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

Case No: **2025-063967**

In the matter between:

TRANSNET SOC LTD

Applicant

and

THOSE PERSONS IDENTIFIED IN ANNEXURES ‘F1’ TO ‘F10’ TO THIS APPLICATION WHOSE FULL AND FURTHER PARTICULARS ARE UNKNOWN TO THE APPLICANT AND WHO ARE UNLAWFULLY OCCUPYING THE APPLICANT’S PROPERTY NAMELY PORTION OF REMAINDER OF ERF 1[...], CAPE TOWN AT WOODSTOCK, ERF 1[...], CAPE TOWN AT SALT RIVER AND ERF 1[...], (A PORTION OF ERF 1[...]) CAPE TOWN AT WOODSTOCK

First Respondent

THOSE PERSONS WHOSE FULL AND FURTHER PARTICULARS ARE UNKNOWN TO THE APPLICANT AND WHO ARE UNLAWFULLY OCCUPYING THE APPLICANT’S PROPERTY, NAMELY PORTION OF REMAINDER OF ERF 1[...], CAPE TOWN AT WOODSTOCK, ERF 1[...], CAPE TOWN AT SALT RIVER AND ERF 1[...], (A PORTION OF ERF 1[...]) CAPE TOWN AT WOODSTOCK

Second Respondent

THE CITY OF CAPE TOWN

Third Respondent

THE MINISTER OF HOME AFFAIRS

Fourth Respondent

Coram: Wille, J

Heard: 17 September 2026

Delivered: 28 September 2026

Summary:

Prospects of success. The applicants must demonstrate that those prospects are not remote but have a realistic chance of succeeding. More must be established than a mere possibility of success, that the case is arguable on appeal, or that the case cannot be categorised as hopeless. There must, in other words, be a sound, rational basis for the conclusion that there are prospects of success on appeal. Leave to appeal refused.

ORDER

The following order is granted:

1. The application for leave to appeal is refused.
2. There shall be no order as to costs.

JUDGMENT

WILLE, J:

INTRODUCTION

[1] The first and second respondents seek leave to appeal to the Supreme Court of Appeal, alternatively to a Full Court (of this Division), against the orders granted on 21 July 2026. The first and second respondents must demonstrate, on proper grounds, that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.¹

[2] Under section 17(1)(a)(i) and (ii) of the Superior Courts Act, the occupiers (the first and second respondents) must show that the appeal has a realistic chance of succeeding (a sound, rational basis beyond a mere possibility or arguable case) or that there is a compelling reason (such as an important, unsettled question of law). A compelling reason may be an important question of law or a discrete issue of public importance that will affect future disputes. The occupiers must satisfy this court that they have met this threshold.²

THE GROUNDS OF APPEAL

EVICITION WITHOUT ALTERNATIVE - EMERGENCY ACCOMMODATION

[3] The occupiers accept that the enquiry is whether, having regard to all the circumstances, an eviction without emergency accommodation may be just and equitable. Nevertheless, occupiers do not identify any legal misdirection. Rather, their complaints target the factual conclusions drawn from applying settled principles to the evidence presented. The focus depends on overturning the following:

- (i) Several factual findings regarding criminality.
- (ii) The absence of sufficient evidence of homelessness.
- (iii) The insufficiency of the occupiers' evidence concerning their personal circumstances, and
- (iv) The reasonableness of the third respondent's position regarding emergency housing.³

[4] I attempted to convey in my main judgment (and I believe that I did so convey) that the availability of suitable alternative accommodation is an important consideration but not a determinative one.⁴

¹ Section 17(1) of the Superior Courts Act, 10 of 2013.

² Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA) at para 2.

³ The third applicant did not seek the eviction order.

⁴ Paragraph [32] of my main judgment makes this clear.

[5] The real debate is whether emergency housing is an immutable prerequisite for an eviction. The Supreme Court of Appeal's jurisprudence and that of our Apex Court do not support the view that providing emergency housing is an immutable prerequisite for an eviction.⁵

[6] I was mindful that homelessness is a very relevant consideration and thereby accepted that alternative accommodation is an important consideration. Not one of the affidavits filed by the occupiers in terms stated that an eviction would render any of them homeless. It may be argued that this was inferred, but it was never stated.⁶

[7] I repeatedly invited the occupiers to provide detailed information about their individual personal circumstances. I issued a further conduct order to obtain that information. Despite this invitation, the occupiers filed what can only be described as vanilla standard-form affidavits.⁷

[8] The occupiers contend for broad notions of humanity and social disruption without identifying any appealable grounds. In addition, the occupiers contend that this is a large-scale eviction and, because of this label without more, renders emergency accommodation a constitutional imperative. This is not what the law dictates. Put another way, the extent of an occupation does not displace the requirement of a fact-specific enquiry, based on admissible evidence regarding those potentially affected by the eviction order. I was simply unable to attach weight to non-existent evidence that was never placed before me.⁸

[9] I did not convey that no information whatsoever had been placed before me. Self-evidently, I found that no detailed, direct, and admissible evidence was presented to enable me to properly interrogate the justice and equity of granting an eviction order. The occupiers' difficulty is that they elected a spokesman who deposed to an affidavit in general terms.⁹

[10] The occupiers did not confirm this affidavit under oath. Thus, the spokesman's affidavit contained hearsay evidence about the alleged personal circumstances of several of the occupiers.¹⁰

⁵ City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA), at para 15.

