**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**JUDGMENT**

**Reportable**

Case No. **2026-026100**

In the matter between:

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| **UNIVERSITY OF CAPE TOWN** | **APPLICANT** |
| and | |
| **S[...] M[...] L[...]** | **FIRST RESPONDENT** |
| **N[...] M[...]** | **SECOND RESPONDENT** |
| **L[...] M[...]** | **THIRD RESPONDENT** |
| **LWAZI VAN STADEN** | **FOURTH RESPONDENT** |
| **MVELISO KRAAI** | **FIFTH RESPONDENT** |
| **ALL THOSE HOLDING TITLE UNDER THE UNLAWFULLY OCCUPYING THE UNIVERSITY OF CAPE TOWN UNDWER THE FIRST TO FIFTH RESPONDENTS** | **SIXTH RESPONDENT** |

**CORAM:** **ADHIKARI AJ**
**Heard:** **9 March 2026**
**Delivered:** **29 April 2026**

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**ORDER**

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1. The application is dismissed.

2. There shall be no order as to costs.

**JUDGMENT DELIVERED ELECTRONICALLY ON 24 APRIL 2026**

**ADHIKARI, AJ**

## RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

[1] This is an application for the enforcement of eviction orders granted by this Court on 13 June 2025[1] against the respondents.[2]

[2] It appears from the judgment in *University of Cape Town v Villo* that the applicant ('UCT') had made offers to UCT students for placement at the UCT student accommodation known as the Philip Kgosana residence ('the PK residence') in Mowbray for the 2024 academic year, subject to the proviso that the PK residence would be decommissioned to address maintenance issues. UCT expressly did not guarantee that the offerees would be accommodated for the entirety of the 2024 academic year.

[3] The first respondent ('Ms L[...]') received a placement offer for the PK residence for the 2024 academic year which was subsequently revoked because she failed to register as a student for the 2024 academic year. The second respondent ('Ms M[...]') also received a placement offer for the PK residence for the 2024 academic year. The third respondent ('Mr M[...]') is

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1 See *University of Cape Town v Villo and Others* (2025/037004) [2025] ZAWCHC 262 (13 June 2025).

2 The first, second, fourth and fifth respondents in the present application were the second, seventh, twelfth and thirteenth respondents respectively in the matter of *University of Cape Town v Villo.* The third respondent was not a named respondent in that matter but was one of the parties to those proceedings.

the spouse of Ms M[...] and had occupied the PK residence with Ms M[...] and their two minor children. The fourth respondent ('Mr van Staden) was temporarily placed at the PK residence at the end of 2024 because his allocated residence was being deep cleaned. He subsequently refused to vacate the PK residence. The fifth respondent ('Mr Kraai') was temporarily placed in the PK residence after he failed to receive an accommodation offer for the 2024 academic year. He also subsequently refused to vacate the PK residence.

[4] On 13 June 2025 this Court granted orders, *inter alia*, directing the respondents to vacate the PK residence by 31 August 2025, and if they failed to do so the Sheriff of the Court was authorised to evict the respondents from the PK residence.

[5] After the eviction order was granted, the respondents applied for leave to appeal and for an extension of the date of their eviction.

[6] On 6 August 2025 the parties to the eviction proceedings concluded a settlement agreement which was made an order of court in terms of which, *inter alia*, the date by which the respondents were to vacate the PK residence was extended to 20 December 2025 and the respondents undertook to vacate the PK residence by 20 December 2025.

[7] On 11 December 2025 certain of the respondents in the eviction proceedings instituted proceedings to stay the execution of the eviction order which was dismissed. On 17 December 2025 certain of the respondents in the eviction proceedings instituted a second stay application which was also dismissed. On 22 December 2025 the same respondents who had instituted the second stay application unsuccessfully sought to approach this Court for the same relief.

[8] The respondents in the eviction proceedings did not vacate the PK residence by 20 December 2025 and the Sheriff on 22 December 2025 executed the eviction order. The Sheriff placed the respondents' belongings in a parking lot owned by UCT and which is adjacent to the UCT hockey fields below the M3

highway, some distance away from the PK residence. The respondents subsequently erected a tent in the parking lot, parked a vehicle next to the tent, and took up occupation of the tent and the vehicle.

