Reportable:	**NO**
Circulate to Judges:	**NO**
Circulate to Magistrates:	**NO**
Circulate to Regional Magistrates	**NO**

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 082438-2026

In the matter between:-

ADAMAX PROPERTY PROJECTS MENLYN (PTY) LTD	1st Applicant
CHRISTAL INVESTMENTS (PTY) LTD	2nd Applicant
TAKOU INVESTMENTS (PTY) LTD	3rd Applicant
PROCPROPS 60 (PTY) LTD	4th Applicant

and

MUNICIPAL EMPLOYEES PENSION FUND	1st Respondent
AKANI PENSION FUND ADMINISTRATORS (PTY) LTD	2nd Respondent
METROPROP (PTY) LTD	3rd Respondent

This judgment is handed down by uploading it on CaseLines and sending it to the representatives of the parties' email addresses as indicated in the practice notes. The date of the judgment is deemed to be 23 June 2026.

JUDGMENT

Reid J

Introduction

[1] The applicants bring this application as a matter of urgency in terms of Rule 6(12) of the Uniform Rules of Court. The first respondent brings a counter-application, similarly on an urgent basis. The matter was heard before me on 5 May 2026. This judgment concerns both the main application and the counter-application.

[2] The dispute between the parties' that serves before this Court, concern three shopping centres in Pretoria, namely Parkview Shopping Centre, Glen Village North, and Glen Village South ("the shopping centres" or "the three shopping centres").

[3] The applicants collectively own a share of 45% of these properties, while the first respondent, the Municipal Employees Pension Fund ("MEPF"), owns the remaining 55% share. The owners cannot come to an agreement about expenses to be incurred (or to not be incurred) in relation to the shopping centres.

[4] Amongst other disputes between the parties, it is disputed whether the expenses sought to be incurred by the first respondent, are necessary and essential, or cosmetic of nature (for purposes of this application, I

will cluster the expenses as “certain identified expenses”). The nature of the expenses is a factual dispute that behoves no determination in this application, as the question before this Court is whether the applicants are entitled to an amount equal to 45% of the rental income of the shopping centres to be held on trust, and that the 45% rental income is *not* used to incur the identified expenses, pending the outcome of litigation proceedings between the parties.

[5] The respondents argue that the 45% share is *not* to be held on trust, and that the expenses are necessary to be incurred and should proportionally be paid from the applicants’ 45% share. The respondents argue that the expenses are essential to uphold safety (amongst other issues) at the shopping centres.

[6] The question before this Court is thus very much of an interdictory nature, and not a factual one. The issue of a factual dispute is analysed from paragraph [43] – [46] of this judgment.

[7] The relationship between the parties is governed by a Co-Ownership Agreement concluded on 9 November 2011, a Property Management Agreement concluded on the same date, and a subsequent agreement appointing the third respondent, Metroprop as the property sub-manager on 14 February 2019.

Factual background

[8] The history between these parties is long and contentious. Since 2016, the relationship has been dysfunctional, giving rise to numerous court applications, court actions, and two significant arbitrations resulting in arbitration awards. These proceedings are yet another continuing chapter in this unfortunate damaged business relationship.

[9] To understand the present dispute, it is necessary to set out the relevant history in some detail. On 9 November 2011, the Adamax co-owners and the MEPF concluded a sale agreement in terms of which the Adamax co-owners sold a 55% undivided share in certain properties to the MEPF. Simultaneously, Adamax and the MEPF concluded the Co-Ownership Agreement ("the COA"), which governed the operation of the letting enterprise conducted from the three shopping centres. On the same date, the parties concluded a Property Management Agreement, appointing Akani as the manager, which immediately ceded and delegated its rights to a sub-manager company.

[10] The COA provided for the distribution of income from the letting business, the payment of costs, the constitution of a Management Committee, and the management of the business. Critically, clause 11.9 of the COA provided that no resolution regarding the "Prescribed Matters" set out in Schedule 1 would be valid and binding unless assented to unanimously by the co-owners.

