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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Not Reportable

Case no: 2026-201817

In the matter between:

**NCHAUPE ROMOLEPO EDWARD
MAKAPAN**

First Applicant

**BAKGATLA BA MOSETLHA
TRADITIONAL COUNCIL**

Second Applicant

and

**MMAMOKWELE HENDRICK
LETSOALO**

First Respondent

SHOPRITE CHECKERS (PTY) LTD

Second Respondent

Coram: PETERSEN J

Heard: 24 August 2026

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email and uploaded to CaseLines. The date and time

for the handing down of the judgment are deemed to be 15h00 on 24 August 2026.

JUDGMENT

(Part A: Interim Relief)

PETERSEN J:

Introduction

[1] This is an opposed urgent application brought in two parts. In Part A, the First and Second Applicants seek interim interdictory relief, pending the final determination of Part B. Only Part A serves before me.

[2] The First Applicant is Nchaupe Romolepo Edward Makapan, the recognised Kgosi of the Bakgatla Ba Moseitlha traditional community. The Second Applicant is the Bakgatla Ba Moseitlha Traditional Council, the authority responsible for administering and allocating the community's land. The First Respondent, Mmamokwele Hendrick Letsoalo, was the respondent against whom this court, per Masike AJ, granted an order on 19 February 2026 under case number M700/2023 'the February order'), cancelling a 2017 lease of the premises concluded between the First Respondent and the Second Applicant, and cancelling the sub-lease under which the Second Respondent, Shoprite Checkers (Pty) Ltd, trades from the premises as a Usave supermarket. No relief is sought against the Second Respondent, which occupies the premises and in whose continued occupation, pending Part B, the Applicants have consented.

[3] The application was launched and served on 21 August 2026 and enrolled for hearing on the urgent roll on Monday, 24 August 2026. It was opposed. The First

Respondent delivered a Notice to Oppose and an Answering Affidavit on or about 23 and 24 August 2026. No replying affidavit was delivered, nor was one necessary for the purposes of this judgment.

The relief sought

[4] In Part A the Applicants seek, in substance, an interdict restraining the First Respondent from entering upon or interfering with the premises; disconnecting or interfering with the water or electricity supply; obstructing the Applicants' efforts to restore or supplement the water supply at their own cost; taking any step to eject the Second Respondent otherwise than by proceedings in a competent court; and letting or introducing any tenant or occupier to the premises. The relief is carefully circumscribed. It expressly does not restrain the First Respondent from attending or addressing a community gathering convened by him at the premises for 25 August 2026, nor from expressing his views on ownership at that gathering or elsewhere, nor from instituting or prosecuting any proceedings to assert whatever rights he claims. In Part B the Applicants seek a final declarator that the First Respondent holds no right, title or interest in the premises, and final relief in materially the same terms as Part A.

Background

[5] The following is common cause or not seriously disputed on the papers. The First Respondent has occupied the site for some thirty years and built the structure from which the Second Respondent trades. He concluded a lease with the Second Applicant in 2010, and again in February 2017. Rental fell due under the 2017 lease from March 2017. None was paid for more than six months, and arrears of R210 600.00 accrued. The Second Applicant applied to this Court for cancellation of the lease and ancillary relief under case number M700/2023. The First Respondent opposed that application, was represented by attorneys and counsel, and the matter was argued before Masike AJ on 21 August 2025. The

February 2026 order was granted against him, with costs, and recorded that reasons would be furnished to the parties on request.

[6] No application for leave to appeal against the February order has been lodged. On 22 June 2026 the First Respondent's attorneys delivered a request for reasons, served on the Applicants' correspondents on 7 July 2026, more than four months after the order. To date, Masike AJ has furnished no reasons. I return to the significance of this sequence below.

