



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

Case no: 2025-023190

1.	REPORTABLE:	No
2.	OF INTEREST TO OTHER JUDGES:	No
3.	REVISED:	No
DATE: 5/08/2025		
SIGNATURE OF ACTING JUDGE: 		

In the matter between:

**CATERPILLAR FINANCIAL SERVICES
SOUTH AFRICA (PTY) LTD**

Applicant

and

MUSOR CONSULTANTS AND PROJECT CC

Respondent

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date and time for hand-down is deemed to be 5 August 2025 at 10h00. The order was granted on 28 March 2025.

PRETORIUS AJ:

Introduction

1. The applicant (“*Catfin*”) obtained an order *ex parte* on 25 February 2025 (“*the ex parte order*”) pursuant to an urgent application brought by it on 20 February 2025 (“*the ex parte application*”). The order was granted by Mahomed J pursuant to part A of the notice of motion in the *ex parte* application. In terms of the *ex parte* order:
 - “2. pending the final determination of part B of this application:
 - 2.1. any representative, employee or person acting under the instruction of the respondent, who is in possession of the CAT equipment, listed in annexure “A” to this order (“CAT equipment”), is to forthwith upon receipt of this order, deliver/ make available for collection/ permit the collection/ repossession of the CAT equipment, by the applicant;
 - 2.2 in the event that the applicant is unable to secure possession of the CAT equipment pursuant to the relief granted in paragraph 2.1 above, the sheriff, assisted by the South African Police Services, if required, is authorised to take such steps as may be necessary to take possession of the CAT equipment, wherever same may be found, and handing same over to the applicant for safekeeping;
 3. the respondent and any other party having an interest in the relief granted may by notice set down the matter for reconsideration, in terms of Uniform Rule 6(12)(c);
 4. the applicant is granted leave to supplement the founding affidavit, in support of further relief, including the relief sought in part B of this application, if so required;
 5. the cost occasioned by part A of this application is reserved for determination at the hearing of part B.”
2. In part B of the *ex parte* application, Catfin claims payment of an amount of R2 879 243.07 from the respondent (“*Musor*”), which amount was alleged to be the full outstanding amount due under a Master Instalment Sale Agreement concluded between the parties.

3. The application before me was an urgent application which was brought by Musor for a reconsideration of the *ex parte* order in terms of rule 6(12)(c) (“*the reconsideration application*”). In terms of rule 6(12)(c):

“A person against whom an order was granted in such person’s absence in an urgent application may by notice set down the matter for reconsideration of the order.”

4. The matter came before me on 27 March 2025 and on 28 March 2025 I made the following order:

“1. The respondent’s reconsideration application is struck from the roll for a lack of urgency, with costs on scale C.”

5. Musor requested reasons for the order. These are the reasons.

Urgency

6. It is required of an applicant in an urgent application to set out unequivocally the circumstances on which it relies to render the matter urgent *and* the reason why it claims that it cannot be afforded substantial relief at a hearing in due course.

7. In *Sheriff Pretoria North-East v Flink*¹ it was held regarding the urgency of reconsideration applications in terms of rule 6(12)(c) that:

“Nothing in rule 6(12)(c) suggests that such a respondent would be entitled to enrol the matter for reconsideration again on an urgent basis merely because the order had been obtained on an urgent basis. A proper case will have to be made out independently for the urgency of reconsideration of the order.”

8. Securing an urgent audience was accordingly not for the taking just because the *ex parte* order was obtained on an urgent basis. Instead, it was required of Musor to demonstrate that, should the matter not be dealt with on an urgent basis, it would not otherwise be

¹ *Sheriff Pretoria North-East v Flink and another* [2005] 3 All SA 492 (T) at 497.

afforded substantial redress at a hearing in due course,² as is required in terms of rule 6(12)(a), i.e. the same onus which was on Catfin when it first sought the *ex parte* order.

9. In *Joint Venture Comprising Gorogang Plant Razz Civils v Infiniti Insurance Limited*³ it was held that:

“An application for reconsideration is not urgent for the purposes of Rule 6(12) simply because an order was granted in the Urgent Court. This means, that in the absence of demonstrable prejudice in the time between when an application may be heard before an Urgent Court and in the ordinary course, a party seeking a reconsideration must set out the prejudice that will ensue. ... The threshold is the same whether in an application for reconsideration or when approaching the Court under Rule 6(12)(a). In both instances, the parties seeking relief must set out in clear terms facts duly supported that will pass the threshold of “absence of substantive relief” if the matter is not heard before the Urgent Court.”

10. The circumstances relied upon by Musor for urgency are limited to the following:

- 10.1. Musor will lose out on the contract it has with its client (“*Mashele*”) and will never be able to pay the amount claimed by Catfin in Part B of its application.
- 10.2. The supplier agreement between Musor and Mashele is being extended by another twelve months and Mashele has settled Musor’s invoices. Musor is in the position to settle Catfin, presumably as a result of the payment, but only upon return of the equipment to Musor.
- 10.3. The potential loss of a contract with Mashele will cause reputational damage to Musor’s business.
11. Musor did not provide any documentary support for any of these allegations. In respect of the first reason, it is not explained what is meant by “lose out” but I assume it means that its client will either not perform in terms of the contract, i.e. make payment to Musor, or will cancel the contract. However, it appears that Mashele was already in default of

² *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin’s Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F; *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* (unreported, GJ case no 11/33767 dated 23 September 2011) at para 6–9 and other applicable authorities.