[9] All the respondents, save for Mr M[...], have been in occupation of the parking lot since their eviction from the PK residence on 22 December 2025. It is not in dispute that the respondents' occupation of the parking lot is unlawful as they do not have the consent of UCT or any other right in law to occupy the parking lot.

[10] As a consequence of the respondents' unlawful occupation of the parking lot, UCT instituted proceedings in this Court on 6 February 2026 for the following relief:

[10.1] An order enforcing the eviction order granted on 13 June 2025, as amended by the order granted by agreement on 6 August 2025 ('the amended eviction order') by declaring that the respondents are in breach of their undertakings to vacate the PK residence by unlawfully occupying the parking lot and directing the respondents to vacate the parking lot and not to re-occupy any property of UCT without its consent; or

[10.2] In the alternative, an order in terms of the common law directing the respondents to vacate the parking lot and not to re-occupy any property of UCT without its consent;

[10.3] In the event that the respondents do not vacate the parking lot, an order authorising UCT's Campus Protection Services assisted by the South African Police Services to evict the respondents from the parking lot, and to remove their possessions; and

[10.4] An order interdicting the respondents from unlawfully occupying or residing in any of UCT's properties without its prior consent.

[11] This application was initially set down for hearing in the urgent court on 20 February 2026. On that date the respondents appeared in person and sought a postponement in order to oppose the application. The application was postponed for hearing on 9 March 2026, and the respondents were directed to deliver their notices of intention to oppose by 24 February 2026 and their answering affidavits by 27 February 2026. In addition, the court granted UCT leave to re-enrol the matter on the urgent roll on 24 hours' notice to the respondents in the event that the respondents failed to deliver answering affidavits.

[12] UCT elected not to re-enrol the matter on the urgent roll and the application was heard on 9 March 2026.

**THE BASIS ON WHICH UCT SEEKS RELIEF**

[13] In essence, UCT contends that the undertaking given by the respondents to vacate the residence by 20 December 2025 as part of the settlement agreement concluded on 6 August 2025 which resulted in the amendment of the eviction order, must be interpreted to include an undertaking by the respondents not to unlawfully re-occupy the PK residence and not to unlawfully occupy any other UCT property.

[14] UCT argues that had it not been for these undertakings by the respondents it would not have consented to the extension of the date of the eviction, and that the respondents' conduct in taking occupation of the parking lot in the face of the undertakings constitutes a deliberate and *mala fide* disregard for the amended eviction order.

[15] UCT urged this Court to take into account that:

[15.1] Ms M[...] had confirmed on oath, in the first and second stay applications, that she fully accepted the eviction order, and that she intended to secure private off campus accommodation;

[15.2] Mr van Staden, Mr Kraai, Ms M[...] and Ms L[...], in the second stay application, had confirmed that they did not oppose the eviction order and did not seek indefinite occupation of the PK residence; and

[15.3] Ms L[...], in the second stay application, confirmed that she would vacate the PK residence by 31 January 2026 and move to alternative accommodation.

[16] In addition, UCT submitted that the decision of the Supreme Court of Appeal in ***Stay At South Point Properties (Pty) Ltd v Mqulwana and others (UCT intervening* as *amicus curiae)***[3] is authority for the proposition that purpose built student accommodation of limited duration does not constitute a *'home'* for the purposes of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 ('PIE') and that as a consequence, the unlawful occupation of a university-owned parking lot following the breach of an undertaking embodied in a court order to vacate a university residence, also cannot attract the protections of PIE.

[17] UCT further contends that PIE does not find application because the respondents have homes elsewhere. In support of this contention UCT relies on the residential addresses which were, *inter alia*, supplied by the respondents when they first registered with UCT or the residential addresses for the respondents which are noted in UCT's records.

[18] Consequently, UCT argues that an order directing the respondents to vacate the parking lot and authorising their eviction in the event that they do not vacate the parking lot, is in fact an order enforcing the amended eviction order. In the alternative, UCT contends that it is entitled to an eviction order in terms of the common law, that is the *rei vindicatio*, in that it is the lawful owner

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[3] *Stay At South Point Properties (Pty) Ltd v Mqulwana and others (UCT intervening* as *amicus curiae)* [2023] ZASCA 108; 2024 (2) SA 640 (SCA).

of the parking lot, and the respondents have no consent or any other right in law to occupy the parking lot.

## THE RESPONDENTS' CIRCUMSTANCES

[19] The respondents delivered a notice of intention to oppose but did not deliver answering affidavits. When the matter came before me on 9 March 2026, Mr M[...] and Ms M[...] appeared in person. None of the other respondents appeared at the hearing.

### The M[...] family

[20] Mr and Ms M[...] addressed the court on their personal circumstances. It appears from their oral submissions that Ms M[...] was previously employed with the South African Police Services ('SAPS') and is now doing her articles with the State Attorney. She submitted that she does not receive a salary but that she is paid by means of a stipend from a SETA and that there are significant challenges with receiving payment of the stipend. It appears that she therefore does not have a reliable, regular source of income at this stage.

[21] It appears from UCT's papers that Mr M[...] has been accepted to study at UCT for the 2026 academic year and has been allocated self-catering accommodation for an individual at the UCT residence known as Obz Square residence. The Obz Square residence does not accommodate families. Consequently, Ms M[...] and the two minor children are not permitted to reside at Obz Square residence with Mr M[...]. UCT contended that Ms M[...] and the two minor children at times reside with Mr M[...] at the Obz Square residence, but this was denied by both Mr and Ms M[...] who indicated that Ms M[...] and the two minor children visit with Mr M[...] during the visitor hours permitted in terms of the rules of the Obz Square residence. UCT also alleged that the M[...] family had at times spent the night in the Kramer law library.

[22] It appears from the oral submissions made by Mr M[...] that prior to taking up residence at PK residence the M[...] family lived in a SAPS residence as Ms M[...] was, at the time, employed by the SAPS. This corresponds with

what is stated in UCT's founding affidavit. In the founding affidavit UCT states that according to its records for 2025 both Mr and Ms M[...] had their residential addresses at SAPS HRD Centre, Eersterivier.

[23] In response to questioning by the court, Ms M[...] stated that she and her minor children no longer reside in the parking lot as she does not feel safe there since Mr M[...] is not with them, and she does not know the two male respondents who reside there, (that is Mr van Staden and Mr Kraai). She further submitted that she was trying to secure alternative accommodation for herself and her children but that she has been unsuccessful so far.

[24] In the affidavit filed by Ms M[...] in the first stay application she stated that she and her family were at risk of temporary homelessness if they were to be evicted. In the affidavit filed by Ms M[...] in the second stay application she stated that if she and her family were to be evicted on 20 December 2025, they would have no alternative accommodation and would face the real threat of homelessness.

[25] From the facts before me it is clear that Ms M[...] and her minor children do not have a permanent place of abode, but also that she and her minor children do not reside in the parking lot any longer. It is not in dispute that Mr M[...] resides at the Obz Square residence, and not in the parking lot.

**Ms L[...]**

[26] Given that Ms L[...] failed to deliver an answering affidavit and did not appear at the hearing, the only information before the court relating to her circumstances appears from UCT's affidavits and the affidavits filed by Ms L[...] in the first and second stay applications.

[27] UCT states in its founding affidavit that the residential address given to UCT by Ms L[...] in 2021 was Samora Machel, Phillippi, and that at the time of her registration in 2016 Ms L[...]'s residential address was in the Eastern Cape. According to UCT after she was evicted from PK residence, Ms L[...] took up residence in the parking lot with her minor children. It is not clear from UCT's

affidavits how many minor children Ms L[...] has. It appears from the affidavits filed by Ms L[...] in the first and second stay applications that she had given birth by caesarean section to a premature baby in December 2025.

[28] According to UCT, Ms L[...] was last present in the parking lot at an inspection conducted on 26 January 2026, but she was not residing at the parking lot at a subsequent inspection conducted in early February 2026, nor when the application papers were served at the parking lot on 6 February 2026. In her affidavit filed in the second stay application Ms L[...] stated that she intended to vacate PK residence by 31 January 2026 as this would allow her to relocate in a safe manner ensuring the well-being of her child.

