



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

Case no: **14916/2024P**

In the matter between:

BRETT CECIL WILLIAMS

APPLICANT

and

**ANDANTE VILLAS BODY CORPORATE
THE TRUSTEES FOR THE TIME BEING OF THE
ANDANTE VILLAS BODY CORPORATE
SCA PROPERTY MANAGEMENT (PTY) LTD
MARTHINUS JOHANNES REINECKE
ALAN HOLMES
ATTLEE AGENCY (PTY) LTD**

**FIRST RESPONDENT
SECOND RESPONDENT

THIRD RESPONDENT
FOURTH RESPONDEDNT
FIFTH RESPONDENT
SIXTH RESPONDENT**

Coram: MOSSOP J
Heard: 27 August 2025
Delivered: 27 August 2025

ORDER

The following order is granted:

1. The urgent application is struck off the roll for want of urgency.
2. The applicant shall pay the respondents' costs on the attorney and client scale.

JUDGMENT

MOSSOP J:

Introduction

[1] This is an ex-tempore judgment.

[2] This matter first came before my brother P Bezuidenhout J on 25 June 2025 as an urgent application (the urgent application). Bezuidenhout J ultimately did not deal with the urgent application on that day but, instead, granted an order (the order) which reads, in part, as follows:

‘1. The application and relief sought in the matter set down on 25 June 2026 be and is hereby adjourned to the opposed roll for 27 August 2025.’¹

Today is 27 August 2025.

[3] The applicant in the urgent application is an owner of immovable property located within the Andante Villas body corporate (the body corporate). There are six respondents cited in the urgent application. The first respondent is the body corporate itself, the second respondent is the trustees of the body corporate for the time being, the third respondent is a property management company, the fourth and fifth respondents are former trustees of the body corporate, and the sixth respondent is another property management company. When referring to any of these parties, whether in the urgent application or in any other application, I shall refer to them by the number that they have been allocated in the urgent application.

The order

[4] One may wonder why Bezuidenhout J framed the order in the way that he did: the learned judge could just as easily have said that ‘this’ or ‘the’ application is adjourned to the opposed roll on 27 August 2025 instead of saying that ‘the matter set down on 25 June 2025’ was so adjourned. But there was a good reason for him

¹ This was not the full range of the order. Bezuidenhout J also fixed the dates by when the answering and replying affidavits were to be delivered and the supplementary heads of argument.

expressing himself that way. This is because there are a number of other self-standing applications before this court involving the same parties. These include:

- (a) An application brought by the applicant for the appointment of an administrator to the first respondent (the main application);
- (b) An application brought by the respondents in which they seek an order that the applicant put up security to the value of approximately R800 000 for the proceedings that he has instituted (the security application);
- (c) A counter application in terms of Uniform Rule 7 brought by the applicant against the respondents challenging the authority of the attorneys representing them to act on their behalf (the rule 7 application); and
- (d) An application brought by the second respondent seeking to set aside a default order of the High Court that was granted to the applicant after he had secured a decision in his favour from the Community Schemes Ombudsman (the rescission application).

[5] In framing the order as he did, it would appear therefore that Bezuidenhout J wanted there to be no confusion about which matter was adjourned to 27 August 2025.

The practice directives of this division

[6] Unfortunately, something must yet again be said about the Practice Directives of this division and, more particularly, their non-observance.

[7] The urgent application is now before me as a special opposed motion. I called upon the Registrar of this division to send me the application papers less than 12 days before the matter was due to be argued and perused them in order to properly prepare for the coming argument. It then became apparent to me that the applicant's attorneys, who are not based in this division, had paid no regard to the provisions of Practice Directive 9.4.4 of this division, which reads as follows:

'If any of the aforesaid matters is of such a nature by reason of the volume of the record or the research involved or otherwise that the judge allocated to hear the matter would, in order to prepare for the hearing, reasonably need to receive the papers earlier than he or she would normally do, the party responsible for enrolling the matter shall notify the Registrar in writing to that effect not less than fourteen clear court days before the day of the hearing.

Failure to do so could result in the matter not being heard on the allocated day. Practitioners are advised to use their own discretion in interpreting this sub-rule but in the ordinary course it ought to apply to all matters where the record exceeds approximately 200 pages (including annexures).’ [Underlining added]

[8] The record in the urgent application alone is contained in six volumes running to some 499 pages. The party responsible for enrolling the matter was the applicant. The fact that I had to seek the delivery of the application papers 12 days before the hearing meant there had not been compliance with Practice Directive 9.4.4.

