

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

Case Number: 2025-054979

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED: NO
DATE 06/05/2025

In the matter between:

PAUL MATHLATJIE	1st Applicant
MISCHACK MNISI	2 nd Applicant
MPHO MUTANGWA	3 rd Applicant
TSHIWELA MUDAU	4 th Applicant
LIVHUWANI NDOU	5 th Applicant
EMELINAH NDOU	6 th Applicant
FRANS MANYAKA	7 th Applicant
SALAMU GUTACHO	8 th Applicant
GLORIA MBULAYENI	9 th Applicant

MAISHA LONDOLANI	10 th Applicant
TSHEGOFATSO LENS	11 th Applicant
DONALD VIRINA	12 th Applicant
NOMKHOSI HLOPHE	13 th Applicant
THANDZI MULAMBULE	14 th Applicant
PFARISO MUEDI	15 th Applicant
MARCIA RAMABANDA	16 th Applicant
TENDANI MUNYAI	17 th Applicant
ANDISWA SITHOLE	18 th Applicant
AYANDA KHUMALO	19 th Applicant
JOSHUA PHALALI	20 th Applicant
NAKISANI MASHAMBA	21 st Applicant
MARIA DLAMINI	22 nd Applicant
MZOTHULA MBATHA	23 rd Applicant

KGOTTHATSO MOTSEI 24th Applicant

MASHUDU RABALI 25th Applicant

MACELO NDINDAN 26th Applicant

GUDANI MURAKE 27th Applicant

BUTSHILO MATHINDUNI 28th Applicant

TUMELO THOBEJANI 29th Applicant

and

MOGALE CITY LOCAL MUNICIPALITY 1st Respondent

MUNICIPAL MANAGER 2nd Respondent

COUNCILLOR: THIZWILONDI JAMES TAPANI 3rd Respondent

VILLAGE FARM PROPERTIES (PTY) LTD 4th Respondent

REASONS FOR JUDGMENT

Urgent spoliation application for by land invaders – court processes abused in order to allow sanctioned occupation on false version.

FISHER J

Order

1. The applications are dealt with as being urgent and in accordance with the provisions of rule 6(12).
2. The interim order of Manoim J dated 18 April 2025 is set aside.
3. The main application is dismissed.
4. The application for contempt of court is dismissed.
5. The applicants are to pay the costs of all the applications and appearances, jointly and severally; on the scale as between attorney and own client; and on scale C.

[1] On 24 April 2025 I heard an urgent application which was a return date of an order heard at the end of the previous urgent week and on 17 April 2025 by Manoim J.

[2] I gave the order set out above and said that reasons would follow. These are the reasons.

[3] Shortly before midnight on Thursday 17 April 2025, the night before Good Friday which was a public holiday, the first applicant, Mr Mathlatjie, who states in his founding affidavit that he brings this application on his own behalf and on behalf of the twenty-nine applicants cited herein filed an application in the urgent court of Manoim J to be heard on Good Friday 18 April 2025.

[4] The respondents against whom the urgent relief was sought were first the

Mogale City Municipality (the Municipality) and second, the Municipal Manager of the Municipality. The third respondent against whom no relief was sought in the main application is cited as the councillor for the district, Mr Tapani.

[5] As I will deal with later, notwithstanding that no relief is sought against Mr Timpani, an application for contempt of court is brought seeking his incarceration and/or that he pay a fine for his alleged contempt of the interim order of Manojm J. This is dealt with in more detail later.

[6] The allegations made in the founding affidavit are distressing.

[7] The case is one of alleged mass spoliation by the State of a settled community.

[8] The occupants of the community are alleged to have been occupying the property in question, which is a large vacant plot, for some months.

[9] Those occupying are said to comprise families, including children, some of whom are infants and elderly persons.

[10] A central allegation made by the deponent to the founding affidavit, Mr Mathlatjie, and purportedly for the applicants that are part of the application (and I will deal with this aspect later) is that the applicants forming this community have inhabited the property at least since October 2024 and that they have done so “with permission”.

[11] It is alleged that the Municipality, without legal sanction under the PIE Act orchestrated a mass eviction of these persons.

[12] Not only were they evicted, says Mr Mathlatjie, but their dwellings were dismantled before their very eyes and in the presence of children and their furniture and effects removed from the property.