[29] The facts before the court therefore indicate that Ms L[...] and her minor children are no longer residing in the parking lot. On the probabilities it appears that she had indeed taken up alternative accommodation by 31 January 2026 as she stated in her affidavit filed in the second stay application.

**Mr van Staden**

[30] In his affidavit filed in the first stay application, Mr van Staden stated that his mother had passed away in 2023 leaving him and his sister homeless and that this was the reason that he had moved into the PK residence. He further stated that his situated remained the same as at 2 December 2025. In his affidavit filed in the second stay application Mr van Staden stated that he was dependent on university accommodation and that if he were to be evicted, he would face the immediate risk of homelessness.

**Mr Kraai**

[31] In his affidavit filed in the first stay application, Mr Kraai stated that he had nowhere to go other than the PK residence and that he could not go back home as both his parents had passed away. In his affidavit filed in the second stay application, Mr Kraai stated that the PK residence was his sole place of residence and that he did not have another home to return to if he was

required to vacate the PK residence. He further stated that if he was to be evicted he would have nowhere to stay and would face homelessness.

**DOES PIE FIND APPLICATION IN THIS MATTER?**

[32] Section 26(3) of the Constitution provides that no one may be evicted from their home, or have their home demolished without an order of court made after considering all the relevant circumstances. The right not to be evicted without an order of court is given effect to by the provisions of PIE,[4] which was adopted with the objective of overcoming the abuses perpetrated under the Prevention of Illegal Squatting Act 52 of 1951 which was used to prevent and control what was referred to as *'squatting'* on public or private land by criminalising such conduct and providing for a simplified eviction process.[5]

[33] As the Constitutional Court noted in ***Port Elizabeth Municipality***, '… *it was against this background, and to deal with these injustices, that s 26(3) of the Constitution was adopted and new statutory arrangements made.* [PIE] *was adopted with the manifest objective of overcoming the above abuses to ensure that evictions, in future, took place in a manner consistent with the values of the new constitutional dispensation. Its provisions have to be interpreted against this background.*'[6]

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4 *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC); 2004 (12) BCLR 1268 (CC), para 11 and 24. See also *Residents of Joe Slovo Community, Northern Cape v Thubelisha Homes and Others* [2009] ZACC 16; 2009 (9) BCLR 847 (CC); 2010 (3) SA 454 (CC), para 62 – 64 (per Yacoob J), para 142 (per Moseneke DCJ), and para 233 (per Ngcobo J).

5 *Joe Slovo* (above) para 230.

6 *Port Elizabeth Municipality* (above), para 10 and 11.

[34] It is well settled that the provisions of PIE only apply to the eviction of persons from buildings or structures that are their homes.[7] The term *'home'* is, however, not defined in PIE, and as a consequence the question of what constitutes a *'home'* for the purposes of PIE has received attention from our courts over time.

[35] In ***Ndlovu v Ngcobo; Bekker and Another v Jika***[8] the Supreme Court of Appeal interpreted PIE in light of its roots in s 26(3) of the Constitution which is concerned with rights to one's home, the preamble to PIE which emphasises the right to one's home and the interests of vulnerable persons, the buildings listed in PIE, and the fact that one is ultimately concerned with *'any other form of temporary or permanent dwelling or shelter'*,[9] and concluded in the context of the unlawful occupation of commercial properties by juristic persons that buildings or structures that do not perform the function of a form of dwelling or shelter for humans do not fall under PIE.[10]

[36] In ***Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers, Newtown Urban Village***[11] the Court in considering the definition of homelessness referred with approval to the decision of ***Makama and Others v Administrator, Transvaal***[12] where the Court in considering the definition of the term *'homeless'* in the context of s 6 of PISA stated that *'[i]ts ordinary meaning is lacking a home and, though the concept of home is of wide and varied nature when applied to persons, it does connote a shelter against the*

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7 *Barnett and Others v Minister of Land Affairs and Others* [2007] ZASCA 95; 2007 (6) SA 313 (SCA); 2007 (11) BCLR 1214 (SCA), para 37. See also *Stay at South Point* (above), para 9.

