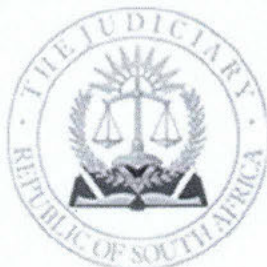


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2024-107226

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<i>16/10/2024</i>	
DATE	SIGNATURE

In the matter between:

MILLION UP INVESTMENTS 86 (PTY) LTD
(Registration Number: 2003/002022/07)

Applicant

And

MAVAMBO COACHES (PTY) LTD
(Registration Number: 2004/000114/07)

First Respondent

**THE SHERIFF OF THE HIGH COURT
JOHANNESBURG EAST**

Second Respondent

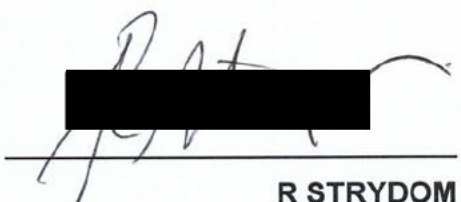
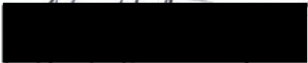
JUDGMENT

Strydom, J

- [1] In this application brought on an urgent basis, the applicant is seeking an order that the respondents (*sic*) (should be first respondent) be ordered not to prevent the applicant's duly authorised employees and the new tenant, being Zacamate (Pty) Ltd, ('Zacamate') from entering and occupying the remaining portion of the premises of 18 Vickers Road V, City Deep, Johannesburg (the 'premises'). Further, that the first respondent restores possession and occupation of a portion of the premises to the applicant.
- [2] Interdictory relief is sought against the first respondent from interfering with the applicant's new tenant, Zacamate, from occupying the premises. A cost order is sought.
- [3] According to the notice, appearing on the Court Online cover page, the urgent application was filed electronically by the Registrar on 20 September 2024 at 10:04:39. The 20th of September was a Friday.
- [4] It was required from the first respondent to notify the applicant's attorney in writing by 16h00 on the same Friday whether the application would be opposed.
- [5] The time afforded to file an answering affidavit was set for on Monday 23 September 2024 at 15h30. Clearly the time periods afforded for filing of these documents were extensively truncated.
- [6] The question this Court must consider is whether these truncated time periods afforded were commensurate with the degree of urgency relied upon by applicant for this matter to be heard? The time period afforded to first respondent to file an answering affidavit was basically a weekend and part of the Monday. As it transpired the respondents only filed an answering affidavit on the 27th of September 2024. The reason why the affidavit could not have been filed within the afforded period was explained and condonation was sought. Friday the 27th of September was a date after the Thursday by which time all affidavits needed to be filed for set down on the urgent roll for 1 October 2024.
- [7] To determine whether the time periods afforded were reasonable the Court will have to consider the alleged degree of urgency.

- [8] The first respondent has been in possession of the premises or a portion thereof since 2017. The applicant has alleged from the year 2020 onwards that the first respondent only leased a portion of the premises and encroached on the remaining portion, referred to as the "PXL portion". This is the portion in relation to which the applicant seeks an order of unlawful occupation.
- [9] It is apparent from the correspondence between the parties that the alleged encroachment comes a long way. In a letter from the applicant's attorney dated 10 June 2020, a previous lease agreement was cancelled, and the first respondent was ordered to vacate the premises. This was repeated in a letter dated 1 July 2020.
- [10] The first respondent never vacated the premises, instead further leases were entered into in circumstances where the first respondent was, according to the applicant, in unlawful occupancy of the 'PXL Portion'.
- [11] This even led to a summons being issued against the first respondent wherein the applicant sought the ejectment of the first respondent from the premises, alternatively, ejectment from the 'PXL Portion'.
- [12] This litigation has not been finalised, despite this, the applicant brought the extremely urgent application for similar relief on the basis that it now entered into a lease agreement with a tenant who wants to occupy the PXL Portion on 15 September 2025. Quite inappropriately the applicant failed to inform the court of this ongoing litigation.
- [13] It is alleged in the founding affidavit that the right to occupy the portion of the premises which first respondent unlawfully occupied was ceded by Sweet Deal (Pty) Ltd (Sweet Deal) to Zacamate (Pty) Ltd. Sweet Deal entered into a lease agreement with applicant for immediate occupation but was only interested to occupy during September 2025. This application was aimed to secure occupation for Zacamate.
- [14] To explain the urgency the applicant averred that on 18 September 2024 the applicant "*reached out to*" the first respondent in an alleged "*last attempt*" to resolve the matter of alleged encroachment and to obtain entry.

- [15] What the applicant failed to explain is what steps were taken during the period from 2020 to 18 September 2024 to resolve this continuing *impasse*. What is clear on the papers before this Court is that the dispute between the parties runs much deeper as alluded to by the applicant.
- [16] As stated, the applicant failed to inform the Court of the pending litigation between the parties under Case Number 25320/2020. Moreover, there is an ownership dispute pertaining to the premises.
- [17] Sweet Deal, before the cession in favour of Zacamate, dated 18 August 2024, was going to occupy the premises from 1 July 2024. The applicant from that date could have taken further steps to evict first respondent from the portion allegedly unlawfully encroached upon.
- [18] The Applicant could have, at least, by then filed an application. Instead, it waited until the 20 September 2024 thereby self-created the extreme urgency for relief.
- [19] The Court is of the view that in this matter the applicant self-created urgency and, in any event, the time period afforded to the first respondent to file an answering affidavit was not commensurate with the degree of urgency under which this application was brought.
- [20] Therefore, I make the following order:
- a. The matter is struck off the roll for a lack of urgency, with costs.



R STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 01 October 2024

Delivered on: 16 October 2024

Appearances:

For the Applicant: Mr. T. Hadebe

Instructed by: Khupane attorneys

For the First Respondent: Adv. P. Marx

Instructed by: Schickerling Incorporated