[7] On the Applicants' account, sworn to in the founding affidavit, the Second Respondent continued for a period after the February order to pay rental to the First Respondent, and he continued to provide services to the premises. That state of affairs changed in July and August 2026. On 8 July 2026 the Second Respondent's attorneys informed the First Respondent's attorneys that rental would be withheld. On 12 August 2026 the water supply to the premises was interrupted. The Applicants did not immediately approach this Court. Instead they arranged, at their own expense, for the installation of a water tank so that the Second Respondent could trade without drawing on the borehole. On 18 August 2026 that course was overtaken. The First Respondent's attorneys demanded that the Second Respondent vacate the premises within seven days, and the First Respondent stopped the installation of the tank. On 19 August 2026 the Applicants' attorneys demanded a written undertaking that the First Respondent cease the conduct complained of and pursue any claim he has through the courts; the undertaking was refused the same day, in terms recorded in correspondence as 'Your clients are free to take any action they deem fit, and our client will do the same.' On 20 August 2026 a notice convening a community gathering at the premises for 25 August 2026, on the First Respondent's own account for the purpose of closing the Usave store, came to the Applicants' attention. The parties settled the papers, and counsel were briefed that day. The application was issued and served the next day, Friday 21 August 2026, for hearing on the first available Monday.

[8] The First Respondent's version, on oath, does not admit a deliberate disconnection of the water supply. He explains that the borehole is his own, that he can no longer afford to pay the employee who pumps water from it, and that this is a direct consequence of the Second Respondent's decision to withhold rental from 8 July 2026. He says the Applicants and the Second Respondent were aware, from a letter dated 15 July 2026, that an interruption of services would follow non-payment. He denies having taken the law into his own hands and contends, in substance, that it is the Second Respondent and the Applicants who have unilaterally treated him as divested of his rights.

[9] One feature of the First Respondent's own affidavit bears materially on the merits, even at this interim stage. He admits, at paragraphs 24, 26 and 27 of his answering affidavit, that after the February order cancelled his lease, the Second Respondent 'continued to pay rental to me, remained in occupation and I continued to provide services' until the Second Respondent stopped paying in July 2026. On the First Respondent's own version, therefore, he continued to collect and retain rental to which the February order had already determined he had no entitlement, for some five months after that order, and it was only once that unlawful income stream ceased that services to the premises were interrupted. Whatever the correct characterisation of the water interruption, a disputed question I do not need to resolve at this stage, the admission that he continued to exact rental in the teeth of an extant, unappealed order materially undermines the suggestion that his conduct since has been that of a party lawfully vindicating a right, rather than one persisting in self-help.

Points in limine

The First Respondent raises three points *in limine*. Lack of urgency, lack of *locus standi* on the part of the Second Applicant, and misjoinder of the Minister of Land Reform and Rural Development. I deal with each in turn before considering whether the requirements for interim relief are met.

(a) Urgency

[10] Rule 6(12)(b) requires an applicant to set forth explicitly the circumstances rendering the matter urgent and the reasons why substantial redress could not be afforded at a hearing in due course. The test is not whether the Applicant subjectively desires an urgent hearing, but whether, if the matter were to follow the normal course, substantial redress would still be available.¹ Mere delay is not on its own fatal. What matters is whether it is explained, and whether, despite it, substantial redress remains available.

[11] The First Respondent submits that the urgency is self-created, pointing to a letter of 15 July 2026 in which his attorneys informed the Second Respondent's attorneys that, in light of the decision to withhold rental, he would not be in a position to provide services associated with occupation of the building. I do not accept that this, without more, renders the application non-urgent. The Applicants' account is that they did not treat the initial interruption reported on 12 August 2026 as a matter requiring immediate litigation; they attempted a practical, non-litigious remedy at their own cost. The First Respondent closed off that avenue on 18 August 2026 by stopping the tank installation and demanding that the Second Respondent vacate within seven days. The First Respondent fixed 25 August 2026 as the date for a gathering at which, on his own account, the store was to be closed. The Applicants cannot fairly be criticised for first seeking to resolve the matter practically, nor is it a sound basis for refusing urgency that a respondent's own conduct converted a developing dispute into one requiring urgent intervention. Once the meeting notice came to light on 20 August 2026, the Applicants moved with evident dispatch. Papers were settled, and counsel briefed the same day, and the application was issued and served the following day.