⁶ This positive allegation was never made.

⁷ No proper details were made available in the affidavits.

⁸ More evidence needed to be filed.

⁹ Most of the content of this affidavit was of a hearsay nature.

¹⁰ This was most unhelpful.

[11] It cannot be expected of a court to make a just and equitable ruling to the benefit of the occupiers in respect of information which a court does not have, despite an invitation to supply the information.¹¹

[12] The occupiers were represented in respect of approximately 281 persons. Yet only 106 further affidavits were delivered in accordance with my conduct order. Some of these vanilla standard-form affidavits conflicted with the information in the spokesman's affidavit. Accordingly, I could not treat the spokesman's affidavit as an evidential basis for determining homelessness or entitlement to emergency accommodation.¹²

[13] Undoubtedly, the occupiers themselves were obligated to place their personal circumstances before the court, as this information lies peculiarly within their knowledge. The court afforded the occupiers a specific opportunity to place that information before it.¹³

CRIMINAL CONDUCT

[14] I was enjoined to decide this issue on motion. Thus, I evaluated the totality of the evidence before me and determined whether the inference advanced by the third respondent was the most plausible inference to be drawn from the proved facts. There can be no issue with the test to be applied. The third respondent's case was set out in extensive detail. It identified the following:

- (i) The criminal incidents relied upon.
- (ii) The statistical material supporting its allegations.
- (iii) The physical features observed on the properties during the inspection in loco.
- (iv) The geographical location of the occupiers' structures, and
- (v) The inferential chain relied upon.¹⁴

[15] The issue before me was not whether allegations had been particularised, but whether the inference advanced by the third respondent was the most plausible inference to be drawn from the totality of the evidence.¹⁵

¹¹ Not enough information was supplied despite my invitation to do so.

¹² Most of the content of this affidavit was of a hearsay nature.

¹³ This invitation was not taken up seriously.

¹⁴ There was no countervailing to disrupt this inferential chain of evidence.

[16] The occupiers argue that it was incumbent on the third respondent to prove that specific identified occupiers committed specific identified crimes. This was not a criminal trial. The issue before me was whether, having regard to the evidence (viewed collectively), it was legally permissible to infer that the occupation operated as a base for criminal activity and whether that circumstance was relevant to the just and equitable enquiry.¹⁶

[17] In addition to all the other evidence of criminality presented by the third respondent, evidence was presented (and observed) concerning a series of tunnels situated beneath the occupied properties which were alleged to be used for the storage of drugs and stolen goods.¹⁷

[18] I considered all the evidence cumulatively, namely:

- (i) The extensive crime statistics.
- (ii) The concentration of criminal activity in the immediate vicinity of the occupation.
- (iii) The undisputed existence of tunnels and structures utilised within the occupied areas.
- (iv) The absence of meaningful evidence linking the occupation to legitimate employment opportunities.
- (v) The occupiers' failure to engage substantively with the findings arising from the inspection in loco.¹⁸

[19] In contrast, the occupiers did not place before me any facts that would have enabled me to draw any meaningful competing inference to the most and only plausible inference. The occupiers rather based their entire case on general denials and vague assertions not supported on the pleadings. Put another way, they did not create a genuine dispute of fact or in any manner displace the inference advanced by the third respondent.¹⁹

THE AVAILABILITY OF LAND FOR EMERGENCY HOUSING

¹⁵ SA Post Office v Delacy and Another 2009 (5) SA 255 (SCA) at para 35.

¹⁶ There was no evidence to dispute the criminal base allegations.

¹⁷ The occupiers did not engage with those allegations.

¹⁸ Viewed holistically, the inference was the most plausible inference available on the evidence.

¹⁹ The inference drawn was legally premissable.

