

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: 134433/2023

DATE: 16-01-2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /	(NO.)
(2) OF INTEREST TO OTHER JUDGES: YES /	(NO.)
(3) REVISED.	✓
<u>DATE</u>	13/02/2024
<u>SIGNATURE</u>	

10 In the matter between

GRADUATE INSTITUTE OF FINANCIAL
SCIENCES (PTY) LTD

Plaintiff

and

INSURANCE SECTOR EDUCATION AND
TRAINING AUTHORITY

Defendant

J U D G M E N T

20 **WEPENER, J:** This is an application filed by the applicant to declare the first respondent in contempt of court on an urgent basis in the urgent court. The question is whether this matter should be brought in the urgent court and on an urgent basis.

Despite the reservations that I had that the relief sought

would have little effect, counsel for the applicant relied on the nature of the matter to classify it as an urgent matter which should be heard out of turn. But I agree with what Wilson J said in *Volvo Financial Services South Africa v Adamos Thlokoze Trading CC*, 2023 SAGP JHC 846 at paragraph 4:

10 “Urgency is determined not by the nature of the claim brought, but by the circumstances in which the applicant seeks its adjudication.”

It is common cause that the respondent filed a notice of application for leave to appeal the order which it is alleged to be in contempt of. The applicant relies on the fact that the order is temporary only and is thus is not suspended due to the application for leave appeal. Two issues follow. Firstly, as Sutherland DJP said in *KMR v KR*, 2021 ZAGP JHC 35 at paragraph 14:

20 “In general, the attribute of finality which may attach itself to (a) supposedly interim order is, of course, not to be equated with an order which is literally irreversible. The point in issue is the effect, not the form.”

I do not believe that it is incumbent upon the urgent court to

determine the issue in this case as it requires careful consideration which is incompatible with urgent proceedings.

Secondly, even if it can be said that the order is not final in effect and I make no finding, the Constitutional Court held that:

10 "It can hardly be said that the party who is of the view that the order is indeed appealable and gives notices that he so seeking leave to appeal the order, is acting in wilful contempt of the court order."

See *JLM v WKM*, 2023 ZAGPHC 41 at paragraph 10.

In these circumstances it is not proper to attempt to determine the question of contempt of the court order in these urgent proceedings.

The matter is removed from the roll and the applicant is ordered to pay the costs of these proceedings.

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WEPENER, J

JUDGE OF THE HIGH COURT

DATE: