IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION – MAHIKENG

CASE NO : M287/22

Reportable: YES/**NO**

Circulate to Judges: YES/**NO**

Circulate to Magistrates: YES/**NO**

Circulate to Regional Magistrates: YES/**NO**

In the matter between:

THE DEPARTMENT OF AGRICULTURE,
LAND REFORM & RURAL DEVELOPMENT **APPLICANT**

And

FRANS MOSWEU **1ST RESPONDENT**

ALL OTHER PERSONS WHO HAVE
ILLEGALLY ERECTED AND INTEND TO
ILLEGALLY ERECT STRUCTURES OR FENCES
ON PORTIONS OF LAND DESCRIBED
AS SUNNYSIDE PORTION 3 54 JO, PORTION 6
OF FARM SEKAI 310 JO AND
SUNNYSIDE PORTION 1 54 JO **2ND RESPONDENT**

NGAKA MODIRI MOLEMA DISTRICT
MUNICIPALITY **3RD RESPONDENT**

MAHIKENG LOCAL MUNICIPALITY **4TH RESPONDENT**

In Re:

THE DEPARTMENT OF AGRICULTURE,
LAND REFORM & RURAL DEVELOPMENT APPLICANT

And

FRANS MOSWEU 1ST RESPONDENT

ALL OTHER PERSONS WHO HAVE
ILLEGALLY ERECTED AND INTEND
TO ILLEGALLY ERECT STRUCTURES OR FENCES
ON PORTION OF LAND DESCRIBED
AS SUNNYSIDE PORTION 354 JO, PORTION
6 OF FARM SEKAI 310 JO AND SUNNYSIDE
PORTION 1 54 JO 2ND RESPONDENT

NGAKA MODIRI MOLEMA DISTRICT
MUNICIPALITY 3RD RESPONDENT

Summary:
The prerequisites for final interdictory relief- points *in limine* non-joinder- *exceptio res judicata*- points in *limine* dismissed- eviction- requirements of just and equitable- strict adherence to section 4(7) of Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998- application successful in part- first and second respondents- to pay the costs-jointly and severally- the one paying- the other to be absolved.

ORDER

(i) The respondents are interdicted from erecting further structures or fences on the applicant's properties known as Sunnyside Farm Portion 354 JO; Portion 6 of the Farm Sekai 310 JO; and Sunnyside Farm Portion 1 54 JO.

(ii) That the Sheriff of this Court, with the assistance of members of the South African Police Service, are authorised and directed to remove or demolish the fence and all structures that are erected on the applicant's property as described in (i) which is **unoccupied**.

(iii) The first and second respondents are to pay the costs of the application jointly and severally, the one paying the other to be absolved.

JUDGMENT

Reddy AJ

INTRODUCTION

[1] On 24 November 2022, under Case Number **UM 231/2022**, the applicant, Mahikeng Municipality (the third respondent in the application before this Court) was successful on motion in obtaining the following relief:

(i) That the applicant be and is hereby granted condonation in relation to the period, notice, from and service and the application is heard as an urgent matter in terms of Rule 6(12) of the Uniform Rules of Court;

(ii) Pending the finalisation of the interdict application instituted under case number M287/2022 the 1st Respondent hereby undertakes not to allocate stands to any individual on Portions1,2 and 3 of the Farm Sunnyside 54 North West, JO;

(iii) Pending the finalisation of the interdict application instituted under case number M287/2022 the 2nd Respondent, including Mr MAHLO MOLEMA, be and hereby interdicted from locating stands, erecting structures or fences and

occupying any such structures so erected on Portions 1, 2 and 3 of the Farm Sunnyside 54 North West, JO;

(iv) A copy of this Order, together with the court papers in case number M287/22 be served on MR MAHLO MOLEMA;

(v) That costs of this application will be costs in the main interdict application instituted under case number M287/22;

(v) The costs of this application will be costs in the main interdict application.

