

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

(1) REPORTABLE: NO/YES
(2) OF INTEREST TO OTHER JUDGES: NO/YES
(3) REVISED: NO/YES

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SIGNATURE

DATE ____ September 2026

CASE NO: 2024-078179

In the matter between:

PURPLE FOUNTAIN PROPERTIES 59 (PTY) LTD

First Applicant

UHD PROPERTY INVESTMENTS (PTY) LTD

Second Applicant

and

THE CITY OF JOHANNESBURG

First Respondent

TSHEPO MAKOLA N.O.

Second Respondent

JOHANNESBURG WATER SOC LTD

Third Respondent

CITY POWER JOHANNESBURG SOC LTD

Fourth Respondent

THE REGISTRAR OF DEEDS, JOHANNESBURG

Fifth Respondent

JUDGMENT

VERVEEN AJ:

This judgment is handed down electronically by circulating it to the parties' representatives by email and by uploading on CaseLines.

INTRODUCTION

- [1] This application concerns the prolonged unlawful occupation of Msibi House, comprising Erven 6[...] to 6[...], N[...] D[...]. The first applicant, Purple Fountain Properties 59 (Pty) Ltd (Purple Fountain), is the registered owner. The proposed transfer of the property to the second applicant has been impeded by municipal charges raised against the property.
- [2] The application has two related, but legally distinct, components. The first is a constitutional claim. Purple Fountain alleges that the City of Johannesburg deprived it of the use and enjoyment of the property from 30 March 2011 until December 2022, in breach of section 25 of the Constitution. It seeks compensation calculated with reference to section 12(1) of the Expropriation Act 63 of 1975. The second concerns the municipal accounts, including the alleged termination of services, the subsequent billing, prescription, and the figures required for a clearance certificate under section 118 of the Local Government: Municipal Systems Act 32 of 2000.
- [3] The parties were *ad idem* at the hearing that the eviction proceedings instituted by Purple Fountain remained stayed from 2011 until 2018 while a temporary emergency accommodation report was awaited from the City. The agreement was expressly confined to that issue and period. It did not extend to the period after the report was made available, and it did not determine the appropriate remedy.
- [4] The issues are:
- [4.1] whether the prolonged stay and the City's role in the temporary emergency accommodation process resulted in an arbitrary deprivation of Purple Fountain's property rights under section 25(1) of the Constitution;

- [4.2] whether the City expropriated the property or infringed Purple Fountain's right of access to court under section 34 read with section 1(c) of the Constitution;
- [4.3] whether constitutional compensation is the appropriate remedy;
- [4.4] whether the municipal accounts should be reconciled and corrected; and
- [4.5] how prescription and section 118 affect the account relief.

MATERIAL BACKGROUND

- [5] Purple Fountain acquired the property in September 2009. The occupiers did not recognise its authority to take possession or charge rental. Purple Fountain's case is that the building was hijacked, leaving it unable to occupy, let, develop, or otherwise use the property.
- [6] On 20 April 2010, Purple Fountain's attorneys gave written notice to Johannesburg Water cancelling the relevant consumer agreement and requesting termination of services because the building had been hijacked. On the same date, they requested City Power to disconnect the electricity supply at level 3.
- [7] Purple Fountain instituted eviction proceedings in 2011 under case number 2011/03323. The City was joined. The eviction proceedings were postponed while the circumstances of the occupiers and their potential entitlement to temporary emergency accommodation were investigated. The City initially indicated that it required at least nine months to secure such accommodation.
- [8] In early 2012, water and electricity services were reinstated. Purple Fountain's attorneys promptly objected, recorded that the reinstatement was without Purple Fountain's knowledge or consent, and rejected liability for ensuing consumption charges.

- [9] The City ultimately filed an updated temporary emergency accommodation report in November 2018. The occupiers did not vacate pursuant to an eviction order. They vacated in December 2022 independently of the eviction proceedings.
- [10] By September 2023, the municipal claim totalled R8 765 642.83, including charges for rates, refuse, water, sewerage, and electricity.

