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 18/10/2024 SIGNATURE……[redacted]…

CASE NO: 10224/2024

In the matter between:

MATHARA INVESTMENTS CC Applicant

and

STATE INFORMATION TECHNOLOGY

AGENCY SOC LIMITED First Respondent

MR S DZENGWA Second Respondent

JUDGEMENT

Gaisa AJ

[1] The applicant, Mathara Investments CC, has approached this court on an urgent basis seeking an order declaring the first respondent's purported termination of a Professional Service Level Agreement dated 3 September 2024 to be unlawful and *void ab initio*. The applicant further seeks an order directing the parties to give effect to the agreement within 24 hours and to comply with their respective obligations until its lawful conclusion.

[2] The central issue before this court is whether the matter warrants urgent consideration. It is trite that an applicant who approaches the court on an urgent basis bears the onus of establishing the requisite urgency.

URGENCY

[3] Urgent applications are governed by Uniform Rule 6(12). In terms of that rule, the court has discretionary power to dispense with the forms and service provided for in the rules and to dispose of the matter at such time and place and in such manner and in accordance with such procedure as it deems fit.[1]

[4] The first question is whether there must be a departure at all from the usual process.[2]

[1] Uniform Rule 6(12)(a).
[2] Luna Meubel Vervaardigers v Makin and Another 1977 (4) SA 135 (W) at 136H-137F. Mbude v Premier of the Eastern Cape and Others (218/2022) [2022] ZAECBHC 3 (3 May 2022)

[5] The applicant is expected, in the founding affidavit, to set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that substantial redress could not be afforded at a hearing in due course.[3]

[6] Put differently, if the matter were to follow its normal course as laid down by the rules, would the applicant be afforded substantial redress. If not, the matter qualifies to be enrolled and heard as an urgent application. If so, the application does not pass the test for urgency.

[7] The question as to the absence of 'substantial redress' in an application brought on usual timeframes lies at the heart of the question of urgency.[4]

[8] Urgency is not a matter to be glossed over.[5] An applicant is obliged to go beyond a mere allegation of urgency.[6]

[9] Even an allegation of an infringement of constitutional rights, on its own, does not render a matter urgent.[7]

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[3] Uniform Rule 6(12)(b).

[4] See East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others [2011] ZAGPJHC 196. See also Mbude *supra*

[5]Mbude supra. See Hultzer v Standard Bank of SA (Pty) Ltd (1999) 20 ILJ 1806 (LC) at 1809: 'The court will, however, only grant such relief where an applicant is able to persuade the court that extremely cogent grounds for urgency exist.'

[6] Mokoena v West Rand District Municipality and Others (unreported case no 39460/19) (High Court of South Africa, Gauteng Local Division, Johannesburg) para 27.

[10] It is an absolute requirement to set forth the reason for claiming that substantial redress would not be possible other than via the urgent application launched.[8]

ANALYSIS

[11] In the present matter, the applicant has failed to satisfy the requirements for urgency for the following reasons:

[12] The termination letter from SITA to the applicant was sent on 3 September 2024. However, the urgent court application was only filed on 16 September 2024, some 13 days later. This delay undermines the claim of extreme urgency.

[13] The applicant has not adequately explained why it could not have approached the court earlier or pursued alternative dispute resolution mechanisms in the intervening period.

[14] While the termination undoubtedly has serious consequences for the applicant's business operations, it is not clear that the harm is truly irreparable. It is trite that the mere fact that the applicant may suffer financial loss is not sufficient to

[7]Moyane v Ramaphosa and Others [2018] ZAGPPHC 835; [2019] 1 All SA 718 (GP). Also see Hotz and Others v University of Cape Town 2018 (1) SA 369 (CC) para 15. Mbude *supra*.
[8]Mbude *supra* at [10]

establish urgency. The issue of whether financial hardship is a basis of seeking urgent relief has received attention in this and other Courts. In other decisions, it has been held that as a general principle, financial hardship does not establish a basis for urgency.[9] It has been held that the mere fact that irreparable financial losses have been suffered or would be suffered by the applicant was not, by itself, sufficient ground to acquire the requisite urgency necessary to justify a departure from the ordinary court rules.[10]

[15] In **Ledimo and Others v Minister of Safety and Security and Another** it was held that:

"[29] The point which I now have to determine is whether the financial hardships of the applicants constitute grounds of urgency sufficient to justify the extra-ordinary modification of the ordinary rules by the applicants.

