



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

Not reportable
Case Number: 2023-038568

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

2 October 2023

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SIGNATURE

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DATE

In the matter between:

SIYAKHULISA TRADING ENTERPRISE (PTY) LTD

Applicant

and

GLENCORE OPERATIONS SOUTH AFRICA (PTY) LTD

First Respondent

JABULA PLANT HIRE (PTY) LTD

Second Respondent

JUDGMENT

FORD , AJ.

Introduction

[1] On 8 May 2023, I handed down an *ex-tempore* judgment, striking the applicant's urgent application from the roll, for lack of urgency. Pursuant thereto, the applicant requested written reasons for that decision. The request for reasons was unfortunately only brought to my attention much later. What follows, are the written reasons for my decision.

[2] It bears noting that, the striking of a matter from the urgent roll, for want of urgency, does not by any means suggest, that I have formed an opinion on the merits. It simply means that the application, is not regarded as urgent, and has to be enrolled for hearing in the ordinary course.

[3] Strydom J, explained it as follows in *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others*¹:

If a matter is struck from the roll on urgency an applicant can simply set the matter down again on proper notice in compliance with the rules, as the only finding which was made was that the matter was not properly on the roll.

The issue of inherent urgency

[4] The applicant contends that its [alleged] spoliation by the first respondent, on which its claim of urgency is based, is inherently urgent, and as such demands the urgent intervention of this court.

[5] Recently, Wilson J, in *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*² dealt with the issue of inherent urgency, as follows:

4. Sometimes, Parliament sets out the circumstances in which a court ought to determine a specific type of matter urgently (see, for example, section 18 (4) (iii) of the Superior Courts Act 10 of 2013 and section 5 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act 19 of 1998). In all other cases, urgency is determined not by the nature of the claim brought, but by the circumstances in which the applicant seeks its adjudication. Uniform Rule 6 (12) says that a matter is urgent if the applicant will not be able to obtain “substantial redress at a hearing in due course” without at least some urgent relief.
5. It follows that, whatever the nature of the claim, there must be some reason why the applicant will not be able to protect or advance their legal rights later, unless they are given specific relief now. Most of the time, the applicant requires no more than temporary protection from harm while the process of finally determining their rights progresses. Sometimes, though, a final determination of rights is necessary on an urgent basis because those rights will have little or

¹ (36515/2021) [2022] ZAGPJHC 754 (6 October 2022) para 33

² (2023/067290) [2023] ZAGPJHC 846 (1 August 2023)

no practical effect if the applicant has to wait weeks or months to vindicate them in the ordinary course.

6. There is, accordingly, no class of proceeding that enjoys inherent preference. Counsel appearing in urgent court would, in my view, do well to put the concept of “inherent urgency” out of their minds. There are, of course, some types of case[s] that are more likely to be urgent than others. The nature of the prejudice an applicant will suffer if they are not afforded an urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the person spoliated acts promptly, the matter will nearly always be urgent. The urgency does not, though, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession. The applicant comes to court because they wish to restore the ordinary state of affairs while a dispute about the right to possess a thing works itself out. Cases involving possible deprivations of life and liberty, threats to health, the loss of one’s home or some other basic essential of daily life, such as water or electricity, destruction of property, or even crippling commercial loss, are also likely to be urgent.
7. It is sometimes said that contempt of court proceedings are inherently urgent (see, for example, *Rustenburg Platinum Mines Limited v Lesojane* (UM44/2022) [2022] ZANWHC 36 (21 June 2022) at paragraph 7 and *Gauteng Boxing Promoters Association v Wysoke* (22/6726) [2022] ZAGPJHC 18 (28 April 2022) paragraph 14). I do not think that can be true as a general proposition. I accept that the enforcement of a court order may well qualify as urgent, in situations where time is of the essence, but it seems to me that contempt proceedings entail the exercise of powers which often demand the kind of careful and lengthy consideration which is generally incompatible with urgent proceedings. For example, it cannot be sound judicial policy to commit someone to prison, even where the committal is suspended, or to impose a fine, on an urgent basis, simply because that might be the only way to enforce a court order. There must, in addition, be some other feature of the case that renders it essential that the court order be instantly enforced, such that the penalties associated with contempt require immediate imposition.
8. The fundamental point is that a matter is urgent because of the imminence and depth of harm that the applicant will suffer if relief is not given, not because of the category of right the applicant asserts.

[6] There are certain categories of disputes that have been regarded as inherently urgent, i.e., contempt of court matters, cases related to minors and their wellbeing, business rescue proceedings (to name but a few). Even if regarded as “*inherently urgent*”, urgency must still be founded on a properly

pleaded case for urgency. The fact that a matter is inherently urgent, does not in and of itself render matters urgent for purposes of Rule 6(12) of this court.