THE APPLICABLE LEGAL FRAMEWORK

Section 25

- [11] Section 25(1) of the Constitution provides that no one may be deprived of property except in terms of law of general application, and that no law may permit arbitrary deprivation of property. Section 25(2) regulates expropriation for a public purpose or in the public interest, subject to compensation.
- [12] The starting point is the distinction drawn by the Constitutional Court in *First National Bank*.¹ Expropriation is a subset of deprivation. A court must first determine whether there has been a deprivation within the meaning of section 25(1) and whether it was arbitrary. Only if the facts establish expropriation does section 25(2) govern the validity and compensation consequences.
- [13] The arbitrariness enquiry is contextual. It considers the nature and extent of the interference with property rights, the purpose served by the measure or conduct, and the relationship between that purpose and the effect upon the owner.²
- [14] *Agri SA v Minister for Minerals and Energy*³ confirms that State acquisition was central to the majority's expropriation analysis. The concurring judgments cautioned against treating acquisition as an inflexible requirement in every

¹ *First National Bank of SA Ltd t/a Wesbank v Commissioner, South African Revenue Service and Another; First National Bank of SA Ltd t/a Wesbank v Minister of Finance* 2002 (4) SA 768 (CC) paras 57–60.

² *First National Bank*, paras 50 and 65–66.

³ *Agri SA v Minister for Minerals and Energy* 2013 (4) SA 1 (CC) paras 48, 71–75 and 78–79.

case. But the decision does not create a general doctrine of constructive expropriation.

UNLAWFUL OCCUPATION AND TEMPORARY EMERGENCY ACCOMMODATION

- [15] In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*,⁴ the Constitutional Court recognised that unlawful occupation interferes with the owner's use and enjoyment of property. The justice-and-equity enquiry under PIE may require an owner to tolerate a temporary restriction. An owner may be required to be patient for a time, but cannot be required to provide free housing indefinitely.
- [16] *Blue Moonlight*,⁵ also makes clear that a municipality faced with foreseeable emergency housing needs must plan and budget appropriately. A bare assertion that it did not budget for temporary emergency accommodation is not a complete answer where appropriate planning ought to have occurred. Further, in *Dladla and Others v City of Johannesburg and Another*,⁶ the Constitutional Court emphasised that temporary municipal accommodation and the conditions attached to it must comply with the rights to dignity, privacy, and freedom and security of the person.
- [17] Two authorities require careful distinction. In *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd*,⁷ the owner had obtained an eviction order which could not effectively be implemented without State participation. The Constitutional Court held that the State's failure to provide an effective mechanism infringed the owner's right under section 34 read with section 1(c), and awarded compensation as the most appropriate remedy.

⁴ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* 2012 (2) SA 104 (CC) paras 37 and 40

⁵ paras 63–67 and 69–75.

⁶ *Dladla and Others v City of Johannesburg and Another* 2018 (2) SA 327 (CC) paras 47–52.

⁷ *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* 2005 (5) SA 3 (CC) paras 42–51, 53–65 and 68

- [18] In *Living Africa One (Pty) Ltd v Ekurhuleni Metropolitan Municipality and Another*,⁸ a Full Court granted constitutional compensation where the owner had an eviction order and orders requiring the municipality to provide temporary emergency accommodation. The municipality's continuing failure to comply left the property serving as accommodation for unlawful occupiers. The Court found an arbitrary deprivation under section 25(1), a section 34 infringement, and ordered compensation to be quantified using the section 12(1) methodology.
- [19] The absence of a final eviction order in the present matter distinguishes it from *Modderklip* and *Living Africa One* for purposes of the section 34 claim. It does not, however, dispose of the separate section 25(1) enquiry. That enquiry focuses on the practical effect of the seven-year stay, and the City's role in the process that prevented the eviction proceedings from advancing.

THE CONSTITUTIONAL CLAIMS

Expropriation

- [20] The City did not acquire Msibi House, assume possession or control of it, or obtain a proprietary competence previously held by Purple Fountain. The claim for expropriation must therefore fail.