[11] On 14 February 2019, Metroprop was appointed as the new sub-manager. Thereafter, Metroprop collected rental income from the tenants in the three shopping centres and was obliged to pay the net income to the co-owners on a monthly basis, in the ratio of 55% to the MEPF and 45% to the applicants.

[12] In 2020, the MEPF embarked upon a redevelopment of the Glen Village shopping centres. The applicants declared a dispute to the effect that this redevelopment was done unlawfully and unilaterally, and the dispute was referred to arbitration before Advocate Ginsburg SC. On 14 July 2022, Advocate Ginsburg SC issued his award ("the Ginsburg Award"). He found that the decision to embark upon the redevelopment was a Prescribed Matter under Schedule 1 of the COA and that the applicants had not consented to it. He further held that the MEPF had acted without the unanimous consent required by clause 11.9 of the COA. It was thus found that the redevelopment was done unlawfully and unilaterally.

[13] Despite the Ginsburg Award, the MEPF continued to direct Metroprop to deduct the redevelopment costs from the applicants' share of the net income. On 5 August 2022, the applicants' attorneys, Malatji & Co, demanded payment of R6,609,145.40 from the MEPF, being the amount unlawfully deducted from the applicants' rental income to fund the unauthorised redevelopment. On 5 September 2022, Malatji & Co

addressed a further letter to the MEPF, giving notice that if the MEPF failed to remedy its breach within 21 days, the applicants would cancel the COA.

[14] The MEPF did not comply with the demand. Subsequently, on 18 October 2022, Adamax terminated the COA. The MEPF disputed the validity of the termination, and the dispute of whether the COA was cancelled validly or not, was referred to arbitration before Advocate Gerald Farber SC.

[15] On 15 January 2024, Advocate Farber SC issued his award ("the Farber Award"). He declared that the MEPF had materially breached the COA and that Adamax had *validly terminated* it on 18 October 2022. He also found that the MEPF's conduct in instructing Metroprop to deduct the redevelopment costs from the applicants' net income was unlawful.

[16] The MEPF refused to accept the Farber Award and sought to review it. The review applications were brought under case numbers 2023-089092, 2023-113014, and 2024-022755 in the Gauteng Local Division, Johannesburg.

[17] On an uncertain date, Wepener J in the Gauteng Local Division, Johannesburg, dismissed all three review applications and made the Farber Award an order of court. The MEPF sought leave to appeal, which

was refused by Wepener J. The MEPF then applied to the Supreme Court of Appeal ("SCA") for leave to appeal, which was also refused. The MEPF thereafter applied to the President of the SCA for reconsideration, which was similarly dismissed.

[18] On 25 September 2025, the MEPF applied to the Constitutional Court for leave to appeal the decisions dismissing its review applications. That application is still pending.

[19] On 24 June 2024, Adamax gave notice to Akani and Metroprop that it was terminating the Property Management Agreement and the Metroprop contract, respectively, with effect from 25 December 2024. The MEPF, Akani, and Metroprop disputed this termination.

[20] On 29 February 2024, Adamax instituted action proceedings against Metroprop under case number 2024-022567, claiming R10,699,306.43 of unlawfully deducted redevelopment expenses. On 15 September 2025, the applicants instituted further action proceedings under case number 2025-162076 against the respondents, claiming 45% of the rental income that had been retained in the Metroprop trust account.

[21] On 24 March 2026, Mr Serf Joubert, the chief executive officer of Metroprop, filed an answering affidavit in the summary judgment application in the 2025 action. In his affidavit, he disclosed for the first

time that Metroprop had deducted R5,954,066.12 from the trust account and had retained R20,412,229.96 in respect of facilities management and general maintenance.

[22] Also on 24 March 2026, Mr Joubert sent a "board pack" to the applicants, which purported to detail a series of proposed development actions at the shopping centres.

