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

CASE NO: 2025-226686

In the matter between:

UNATHI FARMING PROJECT 02 (PTY) LTD Applicant

and

CRAIG NEVEN FARM (PTY) LTD Respondent

ORDER

The following order is made:

1. A rule nisi is issued calling upon the respondent to show cause, if any, on 7 January 2026 at 09h30, or as soon thereafter as the matter may be heard, why an order should not be granted in the following terms:

1.1. That pending the final determination of the arbitration proceedings contemplated by clause 20 of the Sale of Farming Enterprise Agreement read with the Sale of Livestock Agreement:

1.1.1. The respondent is interdicted and restrained from concluding any contract for the alienation, by sale, lease or otherwise, of the farming enterprise, the immovable properties and livestock which form the subject matter of the agreements, and from mortgaging, encumbering or transferring the immovable properties, enterprise or livestock;

1.1.2. The respondent shall permit the applicant to graze the cows purchased by it on the property free of charge, as contemplated by the provisions of clause 8 of the Sale of Livestock Agreement.

1.2. The respondent shall pay the costs of this application on the basis of scale C.

2. The provisions of paragraph 1.1 hereof shall operate forthwith as an interim order.
3. The respondent is directed to deliver any answering affidavit by 17 December 2025 and the applicant any replying affidavit by 24 December 2025.
4. The respondent is directed to pay the applicant's costs incurred in respect of 26 November 2025 on the basis of scale C.

JUDGMENT

Delivered: 5 December 2025

MASIPA J

Introduction

[1] This is an urgent application in which the applicant seeks interim relief interdicting the respondent from alienating, transferring, encumbering, leasing, selling or in any manner dealing with the immovable properties and farming enterprise which form the subject of a Sale of Farming Enterprise Agreement and a Sale of Livestock Agreement concluded between the parties on 6 August 2025. The relief is sought pending the final determination of arbitration proceedings contemplated in clause 20 of the Sale of Farming Enterprise Agreement.

[2] The respondent opposes the application on two principal bases. First, it contends that the matter is not urgent and that any urgency is self-created. Second, it submits that the applicant has failed to satisfy the requirements for interim interdictory relief. The respondent further contends that the sale agreement has

lapsed due to the non-fulfilment of suspensive conditions and that no tacit terms can be imported into the written contract.

[3] When the matter initially served on the urgent roll on 26 November 2025, it was stood down for the exchange of heads of argument and was, by order of Radebe ADJP, enrolled as an opposed urgent application on 4 December 2025 on the issues of urgency and interim relief. The costs of 26 November 2025 were reserved.

Factual Background

[4] On 6 August 2025 the parties concluded a Sale of Farming Enterprise Agreement and a Sale of Livestock Agreement. In terms of these agreements the applicant became the purchaser of the respondent's farming enterprise, immovable properties and livestock. Clause 20 of the Sale of Farming Enterprise Agreement provides that any dispute arising between the parties in relation to their respective rights and obligations shall be decided by arbitration. The agreement contained a number of suspensive conditions, including a requirement that the applicant secure finance of not less than R60 million within 60 days of signature and that the respondent furnish due-diligence documentation within a stipulated period.

[5] On 22 October 2025 the respondent's attorneys addressed a letter to the applicant's then attorneys alleging that the agreement had lapsed due to the alleged non-fulfilment of the suspensive condition relating to finance and foreshadowed the possibility of a further sale to another party. On 23 October 2025 the applicant's then attorneys replied, recording that their client was of the view that the agreement remained alive, that a dispute had arisen regarding the alleged lapse, and that it would be unethical for them to continue acting in the light of that dispute.

[6] After the change of attorneys, on 4 November 2025 the applicant's new attorneys addressed a detailed letter disputing the alleged lapse, contending that the respondent's failure to furnish due-diligence documents had prevented the applicant from securing finance, and identifying tacit terms which they contended were to be read into the agreement. On 5 November 2025 the respondent's attorneys replied,

reiterating their client's stance that the agreement had lapsed, relying in part on a letter from Standard Bank, and expressly reserving their client's rights. A further email on the same day addressed the cattle and asserted that the applicant's grazing rights had terminated because the sale had lapsed.

[7] The applicant thereafter requested an undertaking that the respondent would not alienate the property pending the determination of the dispute by arbitration. No such undertaking was furnished. On 19 November 2025 the respondent for the first time disclosed that it had concluded a sale of the properties with a third party on 22 October 2025. The respondent refused to disclose the identity of the purchaser or to provide a copy of the sale agreement.

