

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: **2025-063967**

In the matter between:

TRANSNET SOC LTD

Applicant

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[...]² CAPE TOWN AT SALT RIVER AND ERF 1[...]³ (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

Second Respondent

**WOODSTOCK, ERF 1[...]2 CAPE TOWN AT SALT RIVER
AND ERF 1[...]3 (A PORTION OF ERF 1[...]) CAPE TOWN
AT WOODSTOCK**

THE CITY OF CAPE TOWN

Third Respondent

THE MINISTER OF HOME AFFAIRS

Fourth Respondent

Summary: Eviction - Just and Equitable – Crime Hot Spot – Eviction Granted.

Coram: Wille, J

Heard: 11 May 2026

Delivered: 21 July 2026

JUDGMENT

WILLE, J:

INTRODUCTION

[1] The applicant seeks the eviction of the first and second respondents from several of the applicant's properties. Some of these properties are adjacent to a major arterial highway, providing daily access to the city of Cape Town for many motorists. These properties are also situated near three business districts.¹

[2] The first and second respondents have been occupying at least ten pockets of land in this area owned by the applicant for over a decade. The application is in accordance with

¹ These business districts are in close proximity the central business district of Cape Town,

the intervening legislation in this connection and raises constitutional issues for determination.²

[3] Initially, the first and second respondents comprised 282 persons. This application now only concerns 161 persons, many of whom are undocumented foreign nationals.³

[4] The third respondent takes the position, *inter alia*, that it is neither just nor equitable to require it to provide emergency housing to these unlawful occupiers, as the undisputed evidence shows that the unlawful occupation of the applicant's properties provides an informal basis for opportunistic criminal activity.⁴

[5] The third respondent also contends that if it is just and equitable for the unlawful occupiers to be offered emergency housing (following their eviction), it would be appropriate for certain land owned by the applicant to be used to provide this emergency housing.⁵

[6] The third respondent also contends that the undocumented foreign nationals are to be assisted with emergency housing only on the conditions prescribed by the fourth respondent on a case-by-case basis.⁶

[7] Thus, the argument is that it is therefore incumbent upon the fourth respondent to give directions to the applicant and to the third respondent as to the way these undocumented foreign nationals fall to be treated in these proceedings. Regrettably, the fourth respondent has decided not to take an active role in these proceedings despite encouragement.⁷

UNLAWFUL OCCUPATION

[8] The unlawful occupation of the applicant's properties is not an issue in this application. In this connection, I granted an order by **agreement** further regulating the conduct of the matter in the following terms:

² In terms of s 4 and s 6 of Act 19 of 1998 (PIE) and the Constitution of the Republic of South Africa, 1996.

³ This is not the subject of any material dispute.

⁴ This was not engaged with save for a bald denial of these allegations.

⁵ This was disputed by the applicant.

⁶ Following the National Housing Code (NHC) in terms of s 4 the National Housing Act 107 of 1997 (NHA).

⁷ Despite my invitation and encouragement to do so.

1. That the 266 persons as listed on Annexure “AA1” hereto, and others (a total of 282 persons), as well as any other persons who have not been identified (the “unlawful occupiers”) are declared to be in unlawful occupation of the properties listed below:

1.1 Portion of the remainder of Erf 1[...], Cape Town, at Woodstock;

1.2 Erf 1[...], Cape Town at Salt River; and

1.3 Erf 1[...], (a portion of Erf 1[...]), Cape Town at Woodstock;

(Hereinafter referred to as the “properties”).

2. That a rule nisi is hereby issued returnable on 11 May 2026 at 10h00 in terms of which the unlawful occupiers are directed to show cause and file with the court by no later than 12h00 on 24 April 2026, **affidavits** dealing with the following personal information relating to their occupation of the properties (the “limited issue”):

2.1 Full and complete details of their personal circumstances, including but not limited to the following:

2.1.1 If they are legally represented, and if so, by whom. Full and complete details are required.

2.1.2 Their legal status in South Africa, including copies of all documentation confirming their legal presence in the Republic of South Africa.

2.1.3 Full details of any criminal charges currently pending against them.

2.1.4 Full details of their current employment (if employed) and their remuneration. If unemployed, the period for which they have been unemployed and details of their livelihood and means of survival.

2.1.5 Full details of their marital status and whether they reside on the properties as couples and/or as a family unit.

2.1.6 Full details if any of the unlawful occupiers have family members residing elsewhere, with whom they may take up temporary residence.

2.1.7 Full details of any minor children of the unlawful occupiers, the ages of the children, and where (and if) they attend school.

2.1.8 Full details of any of the unlawful occupiers who are over the age of 65 years.

2.1.9 Full details of any of the occupiers who are frail and/or disabled and or suffer from serious medical conditions.

2.1.10 Full details of any households headed by women.

[This may be achieved by way of the completion of the pro-forma questionnaire designed for this purpose by the third respondent, provided that these details are provided under oath].

- 3. Upon the filing of the further affidavits referred to above, the parties shall be given the opportunity to file a further affidavit (if any) dealing with the limited issue in connection with the personal circumstances of the unlawful occupiers by no later than 6 May 2026.*
- 4. The matter shall be postponed for hearing before Justice Wille on 11 and 12 May 2026.*
- 5. All costs are to stand over for later determination.⁸*

ALLEGED CRIMINAL CONDUCT

[9] It is undisputed that the applicant is the lawful owner of the properties occupied by the first and second respondents. Also, it is not disputed that the applicant requires these properties for its commercial activities and further development.⁹

[10] The third respondent produced substantial documentary evidence in support of its allegations that the first and second respondents use the properties for criminal conduct. This was not materially engaged with by the first and second respondents.¹⁰

[11] The third respondent avers that, on the balance of probabilities, these properties are used as bases for crime in the immediate vicinity. In the oral argument, the first and second

⁸ This order was granted on 16 April 2026.

⁹ These averments were not responded to in the provisional answering affidavits of the first and second respondents.

¹⁰ This was only dealt with by way of a bald denial.

respondents suggested that there is no factual causal connection between these crimes and them. Nothing further is said on behalf of the first and second respondents about the allegations of serious crimes being perpetrated by the occupants of these properties.¹¹

[12] Thus, the third respondent's version must be accepted and indeed cannot be rejected. It is trite that in finding facts and making inferences in a civil case, the court may go on a mere preponderance of probability, even although in so doing it does not exclude every reasonable doubt, so that one may, by balancing probabilities select a conclusion which seems to be the more natural, or plausible, conclusion from amongst several conceivable ones, even though that conclusion is not the only reasonable one.¹²

[13] The third respondent submits that the unlawful occupation of the properties cannot reasonably be said to have been driven by the need for residential shelter close to economic opportunities, but rather in light of the frequency of documented criminal activities in the immediate vicinity of the properties, the unlawful occupation of the properties appears to be driven by an attempt to create a base for opportunistic criminal activity specifically targeting road users, cyclists and nearby infrastructure.¹³

[14] The statistics relating to safety and crime put up to court by the third respondent demonstrate, *inter alia*, the following incidents of crime in the immediate vicinity of the unlawfully occupied properties:

- (a) There were 74 incidents of common robbery.
- (b) There were 20 incidents of robbery with a weapon or instrument other than a firearm.
- (c) There were 7 incidents of robbery with a firearm.
- (d) There was one incident of vehicle hijacking.¹⁴

[15] In addition, the third respondent's freeway management system captured surveillance footage of cable theft, robberies, and thefts from motor vehicles on a very busy stretch of a

¹¹ Notably, nothing more was said about these serious allegations.

¹² *Govan v Skidmore*

¹³ The uncontested factual material supports this conclusion.

¹⁴ This all took place within an eight month period.

national highway leading into the city, which becomes very congested, resulting in slow-moving traffic immediately adjacent to the properties. This is a high security risk area.¹⁵

[16] In a one-month period over the annual shutdown, law enforcement attended to various incidents that took place within very close proximity of the properties involving motorists. These included 7 incidents of vehicles being attacked with bricks, sustaining damage to windows and their undercarriages. A disabled couple travelling in a vehicle were attacked and robbed, and their vehicle's windows were damaged, and their mobile phone was stolen.¹⁶

[17] The police statistics demonstrated that in a discrete six-month period, there were 44 arrests made for criminal activity in the immediate vicinity of the subject properties. These arrests related to charges for dealing in drugs, possession of drugs, possession of unlicensed firearms, unlawful possession of ammunition, possession of a dangerous weapon, unlawful riotous behaviour, unlawful intimidation, unlawful possession of copper wire, assault with intent to cause grievous bodily harm, possession of stolen vehicles, robbery, possession of house-breaking implements, resisting arrest, defeating the ends of justice, and the assault on a police officer.¹⁷

[18] The statistics for a different eight-month period show that there were over 100 incidents of attacks on cyclists, all of which occurred near the properties. These incidents included 74 incidents of common robbery of cyclists, 20 incidents of robbery with a weapon or instrument other than a firearm of cyclists and 7 incidents of robbery with a firearm of cyclists.¹⁸

[19] In addition, a cyclist using the cycling route located in very close proximity to the properties was attacked and robbed of his cell phone. Significantly and sadly, an elderly

¹⁵ This was not disputed.

¹⁶ During the period December 2025 and January 2026.

¹⁷ During the period January 2025 to June 2025.