[23] The board pack documents revealed that the MEPF and Metroprop intended to embark upon a large-scale redevelopment of the Parkview Shopping Centre, similar to the unlawful redevelopment of the Glen Village shopping centres. The proposed actions (which are the identified expenses) included replacing elevators and escalators at a cost of R22,885,000, replacing the HVAC infrastructure at a cost of R20,846,908.48, installing compliant fire doors at a cost of R742,082.35, various electrical works, and retiling of the shopping centre. The board pack also indicated that the MEPF intended to conclude a long-term lease agreement with the City of Tshwane for a sky bridge and to rezone the Glen Village North property.

[24] A purported board meeting was scheduled for 2 April 2026 to approve these actions. On 31 March 2026, the applicants' attorneys addressed correspondence to the respondents', seeking undertakings that they would not proceed with the development actions. No such undertakings

were given. The absence of such undertakings brought about this application.

The present proceedings

[25] On 10 April 2026, the applicants launched the present urgent application. In summary, the relief sought is as follows:

25.1. An order dispensing with the rules and hearing the matter on an urgent basis.

25.2. An order directing Metroprop to refrain from making payment from its trust account of R13,834,157.66 to itself (or, if it has already paid it, to repay that amount into the trust account), and to refrain from paying any part of 45% of the rental income retained in the trust account to the MEPF.

25.3. An order directing the respondents to refrain from concluding any contracts or taking any steps to implement the proposed development actions listed in the board pack (the elevator and escalator refurbishment, HVAC replacement, fire door installation, electrical works, retiling, the sky bridge lease, and the rezoning application).

25.4. An order that this relief operate as an interim order pending the final

judgment in the 2025 action and the dismissal by the Constitutional Court of the MEPF's pending leave to appeal application.

[26] On 22 April 2026, the MEPF delivered a notice of counter-application. The MEPF seeks orders to the following effect:

26.1. Compelling the parties to give effect to the proposed development actions (which the MEPF calls "the necessary actions" but which I refer to in this judgment as “certain identified expenses”).

26.2. Directing that the expenses associated with these actions be paid by the co-owners in their respective 55% and 45% shares.

26.3. Authorising Metroprop to apply the rental income towards these expenses and to withdraw funds from the trust account if necessary.

26.4. Imposing an interim dispute resolution process for future disputes concerning necessary maintenance and upkeep.

[27] The above constitutes the nature of opposing the application as well as the relief sought in the counter-application.

The Legal Principles Governing Interim Interdicts

[28] The applicants seek an interim interdict. The requirements for an interim interdict are well established. In *Setlogelo v Setlogelo* 1914 AD 221, the court held that an applicant must establish the following factors.

28.1. A *prima facie* right, though open to some doubt;

28.2. A reasonable apprehension of irreparable harm if the interdict is not granted;

28.3. That the balance of convenience favours the granting of the interdict; and

28.4. That there is no other satisfactory remedy available.

[29] These requirements have been confirmed as follows by the Supreme Court of Appeal in *Tau v Mashaba and Others* 2020 (5) SA 135 (SCA):

> *"[21] Had the High Court determined the dispute before it as defined by the parties, it ought to have decided whether the respondent had met the requirements for the grant of an interim interdict. These are: a prima facie right; a well-grounded apprehension of irreparable harm if the relief is not granted; that the balance of convenience favours the granting of an interim interdict; and the absence of another satisfactory remedy. An*

> *interim interdict pending an action is an extraordinary remedy within the discretion of the court."* (footnotes omitted)

[30] These requirements must be applied with the understanding that the court's role at the interim stage is not to make final determinations of the parties' rights, but to preserve the *status quo* pending the final adjudication of those rights. As was stated in *National Gambling Board v Premier, KwaZulu-Natal, and Others* 2002 (2) SA 715 (CC) at paragraph [49]:

> *"[49] An interim interdict is by definition*
>
> > *'a court order preserving or restoring the status quo pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination.'*
>
> *The dispute in an application for an interim interdict is therefore not the same as that in the main application to which the interim interdict relates. In an application for an interim interdict the dispute is whether, applying the relevant legal requirements, the status quo should be preserved or restored pending the decision of the main dispute. At common law, a court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the status quo. It does not depend on whether it has the jurisdiction to decide the main dispute."*
> (footnotes omitted)

[31] In *Pikoli v President of Republic of South Africa and Others* 2010 (1) SA 400 (GNP) the applicant sought to interdict the President from appointing a new National Director of Public Prosecutions pending his review application against the President's decision to remove him from office. It

was held that, since the requirements for the grant of an interim interdict had been satisfied, it followed that the applicant was entitled to an interim interdict.

