

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 058334/2022

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: YES |

DATE

SIGNATURE

In the matter between:

URBAN MOUNTAIN

Applicant

and

THAMI NDLALA HOLDINGS (PTY) LTD

First Respondent

THAMSANQA LUCAS NDLALA

Second Respondent

WRITTEN REASONS FOR ORDER

YACOOB J:

1. On 20 December 2023 and in the urgent court I granted an order by agreement between the parties, interdicting the first respondent's use of a property at 14 Hillel Avenue, Northcliff, Johannesburg, ["the property"] pending

certain remedial work and an application for ejectment, and granting the applicant vacant possession of the property in order to allow that remedial work to take place. The order included a requirement that the applicant would report monthly to the first respondent on the status of the remedial work.

2. Rather surprisingly, considering that the order was granted by agreement, after argument and after instructions were taken, the respondents lodged an application for leave to appeal together with a request for written reasons.
3. Taking into account that the order was granted by agreement, and that no reasons were given for judgment, the record had to be obtained before written reasons could be prepared. There were various delays in obtaining this and once the record was obtained the term was already in full swing. There were therefore also delays in preparing the written reasons, for which the record had to be examined, as well as the pleadings and the order itself.
4. The applicant sought in its notice of motion an order ejecting the first respondent from the property, interdicting the second respondent from harassing or intimidating the applicant or its representatives employed to secure or carry out work on the property, and directing them to pay costs.
5. The basis on which the ejectment was sought was that the heavy rains had caused damage to the property, and that work needed to be undertaken to prevent further damage to the property as well as any collateral damage.
6. The first respondent was a lessee of both the property and the property next door, and made use of the property as an adjunct to the business it ran on the neighbouring property.
7. The respondents opposed the relief sought on a number of bases, including that the damage was not as serious as the applicant suggested, that they had taken steps to secure the property, and that the applicants had imposed a degree of urgency that was not supported by the papers.
8. It was clear to me from the outset that a final order for ejectment could not be granted on an urgent basis. However, it was equally clear that it was not only

in the interests of both parties but also in the public interest that further landslides and damage to the property be prevented. I made this view clear at the hearing, also making it clear that this was only a *prima facie* view and that I was open to being convinced that a different outcome would be appropriate.

9. However, as is often the case in urgent court, the parties adjusted their views as the hearing proceeded, and having taken instructions, indicated that they would be amenable to an order by agreement in the terms finally granted.

10. The order is supported by the pleadings, and I was satisfied that there was no reason not to grant the order.

11. These then are the reasons for the granting of the order.

S YACOOB
JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 20 December 2022

Date of Order: 20 December 2022

Date of Written Reasons: 03 April 2023

For the Applicant:

AW Pullinger instructed by Fairbridges
Wertheim Becker

For the Respondents:

CM Shongwe instructed by Enhle
Ngwane Attorneys Inc