Arbitrary deprivation

- [21] The starting point is the accepted position that the eviction proceedings remained stayed from 2011 to 2018 pending the City's temporary emergency accommodation report. The stay materially restrained Purple Fountain's ability to pursue the eviction application to determination and to obtain vacant possession.
- [22] The restraint lasted approximately seven years. It was not a short or incidental limitation arising in the ordinary course of a PIE enquiry. The City was

⁸ *Living Africa One (Pty) Ltd v Ekurhuleni Metropolitan Municipality and Another* 2023 (6) SA 551 (GJ) paras 93–105.

centrally involved in the assessment of the occupiers' need for temporary emergency accommodation. Purple Fountain was not shown to have delayed institution of the eviction proceedings or to have caused the absence of the report during that period.

- [23] The consequence was that Purple Fountain remained unable to recover the ordinary use, enjoyment, development, and transfer value of its investment property. It was compelled, in practical effect, to bear the burden of accommodating the unlawful occupiers while the temporary emergency accommodation process remained unresolved.

- [24] The City did not identify a law of general application that authorised a delay of this length in supplying the report required for the eviction proceedings to progress. At the hearing, the City accepted the Court's characterisation of its conduct during the relevant period as deleterious. The prolonged restriction on Purple Fountain's rights was substantial. It exceeded the temporary restraint on ownership contemplated in *Blue Moonlight*.

- [25] I accordingly find that the City's delay in supplying the report, and the resulting stay of the eviction proceedings between 2011 and 2018, constituted an arbitrary deprivation of Purple Fountain's right to use and enjoy Msibi House, contrary to section 25(1) of the Constitution.

- [26] This finding is strictly confined to the period from 2011 to 2018. Once the report became available, the respondents submitted that Purple Fountain was not prevented from advancing the eviction proceedings. It is unnecessary to decide that submission. The record does not justify attributing the continued occupation after 2018 to the City, given the later procedural history and the COVID-19 restrictions.

Section 34 and the rule of law

- [27] Purple Fountain relies on *Modderklip* and *Living Africa One* to contend that it was denied effective judicial relief. That contention cannot succeed. Purple

Fountain did not obtain a final eviction order which was rendered ineffective through the City's failure to provide temporary emergency accommodation. The occupiers vacated independently of the eviction proceedings.

- [28] The section 34 claim must therefore be dismissed. The absence of a final eviction order is decisive to that claim, even though it does not preclude the section 25(1) finding made above.

APPROPRIATE RELIEF

Constitutional compensation

- [29] The section 25(1) finding does not amount to formal expropriation. The remedy must nevertheless be appropriate, effective, suitable, and just under section 38 of the Constitution. Constitutional damages are not automatic. They may be awarded only where they are the most appropriate remedy, after taking account of effective alternatives and the evidence of loss.⁹
- [30] A declarator alone will not afford effective relief for the established seven-year deprivation. The deprivation has ended, but Purple Fountain alleges that it suffered economic prejudice through the loss of use, rental income, development opportunities, and the ability to transfer the property. The amended notice of motion seeks compensation calculated with reference to section 12(1) of the Expropriation Act.
- [31] The account relief granted below is complementary, but it is not a substitute for compensation for the deprivation of the use and enjoyment of the property. The account relief concerns the lawfulness and enforceability of specific municipal debits. It does not compensate Purple Fountain for the loss, if established, flowing from the City-caused restraint upon the use of the property.

⁹ *Residents, Industry House and Others v Minister of Police and Others* 2023 (3) SA 329 (CC) paras 118 and 120; *Thubakgale v Ekurhuleni Metropolitan Municipality* 2021 JDR 3200 (CC) paras 40–43.

- [32] In the exceptional circumstances of this matter, constitutional compensation is the appropriate remedy for the arbitrary deprivation during 2011–2018. This conclusion is not founded on an extension of the section 34 remedy in *Modderklip* or *Living Africa One*. It follows from the independent section 25(1) infringement, the duration and effect of the restraint, and the absence of another remedy capable of redressing the loss of use during the concluded period.
- [33] Quantum cannot be determined on the present record. There is no properly tested valuation of lost use, rental value, development loss, or other compensable prejudice. The parties should therefore be afforded an opportunity to determine quantum in further proceedings. The section 12(1) methodology provides an appropriate framework, adapted to the constitutional deprivation found here.

