

Holding Municipalities Accountable for Sinkhole Damage: Legal Remedies for Homeowners

By **Charissa Kok** (Partner),
Thiavna Subroyen (Associate), and
Tshiamo Tabane (Candidate Attorney)

02 June 2025

INTRODUCTION

This article serves as a guideline for homeowners who experience sinkholes on their property due to municipal negligence. It references two key cases, namely —*Theron & Another v The City of Johannesburg Metropolitan Municipality*¹ and *Markowitz & Another v The City of Johannesburg Metropolitan Municipality*² - where our firm represented homeowners, who sought intervention from the Johannesburg High Court, to compel the City to remediate sinkholes caused by deteriorating stormwater infrastructure.

BACKGROUND

Sinkholes are becoming increasingly common in South Africa, posing a serious threat to property owners. A sinkhole forms as a result of water seeping into the ground, usually due to faulty or poorly maintained stormwater management and sewer systems.³ When these systems leak or break

down, they allow excess water to erode the ground beneath properties, weakening the foundation and eventually causing sinkholes to form. In other words, sinkhole formations are a natural phenomenon which is further exacerbated by human activities, or the lack thereof.

In the abovementioned cases, the Applicants' houses and gardens had collapsed into a sinkhole as a result of the City failing to maintain the storm channels and pipes which ran under their respective properties. The sinkhole resulted in the surrounding area being uninhabitable for the Applicants. In both matters, the Applicants attempted to follow the internal procedures of the City to remedy the situation. The Applicants were left with no choice but to escalate the matters to the Johannesburg High Court to seek relief,⁴ compelling the City to take necessary steps to remediate the sinkhole issue, as the City failed to comply with its statutory duties to repair the sinkholes.

LEGAL QUESTION

The legal questions at the core of these matters are whether municipalities can be compelled to take responsibility for sinkholes caused by failing infrastructure and what legal remedies are available to affected property owners.

COURT'S INTERPRETATION

In order for a court to provide an interdictory relief, the Applicants would have to prove the following:⁵

1. they hold a clear legal right;
2. there is apprehension of irreparable harm if not granted;
3. the balance of convenience must favour the applicant; and
4. there is no alternative remedy available to the applicant.

The matter of *Theron* was an unopposed motion where the Applicants sought an order for the City to appoint experts to investigate a sinkhole, prepare a plan to remediate the sinkhole and attend to remediation as soon as possible.

The Applicants in *Theron* had tried for 36 (thirty-six) months to resolve the issue through municipal channels, but the City continuously delayed action. Although municipal officials had inspected the site and acknowledged the need for urgent repairs, no further steps were taken.

The City raised a defence based on a misguided interpretation of section 43 of the City's Stormwater Bylaw.⁶ They argued that the homeowners are responsible for stormwater maintenance unless a servitude (a legal right allowing municipal access to a portion of private land) exists.⁷ However, the Applicants' title deed confirmed a servitude, making the City

responsible for repairs.⁸ The Court granted a structural interdict, compelling the City to act.⁹

A structural interdict is an interdict that retains supervisory powers in the implementation of a court order, where it requires a party to report back to court once it has carried out necessary measures to comply with the order.¹⁰

In *Markowitz*, the case was brought on an urgent basis due to the immediate danger posed by the sinkhole, which prevented the First Applicant from using her property and disrupted her home-based business. Furthermore, the First Applicant faced financial hardship, as she could neither continue business operations nor afford relocation. The Applicants also attempted to follow the City's procedures in relation to its internal remedies - however the City's response was that they would only be able to assist the Applicants if they relocated. The City attempted to further delay the matter by suggesting mediation rather than court intervention. However, given the grave impact, the risk of harm and ongoing municipal inaction, the Court granted a final structural interdict, requiring immediate municipal intervention.

In the cases above, the Applicants successfully met the legal requirements for obtaining interdictory relief. Specifically, the Court found that:

1. the Applicants had a clear legal right based on their status as property owners and their constitutional rights as citizens such as property, life and dignity;
2. the sinkholes created a serious risk to their safety and made it difficult to enjoy their property, showing that they would suffer real and lasting harm if no action was taken;
3. the potential harm to the Applicants if the interdict was not granted outweighed any inconvenience to the City, making it just and reasonable for the Court to grant relief in the Applicants' favour; and
4. the Applicants had exhausted all internal remedies available, but nothing had worked. They had no other choice but to ask the Court for help.

CONCLUSION

Municipalities are responsible for maintaining public infrastructure, including stormwater drainage systems. Under the Constitution of South Africa,¹¹ local governments have a duty to provide and maintain essential services to protect communities. However, widespread non-compliance has left many homeowners vulnerable, with reports indicating that some sinkholes have been left unaddressed for over a decade.¹²

When municipalities fail to fulfill their obligations, property owners may suffer severe damage or even death, often forcing them to seek judicial intervention.

In both matters discussed above, the Court granted structural interdicts, compelling the City to take action. The orders required the City to hire experts to assess the severity of the sinkholes, provide a detailed remediation plan with timelines, submit a budget for repairs, and implement the necessary corrective measures. The judicial intervention underscores the courts' increasing willingness to hold municipalities accountable. Given the rising frequency of sinkholes in South Africa, legal action may become a necessary tool for homeowners seeking to protect their properties and enforce municipal accountability.

Please note: Each matter must be dealt with on a case-case basis, and you should consult an attorney before taking any legal action.

¹2024-078846

²2020-40629

³City of Ekurhuleni, "A Costly Fight Against Sinkhole" (2021) City of Ekurhuleni accessed at <https://www.ekurhuleni.gov.za/press-releases/service-delivery/roads-and-transport/a-costly-fight-against-sinkhole/>

⁴A court order that either prohibits someone from taking a specific action (prohibitory) or compels them to perform a specific action (mandatory) to protect a party's rights against unlawful interference

⁵Barter H, "A Complete Guide to Interdicts in South Africa" Barter McKellar Law accessed at <https://www.bartermckellar.law/litigation-explained/what-is-an-interdict-interdicts-explained>

⁶City of Johannesburg Stormwater Management Bylaw, 2010.

⁷Theron *supra* note 1 FA at para 46.2.

⁸*Ibid* at para 46.8.

⁹A structural interdict is an order where the Court compels compliance with its order and further compels the person who it has been handed to, to set out its plans on how and when it aims to comply to the order.

¹⁰Sekwakwa L, "Structural Interdicts for Environmental Rights Violations South African Human Rights Commission v Msunduzi Local Municipality (8407/2020P) [2]

¹¹The Constitution of the Republic of South Africa: s152 and 156.

¹²Njilo N & Dlangamandla F, "A community at risk of being swallowed by hazardous, neglected sinkholes in Khutsong" (2023) *The Daily Maverick* accessed at <https://www.dailymaverick.co.za/article/2023-03-23-sinkhole-menace-khutsong-finally-to-be-declared-disaster-area/>.



Charissa Kok
(Partner)



Thiavna Subroyen
(Associate)



Tshiamo Tabane
(Candidate Attorney)