[9] Having considered the papers, I confess that I was none the wiser about what I was required to determine. This stemmed from the fact that the urgent application appeared to simply be an amalgam of all the other applications between the parties referred to earlier, garnished with further submissions relating to urgency and further facts that allegedly occurred after Bezuidenhout J adjourned the matter. As Mr Ender, who appears for the respondents, adroitly put it in his heads of argument, the applicant appeared to have ‘rolled up’ all the other applications before this court into one application which was now presented as an urgent application. But it is important to note that none of the other applications were enrolled before Bezuidenhout J on 25 June 2025.

[10] To try and discern a way forward, I wrote to the parties’ legal representatives on 15 August 2025 and requested that I be advised of what was to be dealt with on 27 August 2025 and I requested a joint minute from the parties on what was to occur. I also specifically directed the attention of the parties’ legal representatives to the provisions of Practice Directives 9.4.2 and 9.4.3 and indicated that I required strict compliance with them.

[11] Those two mentioned Practice Directives read as follows:

‘9.4.2 By no later than noon five clear court days before the day of hearing the party responsible for enrolling the matter shall notify the registrar in writing whether the matter will be argued, and if not what alternative relief (for example postponement, referral to evidence, etc.) will be sought, in which case the notification shall be accompanied by a draft setting out

the Order to be sought. The party responsible for enrolling the matter shall, at the same time, deliver a list, agreed to by all the parties, of those issues in dispute and those which are common cause.

9.4.3 Unless condonation is granted on good cause shown by way of written application, failure to comply with this directive will result in the court making such order as it deems fit, including an appropriate order as to costs.’ [Underlining added]

[12] I duly received a joint reply to my letter, about which more shortly. I did not receive the anticipated statement of issues and common cause facts contemplated by Practice Directive 9.4.2.

[13] The Practice Directives of this division are not an optional set of requirements to the conducting of litigation that legal practitioners are at liberty to follow, or ignore, as they choose. It is concerning that I should be required to visit this topic again. In *Dodd NO and Others v Duff*,² I had cause to state the following:

‘If an attorney lacks the capacity to deal with matters in the high court and is not familiar with the Uniform Rules of Court or the practice directives of this division, then he has no place litigating before this court. This court has exacting standards and they are jealously enforced. Those standards will be maintained. Those who cannot meet those standards should either bring themselves up to that standard immediately or litigate elsewhere where a premium is not placed on excellence.’

[14] As Pitman AJ correctly stated in *B.F.M v H.P.N.P.*:³

‘Practice Directives constitute procedures carefully weighed and prepared by each Division to ensure its effective and smooth running. It would surprise me to hear any Advocate say that they are not aware of this, or that they do not know that different Divisions have different Practice Directives. I am well aware of how intensive and comprehensive the advocacy pupillage programme for aspirant advocates is, and that it covers such topics. Counsel for the plaintiff conceded she knew as much and apologised “*profusely*” and stated she had “*learned her lesson.*” Whilst I accept her apology as being sincere and genuine, it is necessary in my view to voice the displeasure of the Court in a salutary manner, which I do in the costs Order I make.’

² *Dodd NO and Others v Duff* [2024] ZAKZPHC 62 para 14.

³ *B.F.M v H.P.N.P* [2024] ZAKZPHC 8 para 21.

[15] Despite all these comments and admonishments, practitioners on a daily basis ignore the Practice Directives and seemingly do as they please, satisfied that if apologies are offered for errant conduct all will be well. I think that I received an attempt at an apology from Ms Coetsee, who appears for the applicant, although I cannot be entirely sure of this. But as the old saying goes, fine words butter no parsnips. The Practice Directives are in place to be observed, and they have not been observed in this matter. This non-compliance will reflect in the costs order that is to follow.

What is set down?

[16] The response that I received to my letter to the parties indicated that there was dissensus on precisely what had been adjourned to 27 August 2025. Thus, the response that I received from the parties was a document that contained two distinct, and competing, versions instead of a single, agreed version.

