

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 32099/21

In the matter between:

PORTIA ITUMELENG MAMPURU

FIRST APPLICANT

DINEO HAZEL THUBAKGALE

SECOND APPLICANT

ANGELINE THOBAGALE

THIRD APPLICANT

and

THE EXECUTOR OF THE ESTATE
OF THE LATE PHILLIP TBOBAGALE
ESTATE NO. 42351/21

FIRST RESPONDENT

BUSISIWE THOBAGALE

SECOND RESPONDENT

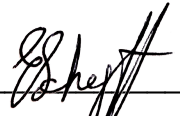
MASTER OF THE HIGH COURT
PRETORIA

THIRD RESPONDENT

ORDER

HAVING heard argument and considering the papers filed of record it is ordered that:

1. The application is struck from the roll.
2. The applicants, jointly and severally the one to pay the other to be absolved, are to pay the costs of the application.



E van der Schyff

Judge of the High Court, Gauteng, Pretoria

REASONS:

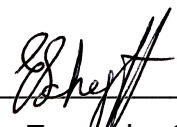
The cursory reasons underpin the order granted. Comprehensive reasons will be furnished to any party on application in terms of Rule 49(1)(c) of the Uniform Rules of Court.

- [1] The court was approached on the basis of extreme urgency. The application was issued on 12 July 2021 and the matter was set down to be heard on 15 July 2021. In the notice of motion, the respondent is directed to notify the applicants' attorneys in writing of their intention to oppose, if any, within 2 days and to file their answering affidavit within 5 days. This directive is not synchronised with the matter being enrolled for hearing on 15 July 2021.¹
- [2] The matter was, however, previously enrolled on the urgent court roll of 6 July 2020. The applicant, however, unilaterally removed the matter from the roll after receipt of the respondent's answering affidavit in order to file a reply.
- [3] The applicants did not follow the Judge President's Directive of 11 June 2021. It is provided in paragraph 183 thereof, that the urgent court roll closes at

¹ The matter was, however, only heard on 17 July 2021 because a virtual connection could not be secured and I postponed the matter to be heard in open court.

noon on a Thursday afternoon for the following Tuesday. No urgent application may be enrolled for a date further in the future. The applicants decided to set the matter down for hearing on 15 July 2021. No reason was provided for the applicants' failure to ensure that the matter was timeously enrolled and not set down for Tuesday 13 July 2021.

- [4] The fact that the applicants unilaterally removed the application from the roll of 6 July 2021 belies the urgency of the matter. The facts underpinning the application, do not support a finding that the application is urgent. The applicants seek an order directing the executor of the Estate Late Phillip Thobakgale to restore their alleged possession of two motor vehicles. The applicants aver that the third applicant and the deceased mother of the first and second applicants, are the respective owners of the vehicles. No executor was appointed for the first and second applicants' mother's deceased estate. The facts indicate, however, that the applicants were never in possession of the vehicles before or after Phillip Thobakgale's demise. If it is considered that Mr. Thobakgale passed away on 21 February 2021, it is evident that if there is urgency in the applicants' claim to the vehicles, the urgency is self-created by the applicants' failure to act soon after his death. In fact, the applicants do not indicate why they never attempted to restore their possession while the late Mr. Thobakgale was still in life.
- [5] In addition, the ownership of the vehicles is in dispute. It is trite that litigants should not use motion proceedings to resolve their disputes when material facts are in dispute. The applicants should reasonably have foreseen this factual dispute. The applicants did not approach the court for *interim* relief pending the institution or finalisation of action proceedings. Even if I was of the view that the matter required the court's urgent attention, the factual dispute would have posed a hurdle for the applicants to pass.



E van der Schyff

Judge of the High Court, Gauteng, Pretoria

Delivered: The order and reasons are 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. The date for hand-down is deemed to be 19 July 2021.

Counsel for the applicants:	Adv. T Mokgotsane
Instructed by:	Zamisa Shisinga Attorneys
Counsel for the 1 st and 2nd respondents:	Adv A Khosa
Instructed by:	Molosi Attorneys
Date of the hearing:	17 July 2021
Date of judgment:	19 July 2021