

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2026-200457

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

Date: 3 September 2026

E van der Schyff

In the matter between:

BUTTERFLY CHANGE FOR CHILDREN NPC

FIRST APPLICANT

CORNELIA ANNA ISABELLA OOSTHUIZEN

SECOND APPLICANT

and

NUWE HOOP ONDERNEMINGS (PTY) LTD

FIRST RESPONDENT

PETRUS WILHELMUS OOSTHUIZEN

SECOND RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] The applicants seek urgent interim relief pending the determination of Part B, in which the validity, enforceability and registrability of a contemplated usufruct will finally be determined.

[2] The respondents contend that the matter is not urgent and that no usufruct presently exists because no limited real right was registered against the title deed of the property.

Urgency

[3] Rule 6(12) requires an applicant to set out explicitly the circumstances rendering a matter urgent and why substantial redress will not be available at a hearing in due course. In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* 2011 JDR 1832 (GSJ) paras 5–9, the Court emphasised that the decisive enquiry is whether substantial redress can be obtained in the ordinary course. Delay is relevant, but is not by itself dispositive. *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) at 782A-G, likewise recognises the exceptional procedural character of urgent proceedings under Rule 6(12).

[4] The underlying dispute about registration of the usufruct had existed before August 2026. That dispute, standing alone, would not justify urgent enrolment. The material change was the respondents' movement from disputing the applicants' legal entitlement to exercising physical control over portions of the area occupied and used by Butterfly. Directives were issued requiring rooms to be vacated. Physical interference followed on 15 and 18 August 2026, and the respondents declined to give an undertaking preserving the *status quo*.

[5] The application was launched on 20 August 2026. The respondents admit that the second respondent entered the rooms, removed the applicants' property from them and made the rooms available for repairs. They dispute that the applicants exercised exclusive possession, that the removal was forcible or unlawful, and that the rooms served the purposes alleged by the applicants. The issuing of the directives and the removal of the applicants' property are nevertheless common cause.

[6] The respondents deny any intention to evict the children or interfere with the baby house. That denial is relevant, but it does not dispose of the urgency enquiry. The respondents assert the right, as owners, to control and allocate structures within the relevant area and have acted upon that understanding. If further unilateral changes occur before Part B is heard, the factual position which that application is intended to determine

may materially alter. I am therefore satisfied that the applicants would not obtain substantial redress in due course and that Part A should be entertained as urgent.

[7] The respondents' answering affidavit was delivered on 27 August 2026, after the date fixed for its delivery in the notice of motion, and the applicants' replying affidavit was necessarily delivered thereafter, outside the timeline originally prescribed. Both affidavits have been had regard to in determining Part A, and it is appropriate that the condonation granted below extend to that further non-compliance also.

Mandament van spolie

[8] Part A is brought both as a mandament van spolie, in respect of the possession of which the applicants have already been deprived, and as an application for an interim interdict, in respect of the threat of further interference. To succeed with a spoliation order an applicant must show that it was in peaceful and undisturbed possession of the property, and that it was unlawfully deprived of that possession, see *Yeko v Qana* 1973 (4) SA 735 (A) at 739D-H. The lawfulness of the applicant's underlying right of occupation is not relevant to that enquiry, and a respondent who resorts to self-help is not absolved by the fact that no violence was used.

[9] The applicants' possession of the rooms in Building 4 is not seriously disputed. The respondents admit, in their answering affidavit, that the applicants used those rooms, that the second respondent removed the applicants' property from them, and that he thereafter retained control of the rooms. It is contended that this was done without force, in a considerate manner, and that the space was in any event one of shared use. Neither contention answers a claim in spoliation. The absence of violence does not convert self-help into lawful conduct, and use shared with another does not deprive a person of the protection to which undisturbed possession, even if not exclusive, is entitled, see *Rosenbuch v Rosenbuch and Another* 1975 (1) SA 181 (W) 183F-G.

[10] I am satisfied that the applicants have established the requirements for a spoliation order in respect of the rooms in Building 4 of which they were deprived on 15 and 18 August 2026. The order restoring their access in paragraphs 2 and 3 below is accordingly justified on this basis, independently of the interim interdict considered next. That relief is final in

effect, as spoliation relief always is, and is confined to the rooms actually taken. It does not extend to the balance of the usufruct area, of which the applicants have at all times remained in undisturbed occupation. Protection of that wider area, resting as it does on apprehended rather than completed interference, is addressed separately below as a matter of interim interdict, and is reflected accordingly in paragraph 4 of the order.

