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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO.: 2025-088899

In the matter between:

MINISTER OF POLICE

Applicant

and

MACEBO QWELA

1st Respondent

BULELANI MAMKELI

2nd Respondent

LUYANDA TAFENI

3rd Respondent

**SHERIFF OF THE HIGH COURT-
KING WILLIAMS TOWN**

4th Respondent

REASONS FOR JUDGMENT

ZONO AJ:

Introduction

[1] The applicant approached the court by way of urgency. Notwithstanding applicant's request made in the certificate of urgency dated 10th June 2025 that the applicant be heard on 11th June 2025 at 14:15 and that papers be served by 17:00 on 10th June 2025, it was directed that this matter be heard on 12th June 2025.

[2] The applicant sought interim relief in his notice of motion in the following terms:

*"2.1 That the warrant of execution issued on 04 March 2025 in favour of the first to fourth respondents against the applicant emanating from the action issued in the Regional Court of Idutywa under case numbers **09/23; 10/23; 11/23 and 12/23** be and are hereby stayed pending finalization of the judgment to be brought by the applicant.*

2.2 That the applicant shall launch the application referred to in paragraph 2.1 hereof within 15 days from the date of this order.

2.3 Interdicting and restraining anyone from acting in furtherance of the warrant of execution referred to in paragraph 2.1 above.

*2.4 That the fifth respondent be and is hereby directed to release to the applicant two motor vehicles with registration letters and numbers **B[...]** and **J[...]**, as well as any other goods or items belonging to the applicant that were removed on 10th June 2025 pursuant to the attachment.*

2.5 That upon the release and delivery to the applicant of the motor vehicles referred to in paragraph 2.4 above and any other goods removed from the applicant, the applicant be and is hereby directed not to dispose of the said motor vehicle or item pending the final determination of this matter" (sic).

[3] The applicant sets out the ground for urgency both in the certificate of urgency and the founding affidavit thus:

“ If this matter is not heard by this honourable court, I submit that the applicant will not be afforded a redress in a hearing in due course because by then, he would have suffered an irreparable harm”(sic).

- [4] The ground for urgency is underpinned by the following common cause facts: Pursuant to the default judgment having been obtained in the amount of **R260 000.00** in the Regional Court of Idutywa, a warrant of execution was issued out of the same court. The sheriff of the court, armed with warrant of execution, attached applicant's movable property consisting of the office furniture and equipment together with two motor vehicles. There is no clear or dim indication in the founding affidavit as to the times when the aforesaid were done. The only thing that is crystally clear, which permeated through to the argument in court on the date of hearing is that, applicant's legal representatives received instructions on 10th June 2025. This date happened to be the same date of removal of applicant's movable assets..
- [5] I may digress and state that the default judgment appears to have been obtained on the 26th June 2024. The warrants of execution were issued on 03rd April 2025. Applicant's property aforesaid was attached and inventoried on 11th April 2025. The attached movable properties were removed on 10th June 2025. All of these dates, except the date of removal are found, not in the founding affidavit, but in the annexures. It suffices to mention that such important non-disclosure leaves much to be desired.
- [6] The only reason the applicant did not defend the action in the Regional court is because the police docket went missing during the refurbishment at Idutywa Police Station. The docket was found on 20th May 2025 after the judgment had been obtained, but before the removal of the attached movable assets. It was only after the docket had been found that the applicant became aware of his Department's defence.
- [7] The matter was opposed by the first to fourth respondents. In doing so the respondents delivered their notice to oppose and answering affidavit deposed to by their attorney, Mvume Vitshima. The deponent in the answering affidavit

alludes to the fact that applicant's movable assets were attached on 11th April 2025 and further state that there is no justification that the application was not launched immediately after the attachment. He concludes by saying that applicant's alleged urgency is self-created.

- [8] After hearing both Counsel on 12th June 2025 I struck this matter from the roll for lack of urgency with costs. On 25th June 2025 I received applicant's request for reasons for such an order. The request was apparently filed on 23rd June 2025. I am now furnishing the requested reasons hereafter.

Discussion and Analysis

- [9] In *Mphahlele*¹ the Constitutional Court remarked thus:

“[12] There is no express constitutional provision which requires judges to furnish reasons for their decisions. Nonetheless, in terms of section 1 of the Constitution, the rule of law is one of the founding values of our democratic state, and the judiciary is bound by it. The rule of law undoubtedly requires judges not to act arbitrarily and to be accountable. The manner in which they ordinarily account for their decisions is by furnishing reasons. This serves a number of purposes. It explains to the parties, and to the public at large which has an interest in courts being open and transparent, why a case is decided as it is. It is a discipline which curbs arbitrary judicial decisions. Then, too, it is essential for the appeal process, enabling the losing party to take an informed decision as to whether or not to appeal or, where necessary, seek leave to appeal. It assists the appeal court to decide whether or not the order of the lower court is correct. And finally, it provides guidance to the public in respect of similar matters. It may well be, too, that where a decision is subject to appeal it would be a violation of the constitutional right of access to courts if reasons for such a decision were to be withheld by a judicial officer”.

¹ *Mphahlele v First National Bank of South Africa* Ltd 1999 (2) SA 667 (CC), 1999 (3) BCLR 253(CC) Para 12.