[13] Mr Mathlattjie alleges that the agents employed by the Municipality were the notorious “*Red Ants*” who have been involved in a number of mass evictions over the years.

[14] Mr Mathlatjie claims unlawful dispossession of peaceful occupants and thus the cause of action is one of spoliation.

[15] An applicant in a spoliation application has only to show possession and that he was unlawfully dispossessed.

[16] The land in question is in Muldersdrift in a township known as *Video*.

[17] In the founding affidavit it is alleged that the property is described as plot 80 Rietfontain, Muldersdrift.

[18] The allegation made in the founding affidavit as to ownership is that the Municipality owned the land. This has proved to be incorrect – but I will come back to this aspect.

[19] The case of the applicant is based on the following allegations made by Mr Mathlatjie in the founding affidavit:

- On or about 08 August 2024 the councillor, Mr Tapani submitted request to the Municipality for ‘some of the applicants’ to be allocated the right to occupy plot 80.
- The request was “authorised” by the Municipality’s “Department of Human Settlements”.
- “Some of the applicants” obtained permission to construct the dwellings.

- These applicants proceeded to construct the dwellings.
- This took place from September 2024 to February 2025.
- The applicants who had so “obtained permission to construct these dwellings” did so under the “watchful eye of the Red Ants”.
- On 10 April 2025 – i.e. approximately a week before the order was obtained before Manoim J - Ms Ntombizethu Dijane a representative of the Municipality and other officials of the Municipality, served notices to the applicants in terms of which notices the applicants were directed to vacate the land within 24 hours on the basis that they were land invaders.
- A further notice to vacate was delivered on 16 April 2025.
- The demolition of the dwellings started at approximately 08h00 on 17 April 2025.

[20] Pictures of the alleged demolition are said to be attached. But they show only a desultory group of people comprising three adults and four children of various ages including an infant tied with a blanket to the back of one of those photographed.

[21] There are also, scattered around, building materials, including brandering and sheet metal. These items appear from the photographs relied on not to have been subject to the elements for an extended period of time. In fact, they look brand new.

[22] The items are furthermore scattered around what appear to be cement foundations which one would expect to be the floor of an informal dwelling of the type in issue.

[23] The attorney who argued for the applicant, Mr Ntaka placed much store by these foundations. It was argued that they constituted photographic evidence of the

fact that the occupants had been on the land for some time such that they had even laid cement foundations.

[24] I must say the obviously brand-new material which was strewn around the few foundations pictured seemed incongruous. The scene appears posed and contrived. There is no indication of widespread furnishings or personal effects being laid waste to as would be the case on the scene of a mass eviction of fully fledged occupants.

[25] The allegation is to the effect that thirty eight well established households were demolished by the Red Ants on 17 April 2025. This demolition was allegedly completed by 11h00 on 17 April 2025.

[26] The applicants alleged that they appointed their legal representatives on the afternoon of 17 April 2025 whereupon a consultation was arranged and the papers drawn for urgent issuing and service. Such service took place in the late hours approaching midnight of 17 April 2025.

[27] The deponent to the founding affidavit explains that due to the fact that “we are homeless without a roof over our heads”; that there were the rights of minor children who “require the warmth of a structure” at stake; and that they “currently have no toilets nor a structure for [their] privacy and to prepare [their] meals” the matter was direly urgent.

[28] It was stated that the applicants and their families “are living in an open space and are exposed to the elements”. The very lives of the applicants were said to be at stake because of the risk of criminal activity in the area and health hazards which flowed from being unprotected and subject to the elements.

[29] Costs were sought in the founding affidavit on a punitive scale against the first and second respondents.

[30] The picture presented was one of reckless abuse of power on behalf of the State. The most vulnerable were said to be subject to this treatment at the hands of the State authorities. This, it was argued in the founding affidavit, was in the face of the applicants having been given permission to occupy the property and having been in possession of the land whereupon the dwellings were erected and occupied by the applicants and their families.

[31] This occupation which took place over more than six months allegedly took place in the presence of agents of the State in the form of the *Red Ants* in their capacity as security guards of the property.

[32] The Municipal respondents were not in a position to produce a version. This stands to reason; they were served with the application shortly before midnight before a public holiday.

