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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER: 2025-185201

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates **NO**

In the matter between:-

FRANCOIS ANTHONY GERBER

Applicant

and

JOE ALBERTO DA SILVA

1st Respondent

MARIA ALCINDA DA SILVA

2nd Respondent

This judgment is handed down electronically to the parties via email. The date of the judgment is deemed to be 18 November 2025.

JUDGMENT

Reid J

Introduction

[1] In this urgent application the applicant seeks several interdicts, both prohibitive and compelling, as well as monetary payments.

[2] The applicant is a tenant of the respondents and leases buildings from the respondents from which the applicant does his business.

[3] The relief sought by the applicant can be summarised as follows:

3.1. That the application be heard as one of urgency.

3.2. Interdicting the respondents to:

3.2.1. not overcharge for electricity and water.

3.2.2. seize threats of eviction and removal of the applicant's solar panels.

3.2.3. remove all illegal pre-paid meters as per clause 11.3 of the lease agreement and return to *status quo* as per the sales agreement.

3.2.4. return all overcharged monies paid on illegal pre-paid meters with immediate effect to the applicant's nominated bank account.

3.2.5. refrain from doing harm to the Companies Polar Ice and Ice Cube Centre, whether the harm is financial, physical or emotional.

3.2.6. refrain from insulting and damaging the reputation of the applicant's businesses to his clients.

3.2.7. not have any contact with the applicant.

3.2.8. return of all items agreed to in the Sale of the Businesses and honouring both lease and sales agreements.

3.3. Payment of:

- 3.3.1. all the money owed to the applicant to date as well as to Mr De Ponte and the employees.
- 3.3.2. R10 million to the applicant, R2,4 million to Polar Ice on behalf of M De Ponte and R4 million to employees.
- 3.4. That the respondents pay the cost of this application, including the costs of 7 October 2025.

Material factual background

- [4] The 1st respondent is the registered owner of an immovable property situated at Number 2[...] B[...] Road, Honingklip, Krugersdorp, Gauteng ("the property"). The applicant is a tenant of the property.
- [5] The applicant is the sole director of 2 companies:
 - 5.1. Polar Ice Distributors (Pty) Ltd, a private company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with registration number 2015/020155/07 ("Polar Ice"). Polar Ice conducts business from the property.
 - 5.2. Ice Cube Centre (Pty) Ltd, a private company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with registration number 2021/448439/07 ("Ice Cube"). Ice Cube also conducts business from the property.
- [6] Both Polar Ice and Ice Cube conduct business as manufacturers and distributors of ice, supplying bulk and packaged ice products for commercial purposes.
- [7] On 30 November 2023, at Honingklip, Krugersdorp, the applicant and 1st respondent entered into written lease agreements with Polar Ice and Ice Cube to lease the property to the applicant for commercial purposes. The entities were duly represented by the applicant and their

erstwhile representative, Michael Salgado De Ponte ("De Ponte").

[8] The 1st respondent states that both Polar Ice and Ice Cube have on a continuous basis breached the terms of the lease agreements by failing to timeously pay the monthly rental and related charges on time or at all.

[9] A litany of litigation followed.

[10] On 12 August 2025, the 1st respondent's attorneys of record caused notices of breach to be delivered to Polar Ice and Ice Cube, which notices advised them of *inter alia* the following:

10.1. At that stage, Polar Ice's rental was in arrears in the amount of R41,829.44 (forty-one thousand eight hundred and twenty-nine rand and forty-four cents) and Ice Cube's rental was in arrears in the amount of R180,031.00 (one hundred and eighty thousand and thirty- one rand).

10.2. They were afforded 20 (twenty) business days from the date of the notices, until Monday, 11 September 2025, to remedy the breach, failing which the lease agreements would be cancelled.

[11] The 1st respondent states that the breach was not remedied and on 15 September 2025, the respondents delivered notices of cancellation of the agreements to the applicant. The applicant's businesses remain in occupation of the property.

[12] The respondents issued a commercial eviction application against the applicant's businesses on 3 October 2025 in the Gauteng Division of the High Court, Pretoria. This eviction application is pending.

[13] On 1 October 2025, the respondents caused a rental interdict

summons in terms of section 31 of the *Magistrates' Courts Act*, No 32 of 1944 to be issued against the applicant's companies in the Krugersdorp Magistrates' Court under case number 2385/2025 on the basis that the companies allegedly are collectively indebted to the respondents an amount of R316,914.69 by virtue of the lease agreements.