8 *Ndlovu v Ngcobo, Bekker and Another v Jika* [2002] ZASCA 87; [2002] 4 All SA 384 (SCA); 2003 (1) SA 113 (SCA).

9 *Id.* para 20.

10 *Id.*

11 *Johannesburg Housing Corporation (Pty) Ltd v Unlawful Occupiers, Newtown Urban Village* [2012] ZAGPJHC 230; 2013 (1) SA 583 (GSJ); [2013] 1 All SA 192 (GSJ); 2013 (3) BCLR 337 (GSJ), para 81.

12 *Makama and Others v Administrator, Transvaal* 1992 (2) SA 278 (T).

*elements providing some of the comforts of life with some degree of permanence.'*[13]

[37] In ***Barnett*** the question arose whether cottages erected on a site for holiday purposes could be said to be homes in the context of PIE. The Supreme Court of Appeal grappled with the question of what constitutes a home for the purposes of PIE and concluded that although the concept '*home'* is not easy to define and bearing in mind the fact that one can conceivably have more than one home, the term requires an element of regular occupation coupled with some degree of permanence.[14]

[38] In ***Stay at South Point***, the Supreme Court of Appeal was called on to determine whether the provision of student accommodation by a university to its students constitutes a home, so as to render PIE of application. The Supreme Court of Appeal found that the student accommodation in question did not constitute a home for purposes of PIE because of three factors.[15] First, the students came from homes in order to study at the university, and as a consequence the students logically had homes other than the student residence.[16] Second, the provision of student accommodation is for a finite period of time and for the limited and defined purpose of accommodating students for the duration of the academic year and thereby assisting them to study at the university.[17] Third, equity required that those students who had the benefit of accommodation should yield to the new students coming to the university who legitimately sought student accommodation which forms part of the larger policy framework of higher education.[18]

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[13] *Id.* at 285I-J.
[14] *Barnett*, para 38.
[15] *Stay at South Point* (above), para 17 and 18.
[16] *Id.* para 12.
[17] *Id.* para 13.
[18] *Id.* para 16.

[39] ***Stay at South Point*** properly interpreted does not establish a hard and fast principle that the eviction of a person from student accommodation provided by a university is never subject to PIE because the key issue in determining whether PIE finds application is whether the accommodation provided is a home which is always a fact specific enquiry. This much is clear from ***Stay at South Point*** where the Supreme Court of Appeal made it clear that *'[u]nless otherwise demonstrated',*[19] student accommodation does not displace or replace the homes from which students come, and that there was no basis to invoke the protection of PIE as a consequence of the fact that the students in question had homes other than the university accommodation.[20] It follows that where it is demonstrated that the student has no other home or that the student accommodation has as a fact replaced the home from which the student came, the university accommodation may indeed be their home, in which case they are entitled to the protection afforded by PIE.

[40] Contrary to UCT's contention, ***Stay at South Point*** cannot be interpreted as establishing an immutable principle that the unlawful occupation of a university parking lot following the breach of an undertaking embodied in a court order to vacate a university residence deprives a student of the protection of PIE. Any such principle would impermissibly operate to prevent a court from considering the facts of each matter so as to determine whether the parking lot in question has as a fact become the home of the student in question. Put differently, where the facts establish that a university parking lot or any other university property is the home of an unlawful occupier, PIE finds application and the unlawful occupiers is entitled to the procedural and substantive protections afforded by PIE.

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[19] *Id.* para 12.
[20] *Id.*

[41] The Constitutional Court has repeatedly emphasised that the application of PIE is not discretionary.[21] In applying PIE, courts must probe and investigate the relevant surrounding circumstances in order to determine whether having regard to all the relevant circumstances it would be just and equitable to grant an eviction order, and if so, what conditions must be attached to that order.[22] The fact that the unlawful occupation took place in the face of a court order is one of the factors that would go into the just and equitable enquiry that a court seized with an application for eviction in terms of PIE must engage in.

