

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025/088122

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
23/6/2025	
DATE	SIGNATURE

In the matter between:

THABILE SHARON SHEZI

First Applicant

and

FIRSTRAND BANK LIMITED t/a FIRST NATIONAL BANK First Respondent

SIKHOSIPHI SHEZI

Second Respondent

N AND C MAINTENANCE SPARES (PTY) LTD

Third Respondent

JUDGMENT

MIA J

[1] The applicant brought an application on an urgent basis. In Part A, the applicant sought urgent interim relief in the following terms:

“

1. Dispensing with the forms and service as prescribed by the Rules of Court and directing that this application be heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. That the first respondent is directed to release and make available such funds as are currently held in the business account of the third respondent, N and C Maintenance and Spares (Pty) Ltd under account number XXXXXX for the sole and express purpose of settling the outstanding school fees due to XXXXXX College in respect of the applicant and second respondent's three minor children.
3. That such payment be made directly to XXXXXX College, or as otherwise directed by this Honourable Court.
4. The costs of this Part A of the application be reserved for determination at the hearing of Part B.”

[2] Paragraph 28.10 of the Practice Directive¹ provides that:

“The urgent roll closes at noon on a Thursday for the following Tuesday. The applicant must properly consider the appropriate notice period to give to the respondent. Generally, enrolments ought to be made for the next week, but where longer notice periods are deemed appropriate by an applicant, matters may be enrolled for a later week.”

[3] In, a reported matter of this Division, *In Re Several Matters on the Urgent Court Roll*,² the Court underscored that “*There is a clear duty on an*

¹ CONSOLIDATED PRACTICE DIRECTIVE 1 OF 2024 COURT OPERATIONS IN THE GAUTENG DIVISION with effect from 26 February 2024.

² *In Re Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ)

applicant who does not comply with this provision to supply a proper explanation why there has been noncompliance”

- [4] The applicant placed this application before this court without complying with the enrolment indicated in the Practice Directive, on an ex parte basis. No explanation was furnished for the lack of service on the respondents. Upon direction that service be effected on the respondents, the applicant served the application on the first and second respondents. The application had not been created on court online portal at that stage. The applicant's view was that the matter be dealt with as one of extreme urgency. Only upon direction by this court was service effected and the matter enrolled.
- [5] In addition to the above non-compliance, the application was lodged without a board resolution where both the applicant and the second respondent are directors of the third respondent. This failure appears to have characterised the previous application as well.
- [6] The first respondent, FNB bank, indicated it did not oppose Part A of the application subject to the following conditions:

“Please be advised that the Bank does not intend to oppose **[P]art A** of the application insofar as **no costs are sought against it**, however, notes and requests the following:

- 1. In respect of paragraph 2 of the notice of motion directing the First Respondent, Fnb to release and make available funds held in the bank account for the purpose of settling outstanding school fees due to XXXXX College, the Bank will require clearer direction from the Court in this regard as releasing and making the funds available would entail releasing the hold on the account.
- 2. In respect of paragraph 3 of the notice of motion, that such payment be made directly to XXXXXXXX College, or as otherwise directed, if the intention of this paragraph is for the First Respondent to make payment of the funds, then the

Order should specify and include the amounts to be paid for each child as well as the banking details and references.

Please provide clarity in this regard as the Bank may have difficulty implementing the Order as prayed for in the Notice of Motion, if not amended.

3. In respect of paragraph 18 of the Affidavit: Kindly note that in the event that the Bank does not oppose part A of the application, costs should not be sought against the Bank on the basis that the 2nd Respondent opposes. Should the 2nd Respondent oppose part A of the application, costs should be sought against the opposing party only.

Kindly be advised that the Bank will respond regarding its position in respect of Part B of the application after the outcome of Part A.

Please provide written confirmation that costs will not be sought against the Bank and provide a draft court order taking the above into consideration.”

