



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: 2025-119985

In the matter between:

SPR

Applicant

and

NV

Respondent

Neutral citation: *SPR v NV* (Case no 2025-119985) [2025] ZAWCHC...(13 August 2025)

Coram: LEKHULENI JD

Heard: 29 July 2025

Delivered: Electronically on 13 August 2025

Summary: Family law - Urgent Application to enforce a Regional Court order- Matter not urgent – Regional Court better placed to the hear matter – Application struck off the roll – Applicant ordered to pay the costs of the application.

ORDER

1. The applicant's application is struck off the roll for lack of urgency.
2. The applicant is ordered to pay the costs of this application on a party and party scale, including the costs of counsel on Scale B.

JUDGMENT

LEKHULENI J:

Introduction

[1] The applicant brought an application on an urgent basis in which he seeks an order declaring that the respondent failed to comply with paragraphs 3.7.1 to 3.7.7 of the final order of divorce granted by the Regional Court for the Regional Division of the Western Cape, held at Bellville, dated 25 November 2021, under case number RCC/BELL 1034/20. The applicant also seeks an order that the respondent be compelled to sign within 24 hours from granting of the order, Powers of Attorney to effect transfer of three sectional title units in the scheme known as Victoria and Van Riebeeck Courts in Parow, (Victoria Properties) owned by the applicant and the respondent into the name of the purchaser, Omega Sibanda.

[2] In addition, the applicant seeks an order that should the respondent fail and or refuse to sign such Powers of Attorney to effect transfer of the Victoria properties as prayed for above, within 24 hours from granting of the order, the applicant be authorised to sign such Powers of Attorney on behalf of the respondent and also to sign all other documents necessary to effect transfer of the properties to the purchaser. The applicant also seeks an order that, should the Victoria properties not be transferred to the purchaser, these properties be sold at the current or reduced price, and that the net proceeds be dealt with in accordance with their consent paper.

[3] In the alternative, the applicant seeks an order that pending the outcome of the action launched by the respondent at the Regional Court for the Regional Division of the Western Cape, in Bellville under case number: RCC/BELL438/2024, the net proceeds of the Victoria properties be held in trust by the applicant's attorneys of record in an interest bearing account after deduction of the agent's commission and the relevant costs including payments of municipal accounts, levies, and bond cost made by the applicant on the Victoria properties since date of signature of the consent paper in the divorce action.

[4] In the further alternative, the applicant seeks an order that, should the court find that the respondent is not in breach of the Regional Court order or that the order cannot be enforced, that:

4.1 The applicant and the respondent's co-ownership of the properties be terminated;

4.2 The properties be sold in accordance with the terms of the consent paper.

[5] The respondent opposed the applicant's application and filed the necessary answering affidavit.

Background Facts

[6] The applicant and the respondent were married on 22 February 1992, at Franschoek, out of community of property with the inclusion of the accrual system. The bonds of marriage between the applicant and the respondent were dissolved when the Regional Court for the Western Cape, sitting in Bellville, granted the final divorce order on 9 November 2020, incorporating the terms of a consent paper and an addendum to the consent paper, both signed by the applicant and the respondent.

[7] During the subsistence of the marriage between the applicant and respondent, the parties from time to time purchased immovable properties, which they held as co-owners in divided shares. At the time of granting the final divorce order, the various immovable properties that the parties jointly owned were dealt with

in the consent paper and the addendum thereto, which were incorporated into the final divorce order. Some properties owned by the parties have since been sold, and the proceeds have been divided according to the terms of the consent paper. The respondent provided written Powers of Attorney to transfer three properties that were sold immediately after the divorce order was granted.

[8] The Victoria properties forming the basis of this application have been purchased by the respondent and the applicant during the subsistence of their marriage as investment properties, and the parties never resided in these properties during the subsistence of the marriage or thereafter. These properties were recorded in the consent paper to have already been placed on the market for sale by agreement between the parties. However, the parties were unable to successfully market the Victoria properties for sale before the final divorce order was granted. The respondent had previously provided Powers of Attorney for the transfer of the Victoria properties. In the said Powers of Attorney, the respondent's status was recorded as divorced, which was her status at the time she signed those documents.

[9] The applicant asserts that after entering into the agreement of sale with Omega Sibanda, in respect of the Victoria properties, it, however, came to the attention of the applicant and the conveyancer that the respondent had, since the granting of the final divorce order, entered into a marriage with one JAV. As such, the Powers of Attorney to effect transfer had to be amended to reflect the current marital status of the respondent. The applicant's attorney requested the respondent to confirm her marital status and to provide a copy of her marriage certificate along with details of her marital regime. The respondent did not respond.