[42] Insofar as the respondents' respective undertakings are concerned, they undertook to vacate the PK residence by 20 December 2025, and this is what was embodied in the amended court order. However, there is nothing in the text or context of their undertakings that can reasonably be interpreted as them having also undertaken not to occupy any other property belonging to UCT whether expressly or by necessary implication.[23] But even if the respondents had given such undertakings as UCT argues, and they subsequently established homes on the parking lot in breach of those undertakings, the breach of their undertakings cannot for the reasons already addressed deprive them of the protection of PIE if the facts nonetheless demonstrate that they have established homes on the parking lot, that they do not have homes elsewhere and that they would be rendered homeless as a consequence of an eviction.

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[21] *Occupiers of Erven 87 and 88 Berea v De Wet N.O. and Another* [2017] ZACC 18; 2017 (8) BCLR 1015 (CC); 2017 (5) SA 346 (CC), para 43. See also *Machele v Mailula* [2009] ZACC 7; 2010 (2) SA 257 (CC) ; 2009 (8) BCLR 767 (CC), para 26.

[22] *Id.* para 43 – 46.

[23] *University of Johannesburg v Auckland Theological Seminary and another* [2021] ZACC 13; 2021 (8) BCLR 807 (CC) ; 2021 (6) SA 1 (CC).

**HAS UCT MADE OUT A CASE FOR EVICTION?**

[43] On the facts before me, it is clear that whatever the circumstances of the respondents may have been prior to their eviction from the PK residence on 20 December 2025, after their eviction they took up residence and established homes in the parking lot.

[44] UCT's reliance in the founding affidavit on the addresses that it has on record for Mr Kraai and Mr van Staden is misplaced in that both Mr Kraai and Mr van Staden filed affidavits in December 2025 stating that they are no longer able to return to their parental homes for various reasons. UCT has placed no evidence before me to gainsay these contentions. It bears emphasis that UCT sought to place reliance on the statements made by the respondents in the affidavits filed in the various stay applications where the respondents had stated that they accepted or acquiesced to the eviction order. In so doing UCT placed those affidavits in issue in these proceedings. Moreover, in circumstances where there is a potential risk of homelessness if an eviction order is granted, it is incumbent on a court to take into account all of the information before it, which in this matter includes the averments made by the respondents in the affidavits in the stay applications in particular because those averments shed light on the key issues of whether the respondents have other homes to which they can return which in turn bears on the question as to whether the respondents had established homes on the parking lot.

[45] On a balance of probabilities, the addresses that UCT relies on in the founding affidavit are no longer the homes of Mr Kraai and Mr van Staden and those addresses were no longer their homes at least from December 2025 and neither Mr Kraai nor Mr van Staden have other homes to which they can return if they are evicted from the parking lot. Consequently, the parking lot is on a balance of probabilities the home of Mr Kraai and Mr van Staden and there is a real risk that they will be rendered homeless if they are evicted from the parking lot. It follows that Mr Kraai and Mr van Staden are entitled to the protections of PIE and any application for their eviction must be sought in terms of PIE. Given that this is not an application brought in terms of PIE,

UCT is as a matter of law not entitled to an eviction order against Mr Kraai or Mr van Staden in these proceedings.

[46] Insofar as Ms M[...] and her minor children are concerned, it is apparent from the oral submissions made by Ms M[...] and Mr M[...] that the residential address that UCT seeks to rely on in the founding affidavit, ceased to be their home when they commenced living at the PK residence. This is clear from the fact that prior to taking up residence at the PK residence the M[...] family lived in a SAPS residence as a consequence of Ms M[...] having been employed by the SAPS at the time. Consequently the address on which UCT seeks to place reliance, that is the SAPS residence, ceased to be their home when Ms M[...]'s employment with SAPS ceased and the family moved into the PK residence. Further, it appears that at some stage after they were evicted from PK residence Ms M[...] and the two minor children established their home in the parking lot. However, in her oral submissions to the court Ms M[...] indicated that she and her children no longer reside in the parking lot. This was not disputed by UCT. Given that Ms M[...] and the two minor children are no longer resident in the parking lot, there is no basis on which an order evicting them from the parking lot can be granted.