The *prima facie* right

[32] The applicants contend that they have a *prima facie* right to the relief sought on two alternative bases: first, under the common law (if the COA has been terminated); and second, under the contractual regime (if the COA is still extant).

[33] Under the common law, it is well established that no single co-owner is entitled to make changes or improvements to common property without the consent of the other co-owners.

[34] The applicants argue that the proposed development actions are not necessary maintenance but rather constitute improvements and redevelopments that require their consent. They point to the board pack documents, which describe the projects as "Refurbishment Program," "Infrastructure Replacement," and "Modernization Project." They argue that these are not the kind of day-to-day maintenance that a co-owner may undertake unilaterally.

[35] The MEPF argues that the proposed actions are essential maintenance and preservation measures that fall within the ordinary course of

business and do not require unanimous consent. The MEPF relies on the provisions of the COA, which provide that "Prescribed Matters" requiring unanimous consent are limited to specific matters set out in Schedule 1, including "the incurring of liability or obligation which is not in the ordinary course of business" and the entering into of contracts involving capital expenditure exceeding R1 million.

[36] On a proper analysis, the applicants have established a *prima facie* right to the relief they seek. The proposed actions are significant capital projects, not routine maintenance. The replacement of entire elevator and escalator fleets, the replacement of major HVAC infrastructure, and the complete retiling of a shopping centre are substantial capital projects. They go beyond ordinary upkeep and maintenance. The fact that the actions may be necessary does not mean that they do not require the consent of both co-owners. The necessity of the actions does not determine whether they are prescribed matters; the nature and scale of the actions do.

[37] Moreover, even if the COA has been terminated, as the applicants contend, the common law requires the consent of all co-owners for major changes to common property. The MEPF cannot unilaterally decide to embark on substantial capital projects without the applicants' consent.

[38] Furthermore, the applicants have a *prima facie* right to the protection of the trust money held by Metroprop. Section 54(3) of the Property Practitioners Act 22 of 2019 provides that a property practitioner must retain all trust money until it is lawfully entitled to such money or receives written instructions to make payment.

[39] The applicants have not given Metroprop any written instructions to pay out their 45% share of the rental income. Metroprop has no lawful entitlement to the applicants' share. The applicants are therefore entitled to the protection of their trust money.

The doctrine of fictional fulfilment

[40] The MEPF argues that the doctrine of fictional fulfilment should be applied because the applicants frustrated the process by refusing to attend the meeting on 2 April 2026. The doctrine of fictional fulfilment holds that a party cannot rely on the non-fulfilment of a condition if it has deliberately prevented the condition from being fulfilled.

[41] This argument must be rejected. The applicants did not attend the meeting because they took the position that the COA had been terminated and they were no longer bound by its terms. Whether this position is correct is the very dispute that must be resolved. The applicants cannot be said to have "frustrated" the process when they were exercising their right to challenge the validity of the COA.

[42] Moreover, the applicants' refusal to attend the meeting was not an attempt to prevent the fulfilment of a condition precedent; it was an assertion of their legal rights. The doctrine of fictional fulfilment is therefore not applicable in this instance.

The existence of disputes of fact

[43] The MEPF argues that there are material disputes of fact that cannot be resolved on the papers, and that this militates against the granting of interim relief. The applicants have raised a striking out application in respect of certain portions of the MEPF's answering affidavit.

[44] The applicants seek to strike out the evidence concerning the necessity of the proposed actions on the basis that it is hearsay and lacks supporting documentation. The applicants point out that Mr Zamani Letjane, who deposed to the answering affidavit on behalf of the MEPF, does not have personal knowledge of the technical details of the proposed projects. The evidence of necessity is based on information provided by Metroprop and is not supported by expert reports or technical assessments.

