

City of Johannesburg Metropolitan Municipality v Bantham and Others

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(1489/2024) [2026] ZASCA 86 (23 June 2026)

The Supreme Court of Appeal (SCA) has handed down a significant judgment in the case between the *City of Johannesburg Metropolitan Municipality v Bantham and Others* [2026] ZASCA 86, clarifying the evidentiary burden on unlawful occupiers seeking protection under the *mandament van spolie* and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE).

BACKGROUND TO THE CASE

The dispute stemmed from allegations by a group of individuals, led by Calvin Bantham (Mr Bantham), that they had occupied municipal land in Rabie Ridge, Johannesburg, since September 2023. Mr Bantham averred that the community had been granted the right to occupy the property by the late Mayor Geoff Makhubo and Mlungisi Mabaso, a member of the municipal council for housing, in 2020. The SCA noted, however, that the press reports relied upon by the respondents did not support this claim. The City maintained that only unfinished and/or unoccupied structures with no evidence of occupation were demolished, a position the High Court accepted as common cause. The central factual dispute was whether the structures were occupied, which the SCA ultimately resolved on the evidence.

The City also disputed that the applicants had established their occupation and maintained that they had failed to provide sufficient evidence demonstrating that they were *bona fide* occupiers entitled to the protection afforded by law.

PROCEDURAL HISTORY

The matter was first enrolled on the urgent court roll on 5 December 2023 and was struck for want of urgency on 14 December 2023. It was not immediately re-enrolled. Four months later, on 8 April 2024, the respondents approached the urgent court again, relying on an alleged new act of dispossession, but the matter was struck off for lack of urgency for a second time.

It was then enrolled on the ordinary opposed motion court roll for the week of 22 July 2024 before Wilson J. On 23 July 2024, the parties agreed to a postponement on the basis that neither party would disturb the status quo. The High Court directed the parties to compile an agreed list of bona fide occupiers, but when they could not agree, the application proceeded on an opposed basis.

JOINT INSPECTIONS OF THE PROPERTY

Pursuant to the High Court's order of 23 July 2024, joint inspections took place on 23 and 24 July 2024. The City's officials found only one completed and occupied structure on the property. During the inspections, Mr Bantham was unable to point out a structure or dwelling belonging to him, and no occupier could identify their dwelling from photographs provided by the respondents' attorneys. The respondents produced a handwritten list of approximately 159 names, later reduced to 114, but the City rejected the list. Mr Bantham then offered a third explanation: the occupiers had deconstructed their dwellings that morning to avoid harassment, storing the materials elsewhere and rebuilding the structures in the evenings.

THE HIGH COURT'S DECISION

The Gauteng High Court ruled in favour of Bantham and the other applicants, declaring the City's conduct unlawful and ordering that possession be restored. It further interdicted the City from evicting the occupiers without first securing a court order. After considering the confirmatory affidavits and other documents contained in the court file, the High Court prepared its own annexure listing more than 200 individuals who would be entitled to the benefit of the order.

WHY DID THE SCA REACH A DIFFERENT CONCLUSION?

The SCA set aside the High Court's judgment, finding that the applicants had failed to discharge the evidentiary burden resting on them. In a unanimous judgment delivered by Keightley JA (Coppin JA and Vally AJA concurring), the Court found that the applicants had not properly identified the second respondents or

provided sufficient admissible evidence establishing that they were the persons who occupied the land or whose structures had allegedly been demolished. The City disputed the authority of the instructing attorney to represent the unnamed second respondents and filed a Rule 7 notice. Instead, the founding papers made repeated references to an unspecified “community” or group of “occupiers”, without identifying the individual members or demonstrating their respective connection to the property.

The SCA was particularly critical of the High Court’s decision to compile its own list of beneficiaries. It held that by doing so, the High Court had effectively sought to cure deficiencies in the applicants’ case, which was beyond the proper role of the court. The judgment reinforces that, where locus standi is placed in issue, applicants bear the responsibility of producing adequate evidence to establish their identity and their entitlement to the relief sought. Courts cannot assume the role of litigants by identifying beneficiaries or filling gaps in an inadequately presented case.

The High Court, following *City of Cape Town v SAHRC and Setjwetla*, held that once construction of a dwelling had commenced, the remedy of counter-spoliation was not available and could not justify demolition without a court order. The SCA did not expressly overturn this legal test, but found that the respondents had not proved the factual predicate for its application: they had not established that they were the persons who had constructed the structures or that those structures were occupied.

EVIDENTIARY DEFICIENCIES IDENTIFIED BY THE SCA

The SCA also raised serious concerns about the adequacy and reliability of the evidence placed before it. A number of the confirmatory affidavits contained little more than general statements supporting Bantham’s affidavit, without providing specific information about the individual deponents’ alleged occupation of the property. After the hearing, the SCA issued a directive requiring the attorneys to clarify whether the confirmatory affidavits and power of attorney had been served and filed. The responses revealed that large batches of confirmatory affidavits had been uploaded onto CaseLines two days after the City filed its answering affidavit and had never been served on the City. The photographs relied upon by the applicants were defective, in that they were not properly authenticated or dated, did not clearly identify the locations depicted, and failed to establish any connection between the images and the particular occupiers concerned.

In light of these evidentiary shortcomings, the Court found that the applicants had not adequately demonstrated either that they were in possession of the property or that they were entitled to the remedies they sought.

SIGNIFICANCE OF THE SCA JUDGMENT

The judgment does not limit the constitutional protections afforded to unlawful occupiers. Rather, it affirms that such protections are available only where applicants sufficiently establish the factual circumstances required to fall within their ambit.

For municipalities, the practical implication is that opposition to a spoliation claim should be directed to the applicants’ evidentiary onus: they must identify themselves, establish their locus standi and prove that they were the persons who constructed the structures removed and were in actual occupation. Municipalities should therefore place clear evidence before the court as to what was demolished, whether it was unfinished or unoccupied, and how the alleged occupiers’ accounts are contradicted. The judgment also highlights the importance of raising locus standi challenges early and comprehensively, including any dispute about unidentified applicants or the authority of their representatives, rather than allowing those issues to be reconstructed from incomplete or unserved material.

The judgment also highlights that confirmatory affidavits cannot, on their own, replace substantive primary evidence in circumstances where material factual disputes arise. Applicants must be properly identified and provide authenticated evidence and sufficient factual information to establish actual possession and occupation.

CONCLUSION

The SCA ultimately upheld the City’s appeal and substituted the High Court’s order with an order dismissing the application. In reaching this conclusion, the court reaffirmed a fundamental principle of civil procedure, which is that courts must determine matters on the basis of the evidence placed before it by the parties and cannot formulate, supplement, or rectify a litigant’s case where the evidence is inadequate.



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