



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

Case No.: 2026-112725

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED NO

DATE 21 August 2026

SIGNATURE

In the matter between:

HENNY HERRAH SAMBO

MOKOENA DANIEL

DLAMINI NCAMSILE PRECIOUS

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

and

**THE REGISTRAR OF COMMUNAL
PROPERTY ASSOCIATION**

FIRST RESPONDENT

THE DIRECTOR GENERAL LAND REFORM AND RURAL DEVELOPMENT	SECOND RESPONDENT
THE CHIEF DIRECTOR LAND REFORM AND RURAL DEVELOPMENT	THIRD RESPONDENT
THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	FOURTH RESPONDENT
THE REGISTRAR OF DEEDS MPUMALANGA	FIFTH RESPONDENT
EVAH SIMANGELE MKHATSHWA	SIXTH RESPONDENT
KHULILE MKHATSHWA	SEVENTH RESPONDENT
JUDAS MAKHUBELA	EIGHTH RESPONDENT
JEREMIAH MKHATSHWA	NINTH RESPONDENT
KHULEKILE MERICA MOKOENA	TENTH RESPONDENT
THOKO MABUYA	ELEVENTH RESPONDENT
CLEMENT CEKO	TWELTH RESPONDENT
MTHOMBISI MASHABANE	THIRTEENTH RESPONDENT
THANDEKA KHOZA	FOURTEENTH RESPONDENT

BONGANI GODFREY MKHATSHWA FIFTEENTH RESPONDENT

MAWEWE COMMUNAL PROPERTY SIXTEENTH RESPONDENT
ASSOCIATION

AFRICAN SUNRISE (PTY) LTD SEVENTEENTH RESPONDENT

LAMBOKAZI HOLDING (PTY) LTD EIGHTEENTH RESPONDENT

ABSA BANK NINETEENTH RESPONDENT

THE SOUTH AFRICAN POLICE TWENTIETH RESPONDENT
SERVICES

THE DIRECTORATE OF PRIORITY TWENTY-FIRST RESPONDENT
CRIMES INVESTIGATIONS

JUDGMENT

FOURIE AJ:

INTRODUCTION:

[1] The Applicants before this Court were the successful Applicants before the Court when Mangena AJ delivered Judgment in their favour on 12 June 2026.

[2] In the Judgment granted by Mangena AJ on the aforesaid date, certain relief was granted pending, as per Prayer 2 of the aforesaid Order, certain ancillary steps to be taken. Paragraph 2 of the Mangena AJ Judgment specifically states that:

‘[2]. The relief they seek in Part B is consequential to the outcome of the forensic investigation and the taking of remedial action in line with the Constitution of the MCPA’.

[3] When the application was initially brought, it was predicated on three portions of relief sought, in essence being:

- a). Declaratory relief under the auspices of Section 18(2) of the Supreme Courts Act, 10 of 2023 (hereinafter “the SCA”).
- b). Alternatively, to Prayer 1, relief under the auspices of Section 18(3) of the SCA, and
- c). An Order placing the Registrar in contempt of Court for its non-compliance with the Order of 12 June 2026.

[4] To be thorough, the Order of Mangena AJ indicated that:

‘2. Pending further proceedings in Part B to be enrolled by the Applicants not more than 120 days from the execution of this Order, it is ordered that:

2.1. The sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth respondents are immediately interdicted and prohibited and restrained from:

- 1.1.1. administrating the affairs of the sixteenth respondent;
 - 1.1.2. controlling, accessing or operating the Mawewe Communal Property Association bank accounts held at ABSA Bank under Account Number: 4[...];
 - 1.1.3. entering into or purporting to enter into any transactions, arrangements, or contracts on behalf of Mawewe Communal Property Association
2. The seventh respondent is interdicted and restrained from alienating, transferring or encumbering the immovable property described as ERF 3[...] M[...] Extension 35 Township, Registration Division JT, Mpumalanga and held by deed of transfer T 6806/2023 pending finalisation of Part B of the application.
3. The seventeenth respondent (African Sunrise (Pty) Ltd) is interdicted and restrained from alienating, transferring or encumbering the immovable property described as Portion 372 (A portion of portion 74) of the farm 375 Rietfontein JR, Pretoria held under title deed number T 02386/2024.
4. The Registrar of Communal Property Associations is ordered to appoint a suitably qualified independent forensic investigator, within 90 days from the date of this order, to conduct an investigation into the financial affairs of Mawewe Communal Property Association for the period March 2021 to May 2026. The appointed investigator shall submit a report to this court within 120 days from the date of appointment by the Registrar.
5. The Registrar is further ordered to immediately appoint a new interim committee to manage the affairs of Mawewe Communal Property Association pending finalisation of part B of this application.

