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

Case Number: **2025-028456**

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED: YES/NO

DATE **20 MARCH 2025**

SIGNATURE

In the matter between:

MIKATEKO FLORENCE HLABANGWANE

Applicant

and

THE UNIVERSITY OF PRETORIA

First Respondent

PROFESSOR WYNAND STEYN

Second Respondent

PROFESSOR CAROLINE NICHOLSON

Third Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be **18 March 2025**.

JUDGMENT

KUBUSHI, J

[1] The Applicant approached this court on an urgent basis seeking interdictory relief in Part A, in which she seeks an order for her immediate readmission to the Bachelor of Engineering (“B-Eng”) programme at the First Respondent, the University of Pretoria, (“the University”) pending a review of the decision of the University from excluding her from continuing with her B-Eng programme, in Part B. This being the urgent court, urgency must be decided first.

[2] Urgency is regulated in terms of rule 6(12) of the Uniform Rules of Court which provides that:

Rule 6(12)

(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as is reasonably practicable be in terms of these rules) as it deems fit.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this subrule, the applicant must 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 in due course.

[3] For the Applicant to succeed in this application she must show why this application should be heard in the urgent court. In doing so, she must also show that any delay in launching this application was not because of self-created urgency. She must also show why she claims she could not be afforded substantial redress in due course.

Self-created urgency

[4] The Applicant in an attempt to prove that the urgency in this matter is not self-created, provided the following facts in her founding affidavit:

[5] She alleges that on 20 December 2024 she was informed that she had been excluded or dismissed from the faculty based on her academic performance during 2024. According to the EBIT Faculty the reason for the exclusion is that she had exceeded maximum attempts for her modules in 2021, 2022, 2023 and 2024. She was advised to appeal the decision before 21 January 2025.

[6] On 07 January 2025 she tried to make an appointment with Dr Raubenheimer to provide her with letters to back up her appeal. However, she was informed that the doctor would only be available once the University opens its doors for the 2025 academic year on 10 February 2025. On 30 January 2025, the Faculty Appeal Committee confirmed the decision not to readmit her.

[7] On 06 February 2025, the Senate Review Committee on Readmission (hereinafter referred to as the Senate Review Committee) confirmed the EBIT Faculty's decision not to re-admit her or exclude or dismiss her from the B-Eng programme. She says she was advised that this decision amounts to expulsion or dismissal from the B-Eng programme alternatively the faculty or the University. On 10 February 2025, the University opened its doors for the 2025 academic year. On the same day she booked an online appointment with Dr Raubenheimer to provide her with a letter to support her attempts to have the Committee's exclusion decision overturned or reconsidered. On 12 February 2025 she saw the doctor and the doctor produced two reports dated 12 and 14 February 2025. Copies of Dr Raubenheimer's reports are annexed to her founding affidavit.

[8] During the week of 14 February 2025 she consulted the University's Disability Unit for their intervention to request the EBIT Faculty to reconsider its decision. The Disability Unit informed her that the Senate Review Committee's decision was final. Prior to the Disability Unit's advice that the decision not to re-admit her was final she still believed that the University could still change its decision based on Dr Raubenheimer's report. On 18 February 2025, her parents engaged in an online or virtual meeting with the

Faculty to reconsider its decision without any success. A copy of an email on the online meeting from her parents to the Dean of the EBIT Faculty is annexed to her founding affidavit. Whilst her parents requested a meeting with the Dean of the EBIT Faculty only the Deputy Dean attended. According to the Appellant the Deputy Dean, Ms Alta Van Der Merwe, is the one who denied her a special exam in June 2024. The EBIT Faculty informed her parents that it was not going to change its decision.

[9] On 20 February 2025, the Appellant consulted the Varsity College Pretoria Law Clinic for advice because they provide free legal advice, and they promised to give her feedback. In the evening of the same day, the Applicant consulted Advocate Lepaku for legal advice as she was not sure about the Varsity College assistance and to date she still has not received a response on her application for legal assistance. On 21 February 2025 Advocate Lepaku prepared a letter of demand in which he requested the University to rescind its decision not to admit her, based on new supporting evidence from Dr Raubenheimer. On 24 February 2024, her legal representative delivered the letter of demand to the University and gave the University two days to provide its response. A copy of the letter of demand is also annexed to the founding affidavit.

[10] On 25 February 2025, the University replied and stated that the matter was not urgent and that they will oppose this application. On 26 February 2025 the University made further responses in which they, *inter alia*, stated the following: that the Applicant was excluded because of her academic performance; she does not have a right to approach this court for relief as she did not perform in accordance with the rules of the University and that they will be asking for a costs order against her. On 26 February 2025, her legal representative informed the University that unless the decision not to readmit was rescinded the Appellant was going ahead with an urgent application to court to review and set aside the decision as irrational and unlawful.

[11] The University gave the Applicant formal notice of her exclusion on 20 December 2024. Her appeal to the EBIT Faculty Appeals Committee was

refused on 30 January 2025, and the Senate Review Committee confirmed this decision on 6 February 2025. It is at this time that the Applicant should have recognised the need for urgent relief. The urgent application was launched on 3 March 2025 almost a month after the need to approach court was established.

[12] In the email threat attached to the Applicant's founding affidavit which is from the Deputy Dean of the Faculty of Engineering, informing the Applicant that she has been excluded from the Faculty of Engineering, the Applicant is further informed that

“You have the option to appeal the exclusion before 21 January 2025. Please follow the process described at the following link (see README OVERVIEW): [h\[...\]](#)”

[13] In a letter from the Senate Review Committee dated 6 February 2025 in which the Applicant is informed that the decision of the Faculty not to approve her readmission has been upheld, the Applicant is further informed that:

“Please log into your Student Portal to check the Appeals section for feedback or contact your Faculty Administrator for further assistance.”

