



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

CASE NO.: 2025-163743

Date heard on: 19th September 2025

Date of delivery :25th September 2025

In the matter between:

FIKILE VINCENT HINTSA

Applicant

and

**MEMBER OF EXECUTIVE COUNCIL,
FOR COMMUNITY SAFETY**

1st Respondent

**HEAD OF DEPARTMENT
(MR PHIKO MBAMBO)**

2nd Respondent

**CHIEF DIRECTOR CORPORATE SERVICES
(MR ZUKILE KANI)**

3rd Respondent

**CHIEF FINANCIAL OFFICER
(NWABISA LIBALA)**

4TH Respondent

JUDGMENT – INTERIM RELIEF

ZONO AJ:

Introduction

- [1] The applicant is the Deputy Director for the Department of Community Safety, Eastern Cape. He approached this court on urgent basis for a relief more fully set out in **Part A** of the notice of motion. It is not necessary to deal herein with the relief sought in **Part B**, save to state that the applicant therein seeks to review second respondent's decision contained in a letter dated 08th September 2025, terminating and or withdrawing protection services afforded to the applicant; and some consequential relief.
- [2] In **Part A** the applicant seeks, on urgent basis, a Rule *Nisi* calling upon the respondents to show cause, if any, why the following order should not be granted.

“2.1 The respondents are interdicted and restrained from withdrawing, terminating or suspending the provision of protective security measures to the applicant (being two security personnel and transport) pending:

2.1.1 The submission by the applicant of his representations in respect of the termination and withdrawal of his security protection; and

2.1.2 The consideration and final outcome of such representations by the respondents.

2.3 The respondents shall pay the costs of this application on punitive scale scale C jointly and severally, the one paying the other to be absolved” (sic).

The Rule *Nisi* is sought without a suggested return day.

- [3] The first respondent is sued as a political head and on the basis that he is vicariously liable for the wrongs committed by the employees of his Department when acting within the course and scope of their employment with the Department of community. The second respondent is cited as an accounting officer in the Department of Community Safety. The third respondent is cited as an official who penned a letter advising that security services would not be afforded to the applicant beyond or after 09th September 2025. Fourth respondent is cited as a functionary in charge of procurement of security services. Fifth respondent oversees the security operations of the Department of Community Safety.
- [4] The application is opposed and in so doing the respondents have delivered both the notice to oppose and opposing affidavit accompanied by the annexures. The applicant had delivered his replying affidavit. This matter came before court as a matter of urgency on 12th September 2025 and an undertaking was made that the security or protection services to the applicant would not be withdrawn or terminated pending hearing of this application (interim relief) on 19th September 2025. On 19th September 2025, after hearing of this matter, the parties agreed that the undertaking made on 12th September 2025 be extended pending this judgment. It is for that reason Mr Poswa consistently submitted during the hearing of this matter that the applicant is under protection for 24 hours, seven days a week (24/7).
- [5] The facts herein are largely common cause. The applicant was appointed as District Manager in the respondents’ Department with effect from 01st

September 2014 and he grew within the ranks of the Department. During October 2022, the applicant received some threats seemingly arising from his involvement in the investigations relating to the hijacking of government buildings in Mthatha. Those investigations resulted in the arrest, detention and prosecution of some people. Bongani Cikolo, Zamikhaya Songca, Sicelo Nkqayi and Fezile Potwana allegedly threatened to kill the applicant if he does not cease his involvement in the criminal case under CAS No 359/03/2019. The confrontation and threats allegedly took place in October 2022. Following a Threat and Risk Assessment Report, the applicant was provided with two protectors (security guards) and a motor vehicle for his transportation. In August 2023 the applicant received anonymous calls threatening to kill him. Threats and suspicious men following the applicant continued until 2024. During December 2024 the applicant was allegedly confronted by a member of community when they were visiting Mthatha and Flagstaff, who accused him of being responsible for eviction of the occupants during ECDC operation, but the protectors managed the situation.

[6] The applicant alleges in his founding affidavit further that:

“5.1 I continue to live in constant fear due to:

5.1.1 ongoing threats from known individual (especially teacher, a known violent taxi boss) living in various places all over the country;

5.1.2 Three suspects from the hijacking case being out on bail.

5.1.3 Continued sightings of suspects in East London (Some with businesses in the area).

5.1.4 Lack of trust in the second respondent particularly after confidential details from my Threat and Risk

Assessment were shared inappropriately” (sic).

The allegations made in paragraph 5.1 of applicant's founding affidavit are deemed to have been admitted as they are not disputed¹. I will come back to these averments later during the course of this judgment, especially with reference to the fact that the second respondent inappropriately shared confidential information.

[7] The respondents deal with these allegations in paragraph 28 of their answering affidavit as follows:

"28 Ad Paragraph 4.1.16 to 5.1.4 thereof

I have no knowledge of the allegations contained herein and can consequently neither admit nor deny the same. Applicant is put to the proof thereof" (sic).

A party who does not make a firm repudiation of an allegation when bound to do so incurs the risk of an adverse inference being drawn against him².