[10] The applicant further stated that the status of the sales of the Victoria properties from the respondent and himself to the purchaser, Omega Sibanda, is that they have become *perfecta* as Omega Sibanda obtained a bond approval from Nedbank, with Nedbank having appointed Milton Matsemela Attorneys to register a bond in favour of Nedbank on the date of registration. Furthermore, the applicant asserted that the conveyancer cannot proceed with the transaction because the respondent consistently fails or refuses to sign the necessary Powers of Attorney.

[11] According to the applicant, the fear is that Nedbank may soon withdraw its bond approval because of the seller's failure to pass transfer. In the applicant's view, this will cause him significant damage, as it has taken more than four years to successfully market and sell the Victoria properties. It is likely that, should the transfer not be passed in terms hereof, it will take the applicant years to obtain alternative purchasers.

[12] On 20 May 2025, the conveyancer requested the respondent to sign the Powers of Attorney by Friday, 23 May 2025, and the conveyancer received no response. The applicant states that the purchaser, through her estate agent, again inquired on 3 June 2025 as to the progress in having the respondent sign the Powers of Attorney and the estate agent was informed that the conveyancer was not receiving cooperation from the respondent and advised the purchaser of her rights in terms of the agreement of sale.

[13] On Monday, 21 July 2025, the estate agent, in an email correspondence, notified the applicant's attorneys of record that the purchaser was placing the sellers on terms and attached the breach letter to the email. Upon receiving the breach letter, the applicant's attorney forwarded the estate agent's correspondence to the respondent and her attorneys, demanding cooperation and the signature of the Powers of Attorney by 15h00 on Tuesday, 22 July 2025. It was also stated that an urgent application would be issued if such cooperation and signature were not received.

[14] The applicant stated that he feared that the purchaser intended to enforce the terms of the sale agreement should the sellers fail to cure their breaches. When there was no response, the applicant brought this application on an urgent basis. The applicant prayed the court to grant the relief sought in the notice of motion or terminate the co-ownership of the Victorian properties between him and the respondent.

[15] The respondent opposed the application and impugned the urgency with which the application was brought. The respondent averred that the agreement of sale in respect of the immovable properties to which this application relates has not

been countersigned by her in her capacity as the joint owner of those properties. As a result, the respondent opined that the sale agreements have always been incomplete, invalid and unenforceable to the knowledge of the applicant and the purchaser, since the date of signature in November 2024, more than eight months ago. In the respondent's view, to use the unilateral signing of these agreements of sale by the applicant more than eight months ago to make out a case for urgency is simply wrong.

[16] Moreover, the respondent questioned the urgency with which this application was brought and submitted that the chronology of events leading to the launching of this application clearly shows that the urgency with which this application was instituted was self-created.

[17] The respondent also emphasised that the applicant is seeking a declaratory order relating to the divorce order granted by the Regional Court of the Western Cape, Bellville, under case number RCC/BELL1034/2020. Alternatively, the applicant is seeking relief by way of the *actio communio dividundo*, which cannot possibly be urgent, and which cannot be applied given the contents of the order that the Regional Court has already granted. According to the respondent, it is abundantly clear that the court with the necessary jurisdiction to hear this application is the court which granted the order in the first place, namely the Regional Court.

[18] The respondent also pointed out that there is a pending action in the Regional Court that deals explicitly with the validity and enforceability of the consent paper, which the applicant is now asking this Court to rule upon and enforce. In the Regional Court, the respondent seeks a rescission of the consent paper and that spousal maintenance be determined and recalculated, as the applicant caused her to sign the consent paper and the addendum thereto while she was admitted for severe depression and anxiety at West Beach Psychiatric clinic. According to the respondent, should the order in this application be granted, it will render the Regional Court action nugatory, in the sense that the very order which is to be set aside in the Regional Court would by then be enforced by this court. The respondent applied that the applicant's application be struck from the roll.

Discussion

[19] As discussed above, the respondent challenged the urgency with which this application was brought. The respondent also contended that the applicant is seeking an order enforcing the consent paper granted by the Regional Court. To this end, the respondent submitted that the court with the necessary jurisdiction to hear this application is the court that granted the order, which is the Regional Court. I consider it prudent to address these two preliminary points first, as, in my view, they are dispositive of this application.

