

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2023-033278

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

Date: 28 April 2023 E van der Schyff

In the matter between:

VERMAAK BEESLAAR

1ST APPLICANT

SALOME BEESLAAR

2ND APPLICANT

and

MASHOTO JOSEPH MOKONE

1ST RESPONDENT

MBUYANE NOKUTHULA ESTELLE CASSANDRA MOKONE

2ND RESPNDENT

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

3RD APPLICANT

JUDGMENT

Van der Schyff J

Introduction

- [1] The first and second applicants (hereafter collectively referred to as Mr. Beeslaar) and the first and second respondents (hereafter collectively referred to as Mr. Mokone) are neighbours in a well-known and affluent residential area in Pretoria. On 3 April 2023, Mr. Beeslaar returned home after a vacation. He noticed the presence of construction workers at his neighbour's property. Sand and bricks had been delivered to Mr. Mokone's property. Later in the afternoon, Mr. Beeslaar saw his neighbour and asked him about the scope of the building work that they were undertaking. Mr. Mokone told him that they were planning to extend their property by, *inter alia*, adding a second storey and entertainment area to the current structure. Mr. Beeslaar was 'completely shocked' by the Mokone's plans to improve their property. In his opinion, the building works would 'disfigure the area, be unsightly and objectionable, would negatively affect the value of the joint properties or endanger life or property and invade [their] privacy'.
- [2] Mr. Beeslaar asked to be provided with the approved building plans. Since Mr. Mokone did not provide him with the building plans as requested, Mr. Beeslaar sent an email to Mr. Mokone's architect on 5 April 2023, again requesting the building plans. He was subsequently informed that the plans were approved in February 2022, more than a year ago. Building commenced around 12 April 2023. On the same day Mr. Beeslaar's attorney of record sent a letter to Mr. Mokone informing the latter of his objection to the developments.
- [3] Mr. Mokone did not respond to the letter, and Mr. Beeslaar and other neighbours proceeded to lay three complaints with the third respondent. On 14 April 2023 Mr. Beeslaar received a response from the third respondent. He was informed that the approval of building plans lapses after the expiry of 12 months. A letter was sent to Mr. Mokone requesting him to seize all construction and building activities. He was informed of the content of the communication received from the third respondent.
- [4] The building activities were not halted, and Mr. Beeslaar decided to approach the urgent court for relief. The notice of motion is dated 14 April 2023. An unissued copy

of the application was served electronically on the first and third respondents on Friday, 14 April 2023, at 16h09. Service of the issued application was effected electronically and through the Sheriff of the High Court on 17 April 2023 at 18h17, through affixing. The respondents were called upon to file a notice of intention to oppose by 17 April 2023 before 17h00, and an answering affidavit by 19 April 2023. The matter was enrolled for hearing in the urgent court on 25 April 2023.

- [5] On 19 April 2023, Mr. Mokone's attorney of record informed Mr. Beeslaar's attorney that construction has been halted and that Mr. Mokone undertakes not to proceed with construction or building activities until a renewal application for the current building plans to be renewed, has been finalised. Mr. Beeslaar, however, was not satisfied with this undertaking. He seeks an undertaking that Mr. Mokone will not proceed with any building work until any review, or appeal process contesting the building plans has been finalised. He contends that the renewal process is merely an administrative process that does not require consideration of whether or not the plans should have been granted in the first place.

Urgency

- [6] The purpose of the urgent court is to provide expedient access to justice to those litigants who will not be afforded substantial redress in due course if their matters are not promptly dealt with. The purpose is not to deal with 'important matters.' Each litigant's matter is important to it, otherwise, the litigant would not have resorted to seeking recourse in a court of law. Neither is the purpose of the urgent court to assist litigants to 'save money' or curtail future legal proceedings. As stated, the purpose is one-dimensional – to assist litigants who would not be afforded substantial redress if the matter is heard in the ordinary course, four to six months down the line.
- [7] It is trite that urgency is a reason that may justify deviation from the times and forms the Rules of Court prescribes. In 1977 Coetzee J, held in *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)*,¹ that Rule 6(12) is undoubtedly the most abused Rule in this

¹ 1977 (4) SA 135 (W) 136C.

Division. In 2023, I can but agree with him. This abuse occurs in both the High Courts of this Division. It compelled the Deputy Judge President of the High Court in Johannesburg to issue a notice to all legal practitioners. This notice is equally relevant to the litigants in the Pretoria High Court. Sutherland DJP, amongst others, stated:

‘It has become apparent that the effective functioning of the Urgent Motion Court in Johannesburg is being imperilled by several undesirable practices by some attorneys and some counsel. This notice addresses the most serious aspects. ...