¹⁸ During September 2024 to May 2025,

cyclist was attacked with a bottle and robbed of his cell phone, sustaining fractures and multiple injuries, and ultimately succumbing to his injuries.¹⁹

[20] Further, there have been numerous incidents of motorists being attacked and robbed on the stretch of the national highway (to which I have referred) in very close proximity to the properties.²⁰

[21] A councillor of the third respondent witnessed an attempted robbery where an individual jumped in front of a pick-up truck to stop the driver, and a group of some 20 to 30 persons armed with knives then emerged and surrounded the vehicle, threw bricks under the wheels of the vehicle and grabbed the driver's keys.²¹

[22] Further, a motorist driving on a road near the properties lost control of his vehicle and collided with a bridge barrier. When his vehicle came to a standstill, he was attacked by 4 people who took everything from the vehicle and grabbed his mobile phone, which he was using to make a call, out of his hand.²²

[23] There is no material engagement with these allegations, save for bald denials coupled with emotive statements, with no countervailing evidence being put forward to address the third respondent's detailed allegations. The denial is an odd denial by the so-called leader of the first and second respondents. I say 'odd' because he does not deny the alarming rate of crime in the immediate vicinity of the unlawfully occupied properties, and he does not assert that the criminal activity is being perpetrated by persons other than the first and second respondents.²³

[24] The inspection *in loco* revealed a series of connected tunnels running under the properties. It is alleged that these tunnels are used to store dependence-producing drugs

¹⁹ On 28 July 2025.

²⁰ The "N1" national highway.

²¹ In the area of Lower Church Street, Cape Town.

²² Again, this was not disputed

²³ Mr Al-Habsy.

and stolen goods. The first and second respondents have elected not to respond to these allegations at all.²⁴

[25] The first and second respondents do not deny (and, rather, seem to accept, by way of general argument) the third respondent's averments linking the undisputedly alarming rate of criminal activity in the immediate vicinity of the properties to them. The first and second respondents do not make any specific denials of these averments and fail to engage with and dispute the veracity of the third respondent's averments.²⁵

[26] Thus, there is no basis to validly dispute or cast doubt on the veracity or accuracy of the averments in this connection by the third respondent.²⁶

[27] Somewhat strangely, the applicant contends that the third respondent ought to have obtained access to the personal particulars of the arrested persons connected to the properties from the police. The short answer to this is that access to such information is not available to the third respondent. I say this because, as a matter of law, third parties other than an accused person are not entitled to access detailed arrest reports and similar information that form part of a police investigation.²⁷

[28] Moreover, it is unclear from the papers who else might be responsible for the crimes committed in this area, particularly given the extensive damage to the infrastructure immediately surrounding these properties. Self-evidently, the most plausible inference to be drawn, having regard to the lack of proximity to employment opportunities and numerous criminal incidents near the properties, is that the occupation of the properties serves as a base for criminal activity, given that no one other than the unlawful occupiers resides there. Thus, the most reasonable inference is that these incidents are perpetrated by the unlawful occupiers.²⁸

JUST AND EQUITABLE

²⁴ Again, this is left undisputed.

²⁵ Nothing of relevance was suggested on behalf of the first and second respondents.

²⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA) at para 13.

²⁷ *Shabalala and Others v Attorney-General of the Transvaal and Another* 1996 (1) SA 725.

²⁸ It is the only reasonable inference to be drawn in the circumstances,

THE ADMISSIBLE EVIDENCE

[29] The just and equitable enquiry is a fact-specific enquiry. Thus, I must consider the admissible evidence. Regrettably, the first and second respondents failed to place before me detailed, relevant and direct information relating to their personal circumstances, thereby preventing me from properly interrogating the 'justice and equity' of ordering an eviction in these circumstances. This, despite a court-ordered invitation to do so. There is no detailed or specific evidence before me regarding the personal circumstances of the unlawful occupiers.²⁹

[30] Thus, there is a duty on legal representatives in eviction proceedings, as officers of the court, not only to advise their clients of the obligation to make a full disclosure of all relevant personal circumstances but also to actively seek to assist their clients in presenting the necessary information to enable the court to make an informed decision.³⁰

EMERGENCY HOUSING

[31] The first and second respondents contend that an eviction order can never be just and equitable in the absence of an offer of emergency housing if the eviction is likely to result in homelessness. I do not understand this to be the law. Rather, a proper statement of the law (as I understand it) is that where an eviction takes place in circumstances such as these, the court may only order eviction if it is satisfied that it is just and equitable to do so after having regard to all the relevant factors, including, *inter alia*, the circumstances in which the occupiers came to occupy the land and the availability of suitable alternative accommodation.³¹

[32] Thus, the availability of suitable alternative accommodation is indeed a crucial factor in the just and equitable enquiry. But it nevertheless remains only a factor. It cannot, however, be the sole enquiry, nor, notwithstanding its importance, is it absolutely decisive of

²⁹ No allegations dealing with "homelessness" were alleged and no detail was provided.

