REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

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

....

DATE 8/10/2024 SIGNATURE...[redacted]......

CASE NO: 10072/2024

In the matter between:

MARIO SNYMAN	**Applicant**
and	
PHIHORAH FOODS (PTY) LTD	**First respondent**
KOENA MARTIN MATLALA	**Second respondent**
FAITH MATHONGASI NKANYANI	**Third respondent**
MAZIA CARRIM ATTORNEYS	**Fourth respondent**
THE REGISTRAR OF DEEDS, LIMPOPO PROVINCE POLOKWANE	**Fifth respondent**

JUDGMENT

GAISA AJ

INTRODUCTION

[1] This is an urgent application brought by Mario Snyman (the Applicant) against Phihorah Foods (Pty) Ltd (First Respondent), Koena Martin Matlala (Second Respondent), and others. The Applicant seeks an urgent interdict to prevent transfer of a property to the Third and Fourth Respondents pending an action for specific performance.

[2] The key issue for determination is whether the application meets the requirements for urgency as set out in Rule 6(12) of the Uniform Rules of Court.

CHRONOLOGY OF EVENTS

[3] Before addressing the issue of urgency, it is necessary to set out the relevant timeline of events:

3.1. 23 June 2024: The First and Second Respondents entered into an offer to purchase with the Third and Fourth Respondents through Seeff Agency.

3.2. 25 June 2024: The Applicant entered into an offer to purchase with the First Respondent through Remax Agency.

3.3. 1 August 2024: A power of attorney was signed authorizing Nazia Carrim Attorneys to transfer and act upon the contract entered into between the First and Second Respondents and the Third and Fourth Respondents.

3.4. 20 August 2024: A mortgage loan was secured by Kemstruct Systems Pty Ltd (not the Applicant personally).

3.5. 22 August 2024: The Applicant became aware of the competing offer.

3.6. 28 August 2024: Negotiations between the parties failed.

3.7. 10 September 2024: The Applicant filed this urgent application.

LEGAL FRAMEWORK

[4] Rule 6(12) of the Uniform Rules of Court requires an applicant in urgent proceedings to set forth explicitly:

4.1. The circumstances which render the matter urgent; and

4.2. The reasons why the applicant claims he could not be afforded substantial redress at a hearing in due course.

[5] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd*[1] the court emphasized that:

"[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. The rules allow the court to come to the assistance of a litigant because if the latter were to

[1] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011)

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

[6] Furthermore, in *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others*[2] the court held:

"It seems to me that when urgency is in issue the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent".

ANALYSIS

[7] After careful consideration of the papers before me, I find that the Applicant has failed to meet the requirements for urgency for the following reasons:

7.1. The Applicant became aware of potential issues with the property sale as early as August 22, 2024, when he received a letter indicating there was a competing offer for the property.

[2] Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others (35248/14) [2014] ZAGPPHC 400; [2014] 4 All SA 67 (GP) (19 June 2014)

7.2. Negotiations between the parties definitively failed on August 28, 2024. This date marks the point at which the urgency of the matter crystallized and the clock, in respect of urgency, started ticking

7.3. Despite the clear failure of negotiations on August 28, 2024, the Applicant only filed the urgent application on September 10, 2024 - a delay of approximately 13 days.

7.4. This 13-day delay is significant in the context of an urgent application and suggests that the Applicant did not act with the promptness required for urgent relief.

7.5. The Applicant has not provided a satisfactory explanation for this delay in the founding affidavit, as required by Rule 6(12) of the Uniform Rules of Court.

7.6. Most importantly, the Applicant has failed to explicitly set forth in the founding affidavit why he cannot be afforded substantial redress at a hearing in due course, as required by Rule 6(12)(b) and emphasized in East Rock Trading.

7.7. The Applicant has not demonstrated why he cannot obtain substantial redress through normal court processes, as required by the Mogalakwena Local Municipality case.

7.8. While there may be potential financial implications for the Applicant if the property is transferred, this alone does not justify urgent relief, especially in the absence of a clear explanation as to why normal court procedures would not provide substantial redress.

[8] Given that the application does not meet the requirements for urgency, there is no need to consider the merits of the matter at this stage.

CONCLUSION

[9] The Applicant has failed to demonstrate the level of urgency required for this court to hear the matter on an urgent basis. The 13-day delay between the failure of negotiations and the filing of the urgent application is significant and unexplained. This delay, coupled with the failure to explicitly address why substantial redress cannot be obtained in due course, leads me to conclude that this matter is not truly urgent as contemplated by Rule 6(12) and the relevant case law.

[10] It is important to note, however, that striking this matter from the urgent roll does not mean the end of the road for the Applicant. The Applicant retains the right to pursue this matter through ordinary court procedures if so advised.

ORDER

[11] In light of the above, I make the following order:

11.1. The matter is struck from the urgent roll for lack of urgency.

11.2. The Applicant is ordered to pay the costs of this application.

[redacted]

N GAISA

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

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	: DE BRUIN OBERHOLZER ATTORNEYS
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DATE OF HEARING :25 September 2024

DATE OF JUDGEMENT : 8 October 2024

This judgment is handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 8 OCTOBER 2024.