[12] I am satisfied that the Applicants would not obtain substantial redress in the ordinary course. The relief sought is specifically directed at preventing the closure of the store and further interference with the premises before 25 August

¹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at paras 6–7; *Bakubung Share Block Company Limited and Another v North West Parks & Tourism Board and Others* [2026] ZANWHC 151 at para 8.

2026. An order granted after that date, once the gathering has taken place and any closure effected, would in material respects be incapable of undoing what has already occurred. The point *in limine* of lack of urgency accordingly fails.

(b) Locus standi

[13] The First Respondent contends that the Second Applicant is not a validly constituted traditional council under the Traditional and Khoisan Leadership Act 3 of 2019 ('the TKLA'), and accordingly lacks the capacity to authorise the First Applicant to institute these proceedings. He relies on s 63(4)(b) of the TKLA, which requires reconstitution of a deemed traditional council within a stated period, and asserts, from his own knowledge as a community member, that no reconstitution occurred by 2 February 2026. He annexes a confirmatory affidavit from Mr Nchaupe Solomon Malebye, who describes himself as the Spokesperson of the Bakgatla ba Mosetlha Royal Family, confirming that, on his version, no properly constituted traditional council exists.

[14] Two difficulties confront this point at the interim stage. First, the Applicants' founding affidavit pleads. It is not squarely denied that, in the prior proceedings under case number M700/2023, between the same parties, concerning the same premises, the First Respondent himself delivered an answering affidavit in which he expressly admitted the paragraphs identifying the Second Applicant as the duly constituted traditional council of the community and the First Applicant as its recognised Kgosi. The Applicants plead that the validity of the leases, and consequently the Second Applicant's authority to have concluded and to have had them cancelled, was an issue essential to the February order, was raised by the First Respondent, was litigated, and was decided against him. The answering affidavit's response to this, at paragraph 54, does not engage with the point. It states only that the issues arising under M700/2023 'will be dealt with in subsequent legal proceedings once the reasons for the order have been furnished.' That is not a denial. Where a party has previously admitted, on oath,

in litigation between the same parties over the same subject matter, the very fact he now seeks to place in issue, considerable difficulty attends any attempt to resile from that admission without explanation.²

[15] Second, the point does not sit easily with the fact that this Court has already, in the February order, granted substantive relief in the Applicants' favour, relief that presupposed the Second Applicant's capacity to have concluded and to have had set aside the very leases in issue. That order in law stands, unappealed.

[16] I am mindful that the *locus standi* challenge is not without any evidentiary foundation. The Malebye confirmatory affidavit is a genuine, commissioned affidavit, and I do not dismiss it out of hand. But for Part A, where the Applicants need only establish a *prima facie* right, though open to some doubt, I am satisfied that the weight of what is before me, including the First Respondent's own prior sworn admission, substantially unanswered, favours the Applicants. The point is better and more fully ventilated, with full argument on the TKLA's transitional provisions and on the doctrine of issue estoppel, at the hearing of Part B, where it can be determined finally rather than provisionally.

(c) Misjoinder

[17] The First Respondent contends that the Minister of Land Reform and Rural Development, as successor to the Minister of Native Affairs, ought to have been joined, on the premise that the land is held in trust by that Minister for the community. The Applicants' founding affidavit, supported by the Deed of Transfer (annexure FA3a) and the Deeds Registry property print (FA3b), is that the registered owner of the land is the Ba-Mosetlha Tribe itself, under title deeds T[...] and T[...]2, held conformably to local custom pursuant to an order of the then Supreme Court dated 29 July 1909, and not held in trust by any Minister. No documentary rebuttal of this specific point, such as a competing deed or gazette,

² cf. the discussion of issue estoppel in *Smith v Porritt* [2007] ZASCA 19; 2008 (6) SA 303 (SCA) at para 10, referred to with approval in this Division in *Seeletso and Another v Ntefeng and Others* [2023] ZANWHC 157 at paras 37–43.

appears in the answering affidavit. On the papers as they stand, the premise for the misjoinder point is not made out, and I am not persuaded that the Minister has the direct and substantial interest in this interim relief that would render non-joinder fatal.³ The point, too, may be revisited with fuller argument at Part B if thought necessary, but it does not stand in the way of interim relief.

