



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

- (1) **REPORTABLE: NO**
- (2) **OF INTEREST TO OTHER JUDGES: NO**
- (3) **REVISED: YES**
- (4) Signature: [REDACTED] Date: 12/02/25

**CASE NO.: 2025/006746**

In the matter between:

**EXEDY SOUTH AFRICA (PTY) LTD**

Applicant

and

**JASON CHARLES HEATH**

First Respondent

**MILLENNIUM CLUTCH MANUFACTURING (PTY) LTD**

Second Respondent

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## JUDGMENT

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Kumalo J

### INTRODUCTION

- [1]. The applicant in this matter seeks on an urgent basis to enforce a restraint of trade against the first respondent regarding his employment with the second respondent.
- [2]. It further seeks to interdict and restrain the second respondent from continuing to employ the first respondent in any capacity that would result in a breach of the restraint of trade provisions contained in the first respondent's employment contract dated January 2020.
- [3]. The application is opposed on several grounds. The respondents contended that the applicant has neither demonstrated urgency nor shown that it cannot obtain substantial redress in the ordinary course. It is further argued that if there is any urgency in the matter, it is self-created.
- [4]. Perhaps it is apposite that I restate the law here in so far as urgency is concerned.

- [5]. Before a court makes a finding on the merits of an urgent application, the court must first consider whether the application is indeed so urgent that it must be dealt with on the urgent court roll. Where an applicant fails in convincing the court that he/she will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll. This will enable the applicant to set the matter down again, on proper notice and compliance.<sup>1</sup>
- [6]. Likewise, where the facts indicate that the urgency is self-created, an applicant will not be entertained, and the application will be struck from the roll
- [7]. Uniform Rule 6(12) affords an applicant to create its own rules within which a respondent must file a notice to oppose and an answering affidavit. This is why condonation must be sought when the court is approached. A respondent who ignores the timeline so set by an applicant does it at its own peril and runs the risk of an order been granted against it by default. However, an applicant who cannot convince the court of the rationality and necessity for the timeline devised by it, should expect its application to be struck from the roll with costs.
- [8]. The law on urgency is abundantly clear. Urgent applications must be brought under the provisions of rule 6(12) of the Uniform Rules of court, with due regard to the guidelines set out in cases such as *Die Republiekseinse Publikansies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*<sup>2</sup> as well

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<sup>1</sup> See *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA)

<sup>2</sup> 1972 (1) SA 773 (A) at pars 782A-G

as the well-known case of *Luna Muebelvervaardigers (Edms) Bpk v Makin and Another*<sup>3</sup>.

- [9]. Notshe AJ in the matter of *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) held that well known principle of whether it has been sufficiently explained that an applicant cannot be afforded substantial redress at a hearing in due course. The applicant must make out its case in this regard.
- [10]. This in a nutshell means, if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. If she cannot be afforded substantial redress at a hearing in due course, then the matter qualifies to be enrolled and heard as an urgent application.
- [11]. I must also mention that the fact the applicant wants to have the matter resolved urgently does not render the matter urgent. Therefore, whether a matter is urgent depends on the relief sought seen in context with the facts of a case. As a result, urgency is determined on a case-by-case, context specific basis.
- [12]. I have alluded above to the fact that this application is opposed by both respondents on several fronts.

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<sup>3</sup>1977 (4) SA 135(W)

- [13]. The respondents contended, amongst other issues that the urgency is self-created.
- [14]. It is perhaps apposite that this court revisit the timelines that applied in this matter. The application was served on both respondents on their attorneys of record on 22 January 2025 by e-mail and after business hours.
- [15]. The notice of motion directed that they file their notice of intention to oppose by no later than 22 January 2025 at 10h00 and file their opposing affidavit on 23 January 2025 at 10h00 and the matter was set down for a hearing on the court's urgent roll commencing on Tuesday 28 January 2025.
- [16]. Needless to state that these were very truncated time periods. What it meant was that the respondents had less than 48 hours to file their notice of intention to oppose and their opposing affidavit.
- [17]. Communication between the parties resulted in the respondents being afforded an opportunity to file their answering affidavit on 25 January 2025 before 16h00.
- [18]. Respondents only managed to file their answering affidavit on Monday 27 January 2025 at 14H35.
- [19]. I must mention at this juncture that the matter was originally set down to be heard before my sister Lenyai J on Thursday 30 January 2025, and due to

family issues, she could not hear the matter. It was transferred to this court. I directed the parties that I would hear the application on Wednesday 29 January 2025.

[20]. Respondents have argued amongst other issues, that this matter is not urgent, and if there is any urgency, it is self-created.

[21]. Respondent based the above on the issues to be addressed herein below.

[22]. Respondents argued that on the version of the applicant, it knew as early as Monday, 18 November 2024 that the first respondent would be working for Orcrest. The deponent of the applicant's founding affidavit had knowledge of the Orcrest Group of Companies by virtue of his past employment history within the group.

[23]. To further bolster their argument, the respondents drew this Court's attention to certain correspondence between the parties. A letter dated 29 November 2024 addressed to the first respondent indicates that the applicant at that stage, had legitimate concerns about his employment with Orcrest Investment, a direct competitor, which could lead to what was termed inadvertent or deliberate disclosure of confidential information, which could cause significant harm to its business interests.

[24]. Orcrest is the holding company of the second respondent. Surely it is for that reason that the letter of 29 November 2024 described it as a direct competitor.

Thus, the assertion by Carstens in the replying affidavit that the first respondent would not seek employment of a company that directly competes with the applicant's business. His belief that he was to be employed directly by Orcrest and not with MC Manufacturing is with respect, not convincing. Orcrest is the holding company of MC Manufacturing and surely it would have interest in the strategies of its subsidiaries.

- [25]. In the 29 November 2024 letter, the applicant's attorneys provided the first respondent with a settlement agreement to consider and provided a deadline of 3 December 2024 to respond, failing which, they reserved the right of their client to enforce the restraint of trade if they do not receive a positive response.
- [26]. The first respondent's response of 3 December 2024 to the deponent was not positive and its right to enforce the existing restraint of trade remained reserved.
- [27]. On 4 December 2024, the first respondent was asked to leave. No action was taken to bring a court application to enforce the restraint.
- [28]. The applicant knew as far back as 18 November 2024 that the first respondent is likely to be employed by a competitor and I must agree with respondents that it does not matter whether the said employer would be Orcrest or MC Manufacturing. In their own words, Orcrest is a direct competitor.

[29]. In the circumstances, I am of the firm view that the urgency in this matter is self-created. The applicant knew that the first respondent would be commencing employment with a competitor, direct or otherwise, as far back 18 November 2024 and took no further steps after 4 December 2024 to 10 January 2025 to enforce its restraint of trade.

[30]. In the circumstances, the following order is made:

1. The matter is struck off on the basis that the urgency is self-created;
2. The Applicant is ordered to pay the costs of this application on scale "C" including costs of two counsels.

  
MP Kumalo  
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv MM Boonzaaier

Instructed by: Len Dekker Attorneys

For the respondents: Adv C Bester and Adv L Nigrini

Instructed by: Potgieter Joubert Attorneys Inc

Date of the hearing: 29 January 2025

Date of judgment: 12 February 2025