[14] In September 2025, the applicant applied for a protection order against the 1st respondent in the Krugersdorp Magistrate's Court in terms of the *Protection from Harassment Act* 17 of 2011 ("the Harassment Act"). No interim order was granted but the respondents were to show cause on 17 September 2025 as to why a protection order should not be granted.

[15] The 1st respondent denies harassing the applicant in any manner. The harassment proceedings are pending.

[16] The applicant proceeded to have solar panels installed in the property, despite the respondent's allegation that the contract between them was terminated and without the permission of the 1st respondent.

[17] On 1 October 2025 the 1st respondent applied for a protection order against the applicant in terms of the Harassment Act and an interim protection order was granted.

[18] The 1st respondent further states that he instructed his attorneys to bring an application to *inter alia* declare that the unlawfully erected additions and/or improvements must be removed, and that the property must be restored to its prior condition. This application is also pending.

Respondent's points *in limine*

Urgency

[19] The 1st respondent submits that the application lacks the necessary

urgency that would warrant it to be heard on the urgent roll.

- [20] The 1st respondent points out that, on the applicant's own version, the applicant has been victimised by the respondent's actions since December 2023.
- [21] Based on the above points *in limine*, the 1st respondent submits that the application should be dismissed, alternatively struck from the roll, with costs.
- [22] The 1st respondent is correct that the applicant is disgruntled from certain conduct of the 1st respondent that, on the applicant's own version, arose during December 2023. The respondents claim that the application is thus on the applicant's own version not urgent and ought not be entertained by the urgent court.

Lis alibi pendens

- [23] The applicant previously brought an urgent application against the respondents in this Court under case number 2025-179847 ("the first application"), which was enrolled by the applicant on the urgent roll for hearing on Tuesday, 7 October 2025. The first application was duly opposed by the respondents and at the hearing thereof Yacoob J struck the matter from the urgent roll and reserved costs.
- [24] Subsequent thereto, the applicant brought this application on 8 October 2025 and set it down on the urgent roll for hearing on Tuesday, 14 October 2025.
- [25] The respondents claim in this application that the applicant seeks substantially the same relief, against the same parties, founded on the same cause of action, as raised in the first application and it is

submitted on behalf of the respondents that this application ought to be dismissed, alternatively struck from the roll, alternatively stayed pending the outcome of the first application, with costs.

[26] The first urgent application before Yacoob J has not been finalised. It has been struck from the roll and costs were reserved. This means that the applicant should re-enrol the application on the normal roll, not the urgent roll, for the merits to be dealt with. The reserved costs are also then to be argued and determined when the matter is heard on the normal roll.

[27] The previous urgent application, as well as the harassment proceedings in Krugersdorp, has the effect that this application is *lis pendens*.

No founding affidavit

[28] Uniform Rule 6 of the High Courts determines that an application shall be accompanied by an affidavit. An affidavit is defined as a statement in writing sworn to before someone who has the authority to administer an oath. An oath or affirmation is governed by the *Justices of the Peace and Commissioners of Oaths Act*, No 16 of 1963 ("the Act").

[29] The 1st respondent claims that the applicant's statement lacks the essential attestation or certification by a commissioner of oaths and does not comply with the requirements determined in Rule 6.

[30] The 1st respondent is correct in this assertion. The founding affidavit lacks the essential attestation. This results in the application not being duly before this Court. In the absence of a proper founding affidavit, there is no application before this Court. In the absence of an application, the matter cannot be heard.

Non-joinder

- [31] The 1st respondent states that the applicant has irregularly sought relief in his Notice of Motion on behalf of his companies, Polar Ice and Ice Cube as well as his partner, Du Ponte, without these parties being joined in this application.
- [32] The 1st respondent contends that the failure to join Polar Ice, Ice Cube and Du Ponte as applicants to the application, results therein that the relief sought on their behalf cannot be granted.
- [33] The 1st respondent is correct that the 3rd parties such as Polar Ice, Ice Cube and Du Ponte have an interest in the outcome of the matter. On that basis they should have been joined as parties in these proceedings.
- [34] Without joining all the parties that have an interest in the outcome in the proceedings, the matter cannot proceed before this Court and is fatally defective.
- [35] In the event that I have been incorrect in any of the above conclusions, I proceed to deal with the merits of the application.