[8] This application is opposed basically on two grounds: namely, lack of urgency, and that there is no case made out for the relief sought in **Part A** of the notice of motion. The respondents contended that the applicant has failed to establish the requisites for the grant of the interdict. During hearing of this matter, there was vacillation by respondents' Counsel; which vacillation and uncertainty pertained to whether it is the clear right or *prima facie* right that needs to be established for a successful interim relief. I was little taken aback by this approach; looking at the stature and expected experience of the Counsel concerned.

Urgency

¹ *Mc Williams v First Consolidated Holdings (Pty) Ltd* 1982 (2) SA 1 (A) at 10E-D.

² *Makhuva and others v Lukoto Bus Service (Pty) Ltd and others* 1987 (3) SA 376 (V) at 386 E.

[9] During argument, respondent's Counsel argued that urgency is not time bound and time based. Whatever that means, the Counsel was clearly understood to be saying the time by and at which an application is launched *vis-a-vis* the time when facts giving rise to urgency occurred are not relevant for purposes of determining urgency. There is absolutely no merit in this argument. It is well established that the applicant cannot create its own urgency by simply waiting until the normal rules can no longer be applied³.

[10] In *Spiklin*⁴ Lowe J had the following to say:

"15 An applicant cannot create its own urgency by simply waiting till the normal rules cannot longer be applied.

16. If the above is satisfied other issues come to be considered, some of which are:

16.1 Whither respondent can adequately present its case in the time given.

16.2 Other prejudice to respondent and the administration of justice;

16.3 The strength of applicant's case and any delay in asserting its rights (self-created urgency)".

[11] Rule 6(12) of Uniform Rules of Court regulates time periods within which certain things must be done. The time therefore is always relevant to urgent application. Rule 6(12)(a) of URC provides:

"(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these Rules) as it deems fit".

Urgent applications involve abridgement of times prescribed by the rules and departure from established filing and sitting times of the court⁵.

³ *Ngquma and Another V Staats President; Damons No v State President; Joostee v State President* 1988 (4) SA 224 at 243 D; *Sokhani Development and Consulting Engineers (Pty) Ltd v Alfred Nzo District Municipality* (1254/2024)[2024] ZAECKMHC 44 (26 April 2024) Para 12-14.

⁴ *ENX Gropup Limited v Spilkin* (2296/2022) [2022] ZAEQBHC 42 (8 November 2022) Para 15-16.

Dilatory conduct in bringing the application or that urgency was self-created is a relevant factor to be taken into account in urgent application⁶. In what follows I deal with fact which I deem to be relevant for determination of urgency. Urgency does not only have a bearing on the times and periods of certain occurrences, but is also fact bound. It relates to the facts of a particular case.

- [12] The applicant learnt for the first time on 08th September 2025 that he would be without security and or protection services. Protection services would be terminated after the 09th September 2025. The third respondent penned a letter dated 08th September 2025 *inter alia*, in the following terms:

“The Department therefore will not extend the protection services to yourself beyond 09th September 2025. You are however given an opportunity to make a representation to the Department should you disagree with the termination of these services” (sic).

On 09th September 2025, applicant’s attorneys penned a letter *inter alia*, requesting the respondents to suspend their decision terminating security and or protection services afforded to the applicant, pending submission of representations and outcome thereof. No confirmation of suspension of the decision aforesaid was received by the deadline. On 12th September 2025 this matter was before this court on urgent basis where an undertaking was made and the matter was further postponed for hearing on 19th September 2025. I am therefore satisfied that this application was urgently instituted and made. The matter is sufficiently urgent to be entertained in this court. Respondents’ point of lack of urgency has no merit and accordingly cannot be upheld. I deal hereinafter with the merits of the application.

⁵ *Luna Meubel Vervaarfigers (Edm) Bpk v Makin (t/a Makin’s Furniture Manufactures)* 1997 (4) SA 135 (W) at 136 H.

⁶ *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC 2004 (2) SA 81 (SE) at 94C-D.

Has the applicant satisfied the requirements of the interim or interlocutory interdict?

[13] The requirements which an applicant for an interlocutory interdict has to satisfy are the following⁷:

“(a) a prima facie right.

(b) a well- grounded apprehension of irreparable harm if the interim relief is not granted and ultimate relief is eventually granted.

(c) a failure of convenience in favour of the granting of the interim relief, and

(d) the absence of any other satisfactory remedy.”

[14] In *Webster v Mitchell*⁸ Clayden J laid down the following approach:

“The Right to be set up by an applicant for temporary interdict need not be shown by a balance of probabilities. If it is prima facie established though open to some doubt that is enough.... The proper manner of approach is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant, he could not succeed in obtaining temporary relief, for his right, prima facie established may only be open to some doubt. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.”

[15] In protecting the applicant’s right to life⁹ and right to bodily integrity¹⁰ the applicant was afforded by the respondents security and protection services in terms of the Guidelines on Employee Protection Services: Eastern Cape Provincial Government 2025-2030 (the Guidelines). The Guidelines are informed by the Provincial Security Management Policy.

