



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
25 June 2025	
DATE	SIGNATURE

Date: 25 June 2025

Case number: 056154/2024

In the matter between:

K2015353134 (SOUTH AFRICA) (PTY) LIMITED

Applicant

and

LOUSIA SIBIYA N.O.

First Respondent

ELIZABETH MARGARATE EDWARDS N.O.

Second Respondent

MPONYANA LAZARUS LEDWABA N.O.

Third Respondent

[In their capacities as the duly appointed joint liquidators

of Artio Investments (Pty) Ltd (in liquidation)]

ARTIO INVESTMENTS (PTY) LTD (IN LIQUIDATION) **Fourth Respondent**

THE MASTER OF THE HIGH COURT, PRETORIA

Fifth Respondent

JUDGMENT

MINNAAR AJ:**INTRODUCTION:**

[1] In this application, the applicant is seeking the following urgent relief:

- a. Interdicting and restraining the first to the third respondents ('the liquidators') from finalising the fourth respondent's liquidation and distribution account ('L&D') and submitting the same to the fifth respondent for approval.
- b. In the alternative to the above, and to the extent that the liquidators have finalised the fourth respondent's L&D and submitted the same to the fifth respondent for approval, then and in that event, the fifth respondent is interdicted from approving the fourth respondent's L&D.
- c. The liquidators to be interdicted and restrained from taxing the bill of costs and executing upon the cost order that the Arbitrator granted in the arbitration as between the applicant and the liquidators and the fourth respondent.
- d. That paragraphs 1 and 2 of the order granted by Motha J on 28 March 2025 be varied, amplified and supplemented.
- e. The orders contained in paragraphs 2 to 4 of the notice of motion (paragraphs a to c herein above) shall operate as interim orders with immediate effect, pending the final determination and hearing of the applicant's appeal in the pending arbitration appeal pursuant to the applicant's notice of appeal dated 27 August 2023, as between the applicant and the liquidators.

- f. The liquidators to pay the costs of the application on the scale as between attorney and client, such costs to include the costs consequent upon the employment of two counsel.

[2] The liquidators delivered a conditional counterclaim. The counterclaim is to be adjudicated upon should it be found that the applicant's application is urgent.

[3] The dispute between the applicant and the liquidators dates back to February 2017, when a written agreement was concluded, under which the applicant offered to purchase the business of the fourth respondent (in liquidation). This transaction culminated in an arbitration that the applicant instituted in September 2022. An arbitration award was handed down on 19 August 2023, wherein the applicant's claim was dismissed. The applicant then delivered a notice of appeal against the arbitration award. In March 2024, a dispute arose over whether or not the appeal had lapsed. This dispute came before Motha J, who granted an order on 28 March 2025. Motha J ordered that the applicant's appeal had not lapsed and directed the applicant and the liquidators to convene and attend a pre-appeal arbitration meeting to be held within 15 days from the date of the order, to reach an agreement on the number of arbitrators to hear the appeal. A further dispute arose regarding compliance with the order by Motha J, as no agreement could be reached on the number of arbitrators to hear the appeal.

[4] According to the liquidators, the L&D has not yet been submitted.

URGENCY:

[5] Rule 6(12) provides, *inter alia*, that the Court may dispose of urgent applications at such time and place and in such manner and in accordance with such procedure as to it seems meet. The circumstances that an applicant avers render a matter urgent, and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course must, in terms of Rule 6(12) (b), be set forth explicitly in the supporting affidavit.¹

[6] The requirements under Rule 6(12)(b) are peremptory, and mere lip service will not suffice.² A proper explanation must be provided as to why an applicant should be granted preferential treatment to be heard in the urgent court as opposed to having to join the queue in the normal course of the motion court.

