

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	NOT REPORTABLE
(2)	NOT OF INTEREST TO OTHER JUDGES

CASE NO: 2025-053282

DATE: 5 May 2025

In the matter between:

UNIPLATE INVESTMENTS HOLDINGS (PTY) LIMITED

First Applicant

UNIPLATE GROUP (PTY) LIMITED

Second Applicant

and

DIEU CHARIS ENTERPRISES (PTY) LIMITED

First Respondent

MICHAEL VAN AS N O

Second Respondent

DEVANDRAN NAICKER

Third Respondent

Neutral Citation: *Uniplate Investments Holdings and Another v Dieu Charis Enterprises and Others (2025-053282) [2025] ZAGPJHC ---*
(5 May 2025)

Coram: Adams J

Heard: 30 April 2025

Delivered: 5 May 2025 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 5 May 2025.

Summary: Civil procedure – stay of – urgent application for stay of arbitration proceedings, pending application in terms of section 3(2) of the Arbitration Act – alternatively, pending judicial review of award by Arbitrator not to stay arbitration – no urgency – application should fail – Uniform Rules of Court 6(12) – any urgency self-created –
Urgent application struck from the roll for lack of urgency.

ORDER

- (1) The applicants' urgent application be and is hereby struck from the urgent court roll for lack of urgency.
 - (2) The first and the second applicants, jointly and severally, the one paying the other to be absolved, shall pay the first respondent's costs of this urgent application, such costs to include Counsel's charges on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.
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JUDGMENT

Adams J:

[1]. Pending the final determination of part B of this application, alternatively, the final determination of the pending application in terms of s 3 of the Arbitration Act 42 of 1965 ('the Act') under case number 2024-140326, whichever is the earliest, the first and the second applicants apply, on an urgent basis, for an interim order interdicting and restraining the arbitration proceedings between the applicants and the first respondent from proceeding before the second respondent ('arbitrator'). In the alternative, the applicants apply, on an urgent basis, for an order staying the enforcement of the arbitrator's ruling dated 4 April 2025 and handed down on 7 April 2025 in terms of section 33(3) of the Arbitration Act 42 of 1965

[2]. In part 'B' the applicants seek to review and have set aside the ruling of the arbitrator dated 4 April 2025 and to have substituted his finding that the arbitration proceedings should not be stayed pending the outcome of the pending s 3 application with a finding that the arbitration proceedings should be stayed pending the final determination of the section 3(2) application and the action.

[3]. In the s 3(2) application dated 29 November 2024, the applicants apply for an order that the dispute resolution agreement in the share sale agreement between the parties be set aside and/or for an order that the said agreement shall cease to have effect with reference to the disputes between the applicants and respondents arising from the share sale agreement. In that application the applicants also apply for an order directing them to institute an action with a view to resolving the dispute between them arising from the share sale agreement, by no later than 31 March 2025.

[4]. The arbitration arises from a Sale of Shares Agreement dated 3 November 2023 between the first respondent and the first applicant for the sale of shares in the second applicant and another company by the name of IPlate (Pty) Limited. The first respondent sold shares to the first applicant for the purchase price of R1 800 000, and in the arbitration proceedings before the second respondent it claims from the first applicant the balance of the purchase price of R1 500 000.

[5]. The first respondent opposes the application and seeks that the matter be struck from the roll for lack of urgency, alternatively, dismissed with costs.

[6]. There are two difficulties which the applicants face relative to the issue of urgency.

[7]. The first relates to the fact that the first respondent as far back as 10 September 2024 invoked the arbitration clause in the share sale agreement. On 12 September 2024, the parties agreed on the appointment of the second respondent, Advocate Mike Van As SC, as the arbitrator. On 10 October 2024, the attorneys for the applicants and the first respondent met for a pre-arbitration meeting. The applicants did not object to the arbitration proceedings.

