



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 121/2024

In the matter between:

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

FIRST APPLICANT

**MMC FOR HOUSING
CITY OF JOHANNESBURG**

SECOND APPLICANT

and

NAKAMPE RECTOR SEALE

FIRST RESPONDENT

THE RABIE RIDGE COMMUNITY

SECOND RESPONDENT

Neutral citation: *The City of Johannesburg Metropolitan Municipality and Another v Seale and Another* (121/2024) [2025] ZASCA 156 (20 October 2025)

Coram: MBATHA ADP and MOKGOHLOA, MATOJANE, GOOSEN and KGOELE JJA

Heard: 29 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 11:00 on 20 October 2025.

Summary: Application of s 17(2)(f) of the Superior Courts Act 10 of 2013 – existence of two orders issued by this Court on application for leave to appeal sufficient to establish jurisdiction to reconsider – no reasonable prospects of success on appeal and no compelling reasons to grant leave to appeal – prior orders of this Court set aside – application for leave to appeal dismissed with costs.

ORDER

On application for reconsideration: referred by Molemela P in terms of s 17(2)(f) of Superior Courts Act 10 of 2013:

1 The orders of this Court, dated 29 November 2023, issued pursuant to the applicants' application for leave to appeal against the order of the Gauteng Division of the High Court, Pretoria, dated 25 August 2023, are set aside.

2 The applicants' application for leave to appeal is dismissed.

3 The applicants are to pay the costs of the application for reconsideration and the costs of the application for leave to appeal.

JUDGMENT

Goosen JA (Mbatha ADP and Mokgohloa, Matojane and Kgoele JJA concurring)

[1] On 14 July 2023 and again on 21 July 2023, officials of the first applicant, the City of Johannesburg Metropolitan Municipality (the City) together with contracted security personnel, demolished informal shacks and shelters that had been erected on a portion of the Allandale Farm (the property), adjacent to the Modderfontein Road in Johannesburg. The property, owned by the City, has been earmarked for the development of low-cost housing. The property has been the scene of numerous and oft-repeated

land invasions and occupation by persons seeking housing or shelter. The City has, in response to this state of affairs, conducted numerous preventative actions involving the demolition of structures; the removal of building materials and belongings of occupiers; and, in some instances, the destruction of shelters or materials used to erect shelters.

[2] The events of 14 and 21 July 2023 were, at the time, the latest of such actions by the City. The conduct of the City prompted the affected persons, some 292 individuals who now constitute the respondents, to seek legal assistance. As a result, the respondents launched an urgent application before the Gauteng Division of the High Court, Pretoria (the high court) in which they claimed immediate relief (Part A) and further final relief (Part B). The immediate relief included an order declaring that the evictions were unlawful and unconstitutional. In addition, they sought an order restoring their possession of the demolished structures; payment of constitutional damages; prohibiting their eviction without an eviction order; prohibiting damage to their property; and that the City be restrained from intimidating, threatening or harassing the respondents.

[3] The City opposed the application. Its defence was premised upon the enforcement, or implementation, of a court order which it had obtained in March 2017 (the Sutherland J order).¹ The City contended that its conduct was authorised by the Sutherland J order; that it had not evicted any persons from the property; and that the demolition and removal of structures or destruction of building materials was directed at preventing the unlawful invasion and

¹ The order was issued by Sutherland J on 22 March 2017 under case number 2017/05167.

occupation of the property. It contended that it had only acted against persons who were in the process of invading the property and that such persons were not, in fact, in occupation of the structures or property when the City acted.

[4] In this regard, the City explained that since before 2017, when the land was earmarked for low-cost housing development, land invasions had occurred regularly. Individuals who apparently anticipated securing a preference in low-cost housing development would erect minimal structures on the property to establish a semblance of permanent occupation. This prompted the City to bring an application in the high court to interdict persons who intended to invade the land from doing so and to authorise the prevention of such invasion. That application culminated in the Sutherland J order. After that order was issued, the City established security patrols to discourage invasions, regularly monitored the area, and embarked on numerous raids, similar to those that occurred in July 2023.