³⁰ *Luanga v Perth Park Properties Ltd* 2019 (3) SA 214 (WCC) at para 48.

³¹ *City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others* 2012 (6) SA 294 (SCA) at para 15.

the enquiry. Put another way, there cannot be an absolute right to alternative accommodation.³²

[33] Moreover, there is no unqualified constitutional duty on local authorities to ensure that an eviction cannot occur unless alternative accommodation has been made available.³³

[34] What this really means is that, as a matter of pure logic, an eviction in which no alternative accommodation is provided is less likely to be just and equitable than one in which alternative accommodation is provided. I am enjoined to consider all relevant circumstances in every matter in order to determine the appropriate just and equitable order.³⁴

[35] Where a risk that an eviction may result in homelessness, the availability of alternative accommodation is a relevant circumstance that must be taken into account.³⁵

[36] The enquiry to be undertaken is therefore whether, given all the relevant factual, legal and socio-economic circumstances, it is just and equitable to order the eviction of the unlawful occupier. This requires the court to make a value judgment, but it must not do so in a vacuum.³⁶

[37] Thus, an eviction is not, and cannot be, inherently unjust or inequitable simply because emergency housing is not provided. The first and second respondents contend that emergency housing must be provided in every eviction that would result in homelessness. If this were the law, it would transform this multifaceted judicial inquiry into a foregone conclusion.³⁷

[38] In addition, a court must, of necessity, consider the circumstances under which an unlawful occupation occurred. This is so because no one, however dire their circumstances may be, is entitled to take the law into their own hands. In a society in which the rule of law

³² Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC) at para 95.

³³ Port Elizabeth Municipality v Various Occupiers 2005 (1) SA 217 (CC), at para 28.

³⁴ In matter is case specific and the facts must be considered in each matter.

³⁵ Occupiers of Erven 87 and 88 Berea v De Wet N.O and Another 2017 (5) SA 346 (CC) at para 58.

³⁶ All the admissible evidence and information must be considered.

³⁷ The approach would be purely mechanical and a tick box exercise.

prevails, taking the law into one's own hands is thus inconsistent with the fundamental principles of our law.³⁸

[39] The general rule against self-help applies in the context of our constitutional rights in accordance with section 26(3).³⁹

[40] Put another way, preferential treatment obtained through self-help conduct is contrary to the rule of law and our constitutional democracy and must be rejected.⁴⁰

[41] It is not open to this court to close its eyes to the circumstances of this unlawful land occupation, where the facts of this case make it apparent that it serves as a base for criminal activity. If this court were to do so, it would mark the end, not only of the authority of the courts but also of our hard-fought constitutional order.⁴¹

[42] The third respondent's averments regarding the criminal conduct at the heart of the unlawful occupation are not meaningfully disputed. Thus, for this court to order emergency housing in these circumstances would neither be just nor equitable.⁴²

[43] That is not the end of the enquiry, as I need to address the issue of meaningful engagement with the first and second respondents. Self-evidently, the process of engagement required does not mean that the parties need to agree on every issue to be engaged with.⁴³

[44] What is needed is good faith and reasonableness on both sides, and a willingness to listen to and understand the other side's concerns.⁴⁴

[45] I find that (on a reading of the papers), the third respondent did meaningfully engage with the first and second respondents as far as it was able to do in the circumstances of this

³⁸ Chief Lesapo v North West Agricultural Bank and Another 2000 (1) SA 409 (CC) at paras 11, 18 and 22.

³⁹ President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd 2005 (3) SA 3 (CC) at para 49

⁴⁰ Gundwana v Steko Development and Others 2011 (3) SA 608 (CC) at para 45.

⁴¹ The rule of law would be violated.

⁴² The court would be ignoring the criminal harm flowing from the unlawful occupation of these properties.

⁴³ The third respondent exhausted all reasonable avenues of meaningful engagement.

⁴⁴ Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others (Centre on Housing Rights and Evictions and Another, Amici Curiae) 2010 (3) SA 454 (CC) at para 243.

matter for the purpose of establishing, *inter alia*, their personal circumstances. In addition, I issued an order in this connection as my role was more inquisitorial than accusatorial.⁴⁵

[46] After much unnecessary posturing by the first and second respondents' legal representatives, the parties agreed to a conduct order that provided for a final survey of the unlawful occupiers, with the fourth respondent's notional participation.⁴⁶

[47] Regrettably, the first and second respondents continued to take issue with this last survey on precisely the same grounds as in their previous submissions, which did not address the merits of the actual dispute between the parties.⁴⁷