[8] It is common cause that Standard Bank has instituted foreclosure proceedings against the respondent and that a settlement agreement was concluded in terms of which the bank's consent to the sale and the application of the sale proceeds form part of a restructuring of the respondent's indebtedness. The precise extent of the respondent's liabilities and equity position is in dispute.

Issues for Determination

[9] The following issue arises:

(a) Whether the matter is urgent.

(b) Whether the applicant has established the requirements for interim interdictory relief pending arbitration.

Submissions

[10] In addition to the written affidavits and heads of argument, both parties presented oral submissions. On the first occasion, 26 November 2025, the matter came before me on the urgent roll. At the request of the applicant, and after hearing both parties, the matter was adjourned for the filing of heads of argument and argument was scheduled, in terms of a directive of Radebe ADJP, for 4 December 2025. Costs of 26 November 2025 were reserved.

[11] Mr Hollis, who appeared for the applicant, submitted that two issues were to be decided, namely urgency and the grant of interim relief. He emphasised that the matter concerned "two sales of the same farming enterprise", and that the applicant was not merely a potential purchaser but the *first* purchaser of the property. He referred to clause 20 of the Sale of Farming Enterprise Agreement, which requires disputes between the parties to be referred to arbitration to be finalised, if possible, within 60 business days. He pointed to the suspensive condition that the purchaser obtain finance from Land Bank or another recognised financial institution, and submitted that while the respondent contended that the sale had lapsed for non-fulfilment of that condition, the applicant's case was that it had been unable to obtain finance because the respondent had failed to provide the due-diligence documentation within 30 days of signature as contemplated in the agreement.

[12] Mr Hollis submitted that clause 15 of the agreement contemplated extensions, and that in the 4 November 2025 letter the applicant's attorneys had effectively put the respondent on terms to provide the due-diligence documentation. He argued that in the initial letter of 22 October 2025 the respondent relied only on non-fulfilment of the finance condition, but that in subsequent correspondence the issue of Standard Bank's consent was raised. He took the court through the chronology: the change of attorneys between 24 October and 4 November 2025, the request for an undertaking on 11 November 2025 that no sale would proceed until after arbitration, the respondent's refusal on 12 November 2025, and the applicant's discovery on 19 November 2025 that a second sale had in fact been concluded on 22 October 2025. He noted that on 20 November 2025 the respondent for the first time raised the appointment of an arbitrator and, by agreeing to the proposed name, implicitly acknowledged the existence of a dispute to be resolved by arbitration. On 21 November 2025 the applicant provided the respondent with an unissued draft notice of motion, in an attempt to avoid litigation. The papers were then issued and enrolled for 26 November 2025.

[13] On urgency, Mr Hollis argued that the applicant had taken all reasonable steps to avoid litigation and only approached court after learning that the farm had already been sold and after its requests for an undertaking had been rebuffed. The delay between 22 October and 19 November 2025 was attributable to the

respondent's failure to disclose the second sale and to the change of attorneys. He pointed to the looming final payment date under the Standard Bank settlement agreement and submitted that the settlement would fall away by 1 February 2026 if the sale did not proceed, thereby reinforcing the need for urgent relief to preserve the subject matter and enable an expedited arbitration. He argued that any urgency could have been avoided had the respondent provided the requested undertaking.

[14] Mr Hollis also addressed the respondent's complaint about the form of the notice of motion. He submitted that in urgent applications the practice in this division has been to use Form 2 (the "short form") and that there was no prejudice to the respondent, which had filed answering papers and heads. On the merits, he submitted that the applicant's prima facie right arises from its status as purchaser of the farming enterprise and livestock as a going concern, and that this right is underpinned by the tacit term articulated in the letter of 4 November 2025 concerning the provision of due-diligence documentation and the consequent extension of the period for securing finance. He emphasised that the respondent's failure to provide the due-diligence documentation, and its later reliance on valuations not previously requested, demonstrated the existence of a real dispute fit for arbitration. As to irreparable harm, he argued that there was no explanation why the respondent took 28 days to inform the applicant of the second sale, and that transfer to the third-party purchaser would render the applicant's right to specific performance illusory.

[15] On the balance of convenience, he stressed the agreed arbitral procedure, the applicant's earlier sale and the absence of any clear evidence that the respondent would suffer uncompensable prejudice if an interim interdict were granted. As to alternative remedies, he submitted that the respondent's reliance on a damages claim was speculative in the absence of financial statements, particularly in light of the foreclosure proceedings and the absence of proof of equity. The applicant, he said, was in any event entitled to specific performance.

