

REPUBLIC OF SOUTH AFRICA



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

Case Number: 096524/2025

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|-----|------------------------------|
| (1) | REPORTABLE: |
| (2) | OF INTEREST TO OTHER JUDGES: |
| (3) | REVISED: YES |

14 July 2025
DATE

[Signature]
SIGNATURE

In the matter between:

IMOLOGA COMMUNITY PROJECT (NPO)

Applicant

And

THE MINISTER OF SOCIAL DEVELOPMENT

First Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL
FOR SOCIAL DEVELOPMENT, NORTH WEST**

Second Respondent

**THE HEAD OF THE DEPARTMENT OF SOCIAL
DEVELOPMENT, NORTH WEST**

Third Respondent

JUDGMENT

BOTSI-THULARE AJ

Introduction

- [1] This is an urgent application in which the applicant, Imologa Community Project (NPO), seeks a mandatory interdict compelling the third respondent to provide a closing report or formal confirmation that the alleged pending case has been concluded. Further, review and setting aside of the decision disqualifying the applicant from funding for the 2025/2026 financial year.
- [2] The first respondent is the Minister of Social Development. The second respondent is Member of Executive Council for Social Development in the North West Province. The third respondent is the Head of the Department of Social Development in the North West Province.
- [3] The urgent application is opposed by the respondents. In this regard, the respondents rely on the following grounds:
- a. The applicant has not established urgency.
 - b. This court lacks jurisdiction against the second and third respondent.
 - c. This application ought to be dismissed on the basis of misjoinder.
 - d. The applicant failed to exhaust internal remedies.
- [4] Before dealing with the issues, it is appropriate to provide a summary of the parties submission before this court.

Applicant's submissions

- [6] The applicant submits that in 2021, funds for the 2020/2021 period were belatedly paid by the respondents, leaving the applicant with insufficient time to use them, resulting in a refund of R274 000.00. In this regard, the applicant contends that despite the refund, the respondent continued to fund the applicant in subsequent years but later rejected its 2024/2025 and 2025/2026 applications based on a purported pending investigation.

- [7] According to the applicant, the respondents never informed the applicant about the nature of the investigation and did not afford the applicant an opportunity to respond. Having said that, the applicant alleges that it provided full cooperation and submitted all relevant documents, including proof of repayment of the R274 000.00.
- [8] The applicant alleges that the respondents refuse to close the investigations despite the applicant having cooperated in every respect. The applicant submits that the respondents' refusal to confirm a closed investigation lacks a legal basis and constitutes administrative irrationality.
- [9] The applicant submits that it has a clear and constitutionally protected right to apply for funding and to have such application considered fairly. Accordingly, the applicant argues that the ongoing denial of funding and refusal to issue the closing report has caused irreparable harm to the applicant's operations, beneficiaries, and reputation.
- [10] The applicant contends that it exhausted internal remedies, including a written appeal dated 10 April 2025 and follow-ups on 5 June 2025. However, these were ignored by the respondents. In other words, the internal appeal process has proven futile. The respondents has not identified any alternative recourse or mechanism, nor responded substantively.
- [11] The applicants therefore submits that the impugned decision is reviewable under section 6(2) of PAJA on grounds of procedural unfairness, arbitrariness, irrationality, and unconstitutionality. The applicant argues that it was denied the right to make representations, contrary to section 33 of the Constitution.
- [12] Regarding urgency, the applicants argues that the matter is inherently urgent because it is at risk of losing access to funding for the 2025/2026 financial year, which will result in immediate termination of essential services to vulnerable communities. Furthermore, the delay by the respondents, after numerous follow-ups and formal appeal demands, justifies the invocation of Rule 6(12)(a) of the Uniform Rules.

[13] Lastly, the applicant argue that any further delay will result in permanent closure of the applicant's programmes, with irreparable harm to the community. Furthermore, if this matter is not heard as one of urgent matters, by the time when the applicant follow the normal roll, the financial year for funding 2025 will have been ended. The application is urgent, and the applicant has no other recourse than to seek judicial intervention to protect its operations and the constitutional rights of the beneficiaries it serves.

Respondents submissions

[14] The respondents submit that the applicant knew on 22 April 2024 that its application for funding has been declined due to financial mismanagement and for failure to file audited financial report. Yet the applicant failed to take any steps to submit audited financial reports nor to await the finalisation of its director's criminal case.

[15] The respondents contend they are required by the Public Finance Management Act 1 of 1999 to take appropriate actions to avoid fruitless and wasteful expenditure. In addition, section 4 of the Prevention of Organized Crime Act, 1998 makes it a crime for the respondents to continue funding the applicant where they suspect or ought to have known that its property forms part of unlawful activities.

[16] In this regard, the respondents has already been informed that the applicant's director Tebogo Olifant send excess rent payment to the landlord and request the latter to deduct his money and send the remainder to his personal bank account. Further, the applicant was not submitting its audited financial report and breached clause 6.1.2 of the service level agreement by failing to return R40 000.00 unspent money for 2022/23 financial year.

