

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE

NO

117558/2023

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
.....
DATE
.....
SIGNATURE

In the matter between:

RAUBEX CONSTRUCTION (PTY) LTD
(Registration number 1993/070002/07)

Applicant

And

PASSENGER RAIL AGENCY OF SOUTH AFRICA (SOC)

1st Respondent

RE A LETAMISA TRADING AND PROJECTS CC
(Reg number B2010/062687/23)

2nd Respondent

JUDGMENT

MAKUME, J:

1. on the 25th January 2024 the Applicant launched this application seeking the following relief:

- 1.1 That the Applicants non-adherence to the Courts Rules relating to form, time period and service be condoned and the application be heard as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court.
 - 1.2 That the first respondent be ordered to deliver the record for tender number 01-05-2023-GAU (PER) to the registrar of this Honourable Court within seven (7) days of the date of this order.
 - 1.3 That the first respondent be ordered to pay the costs of this application on an attorney and own client scale.
 - 1.4 Further and/or alternative relief.
2. It is common cause that this application has its origin in an urgent application that was launched by the Applicant in two parts. In part A thereof the Applicant sought an interdict, interdicting the first Respondent from awarding any work to the second Respondent. Part B which was not to be heard as an urgent application, the Applicant seeks to review the awarding of the tender to the 2nd Respondent.
3. The review application to which this application to compel has a bearing was pending the urgent interdict in part A. However, in the meantime whilst awaiting the outcome of part A the Rule 53 record as required for purposes of the review application became due for delivery by the respondent on the 4th December 2023.
4. On the 14th December 2023 Redman AJ delivered judgment in by striking Part A from the roll due to lack of urgency with costs. This was after the Respondents had in their answering affidavit to Part A delivered and attached a full record in respect of the two-envelope requirement specified in the tender documents.
5. On the 14th December 2023 after the urgent application had been struck off the roll the Applicants sent a WhatsApp message to Respondent's attorneys calling for the filing of the Rule 53 record of proceedings. The request was repeated in a letter dated the 9th January 2024.
6. On the 11th January 2024 the first Respondent's attorneys proposed to the Applicant that there should be a separation of issues in the review application meaning that the issue whether PRASA acted irrationally in excluding Raubex

from the tender processes and evaluation be decided first. The Applicant rejected the proposal.

7. The Respondents indicated that in view of the rejection of their proposal they intend launching an application to separate issues in accordance with the rules. That application had not as yet been issued or served by the 6th February 2024 when this application served before me in the urgent court.
8. On the 25th January 2024 this application was served on the Respondent to be dealt with on an urgent basis.
9. The Respondent has filed its Answering Affidavit and maintains that this application not be placed on the roll of urgent matters as same is not urgent.

URGENCY

10. It is trite to law that before an urgent court deals with the merits of an application it must be satisfied that such application deserved to be placed on the roll failing which the Applicant will not be afforded substantial redress at a hearing in due course that is if the application is placed on the ordinary roll of the motion court.
11. Uniform rule 6(12)(b) of the Uniform Rules of court provides as follows:

“In every affidavit or petition filed in support of any application under paragraph (a) of the sub rule the Applicant shall set forth explicitly the circumstances which he avers renders the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.”
12. Coupled with that requirement a practice has developed in this division that practitioners see to it that there is a specific section headed urgency wherein this requirement is fully dealt with as this enables the presiding judge in a busy urgent court to quickly and conveniently determine the nature of the urgency and why the matter should be afforded preference on the motion roll and not be heard in the normal course of events.
13. The Applicant has failed to set out the basis of urgency and has instead referred this court to the papers filed in the interdict application which had already been dismissed.

14. The rule requires an Applicant to set out in his or her affidavit circumstances which he or she avers renders the matter urgent and the reason why it cannot obtain redress in due course. A case must be made out in the founding affidavit. Cross referencing to a dismissed affidavit in a previous application is not sufficient. The applicant has in my view failed to comply with the peremptory requirement of Rule 6(12) (b).
15. The Applicant knew as far back as the 14th December 2023 that the Respondents have failed to deliver their record and did nothing save to write letters. That act alone caused the matter to lose urgency.
16. Secondly the record that the Applicant requires is in respect of the review application which application was launched in the ordinary course this in itself means that the Applicant appreciates that the review application is not urgent.
17. The tender awarded to the second Respondent is in the interest of the public. A major rail and road infrastructure in Boksburg was damaged resulting in the deaths of a number of people including the railway line and access road to Boksburg a busy and major industrial area in Gauteng.
18. PRASA and the business community are awaiting finalization of the bridge and rail line and this should not be made to await parties that are litigating for own purposes and not for the public interest.
19. Lastly should the Applicant succeed in its review application it has recourse to claim damages.
20. In the result I have come to the conclusion that the applicant has failed to persuade this Court that its application should be heard on the urgent roll and falls to be struck off the roll.

ORDER

- a. The application is struck off the roll for lack of urgency.
- b. The Applicant is ordered to pay the costs of this application which shall include the cost of Counsel.

Dated at Johannesburg on this 28 day of February 2024

**M A MAKUME
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Appearances

Date of hearing	:	06 February 2024
Date of Judgement	:	28 February 2024
For Applicant	:	Adv Grobler
Instructed by	:	Messrs E York Attorneys Inc
For Respondents	:	Adv Ndlovu
Instructed by	:	Messrs Macrobert Attorneys