[45] While it is true that much of the evidence concerning necessity is hearsay, it is not necessary at this stage to determine the admissibility of this evidence. The applicants have established a *prima facie* right to the

relief sought by them, on other grounds.

[46] The question of whether the proposed actions are "necessary" or "essential" is ultimately a question of fact that will have to be determined in the main proceedings. For present purposes, it is sufficient that the applicants have shown that they have a *prima facie* right to prevent the MEPF from unilaterally embarking on significant capital projects without their consent.

The prejudice to Metroprop

[47] The applicants argue that Metroprop may be unable to repay the money if it is paid out of the trust account. The MEPF has not addressed this argument in its answering affidavit.

[48] The applicants are therefore entitled to the inference that Metroprop may not be able to repay the money if it is dissipated.

The irreparable harm

[49] The applicants argue that they will suffer irreparable harm if the proposed development actions proceed. Once the projects are implemented, the *status quo ante* cannot be restored. The properties will be permanently changed, and the applicants will have lost their right to object to the changes. The applicants will be forced to seek damages, which would be an inadequate remedy and may be very difficult, if not impossible, to

quantify.

[50] The MEPF argues that the irreparable harm will be suffered by the properties if the actions are not undertaken. The properties will deteriorate, tenants will leave, and the value of the letting enterprise will diminish. The MEPF argues that the balance of convenience favours allowing the actions to proceed.

[51] In assessing the question of irreparable harm, it is important to distinguish between necessary maintenance and substantial capital projects. The proposed actions are not limited to essential maintenance; they include significant improvements and upgrades.

[52] The applicants' right to have a say in these projects would be permanently lost if the projects proceed without their consent. That is irreparable harm.

[53] Moreover, the applicants will suffer financial harm if their 45% share of the rental income is used to fund these projects. The money in the trust account is trust money that belongs to the applicants. If it is used to fund the projects, the applicants may not be able to recover it. This is particularly so given the uncertainty about Metroprop's financial position.

[54] On the other hand, the MEPF has not established that the properties will suffer irreparable harm if the projects are delayed. The properties have

been operating for years. The harm that tenants may be lost and the income stream may be affected, is speculative of nature. A delay of a few months until the Constitutional Court decides the MEPF's appeal will not cause irreparable harm.

[55] The COA allows that the MEPF can continue to perform essential maintenance and repairs while the legal disputes are resolved.

[56] I find that the applicants have proven that they will suffer irreparable harm should the interim interdict not be granted.

The balance of convenience

[57] The applicants have a clear right to their 45% share of the rental income and a clear right to prevent the MEPF from unilaterally embarking on significant capital projects without their consent in terms of the COA. The MEPF can pursue its claims through proper legal channels. It cannot resort to self-help by using the applicants' money to fund projects to which the applicants have not consented.

[58] The MEPF argues that the applicants are seeking to "freeze" the properties and prevent essential maintenance. This argument is overstated. The applicants are not seeking to prevent essential maintenance. They are seeking to prevent significant capital projects that go beyond ordinary maintenance. The applicants have not objected to

day-to-day maintenance and repairs.

[59] Furthermore, the Farber Award is final and binding on the basis that it was made an order of court, unless it is overturned by the Constitutional Court. The MEPF's appeal to the Constitutional Court is pending, but the MEPF has not applied for an order suspending the operation of the Farber Award.

[60] Pending the outcome of the Constitutional Court appeal, the Farber Award stands. It declares that the COA was validly terminated on 18 October 2022. The applicants are therefore entitled to rely on the common law, which requires the consent of all co-owners for major changes to common property.

[61] I subsequently find that the balance of convenience favours the applicants.

The adequacy of an alternative remedy

[62] Should the development actions proceed, the applicants will be left to claim damages, which would be an inadequate remedy. The damages would be difficult to quantify, and the applicants may not be able to recover it.

[63] The applicants are therefore entitled to interim relief to protect their rights

pending the final adjudication of the disputes between the parties.

[64] I find that the applicants have no adequate alternative remedy.