[33] The State respondents did however muster the legal resources to appear before Manoim J the next day. It seems that this was unanticipated by the applicants.

[34] The applicants were aware of the constraints faced by the State respondents. Indeed, the State respondents allege that these constraints were orchestrated as part of a tactical operation. I will come to this later.

[35] The applicants sought final relief.

[36] It was argued before me on 24 April 2025, which was the return date of the order handed down by Manoim J, that this final relief should have been granted and the applicants immediately reinstated to the remnants of their dwellings. It was furthermore sought that the dwellings be rebuilt by the Municipality.

[37] Manoim J, faced with what the applicants said was a crisis, was concerned to protect the rights of those who presented as vulnerable persons who had been brutally disposed of their dwellings. He was, at the same time prudent to fashion a

remedy which would allow for some protection of the applicants and their families in the interim to an urgent hearing to take place the following week so as to allow for the opposition of the State.

[38] Manoim J was obviously concerned that he only had the version contained in the founding affidavit, it having been impossible for the State respondents to have answered the application overnight. It is common cause that such engagement with the allegations in the founding affidavit was impossible in the time allowed.

[39] The State respondents had, however, notwithstanding having been served close to midnight on 17 April 2025, managed to achieve the attendance of junior counsel at the Good Friday hearing. I believe that this attendance was unexpected.

[40] This remedy which was ultimately fashioned with input on behalf of the applicants and the State representatives that day sought to create a solution which allowed for the State respondents to be heard in a structured manner which took account of the alleged plight of the applicants.

[41] What was ultimately revealed by the appearance on behalf of the State respondents was that the land in question was part of an ongoing expropriation process with compensation. The expropriation was being effect in order to construct RDP housing. The State respondents it was revealed were not yet the owners of the land. Instead, there was an expropriation process which was well underway which entailed the eventual transfer of the property to the Municipality.

[42] The order granted by Manoim J on 18 April 2025 was to the following effect:

- a. The case was dealt with urgently with by Manoim J.
- b. The owner of the land, Village Farm Administrators (Pty) Ltd (Village) was joined as the fourth respondent.
- c. The Municipality was ordered to provide “the applicants and their families with emergency temporary accommodation”.

- d. The applicants were ordered to furnish the State respondents and the owner, Village with a list of affected individuals who had occupied the land on or before 17h00 on 18 April 2025 and this information was to be provided by no later than 17 h00 on 22 April 2025 (i.e. on Easter Monday).
- e. It was required by the order that the applicants provide copies of their identity documents or birth certificates.
- f. It was recorded in the order that the ejected individuals in question, numbered 87 (i.e. the applicants and their families).
- g. In the event that the proceedings were dismissed the applicants were to vacate the emergency accommodation provided by the State respondents under the order.
- h. There was time frames agreed for the furnishing of affidavits by the parties set at 12h00 and 18h00 on Wednesday 23 April 2025.
- i. The matter was postponed for hearing on Thursday 24 April 2025.

[43] As I have said, the allegations in the founding affidavit of Mr Mathlatjie alleged that the State respondents had been involved in illegal activity which was so egregious as to demand this court's urgent intervention on a matter of hours notice and that affidavits be filed in severely truncated time periods.

[44] Hence the order of Manoim J on 18 April; my consequent consideration of the case five days later according to the interim order of Manoim J; my furnishing of the order on 24 April these reasons in the days following.

[45] The aftermath of the order of Manoim J and the purported compliance therewith proceeded as follows:

- The applicants did not provide the details of the occupiers notwithstanding that this information was required in order to provide the emergency accommodation prayed for.

- The State respondents nonetheless provided emergency accommodation in the form of land on a nearby agricultural property which was already occupied in part.
- The third-party occupants of this accommodation resisted the occupation of the proposed agricultural lot, and the applicants which presented themselves at this lot were threatened by the occupiers and thus decided that they could not take up the offered accommodation.

[46] Village who had been joined by the Manojm J order of 18 April, duly filed its affidavit as required under the order of Manojm J on Wednesday 23 April.

[47] The facts set out in the affidavit, hastily filed on behalf of Village, the newly joined owner of the land, was surprising.