[20] The occupiers contend that the third respondent currently has sufficient suitable land available to provide emergency accommodation for them. In the same breath, they contended for a relocation to another piece of the applicants' land. Their challenge is underpinned by allegations in their supplementary affidavit that the third respondent possesses land and resources that could have been utilised for emergency accommodation.²⁰

[21] The occupiers conveniently overlook the question of whether land could hypothetically be identified somewhere within the municipal area controlled by the third respondent. The issue before me was whether suitable land was available for the provision of emergency accommodation in the specific and peculiar circumstances of this case. I was not enjoined to speculate about unidentified properties or unchallenged administrative decisions.²¹

CONCLUSION AND COSTS

[22] The occupiers argue that leave to appeal should be granted because there is a public interest in obtaining legal certainty regarding the extent of the obligations resting on organs of state where persons may potentially be rendered homeless because of an eviction. This is not a compelling reason to grant leave to appeal because there is no uncertainty in the law.²²

[23] I did not make any finding that the third respondent or the applicant (or any other organ of state) bears no constitutional obligations in eviction proceedings. I found on the facts before me that the occupiers had failed to establish an entitlement to emergency accommodation and that an eviction without the provision of such accommodation was nevertheless just and equitable in the circumstances of this specific case.²³

[24] It would have been legally impermissible for me to embark on a course to pronounce on abstract, hypothetical, or academic questions unnecessary for resolving the case before me. The supposed need for clarification of the law invites precisely such an exercise which is impermissible.²⁴

[25] Finally, the occupiers' charter for leave to appeal because my judgment allegedly conflicts with another judgment dealing with issues of regularising the occupiers' immigration status.²⁵

²⁰ The occupiers did not want to relocate to the applicant's alternative portion of land.

²¹ This issue was not before me for adjudication.

²² Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC), at para 39.

²³ Bearing in mind that the occupiers themselves said that the alternative site owned by the applicant was inappropriate.

²⁴ Fischer and Another v Ramahlele and Others 2014 (4) SA 614 (SCA), at paras 13 and 14.

[26] There is no legal conflict. My judgment did not address regularising the occupiers' immigration status. The eviction order I granted concerned the evaluation of insufficient evidence of homelessness and land scarcity, not immigration status. I did not make any determination that undocumented foreign nationals can never receive assistance but rather recognised that on the evidence presented, there was no basis to disregard the existing policy framework or to compel the third respondent to provide emergency accommodation in circumstances where immigration status issues remained unresolved and where the fourth respondent adopted a supine attitude.²⁶

CONCLUSION

[27] Under the leave to appeal threshold, the occupiers must establish either a realistic prospect of success or a compelling reason for leave to appeal to be granted. The occupiers argued that evicting them without alternative emergency accommodation is per se unlawful. While the availability of alternative accommodation is an important factor in the just and equitable enquiry, it is not an immutable prerequisite for the granting of an eviction order.²⁷

[28] Furthermore, the occupiers failed to establish the factual predicate of their defence. I say this because there was no direct evidence of homelessness. Despite having personal knowledge of their own circumstances, not a single affidavit explicitly stated that eviction would render that occupant homeless.²⁸

[29] The occupiers relied primarily on an unconfirmed spokesman's affidavit containing inadmissible hearsay, which in several instances contradicted the vanilla standard-form affidavits that were filed.²⁹

[30] It was thus impermissible to make findings on abstract alleged social disruption or grant equitable relief based on facts never placed into evidence.³⁰

[31] The third respondent presented detailed, uncontroverted evidence showing that the property served as a base for criminal enterprise. This included detailed crime statistics, geographical patterns, and physical destruction of infrastructure. Tunnels under the property used to store drugs and stolen goods were discovered during the inspection in loco. I was dealing here with proceedings on motion,

²⁵ This case had less to do about immigration.

²⁶ This was most unfortunate.

²⁷ According to settled legal principles.

²⁸ The evidence before me on this issue was scant.

²⁹ Very little evidential weight could be attached to the spokesman's affidavit.

³⁰ *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 (SCA), at paras 13 and 14.

and thus I was entitled to draw the most plausible inference from the established facts. The occupiers raised only bald, general denials and failed to engage substantively with the inspection in loco findings.³¹

[32] The contention that the ruling conflicts with jurisprudence concerning the regularisation of foreign nationals' immigration status is unfounded. I say this because the eviction turned on evidence of homelessness and actual land availability, not immigration status. In short, because the appeal challenges factual findings drawn from uncontradicted evidence rather than any misapplication of settled law, it lacks realistic prospects of success and raises no novel legal issue warranting an appellate hearing. In the circumstances, the occupiers have failed to demonstrate either reasonable prospects of success or any compelling reason why an appeal should be heard. Thus, the following order is granted:

1. The application for leave to appeal is refused.
2. There shall be no order as to costs.

D WILLE
E.D. WILLE

LIST OF APPEARANCES

FOR THE APPLICANT

ADV RENATA WILLIAMS SC

ADV JO-ANN MOODLEY

FOR THE FIRST AND SECOND RESPONDENTS

ADV S MAGARDIE

FOR THE THIRD RESPONDENT

ADV MUSHAHIDA ADHIKARI

ADV M EBRAHIM

FOR THE FOURTH RESPONDENT

ADV NTOKOZA MJIYAKO (did not appear at the leave to appeal hearing, and a stand-in representative attended the proceedings)

³¹ No genuine dispute of fact was created.