PRESCRIPTION AND CONSTITUTIONAL COMPENSATION

- [34] The compensation claim remains subject to any properly raised defence of prescription. The Court does not decide when the compensation debt became due, whether it is single, continuing, or periodic, or whether prescription was interrupted or delayed. Those questions must be addressed in the quantum proceedings.

THE MUNICIPAL ACCOUNTS

Termination and billing

- [35] Purple Fountain relies on the April 2010 notices, the alleged disconnection, and the March 2012 objection to reinstatement. The City's later position is that no valid termination occurred because an internal process was not completed.
- [36] The City's own later materials indicate that a disconnection request may generate a service order, notification, quotation, payment process, and job card. Those materials do not establish that the same internal requirements governed Purple Fountain's 2010 notices, were authorised by a binding by-

law, or were applicable to a corporate owner of a hijacked building at that time.

[37] The material before the Court also includes the City's earlier admission that it acted on the initial notice by terminating the service agreement, followed by reinstatement in 2012. City records refer to the removal of a meter by City Power, reversal of estimates, and an inspection at which no meters were found. These features are inconsistent with the later categorical assertion that the City received no operative termination request and did nothing in response.

[38] The 2004 Credit Control and Debt Collection By-laws permitted a customer to terminate an agreement for municipal services by giving not less than seven working days' written notice. The notices relied on by Purple Fountain sought immediate implementation. The evidence does not permit a final finding that every service agreement terminated on 20 April 2010, nor does it permit a final determination of every water and electricity debit thereafter.

ESTOPPEL

[39] Purple Fountain also relies on estoppel. The disconnection, subsequent reinstatement, earlier admission, and meter records are capable of constituting representations by conduct that the notices were received and acted upon. They justify rejection of a bare assertion that no request was received or processed.

[40] A final estoppel finding requires proof of representation, reliance, and prejudice. The latter two requirements are not sufficiently established on the present motion record. Further, estoppel is subject to legality. It cannot validate what a statute or binding by-law prohibits, nor can it dispense with the seven-working-day notice requirement.¹⁰

¹⁰ *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* 2008 (3) SA 1 (SCA) paras 11–18.

- [41] Estoppel is therefore not a basis for an account-wide final declaration. It remains a material consideration in the reconciliation, particularly when the respondents assess whether their own internal records can sustain a denial that the April 2010 notices were received and acted upon.

RECONCILIATION

- [42] The appropriate relief is an account-specific reconciliation. The respondents must identify the receipt date and effective date of the 2010 notices; all relevant service orders, notifications, quotations, payments, job cards, meter readings, disconnections, reconnections, and meter removals; and the legal and factual basis of every debit. A consumption debit may be retained only if the reconciliation demonstrates that it was lawfully raised.

SECTION 118

- [43] Section 118(1) of the Municipal Systems Act prohibits transfer without a prescribed municipal certificate confirming payment of amounts due in connection with the property during the two years preceding the application for that certificate. The section does not determine the underlying disputed liability. *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others*¹¹ confirms both the transfer-related burden created by section 118(1) and the ability of municipalities and owners to limit the unreasonable accumulation of consumption debt.

PRESCRIPTION

- [44] Purple Fountain pleads that parts of the municipal indebtedness have prescribed. Its reconciliation identifies water charges raised between October 2011 and June 2020, and electricity charges raised between July 2010 and March 2020, as prescribed.

¹¹ *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others* 2005 (1) SA 530 (CC) paras 47 and 59.

- [45] The governing legislation is the Prescription Act 68 of 1969. Section 10 provides for extinction of a debt after the applicable period. Under section 11(d), the ordinary period is three years, and section 12(1) provides that prescription begins when the debt is due. Electricity and water consumption charges ordinarily fall within the three-year category.¹²
- [46] Municipal rates require different treatment. They are ordinarily taxes for purposes of section 11(a)(iii) of the Prescription Act and prescribe after 30 years.¹³ The applicable periods for refuse, sewerage, availability charges, interest, and penalties depend on the legal character of each charge and the governing by-law or tariff.
- [47] It would be inappropriate to make an account-wide prescription declaration on the present record. The reconciliation must identify each debit by type and date due, the prescriptive period said to apply, and every fact relied upon to interrupt, delay, or preclude prescription, including service of process or an acknowledgement of liability. Purple Fountain's denial of liability does not, without more, constitute an acknowledgement. Section 118 does not revive a debt extinguished by prescription.