6. All the respondents who opposed the application, except the sixteenth respondent, are ordered to pay jointly and severally the applicants' costs on a party and party scale, including the costs of one senior counsel, where one is employed.”

[5] Prior to the commencement of the proceedings, which was set down on the Urgent Roll of this Court of 18 August 2026, the Applicants indicated that they have abandoned their relief as sought in respect of the Contempt of Court proceedings.

[6] During argument, it was further conceded by the Applicant’s legal representatives that they no longer rely on the relief sought under Section 18(2) of the SCA, namely the declaratory relief.

[7] The essence of the issues on which this Court ultimately needs to decide accordingly turns on the applicability of Section 18(3) of the SCA, and whether the Applicants have met the jurisdictional requirements and threshold for relief to be granted in terms thereof.

[8] The urgent application is opposed by the same groups of Respondents that opposed the initial interdict application, who are grouped together as follows:

- a). The First, Second, Third and Fourth Respondents;
- b). The Sixth, Seventh, Eleventh and Twelfth Respondents; and
- c). The Eighth, Ninth, Tenth, Thirteenth and Fourteenth Respondents.

[9] As was the case in the initial interdict application, the remaining Respondents do not oppose the relief sought by the Applicants herein.

BACKGROUND:

- [10] It is highly irrelevant to what follows to indicate that, as at the time of the current application, the parties are awaiting being heard by Mangena AJ in an application for leave to appeal brought by the respective Respondents against the Order of 12 June 2026.
- [11] The principles on which the application for leave to appeal is grounded, although highly relevant to the ultimate finalisation of the matter, will, for reasons as are highlighted hereinafter, not be dealt with in depth by this Court.
- [12] If either of the parties expects this Court to adjudicate on any of the matters that serve before this Court in less than a week's time in order to utilise the findings of this Court in any way or form or attempt to utilise the findings of this Court in any way or form to attempt to pursue the Court ultimately hearing the application for leave to appeal, same would amount to nothing less than an abuse of Court process.
- [13] The Respondents specifically complain about the timing of the current application under circumstances where the application for leave to appeal is set down in less than a week's time. The Respondents complain that the Applicants indicated they were unavailable to deal with the application for leave to appeal at an earlier stage, although the application had already been brought by the respective Respondents in early July 2026.
- [14] The Respondents complained that it is only after the matter has finally been enrolled that they are confronted by the Applicants with the current application.

URGENCY:

[15] Prior to dealing with the merits of the matter, the Court was necessitated to evaluate whether it ought to deal with the matter on the urgent Court roll.

[16] A litigant who approaches Court for leave on an urgent basis must comply with Rule 6(12)(b) of the Uniform Rules of Court. The Rule reads as follows:

“In every affidavit of petition filed in support of any application under paragraph (a) of this sub rule, the Applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reason why he claims that he could not be afforded substantial redress at a hearing in due course.”

[17] The importance hereof is that the procedure set out in Rule 6(12) is not merely for the taking. An Applicant must explicitly set forth the circumstances he avers render the matter urgent. More importantly, the Applicant must state the reasons why it claims that it cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The Rules allow the Court to come to the assistance of a litigant because if the latter were to wait for a normal course to be laid down by the Rules, it would not obtain substantial redress. It is important to note that the Rule requires the absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial

redress in an application in due course will be determined by the facts of each case. An Applicant must make out its case in this regard¹.

[18] Thus, two requirements must be set forth in the Founding Affidavit to satisfy the Rule². Whether an Applicant has succeeded in satisfying the requirements for urgency must be determined from the contents of the Founding Affidavit³.

[19] In *Luna Meubelvervaardigers (Pty) Ltd v Makin & Another*⁴ Coetzee J held with reference to Rule 6(12)(b) the following:

“Mere lip service to the requirement of Rule 6(12)(b) will not do, and an Applicant must make out a case in the Founding Affidavit to justify the particular extent of the departure from the norm which is involved in the time and day for which the matter be set down.”