[2] The application before this Court is then the sequel that follows **UM 231/2022** wherein the applicant, pursues the following relief:

1. That the respondents are interdicted from erecting further structures or fences and occupying structures already erected on the applicant's property known as Sunny side portion 354 JO portion 6 of farm Sekal 310 JO and Sunny Side Portion 1 54 JO;

2. That the respondents are interdicted from dealing in other manner whatsoever with the applicant's property referred to in paragraph 1above

3. That the Sheriff of the above Court with the assistance of members of the South African Police Service are authorised and directed to remove or demolish the fence and all structures that are erected on the applicant's property mentioned in paragraph 1 above

4. Costs against those respondents who oppose the application.

5. Further and alternative.

[3] Before this Court is an interlocutory application in which a determination has to be made by this Court, if the respondent has made out a case to condone the late filing of the replying affidavit. This may be dispositive of the main

application. It is also accepted that this is a pragmatic way to deal with this application. If a proper case for condonation has not been made out, this Court is required to pronounce on the main application which is final interdictory relief.

THE PARTIES

[4] The applicant is the Department of Agriculture, Land Reform and Rural Development, which is a National Department with its Regional Office in Mmabatho , North West Province.

[5] The first respondent is Mr Frans Mosweu, a major male residing at Stand No 1[...] L[...] Village, Mahikeng, North West Province.

[6] The second respondent comprises of “All Other Unknown Persons Who Have Illegally Erected or Intend Illegally Erecting Fences or Structures or Have Already Erected Structures on Portions of Land Known as Sunny Side Portion 3 54 JO: Portion 6 of Farm Sekai 310 JO and Sunny Side Portion 1 54 JO,” whose full and further particulars are unknown.

[7] Initially the third respondent was cited as Ngaka Modiri Molema District Municipality, a municipality as contemplated by section 2 of the Local Government: Municipal Systems Act 32 of 2000. By an order of court dated 12 January 2023, Ngaka Modiri Molema District Municipality, was substituted for Mahikeng Local Municipality.

OVERVIEW

[8] The applicant is amongst others empowered to ensure that access to and the restitution of land is in line with the tenets and ethos of the supreme law. The provision of land is not the applicant’s sole responsibility. In appropriate instances, it is peremptory that farm workers are provided with a platform to sharpen and develop their agricultural skills to become farmers and ultimately reduce historical land ownership inequality.

[9] In the advancement of this object, the applicant has previously leased its land lawfully to various individuals’, who are commercial and subsistence farmers.

There is no underscoring that the issue of land is a sensitive and hotly contested issue. Resultantly, it has become fertile ground for the opportunistic unlawful land invasions and has become prone to what is colloquially termed “landgrabbers”.

[10] The unlawful acquisition and occupying of land has cast a dark shadow over the process that the applicant has embarked upon in terms of the redistribution of land. To this end, lawful lessees are prejudiced. The unlawful occupation of land, which had its genesis in the Dr Segomotsi Mompati District and spilled over into Ngaka Modiri Molema District, is gaining traction and spreads exponentially. Consequently, the applicant has paused applications for land restitution until further notice.

[11] Towards the end of January 2022, the applicant’s officials in its Ngaka Modiri Molema District Office learned of the invasion on Sunnyside Portion 1 JO 54. On 28 February 2022 Mr Tshwaro Simons (“Simons”), verified the information that indeed twenty-two (22) structures were erected on this portion of the farm. Immediate action was confuted by the absence of the identification of an individual behind the unlawful allocation of land and or the illegal erection of structures. A fact-finding exercise had to be embarked on. In the interim the structures had increased to fifty (50). On 28 January 2022, Simons in the company of the Chief of Security, Mr Juda Khubeka, conducted a physical inspection and confirmed the latter number of structures. Concluded investigations pointed the accusing finger in the direction of the first respondent as the mastermind behind the unlawful allocation of land.

[12] As a result of the first respondents’ conduct, the applicant applied for a final interdict. Ancillary to final interdictory relief, the applicant sought an order for the Sheriff, assisted by the members of the South African Police, to be authorized to demolish or remove all the unoccupied illegal structures and the fence created on the applicant’s land. The failure to demolish these unoccupied illegal structures, might cause the respondents to occupy same to the detriment of the applicant and lawful lessees.

[13] The application was served on the first respondent on **22 June 2022,** and on the second respondents and third respondents on **10 June 2022.** The notice of motion called upon the respondents, if they intended to oppose the application, to file a notice to oppose within five (5) days and their opposing affidavits within fifteen (15) days.