[8]. On 18 October 2024 (more than a month after the first respondent invoked the arbitration clause), the applicants then did an about turn and refused to participate in the proceedings unless other third parties consented to

being parties in the arbitration. The applicants refused to sign a formal arbitration agreement unless these third parties consented to being a part of the arbitration. The applicants also threatened to file an application to stay the arbitration proceeding unless those third parties consented to be a part of the arbitration.

[9]. On 08 November 2024, the third respondent served and filed its statement of claim. The applicants were afforded twenty-one days to oppose the claim, which they elected not to do. On 15 November 2024, the applicants again threatened to launch an application for a stay, and that the applicants would seek an interdict to prevent the continuation of the arbitration proceedings pending the hearing of the application.

[10]. The applicants only filed their section 3(2) application on 29 November 2024 and did not seek relief on an urgent basis. And the foreshadowed action was only instituted on 31 March 2025.

[11]. The point is that the applicants became aware of the arbitration proceedings during September 2024. During October 2024, they seemingly adopted the position that they do not want the arbitration proceedings to proceed. Yet they did nothing until April 2025. There is, in my view, no explanation, let alone an acceptable one, why the applicant did nothing in support of their cause from October 2024 to April 2025.

[12]. The second difficulty relates to the fact that even after the applicants resolved during November 2024 to have set aside the arbitration agreement, they still did nothing to put a halt to the arbitration, which the first respondent was clearly determined to prosecute to finality. The rhetorical question to be asked is why they did not at that stage launch the application to stay the arbitration.

[13]. It is the first respondent's contention that the alleged urgency of the matter is self-created and that there was non-compliance with the provisions of

Uniform Rule of Court 6(12). It was submitted on behalf of the first respondent that despite the fact that the applicant was aware as far back as at least October 2024 that the first respondent was proceeding with the arbitration to finality, the applicants failed to issue their application soon thereafter.

[14]. Rule 6(12)(b) of the Uniform Rules of Court reads as follows that:

‘(b) In every affidavit or petition filed in support of the application under para (a) of this sub-rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he would not be afforded substantial redress at a hearing in due course.’

[15]. On behalf of the applicants, it was submitted that the application is urgent because it was only when the third respondent issued his award on 7 April 2025 that the exigency of the matter dawned on them. There is no merit in this contention.

[16]. I am of the view that the urgency of this application is self-created. The applicants should have launched this application as soon as the respondents made it clear to him that they do not intend staying the arbitration proceedings. If they did so, urgency would not have been an issue now. I am not convinced that the applicants have passed the threshold prescribed in Rule 6(12)(b) and I am of the view that the application ought to be struck from the roll for reasons given above.

[17]. In *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited*¹, this court held as follows: -

‘This Court has consistently refused urgent applications in cases when the urgency relied-upon was clearly self-created. Consistency is important in this context as it informs the public and legal practitioners that Rules of Court and Practice Directives can only be ignored at a litigant's peril. Legal certainty is one of the cornerstones of a legal system based on the Rule of Law.’

¹ *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* 2023 JDR 3204 (GP).

[18]. Accordingly, the application should be struck from the roll with costs.

Order

[19]. In the result, I make the following order:

- (1) The applicants' urgent application be and is hereby struck from the urgent court roll for lack of urgency.
- (2) The first and the second applicants, jointly and severally, the one paying the other to be absolved, shall pay the first respondent's costs of this urgent application, such costs to include Counsel's charges on scale 'C' of the tariff applicable in terms of the Uniform Rules of Court.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

HEARD ON:	30 April 2025
JUDGMENT DATE:	5 May 2025 – Judgment handed down electronically
FOR THE FIRST AND THE SECOND APPLICANTS:	I Miltz SC
INSTRUCTED BY:	Fluxmans Incorporated, Illovo, Johannesburg
FOR THE FIRST RESPONDENT:	A Cook
INSTRUCTED BY:	Wilken Attorneys, Hulringham Manor, Randburg
FOR THE SECOND RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance
FOR THE THIRS RESPONDENT:	No appearance
INSTRUCTED BY:	No appearance