[14] This to me is indicative that the Applicant had been informed of what to do, contrary to her allegation in her papers that she was not given any assistance or her counsel's argument that she was a clueless student. She does not in her papers state whether she followed the advice of the Senate Review Committee and logged into the Student Portal to check the Appeals section or whether she approached the Faculty Administrator for further assistance, and did not find any help there.

[15] Instead, she went on a frolic of her own to try and convince the Senate Review Committee to rescind its decision which they could not do because, as she concedes, the decision was final. The Disability Unit had already on 14 February 2025 informed her that the decision of the Senate Review Committee was final. Why she continued to believe that she could convince

the Senate Review Committee to change its decision, is unknown. The finality of the decision rendered the Senate Review Committee *functus officio*. There was nothing the Senate Review Committee could do to change its decision. Her legal representative was also oblique to the fact that the Senate Review Committee having given its decision, was *functus officio*. On receipt of instructions from the Applicant he followed the same route that the Applicant had already undertaken without success.

[16] My view is that had the Applicant heeded the advice given to her by the Committee and taken time to log into the Student Portal or contacted the Faculty Administrator, she would have found her answers there. She instead wasted time looking for the doctor to draft a report in support of what she thought would help convince the Committee to rescind its decision. I have, as such, to hold that the delay of almost a month that the Applicant wasted looking for something that would not assist her, caused the urgency. As such, the urgency, if any, is self-created.

Substantial redress in due course

[17] As regards being afforded substantial redress in due course, in *M M v N M and Others*,¹ the court remarked that

“[6] Notshe AJ in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*,² stated:

‘The import thereof is that the procedure set out in rule 6(12) is not there for the taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were

¹ (15133/23P) [2023] ZAKZPHC 122 (18 October 2023).

² [2011] ZAGPJHC 196 para 6 and 7.

to wait for the normal course laid down by the rules it will not obtain substantial redress.’

[7] The import of this is that the test for urgency begins and ends with whether the applicant can obtain substantial redress in due course. It means that a matter will be urgent if the applicant can demonstrate, with facts, that the applicant requires immediate assistance from the court, and that if his application is not heard on an urgent basis that any order that he might later be granted will by then no longer be capable of providing him with the legal protection he requires.”

[18] The court in *E.M.W v S.W*³ stated that –

“[11] It is trite that the correct and the crucial test to be applied in urgent applications and confirmed that it is the true test is whether or not an applicant will be afforded substantial redress in due course. (See 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). 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 he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. It means that if there is some delay in instituting the proceedings, an applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course.”

[19] The Applicant’s contention is that she will not be able to obtain substantial redress in the interim pending final determination of the review application under part B.

³ (26912/2017) [2023] ZAGPJHC 710 (15 June 2023)

[20] It has been held that ordinarily, "*in due course*" typically refers to a matter being dealt with in its normal, regular, and expected manner, rather than urgently or exceptionally. It suggests that redress will be available through the normal legal process if the matter is not dealt with urgently. The rule requires substantial redress in due course, that the Applicant will not be afforded substantial redress in the interim is not what is required by rule 6(12)(b). The Applicant has applied for the review of the University's decision in Part B of the application, which follows that she will still get substantial redress in due course. Therefore, the Applicant has failed to establish that requirement of substantial redress in due course.

The type of relief sought

[21] What further makes this application not urgent, is the type of relief the Applicant seeks. The relief, if granted, will have the effect of tempering with the decision of the University that the Applicant seeks to review and set aside in Part B of the application.

[22] The relief the Applicant wants in prayers 2 and 3 of the notice of motion is for this court, pending the final determination of the relief sought in Part B of the notice of motion, to direct the Second Respondent, Professor Wyanand Steyn, the Dean of the Faculty of Engineering, to re-admit the Applicant and to allow her to register for the Bachelor Degree in Civil Engineering in the Faculty of Engineering, Built Environment and Information Technology. The challenge for the Applicant is that the relief cannot be granted whilst the decision of the University made by the Senate Review Committee, is still extant.

[23] The Constitutional Court in *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others*⁴ remarked that

[47] Turning to the present matter, it should be borne in mind that both applicants seek urgently to appeal an interim interdict, which is purely interlocutory in nature. An interim interdict is a

⁴ [2020] ZACC 10.

temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief." (footnote omitted)

[24] The *status quo* in this matter, which the interdictory relief should preserve or restore until the review application has been finally decided, is the Applicant's exclusion from the University. It should not be the final determination of the rights of the Applicant to be readmitted to the Engineering Faculty, as the Applicant seeks to do in this application, despite the pending review. If this court directs that the Applicant be allowed to register with the University, it will be tantamount to it setting aside the University's decision which the Applicant seeks to set aside in Part B of the application. As emphasised in *Economic Freedom Fighters*, the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. This in a sense makes this application not urgent.

[25] Consequently, the application is struck from the roll for lack of urgency with no order as to costs.

E M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the Applicant:	Adv M Khanyeza & Adv M Lepaku
Instructed by:	Moabi Attorneys

For the First Respondents:	Adv E J J Nel
Instructed by:	Anton Bakker Inc

Date of the hearing:	13 March 2025
Date of judgment:	20 March 2025