³ *Joint Venture Comprising Gorogang Plant Razz Civils and others v Infiniti Insurance Limited and another* 2024 JDR 4449 (GJ) at para 71.

making payment to Musor since October 2024 and that Mashele's the non-payment was not caused by the repossession of the equipment. Turning to the second reason, Musor apparently accepts that it is in arrears in respect of the MISA and that it failed to make payment to Catfin of the instalments as and when they fell due. Its attempt to hold Catfin ransom by tendering payment only when the equipment is returned does not assist it with urgency. Regarding the third reason, even if the repossession of the equipment causes Musor to lose its contract with Mashele, which is doubted as Mashele was already in default, and even if Musor suffers reputational loss as a result, no explanation is tendered why such loss cannot be recovered in the normal course.

12. No further circumstances are expressed to render the matter urgent or to explain why substantial redress cannot be afforded in due course. This aspect was also not further addressed with any conviction in Musor's heads of argument. Instead, Musor relied on the judgment of Joffe J in *Rhino Hotel & Resort (Pty) Ltd v Forbes and Others*,⁴ which was overruled in *Oosthuizen v Mijs*⁵ where Wepener AJ (as he then was) held after quoting from *Rhino Hotel* that:

“To hold that the court is confined only to the original application without reference to anything else is in conflict with various decisions on this point.”⁶

13. It appears further that Musor delayed the bringing of its reconsideration application in circumstances where the application could have been brought sooner. Musor provided no convincing explanation for the period between the date of becoming aware of the *ex parte* order and the bringing of the application. It is well established that urgent applications must be brought as soon as possible and that cogent reasons must be advanced to the court for any delay in bringing the application.⁷ This principle extends to applications for reconsideration in terms of rule 6(12)(c).
14. Additionally, Musor placed Catfin under immense and undue pressure to respond to the reconsideration application. Catfin contends that Musor gained knowledge of the *ex*

⁴ 2000 (1) SA 1180 (W) at 1182B-E.

⁵ 2009 (6) SA 266 (W) at 267A-E.

⁶ Referring to *inter alia* *ISDN Solutions (Pty) Ltd v CSDN Solutions CC and Others* 1996 (4) SA 484 (W) at 486H-487D, *National Director of Public Prosecutions v Braun and Another* 2007 (1) SA 189 (C) at 194A-E and *Lourenco and Others v Ferela (Pty) Ltd and Others (No 1)* 1998 (3) SA 281 (T) at 290E - H.

⁷ *Dladla v Ethekewini Municipality* 2023 JDR 1067 (KZD) at para 37; *Venter v Els* 2024 (4) SA 305 (WCC) at para 19.

parte order on 4 March 2025. Musor was then granted access to CaseLines and Court Online on the same day at 13h32. Musor however brought its reconsideration application only seven days later but afforded Catfin only 2 hours to respond. In these circumstances, Musor did not take the required care to use all reasonable steps to mitigate the truncation of time periods it sought to impose on Catfin.⁸

15. Musor relied in its affidavit on a judgment of Marks AJ in *United Medical Devices LLC v Blue Rock Capital Limited*⁹ in support of the proposition that reconsideration applications are by its very nature urgent and should accordingly be heard and dealt with as such. To the extent that this is what was found in *United Medical*, I disagree.¹⁰
16. In exercising my discretion,¹¹ I concluded that Musor has failed to set out sufficiently the circumstances which would render the matter urgent or sufficient reasons why it cannot be afforded substantial relief at a hearing in due course.

Costs

17. The normal principle is that costs follow the result and there is no reason to deviate from this principle. Musor, having been unsuccessful, must pay the costs.

The order

18. Accordingly, the following order was granted on 28 March 2025:
 1. The respondent's reconsideration application is struck from the roll for a lack of urgency, with costs on scale C.



JF PRETORIUS

⁸ *South African Airways SOC v BDFM Publishers (Pty) Ltd and Others* 2016 (2) SA 561 (GJ) at para 24.

⁹ 2016 JDR 0570 (KZD) at para 42.

¹⁰ Instead, I approve of *Sheriff Pretoria North-East v Flink and another* [2005] 3 All SA 492 (T) at 497 and *Joint Venture Comprising Gorogang Plant Razz Civils and others v Infiniti Insurance Limited and another* 2024 JDR 4449 (GJ) at para 71.

¹¹ *Cornerstone Logistics (Pty) Ltd v Zacpak Cape Town Depot (Pty) Ltd* [2022] 2 All SA 13 (SCA) at para 30.

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 27 March 2025

DATE OF ORDER: 28 March 2025

DATE OF JUDGMENT: 5 August 2025

COUNSEL FOR THE APPLICANT: Adv K Meyer

INSTRUCTED BY: Senekal Simmonds Inc.

COUNSEL FOR THE RESPONDENT: Adv MP Zwane