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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case No: 039266/2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
25 JULY 2024	

In the matter between:

MIX MEDIA CORPORATION (PTY) LTD

First Applicant

MIX MEDIA MANAGEMENT PTY LTD

Second Applicant

KUDZAYI TIRIBABI

Third applicant

And

MIX 93.8 FM PTY LTD

First Respondent

BAMBANANI MEDIA PTY LTD

Second Respondent

ABIGAIL MILOSEVICH

Third Respondent

MEDIABRIGHT PTY LTD

Fourth Respondent

REASONS FOR JUDGMENT

MAHALELO, J:

[1] The applicants seek the following relief in the notice of motion:

“ 1. Condonation is granted to the Applicants for non-compliance with the ordinary rules for forms and service and time periods prescribed by the Uniform Rules of Court ("the Rules") and that same be dispensed with and this application be heard and finalised as an urgent application in terms of Rule 6(12);

2. Pending the determination of the contractual Agreement ("the Agreement"):

2.1 The Applicants are granted full access to the Station premises at ground floor, office 2B, The I[...] B[...] [...], 2[...] M[...] C[...] W[...] C[...] 2[...] (the premises) including rights to access tools.

2.2 the Respondent are to grant control and possession of all the assets referred to in Annexure A ("the Assets") to the First Applicant who is to resume possession and control thereof in terms and for the purposes of the Agreement;

2.3 the Respondents should relinquish possession and control of the Assets and are prohibited from in any manner exercising any control, possession and/or ownership rights in relation thereto;

2.4 the First and Second Applicants are to resume radio broadcasting in the Station and its management services in respect of the Station;

2.5 the Respondents are interdicted from broadcasting any content on Mix 93.8 FM ("the Station") and performing any management services which include inter alia:

2.5.1 sourcing and delivery of all programme content for transmission by the Station (in terms of the Licence held by the Midrand Community Communications 054-603 NPO, of which the Applicants have been granted the Management contract);

2.5.2 to interact with the Station's staff including issuing instructions and taking any disciplinary measures;

2.5.3 to issue any invoices in relation to the station

2.5.4 dealing with the intellectual property of any- of the applicants.

2.6 the Respondents are interdicted from interfering with the management, running and operations of the Station including issuing and giving instructions to the employees and service providers of the Station;

2.7 the Respondents are interdicted from interfering or denying access to the Transmitter site of the radio station situated at Johannesburg Water, Midrand Depot, Sixth Road Midrand;

2.8 the Third Applicant is to resume his normal duties and functions at the Station;

2.9 the Respondents should restore access of the Applicants to communication platforms, including access to the WhatsApp communication group with employees;

2.10 The third respondent or any other representative of the respondents are interdicted from holding themselves as Station Managers and/or Managing Director, representatives or agents of the Station;

2.11 the Respondents are interdicted from any further communication with the employees, stakeholders and service providers of the Station;

3. The prayers referred to at paragraphs 2 shall operate as interim interdicts;

4. Directing the Respondents to pay the costs of this application on an attorney and own client scale; ”

[2] The application is opposed on urgency as well as the merits.

[3] On 26/4/2024 I removed the matter from the roll with costs for lack of urgency. These are my reasons.

[4] A party seeking an indulgence to have a matter heard on an urgent basis faces a high threshold of explicitly setting out in the founding affidavit why the matter is urgent. This is so in order to limit an abuse of the process and to ensure that deserving cases are heard in an expedited manner, therefore the procedure set out in Rule 6(12) is not there for the taking.

[5] The applicant in these present proceedings claim as a basis for approaching the Court on an urgent basis, that the respondent have spoliation its lawful and undisturbed possession and control over the assets and resorted to self-help. The applicants seek an order that the respondents restore full control and management of assets as well as ancillary orders. The question in this application is whether this matter should be brought in the urgent court, and or on an urgent basis. Counsel for the applicants relied on the nature of the matter to classify it as urgent, which should according to him be

heard out of turn. I agree with what Wilson J said in Volvo Financial Services South Africa versus Adamas Tkolose Trading CC 2023 ZAGPJHC 864 at paragraph 4 that:

"Urgency is determined not by the nature of the claim brought but by circumstances in which the applicant seeks its adjudication."

[6] At the heart of this matter lays two disputes, one dealing with the alleged spoliation and the other a contractual breach. I do not believe that it is incumbent upon the urgent court to determine the issues in this case, as it requires careful consideration which is incompatible with urgent proceedings. The issues between the parties will require an analysis of major factual disputes, which is unsuited for urgent court. The agreement concluded between the parties makes provision for expedited arbitration therefore giving the applicants substantial redress in due course.

[7] In these circumstances it is not proper to attempt to determine contractual issues in these urgent proceedings.

[8] In result, the matter is removed from the roll and the applicants are order to pay the costs of these proceedings jointly and severally the one paying the other to be absolved.

MAHALELO, J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Date of order: 26 April 2024

Date of reasons: 25 July 2024

Appearances:

On behalf of Applicants:

Adv. Mpilo Sikhakhane

Instructed by:

Saney Mbatha & Associates.

On behalf of first to fourth Respondents:

Adv. SJ Martins

Instructed by:

AKA Attorneys Inc.

This Judgment is delivered electronically by uploading on caselines and emailing to the parties.