IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: 990/2025

Reportable: YES / **NO**

Circulate to Judges: YES / **NO**

Circulate to Regional Magistrates: YES / **NO**

Circulate to Magistrates: YES / **NO**

In the matter between:

MELISSA MARLENE JAPHTA	First Applicant
ZECHA JV ROSSTECH XEROX (PTY) LTD	Second Applicant
and	
SEPHIRI ERNEST MOSALA	First Respondent
CHARLES ALFRED ROSSOUW	Second Respondent
ROSSBURG INDUSTRIAL ENTERPRISES (PTY) LTD t/a ROSSTECH XEROX	Third Respondent
FIRSTRAND BANK LTD t/a FNB BANK	Fourth Respondent
STD BANK OF SA LTD t/a STANDARD BANK	Fifth Respondent
ZECHA HOLDINGS (PTY) LTD	Sixth Respondent

THE DEPARTMENT OF EDUCATION,
NORTHERN CAPE Seventh Respondent

CAPITEC BANK Eighth Respondent

In re:

ZECHA JV ROSSTECH XEROX (PTY) LTD First Applicant

SEPHIRI ERNEST MOSALA Second Applicant

CHARLES ALFRED ROSSOUW Third Applicant

ROSSBURG INDUSTRIAL ENTERPRISES
(PTY) LTD t/a ROSSBERG XEROX Fourth Applicant

and

ZECHA HOLDINGS (PTY) LTD First Respondent

MELISSA MARLENE JAPHTA Second Respondent

FIRSTRAND BANK LTD t/a FIRST
NATIONAL BANK Third Respondent

STD BANK OF SA t/a STANDARD BANK Fourth Respondent

Heard: 1 July 2025
Delivered: 1 July 2025

Summary: Urgent interlocutory application. Fear of dissipation of funds into a new bank account when the r/n issued on **17 APRIL 2025** makes provision for the original bank account to be frozen until such time as the matter is ventilated properly on **25 JULY 2025**.

ORDER

The following order is made:

1. The application is dismissed with costs.

EX TEMPORE JUDGMENT

MAMOSEBO, J

1. The applicants approached this court on an urgent basis seeking the following relief:

   That this interlocutory application be heard as an urgent matter as contemplated in Rule 6(12) of the Uniform Rules of the Court. That pending finalization of the main application under Case Number 990/2025 and Part B of this application, that this Court should order that the appointment of the first and second respondents as directors of the second applicant at an alleged shareholders meeting held on 17 April 2025 be suspended; that all the payments made by the 7th respondent arising from the Service Level Agreement between the second applicant and the 7th respondent be paid into the second respondent's bank account number 0[...] and that the bank account number 3[...] of the second applicant be placed on hold pending the final determination of the main application.

2. This Court was approached on urgency by the applicants who in their papers contend that if they are not heard on an urgent basis and this court not grant them the relief they are seeking, they may not be afforded substantial redress should the matter be heard in the normal course. Coupled with this aspect of urgency the first to third respondents, who, I should also point out are the only opposing parties in this application at this stage, is the challenge to the applicants' *locus standi in judicio*.

3. The submissions in sum by Mr Mongala, for the applicants, are the following:

3.1 The applicants have third parties with rights and interests who solely depend on funds deposited by the Department of Education, cited as the 7th respondent, in compliance with the Service Level Agreement (SLA). Although such services continue to be rendered the applicants are asking the court to place on hold the money deposited by the 7th respondent pending the determination of the issues or until the matter is fully ventilated on 25 July 2025. The applicants' fear which informed the urgency is the dissipation of the money if it is deposited into a different account than that furnished by the applicants. The new bank account was opened by parties whose rights are yet to be determined in the main application. Should the funds be dissipated the contract with the 7th respondent may be at stake. It is contended on behalf of the applicants that the first applicant has a prima facie right though subject to doubt, but the second applicant has a clear right. Should funds be dissipated, the applicants stand to suffer irreparable harm. The balance of convenience favours the granting of the relief to the applicants as prayed for.