[48] Milissa Nel, the managing director of Village had the following to say in relation to the situation at hand. The land in question was plot 80. There was an adjacent plot, also owned by Village called plot 87.

[49] It is alleged by the respondents that plot 87 was the subject of its own land invasion. The respondents say they are currently seeking to evict the occupiers of plot 87 and this process is ongoing.

[50] The respondents allege that they have been watchful over plot 80 because they feared that there would be an illegal land grab of this site in the same way as this took place in relation to plot 87.

[51] As I have said, the land in issue is the subject of a developing appropriation. This is subject to agreed compensation in order to build RDP housing.

[52] Village and the State allege that and the expropriation process in respect of both plots 80 and 87 has been unfolding under section 19 of the Gauteng

Infrastructure Act 8 of 2001. The finalisation of the proposed expropriation depended on the relocation of the occupants on these two plots and especially the illegal occupants of plot 87.

[53] Ms Nel alleges that both the properties have been beset by what are commonly called “land invasions”.

[54] The allegation of the respondents is that this application entails an orchestrated invasion of the land by persons who are concerted in their approach and aim.

[55] The aim, it is alleged by the respondents, is the attempt to gain possession of the land and maintain that possession by way of the court’s processes. I will expand on this later.

[56] Ms Nel explains that, at the end of October 2024, consent was granted by Village to the Municipality, at the instance of the Municipality for three families consisting of six individuals to erect temporary housing structures on plot 80 - the property in issue.

[57] This position was formalised in writing by Village and the Municipality and the three families thus obtained the written permission to occupy.

[58] These three written permissions are attached to Ms Nel’s answering affidavits and are not in dispute.

[59] As I have said, the applicants contend that they too were the recipients of written permissions to occupy the land. The implication made is that this permission accrued on a similar basis to that of the three families who had the written permission.

[60] When Mr T Ntaka, the attorney for the applicants was confronted with the fact

that there were no such written permissions for the applicants, this was conceded.

[61] Mr Ntaka then said that the permissions relied on had, in fact, been granted by “community leaders”. He could not explain the basis on which his clients had filed an affidavit suggesting that the applicants had been given formal permission from those in authority to give that permission, to occupy plot 80. This would be the owner, Village and the Municipality.

[62] There was, in fact ,no permission to occupy plot 80 either by Village nor the Municipality save for the three families who had written permission.

[63] Ms Nel says that there was, on the contrary, a drive on the part of Village and the State to finalize the expropriation as soon as possible. This involved active steps to preserve the plot from illegal occupation.

[64] The threat of invasions of the property was, says Ms Nel, ever present. As I have said plot 87 which was adjacent to the subject land had already been invaded and there are ongoing court proceedings to gain the eviction of the invaders.

[65] The respondents agree that it was necessary to keep the movements on the property on constant surveillance. Both the State and Village confirm that there were concerns by the respondents of the ever-present threat of “land grabs”.

[66] The respondents’ deponents, Ms Nel and Mr Msezana, the Municipal Manager of the Municipality who makes the answering affidavit for the State respondents agree that it is common for a strategy to play out as follows. The land is identified by participants in the scheme as being a potential target for invasion; there is then a concerted invasion over a very short period of time, often hours; this invasion entails complicit persons converging on the land so identified for invasion armed with rudimentary materials that will serve the purposes of the hasty assembly of what is intended to create the impression of the existence of an entrenched dwelling; once this initial traction on the land is gained by the makeshift erection of

this collection of materials, the inevitable demolition of these structures by the owner or other interested parties results in the demolition of the makeshift and hastily erected structures; this action is anticipated by the invaders; the stage is then set for an application to court with scant notice to the Municipality and or owners of the land; the intention is to obtain a final court order reinstating the structures on the basis of an alleged spoliation (recall the applicant need establish only possession and interference with that possession); public holidays and late hours are often chosen for the inevitable element of surprise and inability to marshal legal and other resources which this entails; the allegations made by those “grabbing” the land are to the effect that their basic rights have been disregarded by the municipalities and /or owners; courts, on the basis that they will inevitably err on the side of protecting those who are presented as the most vulnerable, will grant the proposed spoliation order; this will allow the occupation of the land by the applicants and; from this point onwards there will be legal battle after legal battle with the occupants – sometimes over years – to obtain their eviction. Those in control often monetise their unlawful possession by “letting out” or even “selling” plots to persons who then take control through them.