The counter-application

[65] The MEPF seeks to force the applicants to consent to the proposed development actions and to pay their share of the costs. This relief is sought on an interim basis, but it is final in effect. The MEPF is asking this Court to compel the applicants to fund projects to which they have not consented and to which they object. This is not relief that can be granted on an interim basis as it will have a final effect.

[66] The MEPF's proposed interim dispute resolution process also cannot be imposed on the applicants. The parties are not in agreement on the process. This Court cannot impose a contractual regime on the parties that they have not agreed to. The MEPF's proposed process is an attempt to circumvent the applicants' rights under the common law and the COA. As such, it must be rejected.

[67] I find that the MEPF's counter-application must be dismissed.

Conclusion

[68] This matter concerns the fundamental rights of co-owners to protect their property and to have a say in how it is managed and developed. The

applicants have established a *prima facie* right to the relief they seek. The MEPF's attempts to unilaterally embark on significant capital projects without the applicants' consent and to use the applicants' money to fund those projects have already been found to be unlawful in the Faber Award.

[69] The counter-application is nothing other than an attempt to force the applicants to accept a regime that would deprive them of their rights. It is destined to be dismissed.

[70] The orders sought by the applicants to be granted herein are interim in nature. They preserve the *status quo* pending the final adjudication of the disputes between the parties. The parties are urged to resolve their disputes through the proper legal channels and to avoid further litigation.

Costs

[71] The general principle is that the successful party is entitled to its costs. I find no reason to deviate from the general principle. The respondents should therefore pay the applicants costs in this matter.

[72] The complicated factual history and difficulty of the matter justify a cost order higher than a regular cost order. A cost order on Scale C of in terms of Rule 67A is justified.

[73] Both the applicants and respondents have requested that a cost order include the cost of two counsel. I agree that the complexity of the matter justifies such an order.

The Order

[74] In the result, the following order is made:

[i] The forms, service and time periods prescribed by the Uniform Rules of Court is condoned and the matter is heard as one of urgency in terms of the provisions of Uniform Rule 6(12) of the Uniform Rules of Court.

[ii] The third respondent is ordered to refrain from making payment from its trust account of the sum of R13,834,157.66 to itself, and to repay that amount into the trust account if it has already paid it.

[iii] The third respondent is ordered to refrain from making payment from its trust account of any part of 45% of the rental income retained in the trust account to the first respondent.

[iv] The respondents are ordered to refrain from concluding any contracts or taking any steps to implement the following actions:

(a) The elevator and escalator refurbishment program;

(b) The Parkview HVAC infrastructure replacement project;

(c) The rational fire design for Parkview shopping centre;

(d) The emergency procurement and installation of compliant fire doors;

(e) The phased replacement of changeover infrastructure and electrical compliance and asset protection (surge mitigation);

(f) The mandatory electrical compliance;

(g) The Woolworths air-conditioning replacement at Glen Village South;

(h) The parking infrastructure modernisation project at the Parkview Shopping Centre;

(i) The retiling of the Parkview Shopping Centre;

(j) The conclusion of a long-term lease agreement with the City of Tshwane in respect of the skybridge between the Glen Village North and Glen Village South shopping centres; and

(k) The rezoning of the Glen Village North shopping centre property.

[v] Paragraphs [ii], [iii], and [iv] above shall operate as an interim order pending:

(a) The final judgment in the action between the current applicants and respondents under Gauteng Division case number 2025-162076; and

(b) The finalisation of the pending application for leave to appeal by the first respondent to the Constitutional Court, *alternatively* the finalisation of the first respondent's applications under

Gauteng Local Division case numbers 2023-089092, 2023-113014, and 2024-022755.

[vi] The counter-application is dismissed.

[vii] The respondents are ordered to pay the costs of the main application and the counter-application, including the costs of two counsel, on Scale C, jointly and severally, the one paying the other to be absolved.

[redacted]

REID J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

DATE OF ARGUMENT:	**4 MAY 2026**
DATE OF JUDGMENT:	**23 JUNE 2026**

APPEARANCES:

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