



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

**CASE NO: 2025-120339**

In the matter between

**Q AND Q TRANSPORT (PTY) LTD**

**Applicant**

**and**

**EDAN TRADERS (PTY) LTD**

**Respondent**

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**REASONS FOR ORDER**

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**KRÜGER AJ:**

[1] The applicant instituted a spoliation application against the respondent on an urgent basis on 21 July 2025, stipulating abridged timelines for the exchange of papers in its notice of motion.

[2] The matter was set down for 29 July 2025. The respondent, among other things, contested the urgency of the application. After hearing arguments on the issue of urgency, I struck the matter off the roll for lack of urgency and made a costs order in favour of the respondent as requested. In what follows, I set out the reasons that order.

[3] In *Mangala v Mangala*,<sup>1</sup> Munnik J held that

‘It is true that a spoliation order is a remedy which in the nature of things should be a speedy one, but the fact that there has to be restitution before all else simply means that, once an applicant has proved that he was in peaceful possession and his possession was disturbed, the respondent must restore that position before entering into the merits of the ownership or otherwise of the subject matter. It does not follow that, because an application is one for a spoliation order, the matter automatically becomes one of urgency. The applicant must either comply with the Rules in the normal way or make out a case for urgency in accordance with the provision of Rule 6(12)(b).’

[4] It was therefore incumbent on the applicant to set out the basis for the urgency of the application clearly in its founding papers, and to demonstrate that it would not otherwise be afforded substantial redress at a hearing in due course.<sup>2</sup>

[5] The nub of the applicant’s case for the urgency of its spoliation application was that the respondent’s unlawful possession of its truck placed the applicant’s contact with MSC Logistics (Pty) Ltd at risk. The applicant explained that it requires the truck to fulfil its contractual obligations to MSC, and that MSC threatened to cancel its contract with the applicant.

[6] The applicant acknowledged that it handed the truck to the respondent for repairs on 9 February 2025. In its view, that date could not be considered pivotal for purposes of the determination of urgency as it had to allow time to the respondent to repair the truck. Furthermore, the applicant tried to resolve the matter without turning to court in the first instance,<sup>3</sup> by calling the respondent and by approaching the Ombudsman for the Motor Industry. Thus, it argued, its urgency was not self-created.

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<sup>1</sup> 1967 (2) SA 415 (E) 416E-F.

<sup>2</sup> *Luna Meubel Vervaardigers (Edms) Bpk v Makin (T/A Makin’s Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F; *AG v DG* 2017 (2) SA 409 (GJ) at 412A.

<sup>3</sup> Mr *Rubela* placed reliance on *South African Informal Traders Forum v City of Johannesburg* 2014 (4) SA 371 (CC) paras 38-37.

[7] The respondent's case was that the applicant failed to provide a clear basis for urgency in its founding affidavit, given that the applicant's departure from the rules and their timeframes was significant. The applicant had known since 9 February 2025 that its truck was in possession of the respondent. The applicant's timeline setting out the engagement between the parties lacked specific dates, and little detail of exchanges between the parties was provided. The applicant stated, for example, that his calls were ignored, but failed to state when the respondent started to do this and for how long this happened.

[8] The respondent's submissions were on point. On the applicant's own version, it last fulfilled its contractual obligations to MSC in June 2024. It gained knowledge that its contract with MSC was at risk at least in May 2025, when it was informed by Mr Sizwe Ngudle, a MSC cartage controller, that MSC was considering terminating its agreement with the applicant. It is unclear when in May 2025 this exchange took place and what steps the applicant then took. While the applicant indicated that there were several exchanges between itself and the respondent about the return of the truck prior to its court application, details of the dates on which these exchanges took place were not provided.

[9] What is clear from the founding papers is that the applicant handed the truck to the respondent on 9 February 2025. Thereafter, it allowed 'a few weeks' for repairs to be made, and that 'at some point', the applicant's deponent's calls were ignored. It is unclear when these events took place in relation to the applicant approaching the court.

[10] The applicant did not take the court into its confidence. Based on the scant information provided, it was not possible to assess whether the applicant's degree of deviation from the rules was justified by the facts of the matter. The application fell short of that which Rule 6(12)(b) requires.

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**R Krüger AJ**  
**Acting Judge of the High Court of South Africa**

4 August 2025

Appearances:

For the applicant:

*Adv S Rubela*

Instructed by:

AS Pata Attorneys, Mthatha c/o Ntanz  
Attorneys, Gqeberha

For the respondent:

*Adv J Prinsloo*

Instructed by:

TF Kruger Incorporated, Roodepoort c/o  
Eugene Raymond, Gqeberha