The applicant's case

- [36] The applicant states that he has been the victim of "illegal self-enrichment and fraudulent activities" of the two respondents from inception of his companies on 1 December 2023. These illegal self-enrichment and fraudulent activities include, but is not limited to, overcharging the electricity with illegal pre-paid meters (which the applicant contends to be a direct contravention of clause 1.3 of the lease agreement) and the illegal self-enrichment of Eagles Crest Properties where no plans have been approved to construct the properties.

- [37] The applicant claims that the electricity supply to his business is diverted to the tenants who reside in flats above his premises, forcing both the applicant and tenants to pay for electricity. The applicant further contends that Eagles Crest Properties are not VAT registered but earns approximately R1 million per annum and have submitted zero tax returns for the past 8 years. The applicant contends that Eagles Crest Properties earns approximately R100,000 per month. He further argues that the employees have not received any increase for a period of 8 years. The applicant claims that the respondents pay their employees R8.52 below the minimum wage per hour.
- [38] The applicant states that he has suffered the financial loss in the amount of R565,000 as he was forced to pay cash for stock to the value of R396,000 and Ice Cube Centre paid rent to the 1st respondent in cash for months. The applicant states that his auditor informed him that he will not be able to claim the rent back as the bank statements do not reflect cash payments. All the payments to the respondents were made on a cash basis at the insistence of the respondents. This, the applicant contends, indicates sinister motives.
- [39] The applicant refers to Clause 16.1 of the Sales Agreement which determines that the applicant has the right to claim damages from the respondents. In this application, the applicant believes that he is exercising that right as to claim his cash expenses back. The agreement between the parties determines that the tenant can pay for electricity on a monthly basis, where the respondents demands payment on a daily basis. The applicant states that his electricity on one day was approximately R25,000.
- [40] The applicant claims that he, as a tenant, needs protection against the lawlessness of the respondents as the lives of individuals are at stake,

on the basis that the respondents on 3 occasions have pumped sewerage water through the erf, despite warnings from Environmental Health Westrand. Water went up by 25% where lease agreement states 5% per annum.

[41] The applicant requests:

“In the event of my application being granted I request a full investigation into Meterman's illegal involvement and abuse of powers and want them reported for their illegal activities and self-enrichment. I request a full disclosure of the tariff increases of the top houses as to prove vindictiveness and illegal targeting of both my businesses.

...

I beg for justice served to put an end to this destruction they create in their path. I beg this Court to grant an immediate interdict against the relentless harassment from both the previous Directors and their accomplice, namely Meterman who clearly acts on the instructions of these serial lawbreaking individuals.

...

I ask this Honourable Court to bring justice to my application as to reinstate my businesses to what was bought in the first place. To honour ALL agreements and expenses (ELECTRICITY) in particular and return prosperity and peace to 2[...] B[...] Road Honingklip Krugersdorp.”

As it a matter of PUBLIC INTEREST and society needs protection against this unscrupulous unethical deliberate misconduct, I ask for immediate arrest warrants being issued as to protect the public against their deeds. As both will be considered a flight risk (even suicidal risk) all Passports needs revoking and as I feel unsafe and now a target of revenge, I request that ALL FIREARMS BE SEIZED that includes the Da Silvas as now they have nothing to

lose.”

- [42] This sets the tone for the applicant’s statements both in founding and in reply.

The respondents’ case

- [43] I have set out the details of the respondent’s case with the points raised *in limine*, as well as the answers to the allegations made by the applicant.

- [44] The respondents respond to most of the allegations made by the applicant, as follows: “... *they are confusing, speculative, completely fabricated and false.*”

- [45] It is argued on behalf of the respondents that any VAT that was levied, was not payable to the respondents, but reflected the VAT as charged by ESKOM, and payable to ESKOM. This was done separately, on the invoices provided to the applicant in respect of the utilities. The applicant requested proof that the VAT received by the respondents was paid over to SARS. The respondents argue, rightfully so, that they do not have to prove to the applicant that they have paid SARS. Should the applicant so wish, he may lay a complaint against the respondents at SARS.

- [46] The respondents have already instituted eviction proceedings as described herein above in order to enforce their rights as the lawful owners of the property.

- [47] The merits of this dispute is thus *sub judice* and is not for this Court to determine.