Urgency

[20] The legal principles applicable to the question of urgency are well-established in our law. Urgency in applications primarily involves the abridgement of times prescribed by the rules, and secondarily, the departure from established filing and sitting times of the court.¹ Rule 6(12) of the Uniform Rules of Court confers courts with a wide discretion to decide whether an application justifies enrolment on the urgent court roll based on the facts and circumstances of each case.² It is peremptory that an applicant set out explicitly the circumstances on which he relies to render the matter urgent, and the reason why he claims that he cannot be afforded substantial relief at a hearing in due course. In other words, an application is urgent when an applicant cannot obtain substantial redress in due course.³ The degree of departure from the modes of service and time frame in the Uniform Rules must be commensurate with the urgency in each case.⁴

[21] It is also trite that an applicant in an urgent application must give proper consideration to the degree of urgency of his application, and tailor the notice of motion to that degree of urgency. The degree of relaxation of the Rules and the ordinary practice of a court depends upon the degree of urgency of a case. The

¹ See Rule 6(12) (a) and (b) of the Uniform Rules.

² *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo* [2014] 4 All 67 (GP) at para 63; *Caledon Street Restaurants CC v D'Aviera* 1998 JDR 0116 (SE) at 8.

³ *Dlamini v City Manager of the City of Ekurhuleni Metropolitan Municipality* [2023] ZAGPJHC 147 at para 27.

⁴ *Republikeinse Publikasie (Edms) Bpk v Afrikaanse Pers Publikasie (edms) Bpk* 1972 (1) SA 773 (A) at 782A-G.

degree of urgency and the relaxation of the Rules should not be greater than the exigencies of the case demand.⁵

[22] In the present matter, it is common cause that the applicant signed agreements of sale in respect of the Victoria Properties on 20 November 2024. The respondent did not sign the said agreements as the seller of the properties. A letter of demand was written to the respondent on 24 January 2025, in which it was demanded that the respondent provide certain information and sign the Powers of Attorney by 27 January 2025 to effect the transfer of the properties. Another correspondence was sent to the respondent on 20 March 2025, in which it was demanded that the Powers of Attorney be signed by the respondent by no later than 27 March 2025; failing which, court action would follow.

[23] On 20 May 2025, the conveyancer forwarded correspondence to the respondent, requesting that the respondent sign the Powers of Attorney by 23 May 2025, failing which it would be accepted that the respondent and her current husband, JAV, were not going to provide their cooperation and were not going to sign the Powers of Attorney. The conveyancer received no response from the respondent, her husband, or her attorneys.

[24] On 21 July 2025, the estate agent acting on behalf of the purchaser of the properties sent a letter of breach and placed the sellers on terms, and subsequently, the applicant brought this matter to court on an urgent basis. Mr Smit, counsel for the applicant, argued that the urgency of this matter only arose on 21 July 2025, when the letter of breach was sent. Upon careful consideration, I do not agree with this proposition for several compelling reasons, which I will outline in detail below.

[25] The chronology of events described above clearly demonstrates that the urgency in this application was self-created. Eight months before filing this application, the applicant and the purchaser were aware that the respondent had not signed the sale agreements or the Powers of Attorney. The applicant did nothing other than send letters that the respondent must sign the Powers of Attorney. In the

⁵ *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W) at 137F.

letter of 20 March 2025, the applicant's legal representative requested the respondent to sign the Powers of Attorney by no later than 27 March 2025, failing which the applicant threatened to proceed with such actions as may be required, including approaching the court for an order of *actio communi dividundo*, the cost of which the respondent would be held liable.

[26] Notwithstanding, the applicant did not institute those intended proceedings. The applicant only instituted these proceedings on an urgent basis after the estate agent sent a letter of breach on 21 July 2025, in which the purchaser was enforcing the purported sale agreements. As foreshadowed above, Mr Smit asserted that this matter became urgent after the letter of breach was sent. In my view, this matter is not urgent, and the letter of breach lacks substance to satisfy the requirement of Rule 6(12) of the Uniform Rules. It is essential to emphasise that urgent applications must be launched at the earliest opportunity, and valid and compelling reasons must justify any delays. Additionally, an applicant is not allowed to create his/her own urgency.⁶

[27] The applicant's difficulties do not end there. There is an insurmountable hurdle on the applicant's path. The applicant relies on the letter of breach sent on 21 July 2025 as the basis for bringing this application on an urgent basis. In that correspondence, the estate agent acting on behalf of her client, Omega Sibanda (the purchaser), notes that should the Powers of Attorney not be signed within the stipulated 10-day period, and should the transfers not proceed accordingly, her client reserves the right to enforce its rights in terms of clause 7.2 of the respective agreements of sale without further notice.