The reasons and appeal question

[18] Although not raised as a discrete point *in limine*, the question of the status of the February order featured throughout the papers and warrants express treatment, since the First Respondent's papers proceed, at several points, on the premise that he 'cannot apply for leave to appeal until I have the reasons for the order' and that this in some way holds the order, or these proceedings, in abeyance.

[19] The February order recorded that reasons would be furnished to the parties on request. Where a court's order so provides, the applicable provision is Rule 49(1)(c) of the Uniform Rules of Court, which requires such a request to be made within ten days of the order.⁴ The February order was granted on 19 February 2026. The First Respondent's request for reasons is dated 22 June 2026 and was only served on 7 July 2026, more than four months later. No application for condonation of that delay has been brought before Masike AJ or any other designated Judge.

[20] In addition, and independently of Rule 49, s 18(1) of the Superior Courts Act 10 of 2013 provides that the operation and execution of a decision is suspended pending an application for leave to appeal or an appeal only once such an application or a notice of appeal has actually been lodged. Neither has occurred. An intention to appeal, or a request for reasons, however framed, is not equivalent to either, and does not suspend the operation of the February order. That order accordingly remains extant, final and unsuspended.

³ *Trope v South African Reserve Bank* [1993] 2 All SA 278 (A).

⁴ See the discussion of the interplay between Rule 49(1)(b) and (c) in this Division in *Seeletso and Another v Ntefeng and Others* [2023] ZANWHC 157 at paras 17–18.

[21] It follows that the First Respondent's stated apprehension, that he is presently unable to pursue an appeal because reasons have not been furnished, does not assist him in resisting interim relief in these proceedings. Even were an application for leave to appeal to be lodged, s 18(1) would suspend only the February order itself. It would not, without more, suspend the operation of a fresh interdict granted in these separate proceedings, which are brought to restrain conduct occurring independently of, albeit consequent upon, the February order.

Requirements for interim relief

[22] An applicant for an interim interdict must establish a *prima facie* right, though open to some doubt; a well-grounded apprehension of irreparable harm if interim relief is not granted and the ultimate relief is eventually granted; that the balance of convenience favours the grant of interim relief; and the absence of any other satisfactory remedy.⁵

A prima facie right

[23] For the reasons given above in relation to *locus standi*, I am satisfied that the Applicants have established, at least *prima facie*, a right to protect the community's land and the building upon it from interference by a person whose only asserted entitlement derived from a lease this Court has already cancelled, by an order that remains extant and unsuspended.

Well-grounded apprehension of irreparable harm

[24] The conduct complained of, interruption of the water supply, a demand to vacate, and a gathering convened for the stated purpose of closing the store, is, on the First Respondent's own version, either admitted or not seriously disputed in its practical effect, whatever dispute there may be as to its legal characterisation or cause. Once the gathering on 25 August 2026 proceeds and any closure is effected, the harm will, in material respects, have occurred. This

⁵ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

Court cannot, as the Applicants correctly submit, un-close a supermarket after the fact.

Balance of convenience

[25] The relief sought is narrow and preservative. It restrains specific acts of interference pending final determination. It does not purport to resolve the underlying ownership dispute. And it expressly preserves the First Respondent's rights to attend and address the 25 August gathering, to express his views, and to pursue whatever claim he has through the courts. Weighed against the prejudice to the Applicants and the Second Respondent of an unregulated escalation pending Part B, the balance favours the grant of interim relief.

