 286*** (3 May 2022), ***Zulu and Others v eThekweni Municipality and Others 2014 (4) SA 590 (CC)*** and ***Ekurhuleni Metropolitan Municipality v Harmse & Others (0014030/2017) [2023] ZAGPJHC 860***, the Courts considered relief which, although framed as zoning or land-use enforcement, would in substance have resulted in the removal of persons from their homes.

[19] Those authorities establish an important principle: where relief sought will have the effect of evicting persons from their homes, those persons must be brought before the Court and their circumstances considered in accordance with section 26(3) of the Constitution.

[20] The principle is not confined to formal eviction orders. Our courts have recognised that relief granted in land-use and zoning disputes which, in substance, has the effect of requiring persons to vacate their homes engages the same constitutional protections and procedural safeguards.

[21] The authorities relied upon by the City therefore regulate the circumstances in which eviction-related relief may be granted and must therefore comply with those protections. It is furthermore directed at land-use and zoning enforcement proceedings

where the relief sought (whether in the form of demolition orders, interdicts restraining unlawful use, or related enforcement measures) may ultimately result in the removal of occupiers from their homes. Counsel for the City relied on ***Ekurhuleni Metropolitan Municipality v Harmse & Others (0014030/2017) [2023] ZAGPJHC 860*** (31 July 2023) in support of its argument that an interdict which has the effect of prohibiting persons from occupying their homes constitutes, in substance, an eviction and must comply with the protections of section 26(3) of the Constitution. In that matter the application by the municipality was dismissed, inter alia, because the occupiers had not been given notice of the proceedings, notwithstanding that the relief sought would have had the effect of prohibiting them from occupying their homes. The Court held that such relief constituted an eviction in substance and that the occupiers were required to be joined and heard.

[22] The cited authorities do not, however, determine the issue presently before this Court. Those matters concerned proceedings in which eviction-related consequences were already engaged. The defect identified in ***Harmse*** was the failure to notify and join occupiers in circumstances where their continued occupation was directly at stake. In the present matter no eviction relief is sought in Part A. The continued occupation of the tenants is not presently the subject of any order before this Court. The principle articulated in ***Harmse*** does not therefore justify granting access to tenants at this stage merely to facilitate possible future proceedings.

[23] The premise underlying the City's argument is that it must first identify tenants before it can proceed with future enforcement proceedings.

[24] I do not agree. The law has long accommodated situations where occupiers are not individually known when proceedings are instituted. Occupiers may be cited collectively by reference to the premises they occupy. Proceedings are routinely brought against "*the occupiers of*" a particular property. Service is effected at the premises and

occupiers are afforded an opportunity to participate in the proceedings. If eviction-related relief is ultimately pursued in Part B, there is no procedural impediment to citing the occupiers in that manner and ensuring that they are properly notified and afforded an opportunity to be heard.

[25] This conclusion does not leave the City without a procedural remedy should it elect to pursue Part B. In ***City of Cape Town v Various Occupiers and Another [2024] ZAWCHC 173***, proceedings were instituted against both identified occupiers and persons whose full and further particulars were stated to be unknown to the City. The fact that not all occupiers have been identified at the commencement of proceedings does not necessarily preclude the institution of proceedings which may ultimately affect occupation.

[26] The authorities relied upon by the City are distinguishable. In those matters, the municipalities sought eviction-related relief without the affected occupiers having been cited or brought before the Court. It was for that reasons that the courts declined to grant relief affecting their continued occupation. In the present matter, the City has not yet instituted Part B proceedings seeking such relief. Should it elect to do so, it will be incumbent upon the City to ensure that the occupiers whose rights may ultimately be affected are properly brought before the Court before any eviction-related relief is granted.

[27] It follows that the City's present inability to identify every tenant does not justify compelling access to the tenants for investigative purposes. The issue of citation, service and the participation of affected occupiers will arise if, and when, the City elects to institute Part B proceedings seeking relief that may affect their continued occupation. At that stage, and where appropriate, the City may seek directions from the Court concerning citation, service and, where necessary, the identification or joinder of affected occupiers before any eviction-related relief is determined. Until then, there is

no basis in my view for compelling access to persons (whose present occupation is with the consent of the first respondent) for the purpose of investigating possible demolition and eviction-related relief as contemplated in Part B.

Status of the occupiers

[28] It is necessary to emphasise the present status of the persons residing at the properties. The tenants occupy the properties with the consent of the first respondent. Whether, notwithstanding that consent, their occupation may ultimately be found to be unlawful by reason of the first respondent's unlawful use of the property, is not an issue which arises for determination in Part A. I accordingly express no view on that question.