- [7] The background facts are as follows. The applicant and second respondent are joint directors in the third respondent. The applicant and second respondent conduct a business under the name of the third respondent, which holds an account with the first respondent. The applicant and the second respondent are married. The applicant brought two applications prior to the present application in this court.
- [8] It is evident from the history of litigation, that there is acrimony between the applicant and the second respondent, who are in the midst of a divorce. There appears to be a struggle for control over the funds held in the third respondent's bank account. Both parties allege that the other is moving funds inappropriately. The applicant in an application before Mfenya J, successfully prevented the second respondent from transferring funds from a Standard Bank account to his personal FNB account. In the second application before Du

Plessis J, in March 2025, the application was struck for lack of urgency. This too related to access to funds in a bank account.

- [9] The second respondent laid a criminal charge against the applicant, believing she was misusing funds, as evidenced by withdrawals from the business account that he considered unjustified. The criminal matter was not prosecuted, as the prosecutor determined that the funds in the account were used for the business and in the best interests of both parties. The present application is thus the third application before this court to gain access to funds in business bank accounts. Regarding this FNB account of the third respondent, both the applicant and the second respondent are directors. There was an attempt to have both parties be appointed as co-signatories on the account. This would enable access, with the other party being aware of the transactions in the account.
- [10] In this application, the applicant cites the school fees for the minor children as the reason for obtaining access to the funds in the FNB business account, which has a hold placed on it.
- [11] When the matter was heard, I enquired from both parties whether they had considered the first respondent, the bank's position regarding the order it could give effect to without delay. The applicant's draft order had not been amended to take account of this when the matter was heard at 14h00. I considered the applicant's affidavit sent through via email and the second respondent's answering affidavit sent through via email as directed at a preliminary meeting held the previous evening.
- [12] The second respondent's concerns were that the order indicated the first respondent would require the upliftment of the hold on the account. Whilst the applicant required an upliftment of the hold on the account to access funds to pay school fees, she did not provide an amended draft order with the names of the children, the current amounts due and the account and reference required to enable the

bank to give effect to an order. The uplift employing a court order would allow the applicant access to funds in the account without the second respondent as co-signatory.

[13] In addressing the question of urgency, counsel for the applicant argued that the school fees due for the children had not been paid. Counsel highlighted the prejudice the children would suffer if school fees were not paid. The children were unable to attend school and therefore could not take their exams. The correspondence sent on behalf of the applicant on 6 June 2025 indicates that the children will write their exams without the benefit of preparation not that they will be precluded from writing their exam.³ Counsel continued that the applicant would not be able to obtain substantial relief in due course, and this necessitated the granting of relief in terms of the relief requested by the applicant.

[14] The first respondent communicated that it would not be able to give effect to the order without it being amended, and required more details to make payment to the school such as the children's names, amounts, account details of the school account to pay monies into.

[15] A perusal of the application and answering affidavit indicates that the school raised the issue of outstanding school fees in March 2025. Notwithstanding the applicant being aware of the school fees being due in March 2025 when the school warned of an impending suspension, this was not raised when the matter came before Du Plessis J. This was not explained in the reply that the applicant filed at 12h40 on the day the matter was heard. Counsel argued that the applicant was unable to resolve the issue with the school and had previously written to the school to seek an indulgence whilst referring to legal proceedings between herself and the second respondent.

[16] Counsel for the second respondent relied on the correspondence, which called for school fees to be paid in March 2025, and argued that

³ Caselines 09-35, correspondence from L Ndlovu Attorneys to C Scalco Attorneys

the applicant was aware of the outstanding school fees since that date. Counsel argued that the present application was self created urgency in circumstances where the issue of fees could have been raised earlier. This was so where the applicant launched two previous applications citing the second respondent. In both previous applications. Furthermore, she continued that the applicant would obtain relief in due course, if she accompanied the second respondent to the bank to appoint the second respondent as a cosignatory on the account in the name of the third respondent. This would allow the bank to lift the hold on the account. This proposal had already been made by the second respondent in February 2025.⁴ The parties had agreed to this before the application was launched.⁵

[17] I have taken into consideration that the applicant would not have access to funds invested in the offshore account where a 120-day notice is required. This does not mean the applicant had no access to relief in due course, where the funds were held by the first respondent in an account under the name of the third respondent. The access only required that the applicant and the second respondent be appointed as co-signatories. This had been agreed to. The second respondent offered to approach the bank forthwith. The correspondence from the applicant's attorney indicated the time and date for this appointment. The offer was repeated by counsel for the second respondent again during the proceedings to reinforce the point that the applicant had substantial relief available to her.