[16] Mr Pillay, for the respondent, submitted that the issue of urgency had to be dealt with at the threshold. He took point with the use of Form 2 rather than Form 2A and referred to the judgment of Steyn J in *Rockwil Civils (Pty) Ltd and Others v Le*

Sueur NO[1], where the learned judge, relying on *Caledon Street Restaurants CC v D'Aviera*[2], stressed that the provisions of Rule 6(5) are peremptory and that an applicant is required to frame its notice of motion as near as may be to Form 2A. He argued that, even in urgent applications, due regard must be had to the audi principle and to the time periods prescribed by Rule 6(5), and that on the face of the initial notice of motion no provision had been made for the filing of an answering affidavit. He submitted that, on the reasoning in *Caledon* and *Rockwil Civils*, the matter ought to be struck from the roll.

[17] Mr Pillay further relied on *Square Root Logistics (Pty) Ltd v Commissioner for SARS*[3], submitting that the certificate of urgency in this matter was defective and that the applicant had not calculated the timelines with due regard to the respondent's rights. He argued that the applicant had been aware, by 23 October 2025, of the respondent's contention that the agreement had lapsed and of its intention to sell to a third party yet did nothing until the end of November 2025. On his argument, the urgency was self-created. He also drew attention to the fact that the sale sought to be interdicted had already been concluded on 22 October 2025.

[18] In relation to the prima facie right, Mr Pillay submitted that tacit terms are rarely imputed and only where necessary to give business efficacy to a contract. He referred to the entire-agreement clause in clause 21.2 of the sale agreement and to *First National Bank of SA Ltd v Transvaal Rugby Union and Another*[4] and *Adhu Investments CC and Others v Padayachee*[5], for the proposition that where the parties have recorded a comprehensive written agreement leaving little room for supplementation, a court may not impute tacit terms and "make a contract for the parties". He submitted that there was no evidential foundation for the tacit term contended for, and that the issue of Land Bank finance in any event presupposed a further addendum to the agreement, which itself suggested that there was no enforceable sale agreement capable of specific performance.

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[1] *Rockwil Civils (Pty) Ltd and Others v Le Sueur NO* (Rockwil Civils) [2020] ZAKZDHC 35.
[2] *Caledon Street Restaurants CC v D'Aviera (Caledon)* [1998] JOL 1832 (SE).
[3] *Square Root Logistics (Pty) Ltd v Commissioner for SARS (Square Root)* [2022] ZAKZDHC 11.
[4] *First National Bank of SA Ltd v Transvaal Rugby Union and Another* 1997 (3) SA 851 (W) at 864J–865A.
[5] *Adhu Investments CC and Others v Padayachee* [2019] ZASCA 63.

[19] On the remaining requirements for interim relief, Mr Pillay argued that a damages claim constituted an adequate alternative remedy and that the evidence suggested substantial equity in the property, particularly if the second sale proceeded. He relied on *Hix Networking Technologies v System Publishers (Pty) Ltd and Another*[6] and on *Cyclone Technologies (Pty) Ltd and Another v Eskom Holdings Ltd* [7] to submit that it is a common "rider" in this division, where an interim interdict is granted, for the applicant to tender an undertaking to compensate the respondent for proven loss if the interdict is later found to have been wrongly granted; no such undertaking had been tendered here. In any event, he contended, the applicant had not demonstrated that it was a trading entity with sufficient resources to meet such a claim and might be no more than a shell company. He submitted that for a number of reasons the defective notice, the delay, the alleged lack of a prima facie right, the existence of alternative remedies and the absence of a tender the matter should either be struck from the roll for lack of urgency or dismissed, and that punitive costs on the attorney-and-client scale (including the costs of 26 November 2025) should be awarded.

[20] In reply, Mr Hollis reiterated that the respondent had never explained why it took from 22 October to 19 November 2025 to inform the applicant that the property had in fact been sold, and contended that had that been disclosed promptly, the applicant would have approached the court within days. He submitted that the setting down of the matter for 26 November 2025 was intended to secure a timetable for the exchange of affidavits and was not an attempt to have the matter heard as an opposed motion on that date; any infelicities in the notice of motion did not detract from the genuine urgency.