[48] The first and second respondents have a duty to place all their relevant circumstances before the court. In addition, because the applicant seeks the eviction of the first and second respondents, it also bears the onus of placing sufficient information before the court to justify the eviction order it seeks.⁴⁸

[49] In this connection, the applicant can only place before the court what is within its knowledge or what it can reasonably ascertain. Thus, there is also an obligation on the unlawful occupiers to place before the court information sufficient to enable the court to discharge its duty to enquire into all the relevant circumstances for the purposes of the enquiry required.⁴⁹

[50] In this case, the third respondent has acted wisely and cautiously. I say this because it has taken all reasonable steps to meaningfully engage with the unlawful occupiers, has established their personal circumstances as far as it has been able to do so, and has presented the results of the surveys in its answering affidavits.⁵⁰

[51] The first and second respondents' objections to a reasonable process of engagement are regrettable. What must be borne in mind is that the third respondent is not seeking the eviction of the first and second respondents. It is so that the applicant is a state enterprise

⁴⁵ I needed more information.

⁴⁶ The fourth respondent did not meaningfully participate.

⁴⁷ This was unfortunate.

⁴⁸ The applicant attempted to do so.

⁴⁹ *Bekker and Another v Jika* 2003 (1) SA 113 (SCA).

⁵⁰ Extensive surveys were commissioned and undertaken.

and thus has a duty to meaningfully engage with the first and second respondents. I do not hold the view that the applicant is obliged under these circumstances to provide emergency housing to the first and second respondents. I do not agree that the applicant must make available some of its other land for the emergency housing of the first and second respondents.⁵¹

[52] There is a factual dispute over whether the applicant owns 'sufficient available vacant' land that may be used to provide emergency housing for the first and second respondents. In determining whether an eviction is just and equitable, a court is enjoined to consider the available resources in the circumstances. It is undisputed that the third respondent does not currently have sufficient suitable land available for emergency housing for all the unlawful occupiers. Of significance here is that the third respondent has a dedicated department equipped with the resources to manage its immovable properties sustainably, transparently, and lawfully in terms of a variety of legislative instruments.⁵²

[53] A vital component of this sustainable asset management strategy is the right to dispose of unutilised immovable properties once all lawful regulatory processes have been completed.⁵³

[54] As part of this internal assessment process, various departments, in determining whether properties should be retained for municipal use (including for emergency housing), have to consider a range of factors such as zoning and development potential, extent and configuration of the properties, servitudes, encumbrances or title deed restrictions, heritage status, environmental sensitivities, relevant spatial development frameworks and alignments with departmental mandates.⁵⁴

[55] The complexity of housing demands placed at the door of the third respondent underscores why housing-related decisions (including land release, sequencing of projects,

⁵¹ Some land which was identified in Langa which belongs to the applicant.

⁵² Certain regulatory and administrative processes must be followed.

⁵³ This is not the subject of any dispute.

⁵⁴ Again, this is not the subject of any dispute.

budgeting, and the balancing of competing constitutional obligations) are inherently polycentric, difficult and complex.⁵⁵

[56] A lawful process must be followed, while also bearing in mind that many people are on long waiting lists for affordable housing, given their limited resources.⁵⁶

[57] The third respondent's funding regime for emergency housing has undergone a radical change in the last couple of years. Before this, national funding for emergency housing developments was available, and the third respondent developed emergency housing programmes that still exist and are fully utilised, with units now almost all occupied on a continual basis.⁵⁷

[58] This national funding has now been severely restricted for use only for declared disasters. These funding shifts have left the third respondent unable to fund emergency housing for evictees from national grant funding, effectively making it an unfunded mandate.⁵⁸

[59] Because of the increased demand for housing locally and the concurrent obligations of all spheres of government in this respect, and the lack of specific funding from the national government for this purpose, it was agreed that the third respondent could utilise a small percentage of a discrete funded budget to attempt to meaningfully meet its emergency housing requirements.⁵⁹

[60] In addition, the third respondent has aligned itself with a faster process utilising alternative building technology that allows for densification.⁶⁰

[61] Because of this technology, the third respondent suggested using the applicant's vacant property (as identified) to construct several three-storey units on this vacant land. This would be on the assumption that the surrounding community would agree to accommodate the first and second respondents on this land. The applicant, however, does

⁵⁵ As a matter of pure logic this must be so.

⁵⁶ There are many South Africans on waiting lists for affordable housing privileges.

⁵⁷ This was not the subject of any dispute.

⁵⁸ This places enormous financial strain on the third respondent's resources.

⁵⁹ The Human Settlements Development Grant.

⁶⁰ The ABT housing system was developed.

not agree that this vacant land may be used for this purpose. I agree with the applicant on this because what concerns me is that, if this were to come to fruition, the first and second respondents would be given an unfair advantage and jump the proverbial queue at the expense of many lawful affordable housing requests. Thus, I am not in favour of merely swapping one portion of the applicant's land for another portion of the applicant's land to house the first and second respondents in these circumstances.⁶¹

SAFE SPACES

[62] To its credit, the third respondent has developed a model for a specific category of emergency housing for vulnerable homeless people. The abovementioned model has been developed to cater for rough sleepers or transients, in that these homeless people reside on the streets, move on a regular (daily or weekly) basis from one location to another with their possessions. Their structures are not fixed but rather temporary, easily erected and dismantled, and not permanently placed in a particular area.⁶²

[63] This programme has as its approach three pillars, namely rehabilitation, which addresses drug addiction, and treatment for mental or other illnesses, reintegration, which focuses on employment, reunification with families, assisting people to obtain identity documents, developing skills to enable people to lead functional lives and an immediate alternative to living on the streets.⁶³

[64] Simply put, accommodating the first and second respondents in these specific areas would fundamentally undermine the initiative's purpose. The first and second respondents do not reside on the streets and are not transient. They reside in informal structures on a permanent basis. They are not transient homeless persons. Persons who take up this type of accommodation in this programme voluntarily agree to do so based on a set of rules established to facilitate the proper implementation of a structured programme of reintegration

⁶¹ This would also amount to jumping the proverbial existing housing waiting list.

⁶² The Safe Spaces option finds no application in these circumstances.

⁶³ This programme has a specific purpose in mind.

into the community. The rules of this programme require participants to actively and meaningfully engage with the rules and abide by them.⁶⁴

[65] In addition, if either of the first or second respondents wished to use these facilities, nothing would prevent them from doing so, as this is entirely voluntary and no court order is required.⁶⁵

[66] The majority of the first and second respondents are engaged in various forms of informal labour and recycling. They say that they need to remain on the properties they currently occupy to further their employment. This is in circumstances when many of the first and second respondents also declare that they are unemployed.⁶⁶

[67] Our jurisprudence dictates that there is no legal basis for the first and second respondents to contend that they are entitled to emergency housing in a specific area, as the law does not grant evictees a right to emergency housing in a specific location.⁶⁷

THE FOURTH RESPONDENT

[68] The first and second respondents contend that it is completely irrelevant whether they are in this country legally or illegally when it comes to the 'right' to be afforded emergency housing. As a matter of pure logic, it must be so that the legal status of the first and second respondents is a very relevant fact which is necessary to consider for the purposes of a just and equitable enquiry concerning emergency housing.⁶⁸

[69] I say this because where a local authority applies for funding assistance for emergency housing, a community profile covering the broad demographics and situation of the persons affected must be provided. This must, of necessity, include consideration of whether those seeking assistance with an offer of emergency housing are legally or illegally in our country and whether they qualify as subsidy beneficiaries. When this is determined,

⁶⁴ Nothing would prevent any of the respondents individually applying for assistance under this regime.

⁶⁵ It would not be competent to grant a court order in this connection.

⁶⁶ At least 73 of the occupants remain unemployed.

⁶⁷ Joe Slovo (*supra*) at para 254.

⁶⁸ Put another way, it cannot be ignored.

the fourth respondent has a legal duty to intervene when those seeking emergency housing are illegally in our country.⁶⁹

[70] Put another way, the way undocumented foreign nationals are treated in eviction matters that include an offer or determination of emergency housing falls within the remit of the fourth respondent.⁷⁰

[71] A foreign national may not enter or remain in our country unless they hold a lawful visa or permanent residence permit. Failing which, they must depart unless they have authorisation to remain pending an application for status.⁷¹

[72] Persons who have applied for asylum are entitled to remain in the country lawfully until their applications have been finally determined.⁷²

[73] I raised these issues with the legal representative of the fourth respondent during the hearing.⁷³

[74] I believe I was entitled to do so (the fourth respondent filed no papers) as the just and equitable enquiry has some inquisitorial features as the court must be satisfied that any eviction order is just and equitable.⁷⁴

[75] The response by the fourth respondent's legal team was both disappointing and regrettable. The response was that the fourth respondent would act only upon a court order. Thus, the trigger would be an order from the court. However, the illegal status, or otherwise, of the first and second respondents is not an issue before me for determination, and I decline to engage in judicial overreach in this connection.⁷⁵

⁶⁹ In my view, the fourth respondent cannot adopt a supine attitude.

⁷⁰ This is consonant with and respects the provisions of the Immigration Act. (IA)

⁷¹ Section 32 read with section 9 of the IA.

⁷² Section 23 of the Immigration Act read with the relevant provisions of the Refugees Act 130 of 1998 and the regulations thereto.

⁷³ I encouraged the fourth respondent's counsel to address me on these issues. He declined my invitation.

