



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No. **021361/2025**

- | |
|------------------------------------|
| 1. REPORTABLE: NO |
| 2. OF INTEREST TO OTHER JUDGES: NO |
| 3. REVISED: NO |

[Redacted Signature]

.....
SIGNATURE

14 March 2025
.....
DATE

In the ex-parte application; -

SIYANDASABELO TRADING (PTY) LTD

First Applicant

and

RIVERMEADOW MANOR (PTY) LTD

First Respondent

RMM PROPERTIES (PTY) LTD

Second Respondent

RHONA ELIZABETH TOPKA

Third Respondent

UDO PAUL TOPKA

Fourth Respondent

WE BUY CARS

Fifth Respondent

LOUIS ESTERHUIZEN

Sixth Respondent

Summary: -Applicant seek condonation, non-compliance with the normal Rules of Court with regard to service, form and time -periods as contemplated in Rule 6(12). Uniform Rule 6(12) -Matter is urgent if applicant will not be able to obtain “substantial redress at a hearing in due course” without at least some urgent relief- Applicants should set forth explicitly the reasons why the matter should be treated urgent. -Application is struck-off for lack of urgency.

JUDGMENT- *EX TEMPORE*

YENDE AJ

[1] This is an application in terms of the Uniform Rule 6 (12) brought before this court on urgency basis.

[2] As part of the introduction, I deem it fit to refer to the Practice Directive that was uploaded on caselines and circulated to all parties who had matters that appeared before this court on urgency basis.

Paragraph (3) thereof states that “An allocation by acting Justice Yende does not automatically mean that the matter is considered sufficiently urgent to hear on merits. Submissions will indeed need to be made regarding the ground of urgency. (*See Luna Muebel Vervaardigers and Moyane v Ramaphosa and others in this regard*). Those case pertinent cases on the issues of urgency and what needs to be pleaded on the issue of urgency.

[2.1] On paragraph 6.1, as per the court’s directive, I have also highlighted firstly: “*To set matters down which are not really ripe for hearing, not urgent, in which case there is self-created urgency, is frowned by this court and it is not permitted*”.

[2.2] Secondly, I mention that: *“Urgent Court is not intended to hear complex factual and/or legal issues set out over lengthy hundreds of pages which take a long time to consider and finalize as this tends to clog up an extremely busy urgent court and prevents the deserving on urgent basis”*.

[2.3] I further on mention that *“These complex or long matters are to be removed from the roll and the parties are advised to seek an allocation from the Deputy Judge President in a special court on a future date”*.

[3] Now, I turn to the matter before court. I listened to both counsel for the applicant as well as the counsel for the respondents. It is this court’s strong view that matters that are urgent should comply with urgency, rule 6(12). It is very much important for one to consider that urgent court is solely preserved for those matters that are deservedly urgent and not those matters where urgency is self-created, self - orientated or perceived to be urgent.

[4] Although, it was submitted by counsel for the applicant that there is imminent harm to be suffered by the applicant if the order is not granted in their favour. This application involves two motor vehicles that were part of the sale that took place in 2019.

[5] What struck the court and causes concern is the fact that if theses vehicle were indeed part of the business transaction, and upon taking ownership of the business and when the applicant became aware of the fact that these vehicles were not delivered and/ transferred to the applicant. The applicant should have sought recourse there and then, not to wait for almost six years wherein to start legal action to recover those vehicles if indeed they belonged to the business.

[6] The truncated timeframes under which this matter took place, under which this application is premised, makes the court to consider making findings against the applicant in so far as the urgency is concerned.

[7] Having considered the submissions made by the counsel for the applicant *per se*, not even looking at the submissions made by the counsel for the respondents, the urgency in this matter has been self-created. The urgency averred in the applicant's case is not urgency as envisaged in rule 6(12).

[8] In summary, the requirements for an urgent application in general are;

- (a) the applicant has to set out explicitly the circumstances which renders the matter urgent with full and proper particularity;
- (b) reasons must be stated why he/she (believes that he/she cannot get substantial redress at a hearing in due course;
- (c) where final relief is sought the court must even be more circumspect to determine whether urgency has been established;
- (d) the urgency must not be self-created; it should never be a subjective perceived urgency;
- (e) respondent's prejudice as a result of abridgement of prescribed time limits and an early hearing is also relevant;
- (f) More immediate reaction by the applicant by instituting litigation points favourably to urgency¹.

[9] Was there any urgent litigation instituted by the applicant in these proceedings since 2019 when he took over the business after the alleged inventory which was given to IDC raise and /or approve funding for the business, the answer is in the negative.

¹ Association of Mineworkers and Construction Union and Others v Northam Platinum and another [2016]37 ILJ 2840 (LC) at para 20-26, and the authorities cited in it; Select PPE (Pty) Ltd v Ryan Holmes and Universal Safety Products (Pty) Ltd, unreported judgment, Labour Court, Case No 115703-2024.

[10] There was no delivery of those vehicles and yet the applicant failed to take any legal action to recover those vehicles. For almost six years there is nowhere on papers where the applicant avers that he has been trying to get hold of the respondent and/or that the respondent had fled the country, thus he could not pursue the respondents. Even if the respondent had fled the country and hidden those vehicles, the court were open for the applicant to seek recourse on urgent basis.

[11] It is this court's view that this matter is not deserving of urgency and as such it is struck off from the roll and the costs should follow suit.

[12] Counsel for the respondents argued that the costs should be on attorney and client C scale. I have reconsidered that in light of the peculiar circumstances of this matter, the court is still unsure as to why did the applicant took so long to seek relief from the court months after he took ownership of the business.

[13] As the consequence, the court is the satisfied that the applicant in this matter has failed to convince the court that he has overcome the threshold prescribed in Rule 6(12) and I am of the firm view that the application ought to be struck off from the roll for lack of urgency.

[14] This application therefore falls to be struck from the roll and I hereby make the following order.

Order

[1] The applicants' urgent application is struck off from the roll for lack of urgency.

[2] The applicant is to pay the respondents cost on party and party scale.



J YENDE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

*This judgment was prepared by **YENDE AJ**. It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed **26 February 2025**.*

Appearances:

Advocate(s) for Applicant: F Letoaba

Appearing with: L Makhoba

Instructed by: Msiza & Co. Attorneys

C/O Pantsi Madiba Attorneys

Advocate(s) for Respondent(s): C Georgiades

Instructed by: HMK Naidoo Attorneys

C/O Muthray and Associates INC

Heard: 26 February 2025

Delivered: 26 February 2025