[17] Counsel for the applicant, in a longwinded treatise on the history of the matter, which I did not ask for, submitted that the urgent application, together with all the other applications, was to be heard. Counsel for the respondents, Mr Ender, responded to this by stating that an attempt had been made to secure such an order from Bezuidenhout J by the applicant's legal representatives on 25 June 2025, but the learned judge had considered, and upheld, an objection from the respondents that the only application that they had been called upon to meet on 25 June 2025 was the urgent application. That is why the order granted by Bezuidenhout J specifically referred to 'the matter set down on 25 June 2025' being adjourned to 27 August 2025.

[18] The relevant portion of the order granted by Bezuidenhout J has already been narrated at the commencement of this judgment. The correct approach to interpreting a judgment of a court was discussed in *Firestone South Africa (Pty) Ltd v Genticuro AG*,⁴ where the Appellate Division held that:

'[t]he basic principles applicable to construing documents also apply to the construction of a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules.

⁴ *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A) at 304D-H.

Thus, as in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, it was common cause that in such a case not even the court that gave the judgment or order can be asked to state what its subjective intention was in giving it.' [Authorities and citations omitted]

[19] It would not provoke any controversy to acknowledge that the only matter enrolled before Bezuidenhout J on 25 June 2025 was the urgent application. It was the enrolment of that matter that had brought the parties to that courtroom on that day and there is no evidence that any of the other applications were set down and were before Bezuidenhout J on that day. Moreover, the wording of the order is clear and excludes the possibility of the court having ordered that all the matters not before the court were also to be considered on 27 August 2025. I am therefore satisfied that the wording of the order supports the understanding of the respondents. It was the urgent application that was adjourned to 27 August 2025, and no other matter.

[20] However, it seems to me that this constitutes a pyrrhic victory for the respondents. This is because, technically, both parties are correct in what they contend. Because the urgent application is made up of all the other applications presently before this court, it is correct to say, as the applicant does, that all those applications are to be considered today albeit in the form of the urgent application. The respondents insist that only the urgent application is before court but in making that submission they are compelled to acknowledge the constituent parts of the urgent application, which are the other applications that are already before this court. It thus seems to me that a consideration of the urgent application, as urged upon me by the respondents, will require consideration of all the other applications. However, what distinguishes the urgent application from all the other already existent applications is, naturally, the alleged presence of urgency allowing the urgent application to be heard ahead of other applications (including the applicant's other identical applications) awaiting a date of hearing.

A brief history of the matters

[21] It is necessary to briefly consider a potted history of the rancorous disputes between the parties.

[22] The dispute is centred upon the affairs of the body corporate and what the applicant contends is unlawful conduct on the part of those who voluntarily administer its affairs and those who have been employed to assist with that function. The dispute has its origin in a decision by the trustees of the body corporate to instal individual water meters at each unit forming part of the body corporate. The decision to do so was taken in 2018 and that was the pebble that started rolling and which led to the avalanche of litigation that was to follow.⁵ Initially, proceedings were conducted before the Community Schemes Ombudsman. I was advised in argument by Mr Ender that the applicant has launched another application this last Friday against the respondents before the self-same Community Schemes Ombudsman.

[23] The main application, which seeks to appoint an administrator to the body corporate because of the allegedly unsatisfactory management of the affairs of the body corporate, was launched in 2024. That application was opposed by the respondents. The respondents then brought an application in which they sought security for costs from the applicant. The applicant is a British citizen and resides in the United Kingdom and thus, so the respondents reasoned, was a peregrinus and ought to be required to put up security. The fact that the applicant owned a fully paid for immovable property valued at approximately R2,5 million⁶ within the body corporate did not appear to have been considered or acknowledged by the respondents.

[24] The application for security provoked the applicant to bring a counter application in which he sought leave to dispute the authority of the attorneys who placed themselves on record on behalf of the respondents to act for them. The application was therefore preceded by a notice in terms of Uniform Rule 7(1). This challenge appears to be based upon an allegation that one of the trustees of the first respondent had not been informed of the need to instruct attorneys and had not

⁵ This other litigation also includes contempt of court proceedings initiated in the Durban High Court by the applicant and a review application brought by the applicant to set aside a decision of the Community Schemes Ombudsman granted in favour of the previous trustees of the body corporate.

⁶ Being the estimated value of the applicant's immovable property mentioned by the applicant's attorney in his answering affidavit delivered on behalf the applicant in the security application.

given his consent for this to occur. There are five trustees in all, according to Ms Coetsee, six according to Mr Ender.

