IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 2024-040366
Date of hearing: 27 May 2026
Date delivered: 29 May 2026

In the application of:

MICHAEL MASILO	**First Applicant**
MASILO INCORPORATED	**Second Applicant**
ALL OTHER UNLAWFUL OCCUPIERS RESIDING AT PORTION 499 OF FARM RIETFONTEIN 375, REGISTRATION DIVISION J.R	

and

OSCAR JABULANI SITHOLE NO

and

EPHRAIM MAKHESI NO	**First Respondent**
MOOIKLOOF HOMEOWNERS ASSOCIATION	**Second Respondent**
DEPUTY SHERIFF	**Third Respondent**

This judgment is handed down electronically by the Judge whose name is reflected herein, and is submitted to the parties or their legal representative by email. This order is further uploaded to the electronic file of Caselines by the Judge or his Registrar. The date of this order is deemed to be 29 May 2026.

JUDGMENT

SWANEPOEL J:

[1] The applicants launched this application on 6 May 2026 , to be heard on 12 May 2026, in which they sought the following urgent relief (I paraphrase):

> [1.1] That the applicant's dispossession of their property, and their eviction from 3[...] I[...] F[...] F[...], M[...] Estate, Pretoria ("the property") be declared to be unlawful;
>
> [1.2] That the applicant's possession of the property and of their movable possessions be restored;
>
> [1.3] An interdict restraining the respondents from evicting the applicants from the property;
>
> [1.4] Costs on the attorney/client scale.

[2] On 12 May 2026, and on 13 May 2026 the matter was struck from the roll for lack of urgency. In my view nothing has happened since 13 May 2026 to render the application urgent. However, due to the view that I take on the merits, I shall not expand on the lack of urgency. The third respondent did not participate in the matter, which is only opposed by the first and second respondents. It is uncertain why the second

applicant has been joined in the matter, as it is the first applicant that claims to have been in possession of the property.

[3] In the founding affidavit the applicants alleged that they had been unlawfully evicted without a court order authorizing their eviction, and without an order being served on them, and on their attorney. The applicants also alleged that a petition to the SCA is pending against the eviction application.

[4] The applicants alleged that they had been told by a domestic servant that the padlock to the property had been changed, and that the first and second respondents, acting in concert, deprived the applicants of their possession of the property. They alleged that the respondents had simply changed the padlocks, and had terminated the first respondent's access to the estate. The cause of action was spoliation, with no mention whatsoever of the extensive history of the litigation regarding this property, and without mentioning that an eviction order had already been granted against the first respondent on 17 September 2024.

[5] Upon the striking of the matter on 13 May 2026, the applicants delivered a notice of intention to amend the notice of motion. That amendment had not been effected by the time that the matter came before me, but I dealt with the matter as if it had. Essentially, the only material amendment was to seek an order interdicting the sale of the property to a third party. The notice to amend was accompanied by a supplementary affidavit which alleged the following:

> [5.1] The property was to be sold by public auction on 28 May 2026;
>
> [5.2] The eviction order under which the eviction was carried out had lapsed, as it had only been executable for thirty days;
>
> [5.3] The eviction was not carried out according to the terms of the order, and that the Sheriff had not carried out the order.

[6] The supplementary affidavit repeated the initial averment that the eviction had been carried out without a court order, and that the sale of the property was unlawful. However, a second supplementary affidavit was delivered that made the allegation that the eviction order had lapsed, and that the order had not been carried out by the Sheriff. Ultimately, at the hearing of the matter, the applicants' case had morphed from the initial allegation that the eviction had been carried out without an eviction order, to an acknowledgement that there was an eviction order, but that it had either lapsed, or had not been carried out by the Sheriff. The case presented on behalf of the applicants at the hearing bore no resemblance to the case put up in the founding affidavit.

[7] Ultimately the applicants argued that the eviction order was only valid for 30 days from date of the order. That is, in my view, an intentional misreading of the order. The first applicant was afforded 30 days to vacate the premises, whereafter the eviction could be carried out. The interpretation placed on the order by the applicants is untenable. Secondly, the applicant contends that the order is the subject of an appeal. That is not so. The applicants contend that they have sought leave to appeal from the Supreme Court of Appeal. That application has, however, not been accepted by the Registrar of the Supreme Court of Appeal. At this stage there is no petition for leave to appeal.