[17] Furthermore, the applicant's director has a criminal case where he mismanaged R90 000.00 and a criminal case to that effect is pending. But even worse, the applicant's director conducts the applicant as a private company and refuses any guidance from the respondents.

- [18] The respondents therefore argues that it is on the basis on the above-mentioned facts that the respondents declined the applicant's application for funding for 2025/2026 just like it declined the application for funding for 2024/2025.
- [19] The respondents submit that the decision to decline the applicant's funding seeks to vindicate the rule of law, promote accountability, and protect the public fiscus. These are quintessential matters of public interest. Therefore, any prejudice or harm that the applicant may suffer is far outweighed by the public interest in restoring legality, particularly where public funds are concerned.
- [20] In response to the applicant's arguments on urgency, the respondents submit that the applicant has not established urgency. To this end, the respondents argues that the applicant's application for funding for 2024/2025 financial year was also declined on 22 April 2024 on the similar reasons provided on 30 May 2025 i.e. that the applicant has failed to submit audited financial report, that it has committed financial mismanagement and that there is a pending case against it which has not been closed.
- [21] Against this background, the respondents contend that the applicant has been having complete knowledge of the facts which led to its application for funding being declined for fifteen months (i.e. since April 2024) and yet did nothing to remedy the issue.
- [22] The respondents therefore contend that this application is not urgent by any stretch of imagination. Accordingly, they submit that this matter must be struck off the roll with punitive costs for lack of urgency.

Issues

- [23] Against this background, this court must determine the following issues:
- a. The point in *limine* raised (by the respondents) whether this court has jurisdiction over this matter (in particular against the second and third respondent).
 - b. If the answer to the point in *limine* above is in the positive, whether this matter is urgent.

- c. If yes, whether the applicant has exhausted internal remedies.
- d. If yes, whether the applicant has made up a case on the merits for the relief sought.

Jurisdiction

[24] As a point in *limine*, the respondent contended that this court does not have jurisdiction over the second and third respondents as they are not domiciled within this court's jurisdiction. Furthermore, the respondents argues that the applicant's main relief are sought against the third respondent who also falls within the jurisdiction of the North West High Court.

[25] Conversely, the applicant contends that this court has jurisdiction to hear this matter. The applicant argues that the principal place of business of the first respondent is situated in Pretoria, Gauteng. Jurisdiction is accordingly established based on the residence of the respondents, the location of the cause of action, and the rules relating to attachment and situs of government authority.

[26] I am inclined to agree with the applicant on this point. In my view, this court has jurisdiction to hear this matter on the basis that it has jurisdiction over the first respondent. It may be that the second and third respondents are not located within the jurisdiction of this Court but the fact that the first respondent is party to this matter bestows upon this court the power to adjudicate this matter.

[27] Accordingly, I am of the view that the point in *limine* raised by the respondents should fail.

Urgency

[28] Now that I have concluded that this court has jurisdiction to hear this matter, I proceed to deal with the issue whether urgency has been established. Urgent applications are brought when an applicant cannot wait for a matter to be dealt with in the ordinary course, where time is of the essence and urgent relief is required. Bringing an urgent application is an extraordinary measure, which is why there are stringent conditions that must be met in order to bring one successfully.

[29] It is therefore imperative that the applicant in urgent application should set forth explicitly the reasons why the matter is urgent. Self -created urgency does not entitle a particular applicant to urgent relief and where it is found that the application is self -created, such application has to be struck off the roll for lack of urgency.

[30] This Court has consistently refused urgent applications in cases where the urgency relied upon was subjective urgency, 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.

[31] The court's power to condone non-compliance with the rules and to accelerate the hearing of a matter should be exercised with judicial discretion and in the light of sufficient and satisfactory grounds being shown by the applicant. There are three major considerations¹:

- a. The prejudice that the applicant may suffer by having to wait for a hearing in the ordinary course.
- b. The prejudice that other litigants might suffer if the application were to be given preference.
- c. The prejudice that the respondents might suffer by the abridgment of the prescribed times and an early hearing.

[32] The rule requires two legs to be present before urgency can properly be founded, namely; first, the urgency should not be self-created² and secondly, it must provide reasons why substantial relief cannot be achieved in due course.

[33] The Court in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*³ stated:

¹ *IL & B Marcow Caterers (Pty) Ltd v Gretermans SA Ltd and Another* 1981 (4) SA 108 (C) at 112H-113A

² *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* [2003] ZAECHC 5; 2004 (2) SA 81 (SE) paras 23, 33-34, and *Rokwil Civils (Pty) Ltd and others v Le Sueur N.O and others* [2020] ZAKZDHC 61 paras 16-19.

³ *East Rock Trading 7 (Pty) Ltd and another v Eagle Valley Granite (Pty) Ltd and others* [2011] ZAGPJHC 196 para 6.

“The import thereof is that the procedure set out in rule 6(12) is not there for 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 to wait for the normal course laid down by the rules it will not obtain substantial redress.”

[34] 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.