⁷⁴ No real opposition was advanced.

⁷⁵ I was enjoined to determine the eviction or otherwise of the first and second respondents.

[76] That having been said, there is no legal basis to contend that a person who has no entitlement to be or remain in our country is entitled to emergency housing assistance. This would violate the rule of law.⁷⁶

[77] The entitlement of undocumented or illegal foreign nationals to emergency housing is made contingent on the illegal foreigners regularising their status. This is precisely why the fourth respondent was obliged to intervene and issue directions on this matter. It is simply impermissible for the fourth respondent to adopt a supine attitude, which it has done.⁷⁷

INSPECTION IN LOCO

THE NEED FOR THE INSPECTION IN LOCO

[78] The third respondent deemed it appropriate for the court to view the properties to obtain a contextual understanding of the scale of the occupation and the contentions regarding criminality which allegedly takes place from the properties. This is because of a tunnel network wherein drugs and stolen goods are allegedly stored on the properties.⁷⁸

[79] This was also necessary because it informs the just and equitable enquiry, which is essential for purposes of eviction proceedings.⁷⁹

GENERAL OBSERVATIONS

[80] The parties attended a joint inspection *in loco* of the properties subject to the eviction proceedings. All the parties' legal representatives were present during the inspection. The parties were accompanied by several of the third respondent's law enforcement personnel.⁸⁰

[81] The inspection commenced at Area I, then proceeded to Areas G, D, E and F; Area C; Areas A and B; and Area H. Area J was observed from a distance.⁸¹

[82] The parties walked from the gathering point in Area I in a northerly direction on a bus lane, proceeding along the road reserve controlled by the third respondent alongside the

⁷⁶ As a matter of pure logic this would be so.

⁷⁷ I expected more from the fourth respondent.

⁷⁸ I agreed with the submissions in this connection by the third respondent.

⁷⁹ The just and equitable enquiry lends itself to a "inquisitorial" procedure.

⁸⁰ On 16 April 2026.

⁸¹ Area J was too dangerous to enter.

applicant's property. The following observations were recorded for most (if not all) of the properties:

- (a) Ditches were dug into the road reserve, and cut-off cables were observed.
- (b) Cut-off cables for the street light poles were observed.
- (c) There is no fence separating some of the properties from the N1 highway.
- (d) Informal structures were observed immediately adjacent to the N1 highway.
- (e) Litter and other materials were observed in the area around these structures.
- (f) Open drainage culverts allowing open access to the water sources were observed.
- (g) Open manholes used to store items were observed.
- (h) Movable assets identified as belonging to the applicant were observed on one property.
- (i) Ditches on the applicant's property adjacent to the 'My Citi' bus lane were observed.
- (j) Open access to the N1 highway from the applicant's property was observed.
- (k) Cables removed from streetlights along the N1 highway were observed.
- (l) Informal structures were erected adjacent to the boundary of a commercial site.
- (m) Informal structures adjacent to the 'My Citi' bus lane were observed.
- (n) Informal structures in an area identified as a crime 'hotspot' were observed.
- (o) The base of the bridge from the N1 highway that was fire-damaged was observed.⁸²

AREA NOT INSPECTED

[83] The inspection could not proceed in certain of the occupied areas because the law enforcement officials were unable to guarantee the parties' safety and were not comfortable proceeding. Finally, a dilapidated building near a bridge where stripped cables were stored was observed. This was identified as one of the hotspot areas where cyclist attacks take

⁸² This was not disputed.

place, and extensive damage to the safety barrier fencing around this bridge was observed. The first and second respondents' legal representatives objected to some of these observations.⁸³

THE ADMISSION OF THE FURTHER AFFIDAVIT

[84] The third respondent sought leave to file a further affidavit and such leave was granted. The reason for this, so they say, is that the applicant called for a response from the third respondent as to why certain properties owned by the third respondent (identified by the applicant in reply) were not suitable for emergency housing and had not been offered by the third respondent for this purpose.⁸⁴

[85] Generally, if I exercise my discretion to allow new matter in a replying affidavit, then an opportunity should be afforded to the respondent to address this new matter in a further affidavit.⁸⁵

[86] Where allegations are made in a replying affidavit which call for a response, a respondent is required to seek the leave of the court to file a further affidavit to place its limited response before the court.⁸⁶

[87] The applicant in this case effectively issued a challenge to the third respondent. In addition, the information in the further affidavit was material and helpful in enabling the court to reach a just and equitable determination of the issues. There was no prejudice to any party in the admission of the further affidavit, as it did not result in a postponement of the hearing. It was in the interests of justice that the further affidavit was admitted.⁸⁷

CONCLUSION

[88] Aside from the unlawful conduct by the first and second respondents, the consequence of this conduct amounts to a constitutional deprivation. I say this because the

⁸³ Technical objections were raised.