[5] On 23 August 2023, after hearing the application brought by the respondents, the high court granted the following order against the City, with costs on the scale between attorney and client:

‘

2. The evictions effected by the [City] at Farm Allandale are unlawful and unconstitutional.
3. The [City is] to restore the *status quo ante* [the position as it was before] of the [respondents], which includes constructing emergency temporary accommodation for the [respondents] whose shelters have been demolished at the time of the hearing of this matter and who still require them, within 72 hours of granting this order.
4. Should the [City] not be able to restore possession as per (3), then the [City] must pay R1500 per shack to the [respondents] within 72 hours of granting this order to enable them to do so themselves. The attorneys of the [respondents] are to facilitate such a process.

5. The [City] and or any of the [City's] representatives are barred from evicting or seeking to evict the [respondents] without an eviction order.
 6. The [City is] to refrain from intimidating, threatening, harassing and / assaulting the [respondents].
 7. The [City is] to refrain from causing any damage to the [respondent's] property, including but not limited to their personal belongings and building materials.
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[6] The City applied for leave to appeal against the order. The application was refused on 25 August 2023. An application for leave to appeal was filed with this Court. On 29 November 2023, the application (per Petse JA and Chetty AJA) was dismissed. An application for reconsideration in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (the Act) was lodged on 20 February 2024 (the reconsideration application). On 9 May 2024, the President of this Court, Molemela P, referred the decision dismissing the application for leave to appeal to the Court for reconsideration and, if necessary, variation. The referral also contained the usual order that the parties should be prepared to address the merits of the appeal, if required.

The case for reconsideration

[7] The main thrust of the City's application for reconsideration is the existence of two orders issued by this Court in dismissing its application for leave to appeal. The orders were both issued on 29 November 2023. They are in standard form for orders issued in applications for leave to appeal. The first order stated that the application was dismissed with costs on the grounds that the requirements for special leave to appeal had not been met. The second order, apparently issued by the Registrar later that day, provided that the

application for leave to appeal was dismissed on the grounds that there were no reasonable prospects of success and no compelling reasons why leave should be granted. In response to an enquiry made by the legal representatives of the City, the Registrar stated that the second order corrected a ‘typo’. Nothing else appears in the record to explain the issuing of the two orders.

[8] The City contended that the existence of the first order gives rise to a concern that a higher threshold test might have been applied in consideration of its application for leave to appeal. It pointed out that upon granting an order, a court is *functus officio*. It may only recall, alter or vary its order in certain limited, but well-established, circumstances. In the absence of an explanation from the Court itself, the issue of the second order cannot cure the apparent misdirection in the adjudication of its application for leave to appeal.

[9] The general rule that applies to the pronouncement of court orders is that a court itself has no authority to correct, alter or supplement the order. It is *functus officio*.² The time of issuing the order by the Registrar plays no part in determining the status of the order.³ There are exceptions to this general rule. In *Firestone South Africa (Pty) Ltd v Gentiruco AG*,⁴ this Court set out four instances in which a court might alter, vary or supplement its order. They are that:

(a) The court may supplement its order in respect of an accessory or consequential matter (such as costs or interest) which the court had overlooked or inadvertently omitted to grant.

² *West Rand Estates, Ltd v New Zealand Insurance Co Ltd* 1926 AD 173 at 178. See also *De Villiers and Another NNO v BOE Bank Ltd* [2004] 1 All SA 481 (SCA); 2004 (3) SA 459 (SCA) para 7.

³ *Naidoo v Naidoo* 1948 (3) SA 1178 (W) at 1180. See also *Ex Parte Nel* 1957 (1) SA 216 (N) at 218E-F.

⁴ *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 306F-307H.

(b) The court may clarify its judgment or order if, on a proper interpretation, the meaning remains obscure or ambiguous or otherwise uncertain, so as to give effect to its true intention; provided that it does not alter the sense and substance of the judgment or order.

(c) The court may correct clerical, arithmetic or other errors in its judgment or order so as to give effect to its true intention. This exception is confined to the mere correction of an error in expressing the judgment or order and does not extend to altering its intended sense or substance.

(d) Where counsel has argued the merits and not the costs, but the court, in granting judgment, also makes a costs order, the court may thereafter correct, alter or supplement that order.

[10] Whether the exception in (c) might apply if the Court inadvertently issues a substantive order which does not accurately reflect its true intention, so that it might issue the correct substantive order, need not be decided. In the present matter we do not know the circumstances in which the second ‘corrected’ order was issued. More, in my view, would be required than the explanation proffered by the Registrar in this case.