[28] It must be stressed that the sale agreements in respect of the Victoria properties to which this application relates have not been countersigned by the respondent in her capacity as the joint owner of those properties. No representative or agent acting on the written authority of the respondent signed the agreement on behalf of the respondent. To this end, I agree with the views expressed by Mr Engela, the respondent's counsel, that the agreements of sale in respect of the

⁶ *Venter and Another v Els and Another* 2024 (4) SA 305 (WCC) at para 19.

Victoria properties have always been incomplete, invalid and unenforceable to the knowledge of the applicant and the purchaser since their date of signature in November 2024, more than eight months ago.

[29] Most importantly, section 2(1) of the Alienation of Land Act 68 of 1981 (Alienation of Land Act), provides that no alienation of land after the commencement of this section shall be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority. The result of non-compliance with section 2(1) of the Alienation of Land Act is that the agreement concerned is of no force or effect. This means that it is void *ab initio* and cannot confer a right of action.⁷ In *Johnston v Leal*,⁸ the Appellate Division, as it then was, observed that the reason why the legislature selected, *inter alia*, contracts for the sale of land for such special treatment as far as formalities of contract are concerned, was, no doubt, that it recognised that such contracts are generally transactions of considerable value and importance and that the terms and conditions attached thereto are often intricate.⁹

[30] As previously mentioned, the alleged sale agreements have not been signed by the respondent or her agent acting on her written authority. These sale agreements are therefore, incomplete, invalid and unenforceable. Consequently, given that the sale agreements were to the purchaser's and the applicant's knowledge not countersigned by the respondent, the co-owner of the properties, the letter of breach dated 21 July 2025 sent by the estate agent to the applicant has no legal effect and is of no consequence. Thus, to use the unilateral signing of these purported agreements of sale by the applicant more than eight months ago in an attempt to make out a case for urgency is simply mistaken and cannot be sustained. A proper case has therefore not been made out for urgency at all.

Jurisdiction

⁷ *Johnston v Leal* 1980 (3) SA 927 (A) at 939A-939D.

⁸ Ft 7 above, at 939D.

⁹ 1980 (3) SA 927 (A) at 939A-939D.

[31] Regarding the question of jurisdiction, I appreciate that this court enjoys inherent jurisdiction and has the authority to enforce decisions of the Regional Court. I also appreciate that a rescission application does not suspend a court order. However, from the affidavits of the parties filed on record, it is evident that the pending proceedings in the Regional Court explicitly address the validity and enforceability of the consent paper, which the applicant seeks to enforce in this court. Should the order in this application be granted, it will render the Regional Court action nugatory in the sense that the very court order which is impugned in the Regional Court would by then be enforced by this court.

[32] Notably, from the affidavits in these proceedings, it is apparent that the pleadings in the Regional Court matter have reached the stage of *litis contestatio*. In my opinion, the facts of this matter do not justify the hearing of this matter in this court. The Regional Court is well suited to address the issues raised by the parties. This conclusion is further supported by the applicant's prayer in this application for payments of municipal rates, taxes, levies, insurance, utilities, and bond costs related to the Victoria properties, which he claims he made after the final divorce order was granted. The respondent, however, disputes this claim. Thus, it is evident that there is a dispute of facts that can only be properly addressed by hearing viva voce evidence.

[33] In conclusion, it is essential to remind ourselves that in terms of section 29(1B)(a) of the Magistrates Court Act 32 of 19454, a court for a regional division, in respect of causes of action, has jurisdiction to hear and determine suits relating to the nullity of a marriage or a civil union and relating to divorce between persons and to decide upon *any question arising therefrom*, and to hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act 120 of 1998. Moreover, a court for a regional division hearing a matter referred to in paragraph (a) of section 29(1B) has the same jurisdiction as any High Court in relation to such a matter.

Order

[34] Given all these considerations, the following order is granted.

34.1 The applicant's application is hereby struck off the roll for lack of urgency.

34.2 The applicant is ordered to pay the costs of this application on a party and party scale, including the cost of counsel where so employed, on Scale B.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES:

For the applicant: Adv. Smit
Instructed by: Kemp Nabal Inc

For the Respondent: Adv Engela
Instructed by: Enderstein Malumbete Inc