[67] Ms Nel, against this backdrop, tells the court about her watchfulness over the property. She says that on 11 April 2025, she was informed by security guards stationed at the property for the purposes of preventing unlawful occupation that there had been an invasion of plot 80 and that those invaders had commenced building makeshift structures which approximated dwellings.

[68] Ms Nel wasted no time. She was, she says aware of the tactic which was underway. She visited the land and confirmed the invasion. She then immediately attended at the local Police Station where she reported the invasion onto plot 80, in the process laying a criminal charge. There is evidence of such report which conforms to the version of Ms Nel.

[69] Notice was given to the applicants to desist their activity and leave the site. They did not comply. On this basis, on 17 April 2025, the security team, which I assume

included the *Red Ants*, officials of the Municipality, the SAPS, and other involved persons and entities embarked upon and carried out an orchestrated demolition project which was aimed at thwarting the invasion.

[70] The demolition of what the respondents allege were makeshift, unfinished structures which were devoid of any discernible occupation, ensued.

[71] Ms Nel, on behalf of the fourth respondent, attached to her affidavit a report of those who oversaw the demolition project. The report with photographs provided in support thereof confirmed that, prior to 11 April 2025, the only occupants on the land were the three families who had been given permission to occupy, in writing.

[72] The applicants – based on the founding affidavit of Mr Mathlatjie - then brought the application on the late night of 17 April 2025 for hearing on the 18 April.

[73] The respondents allege that the photographs of the cement foundations by which much store was placed in argument on behalf of the applicants are those found on plot 87. They allege that these photographs have been taken in a bid to suggest that these foundations were laid by the applicants many months ago so as to contrive the appearance of long-term occupation and undisturbed possession.

[74] Ms Nel says the following in relation to the threat of illegal land invasions or “land grabs”:

“This problem has become hampered within the surrounding areas and time and time again the Municipality and/ or owners of the properties are forced to approach the court for relief. The situation has become untenable and has caused the taxpayers large sums of money that the Municipality has to spend in order to prevent these brazen and illegal invasions. The consequence is that it delays the infrastructure project to the benefit of the community at large. The applicant has been left with no option but to approach the Court for a court order. The illegal invaders are usually well orchestrated, with the invaders

coming in large numbers and bringing with them their personal belongings and illegally erecting structures and effects of via taxis, busses and other modes of transport. They illegally trespass, enter and begin to occupy the property. They intimidate law enforcement officials and refuse to leave in the absence of a court order. They also incite others nearby to come and also occupy the property and surrounding areas. This has become of grave concern to the applicant, as experience on plot 87.

Once in occupation, the illegal occupiers claim all sorts of rights and as this case even go as far as seeking to obtain an interdict to prevent the Municipality ...from protecting its own interest.

In most cases the Municipality being the owner is then forced to approach the Court on an urgent basis to protect its rights.”

[75] Notwithstanding the filing of this affidavit by Village in accordance with the order of Manoim J, the applicants chose not file any reply thereto. This is notwithstanding that it was they who had set the tight timelines for reply.

[76] Neither did they file any confirmatory affidavits of the second to twenty ninth applicants in relation to the allegations made by Mr Mathlatjie in the founding affidavit. This is notwithstanding the undertaking that these affidavits would be filed.

[77] Thus, in the circumstances at the hearing of 24 April 2025, the only applicant properly before this court was the deponent to the founding affidavit, Mr Mathlatjie.

[78] Notwithstanding this failure to file the information pertaining to those affected; the necessary confirmatory affidavits or a reply to the allegations made in answer, Mr Mathlatjie apparently found himself able to file a separate application for contempt of the order of Manoim J.

[79] It was sought in this contempt application that a rule nisi issue calling on the

State respondents to appear and show cause on a date to be determined as to why they should not be found to be in contempt of the order of Manoim J.

[80] The gravamen of the complaint put forward by Mr Mathlatjie in the contempt application is that the State respondents did not provide the alternative emergency accommodation ordered by Manoim J.

[81] The complaint made is that the applicants or some of them and their family members were forced to sleep in their cars whilst others spent the night of 18 April around a fire in an open field.