[11] It must therefore be accepted that an order was issued which suggests that a higher than required threshold test might, in the perception of the City, have been applied to adjudicate its application for leave to appeal. The language of s 17(2)(f) requires that the President may exercise her discretion to refer the matter if ‘*a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute*’. The application of a more stringent test than required meets this requirement. It follows, therefore, that the jurisdictional requirement for reconsideration is met.

Reconsideration of the decision to refuse leave to appeal

[12] Upon reconsideration of the application for leave to appeal, this Court steps into the shoes of the two judges who dealt with the application and may grant or refuse the application. If it grants leave, it will vary the order ‘dismissing the application to one granting leave either to this Court or the relevant high court’.⁵ The test to be applied is that which ordinarily applies to the application that served before the two judges who considered the application. Thus, if the application is one for special leave, the requirements for such leave must be established. If it is one for leave to appeal brought in terms of s 17(2)(b), as is the case in the present matter, leave to appeal will only be granted if it is found that there is a reasonable prospect of success on appeal, or there is some other compelling reason why the appeal should be heard.

[13] As indicated in the summary of facts above, there is no dispute that the City demolished structures which had been erected on the property, that it removed building materials and certain belongings of the affected persons and, in some instances, destroyed certain materials. The City contended that it had not thereby ‘evicted’ any persons from the property on the basis that the affected persons were not in fact ‘occupiers’. They were, according to the City, persons who intended to invade and occupy the property, who were prevented from doing so by the actions of the City. The Sutherland J order, so it was suggested, authorised this preventative conduct.

⁵ *Motsoeneng v South African Broadcasting Corporation Soc Ltd and Others* [2024] ZASCA 80; [2024] JOL 64831 (SCA); 2025 (4) SA 122 para 14.

[14] The final order, which was granted by Sutherland J on 22 March 2017, was granted in default of any opposition. The parties cited in that application as the first respondents to whom the order would apply are described as unknown individuals *who intend to invade* the property. The second respondents are described as the unknown people *who invaded* the property.

[15] It is only necessary to quote paragraphs 2 and 3 to appreciate its import and effect.⁶

‘2. The Respondents be interdicted from invading and taking possession of the property known as the Remaining Extent of farm Allandale 10 Registration Division IR, Province of Gauteng measuring 127,0696 hectares (“the property”) and more specifically the following:

2.1 from invading and erecting houses/structures on the said property;

2.2 from erecting houses/structures on the property;

2.3 from attempting to prevent the Sheriff of the above Honourable Court and/or the Johannesburg Metro Police and/or the South African Police and/or any other person appointed by the Applicant to give effect to this court [order] from carrying out the duties in preventing illegal invasion of the said property;

2.4 carrying out their duties in preventing the unlawful invasion and/or occupation of the said property;

2.5 taking any steps to prevent the construction of any structures on the properties.

3. That the Sheriff of the above Honourable Court and/or the Johannesburg Metro Police and/or the South African Police Services or any other person appointed by the Applicant be mandated and requested to assist the Applicant in its activities and endeavours to prevent the unlawful invasion and/or occupation of the property and take the necessary steps preventing same.’

⁶ Paragraph 4 deals with service of the order and is irrelevant for present purposes.

[16] The order is remarkable in several respects, not least that it was granted against two sets of unidentified persons. To the extent that there existed, back in March 2017, a group of unidentified persons who had already invaded the property (the so-called second respondent), none of orders which intended to prohibit them from invading could have had any application. Furthermore, paragraphs 2.4 and 2.5 are nonsensical as prohibitions intended to apply to the unidentified respondents.

[17] Counsel for the City conceded, correctly, that the only source of authorisation for the City's conduct must be found in paragraph 3 of the order. The plain language of paragraph 3 authorises the named persons and entities 'to assist the [City] in its endeavours to prevent the unlawful invasion and/or occupation of the property'. What those 'endeavours' are or might involve is not specified. Counsel further conceded that the order, in its terms, could only authorise *lawful endeavours* or the taking of *lawful steps* to prevent invasions or unlawful occupation. However, it was submitted that paragraph 3 must be read as authorising the City to enforce the prohibitions set out in paragraph 2. On this basis, it was suggested that the authorised prevention of invasion and occupation extended to the destruction or removal of structures built in contravention of the prohibitions.