[14] In the event that the respondents failed to deliver a notice of intention to oppose as delineated, the application would have been brought on an unopposed basis on Thursday, **23 June 2022** at 10h00, being the default date. Afore the enrolling of the application on the unopposed roll of **1 August 2022**, the third respondent filed an answering affidavit, wherein the non-joinder of the Mahikeng Municipality as a party with a direct and substantial interest in the matter, was raised.

[15] The first and second respondents filed a Notice to Oppose on **22 August 2022**. The third respondent filed a Notice to Oppose on **14 June 2022**. It is apparent that the prescribed timeframes from this point went south. The first and second respondents filed an answering affidavit on **15 February 2023**.

[16] On **12 January 2023**, by an order of the Court ,the third respondent at the time, the Ngaka Modiri Molema District Municipality, was substituted for the Mahikeng Local Municipality.

[17] Notwithstanding the first and second respondents notice of intention to oppose and answering affidavits being filed out of time, the applicant filed a replying affidavit commissioned on **16 August 2023**. Within the body of this affidavit, the applicant requests condonation for the late filing of the replying affidavit.

[18] It is apparent that the applicant and respondents have trespassed the various time frames as it is clear from the exposition of the chronological history of the application. It was therefore disingenuous for the applicant to argue the non-compliance with the Uniform of Rules of Court when, the dilatoriness on its part is clear.

CONDONATION

[19] Rule 27 of the Uniform Rules of Court gives a discretion to the court to condone non-compliance with the rules, where good cause has been shown and the other party would not suffer prejudice. It is settled law that, in considering an application for condonation, the court has a discretion, to be exercised judicially upon a consideration of all facts, and that in essence it is a question of fairness to both parties (*United Plant Hire (Pty) Ltd v Hills* 1976 (1) SA 717 *(A) at 720E-G*).

[20] The applicant for condonation must show good cause for the delay. In determination of good cause, I am guided by the following factors: degree of lateness, the explanation for the delay, the degree of non-compliance with the rules, the importance of the case, the prospects of success, interest in the finality of its judgement and the avoidance of unnecessary delay in the administration of justice. These factors are not individually determinative, but must be weighed, one against the other. See *Melane v Santam Insurance Co. Ltd* 1962 (4) SA 531 (A) at 532 C – F, *Dengetenge Holdings (PTY) (Ltd) v Southern Sphere Mining and Development Company Ltd and Others* 2013 (2) All SA 251 (SCA) at paragraph [11].

[21] The Constitutional Court pointed out in *Brummer v Gorfil Brothers Investments (Pty) Ltd* 2000 (2) SA 837 (CC) that an application for condonation should be granted if it is in the interests of justice and refused if it is not. The Uppermost Court expounded that the interests of justice must be determined by reference to all relevant factors outlined in *Melane supra*, including the nature of the relief sought, the nature and cause of any other defect in respect of which condonation is sought, and the effect of the delay on the administration of justice.

[22] In *Steenkamp and Others v Edcon Limited*, [2019] 11 BLLR 1189 (CC), the apex Court reaffirmed that granting condonation must be in the interests of justice and it referred with approval to its decision in *Grootboom v National Prosecuting Authority and Another*: [2013] ZACC 37; 2014 (2) SA 68; 2014 (1) BCLR 65 (CC).

"[36] Granting condonation must be in the interests of justice. This Court in Grootboom set out the factors that must be considered in determining whether or not it is in the interests of justice to grant condonation:

"*[T]he standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both Brummer and Van Wyk emphasize that the all the relevant factors, but it is not necessarily limited to those mentioned above. The particular ultimate determination of what is in the interests of justice must reflect due regard to circumstances of each case will determine which of these factors are relevant.*

It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.

The interests of justice must be determined with reference to all relevant factors. However, some of the factors may justifiably be left out of consideration in certain circumstances. For example, where the delay is unacceptably excessive and there is no explanation for the delay, there may be no need to consider the prospects of success. If the period of delay is short and there is an unsatisfactory explanation but there are reasonable prospects of success, condonation should be granted. However, despite the presence of reasonable prospects of success, condonation may be refused where the delay is excessive, the explanation is non-existent and granting condonation would prejudice the other party. As a general proposition the various factors are not

individually decisive but should all be taken into account to arrive at a conclusion as to what is in the interests of justice."

[37] All factors should therefore be taken into account when assessing whether it is in the interests of justice to grant or refuse condonation."

