

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

CASE NO: 113234/23

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE

SIGNATURE

In the matter between:

E[...] E[...]

Applicant

and

T[...] C[...] E[...]

Respondent

***Delivered:** this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be **16 May 2025**.*

JUDGEMENT

NDLOKOVANE AJ

[1.] This is an opposed urgent application in which the applicant, in her notice of motion dated 25 March 2025, seeks an order from this Honourable Court in the following terms:

“

1. *That the matter be heard as one of urgency and that non-compliance with the Uniform Rules of Court be condoned;*
2. *That the Divorce Settlement Agreement, which was made an order of court on 6 February 2025, be rescinded in terms of the common law;*
3. *That the Office of the Family Advocate be directed to investigate the prevailing circumstances of the minor children and submit its recommendations to this Court;*
4. *That, pending finalisation of the Family Advocate's investigation, primary residence of the minor children be awarded to the applicant;*
5. *That the parties be directed to proceed with a forensic audit aimed at determining the value of the joint estate, which audit had commenced prior to 6 February 2025;*
6. *That costs be awarded against any party opposing the relief sought; and*
7. *That the applicant be granted further and/or alternative relief as this Honourable Court may deem appropriate. (own emphasis)”*

[2] When the matter was called virtually, the Court heard submissions from both parties on the issues of urgency and the merits of the application. Judgment was thereafter reserved to allow the Court to fully consider the submissions and legal principles involved.

TIME PERIODS AND PROCEDURAL HISTORY

- [3] In her notice of motion, the applicant directed the respondent to:
- (a) File his notice of intention to oppose by 14h00 on 26 March 2025.
 - (b) Appoint an address in terms of Rule 6(5)(b) for purposes of service; and
 - (c) File his answering affidavit, if any, by 15:00 on Friday, 28 March 2025.

[4.] The notice of motion and founding affidavit were both dated and commissioned on 25 March 2025. A stamped return of service reflects that the documents were served electronically on 26 March 2025 at 15:05:53.

[5.] The first respondent's notice of intention to oppose is dated 26 March 2025 at 14:33:56, and the answering affidavit was electronically filed and uploaded to Caselines on 28 March 2025 at 15:05:23. The applicant filed her replying affidavit

on 31 March 2025, followed by heads of argument. The Court and respondents confirmed receipt of these documents on the same date. Counsel for the applicant, Mr Raymond, readily conceded that the application was brought on an extremely urgent basis.

[6.] On 31 March 2025, a note was uploaded to Caselines by Ms Shani van Niekerk, attorney for the **Curator ad litem**, drawing the Court's attention to correspondence uploaded under Section 000, Item 9.

[7.] The correspondence raised several material concerns, summarised below: That both parties' affidavits were reviewed by instruction of the **Curator ad litem** on 31 March 2025;

That the applicant failed to disclose that:

7.1A Curator ad litem had been appointed to represent the minor children;

7.2A legal representative had also been appointed for the children;

7.3A forensic psychologist had conducted an investigation and testified in prior proceedings;

7.4 That the application was not served on the Curator ad litem, the children's legal representative, or the applicant's previous legal team;

7.5 That the relief sought—particularly the partial rescission of the settlement agreement—would arguably revive the duties of the Curator ad litem, thus giving him a direct and substantial interest in the matter;

7.6 That the Curator ad litem, while not filing an affidavit or appearing at this stage, expressly reserves the right to do so and requested all relevant facts be brought to the Court's attention;

7.7 That the correspondence was duly uploaded for the benefit of the presiding Judge hearing the matter on 1 April 2025(my own emphasis).

APPLICANT CONTENTIONS

[8.] The applicant contends that she had no option but to approach this Court on an urgent basis and pray the Court to accept the urgency, for the reasons provided in her founding papers. Should the Court not grant the urgent relief, the harm to her and the children would be irreparable. The respondent will have the opportunity during a trial to convince the Court of the financial position and she will likewise have the opportunity to evaluate the real financial position and negotiate a fair settlement with the true facts, and not without the fraudulently withheld information.

RESPONDENTS' OPPOSITION

[9.] The respondent, in turn, raised several preliminary objections including lack of urgency, non-joinder, and procedural irregularity. He also dispute the existence of any fraudulent conduct and maintain that the applicant has not met the requirements for rescission under the common law.

LEGAL PRINCIPLES APPLICABLE TO URGENCY

[10.] Before entertaining the merits of any urgent application, a court must be satisfied that the matter is indeed urgent and warrants deviation from the normal rules of court. Where an applicant fails to establish that substantial redress is not available in due course, the matter must be struck from the roll – ***SARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA)***.

[11.] Similarly, where urgency is self-created, a court is not obliged to afford the matter priority – ***Lindeque and Others v Hirsch and Others (In Re: Prepaid24 (Pty) Limited) (2019/8846) [2019] ZAGPJHC 122***.

[12.] In terms of Rule 6(12), an applicant is permitted to set abridged timeframes, provided the urgency is genuine and not manufactured. Failure to convince the court of the rationality of the truncated timelines will result in the matter being struck from the roll, often with costs.

[13.] The test for urgency, as articulated in ***East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others (2011) ZAGPJHC 196***, is whether the

applicant will be afforded substantial redress in due course if the application is not heard immediately. A mere desire to have the matter heard quickly does not suffice.

APPLICATION OF THE LAW TO FACTS

[14] Having carefully considered the affidavits, oral submissions and case law cited, I am not satisfied that the applicant has met the burden of proving that this matter ought to be heard as one of urgency.

In particular:

1. The applicant submits that the harm to her and the parties minor children will be *irreparable* if urgent relief is not granted. However:

- (a) She **does not detail** what this irreparable harm entails (e.g., threats to safety, eviction without recourse, psychological harm to children).

- (b) The alleged harm is mostly *financial and procedural* in nature, which typically **can be addressed through ordinary legal remedies**, including contempt or variation proceedings.

- 2.

The applicant argues that rescinding the settlement will give both parties the opportunity to assess the real financial position. However:

- (a) This goes to the **merits of the rescission**—not urgency.

- (b) Courts are generally reluctant to grant **urgent rescission** unless immediate consequences flow that **cannot be reversed later** (e.g., imminent sale of property, immediate dispossession).

- 3.

- (a) The settlement was made an order of court in February 2025, and she only approached the court in late March/April 2025.

- (b) There is **no detailed timeline** explaining when she discovered the alleged fraud and why she waited to act.

(c) **Delay without justification** undermines any claim of urgency (see *Lindeque v Hirsch* case above).

4.

(a) She failed to join the ***curator ad litem*** and others with a direct interest.

(b) Courts consider this seriously, especially in matters involving children, which undermines both urgency and procedural fairness.

[15] Given my finding that the matter lacks urgency, it is unnecessary to make a determination on the merits at this stage.

ORDER

[16] In the result, the following order is made:

(a) The application is struck from the roll for lack of urgency with costs;

N NDLOKOVANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

For the Applicant:	S. Bester
For the Respondents:	AM Raymond
Heard on:	01 April 2025
Date of judgment:	16 May 2025