[18] In my view, that would be an extraordinary construction of the ambit of the order. It would place the City in the position of the party responsible for preventing a breach of the prohibitory orders, thereby enforcing the terms of the prohibitory interdict. The terms of paragraph 3 do not provide for this. In any event, the order does not, upon any construction, authorise the taking of any steps against persons who had already invaded or occupied the property

or had already erected structures or shelters, even if contrary to the prohibitions contained in paragraph 2. The order does not serve to negate or override statutory and constitutional protections afforded to persons in the position of the respondents. Upon this basis, it could not serve as authorisation for the actions taken by the City on 14 and 21 July 2023.

[19] The contention that the actions of the City did not constitute an eviction of the persons concerned is without merit. The respondents annexed a series of photographs taken of the scene of the City's actions to remove them from the property. They were not seriously challenged. In any event, the high court conducted an inspection *in loco* in order to apprise itself of the circumstances. The photographs depict piles of building materials from demolished structures. They also show persons with personal belongings and household goods. These images are difficult to reconcile with the claim, made by the City, that no action was taken to demolish established shelters and structures. The high court accordingly cannot be faulted in its conclusion that the City's actions constituted an unlawful eviction of the respondents who were occupying the property at the time.

[20] It is necessary to say a final word about the Sutherland J order. It was suggested that the order is valid and enforceable until it is set aside. That is certainly correct as a general proposition of law. Whether the order, in its form, was one which could competently be made in the case that was then before the high court, is not a matter that arises in this case. The order was granted in the context and circumstances of the particular case. The fact that it prohibited actions by a group of persons, then unidentified, does not mean

that the order now stands as a form of edict applicable to a class of persons who were not at the time parties to the litigation.

[21] In *Kayamandi Town Committee v Mkhwaso and Others*,⁷ the attributes of a court order were explained as follows:

‘One of the tests, of which there are several, for determining whether a particular act is to be classed as a judicial act is whether there a *lis inter partes* (Wiechers *Administrative Law* at 96).

In De Smith’s *Judicial Review of Administrative Action* 4th ed at 83, the author calls this “perhaps the most obvious characteristic of ordinary Courts”. It is, as remarked in *Saskatchewan Labour Relations Board v John East Iron Works Ltd* [1949] AC 134 at 149: “...a truism that the conception of the judicial function is inseparably bound up with the idea of a suit between parties, whether between the Crown and subject or between subject and subject, and that it is the duty of the Court to decide the issue between those parties.”

These *dicta* proclaim that there must be parties to a lawsuit...⁸

[22] The court went on to state that:

‘A failure to identify defendants or respondents would seem to be destructive of the notion that a Court’s order operates only *inter partes*, not to mention questions of *locus standi in iudico*. An order against respondents not identified by name (or perhaps by individualised description) in the process commencing action or (perhaps in very urgent cases, brought orally) on the record would have the generalised effect typical of legislation. It would be a decree and not a Court order at all.’⁹

⁷ *Kayamandi Town Committee v Mkhwaso and Others* 1991 (2) SA 630 (C).

⁸ *Ibid* at 634B-D.

⁹ *Ibid* at 634H-I. See also *Illegal Occupiers of various erven, Philippi v Monwood Investment Trust Company (Pty) Ltd and Others* [2002] 1 All SA 115 (C) at 122; *City of Cape Town v Yawa* [2004] JOL 12519 (C) at 5, [2004] 2 All SA 281 (C) at 283-284 where the court held:

‘However, it seems to me that there is a much more fundamental problem with this aspect of the application. The persons who comprise or might comprise the twentieth respondent, namely persons *intending* to unlawfully to occupy the erf, are not in any real sense an ascertainable group. In this instance there is not an “identified or identifiable group of persons who are properly before the court and against whom an effective order can be made” (*Monwood* at paragraph 15). There is no prospect that they will be identified during the course of the proceedings, as happened in the *Communicare* case ... The identity of the members of the

[23] In *Zulu and Others v eThekweni Municipality and Others*,¹⁰ the Constitutional Court considered an order framed in terms similar to the Sutherland J order. The central question before the Constitutional Court concerned the standing of persons, not identified as parties in the proceedings in the high court, to intervene and thereby challenge an interim order that had been granted by the high court. The interim order authorised the eThekweni Municipality to take all reasonable and necessary steps to prevent persons from invading the property concerned, from constructing any structures, or from placing materials upon the property. It authorised the removal, dismantling or demolition of structures built after the date of the order.¹¹ The order also interdicted and restrained *any persons* from invading or occupying or undertaking any construction on the property. Zondo J, writing for the majority, found that the order, in its effect, amounted to an eviction order. It was open to be interpreted as authorising the municipality to prevent ‘ongoing invasion’ affecting persons who had already occupied the land. Upon that basis, the Constitutional Court concluded that the applicants enjoyed standing and were entitled to intervene in the proceedings.¹²