[29] The relief sought by the City in relation to tenant engagement cannot, in my view, be sustained. The City seeks access to persons who presently occupy the properties with the consent of the first respondent in order to obtain information for use in proceedings which may potentially result in their removal from the properties.

[30] That approach conflates two distinct stages. The first is the present enforcement of compliance with the Kantor Order, which concerns unlawful building works, compliance with the Building Act and the By-Law, and the steps directed by the Kantor Order for the regularisation or removal of those unlawful structures. The second is the potential institution of eviction-related proceedings in Part B, should enforcement relief ultimately be sought which may affect the continued occupation of the tenants.

[31] The authorities relied upon by the City regulate the latter. They do not justify the former. Nor do they establish that a municipality is entitled to pre-emptive access to lawful occupiers for the purpose of investigating or preparing a future application.

[32] Additionally, the authorities cited by the City concern the stage at which eviction-related relief (whether directly or through relief which, in substance, has eviction consequences) is sought from the Court. In those matters, the occupiers whose rights stood to be affected had either to be cited or brought before the Court because the Court was being called upon to determine relief affecting their occupation. Conversely, they do not support the proposition that, before such proceedings have even been instituted, a municipality is entitled to compel access to lawful occupiers in order to investigate or prepare a possible future application. That is not what those authorities decided.

[33] The tenants presently enjoy rights of occupation arising from their occupation with the consent of the first respondent. The City seeks access to their personal circumstances and details for investigative purposes in anticipation of possible future litigation. However, the procedural mechanisms governing eviction proceedings provide adequate means to identify, cite and notify occupiers should the City ultimately pursue the eviction-related relief in Part B. In that instance, the City may seek appropriate directions regarding citation, service and, where necessary, the identification or joinder of occupiers before any eviction-related relief is determined. There is accordingly no basis, in my view, for compelling such access now to the tenants for the purpose advanced by the City.

Interdict against new leases

[34] The final substantive component of the City's relief is an interdict against the conclusion of further lease agreements and/or the granting of further rights of occupation pending the determination of Part B.

[35] The City has demonstrated that the first respondent is using the properties as boarding houses. The use of the properties for that purpose has been declared unlawful. Until such time as the necessary approvals have been obtained, the use of the properties as boarding houses remains unlawful.

[36] The City seeks an interdict prohibiting the first respondent from concluding further lease agreements or granting additional rights of occupation pending the determination of Part B. The purpose of the relief is to prevent the expansion of an already unlawful use whilst the broader enforcement proceedings remain unresolved.

[37] The first respondent contends that demolition and eviction constitute the most drastic remedies contemplated by the Kantor Order and that such relief can only arise once the opportunities for regularisation have been exhausted and the Court is satisfied that the provisions of the Kantor Order have not been complied with.

[38] I am unable to agree with that submission. The Kantor Order declared the additions and alterations unlawful. Although the first respondent was afforded an opportunity to regularise the position, the declaration of unlawfulness was not suspended. The opportunity to regularise does not confer an entitlement to continue expanding the unlawful use of the properties pending the final determination of the enforcement proceedings.

[39] The relief sought does not require any existing occupier to vacate the properties. Nor does it terminate any existing lease agreement. It merely prevents the conclusion of further leases and the expansion of occupation pending the determination of Part B. The prejudice to the first respondent is accordingly limited. By contrast, permitting the continued conclusion of new leases would increase the number of occupiers potentially affected by future enforcement proceedings and further entrench a use already declared unlawful. In those circumstances the interdict sought is justified.

Conclusion

[40] For these reasons, I am satisfied that the City has not established an entitlement to access the properties for purposes of engaging with or interviewing its tenants at this stage of the proceedings.

[41] An interdict prohibiting the conclusion of further lease agreements and/or any other agreement in terms of which rights of occupation are granted pending determination of Part B is warranted and ought to be granted.

Order

[42] For the reasons aforesaid, I make an order as follows:

[42.1] The applicant's application for access to the properties for purposes of engaging with or interviewing the tenants residing at the properties is refused.

[42.2] The first respondent is interdicted and restrained, pending the final determination of Part B of the application, from entering into any new lease agreements or granting any new rights of occupation in respect of the properties.

[42.3] The costs of Part A are reserved for determination together with the remaining issues.

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE PROVINCE

Appearances

For Applicant:	Adv. M O'Sullivan SC Adv. S Hendricks
Instructed by:	Fairbridges Wertheim Becker
For First Respondent:	Adv. P Torrington

Instructed by:

Brett Carnegie Attorneys