[82] In support of this allegation, photographs of three woman wrapped in blankets sitting around a fire are attached. They are all pictured wearing electronic head torches such as are commonly used by hikers or runners.

[83] I must state that, on the basis of the impending application and given the serious allegations made by the applicants and the far-reaching order handed down by Manoim J interim to the hearing date of 24 April, I was poised to expect and immediately read the affidavits which were forthcoming in terms of the order.

[84] The applicants did not treat the matter with the same sense of urgency.

[85] As I have said, there was no response to the affidavit of the fourth respondent which was compiled at very short notice and filed in accordance with the time periods ordered.

[86] The allegations in the affidavit of Ms Nel were serious – essentially, what was alleged was an orchestrated land invasion by the applicants which made use of and abused court procedures in a bid to obtain a legally approved occupation on the basis of an application in respect of which no opposition was expected.

[87] The applicants were apparently not able to comply with the order by providing the necessary information and nor did they reply to the damning allegation in Ms Nel's

affidavit. The only inference to be drawn from this failure to reply is that the applicants are unable to gainsay the version of the respondents.

[88] The application for contempt sought that the State respondents show cause why Mr Msezana and Councillor Tapani should not be punitively committed to prison and remain incarcerated for a period to be determined by this court and/ or fined.

[89] Notwithstanding the failure to account as to who the applicants and their dependents were, the State respondents still attempted to afford the applicants accommodation on agricultural land which was already occupied by an informal community, but which had capacity to accommodate further occupants.

[90] It is common cause that members of the community in the land offered for emergency interim accommodation by the Municipality refused the applicants access to the land occupied by them on threats of violence.

[91] The first and second respondents – i.e. the State respondents filed their answering affidavit on the day of hearing. They explained that the times imposed were too truncated to allow for the filing of the affidavit the previous day.

[92] The applicant's attorney protested that the applicants had not been given sufficient time to deal with the answering affidavit. He was however unable to deal with the fact that the applicants had not answered the fourth respondent's affidavit which had come in in good time to allow it to be meaningfully engaged with. The fact that the fourth respondent's affidavit and that latterly filed by the State respondents were essentially on all fours as to the central premise – being that the occupation was an orchestrated land invasion were also not explained in argument for the applicants.

Concluding remarks

[93] This application to my mind represents criminal behaviour and syndication. It is a cynical attempt to gain unlawful possession of land by stealth and orchestration of

the semblance of position which was manifestly false.

[94] The photographic “evidence” attached to the founding affidavit was staged using building material brought onto the site to create the impression of settled occupation exceeding six months when the occupation in fact took place over days.

[95] The respondents and their security agents have been maligned even to the point of threats against their liberty.

[96] The use of court processes and laws which are designed to protect the vulnerable is deplorable. This is made worse by the fact that the land in question is that earmarked through consent driven expropriation by the State of open land for the erection of housing for those in need many of whom have been waiting for years for housing.

[97] The applicants, who are part of this syndication operate with relative impunity. They have not provided confirmatory affidavits and thus are not formally part of the application. Thus, any cost order would probably be difficult if not impossible to execute on.

[98] All the while, taxpayers are forced to fit the bill for the opposition required to thwart the attempts at gaining court sanctioned occupation. Furthermore, the building of infrastructure to allow occupation by those waiting for housing is delayed.

[99] The applicants must be made subject to a punitive costs order to mark this court’s displeasure.

**FISHER J JUDGE OF THE HIGH COURT
JOHANNESBURG**

**This Judgment was handed down electronically by circulation to the parties/
their legal representatives by email and by uploading to the electronic file on
Case Lines. The date for hand-down is deemed to be 06 May 2025.**

Heard: 24 April 2025

Delivered: 06 May 2025

APPEARANCES:

Applicant's counsel: Mr T Ntaka

Applicant's attorneys: T Ntaka Attorneys Inc

1st to 3rd Respondent's counsel: Adv K I Kabinde

1st to 3rd Respondent's attorneys: Motlatsi Seleke Attorneys

4th Respondent's counsel: Adv L Kellermann SC Adv E Propy

4th Respondent's attorneys: Manong & Badenhorst Attorneys