[24] In a minority judgment, Van der Westhuizen J (with Froneman J concurring) addressed the constitutionality of the interim order. Van der Westhuizen J reasoned that since the order constituted an eviction order and

twentieth respondent will change from day to day. Some of those currently intending to occupy the land may decide not to do so. Some people, who today have no intention to occupy the land, may subsequently decide to do so.’ (Citations omitted.)

¹⁰ *Zulu and Others v eThekweni Municipality and Others* [2014] ZACC 17; 2014 (4) SA 590 (CC); 2014 (8) BCLR 971 (CC) (*Zulu*).

¹¹ It is noteworthy, however, that this order specified preventative measures that might be taken, unlike the order at issue here.

¹² *Ibid* paras 24-29.

it was common cause that the mandatory requirements of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE) had not been met prior to it being issued, the order was unlawful and unconstitutional. It was necessary to reach that issue since there was continuing conduct on the part of the eThekweni Municipality, which relied upon the lawfulness of the interim order.¹³ The majority did not agree that the issue had been reached. They found that it could be addressed in the high court proceedings in which the applicants had been granted leave to intervene.¹⁴

[25] For present purposes, the following passages from the judgment of Van der Westhuizen J are apposite because they resonate with the facts of this case and they speak to the admitted conduct of the City and its continuing reliance upon the Sutherland J order:

‘...The interim order authorises evictions – and has been used as authority for at least three evictions – without providing the unlawful occupiers a hearing and ensuring that they were protected to the extent required by law. An order of this nature deprives unlawful occupiers of rights enshrined in the Constitution and recalls a time when the destitute and the landless were considered unworthy of a hearing before they were unceremoniously removed from the land where they had tried to make their homes.

At the very least, an eviction order could not lawfully have been issued without judicial determination that it was just and equitable to do so, considering all relevant circumstances and having allowed affected persons, especially the most vulnerable, to present evidence of their circumstances in a hearing. The order was issued without consideration of those persons whom it would impact, in apparent contravention of PIE and in direct violation of underlying constitutional rights. I would find that the interim order is unlawful and therefore unconstitutional on the basis that it negates the Madlala Village residents’ rights

¹³ *Zulu* paras 44 and 45, 47 and 48.

¹⁴ *Ibid* per Moseneke ACJ (with whom a majority concurred), paras 73-75.

(*as well as those of unnamed others*) under PIE and s 26(3) of the Constitution.¹⁵
(Emphasis added.)

[26] We are not required to determine that the Sutherland J order is unconstitutional. We are required only to determine whether, given its provenance, its ambit and its effect, it might justify the conduct of the City on 14 and 21 July 2023. In my view, it plainly cannot. Since the City premised its defence of the application upon the Sutherland J order, it follows that the City enjoys no reasonable prospects of overturning the order of the high court on appeal.

[27] That would ordinarily be dispositive of the application for leave to appeal, which now serves before this Court. There is, however, one further aspect to consider. Counsel for the City pressed the fact that the high court had granted an order directing payment of an amount of R1500 to each of the respondents by way of compensation. It was submitted that the high court had made an order for constitutional damages which was not sought at the stage of adjudication of part A of the application. Based upon this, counsel submitted that there are compelling reasons why leave to appeal ought to be granted.

[28] I am unable to agree with the manner in which counsel characterised the order granted by the high court. In paragraph 52 of the high court judgment, the learned Judge records the following:

‘I, therefore, grant the order for restoration as set out. Should the Respondents, for whatever operational reasons, not be able to do the reconstructions themselves, they should pay the

¹⁵ *Ibid* per Van der Westhuizen J, paras 44 and 45. (Citations Omitted.)

Applicants R1500 per shelter to enable them to restore the property themselves. The order for the payment of this money is part of the order of restoration and should not be viewed as damages – it is part of the duty of restoration.’