Analysis

- [48] This matter has been set down by the applicant on the urgent roll. The applicant must show that he will not otherwise be afforded substantial redress at a hearing in due course. See: *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F.
- [49] The applicant has, on more than one occasion, indicated that the conflict between him and the respondents commenced from November / December 2023. This does not support sufficient allegations to make the matter urgent.
- [50] The mere fact that the applicant desires urgent relief, does not make the matter urgent.
- [51] I therefore find that the matter is not urgent.

Relief sought

- [52] The applicant approaches this Court for relief that entails both interdictory relief (applicable in application proceedings) and monetary relief (applicable in action proceedings).
- [53] At the onset it has to be recorded that monetary relief, and specifically the relief sought by the applicant, is not to be brought on application proceedings. The correct procedure is that the applicant should issue summons and claim the monetary relief, as oral evidence needs to be lead and various versions must be tested under cross examination. The incorrect procedure is being used *in casu*. The applicant should make use of the action process (summons), and not the application process (motions).
- [54] The claim for monetary relief is not a liquidated amount and is disputed.

This is not something that can be determined on papers in an application but should be determined by the applicant instituting action proceedings with a summons and particulars of claim.

[55] The monetary claim of the application should be dismissed, in order to afford the applicant, the opportunity to use the correct procedure, namely action proceedings and issue summons.

[56] I summarise the points *in limine* individually:

56.1. *Lis alibi pendens*: There are proceedings pending in the Krugersdorp Magistrates Court that was instituted by the applicant against the respondents (for *inter alia* harassment) and there are proceedings pending in the Krugersdorp Magistrate Court instituted by the respondents against the applicant for recovery of alleged outstanding rental payments. The correct procedure would be that the applicant institute a counter-claim against the claim of rent, in order to claim for the monetary compensation as incorrectly claimed in this application. This point *in limine* is upheld.

56.2. No founding affidavit: Rule 6 sets out the detailed specifications of what is required to be contained in an application to be recognised as a proper application before court. One of the requirements is that the founding affidavit (and all the other affidavits) be made under oath. The applicant's founding and replying affidavit is not made under oath or confirmation. This results therein that the application is fatally defective. This point *in limine* is upheld.

56.3. Non-joinder: The applicant refers to entities that are not before this Court, such as his companies and the companies of the

respondents. These entities each have their own legal persona and should be cited separately before court. This was not done. This point *in limine* is also upheld.

[57] Having upheld the points *in limine*, this application stands to be dismissed.

[58] In relation to the merits of the application, the application that served before Yacoob J has not been disposed of, and the applicant is to set it down on the normal roll for hearing.

Costs

[59] The general principle is that the successful party is entitled to its costs. I find no reason to deviate from the general principle.

[60] The respondents request cost on a punitive scale. I do not agree, as the applicant is litigating in person and as set out in the judgment, many of the issues involve the application of legal principles. I am not of the opinion that the applicant was vexatious or *mala fide* in launching the application. It is clear that the relationship between the applicant and respondents have broken down and mainly involves

[61] In *Mashavha v Enaex Africa (Pty) Ltd* 2025 (1) SA 466 (GJ) it was said by Wilson J that:

“[15] It also seems to me that the rule implies that the power to reduce the scale on which counsel’s costs are awarded should be exercised sparingly, and only where a case for its exercise has been made out. A judge generally approaches a case on the assumption that it has been competently litigated, that counsel has done what is within their power to ensure substantial compliance with the applicable rules, and that argument and

evidence has taken as long as it needs to take. It is only where there has been a marked departure from these norms that a court should consider lowering the scale on which counsel's costs are awarded.

[16] Likewise, the default position set under the rule is that, in the absence of contrary indication, counsel's costs will be recovered on scale A. Scale A, it seems to me, is the appropriate scale on which to make an award unless the application of a higher scale has been justified by careful reference to clearly identified features of the case that mark it out as unusually complex, important or valuable. Run-of-the-mill cases, which must be the vast majority of cases in the High Court, should not attract an order on the B or C scales."

[62] In application of the principle set out by Wilson J in *Mashavha* above, the applicant should be ordered to pay the costs of the respondents on Scale A, party and party costs.

Order

In the result, I make the following order:

- (i) The application is dismissed.
- (ii) The applicant is to pay the costs of the application on Scale A, party and party.

**JUDGE OF THE HIGH COURT
GAUGENG DIVISION JOHANNESBURG**

DATE RESERVED: 14 OCTOBER 2025

DATE OF JUDGMENT: 18 NOVEMBER 2025

APPEARANCES:

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