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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

- (1) NOT REPORTABLE
- (2) NOT OF INTEREST TO OTHER JUDGES
- (3) REVISED.

**CASE NO: 81278/2017
16/2/2018**

In the matter between:

SUID-AFRIKAANSE VROUE FEDERASIE

APPLICANT

and

MARIE DE BIE

RESPONDENT

(ID NUMBER: [...])

REASONS FOR ORDER

THOBANE AJ,

[1] On 16 January 2018 I heard an urgent application and granted the following order;

1. The application is struck from the roll;
2. The applicant is directed to pay the costs.

[2] I indicated at the time that reasons for my order will follow. What follows below are the reasons.

[3] On or about 29 November 2017 the applicant launched an application in this court seeking the eviction of the respondent from premises known as [...] Pretoria, plus costs on a scale as between attorney and client.

[4] The application, which does not appear to be opposed at this stage, is to be heard on 13 March 2018. In the application, the applicant seeks to have evicted from the aforementioned premises, the respondent as well as all other persons who occupy the premises through the respondent.

[5] On 20 December 2017 the applicant launched another application purportedly on an urgent basis, seeking in summary form the following relief;

1. Joining one Raymond Fouche as the second respondent;
2. Joining Rey's Gymnastics as the third respondent;
3. Eviction of the first to third respondents;
4. Costs on attorney and client scale.

[6] It must be accepted from the onset that when the application was launched initially it was not on an urgent basis, hence the set down on the unopposed roll of 13 March 2018. It follows therefore, that when that date is brought forward, cogent reasons must be advanced. The reason advanced which I will deal with in detail below, was the imminent commencement of the academic year on 18 January 2018. The main reason however was that the matter had been rendered urgent because of events that occurred on 16 December 2017.

[7] The aim of the recently launched application is twofold, namely;

- 7.1. To join the other parties as respondents;
- 7.2. To have the application classified as urgent enrolled and heard.

[8] To the above end, the applicant filed a supplementary affidavit seeking joinder and establishing urgency. The supplementary papers further explain issues of service as well as grounds of urgency. The application is opposed by the respondents.

[9] For ease of reference it is prudent that the application for joinder be considered first.

[10] Johannes Fouche is the father of Reynard Fouche, who is sought to be joined as the second respondent. Johannes Fouche argues that throughout the duration of the lease he is the one who had been in constant contact with the applicant and that it makes no sense to seek to join Reynold Fouche, his son, who had no dealings with issues that relate to this matter. In fact he argues that the Gymnasium is a separate legal entity and that there is no reason why citing it alone should not be sufficient.

[11] The application for joinder was not argued with vigor before me. Counsel for the respondents was much more vociferous in submitting that the application was without merit particularly in so far as it related to Reynold Fouche. He argued that Johannes Fouche was at all times the individual dealing with issues of the lease and contended that there was no necessity to join Reynold Fouche or even him for that matter. He stated that the Gymnastic Club had its own legal personality and there was no reason, if a case has been made for joinder, it alone would not be joined.

[12] In ***Burger v Rand Water Board and Another 2007 (1) SA 30 SCA*** at 33, the Supreme Court of Appeal summarized the principles applicable to joinder as follows:

"The right to demand joinder is limited to specific categories of parties such as joint owners, joint contractors and partners and where the parties have a direct and substantial interest in the issues involved and the order which the Court might make, or if such an order cannot be substantiated or carried into effect without prejudicing that party, unless the Court is satisfied that he/she has waived his/her right to be joined."

[13] Corbett CJ in ***United Watch and Diamond Company (Pty) Limited v Disa Hotels Limited and Another 1972 (4) SA 409 (C)*** at 415 E-F, set out what amounts to direct and substantial interest as follows;

"A direct and substantial interest can be connoted as an interest in the

right which is the subject matter of the litigation and ... not merely a financial interest which is only an indirect interest in such litigation. This view of what constitutes a direct and substantial interest has been referred to and adopted in a number of subsequent decisions and it is generally accepted that what is required is a legal interest in the subject matter of the action which could be prejudicially affected by the judgment or the order.”

[14] The Gymnasium currently occupies the leased premises on the basis of a sublease between itself and Marie de Bie. The relief sought, to evict Marie de Bie and all those who occupy the premises through her, will undoubtedly affect the Gymnasium. I am accordingly of the view that a case for the joinder of the Gymnasium has been established. However, it can not be said that an application for joinder must be entertained in the urgent court.

[15] The applicant states in the supplementary affidavit founding urgency that the events of 16 December 2017 were precipitous to the urgent application. This is because on that day a Mr Fouche attended the premises and removed therefrom furniture belonging to a tenant (Mr Jordaan), who had occupied the hall seemingly at the instance of the applicant.

[16] The following very brief background facts which are largely common are necessary to highlight. The applicant is the owner of the leased premises, stated above. The applicant and the respondent entered into an agreement of lease with an option to purchase. The lease would have run its course and terminate on 28 February 2010. It seems two further leases were concluded between the parties, the last of which was on 8 March 2017. The applicant's contention is that the third agreement was terminated on 27 September 2017 when applicant delivered a letter to the respondent to the effect that the lease agreement would terminate on 31 October 2017.

[17] For our purposes, it is irrelevant whether the parties loaned each other moneys back and forth an allegation which is prominently made. What is of importance is what was known by the applicant at the time when the application for eviction was launched. What makes this application, which was launched

after the initial application, urgent.

[18] On 14 September 2007 the applicant entered into a new agreement with Mr Pieter Jordaan who intended to utilize the premises as a school. On 16 December 2017 Mr Jordaan spoliated the gymnasium. In turn, Mr Fouche spoliated Mr Jordaan by removing from the hall items belonging to him. It is these events that the applicant contends gave rise to urgency leading to the launching of the urgent application on 20 December 2017. I must hasten to add that the current dispute is not about the spoliation of either of the parties, it is simply about the eviction of the respondent or any person occupying the premises through the respondent, such as the Gymnasium, from the leased premises.

[19] Bearing in mind that this application was struck from the roll for want of urgency, the court must in this judgment deal with whether the application was in fact urgent. A useful starting point is to evaluate whether the application meets the requirements of Rule (6)(12) of the Uniform Rules of Court. The rule provides that; *'In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.'*

[20] In all matters where relief is sought on an urgent basis it is peremptory that the applicant deal with the above requirements. Notshe AJ in ***East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others [2012] JOL 28244 (GSJ)*** put it thus,

"[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. (My emphasis). The rules allow the court to come to the assistance of a litigant because if the latter were to wait for

the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard."

[21] In *casu* circumstances that gave rise to urgency are said to be the spoliation that took place on 16 December 2017. At that time the applicant was fully aware that the respondent as well as the subtenants were in occupation of the premises. The applicant nevertheless chose to approach this court in the normal course for relief. That case is pending before this court. Reverting to ***East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others***, Notshe AJ tells us that urgency is underpinned by absence of substantial redress at a hearing in due course. The question to be asked therefore is whether the relief or redress the applicant seeks can not be obtained in due course. The relief or redress that the applicant seeks in due course, namely, to evict all those who occupy the leased including the subtenants, is exactly the same as the relief the applicant seeks in *casu*. By all accounts therefore, the applicant has substantial redress at a hearing in due course.

[22] Once it is shown that the applicant can obtain substantial redress in due course, the application can not be said to be urgent.

[23] For all the above reasons the matter was struck from the roll with costs.

**SA THOBANE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**