[25] The dispute between the applicant and the respondents is thus of long standing and appears to have become progressively more bitter and spiteful over time. Mr Ender, in his supplementary heads of argument, explained that the ongoing dispute has driven the body corporate to the precipice of bankruptcy because of the amount of money that has had to be collected, and spent, in opposing the litigation brought against it by the applicant. Mr Ender makes the point that the applicant has proclaimed that he is motivated to come to the rescue of the body corporate and to free it from deplorable leadership and its consequences, when, in fact, his conduct has had quite the opposite effect, and the body corporate now faces financial ruination largely because of his predilection for litigation.

Urgency

[26] And so, to the issue of urgency. The issue of urgency was obviously not debated when the matter was before Bezuidenhout J. As indicated previously, dates for the exchange of further pleadings were fixed by the learned judge to allow all the issues in, and opposition to, the urgent application to be considered on 27 August 2025. These affidavits have now been delivered, as have supplementary heads of argument.

[27] The fact that the matter is now complete in the sense that all the necessary affidavits have been exchanged does not necessarily mean that the matter is now enrolled and can be argued without further let or hindrance. This is because the issue of urgency was specifically raised by the respondents in their answering affidavit. The fact that Bezuidenhout J did not consider the issue of urgency before adjourning the urgent application does not mean the issue of urgency has lost its potency. That point has not been withdrawn, and I ascertained from Mr Ender this morning that it remains very much an issue as far as the respondents are concerned. The urgency of the matter must therefore be considered first.

[28] The applicant contends that the main application was urgent from the outset. In the supplementary affidavit that it delivered on the issue of urgency, which fills

some 46 pages, the applicant raises four principle grounds upon which it alleges that all the matters already in existence have now become even more urgent.

[29] The first ground is that the appointment of an administrator has become critically necessary because of the first respondent's worsening financial situation. However, nothing additional to what was already stated in the self-standing application claiming the same relief has been mentioned in the urgent application. This was always the applicant's case.

[30] The second ground is that the respondents have opposed the main application (and the other applications that the applicant has brought) at great cost to the body corporate and, in doing so, have allegedly lacked proper authorisation to do so, hence the rule 7 application.

[31] The rule 7 application is difficult to understand. The notice in terms of Uniform Rule 7, already referred to, records that the challenge relates to the authority of:

'... Talbot Attorneys to act as Attorneys of record on behalf of the First, Second, Third, Fifth and Sixth Respondents herein.'

In conformity with this, the counter application indicates that it is directed at:

'... the authority of Talbot Attorneys to act on behalf of the respondents as per the applicants notice in terms of rule 7, dated 14 February 2025;'

[32] Thus, it would seem that the counter application excludes the fourth respondent from its sweep, for he is not mentioned in the Uniform Rule 7 notice. Yet, relief is sought against the fourth respondent in the notice of counter application, where the following is stated:

'That the Third to Sixth Respondents are declared liable for any and all costs incurred in the current proceedings...'

[33] The third ground mentioned is that the respondents intend seeking the rescission of a default order of the High Court that was granted to the applicant after he secured a decision in his favour from the Community Schemes Ombudsman. Indeed, this appears to be regarded by the applicant as being exceptionally

provocative conduct by the respondents on the issue of urgency, for he states the following:

‘What compounded the urgency in this matter is the institution of the rescission application on 21 May 2025 and the notice of the AGM delivered on 3 June 2025, evidencing that substantial relief will not be available in the normal course.’

[34] The conduct of the fourth and sixth respondents in particular has, according to the applicant, had the effect of ‘obstructing’ the relief sought by him. The applicant’s argument goes that the attorneys acting for the first respondent and the fourth and sixth respondents have disregarded the requirements of the Act and have chosen to:

‘... litigate on matters of personal principle’ to the detriment of the body corporate.’

[35] The final ground alleged is that the Annual General Meeting (AGM) of the first respondent is scheduled for 5 July 2025 at which meeting it is intended, according to the applicant, to present resolutions that will:

‘... entrench the unlawful conduct and cause irreversible harm if passed.’