COSTS

- [48] Purple Fountain has succeeded on the limited section 25(1) claim and has secured substantive account-reconciliation relief. The respondents' position regarding the prolonged stay, together with the contradictory positions of the City, Johannesburg Water, and City Power regarding termination, disconnection, meter removal, and billing, materially caused the litigation. The first, third, and fourth respondents should bear the applicants' costs jointly and severally.

¹² *Jordaan and Others v Tshwane Metropolitan Municipality and Others* 2017 (6) SA 287 (CC) para 25 and fn 59.

¹³ *Govan Mbeki Local Municipality v Glencore Operations South Africa (Pty) Ltd and Others* 2025 (2) SA 238 (CC) paras 11 and 99.

ORDER

[49] The following order is made:

1. The claim for a declaration that the first respondent expropriated the applicants' property is dismissed.
2. It is declared that the first respondent's delay in supplying the temporary emergency accommodation report required for the eviction proceedings to advance, and the resultant stay of those proceedings from 2011 to 2018, arbitrarily deprived the first applicant of the use and enjoyment of Msibi House contrary to section 25(1) of the Constitution.
3. The first applicant is entitled to constitutional compensation from the first respondent for the infringement declared in paragraph 2, confined to the period 2011–2018 and subject to any properly raised defence of prescription.
4. The compensation is to be determined with reference to the methodology in section 12(1) of the Expropriation Act 63 of 1975, adapted as necessary to quantify the prejudice caused by the constitutional deprivation. The parties must address:
 - 4.1. the date on which the compensation debt became due;
 - 4.2. whether the debt is single, continuing, or periodic; and
 - 4.3. any alleged interruption or delay of prescription.
5. Within 30 days, the first applicant must deliver a computation of its compensation claim and the material on which it relies. The first respondent must deliver its response, including any prescription defence, within 30 days thereafter. If the parties cannot agree on

quantum or prescription within 30 days after that response, either party may apply to this Court for directions under Rule 33(5).

6. The claim for a declaration that the first respondent infringed the first applicant's rights under section 34 read with section 1(c) of the Constitution is dismissed.
7. Within 20 court days, the first, third, and fourth respondents must provide the first applicant with a full, itemised reconciliation of the municipal accounts relating to Msibi House. The reconciliation must identify:
 - 7.1. the receipt date and effective date of each 20 April 2010 notice;
 - 7.2. every relevant service order, notification, quotation, payment, job card, meter reading, disconnection, reconnection, and meter removal;
 - 7.3. each debit raised after the effective termination date, its nature, tariff, basis, and whether it reflects actual or estimated consumption;
 - 7.4. whether each charge is a consumption charge, rates, refuse, sewerage, water availability, interest, penalty, or other non-consumption charge; and
 - 7.5. for every debit, the due date, the prescriptive period the respondents contend applies, and every fact relied upon to interrupt, delay, or preclude prescription, including service of process or an acknowledgement of liability.
8. Within 10 court days after delivering the reconciliation, the first respondent must furnish a written statement identifying the amounts it contends are lawfully due for purposes of section 118(1), calculated

by reference to the two years preceding the date of any application for a clearance certificate. This order does not compel the issue of the prescribed certificate before payment of amounts lawfully due.

9. The questions of prescription, enforceability and quantum of individual municipal charges, and the effect of the reconciliation are reserved, subject to paragraph 7.5.
10. The first, third, and fourth respondents are ordered, jointly and severally, to pay the applicants' costs, including the costs occasioned by the supplementary affidavits.

P VERVEEN

Acting Judge of the High Court
Johannesburg

APPEARANCES:

Applicant	:	Angus Mckenzie
Instructed by	:	VMW Inc
Respondent	:	S Mutemwa
Instructed by	:	Madhlopa & Thenga Inc
Hearing	:	27 August 2026
Judgment	:	___ September 2026