3.2 On the aspect of *locus standi*, in the first applicant's founding affidavit she stated that she is a businesswoman, a director, for all intends and purposes, Zecha JV Rosstech Xerox (Pty) Ltd. In the papers she maintains that she is the sole director and, although the issues pertaining to shareholding and directorship are deferred to the main case to be heard on 25 July 2025, she maintains that she was not properly removed as contemplated by the Companies Act.

4. The submissions in sum by Mr Olivier, for the first to third respondents is the following:

4.1 The applicants lack locus standi and have not satisfied the requirements for urgency. The SLA is between the 7th respondent and the Zecha JV (the second applicant). On 17 April 2025 the court ordered the freezing of the bank account that the applicants are asking this court to order that the money must be deposited into. An amount of R4 million is frozen in that account. The new account was opened in the second applicant's name to enable the services to be rendered and for service providers to continue to be paid. The applicants have neither explained how the money would be swindled or dissipated nor the anticipation of irreparable harm. Redress would be afforded by this court on 25 July 2025 when the main application will be heard and therefore the urgency is unfounded.

4.2 The first applicant was removed as a director on 17 April 2025 and did nothing. She could have filed a counter-application seeking relief but has failed to do so. The first applicant has not challenged her removal in court and it is only on 25 July 2025 where the issues of directorship and shareholding would be fully ventilated. Until then, she has no standing to approach the court.

5. The principles relating to urgent applications are trite. The leading case in this regard is *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another* 1977 (4) SA 135 (W). A court would dispense with the normal forms and service as contemplated in the Uniform Rules of Court if the applicant demonstrates that it would not be afforded substantial redress should the matter be heard in the normal course.

6. It is apposite to refer to the remarks by Flemming DJP, with which I align, in *Gallagher v Norman's Transport Lines (Pty) Ltd* 1992 (3) SA 500 at 502H – 503A where the Court said:

'But the intent of the Rules is that such amendment is permissible only in those respects and to that extent which is necessary in the particular circumstances. I use the word 'necessary' in its ordinary signification, but naturally in relation thereto that evidence shows 'real loss or disadvantage if he is compelled to rely solely on the normal procedure'. The Court is enjoined by Rule 6(12) to dispose of an urgent matter by procedures 'which shall as far as practicable be in terms of these Rules'. That obligation must of necessity be reflected in the attitude of the Court about which deviations it will tolerate in a specific case.

…The mere existence of some urgency cannot therefore justify an applicant not using Form 2(a) of the First Schedule to the Uniform Rules. The rules do not tolerate the illogical knee-jerk reaction that, once there is any amount of urgency, that form of notice of motion may be jettisoned - and often that a rule nisi may be sought. The applicant must, in all respects, responsibly strike a balance between the duty to obey Rule 6(5) and the entitlement to deviate, remembering that that entitlement is dependent upon and is thus limited according to the urgency which prevails.'

7. The applicants have the responsibility to explicitly set forth in the founding papers the circumstances which render this application urgent and the reason why they claim they will not be afforded substantial relief in the hearing in due course. I pause to mention that the main application has already been set down to 25 July 2025. I am not persuaded that the applicants have satisfied this requirement, and it follows that the application on urgency cannot be sustained.

8. The fact that the first applicant was removed from office and a determination of the lawfulness of her status as director would only be made once the issues have been fully ventilated in July 2025, at this stage, the applicants, in

my view, hold no standing to launch this application. Their piecemeal approach of dealing with issues is deprecated by the courts. Substantial redress is around the corner, 25 July 2025, there is no justification for having brought this application on an urgent basis.

9. On the question of costs. There is no reason why costs should not follow the result.

10. In the result, the following order is made:

    1. The application is dismissed with costs.

MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Obo the Applicants:	Adv. J. Mongala
On instruction of:	Taylor Inc.
Obo 1st to 3rd Respondents:	Adv. A.D Olivier
On instruction of:	Engelsman, Magabane Inc.