[20] The test, insofar as it relates to urgency, remains, at its core, whether, if the Court does not deal with the matter at this juncture and allows the matter to be heard in the normal course, the Applicant will be able to obtain substantial redress. Substantial redress will depend on the facts of each specific matter⁵.

[21] In the matter of *Witbank Taxi Association, supra*, the Court found it necessary to expressly deal with what is ultimately meant by substantial redress, where the Court stated that:

‘Unfortunately, both litigants and the general public fail to appreciate what is actually meant and what ought to be proven by the test to evaluate whether substantial redress would be forthcoming if the matter is not heard in the manner as set down by the Applicant in an urgent application.’

[22] Applicants frequently insert the phrase:

‘The Applicant will not be able to obtain substantial redress in due course if the matter is not heard on the Urgent Court Roll’

Absent such an averment, Respondents, when opposing urgent applications, frequently insert the phrase:

‘The Applicant has failed to allege that substantial redress in due course will not be forthcoming if the matter is not heard on the current Urgent Court Roll.’

[23] Neither of the aforesaid sentiments ought to find any place in the litigious framework of an urgent application. To scrutinise founding or answering papers in search of specific words that would serve as a proverbial tick-box is a formalistic and outdated manner of evaluating compliance with the litigious process.

[24] I am of the view that, even in the absence of a specific mention of the phrase “substantial redress” if the facts as alleged by the Applicant in its founding papers set up a premise which, if ultimately tested and proven is proven to be the truth, and will lead to an Applicant invariable not obtaining substantial redress if the matter was not dealt with on the day as set down, the Applicant would have complied with his obligations in this regard.

[25] The safeguard built in by the Uniform Rules of Court to protect against abuse of Court process, and what is commonly referred to as a jumping of the queue, is to protect against the following:

- a). A Respondent being able to properly present the opposition they would otherwise have wanted to if they had sufficient time to present their opposition to the application.
- b). The Court being inconvenienced both in its preparation time and the information at its disposal to come to an adequate decision.
- c). Litigants taking up valuable judicial resources which could have and should have been allocated to matters that patiently waited in line, which is now forced on the back-burner by an Applicant that forced in a matter that could have and should have been dealt with at either an earlier or later time.

[26] When evaluating whether a party could ultimately obtain substantial redress, the starting point ought to generally be found in the relief sought by such a party. A basic evaluation of the prayers in a Notice of Motion ought to be indicative of whether a matter is truly principled on urgency or not. Following this approach, a court will evaluate whether the urgency was self-created or, when applying the principles of *Luna Meubelvervaardigers, supra*, the timeframes set out in the application align with the chosen urgency of the matter.

[27] A matter can accordingly be urgent but still fall foul of being heard by the Court on the urgent roll because the urgency was self-created or the manner of approach to Court was found to be unreasonable given the facts of the matter.

- [28] Ultimately this Court was called upon to decide whether the Applicants' Section 18(3) application ought to be entertained on the urgent roll. The essence of the relief the Applicants seek is that the Court Order granted by Mangena AJ is not suspended pending the finalisation of the appeal process.
- [29] If the Court decides not to adjudicate the matter at the current juncture, it is a reasonable inference to be drawn that the matter will proceed on the normal roll approximately one calendar year from the date hereof, by which time the appeal process would in all likelihood have been concluded. Accordingly, the relief sought in the Notice of Motion will in all likelihood have become moot by that stage.
- [30] The Court initially hearing the application found same to be urgent and although there has been some lapse of time until the current application is brought, to reason, as the Respondents have, that the matter is not urgent and could stand over for later adjudication makes no practical sense.
- [31] It is for the aforesaid reasons that the Court was satisfied that the application in as far as it was to deal with Section 18(3) of the SCA was sufficiently urgent.
- [32] At the hearing of the matter the Court indicated its displeasure with the state of the Applicants' bundles as filed.
- [33] In general, this Court agrees that an Applicant who brings his matter to Court on the urgent roll should ensure that his papers are in an impeccable state as to make it as easy as possible for the Court that ultimately deals with the matter to evaluate such a matter in curtailed time frames. There are, however, circumstances that may permit a

deviation from this principle, and in deserving cases, this is an aspect in which the Court needs to take a practical and logical approach, as the interest of justice might necessitate a deviation from this norm from time to time.