- [10] It is elementary that litigants are ordinarily entitled to reasons for a judicial decisions following upon a hearing, and when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigants' rights and an impediment to the appeal process². Judges ordinarily account for their decisions by giving reasons and the rule of law requires that they should not act arbitrarily and that they be accountable. Judicial accountability impels the judicial officers to account to the parties in a litigation and to the public at large through their judgments³. The core principle of the rule of law includes the right of a litigant to be given reasons by a court.⁴ Absent such a right, transparency is cloaked in darkness, accountability is honoured in the breach⁵.
- [11] For a proper context, applicant's entire case is about staying the warrant of execution issued on the 04th March 2025. There is absolutely no relief sought for the interdict of the impending sale of the attached and removed applicant's movable assets. This distinction is important because the two distinct legal processes took place at two separate and distinct periods. As stated above, the warrant of execution was issued on 04th March 2025, and removal of the applicant's movable assets only took place on 10th June 2025.
- [12] The applicant became aware or ought reasonably to have been aware of the warrants of execution issued on 04th March 2025 on 11th April 2025 when the sheriff visited its Griffiths Mxenge offices at Zwelitsha for attachment. On this date applicant's movable assets were attached and inventorised and that inventory was apparently left at the applicant's offices. The inventory was annexed in the applicant's founding papers. Nothing appear to have been done by the applicant since the date of attachment and inventory. No explanation has been made for this delay as this application was only instituted on 11th June 2025.

² *Strategic Liquor Services v Mvumbi NO and Others* 2010(2) SA 92 (CC) Para 16.

³ *Tom v S (Appeal)* (CA &R/ 2025) [2025] ZAECHC 13 (12 June 2025) Para 16.

⁴ *GMSA Financial Services: A division of West Bank: A Division of First National Bank Limited v PBF Investors (Pty) Ltd. and another* (2358/2017) [2019] ZAECHC 15 (12 March 2019) Para 5- per Mbenenge JP.

⁵ *M v M* (20350/2012) [2015] ZAWCHC 197 (24 November 2015) per Davis J.

- [13] On 20th May 2025 the applicant found the long missing docket and became aware of his defence. The applicant again, does not explain the impediment to the institution of these proceedings immediately after he became aware of his defence. The applicant only acted when the respondents decided to remove the attached goods. Again, there is no explanation for this late reaction. The first to fourth respondents are justified in contending that the urgency alleged by the applicant is self-created. It is so because, the warrants of execution that are sought to be stayed were issued on 04th March 2025 and became known or ought reasonably to have been known by the applicant on 11th April 2025 when the sheriff went to attach and inventorise applicant's movable assets.
- [14] During hearing of this matter applicant's Counsel limited himself only to the fact that if the warrant of execution is not stayed, there is a substantial injustice that will be suffered by the applicant as the removed movable assets will have sold when this application is finalized in a long form. That cannot by any stretch of imagination revive or bring back the lost urgency, especially in the light of the fact that there is no explanation for such long delay. Applicant's concerns may be addressed by invocation of the practice rules relating to the application for a preferential date to the Judge President or Deputy Judge President through the office of the registrar, if so minded. Invocation of those rules will afford applicant redress at a hearing in due course.
- [15] It is well established that the applicant cannot create its own urgency by simply waiting until the normal rules can no longer be applied⁶. A point must be clearly made that the Rules should be obeyed and the interest of the other party and his lawyers should be accorded proper respect and the matter must be looked at to consider whether the case is such a time or not⁷. Rule 45A of the Uniform Rules of Court provides for suspension of orders by the court. It is

⁶ *Ngquma and another v Staas President; Damon's No v State President; Jooste v State President* 1988 (4) SA 224 at 243 D-E; *Sokhani Development & Consulting Engineers (Pty) Ltd v Alfred Nzo District Municipality* (1254/2024) [2024] ZAECKMKHC 44 (26 April 2024) Para 12.

⁷ *Nelson Mandela Metropolitan Municipality & Others v Greyvnouw CC & Others* 2004 (2) SA 81 (SC) Para 38.

in the context of this Rule that Mr Mwelase for the applicant submitted that substantial injustice will ensue if an order is not granted on urgent basis. A case for an order to be granted on urgent basis must be made out in terms of Rule 6 (12) (b) of the Uniform Rules of Court. No such case has been made out both in the papers and during the oral submissions.

- [16] As I conclude, it is apposite to be reminded of the words of Cameron J⁸ when the Constitutional Court was dealing with citizens' rights and government Department: he had this to say:

“[82] All this indicates that this Court should not decide the validity of the approval. This would be in accordance with the principle of legality and also, if applicable, the provisions of PAJA. PAJA requires that the government respondents should have applied to set aside the approval, by way of formal counter-application. They must do the same even if PAJA does not apply. To demand this of government is not to stymie it by forcing upon it a senseless formality. It is to insist on due process, from which there is no reason to exempt government. On the contrary, there is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline. It is the Constitution's primary agent. It must do right, and it must do it properly.”

- [17] The applicant failed to follow the rules of procedure designed to be the vehicle delivering speedy resolution of proceedings. It is reiterated that Rule 6 (12) (b) of the Uniform Rules of Court has not been complied with.

⁸ *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC); 2014 (5) BCLR 547 (CC) Para 82.

[18] It is therefore in these circumstances that I struck the application from the roll with costs. I was and am still satisfied that an order striking the matter from the roll was justified.

A.S ZONO
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

For the Applicant	:	MR MWELASE
Instructed by	:	B. MWELASE ATTORNEYS
		Suite 201B, 1st Floor
		City Centre Complex
		York Road
		Tel: 067 180 0045/047 050 4938
		Email: mwelasebongile@gmail.com
		Ref: BM/M.10-2025
For the 1ST to 4th Respondents	:	ADV JIKWANA
Instructed by	:	VITSHIMA ATTORNEYS
		101 King Street
		Idutywa
		Email: mvumev@telkomsa.net
C/O	:	A.W CHOPHA INC.
		No 67 Blakeway Road
		Mthatha
		Tel: 047 431 0185
		Email: reception@awchophainc.co.za
Date matter heard	:	12th June 2025
Date order issued	:	12th June 2025

Date reasons sought : 23rd June 2025

Date reasons furnished : 08th July 2025