[8] This matter has a lengthy history, which the applicants conveniently ignored in the founding affidavit. The property is owned by the Lefatshe Trust (Pty) Ltd (in liquidation) ("the Trust"). The first respondents are the joint liquidators of the Trust. The trust was liquidated in 2021 at the instance of the second respondent due to non-payment of levies. The first applicant's right to occupy the property was derived from the ownership thereof by the trust. The first applicant sought rescission of the liquidation order, which application was dismissed on 7 June 2023. The first applicant then delivered, some three years later, an application for leave to appeal against the liquidation order.

[9] During April 2024 the first respondents launched an application to evict the first applicant from the property. The first respondent opposed the application, but some four months later he had not yet delivered an answering affidavit. When he eventually did so, he did not seek condonation for the late filing. The result is that the eviction order was granted on 17 September 2024. The first applicant sought leave to appeal that order. That application has been dismissed.

[10] During March 2026 the first applicant brought an urgent application in which he sought an order interdicting the execution of a warrant of execution for past cost orders. That application was dismissed. This history reveals a pattern of dilatory and reckless litigating by the first respondent. In this application the same pattern emerged. The initial application on 13 May, having been struck for lack of urgency, was purportedly amended by the inclusion of a prayer relating to the sale of the property. Two supplementary affidavits followed.

[11] By the time that the matter came before me it consisted of some 2000 pages. The supplementary affidavits did not address what facts made the application urgent subsequent to its having been struck off on 13 May. The Caselines filing left much to be desired, so much so that it was virtually impossible to determine what was relevant to this application and what was not. I had to direct that the Caselines file be corrected. No practice note was delivered to cast light on what was relevant to the case, and what should be read, until the evening of Tuesday 26 May, after the matter had already stood down to 27 May. In other words, the matter was a shambles. I will address this conduct hereunder when I consider costs.

[12] The first respondent says that on 30 April 2026 the applicants attended at the property and found it to be vacant. This is consonant with the first applicant's averment that his wife and children reside in the Cape, and that he had been with them since 9 April 2026. The first applicant said in the second supplementary affidavit that he will return from Cape Town for the hearing of the matter on 26 May 2026. The second respondent had no record of the first applicant having entered the estate since 9 April

2026. All of these facts bear out the respondents' contention that the applicants did not have possession of the property on 30 April 2026. The applicants regarded the property as having been abandoned, and they took possession thereof.

[13] The first applicant says that, although he had been in Cape Town for some weeks, his domestic servant was still at the premises, which indicated that he had not abandoned the property. The applicants' problem is that the first applicant's version is hearsay, as there is no confirmatory affidavit by the domestic servant. In any event, I cannot reject the first respondent's version out of hand, and where there is a dispute of fact such as this, I must accept the respondent's version.

[14] It is impermissible for a party to put up a case, omit relevant facts, and to then pursue a different case at a later stage. I was somewhat dumbfounded that the applicants had entirely omitted to disclose in their founding affidavit that there was an existing eviction order, that had been the subject of much litigation, and with which they had failed to comply. It seems to me that the applicants tried as best they could to distance themselves from the order, so that they could create the impression that this had been a simple case of spoliation.

[15] In these circumstances the application must fail. The second respondent sought costs on a punitive scale. I have outlined above the manner in which the first applicant has litigated recklessly and in a dilatory manner. The papers in this application were an utter shambles. Therefore, I am of the view that punitive costs are appropriate.

[16] I make the following order:

[16.1] The application is dismissed.

[16.2] The applicants shall pay the costs jointly and severally, the one paying the other to be absolved, on the attorney/client scale.

SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Counsel for the applicant:	Adv. P Mabilo
Instructed by:	MD Molusi Attorneys
Counsel for the first respondent:	Adv M Jacobs
Instructed by:	Strydom & Bredenkamp Inc
Counsel for the second respondent:	Adv A Koekemoer
Instructed by:	Griesel van Zanten
Heard on:	27 May 2026
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