



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no: 12866/2014

In the matter between:

C[...] **R[...]** **W[...]**

Applicant

And

L[...] **M[...]** **W[...]**

Respondent

Coram: Nziweni, J

Heard: 26 August 2025

Reasons delivered: 6 October 2025

Summary: Urgency – urgency not created by mere imminence of a situation – vexatious litigant – party declared a vexatious litigation ought to inform the court of such declaration.

REASONS

NZIWENI, J

Introduction and background

[1] The applicant filed this application seeking an urgent relief. I then struck the matter off the roll for lack of urgency. Pursuant to the matter being struck from the roll and ordering the applicant to pay costs, the applicant requested reasons. Since the applicant was self-represented, I feel duty bound that I should give the applicant further reasons, for the orders that I had made. I now give my reasons for refusing to hear the matter on urgent basis and for the cost order to paid on attorney and client scale.

[2] It is evident from the applicant's papers and from both the parties' oral submissions that the parties have a long history of litigation, including:

- (a) Protracted divorce proceedings that were launched in 2014;
- (b) Application against the applicant to declare immovable property executable;
- (c) Application for stay attachment of the applicant's immovable property, to satisfy obligations stemming from the Divorce Order;
- (d) Several unsuccessful attempts by the applicant to have decisions against him taken on appeal; and
- (e) Application to declare the applicant a vexatious litigant.

[3] I need then to briefly sketch the history of the litigation as it appears in the applicant's founding papers and oral submissions. The parties have been divorced by a Decree of this Court that was granted on 26 August 2020.

[4] On 2 July 2025, Judge Le Grange dismissed an application that was brought on urgent basis by the applicant seeking an order to stay the execution of his immovable property. In addition, Judge Le Grange, also granted a rule nisi directed

to the applicant to show cause amongst others, why an order declaring a vexatious litigant, should not be made final.

[5] On 05 August 2025, Judge Nuku heard an application that was brought by the respondent to have the applicant declared a vexatious litigant in terms 2 (1) (b) of the Vexatious Proceedings Act 3 of 1956.

The applicant then sought leave to appeal the dismissal of his application by Judge Le Grange. The application for leave to appeal was set down for 24 September 2025.

[6] Before me, the urgent relief that was sought by the applicant pertained to the request to compel discovery of documents. The documents that the applicant sought the respondent to discover were meant for the application for leave to appeal, that was set down for 24 September 2025, before Judge Le Grange. The applicant asserted that he seeks the discovery to properly prepare for his appeal on 04 September 2025 and to demonstrate that the financial incentive that the applicant's legal team had to keep the divorce matter running. According to the applicant, the discovery of documents that he sought were completely relevant.

Parties' submissions

[7] In his oral submissions, the applicant advanced that the matter he required documents for was to be heard in a week's time. As such, he requested that the matter should be heard on urgent basis on the 'fast lane'. In doing so, the applicant wanted his application to be heard out of turn.

[8] On the other hand, it was argued on respondent's behalf that the documents that the applicant sought to be discovered related to costs that were incurred by the respondent to her counsel and her instructing attorneys. It was strenuously argued on respondent's behalf that the documents that the applicant seeks to be discovered are completely irrelevant, as they did not form part of the application to stay the execution of the property. According to the respondent's counsel, the discovery

application pursued by the applicant is unmeritorious litigation, and it's a conduct that is unnecessary and in bad faith.

[9] It was further argued that the applicant had been declared to be a vexatious litigant by Judge Le Grange. As such, the applicant ought not to have brought this application without seeking leave from the court.

Discussion

[10] I recognise that the concept of urgency is not a new problem. Virtually, every litigant that approaches a court, considers their matter as being urgent, and understandably so. Unfortunately, before a matter can be heard on urgency basis an applicant is required to meet the test of urgency to succeed to have a matter being heard on urgency. It is thus axiomatic that for the applicant to be heard in the fast lane there is a criteria to be considered.

[11] Uniform Rule 6(12)(b) reads as follows:

“In every affidavit filed in support of any application under paragraph (a) of this sub-rule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.”

[12] The urgency criterion has two components. For a party to convince a court that there is urgency in their matter, it should first overcome the following hurdles;

- a. Whether there is imminent peril justifying that the matter be heard on urgency;
and
- b. if there is such a peril, whether the urgency was not self-created.

[13] It is an established practise that only urgent matters are heard on the 'fast lane'. As such, normally, an application that is brought on urgent basis enjoys preference

over matters that are not regarded as being urgent. More importantly, a litigant ought to demonstrate an evidential foundation for urgency. To that end, the hearing of the merits can only proceed once some sense of urgency is established. A litigant may not disregard this at their own convenience.

[14] The assertions that were made by the applicant in his founding affidavit do not speak to urgency. Accordingly, the applicant did not present any iota of evidence to establish the supposed urgency. There was nothing that warranted the application to be heard expeditiously.

[15] What this Court heard in this matter, is that the applicant did not act diligently in seeking the intervention of the court as far as the discovery is concerned.

[16] The obvious corollary of this is that, in the present matter, there was no cogent reason or circumstances that showed that the applicant was entitled to have his application for discovery be heard on the “fast lane”. Urgency is not created by mere imminence of a situation

[17] The mere fact that the matter for which discovery is sought was going to be heard the following week, by itself, is not grounds to satisfy the urgency requirement. If it were, litigants would wait until the last moment to bring their applications and when they run out of time, they would routinely bring their applications on ‘urgent basis’. Surely, litigants cannot blatantly disregard the Rules of court and wait until the last days to bring their applications; and then expect the court to treat their delay as urgent.

[18] For discovery of documents there are normal timeframes established by the Rules of Court. The applicant could have moved quickly to file the application for discovery of the documents, instead of filing it a few days before the hearing of the matter before another Judge. The applicant’s papers suggests that he had the opportunity to launch such an application in earlier proceedings and failed to do so. As a result, it cannot be said that the delay cannot be imputed to him.

[19] This then begs the question as to why then the timelines should be abridged for the applicant's self-created urgency. For that matter, the applicant did not even attempt to explain why he delayed for so long in launching this application. Thus, there is no adequate explanation to explain why immediate measure is necessary.

[20] The applicant dismally failed to meet the criteria to be heard on urgent basis. Moreover, the matter was not properly filed on case on lines. The applicant simply brought the application to my chambers. It is a striking feature of this case that, this matter did not warrant to be brought before the court. Moreso, on urgent basis.

[21] Even if I were to find that the application was urgent, the applicant still had an insurmountable hurdle to overcome. The applicant failed to disclose that he had already been declared to be a vexatious litigant. This failure to disclose such information reveals the applicant's bona fides in bringing this matter in the manner in which he did.

[22] Over and above these reasons, an important submission advanced by applicant's counsel Ms Beukman, SC, that the applicant should not have been before this Court in the first place, cannot be faulted. Particularly, if regard is also had to the fact that the applicant was in the process of being declared a vexatious litigant. This I say because the rule nisi issued by Judge Le Grange stated the following:

"A rule nisi is issued calling upon the respondent to show cause on 5 August 2025 why an order in the following terms should not be made final:

2.1 Declaring the respondent to be a vexatious litigant . . ."

[23] In essence, the rule nisi that was issued by Judge Le Grange also pertained to the prohibition of filing any new litigation, including the present case. Having regard to the applicant's conduct in this matter, a punitive cost order was fully warranted.

Conclusion

[24] Consequently, the order that I made was based on the reasons set out above.

NZIWENI, J

Appearances:

Counsel for the Appellant : In Person

Counsel for the Respondent : L Buikman SC

Instructed by : Catto Neethling Wiid Inc.