[23] The applicant and respondents have equally transgressed the Rules of Court. The interests of justice unquestionable require that this application reach its conclusion by the merits being adjudicated. Consequently, the non-compliance with the Rules of Court by both litigants are condoned.

THE POINTS *IN LIMINE* OF THE RESPONDENTS

[24] Counsel appearing on behalf of both applicant and respondents filed heads of arguments. Not all the points raised will be dealt with but nonetheless have been carefully considered. The respondents raised two points in *limine,* namely that of non-joinder and *res judicata*. I turn to address each.

NON-JOINDER

[25] On 18 November 2022, the third respondent brought an urgent application within the purview of Rule 6(12) of the Uniform Rules of Court under case number **UM231/2022,** mirroring prayer 1 of the present relief. The parties in **UM231/2022** narrowed the issues resulting in an agreed draft order gaining the *imprimatur* of this Court.

[26] The first respondent contends that if due consideration is given to the order of this Court in case number **UM231/2022**, more particularly orders two (2) and three (3) thereof, a compelling case had been made for the substitution of the first respondent for the joining of Mr. Mahlo Molema, the Tribal Chief under the Barolong Boo Ratshidi Chieftaincy, or the substitution of the latter for the first respondent. Further thereto, as per the directive of this Court in case number UM**231/2022**, the order of court was not served on Mr. Mahlo Molema.

[27] It is clear, so the first respondent expressed, that Mr. Mahlo Molema should be joined in these proceedings as he has a direct and substantial interest in these

proceedings. The failure to do same will inevitably result in prejudice to Mr. Mahlo Molema.

[28] According to the applicant in case number **UM231/2022**, the first respondent implicitly acquiesced not to allocate stands to any individual on Portions 1,2 and 3 of the Farm Sunnyside 54 North West, JO. It is therefore factually incorrect that the first respondent was ousted by Mr. Mahlo Molema, or that the first respondent should be substituted by Mr. Mahlo Molema. The applicant's case before this Court is that the first respondent who admittedly allocated stands unlawfully, is identified as the protagonist against who final interdictory relief is sought.

[29] The test in a joinder application is whether the party has a "*direct and substantial interest*" in the subject matter of the action, namely, a legal interest in the subject matter of litigation, which may be affected prejudicially by the judgment of the court. See: *Old Mutual Life Assurance Co SS Ltd v Swemmer* 2004 (5) SA 373 (SCA) at 381 C-D; *Transvaal Agricultural Union v Minister of Agricultural and Land Affairs* 2005 (4) SA 212 (SCA) at 226F – 227F.

[30] A party should be joined if an order of the court cannot be sustained or carried into effect without prejudicing that party, unless the court is satisfied that the party has waived its right to be joined. See: *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659.

[31] The nature of the relief sought against a party is therefore relevant to the question whether the party concerned had a direct and substantial interest in the matter. See: *Gordon v Department of Health Kwazulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA) para [9] and [11] at 529C and 530F.

[32] In *Judicial Service Commission and Another v Cape Bar Council and another* 2013 (1) SA 170 (SCA), at paragraph [12], the court held that:

"**It has now become settled law that the joinder of a party is only required as a matter of necessity- as opposed to a matter of convenience- if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned…"**

[33] Apart from a joinder out of necessity, a court can join a party under the common law on grounds of convenience, equity, the saving of costs and the avoidance of multiplicity of actions. The court has the inherent power to order the joinder of further parties in an action which has already begun, to ensure that person's interest in the subject matter of the dispute and whose rights may be affected by the judgment are before court. See *Ploughman NO v Pauw* 2006 (SA) 334 (C) at 341 E-F.

[34] An application of the law to the undisputed facts is that no relief is being pursued against Mr Mahlo Molema. It was therefore pointless for the applicant to have joined Mr Mahlo Molema. Notably, since no relief is being sought against Mr Molema, it axiomatically follows that this point *in limine* falls to be dismissed.

RES JUDICATA

[35] Arising from the order of this Court of 24 November 2022 in case number **UM231/2022**, the third respondent on or about 7 January 2023 assigned its officials accompanied by Municipal Police Officers, who demolished structures and fences at Sunnyside Portion 3 54 JO; Portion 6 of Farm Sekai 310 JO and Sunnyside Portion 1 54 JO and removed the occupier's property to an undisclosed storage address. Hence, the principle of double jeopardy features as the relief sought has previously been executed.