A much more disciplined approach must be adopted by practitioners as to whether or not a matter truly is urgent to justify its enrolment in a particular week. Non-urgent matters clutter up the roll and waste time that could be devoted to truly urgent matters. Practitioners must not be timid in the face of anxious and bullying clients who demand gratification of their subjectively perceived needs. The era of ‘let us see what the judge might think’ is now officially over.’

- [8] In order to safeguard the sanctity of the urgent court, the first hurdle a litigant approaching the urgent court needs to overcome before his application will be considered on the merits, is the question as to whether the matter is indeed urgent. The determination of urgency is intertwined with the facts underpinning the litigation, and the relief sought.
- [9] In this application, the question of urgency looms large. Mr. Beeslaar contends that Mr. Mokone’s failure to provide him timeously with the required approved building plans, or an undertaking that building works would be ceased on 13 April 2023, necessitated the launching of the application. At the time when the application was launched, the respondents were illegally building, and this, the applicants contend, renders the application inherently urgent as an illegal situation cannot be allowed to continue.
- [10] In determining whether this application passes the urgency test, I also have to consider that the applicants approached the court on the basis of extreme urgency.

- [11] Counsel for the applicants referred me to the judgment by Dlodlo J in *The Camps Bay Residents Ratepayers Association and Others v Augoustides and Others*.² In this case the court held, and correctly so, that interim relief regarding the cessation of building works pending review proceedings may be granted where the requirements for an interim interdict have been met. The question as to whether the applicants made out a case for interim relief to be granted is, however, not the first question to be considered in urgent motion court proceedings. As stated at the onset of this discussion, the question is whether the applicants will be afforded substantial redress in due course if the application is not dealt with expediently.
- [12] Section 7(4) of the National Building Regulations and Building Standards Act 103 of 1977 (the Act) provides as follows:
- ‘Any approval granted by a local authority in accordance with subsection (1) (a) in respect of any application shall lapse after the expiry of a period of 12 months as from the date on which it was granted unless the erection of the building in question is commenced or proceeded with within the said period or unless such local authority extended the said period at the request in writing of the applicant concerned.’
- [13] The applicants stated that they were ‘informed’ by third respondent’s officials that the renewal process is a mere administrative process that does not require the reconsideration of the approval. A plain reading of the section, however, leads to the interpretation that the extension must be applied for, before the validity of the building plans has lapsed. This leads to the conclusion that when a building plan has lapsed, and no extension was applied for within the twelve-month validity period, a full application will need to be resubmitted should the applicant wish to commence with the building work.
- [14] I am, however, of the view, that even the approval of the building plans can be extended through a simple administrative process, the issues involved in this application do not render the matter urgent. The applicants did not succeed in

² 2009 (6) SA 190 (WCC).

making out a case that they will not be afforded substantial redress in due course if this matter is not dealt with in the urgent motion court.

- [15] Not only did Mr. Mokone undertake not to commence with any building works before obtaining the third respondent's approval, Mr. Beeslaar failed to indicate, on the papers as it stands, how the applicants will be prejudiced if Mr. Mokone continues with the building once the building plans are approved, pending further legal proceedings being instituted. Mr. Beeslaar did explain the prejudice he will suffer if Mr. Mokone builds in accordance with the existing building plans. However, if Mr. Beeslaar successfully pursues legal avenues open to him to object against the third respondent's approval of the building plans, once their validity is confirmed again, Mr. Mokone may be ordered to demolish any building works erected if the work is done in contravention of approved building plans, or without any approval. The risk of continuing with the building project when the building plans are re-approved under the threat that the decision might be overturned in the future, is a risk that only the respondents carry. No case was made out that the applicants will suffer any irreparable harm if the building continues once the plans are approved, or the approval extended, and Mr. Beeslaar succeeds with either appeal or review proceedings in due course.
- [16] The applicants abused the court's process to 'jump the queue' and to receive preferential treatment. This cannot be countenanced. In addition, they afforded the respondents very limited time periods within which to obtain legal advice and file answering papers. The applicants reported their complaints to the third respondent, the appropriate authority, who is empowered to intervene and stop any building activities commenced with in contravention of the Act. However, they did not afford the third respondent time to take any action before approaching the urgent motion court.
- [17] This application thus stands to be struck from the roll for lack of urgency. The respondents should not be out of pocket for being dragged before the urgent court. In the result, a punitive costs order is appropriate.

ORDER

In the result, the following order is granted:

- 1. The application is struck from the roll with costs on an attorney and client scale.**



E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

For the applicants:	Adv. J. Henderson
With:	Adv. J. Stroebe
Instructed by:	Barnard & Patel Inc.
For the respondents:	Adv. M.T. Shepherd
Instructed by:	Strydom, Britz Molahutsi Inc.
Date of the hearing:	26 April 2023
Date of judgment:	28 April 2023