

COURT ONLINE COVER PAGE

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

CASE NO: **2025-063967**

In the matter between:

Ilke Andrea Kearns

Plaintiff / Applicant / Appellant

and

**THOSE PERSONS IDENTIFIED IN
ANNEXURES F TO F TO THIS
APPLICATION WHOSE FULL AND
FURTHER PARTICULARS ARE UNKNOWN TO THE
APPLICANT AND WHO ARE
UNLAWFULLY IN, CITY OF CAPE
TOWN**

Defendant / Respondent

Notice (Other)

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ELECTRONICALLY SIGNED
BY:

**Registrar of The High Court,
Western Cape Division, Cape
Town**

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 10256, CAPE TOWN AT WOODSTOCK, ERF 15201 CAPE TOWN AT SALT RIVER AND ERF 164070 (A PORTION OF ERF 10256) 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 10256, CAPE TOWN AT WOODSTOCK, ERF 15201 CAPE TOWN AT SALT RIVER AND ERF 164070 (A PORTION OF ERF 10256) CAPE TOWN AT WOODSTOCK

Second Respondent

THE CITY OF CAPE TOWN

Third Respondent

THE MINISTER OF HOME AFFAIRS

Fourth Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that the first and second respondents represented by the Ndifuna Ukwazi Law Centre (“the NU Respondents”) hereby apply, in terms of section 16 and 17 of the Superior Courts Act 10 of 2013, read with Uniform Rule 49(1)(b), for leave to appeal to the Supreme Court of Appeal, alternatively the Full Court of this Division, against the whole of the judgment and orders delivered by the Honourable Justice Wille on 21 July 2026 (“the judgment”).

Leave to appeal directly to the Supreme Court of Appeal is sought in terms of section 17(6)(a) because the appeal raises questions of law of general public importance concerning *inter-alia* access to emergency shelter by undocumented foreign nationals and the circumstances under which it is just and equitable for a Court to grant an organ of state a mass eviction order against hundreds of occupiers without any provision for emergency housing for persons who may be rendered homeless upon the execution of such an order.



GROUNDS OF APPEAL

1. The learned Judge erred, with respect, in fact and/or in law in the respects set out below. The grounds are inter-related and are relied upon both individually and cumulatively.

Ground A: large scale eviction order granted without any emergency shelter

2. The Court erred in finding that it was just and equitable to grant an organ of state an order evicting hundreds of persons from their homes without provision for any form of emergency shelter at all for anyone, including children, disabled persons and the elderly, who would most likely be rendered literally homeless upon the execution of such an order.

3. The Court failed to have due regard to the practical, social and humanitarian consequences of executing a mass eviction and demolition order against hundreds of indigent occupiers who would have nowhere to go. The Court in this regard misdirected itself by failing to consider the constitutional obligation on courts to ensure that orders are executed humanely and in manner that prevents wide scale disruption and social upheaval.

Ground B: allegations of criminal conduct

4. The Court erred in finding that the most plausible and reasonable inference to be drawn from the evidence was that incidents of alleged criminal conduct on and near the properties are perpetrated by the unlawful occupiers including the NU Respondents. The Court failed to recognise that the City had not provided any admissible evidence, documentary or otherwise, establishing any link whatsoever between the NU Respondents and alleged criminal activities on or near the properties.
5. The Court misdirected itself in finding that the inspection in loco had revealed a series of connected tunnels running under the properties which are allegedly used to store dependence-producing drugs and stolen goods and that the NU respondents had elected not to respond to these allegations "at all". The joint minute of the inspection in loco agreed to by the parties makes no mention of the tunnels or the allegations relied on by the Court in making this finding.
6. The Court erred in concluding that there had been no material engagement with the allegations of criminal conduct save for bald denials and that the NU Respondents had not put forward countervailing evidence to address these allegations by the City. In reaching this finding, the Court impermissibly and contrary to the established rules of motion proceedings, imposed an onus on the NU Respondents to prove a negative.



7. The Court erred in requiring the NU Respondents to provide countervailing evidence to wholly speculative allegations by the City, which allegations in any event failed to demonstrated any link between any of the NU Respondents and the alleged incidents of criminal activity on the properties.
8. The Court erred in finding that the NU Respondents had not denied and “seem to accept” the City’s averments linking the rate of criminal activity in the immediate vicinity of the properties to them. The NU Respondents had expressly denied any evidentiary link between them and the specific criminal conduct alleged by the City. The NU Respondents had disputed on oath the attribution to them of criminal conduct, without any clear evidence, as being speculative and discriminatory. The Court’s findings to the contrary are not supported by the evidence and constitute a misdirection.