No other satisfactory remedy

[26] I accept, as advised in the founding affidavit, that recovery of possession after the fact from any occupier the First Respondent might install would require fresh proceedings against a party not before this Court, in which the February order would avail the Applicants nothing directly. That is not a satisfactory alternative to timeous interim relief.

[27] I am accordingly satisfied that the requirements for interim relief in Part A are met.

Costs

[28] The Applicants seek costs on the attorney-and-client scale, including counsel's fees on Scale B. They point out that this is the second occasion on which the First Respondent has put them to the expense of litigation over the same premises. That he was already ordered to pay the costs of the M700/2023 application; and that this application was rendered necessary by a single, unqualified refusal, on 19 August 2026, to give an undertaking that would have avoided it entirely. Given the history between the parties, the First Respondent's admitted continued exaction of rental after the February order, and the terms in

which the undertaking sought was refused, I am satisfied that an order in accordance with scale B of Rule 67A is warranted.

Order

[29] In the result the following order is made:

1. The application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the Applicants' non-compliance with the forms, service and time periods otherwise prescribed by the Rules is condoned.
2. Pending the final determination of Part B of this application, the First Respondent is interdicted and restrained from:
 - 2.1 entering upon, taking occupation of, or in any manner interfering with the premises situated at Stand Number 2[...], Maseding Section, Makapanstad, on Portion 2 of the farm Goedgewaagd 60 JR, in the district of Moretele, North West Province ('the premises'), or any part thereof;
 - 2.2 interfering with, disconnecting, terminating, obstructing, or in any manner disrupting the supply of water or electricity to the premises, or the operation of any borehole, pump, pipework, reservoir, tank or electrical installation serving the premises;
 - 2.3 obstructing, preventing or interfering with the Applicants, or any person acting on their behalf or duly authorised by them, in the delivery, installation, connection, filling, maintenance or operation of any water tank or other alternative supply of water at or to the premises;
 - 2.4 interfering with, obstructing or disrupting the occupation of, the access to, or the trading operations conducted at the premises by the Second Respondent;
 - 2.5 taking any step to eject or remove the Second Respondent from the premises, or to compel the Second Respondent to vacate

the premises or to cease trading therefrom, otherwise than by proceedings duly instituted in a court of competent jurisdiction;

2.6 letting, purporting to let, offering to let, or granting or purporting to grant to any person any right of occupation of or access to the premises, or introducing or causing to be introduced any tenant or occupier into or upon the premises; and

2.7 instructing, directing or procuring any other person to do anything which the First Respondent is by paragraphs 2.1 to 2.6 above restrained from doing, provided that nothing in this paragraph shall prevent the First Respondent from attending or addressing the gathering convened by him at the premises for 10h00 on Tuesday, 25 August 2026, or any postponement thereof, or from expressing any view, whether at that gathering or otherwise, as to the ownership of the premises or the building, or from instituting or prosecuting any proceedings in a court of competent jurisdiction to assert whatever rights he claims.

3. Pending the final determination of Part B, the First Respondent shall permit, and shall not obstruct, the Applicants, and any person duly authorised by them, in restoring, maintaining and operating the supply of water to the premises, including access to the borehole, pump, pipework and associated infrastructure, and in the delivery, installation, connection, filling, maintenance and operation, at the Applicants'; own cost, of a water tank or other alternative supply of water at or to the premises.
4. The First Respondent shall pay the costs of Part A of this application on scale B, such costs to include the fees of counsel.

A H PETERSEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAFIKENG

Appearances

For the Applicants:	Adv WC Potgieter
Instructed by:	Billson Inc, c/o Labuschagne Attorneys, Mahikeng
For the First Respondent:	Adv MZ Seima
Instructed by:	MP Mannya Inc, c/o M Matlatle Attorneys Inc, Mahikeng
For the Second Respondent:	No appearance