



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: N
(2) OF INTEREST TO OTHER JUDGES: N
(3) REVISED: Y
(4) Signature: [Redacted] Date: 04/11/25

CASE NO.:182280/2025

In the matter between:

KABORONA INVESTMENTS (PTY) LTD

Applicant

and

SMALL ENTERPRISE DEVELOPMENT AND

FINANCE AGENCY SOC LIMITED

First Respondent

MINISTER OF SMALL BUSINESS DEVELOPMENT

Second Respondent

MINISTER OF TOURISM

Third Respondent

JUDGMENT

Kumalo J

INTRODUCTION

- [1]. This application is brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules of Court and is opposed by the First and Third Respondents.
- [2]. In 2021, the Applicant applied for funding under the Tourism Equity Fund Program of the Third Respondent, whose application was put on hold due to internal litigation concerning the Tourism Equity Fund ("TEF"). The application was resubmitted to the First Respondent in February 2024.
- [3]. The Third Respondent appointed the First Respondent on 31 October 2023 to implement and manage the TEF amount of R540 million. The appointment was terminated on 29 April 2025.
- [4]. The Applicant's application was adjudicated and rejected at the level of the First Respondent's EXCO. In consequence and on 9 December 2024, the Applicant appealed against the decision of the First Respondent's EXCO.
- [5]. By May 2025, the appeal had neither been processed nor finalized, which act prompted the Applicant to approach this court on an urgent basis under case number 69268/2025. The parties in that application were the same as those in this application.
- [6]. The parties agreed to settle the dispute then by agreement. The Third Respondent agreed to grant the First Respondent the required authorization to decide the Applicant's appeal, and the First Respondent agreed to

determine the appeal fully and finally. The agreement was made an order of court on 27 May 2025.

- [7]. The court ordered and directed that the First Respondent decide the Applicant's appeal dated 9 December 2024 within 10 days of the 27 May 2025 order and directed each party to pay their own costs.
- [8]. On 11 June 2025, the First Respondent, by letter, advised the Applicant that, on 10 June 2025, it convened a committee to decide the appeal in accordance with the court order. The outcome communicated was that the appeal was successful and the transaction was recommended to the following approval committee, the Board Credit and Investment Committee (the "BCIC").
- [9]. On 24 July 2025, the First Respondent advised the applicant that the BCIC rejected its application for funding.
- [10]. The Applicant wrote a letter to the First and Second Respondent to seek guidance as the process to be followed in appealing the decision of the BCIC and alleged that no response was forthcoming.
- [11]. The Applicant then followed the process set out in clause 16.11 of the First Respondent's Credit Policy and lodged another appeal on 30 July 2025, allegedly not aware of the consequences of the First Respondent's mandate having been terminated.

- [12]. On 29 July 2025, the Applicant made an application under the Promotion of Access to Information Act 2 of 2002 ("PAIA").
- [13]. The application before this court is that the First Respondent ought to be held in contempt as it failed to comply with the order of the Court issued on 27 May 2025, and the same is brought on an urgent basis in terms of Rule 6(12)(b) of the Uniform Rules of Court.
- [14]. Urgent applications are not there for the taking. The applicable rule stipulates that the applicant must explicitly set forth the circumstances he avers render the matter urgent, and the reasons why he claims he could not be afforded substantial redress at a hearing in due course.
- [15]. The Applicant alleged that the urgency of its application arose from the impending migration of the TEF from the First Respondent's administration. It is further alleged that the prejudice to the Applicant's rights under the application for funding were being continuously and persistently eroded in consequences of the First Respondent having acted in contempt of the 27 May 2025 Order and the failure of the First Respondent's to purge its contempt, including appropriating to itself powers that were terminated as far back as 29 April 2025 and in respect of which it had no authority to involve the BCIC.

- [16]. The Department of Tourism has since advised that the impending migration is not imminent, as the third party to take over the administration of TEF from the First Respondent has yet to be appointed.
- [17]. The Applicant, in a letter addressed to the Department of Tourism, admitted that the urgency of the application had dissipated, yet continued to press for its urgency.
- [18]. I agree with the First Respondent's submissions relating to adequate redress at a hearing in due course that the Applicant made a bold statement without any factual foundation that, should TEF be migrated from the First Respondent to a third party, it would suffer irreparable harm. There is no basis to this claim.
- [19]. The Third Respondent responded to the concerns and explained that the First Respondent was appointed merely as an administrator of the TEF, and that a subsequent administrator would have the same powers and functions as the First Respondent. There would be no legal impediment for such an administrator to consider the Applicant's application.
- [20]. There is no urgency to this matter. Even if I may be wrong in this regard, any urgency would have been self-created. The alleged contempt of court would have been known at least by 11 June 2025, when the First Respondent advised of its decision. The impugned decision was clear that its recommendation is subject to the BCIC's final approval. It appears from the

papers that the Applicant acquiesced in this decision and raised issues only when BCIC rejected its application.

[21]. The allegation that it did so without legal representation is hollow in the circumstances. The Applicant was legally represented when it approached the court on 27 May 2025. I find it difficult to phantom that it would not have advised its legal representatives of the 10 June decision.

[22]. In the circumstances, the following order is made -

1. The Applicant's application is struck off the roll for lack of urgency.
2. The Applicant is ordered to pay the costs of the application, including the costs of two counsels where applicable.



MP Kumalo
Judge of the High Court, Pretoria

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv Konstantinides SC

Instructed by: Van Hulsteyns Attorneys

For the first respondent: Adv Ngcukaitobi SC & Adv Manala

Instructed by: Mncedisi Ndlovu & Sedumedi Attorneys

For the third respondent: Adv Barnardt

Instructed by: State Attorney, Pretoria