Ground C: absence of information relating to personal circumstances of the occupiers

9. The Court erred in finding that there was no detailed or specific evidence before the Court regarding the personal circumstances of the unlawful occupiers. The Court failed to recognise that the applicant (Transnet) had provided the Court with detailed personal circumstances information relating to inter-alia the names, nationality, age, gender, language of the occupiers and special categories of the occupiers (female headed households, minor children, elderly occupiers and disability status).
10. The City and the Department of Home Affairs had also placed information before the Court relating to the personal circumstances of the occupiers. The NU Respondents had provided detailed information relating to the their personal circumstances both in their supplementary answering affidavit and on affidavit pursuant to the order granted by the Court on 16 April 2026.

11. The Court erred in concluding that there was an absence of information relating to the personal circumstances of the occupiers and that this had prevented the Court from properly interrogating whether the granting of an eviction order in these circumstances would be just and equitable.

Ground D: vague assertions of impecuniosity and homelessness

12. The Court erred and misdirected itself in finding that the NU Respondents had relied on very vague and bald assertions of impecuniosity and homelessness and that there was no legal basis for a claim for alternative accommodation in the absence of a clear and reasoned basis for alleging homelessness.



13. Transnet, on its own version, had contended that the unlawful occupiers were a group of people who were generally homeless and unemployed. The affidavit evidence relating to the condition of the housing and structures on the properties, the personal circumstances of the occupiers and the evidence observed during the inspection in loco was such that the Court ought to have concluded that it was overwhelmingly probable that the occupiers were extremely poor and at risk of being rendered homeless by an eviction order.
14. The Court failed to consider and give sufficient weight to the contents of annexure AL2 to the NU Respondents supplementary answering affidavit. The Court erred in concluding that the evidence of the NU Occupiers regarding their personal circumstances, impecuniosity and their risk of being rendered homeless if evicted, was vague, unclear and constituted bald assertions without any evidentiary value.

Ground E: availability of land for emergency housing

15. The Court erred in finding that it was undisputed that the City did not have sufficient suitable land for emergency housing for all the unlawful occupiers. The Court ought to have found that it was clear from the evidence that this allegation had been disputed by both the occupiers and Transnet.

16. The Court erred in finding that the use of vacant land owned by Transnet for emergency housing purposes would amount to impermissible queue jumping at the expense of many lawful affordable housing requests. In this regard, the Court failed to have sufficient regard to the evidence relating to the engagements between the City and Transnet regarding the use of Transnet owned land for emergency housing for the occupiers and the City's contentions that the obligation to provide land for emergency housing does not rest on the City alone.

Ground F: non-entitlement to emergency housing assistance

17. The Court erred in finding that undocumented foreign nationals in South Africa have no entitlement to emergency housing assistance and that such entitlement would violate the rule of law.
18. The Court erred in failing to conclude that a general exclusion of undocumented foreign nationals from emergency housing assistance in circumstances where such persons would be rendered homeless by an eviction order, would be inconsistent with the National Housing Code, the right to equal protection and benefit of the law under section 9 of the Constitution, the right of everyone to have access to adequate housing under section 26(1) of the Constitution and South Africa's non-discrimination obligations under international human rights law.
19. The Court erred in failing to conclude that undocumented foreign nationals are entitled to emergency housing assistance on conditions prescribed by the Department of Home Affairs on a case by case basis. The Court in this regard failed to consider whether an order in the terms granted in *Chapelgate Properties 1022 CC v Unlawful Occupiers of Erf 644 Kew and Another* 2017 (1) SA 403 (GJ) ("Chapelgate") would be just and equitable in the circumstances of this particular case.



20. The Court misdirected itself in finding that due to the status of certain respondents as undocumented foreign nationals, none of the NU Respondents were entitled to emergency housing assistance. The Court made this finding contrary to the undisputed evidence that the NU Respondents included persons who are in fact South African citizens.

SECTION 17(1)(a)(ii): COMPELLING REASONS

21. In addition to the appeal enjoying reasonable prospects of success, compelling reasons exist to grant leave to appeal because the appeal raises:

- 21.1 the proper interpretation of Chapter 12 of the National Housing Code, on which conflicting High Court authority now exists following *Chapelgate* and the present judgment insofar as these judgments relate to the entitlement of undocumented foreign nationals to emergency housing assistance;
- 21.2 important questions concerning meaningful engagement, consultation and the provision of emergency shelter to affected persons in the context of development-based evictions and displacement of persons at the instance of an organ of state;
- 21.3 constitutional issues concerning the right of access of adequate housing and non-discrimination on the basis of immigration status in access to emergency shelter by persons facing evictions which would result in homelessness and other violations of fundamental human rights.



RELIEF SOUGHT

22. **WHEREFORE** the NU Respondents pray for an order in the following terms:

- 22.1 Leave is granted to the NU Respondents to appeal to the Supreme Court of Appeal, alternatively to the Full Court of this Division, against the whole of the judgement and orders of 21 July 2026.
- 22.2 In terms of section 17(6)(a) of the Superior Courts Act 10 of 2013, that the appeal be heard by the Supreme Court of Appeal;
- 22.3 The costs of this application are costs in the appeal;
- 22.4 Further and/or alternative relief.

DATED at CAPE TOWN on this 12th day of AUGUST 2026




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