- [34] Under appropriate circumstances, a Court, such as this one, might condone the state of a litigant's papers, but take the same into consideration when ultimately dealing with the costs of an application.

APPLICABLE LEGAL PRINCIPLES:

- [35] The relevant provisions of the SCA state that:

‘18. Suspension of decision pending appeal

- (1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.’

- [36] A significant portion of the respective bundles filed by the respective parties relates to whether the Judgment by Mangena AJ could and should be regarded as an Interim Order or a Final Order.

- [37] In the matter at hand, it is significant to determine whether the relief granted by Mangena AJ was of a temporary or final nature. The reason for the aforesaid is that the nature of the relief granted by Mangena AJ will determine the procedure to determine the right of execution, or not, pending the finalisation of the appeal.
- [38] If the relief granted by Mangena AJ is ultimately found to be interim in nature, then the provisions of Section 18(2) of the SCA find application.
- [39] If Section 18(2) of the SCA finds application, the burden of proof shifts to the Respondents in the current application, the Applicant in the application for leave to appeal or the Appellant in the appeal, as the case may be, to prove exceptional circumstances as to why the operation and execution of the interim order ought to be suspended pending the finalisation of the appeal process.
- [40] The Applicant in whose favour the initial Interim Order was granted has no burden to seek declaratory relief, as the Applicants initially attempted in this Court, to prove their right to execute on an order that has been granted on an interim basis. The general legal position is that interim Court Orders stand and must be executed unless suspended by a Court under Section 18(2) of the SCA.
- [41] An application to suspend an interim order will generally be brought by the Appellant in an appeal or the Applicant in an application for leave to appeal, as it is such a party who seeks a change in the legal position.
- [42] If the Applicants in the current application wanted any sort of declaratory relief to clarify the legal position between the parties, then such relief in the Notice of Motion ought to have expressly entailed a

request for the Court to determine whether the Order of Mangena AJ ought to be regarded as interim or final.

[43] I hasten to say that this Court will not pronounce on whether or not a Court would have entertained such a request at this stage in proceedings, seeing that the same question will in all probability confront the Court hearing the application for leave to appeal or ultimately the appeal as the case may be, but it would be relief aimed at clarifying an existing, future or contingent right or obligation⁶.

[44] The manner in which the Applicant, however phrased the relief as sought would have, in any event, and even if such relief was not abandoned by the Applicant, precluded the Court from dealing with this question.

[45] As stated *supra*, Section 18(2) of the SCA deals with appeals to interim orders whereas Section 18(3) of the SCA deals with appeals against final orders.

[46] The only way in which the Applicants would accordingly be necessitated to make an application under Section 18(3) of the SCA would be if it is determined that the relief sought was final in nature as, once it is proven that the relief sought is final in nature, it would be necessary for the Applicants to prove exceptional circumstances, and irreparable harm on their part, and the lack of irreparable harm on the part of the Respondents that necessitate a deviation from the norm, that being the suspension of Court Orders where an appeal process to such orders are pending.

[47] The difficulty confronting the Applicants in the current matter, however, is that the Applicants, in their founding papers, expressly state their firm belief that the Order granted by Mangena AJ is interim in nature and not

final. The Applicants further state that this will be one of the crucial legs on which their opposition to the application for leave to appeal ultimately rests when the matter is heard in the coming days.

[48] Accordingly, if the Applicants believe that the Order of Mangena AJ is interim in nature, such would preclude the Applicants from bringing an application under the auspices of Section 18(3) of the SCA under circumstances where such an application would simply not be necessary as the legal position would favour the Applicants and, on the Applicants version it would have been necessary for the Respondents to proceed with an application under Section 18(2) if they had wished to suspend the operation of the Mangena AJ Order.

[49] Peculiarly, the relief the Applicants sought, which could have possibly aided the Applicants in the relief it seems they ultimately seek, vested in the prayers the Applicants abandoned, being the contempt of Court process, if they were able to prove same, alternatively in seeking clarification on the nature of the Mangena AJ relief, being either interim or final.

[50] Once the Applicants elect to regard the Mangena AJ as interim, the procedure as set out in Section 18(3) of the SCA becomes irrelevant.

[51] The only way in which this Court will entertain the application under the auspices of Section 18 (3) is if this Court makes a determination on the nature of the relief granted by Mangena AJ, a question this Court is not requested to answer, and given the close proximity to the leave to appeal application which the Court would in any event have had difficulty to entertain as to not influence the Court during the application for leave to appeal with this Court's views and further as to not determine issues already serving before this Court in a different forum.