⁷ *Setlogelo v Setlogelo* 21914 AD 221 at 227.

⁸ *Webster v Mitchell* 1948(1) SA 1186 (W) at 1189.

⁹ Section 10 of the Constitution.

¹⁰ Section 12(2) of the Constitution.

Whilst the first respondent was obliged to provide the services in question, the applicant had a corresponding right to receive those services. The respondents accepted that the applicant was exposed to death threats and physical harm. During October 2022, after the Threat and Risk Assessment Report had been compiled¹¹ the applicant was afforded security and or protection services. Applicant's right to security and/or protection services is interlinked and inextricably interwoven with applicant's right to life and to bodily integrity. They are not separable. Whilst the applicant seeks to enforce his right to security and protection services, he is contemporaneously and quintessentially seeking to protect the right to life and bodily integrity.

- [16] Whilst it is accepted that the prevalence of the threats and potential risk to applicant's life and bodily integrity availed the applicant to the right to security and or protection services, respondents contended that such right ceased to exist. There is paucity of information about the date and or period as to when that right ceased to exist. Counsel for the respondent, upon invitation, could not assist this court as to when applicant's right to security and or protection services ceased to exist. It is the cessation of the right and the non-existence thereof that would, with due process, lead to the lawful termination of the protection services. It is axiomatic that provisions of security and or protection services naturally follow the right thereto. If there is a right to those services, it follows axiomatically that those services must be provided. I am satisfied that the right to security and or protection services which originally existed when the applicant afforded same in 2022 did not cease to exist. I am further satisfied that the applicant has established the first requisite of an interim, temporal or interlocutory interdict (*prima facie* right).

¹¹ Ostensibly after thorough investigation had been made.

[17] This drives me to the second requisite of an irreparable harm. Right to life is sacrosanct. There is no replacement for life. Once a person becomes deceased he cannot be resuscitated to life again. Provisions of security and or protection services to protect human life is a delicate matter that requires pragmatism and sense of justice. A requirement of irreparable harm can appositely be dealt together with a requirement of balance of convenience. The following rhetoric questions are relevant for a proper determination of this issue: What would happen if the interim relief is not granted and the review application in **Part B** is ultimately granted after the applicant has been shot dead because of lack of security and protection services? **Part B** would not only become a hollow victory and *brutum fulmen*, but also a reminder of a too legalistic and unjust legal system which did not assist a citizen who came to it when he was still alive but could not get the necessary assistance. Life is an endowment or value that cannot be measured in monetary terms. Applicant stand to suffer irreparable harm should this interim relief be not granted. Equally, balance of convenience favours the applicant and the grant of interim relief.

[18] There is no other satisfactory remedy available to the applicant. The respondents' Counsel argued that an opportunity was/is afforded to the applicant to make representations. That opportunity is an adequate remedy available to the applicant, so it is argued. I disagree. It is not a foregone conclusion that the applicant, once he makes representations he will be afforded those security and protection services. In any event, what will happen to the applicant when he is still undergoing the rigmarole of making the representations and that process is still unfolding? If this interim relief is not granted, the applicant will not have security and

protection services. From the point when this court delivers its judgment refusing interim relief, the applicant will be exposed to high scale risk.

[19] The applicant has established and satisfied all the requirements of an interim interdict. I have already found that this matter is urgent. Accordingly, this application must succeed.

[20] However, there is a common cause worrisome and concerning fact. The respondent is said to have inappropriately shared the applicant's Threat and Risk Assessment Report. It is not clear with whom that report was shared. However, it was shared without the knowledge and consent of the applicant. The report contains a sensitive security information of the applicant. The conduct of inappropriately sharing such information poses a security risk to the applicant. This conduct buttresses a need for security and protection services. Now that the respondents have not denied the fact that they have inappropriately shared the said report, it admits of no doubt that the respondents pay no regard about their employees' safety. This underscores a need for security and protection services to be provided to the applicant.

[21] The only issue now that is remaining is the issue of costs. The relief sought in **Part A** is subject to what the court will decide in **Part B**. It is apposite to order that costs of this application be costs in **Part B**, as the two parts of this application are interconnected.

Order

[22] In the result I make the following order:

- 22.1 The applicant is granted leave to bring this application in one of urgency, and the non-compliance with rules relating to service is condoned and dispensed with in terms of Rule 6(12) (a) of URC.
- 22.2 The respondents are hereby interdicted from withdrawing or terminating applicant's security and or protection services pending the final determination of the application made in Part B hereof.
- 22.3 Costs of this application (Part A) are costs in Part B.

A.S ZONO
JUDGE OF THE HIGH COURT (ACTING)

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Bhisho

Due to the fact that it is recess and that this matter was brought on urgent basis, this judgment was handed down electronically by circulation to the above mentioned legal representatives by email and release to SAFLII. The date and time for hand-down is deemed to be 09h30 on Thursday 25th September 2025.