[18] Counsel for the applicant was allowed to take instructions regarding the parties' co-operation to arrange for the second respondent to be invested as a co-signatory. Counsel confirmed that the applicant agreed to approach the bank with the second respondent to finalise the necessary arrangement regarding the appointment of the second

⁴ Caselines 09-30 Correspondence from second respondents attorneys to applicants attorneys raising the appointment of co-signatories

⁵ Caseline 09-21, Correspondence second respondents attorney regarding the appointment of both parties as cosignatories dated January 2025

respondent as co-signatory. This would enable the first respondent to lift the hold on the account. As the second respondent was in the Province this could be effected on the next business day, Friday. Notwithstanding this agreement, counsel for the applicant insisted that the court grant an amended order to facilitate the payment. The order had not been prepared by 16h00 whilst the matter was being heard. The bank would only receive an order by the following day. In the absence of an amended order, the quickest and most efficient manner to secure the payment was the upliftment of the hold on the account. As indicated by the counsel for the applicant, the parties agreed to approach the bank for this purpose. The applicant had recourse to substantial relief. In circumstances where the applicant could access funds to pay school fees by accompanying the second respondent to uplift the hold on the account.

[19] The urgency appears to be self-created as the applicant was aware that school fees needed to be paid in March 2025 when the school threatened suspension.⁶ Additionally, the applicant had access to substantial relief, as the parties were appointed as cosignatories to the account, which would uplift the hold, affording access to the funds held in the account.

[20] The applicant has not made out a case for urgent relief. Any harm envisaged by the delay of access to school could have been addressed in March 2025, especially where the parties agreed in February to be co-signatories, allowing access to funds in the account of the third respondent. Regarding the availability of substantial relief, the applicant could obtain relief by having the hold lifted, provided the parties attended at the bank to appoint the second respondent as a co-signatory, thereby affording substantial relief. This option was available prior to the applicant seeking an application for urgent relief.

⁶ In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] ZAGPJHC 196, the court reiterated that urgency is not an escape mechanism, and the degree of urgency and reasons for it must be set out in detail.

[21] In the circumstances, the application does not pass through the initial hurdle regarding urgency. I have considered the submission that the applicant not be mulcted with costs when relief is sought related to the children.

[22] Regarding costs, paragraph 28.8 of the Practice directives⁷ provides:

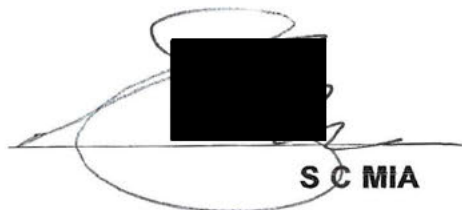
The enrolment of an allegedly urgent matter found not to warrant a hearing on this roll may, at the discretion of the Judge seized with the matter, result in punitive costs being awarded and the culpable counsel and attorney being ordered not to be paid any fees arising from the prosecution of such matter(s).

[23] Given that the applicant had a remedy available in the upliftment of the hold on the account as indicated above, this application was not necessary. The offer to approach the bank was made again during the hearing by counsel for the second respondent. Counsel for the applicant, upon taking an instruction, agreed that the applicant would pursue this. The matter did not warrant a hearing on this roll, where there was a solution available which would save the costs to both parties. In the circumstances, it is appropriate that the applicant pay costs in the matter.

ORDER

Accordingly, the order below was granted.

1. The matter is struck from the roll with costs.



S C MIA

**JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

⁷ CONSOLIDATED PRACTICE DIRECTIVE 1 OF 2024 COURT OPERATIONS IN THE GAUTENG DIVISION with effect from 26 February 2024.

DELIVERED: *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be **10h00** on 23 June 2025*

Appearances:

On behalf of the applicant	: Adv Nkabine
Instructed by	: Ndlovu Lindiwe Attorneys Johannesburg
On behalf of the first respondent	: No Appearance
On behalf of the second respondent	: Adv. Vorster
Instructed by	: C Scalco Attorneys Johannesburg
Date of hearing	: 10 June 2025
Date of judgment	: 23 June 2025