[7] The point made above was expressed as follows in *Manamela v Maite*, where the court held³:

The applicant's broad reliance on "contempt proceedings being inherently urgent" is also misconceived. Simply because an application concerns contempt proceedings, that does not of itself justify the enrolment of such application on the urgent court's roll. As in every other urgent application, the issue of urgency must be evaluated in the context of the specific facts of the matter. There must be exact compliance with the requirements of r 6(12)(b) and an applicant must explicitly set out the specific facts which render such application urgent and why an applicant could not be afforded substantial redress at a hearing in due course.

[8] In handing down my *ex-tempore* judgment, I explained that urgent applications, allow litigants an opportunity to jump the proverbial queue, in motion court matters.

[9] The intention behind the formulation of Rule 6(12), both in its construct and intention, was to single-out cases deserving an urgent hearing, free from, what some might say are, burdensome limitations that accompany applications in the normal course.

[10] The relevant rule provides as follows:

(12) (a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.

³ (2023/055949) [2023] ZAGPJHC 1011 (6 September 2023) para 47

- [11] A party seeking the indulgence to have a matter heard on an urgent basis, is held to a high, though not insurmountable threshold. This is so, in order to limit an abuse of the process and to ensure that deserving cases, are heard in an expedited manner.
- [12] It is accordingly important for a court to determine, firstly, whether the applicant has met the threshold, and if so, to hear the application on the merits, and if not, to strike the matter from the roll, in order for it to be heard in the ordinary course.
- [13] The applicant in the present proceedings claims, as a basis for approaching the court on an urgent basis, that the first respondent has spoliated its lawful and undisturbed possession and resorted to self-help. It is not at this stage necessary to consider the merits of the claim pertaining to spoliation.
- [14] In so far as urgency is concerned, the following facts are relevant:
- 14.1 On 29 June 2022, the applicant and the first respondent concluded a Service Supply Agreement;
 - 14.2 The agreement would run for 36 months, from 1 July 2022 to 30 June 2025;
 - 14.3 On 31 March 2023, the first respondent, as contended by the applicant, purportedly terminated the agreement between the parties in respect of the Goedgevonden and Tweefontein sites;
 - 14.4 On 5 April 2023, the second respondent commenced rendering services at the Tweefontein and Goedgevonden sites, replacing the applicant;
 - 14.5 On 6 and 11 April 2023, the applicant sent letters to the first respondent demanding that the first respondent rectifies the breach of the agreement;
 - 14.6 Various letters were exchanged between the parties, which for present purposes can be summarised as the applicant seeking the

first respondent to correct the breach, refrain from sabotage and poaching of employees;

14.7 The first respondent in response to a threat by the applicant to institute interdict proceedings, retorted that the approach would be untenable as it would constitute an abuse of process, and that the position of the first respondent as stated in the letter of termination, remains unaltered.

[15] The applicant explained in these proceedings, that it could not approach this court for interim relief in circumstances where it was obligated to first explore internal remedies.

[16] At the heart of this matter, lies two disputes, one dealing with the alleged spoliation, and the other a contractual breach.

[17] It was contended on behalf of the applicant, that it couldn't approach the court in the normal course, since the act of spoliation had already taken place. Further, that it was impermissible for the first respondent to have resorted to self-help, and that a party is entitled to seek urgent intervention from a court for interim relief, pending an arbitration where the main dispute will be finally determined.

[18] The agreement concluded between the parties, as correctly pointed out by the first respondent's counsel, does make provision for expedited arbitration. And it is not denied, by the applicant's counsel, that any dispute could also include a dispute pertaining to spoliation. I am not persuaded that spoliation, in the context as pleaded by the applicant, can arise from the provisions of the agreement, nor is it contemplated.

[19] The applicant's pursuit of internal remedies, did not disentitle it from approaching this court on an urgent basis, much sooner than it elected to do.

[20] In the circumstances, I concluded that the application is not urgent, and that any urgency which may exist is by and large self-created. Having concluded thus, I expressed no view on the merits of the applicant's claim on spoliation.

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

Order

1. The application is struck from the roll for lack of urgency.
2. The applicant is ordered to pay the first and second respondent's costs on the ordinary scale (party-and-party).

B. FORD

Acting Judge of the High Court
Gauteng Division of the High Court,
Johannesburg

Delivered: This judgment was prepared and authored by the Judge whose name is reflected on 2 October 2023 and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 2 October 2023

Date of *ex-tempore* judgment: 8 May 2023
Date of written judgment: 2 October 2023

Appearances:

For the applicant: Adv. G. Shakoane SC
Instructed by: Nhubunga Attorneys

For the first respondent: Adv. D. Watson
Instructed by: Werksmans Attorneys

For the second respondent: Adv. B.D. Hitchings
Instructed by: Seneka Simmonds Inc