[36] The applicant retorts that it has no knowledge of any structures that were demolished and any fence and/or properties of individuals that were removed. Notwithstanding the order of this Court in case number **UM231/22**, the first respondent allocated more stands, which conduct was in contravention of same.

[37] In *Smith v Porritt* [2007] ZASCA 19; (SCA), at paragraph [10], the law regarding the *exceptio rei judicata* was reiterated as follows:

> 'Following the decision in *Boshoff v Union Government* 1932 TPD 345 the ambit of the *exceptio rei judicata* has over the years been extended by the relaxation in appropriate cases of the common-law requirements that the relief claimed and the cause of action be the same (*eadem res* and *eadem petendi causa*) in both the case in question and the earlier judgment. Where the circumstances justify the relaxation of these requirements those that remain are that the parties must be the same (*idem actor*) and that the same issue (*eadem quaestio*) must arise. Broadly stated, the latter involves an inquiry whether an issue of fact or law was an essential element of the judgment on which reliance is placed. Where the plea of *res judicata* is raised in the absence of a commonality of cause of action and relief claimed it has become common place to adopt the terminology of English law and to speak of issue estoppel. But, as was stressed by Botha JA in *Kommissaris van Binnelandse Inkomste v Absa Bank Bpk* 1995 (1) SA 653 (A) at 669D, 670J-671B, this is not to be construed as implying an abandonment of the principles of the common law in favour of those of English law; the defence remains one of *res judicata*. The recognition of the defence in such cases will however require careful scrutiny. Each case will depend on its own facts and any extension of the defence will be on a case-by-case basis. (*Kommissaris van Binnelandse Inkomste v Absa Bank* (supra) at 670E-F.) Relevant considerations will include questions of equity and fairness not only to the parties themselves but to others. As pointed out by De Villiers CJ as long ago as 1893 in *Bertram v Wood* (1893) 10 SC 177 at 180, 'unless carefully circumscribed, [the defence of *res judicata*] is capable of producing great hardship and even positive injustice to individuals'.'

[38] The order of this Court in case number **UM 231/2022**, was clearly intended to be of an interim nature, pending the finalisation of the interdict application in case number **UM 287/2022**. It was not a final order. Consequently, the principle of *exceptio res judicata* did not find application. This point *in limine* is meritless. Consequently, it falls to be dismissed.

[39] I now shift focus to address the main relief, namely final interdictory relief. The trite requirements for a final interdict as set out in *Setlogelo vSetlogelo* 1914 AD 221 and *Free State Gold Areas Ltd v Merriespruit Gold Mining Co* 1961 (2) SA 505 (W) are:-

(i) A clear right on the part of the applicant.

(ii) An injury actually committed or reasonably apprehended.

(iii) There is no other satisfactory remedy available to the applicant.

CLEAR RIGHT

[40] Pivotal to an interdict is the implementation and protection of rights. Central to this requirement is the existence of a right that is sought to be protected by the applicant. To this end, to be successful in obtaining final interdictory relief, an applicant must establish that the clear right exists in law and that the right is underscored by the particularities of fact within the four corners of the relevant application.

[41] The existence of the applicant's clear right as the custodian of the land in question, notwithstanding it being registered in the name of the National Government of the Republic of South Africa, is irrefutable and correctly admitted by the respondents. To establish a clear right, the applicant must prove the existence of the right on a balance of probabilities. A clear right may be either a real or a personal right, in other words, a right *in rem* or a right in *personam*.

AN INJURY ACTUALLY COMMITTED OR REASONABLY APPREHENDED

[42] The prerequisite evinces an 'injury actually committed or reasonably apprehended". An 'injury' in this context does not necessarily mean physical harm or harm that results in financial loss. As explained in **Erasmus (2003) Superior Court Practice, E8-6,** the authorities use the word 'injury' to mean an act of interference with or an invasion of the applicant's right and resultant

prejudice. An examination of the applicant's papers undoubtedly establishes this prerequisite.