[35] De Wit,⁴ in his article discussing *East Rock Trading*, with regards to the harm the applicant may suffer where the matter is not dealt with on an urgent basis, wrote as follows:

“.... harm does not found urgency. Rather, harm is a mere precondition to urgency. Where no harm has, is, or will be suffered, no application may be brought, since there would be no reason for a court to hear the matter. However, where harm is present, an application to address the harm will not necessarily be urgent. It will only be urgent if the applicant cannot obtain redress for that harm in due course. Thus: harm is an antecedent for urgency, but urgency is not a consequence of harm.”

[36] The High Court in *Roets N.O. v SB Guarantee Company (RF) (Pty) Ltd*⁵ regarding the explanation that the application must furnish as to why the matter is urgent and cannot be brought in the ordinary course, held:

“urgency which is self-created in a sense that an applicant sits on its laurels or take its time to bring an urgent application can on its own lead to a decision that a

⁴ V de Wit ‘The correct approach to determining urgency’ (2021) 21(2) *Without Prejudice* 12 at 13.

⁵ *Roets N.O. and another v SB Guarantee Company (RF) (Pty) Ltd and others* [2022] ZAGPJHC 754 para 26.

matter is struck off the roll. It would of course depend on the explanation provided but if the explanation is lacking and does not cover the full period from when it was realised, or should have been realised, that urgent relief should be obtained. If this criteria to strike a matter from the roll is not available to a court, a court would be compelled to deal with an urgent application where for instance nothing was forthcoming for weeks or months and a day or two before an event was going to take place a party who wants to stay that event can approach a court and argue that if an order is not immediately granted such party would not obtain substantial redress in due course. If this is the approach to be adopted by a court there exist no reason why any explanation for the delay should be provided at all. An applicant only have to show that should interim relief not be granted it will suffer irreparable harm.”

[37] The Supreme Court of Appeal in *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others*⁶ stated that:

“... Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.”

[38] In other words, once an applicant has established that it will not obtain substantive redress at a hearing in due course, the court concerns itself with the question of whether the abridgement of time periods from those ordinarily prescribed by the Rules is commensurate with the urgency with which the redress require.

Reasons for the decision

[39] On a proper analysis of the parties submissions, it is clear that the applicant was aware from as far back as April 2024 that the respondents were investigating the applicant’s director Tebogo Olifant as well as the applicant’s failure to submit its audited financial report. The applicant was also aware that this was the main reason why its application for 2024/2025 was declined. In other words, the

⁶ 2006 (4) SA 292 (SCA) at para 9.

applicant knew that the investigation was continuing even at the time it applied for the 2025/2026 funding from the respondents.

[40] In fact, on assessing the facts and evidence, it cannot be said that the respondents are simply refusing to act which would constitute a failure to do their statutory duty. What is apparent from the papers is that there is no refusal to act rather there is an ongoing investigation into the affairs of the applicant which the applicant has been aware of since April 2024. In this regard, the applicant could have at that stage followed the normal court processes or any internal remedies available to it to challenge the respondents decision to decline its funding.

[41] The applicant further claims that if this matter is not heard as a matter of urgency the applicant and the community which it serves will suffer harm. by the time when the applicant follow the normal roll, the financial year for funding 2025 will have been ended. I disagree with the applicant on this point. In my view, the applicant has failed to demonstrate how its operations will suffer irreparable harm when in fact it was not for the first time its application for funding was declined.

[42] What is apparent is that the applicant wants this court to believe that without legitimate cause or justification the respondents simply refuses to fulfil their statutory duty to approve the applicant's funding application. The applicant further wants this court to accept that its application for 2024/2025 and 2025/2026 funding was declined by the respondents without justification. in my view this cannot be the case.

[42] In my view, any prejudice or harm that the applicant claims it may suffer is far outweighed by the public interest in restoring legality, particularly where public funds are concerned. The respondents have a responsibility to promote accountability and protect the public fiscus. These are, as correctly argued by the respondent, quintessential matters of public interest.

[43] Therefore, this court unfortunately is constrained to find that this application does not deserve to be heard on urgency. It is my considered view that the applicant has not succeeded in convincing this court that this application is urgent. In my view, the applicant

[44] Accordingly, I am of the view that the relief sought by applicant does not necessitates this court's urgent attention. Therefore, for this reason, I need not proceed to determine the issue of merits. As a consequence, this application falls to be struck of from the roll for lack of urgency.

Order

[45] In the result, I make the following order:

1. The applicant's urgent application be and is hereby struck from the roll for lack of urgency.
2. The applicant shall pay the respondents costs for the urgent application on attorney and own client scale



MD BOTSI-THULARE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

Counsel for the Applicant: Advocate DB Melaphi
Instructed by: Seema Mmabatho Attorneys

Counsel for the Respondents: Advocate B Lukhele
Instructed by: State Attorney

Date of Hearing: 8 July 2025

Date of Judgment: 14 July 2025

MODE OF DELIVERY: This revised judgment is handed down electronically by transmission to the parties' legal representatives by email, uploading on Caselines and release to SAFLII. The date and time for delivery is deemed to be 10 00am.