- [52] Irrespective of the manner in which the relief sought by the Applicant is phrased, a material dispute of fact exists between the respective parties in that it is evident the Applicants believe the relief of Mangena AJ to be interim in nature, and the respective Respondents who harbour the firm view that the relief granted by Mangena AJ to have final effect.
- [53] If the respective parties were in agreement on this point, it would have indicated the route to be taken either by the Respondents under Section 18(2) of the SCA or by the Applicants under Section 18(3) of the SCA.
- [54] In so far as the relief sought herein is subject to the principles of the Plascon-Evans test⁷, the circumstances where the Applicant, stating the matter to be dealing with interim relief and the Respondents stating the matter to deal with final relief which, if followed, would lead to the bizarre notion that the Applicant would have erroneously so elected to proceed under the auspices of Section 18(3) of the SCA and with the submissions the Applicants make in their papers they would not be entitled to such relief but if regard is had to the submissions made in the Respondents' papers it would bring the matter within the ambit of Section 18(3) of the SCA which would then, by virtue of some sequence of events that neither of the parties could have foreseen bring the matter back into the ambit of Section 18(3) of the SCA.
- [55] Fortunately, this Court has not been requested to decipher or address this anomaly, and the Court need only evaluate whether the Applicants have met the threshold for what they aim to achieve in their application.
- [56] Principled on their own factual allegations, the application in its current form was unnecessary, and while relief phrased in different terms might be available to the Applicants, the matter that was brought to Court

stands to be dismissed as the relief sought and the submissions made in the founding papers are irreconcilable with one another.

[57] For this reason, the Applicants' application cannot succeed.

COSTS:

[58] It was argued by the Respondents, and to a great degree conceded by the Applicants, that the fact that the Applicants abandoned significant portions of their relief sought, and evaluated together with the disorderly manner in which the Applicants' bundles were ultimately presented to the parties and to the Court, would have an impact on the Order the Court ultimately makes in respect of costs.

[59] It should be noted that the Court, in coming to the conclusion it does, does not deal at all with the merits of the application or many of the submissions made by either the Applicants or the Respondents.

[60] As much as the Applicants misinterpreted the principles on which the Application was to be brought, none of the principles on which the Court ultimately finds in respect of the matter was highlighted or presented to the Court by any of the Respondents.

[61] The Court can, under the circumstances, however, not disregard the fact that the Respondents were brought to Court with significant portions of the relief sought against them ultimately not persisted with, under circumstances where the Applicants' papers were presented to the Court and the respective parties in a less than satisfactory manner.

[62] Having found that the application was unnecessary and premised on incorrect legal principles, I find no reason why the Applicants ought not to pay the costs occasioned due to the current application. I am, however, not persuaded by the submissions made by the Respondents that the costs ought to attract a punitive scale.

ORDER:

[63] For the aforesaid reasons, the following Order is made:

[63.1] The relief as persisted with by the Applicants predicated on Section 18(3) of the Superior Courts Act, 10 of 2013, is found to be urgent and dealt with as such in accordance with Rule 6(12) of the Uniform Rules of Court.

[63.2.] The Applicants' application is dismissed.

[63.3.] The Applicants shall pay the Respondents' costs, jointly and severally, the one to pay the other to be absolved, on a party-and party scale.

HF FOURIE
ACTING JUDGE OF THE HIGH COURT,
MPUMALANGA DIVISION

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Date of hearing: 18 August 2026

Date of Judgment: 21 August 2026

¹ Eastrock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others (11133767) [2011] ZAGPJHC 196 (23 September 2011)

² Salt & Another v Smith 1991 (2) SA 186 (NM) at 197 A

³ Il & B Marcow Caterers v Gretermans SA 1981 (4) SA 108 (C) at 111 A

⁴ Setlogelo v Setlogelo 1914 AD 221

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- ⁵ Witbank Taxi Association v Local Taxi Association and Another (2026-069702) [2026] ZAMPMHC 15 (9 April 2026)
- ⁶ Gensinger & Neave CC and Others v Minister of Mineral Resources and Energy and Others 2015 (4) SA 84 (SCA) at para 31
- ⁷ Plascon-Evans Paints (TVL) Ltd. v Van Riebeck Paints (Pty) Ltd. (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984)