Interim relief

[11] An interim interdict preserves or restores the *status quo* pending the final determination of the parties' rights, see *National Gambling Board v Premier, of KwaZulu-Natal and Others* 2002 (2) SA 715 (CC) para 49. The requirements are (i) a *prima facie* right, though open to some doubt, (ii) a well-grounded apprehension of irreparable harm, (iii) a balance of convenience favouring relief, and (iv) the absence of another satisfactory remedy, see *Reckitt & Colman SA (Pty) Ltd v SC Johnson & Son (SA) (Pty) Ltd* 1995 (1) SA 725 (T) 729I-730G.

[12] The issue at this stage is not whether Butterfly presently holds a registered usufruct as a limited real right. The written sale agreement expressly contemplated Butterfly's continued use of the defined area through a 20-year usufruct. Butterfly had occupied and used that area for many years before the sale and continued to do so thereafter.

[13] The respondents contend that the contemplated usufruct was abandoned in favour of a lease. Although the correspondence establishes that a lease was discussed, it also records the second respondent enquiring whether clause 17 would have to be amended to give effect to that change. No written lease or amendment of clause 17 was concluded. On the papers as they presently stand, the respondents' contention does not displace the *prima facie* contractual basis upon which Butterfly relies.

[14] The apprehension of further interference is not speculative. The respondents have issued directives, moved property and asserted a right to control and reallocate structures.

[15] The balance of convenience favours preserving the existing position. The first respondent remains the registered owner and its final rights are unaffected. The interim

order merely prevents unilateral alteration of the applicants' occupation before Part B is decided. Damages would not constitute an adequate alternative remedy.

Access to the defined area

[16] I am satisfied that the interim protection should extend to the area identified by the parties as the usufruct area. That defined area is the subject of the contractual arrangement and of the final relief sought in Part B. This relief is distinct in character from the restoration. It does not rest on a finding that the applicants have been dispossessed of the area as a whole, which they have not; it rests instead on the *prima facie* right and the apprehension of harm found. It operates prospectively pending Part B.

Costs

[17] The applicants seek an order that the second respondent pay the costs of Part A. The respondents, in turn, initially sought a punitive costs order *de bonis propriis* against the applicants' legal representatives, alternatively an order that the applicants pay the costs on the attorney and client scale. During argument counsel only sought an ordinary costs order.

[18] As is generally the position when interim relief is granted, the appropriate costs order of Part A is better determined together with the costs of Part B, once the merits of the underlying dispute, and with them the parties' good or bad faith, have been finally determined.

ORDER

In the result, the following order is granted:

1. The applicants' non-compliance with the forms, service and time periods prescribed by the Uniform Rules of Court, and the respondents' non-compliance with the timeline for the delivery of their notice to oppose and answering affidavit set out in the notice of motion, and the applicants' consequent late delivery of their replying affidavit, is condoned, and Part A is heard as an urgent application in terms of Rule 6(12).

2. The first and second respondents are directed to restore to the applicants their access to, and occupation and use of, the rooms in Building 4 of which the applicants were

deprived on 15 and 18 August 2026, together with the movable property removed therefrom.

3. Any locks or other impediments placed by the respondents which prevent such access are to be removed forthwith.

4. Pending the final determination of Part B, the first and second respondents are interdicted and restrained from the following conduct in respect of the area depicted and described in annexure "NOM1" to this order and the notice of motion, situated on the Remaining Extent of Portion 7 (a Portion of Portion 3) of the Farm Klipdrift 90 JR, Hammanskraal ("the usufruct area"):

- 4.1 evicting the applicants from the usufruct area otherwise than pursuant to an order of court;
- 4.2 preventing the applicants, their staff, volunteers and persons authorised by them from obtaining reasonable access to the usufruct area;
- 4.3 removing from the usufruct area property belonging to, possessed by or under the control of the applicants without their consent or an order of court; and
- 4.4 materially altering, reallocating or rendering inaccessible any structure within the usufruct area which was occupied or used by the applicants immediately before the acts complained of in August 2026, save with the applicants' written consent or pursuant to an order of court.