[29] This passage explains that the high court was not addressing the issue of constitutional damages. It was alert to the fact that the issue had been deferred for subsequent consideration. There can be no doubt that the issue of restoration, namely placing the City under compulsion to restore the applicants in possession of their shelters, was central to the cause of action the respondents had made out in part A of the application. The high court explained its approach to an order of restoration with reference to this Court’s judgment in *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality*.¹⁶ As far as the amount of R1500 is concerned, the evidence before the court indicated that basic building materials for the type of structures which had been destroyed would cost that amount.

[30] There is an important qualification in the order of the high court which was overlooked in argument. Paragraph 4 of the order opens with the phrase: ‘*[s]hould the respondents not be able to restore possession*’. (Emphasis added.) The payment is therefore made contingent upon the inability of the City to provide restoration itself. It does not envisage payment outside of this contingency. Furthermore, paragraph 3 of the order, requires only that ‘emergency temporary accommodation’ must be provided for those ‘whose shelters have been demolished... *and who still require them*’. (Emphasis

¹⁶ *Tswelopele Non-Profit Organisation and Others v City of Tshwane Metropolitan Municipality* [2007] ZASCA 70, [2007] SCA 70 (RSA); 2007 (6) SA 511 (SCA). See paragraph 49 and fn 32 of the judgment of the high court.

added.) This latter qualification also arises from the facts, which indicate that many of the respondents had immediately commenced rebuilding their demolished shelters in the wake of the actions of 14 and 21 July 2023.

[31] Finally, there was some suggestion that the high court order was open to misinterpretation in the sense that it referred to payment of the amount ‘per shack’. Reference was made to a schedule of the members of the Rabie Ridge Community, which was attached to the founding papers before the high court. The schedule contains the names of the Rabie Ridge Community. It provides information about the period of occupation, the number of persons in each household and their status. Under a column with the heading ‘*[w]hat did you lose during the eviction/demolition?*’, lists of items are recorded opposite each person’s name. (Emphasis added.) The lists refer to personal belongings, shacks (in some instances multiple shacks), building materials and the like. This list is relevant to the question of constitutional damages to be considered in due course.

[32] Counsel for the City contended that the reference to multiple shacks alongside the names of members, might be construed as entitling persons who owned multiple shacks to being paid multiples of the R1500 provided by the order. In my view, that is not what the order envisages. It envisages the restoration of a shelter or shack for each of the households which was destroyed or demolished. As already indicated, the order is not for constitutional damages. It is an order for the provision of emergency temporary accommodation, if still required, and the payment of an amount arises in the context of the provision of such emergency temporary shelter.

[33] In light of this, the contentions raised in relation to the order of the high court do not establish compelling reasons why the City ought to be granted leave to appeal. No other such compelling circumstances were advanced. It follows, therefore, that the application for leave to appeal against the high court order must be dismissed.

The orders

[34] When an application for leave to appeal is reconsidered pursuant to s 17(2)(f) of the Act, the Court may either confirm or vary the order under reconsideration. In this case, however, there are two orders issued in relation to the application now before us. Neither can stand, for the reasons advanced above. They must be set aside and replaced with one that dismisses the application for leave to appeal.

[35] Insofar as costs are concerned, there can be no doubt that the costs must follow the result in the application for leave to appeal. Although the City was successful in its bid to have the decision on petition reconsidered, its success was confined to circumstances which arose in the formulation of the order of the Court. It did not achieve substantive success. To award costs of the reconsideration application to the City would be grossly prejudicial to the respondents. For this reason, and considering the underlying issues in this matter and the City's conduct, it will be fair and reasonable to order the City to also pay the costs of the reconsideration application.

[36] In the result, I make the following order:

1 The orders of this Court dated 29 November 2023 issued pursuant to the applicants' application for leave to appeal against the order of the High Court dated 25 August 2023, are set aside.

2 The applicants' application for leave to appeal against the order of the High Court dated 25 August 2023 is dismissed.

3 The applicants are to pay the costs of the application for reconsideration and the costs of the application for leave to appeal.



G GOOSEN

JUDGE OF APPEAL

Appearances

For the applicants: W R Mokhare SC (with T Mosikili and V Qithi)

Instructed by: Popela Maake Attorneys, Johannesburg
Symington De Kok Incorporated, Bloemfontein

For the respondents: M Coetzee (with N Sibeko)

Instructed by: Lawyers for Human Rights, Pretoria
Webbers Attorneys Incorporated, Bloemfontein.