THERE IS NO OTHER SATISFACTORY REMEDY AVAILABLE TO THE APPLICANT

[43] In terms of this final prerequisite, the applicant must establish that there is no other satisfactory remedy available. Given the impact of an interdict, a court will not acquiesce to the granting of same when some other form of redress would be adequate or would provide similar protection. Resultantly, this Court is satisfied that *in casu* the applicant had no other remedy.

THE TERMS OF FINAL INTERDICTORY RELIEF

[44] I have no reservations regarding final interdictory relief that interdicts the first and second respondents from erecting further structures or fences and occupying these structures.

[45] Regarding the ancillary final relief, there exists no factual or legal basis for it in its current form. The applicant requests that the Sheriff of this Court, with the assistance of members of the South African Police Service, are authorised and directed to remove or demolish the fence and all structures that are erected on the applicant's property. The proposed relief does not aver as to the occupancy or inoccupancy of these structures, which is material to this part of the relief.

[46] There is a contestation regarding the number of structures that exist on the identified properties and whether these are occupied. The applicant contends that the number of unoccupied structures were fifty (50) as of 28 January 2022, whilst the respondents avers that these structures numbered more than one hundred (100) occupied structures. Interspersed, amongst these structures are a few houses built of brick and mortar. To this end, the respondents aver that the Sunnyside occupiers are comprised of senior citizens, pensioners, women and children who are on the verge of being evicted. This would render them homeless. Further thereto, it is the applicant's contention that the first respondent has transgressed the interim order dated 24 November 2022 by continuing to allocate stands.

[47] To my mind, the number of structures have probably exponentially grown. The crisp issue inexorably linked to the structures is the question of the occupancy of same. In reply, the applicant contends that it wishes to bring to this Court's attention that after the first and second respondent were served with the papers in these proceedings, the first respondent allocated more stands in the other Portion 1 to people who took occupation of the erected structures and newly built structures.

[48] The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, (PIE Act) provides procedures for the eviction of unlawful occupants and also prohibits unlawful evictions. The main aim of the PIE Act is to protect both occupiers and landowners. It is peremptory for a landowner or landlord to follow the provisions of the PIE Act in the event they want to evict an unlawful occupier or tenant.

[49] Section 26(3) of the Constitution of the Republic of South Africa , 1996, states that : "No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions." In *Pheko and Others v Ekurhuleni Metropolitan Municipality* (CCT19/11A) [2015] ZACC 10; 2015 (6) BCLR 711 (CC); 2015 (5) SA 600 (CC) (7 May 2015), the apex Court reiterated that Section 26(3) does not permit legislation authorizing evictions without a court order. The PIE Act reinforced this by providing that a court may not grant an eviction order unless the eviction would be just and equitable in the circumstances. The court has to have regard to a number of factors including but not limited to :

(a) whether the occupants include vulnerable categories of persons (the elderly, children and female-headed households) ;

(b) the duration of occupation and

(c) the availability of alternative accommodation or the state provision of alternative accommodation in instances where occupiers are unable to obtain alternative accommodation for themselves.

[50] To my mind, I see no issue with the demolishing of **unoccupied structures.** Occupied structures are to be dealt with within the purview of PIE Act. This must be underscored to ensure there is no ambiguity in the implementation of this Court's order.

[51] Regarding costs, there is no basis to deviate from the general rule that costs follow the result. In the premises, I make the following order.

Order

(i) The respondents are interdicted from erecting further structures or fences on the applicant's properties known as Sunny Farm Portion 354 JO; Portion 6 of Farm Sekai 310; JO and Sunny Side Farm Portion 1 54 JO.

(ii) The Sheriff of this Court, with the assistance of members of the South African Police Service, are authorised and directed to remove the fence and all structures that are erected on the applicant's property as described in (i) which are **unoccupied.**

(iii) The first and second respondents are to pay the costs of the application jointly and severally the one paying the other to be absolved.

A REDDY
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA.
NORTH WEST DIVISION, MAHIKENG

APPEARANCES:

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Attorneys For Applicant	**State Attorneys** **First floor, east wing** **Megacity complex** **Mmabatho**
Counsel For 1st & 2nd Respondent	**Advocate N Ferris**
Attorneys for Respondent	**Moatswi Bekwa Attorneys** **1059 DP Kgotleng Street** **Montshiowa** **Mahikeng**
Date Of Hearing:	**16 October 2023**
Date Of Judgment:	**18 January 2024**