5. Part B is postponed sine die.

6. The costs of the application are to follow the result of the main application.



E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the applicants:
Instructed by:

Adv. J Delport
Delberg Attorneys Inc.

For the respondents:
Instructed by:

Adv. MM Ratau
AHB Attorneys

Date of the hearing:

1 September 2026

Date of judgment:

3 September 2026

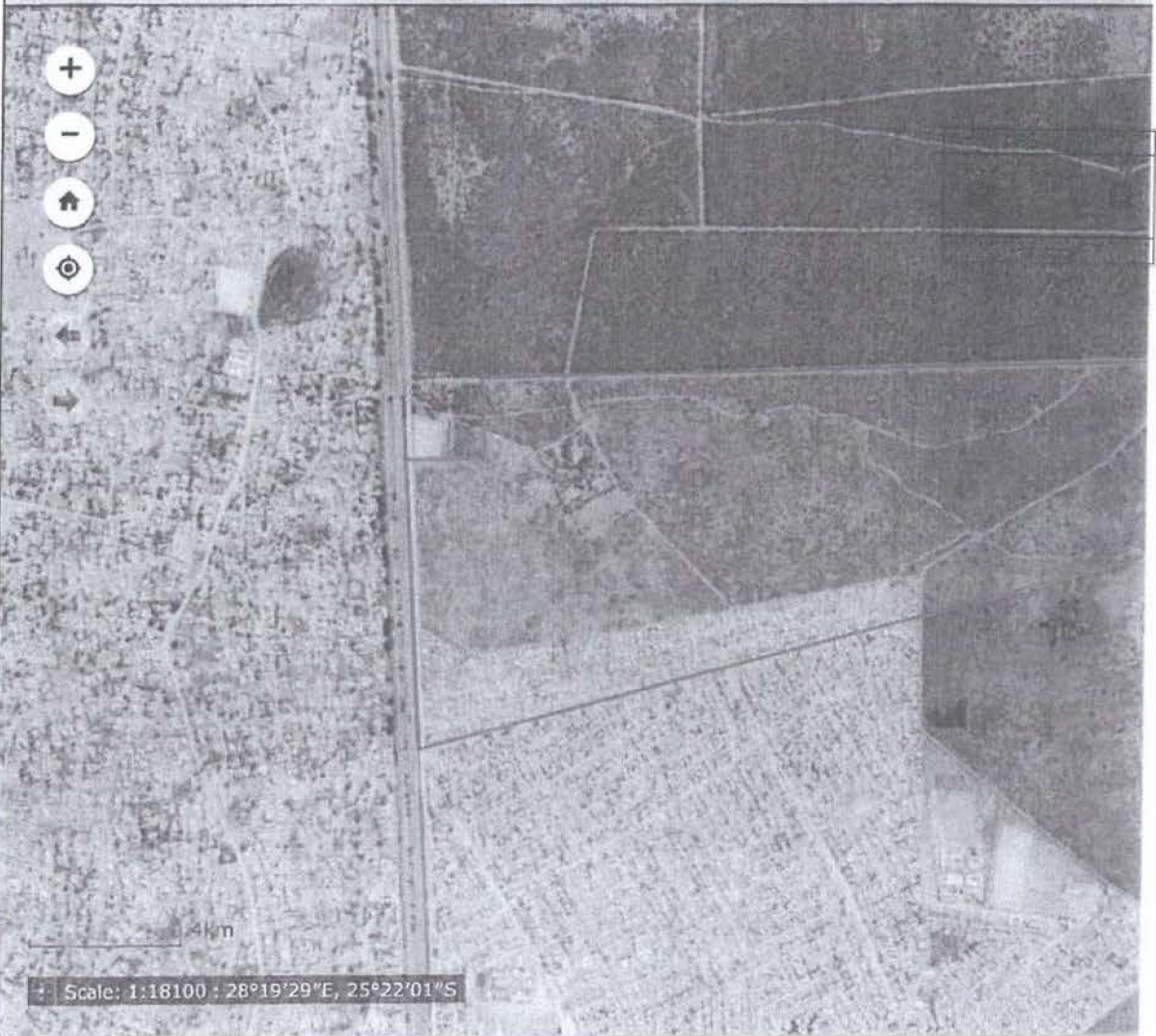


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Tshwane Web GIS