[7] One of the key urgency requirements is for an applicant to make out a case that such an applicant will not obtain substantial redress in due course. In this regard, it was stated by Tuchten J in *Mogalakwena Municipality v Provincial Executive Council, Limpopo* 2016 (4) SA 99 (GP) at paragraph 64:

¹ *IL&B Marcow Caterers v Greatermans SA* 1981 (4) SA 108 (C) at 110

² *Luna Meubel Vervaardigers Eiendoms Beperk v Makin & Another (trading as Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F - G

*"It seems to me that when urgency is in issue, the primary investigation should be to determine whether the applicant will be afforded substantial redress at a hearing in due course. If the applicant cannot establish prejudice in this sense, the application cannot be urgent. Once such prejudice is established, other factors come into consideration. These factors include (but are not limited to): whether the respondents can adequately present their cases in the time available between notice of the application to them and the actual hearing; other prejudice to the respondents and the administration of justice; the strength of the case made by the applicant; and any delay by the applicant in asserting its rights. This last factor is often called, usually by counsel acting for respondents, self-created urgency."*³

[8] In the founding affidavit, the following is stated by the applicant under the heading of 'urgency':

- "23. The application is brought urgently.*
- 24. The Applicant respectfully submits that the matter is of such a nature that it cannot be afforded the normal timeframes and formalities applicable in the ordinary course.*
- 25. The urgency stems from the conduct and stated intentions of the Respondents, who, despite the existence of a valid and pending arbitration and a binding Court Order confirming the Applicant's right to pursue such appeal, have indicated that they will proceed with:*

³ See also: *East Rock Trading (Pty) Ltd and Another v Eagle Valley Granite and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011)

- 25.1 *the taxation and execution of the bill of costs, in the cost order that was granted in the arbitration proceedings as between the Applicant and the First to Fourth Respondents; and*
- 25.2 *the composition and submission of the liquidation and distribution account of the Fourth Respondent.”*

[9] From the above-quoted passage, the applicant’s urgency is therefore premised on:

- a. The taxation and execution of the bill of costs, in the cost order that was granted in the arbitration proceedings; and
- b. The composition and submission of L&D.

[10] In the concluding paragraphs of the founding affidavit, it is stated that, based on the extensive submissions contained in the founding affidavit, the matter is urgent. In a general statement to justify urgency, reference is also made to promptitude to pursue the application, the interest of justice, and lack of prejudice to the respondents. Without providing any specifics, it is also stated that a hearing in due course would not afford the applicant substantial and meaningful redress. These general remarks do not assist the applicant in meeting the requirements of Rule 6(12)(b).

[11] The costs order was already granted on 19 October 2023. At the commencement of the argument, the applicant’s counsel indicated that

the issue of costs is no longer a ground for urgency. This then leaves the L&D as the only ground for urgency.

[12] As far back as 10 April 2024 (Annexure OA-3 to the answering affidavit), the applicant was informed that the liquidators would prepare an L&D account. It is unclear why the L&D would now, more than a year later, become an urgent issue.

[13] In terms of section 407 of the Companies Act 61 of 1973 (Old Act), any person having an interest has the right to object to any L&D after it has been submitted for approval. It is for the fifth respondent to consider whether the applicant would have an interest in objecting to the L&D. For the applicant to seek now an order to interdict the L&D process would be premature. Such a right in terms of section 407 would also afford the applicant substantial redress in due course.

[14] The variation of the order granted by Motha J on 28 March 2025 was not included as a specific ground of urgency under the heading of 'urgency' by the applicant. Even if this ground is read as a ground to justify urgency, then the applicant fails to convince this court that they cannot obtain substantial redress in due course on this ground.

[15] It follows that the application stands to be struck from the roll due to a lack of urgency. There is therefore no need to address the liquidators' counter-application.

COSTS:

[16] There is no reason why costs should not follow the outcome. Both sides employed the services of two counsel. Costs are to be taxed on scale C.

ORDER:

Consequently, I make the following order:

1. The application is struck from the roll due to a lack of urgency.
2. The applicant is to pay the costs of the application on scale C, such costs to include the costs occasioned by the employment of two counsel.


Minnaar AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on : 17 June 2025

For the Applicant : Adv. N A Cassim SC with Adv A Vorster

Instructed by : Asif Latib Attorneys Incorporated

For the First to Fourth

Respondents: : Adv M Louw with Adv W G Tshabalala

Instructed by: : Jaco Roos Attorneys Incorporated

Date of Judgment : 25 June 2025