[47] Both Mr M[...] and Ms L[...] are no longer residing in the parking lot. It is not in dispute that Mr M[...] is temporarily resident at the Obz Square residence and UCT made it clear that no eviction order was sought against Mr M[...] because he is resident at the Obz Square residence. Ms L[...] appears to have found alternative accommodation as she had stated that she would do in her affidavit filed in the second stay application which is corroborated by the fact that she was last present in the parking lot on 26 January 2026 and was no longer present in the parking lot in February 2026. Given that Ms L[...] is no longer resident in the parking lot there is also no basis on which an order evicting her from the parking lot can be granted.

**THE INTERDICTORY RELIEF**

[48] UCT sought a final interdict against all of the respondents. In the heads of argument delivered on behalf of UCT the interdictory relief is characterised as an order restraining all of the respondents from further unlawful occupation of the parking lot or any other UCT property, together with an order against Mr M[...] restraining him from unlawfully occupying the parking lot or any other University property without the written consent of UCT, in the event that he vacates or is no longer entitled to occupy the Obz Square residence.

[49] The three requirements for a final interdict are a clear right, a threat to breach such right (in the case of a prohibitory interdict), and no other remedy.[24]

[50] As the registered owner of the property in respect of which the interdictory relief is sought, there can be no question that UCT has a clear right to prevent the unlawful occupation if its property. As to the second requirement, UCT contends that it has suffered and continues to suffer harm as a consequence of the unlawful occupation of its property by the respondents.

[51] It is not in dispute that Mr M[...] is not and has never been in unlawful occupation of the parking lot. Ms M[...] submitted that that she and her minor children no longer reside in the parking lot as she does not feel safe there since Mr M[...] is not with them. These assertions were not gainsaid by UCT. Consequently, there is no factual basis on which I can find that Mr M[...] or Ms M[...] are likely to unlawfully occupy the parking lot in future. Ms L[...] too is no longer in occupation of the property and appears to have obtained alternative accommodation by 31 January 2026 as she had indicated she would do in her affidavit in the second stay application. In addition there was no evidence before me that she is likely to unlawfully occupy the parking lot or any other UCT property in future. Consequently UCT cannot establish that it

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[24] *Setlogelo v Setlogelo* 1914 AD 221.

is likely to suffer irreparable harm as a consequence of Mr M[...], Ms M[...] or Ms L[...] unlawfully occupying the parking lot or any other UCT property in future.

[52] Given that an interdict is not a remedy for past invasion of rights but is concerned with present or future infringements, and is appropriate only where future injury is feared,[25] UCT cannot establish the requirements necessary for an interdict in respect of Mr M[...], Ms M[...] or Ms L[...].

[53] For the reasons already addressed Mr van Staden and Mr Kraai are entitled to the protections of PIE and UCT will need to seek their eviction in fresh proceedings brought in terms of PIE. The court seized that application would have to determine whether on all the facts it is just and equitable to grant an order evicting Mr Kraai and Mr van Staden from the parking lot. An interdict restraining Mr Kraai and Mr van Staden from unlawfully occupying the parking lot in future would serve little if any purpose at this stage as UCT could not utilise that order to remove Mr Kraai and Mr van Staden from the parking lot as an interdict cannot be used as an eviction order. Moreover, facts may emerge in the just and equitable enquiry before the court seized with any eviction application that UCT may elect to institute in respect of Mr Kraai and Mr van Staden which are relevant to whether an interdict against them is warranted. Consequently, I am of the view that it would not be appropriate in these proceedings to grant the interdictory relief sought by UCT against Mr van Staden and Mr Kraai and that such relief ought to be sought in any eviction proceedings in terms of PIE which UCT may elect to institute against them.

**In the result I make the following order:**

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[25] *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA), [2008] ZASCA 78; [2008] 4 All SA 225 (SCA); 2008 (5) SA 339 (SCA), para 20; See also *Phillip Morris Inc v Marlboro Trust Co SA* 1991 (2) SA 720 (A) at 735B.

1. The application is dismissed.

2. There shall be no order as to costs.

**M. ADHIKARI**

**ACTING JUDGE OF THE HIGH COURT**

Appearances:

| | |
|---|---|
| **For the applicant:** | M O'Sullivan SC with U Mahilall |
| **Instructed by:** | Fairbridges Wertheim Bekker |
| | |
| **Second and Third Respondents:** | In person |
| **First and Fourth Respondents:** | No appearance |