e-GIS Viewer - Map



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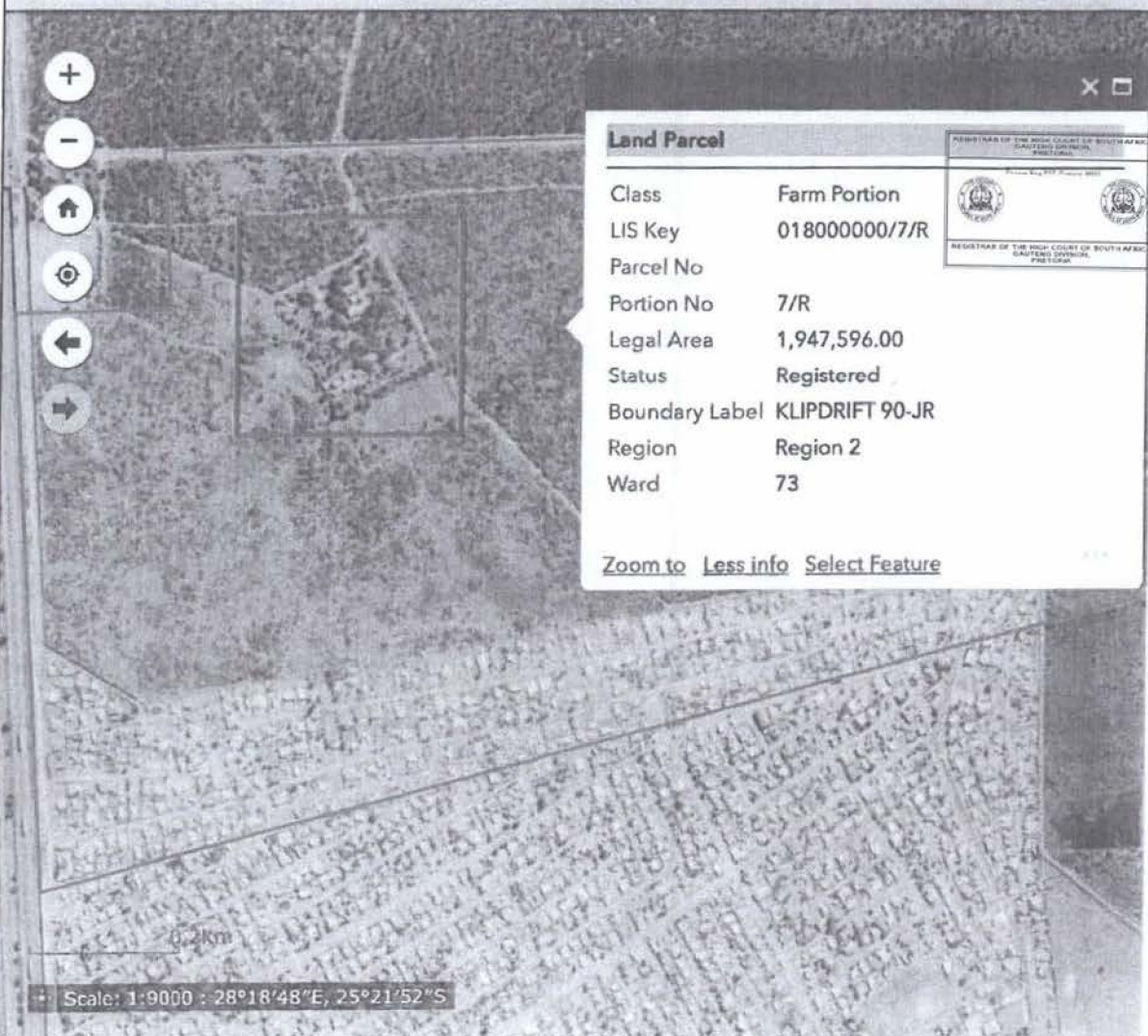
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Tshwane Web GIS



e-GIS Viewer - Map

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Land Parcel

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Ward	73

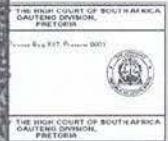
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Figure 7: Usufruct servitude



Source: HTP