[36] The applicant’s argument then proceeds that if the AGM takes place before the application for the appointment of the proposed administrator, then the same members will remain in place at the helm of the body corporate which will remain ‘captured’ by them and they will then be able to:

‘... ratify or retrospectively avoid the relief sought in the Notice of Motion’

Analysis

[37] It seems to me that the applicant has a distorted and imperfect understanding of what makes a matter urgent. The essential quality of urgency is a compelling necessity for immediate action. In other words, a matter is urgent because of the imminence and depth of harm that the applicant will suffer if relief is not given.⁷ The applicant has stated that the respondents are seeking to set aside a default judgment in his favour and that they have opposed and obstructed his

⁷ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* [2023] ZAGPJHC 846 para 8.

applications. None of these forms of conduct create urgency in my view. The urgency must exist prior to any opposition to what is claimed.

[38] Our system of law generally requires that notice be given to parties when legal proceedings are commenced against them because our law is suffused with the fundamental principle of *audi alteram partem*.⁸ There are two consequences of the giving of notice of intention to litigate: the targeted party may not oppose the relief claimed, or they may oppose it. In this instance, the relief claimed has been opposed. That does not escalate an otherwise ordinary dispute to the level of now being urgent: opposition is an entirely predictable consequence of the giving of notice.

[39] The applicant contends that the first respondent will be left in a potentially terminal financial condition if the urgent application is to be heard in the normal course. I remain unpersuaded that this is the case. The urgency of having the matter heard before the AGM is held on 5 July 2025, appears to me to have come and gone and that horse has bolted and is to be observed grazing contentedly in another paddock. The AGM was held on that date, and resolutions were proposed, and votes were taken. It appears that the applicant remains discontented with what occurred at the AGM. It would serve the applicant well to consider that he owns property in a communal scheme, and his opinion of events may be his alone and not necessarily those of his co-residents and co-owners. A court accordingly should hesitate to rewrite the bargain struck by the members with each other, especially where the impetus to do so is at the instance of a minority of members.⁹

[40] The respondents, naturally, submit that the matter is not urgent at all. They submit that the issues raised in the urgent application are already before the court in separate applications that have individually advanced significantly towards being argued. That is undoubtedly correct, as is the submission that there is nothing disclosed in the urgent application that establishes the presence of any lately emerging urgency.

⁸ *Sibiya and Others v Road Accident Fund* [2023] ZASCA 171 para 14.

⁹ *Wilds Home Owners Association and others v Van Eeden and others* [2011] ZAGPPHC 101 para 205.

[41] In *Mlezana and Others v South African Civic Organisation*,¹⁰ Plaskett J observed as follows:

‘The judicial system, not unlike the private individual, does not take kindly to people who push to the front of the queue. The doctrine of urgency was developed and encapsulated in the rules of court in order to allow those for whom the wait in the queue would not be worth it unless they push in front, to do just that without attracting dirty looks from those behind them.’

[42] This appears to me to be an unfair attempt by the applicant to push to the front of the queue. The applicant was initially content to join the queue and now must wait his turn to be heard in the absence of any compelling grounds of urgency.

[43] In coming to my decision, I make it plain that I have not determined the merits of the various applications, whether stand alone or rolled up into the urgent application, but have merely determined the issue of urgency. In doing so, I have obviously been required to consider and assess the grounds of urgency, but I have gone no further. However, it does appear to me that there are countless disputes of fact on the papers that may render resolution thereof difficult, if not impossible, on paper and in the absence of viva voce evidence.

[44] I am in the circumstances unpersuaded that grounds of urgency have been established by the applicant.

Costs

[45] The applicant has litigated without concern for the Practice Directives of this division. He has not disclosed any compelling grounds of urgency that warranted the bringing of this application and has merely duplicated what has already been said by him in each of the other applications that he has brought before the courts of this division. On his own version, he acknowledges that the body corporate is financially weakened, but he fails to recognise that he has contributed to this weakness by

¹⁰ *Mlezana and Others v South African Civic Organisation* [2018] ZAECHGHC 114 para 5, quoting with approval N Manoim ‘Principles Regarding Urgent Applications’ in N Haysom and L Mangan (eds) *Emergency Law* at 79.

bringing this frivolous and unnecessary application. In my view, a punitive costs order is warranted in the circumstances.

Order

[46] I accordingly grant the following order:

1. The urgent application is struck off the roll for want of urgency.
2. The applicant shall pay the respondents' costs on the attorney and client scale.

MOSSOP J

APPEARANCES

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