⁸⁴ Again, I agreed with the third respondent's submissions in this connection.

⁸⁵ *Mostert v FirstRand Bank Ltd t/a RMB Private Bank* 2018 (4) SA 443 (SCA) para 13.

⁸⁶ *Tantoush* (supra) at paras 50 and 51.

⁸⁷ Again, the procedure to be adopted lends itself to a "inquisitorial" procedure.

conduct of the first and second respondents has arbitrarily deprived the applicant of its constitutionally secured property rights.⁸⁸

[89] Thus, the enquiry should focus primarily on the reasonableness of the third respondent's stance that land could not be made available for the relocation of the first and second respondents.⁸⁹

[90] In this case, there is no direct challenge to the reasonableness of the third respondent's housing programme or policies. In the context of any order for the provision of emergency accommodation, the legal status of the first and second respondents is also a relevant fact which is necessary to consider for the purposes of a just and equitable enquiry.⁹⁰

[91] In the present matter, many of the first and second respondents have, on affidavit, conceded that they are not lawfully in this country. In addition, what was surprising was that the first and second respondents relied on very vague and bald assertions of impecuniosity and homelessness. In the absence of a clear and reasoned basis for alleging homelessness, there is no legal basis for a claim (under these circumstances) for the first and second respondents for alternative accommodation.⁹¹

[92] In some cases, it seems to me that the occupation of some of these properties was deliberate and motivated by their location. In this case, not so much for economic opportunities but for criminal activity. Thus, much of this occupation arose not from compulsion but from choice.⁹²

[93] The first and second respondents effectively jumped the queue to assert an immediate, priority right to accommodation by unlawful means at a location of their choice. This is not the sort of conduct that may be countenanced by the court.⁹³

⁸⁸ Section 25 of the Constitution of the Republic of South Africa, 1996.

⁸⁹ It could not be advanced that the third respondent was unreasonable in any manner.

⁹⁰ As a matter of pure logic it must constitute a relevant factor.

⁹¹ No evidence was advanced concerning "homelessness".

⁹² This is also a relevant factor to be considered.

⁹³ This was not disputed.

[94] The consequence of this is to arbitrarily denude the applicant as the owner of its constitutional property rights. Put another way, the first and second respondents unlawfully occupy land to which they have no legal title, doing so to improve their own conditions while disregarding the applicant's rights.⁹⁴

[95] This puts our constitutional project at risk and violates the rule of law.⁹⁵

[96] The third respondent has provided a reasonable and adequate explanation for its current inability to provide alternative accommodation to the first and second respondents. In summary, the third respondent proactively plans for emergencies and has explained that to meet its obligations in respect of emergency housing, it has established several emergency accommodation areas, all of which are currently fully subscribed and unable to accommodate any other households. It cannot be seriously disputed that the third respondent faces a massive emergency backlog, and it is operating in a context of very limited resources.⁹⁶

[97] The third respondent contends the facts of this case militate against ordering emergency housing, that an order of eviction is nevertheless just and equitable, and that its position is consistent with our settled jurisprudence. I agree, considering the peculiar circumstances of this case.⁹⁷

[98] In addition, many of the occupiers have conceded under oath that they are not in this country legally. In summary, the third respondent submits that, on all the evidence presented, it would be just and equitable to order an eviction and that the third respondent not be directed to provide the first and second respondents with emergency accommodation. Again, I agree.⁹⁸

ORDER

[99] The following order is made:

⁹⁴ The applicant is entitled to legal protection in these circumstances.

⁹⁵ This cannot be disputed.

⁹⁶ This was not disputed.

⁹⁷ The facts of this case are specific and peculiar.

⁹⁸ To grant the first and second respondents emergency accommodation would not be just and equitable in these circumstances.

1. The **first and second respondents** (and all those holding through or under them) are evicted and ordered to completely vacate and restore vacant occupation to the applicant of the following properties:
 - 1.1 Portion of the remainder of Erf 1[...], Cape Town at Woodstock.
 - 1.2 Erf 1[...]2, Cape Town at Salt River, and
 - 1.3 Erf 1[...]3 (a portion of Erf 1[...]), Cape Town at Woodstock.(the 'properties').
2. The **first and second respondents** are ordered to comply with the provisions of the abovementioned order by no later than **30 September 2026**.
3. In the event of the **first and second respondents** failing to timeously comply with the orders abovementioned, the appropriate Sheriff of the High Court (with the assistance of the South African Police Service, if necessary and appropriate) is hereby ordered to evict the first and second respondents and all those holding through and with them (together with their possessions and including any structures unlawfully erected on the properties) and restore the vacant occupation of the properties to the applicant
4. There shall be no order as to costs.

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
