

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 074694/2024

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
20 September 2024	
DATE	SIGNATURE

In the matter between:

ERGA INVESTMENTS LTD

Applicant

and

HI-Q AUTOMOTIVE (PTY) LTD

First Respondent

THE SHERIFF MIDRAND

Second Respondent

Summary: *Urgency – requirements for enrolment in urgent court well established – not sufficient to pay lip service or make bare allegations of urgency. Necessary to set out clearly and in sufficient detail facts from which the degree of urgency imposed can be concluded. Compliance necessary for proper administration of justice.*

JUDGMENT

YACOOB, J

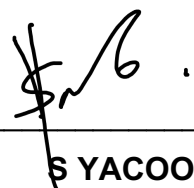
- [1] The applicant approaches this court on an urgent basis for an order interdicting execution of a judgment and ordering the second respondent (“the sheriff”) to unlock an unidentified lock, pending the determination of a reconsideration application which has been submitted to the President of the Supreme Court of Appeal.
- [2] The applicant was the unsuccessful respondent in an urgent application for eviction brought by the first respondent before me. The applicant sought leave to appeal and was unsuccessful, petitioned the Supreme Court of Appeal unsuccessfully and has now submitted an application for reconsideration to the President of Supreme Court of Appeal. According to the papers, the sheriff arrived at the applicant's premises in order to execute the order of ejectment on 4 July and the application was instituted on 5 July.
- [3] The Rules and practice of this court regarding urgency are clear and well established. Rule 6(12)(b) requires an applicant to “set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course”.
- [4] It has been commented by the courts more than once that the procedure is not there merely for the taking.¹ In *In re: Several Matters on the Urgent Court Roll*² my brother Wepener J saw fit to comment that
- “There are a number of matters where these provisions have simply been ignored. Practitioners are setting matters down in the urgent court for flimsy and inadequate reasons This practice needs to be discouraged.”
- [5] Unfortunately, despite the best efforts of the courts to discourage the practice, practitioners and litigants continue to set matters down in the urgent court for flimsy and inadequate reasons, without properly substantiating the alleged urgency, and without complying with the relevant Rules and directives. This is

¹ For example *East Rock Trading 7 (Pty) and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at para 6.

² 2013 (1) SA 549 (GSJ) at para 8

not only discourteous to judges and other litigants who may have real urgency at the root of their matters, it opens up the risk that a miscarriage of justice may result because a matter was not heard when it should have been, because of failure to comply, or because the sheer volume of frivolous matters leads to a matter with merit falling through the cracks.

- [6] In support of urgency the founding affidavit sets out the background to the matter and then states that the sheriff arrived. The deponent then refers to communications between the different sets of attorneys and does not say anything about what the sheriff ultimately did. There is no detail about the extent of the execution (if any) that has taken place: whether it is complete or partial; if it is partial, what is the nature or extent of the execution? The applicant does not disclose what type of business it conducts, what kind of equipment, if any, is on the premises, and what kind of prejudice, if any, results from the execution which may or may not have taken place.
- [7] In those circumstances no court can find that a case has been made out for urgency. It is not for an applicant to simply assert that a matter is urgent and that it cannot obtain sufficient redress in due course. It must properly set out facts from which the court can conclude that the matter is urgent. Urgency is a conclusion for the court to make, based on facts properly put before it.
- [8] It was submitted for the applicant that the assumptions I had initially made when reading the application, that the sheriff had locked the applicant out of its premises and that the applicant conducts a physical business with physical equipment were reasonable assumptions. However, on reading the application again, I found that there was no support for those assumptions and I am not entitled to make them.
- [9] For these reasons I find that the case for urgency has not been made out. The matter is struck from the roll with costs.



S YACOOB
JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: X Stemela instructed by L Guzana Inc

For the Respondent: JJ Nepgen SC instructed by Pagdens Attorneys

Date of Hearing: 10 July 2024

Date of Judgment: 10 July 2024

Date of Revision: 20 September 2024