[30] In the unreported case of ***CALEDON STREET RESTAURANTS CC v MONICA D'AVIERA*** *which was heard in the South Eastern Cape on 7 November 1997 Kroon J on p 12 quoted the following passage by Fagan J at p 113E-114B in* ***IL & B MARCOS CATERERS (PTY) LTD v GREATERMANS SA LTD AND ANOTHER*** *which was heard at the same time with the case*

[9] See Hultzer v Standard Bank of South Africa (Pty) Limited (J 469/99) [1999] ZALC 46 (25 March 1999) at para 13; Jonker v Wireless Payment Systems CC (2010) 31 ILJ 381 (LC) at para 16.
[10] Ntefe J Ledimo & others v Minister of Safety and Security & Others (2242/2003) [2003] ZAFSHC 16 (28 August 2003) at paragraph 32

*of **<u>AROMA INN (PTY) LTD v HYPERMARKETS (PTY) LTD AND ANOTHER</u>** 1981(4) SA 108 (CPD):*

"Other litigants waiting for their matters to be heard would be prejudiced if priority were afforded to these applications as they would have to wait longer. And what distinguishes these two applications from other matters? Applications for review such as these occur commonly and are not given priority. The prejudice that applicants are complaining about is the possibility that they may suffer losses of profits - the losses, if any, sound in money. Assuming that such losses are irrecoverable, that still does not distinguish these matters from many others awaiting their turn on the ordinary roll. Take for example all the cases wherein general damages are claimed in delict including actions instituted under the Compulsory Motor Vehicle Insurance Act 56 of 1972. Interest is not claimable on the amount awarded and litigants suffer financially by delay in the adjudication of their matters. Moreover, the fact that a litigant with a claim sounding in money may suffer serious financial consequences by having to wait his turn for the hearing of his claim does not entitle him to preferential treatment. On the other hand, where a person's personal safety or liberty is involved or where a young child is likely to suffer physical or psychological harm, the Court will be far more amenable to dispensing with the requirements of the Rules and disposing of the matter with such expedition as the situation warrants. The reason for this differential treatment is that the Courts are there to serve the public and this service is likely to be seriously disrupted if considerations such as those advanced by the applicants in these two matters were allowed to dictate the

> *priority they should receive on the roll. It is, in the nature of things, impossible for all matters to be dealt with as soon as they are ripe for hearing. Considerations of fairness require litigants to wait their turn for the hearing of their matters. To interpose at the top of the queue a matter which does not warrant such treatment automatically results in an additional delay in the hearing of others awaiting their turn, which is both prejudicial and unfair to them. The loss that applicants might suffer by not being afforded an immediate hearing is not the kind of loss that justifies the disruption of the roll and the resultant prejudice to other members of the litigating public."*

…"

[16] The urgency appears to be at least partially self-created by the applicant's delay in bringing the application.

[17] The 13-day period between the termination and the filing of this application is rather a long time taken by the applicant to bring this application.

[18] Furthermore, it appears from the papers that SITA had been complaining about the applicant's poor service for some time prior to the termination letter of 3 September 2024.

[19] This suggests that the applicant should have been aware of the potential for termination and had ample opportunity to take preemptive legal action or engage in dispute resolution.

[20] While I am mindful of the potential impact on the applicant's business and employees, this alone does not justify bypassing the ordinary court process.

[21] As has been shown with the caselaw cited herein, mere prejudice is not enough. The prejudice must be irreparable and not susceptible to recompense by an award of damages.

[22] In this case, it appears that any prejudice suffered by the applicant could potentially be addressed through a claim for damages if the termination is later found to be unlawful. This further militates against a finding of urgency.

[23] In light of the above considerations, I am not satisfied that the applicant has made out a case for extreme urgency or any kind of urgency that would justify hearing this matter outside of the normal court process. The ordinary mechanisms of the court are sufficient to deal with this dispute.

<u>ORDER</u>

[24] Accordingly, the following order is made:

1. The application is struck from the roll for lack of urgency.

2. There is no order as to costs.

[redacted]

N. GAISA
ACTING JUDGE OF THE HIGH COURT, POLOKWANE; LIMPOPO DIVISION

APPEARANCES

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DATE OF HEARING	**: 26 September 2024**
DATE OF JUDGEMENT	**: 18 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 18 OCTOBER 2024.