[21] On the prima facie right, he maintained that there was on the applicant's version a breach of the obligation to provide due-diligence documentation, that this was not foreseen by the parties and that it was in those circumstances that a tacit term could be imputed an issue properly for the arbitrator. He stressed the respondent's failure to honour the arbitration clause, the payment by the applicant of

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[6] *Hix Networking Technologies v System Publishers (Pty) Ltd and Another (Hix Networking)*1997 (1) SA 391 (A).
[7] *Cyclone Technologies (Pty) Ltd and Another v Eskom Holdings Ltd* [2009] ZAKZDHC 79.

more than R1,4 million towards the transaction, and the need for preservatory relief to avoid rendering the arbitral process nugatory. He disputed that a tender to pay damages was a precondition to interim relief and emphasised that the applicant sought an interdict essentially in the form of the draft order to preserve the status quo pending the determination of the dispute.

Urgency

[22] The respondent's central submission is that the applicant was advised as early as 22 October 2025 that the respondent regarded the agreement as lapsed and intended selling to a third party. It is contended that any urgency is self-created and that the applicant delayed for several weeks before approaching court. This argument fails to distinguish between two materially different facts: a threatened future sale and the existence of a concluded sale. While the respondent indeed foreshadowed the possibility of another sale on 22 October 2025, it concealed the fact that a binding sale had already been concluded on that very day.

[23] The applicant became aware of the completed third-party sale only on 19 November 2025. Until that date the dispute concerned whether the suspensive conditions had been met and whether the agreement had lapsed matters which both parties accepted were to be determined by arbitration. During the period 11 to 18 November 2025 the applicant made sustained attempts to avoid litigation by securing an undertaking that the respondent would preserve the status quo pending arbitration. Those efforts were rebuffed. The urgent application was launched within three days of the applicant learning of the concluded sale. That explains the timing and demonstrates reasonable promptness.

[24] The test is not whether a specific act of transfer was scheduled for 26 November 2025, but whether the applicant would be afforded substantial redress in due course if it were required to follow ordinary time periods. The risk of imminent transfer to an undisclosed third party is self-evidently destructive of the subject matter of the arbitration.

[25] The respondent relied strongly on *Square Root*[8], where the Court cautioned that "a certificate of urgency cuts through the normal waiting period for applications and must be thoughtfully and appropriately calculated", and further held that "*urgency must not be resorted to merely because it is convenient; Rule 6(12) is not a mechanism for parties to jump the queue*". While that caution is fully endorsed, the present matter does not fall within the mischief addressed in *Square Root Logistics*. Here, urgency did not arise from tactical convenience or dilatory conduct but from the belated disclosure of a concluded sale after repeated refusals to give any preservation undertaking.

[26] The balancing authority is *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others*[9], where it was held that urgency exists only where "*the applicant cannot obtain substantial redress in due course*" and that "*self-created urgency is not a basis for invoking Rule 6(12)*". Once the existence of the concluded third-party sale became known, the threat to the subject matter of arbitration was immediate, concrete and irreversible. This matter therefore falls squarely within the legitimate protective scope of Rule 6(12) contemplated in *East Rock Trading*, and not the abuse cautioned against in *Square Root Logistics*. I am satisfied that the urgency was not self-created and that substantial redress cannot be obtained in due course. The matter was properly enrolled as urgent.

[27] The respondent further sought punitive costs on the basis of an alleged abuse of Rule 6(12). Punitive costs are reserved for clear cases of bad faith, recklessness or deliberate manipulation of process. The applicant attempted to resolve the dispute through arbitration, sought undertakings, and acted within three days of learning of the completed sale. It cannot be said that the urgent procedure was abused. On the contrary, the respondent's concealment of the concluded third-party sale materially generated the emergency.

[28] The respondent further took technical issue with the applicant's use of Form 2 instead of Form 2A in the notice of motion, relying on *Rockwil Civils*[10] and *Caledon*[11].

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[8] Fn 3 above.
[9] *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196.
[10] Fn 1 above.

It was argued that even in urgent applications Rule 6(5) remains peremptory and that the matter ought to be struck from the roll for non-compliance therewith. In my view, that objection was overtaken by events in this matter. When the matter was called on 26 November 2025, all affidavits had already been filed. The respondent did not indicate that it was prejudiced by the form used, did **not** seek to supplement its answering affidavit, and did not reserve any rights to do so. The parties thereafter proceeded to file full heads of argument and the matter was argued comprehensively. As correctly submitted by Mr Hollis, no prejudice whatsoever was suffered by the respondent as a result of the use of Form 2 instead of Form 2A. The *audi alteram partem* principle was fully observed. The objection based on form is therefore without merit.

Interim interdictory relief

[29] The requisites for an interim interdict are a prima facie right, though open to some doubt; a reasonable apprehension of irreparable harm; a balance of convenience in favour of the applicant; and the absence of any other satisfactory remedy. Where the facts disclose disputes and denials, the court applies the approach formulated in *Webster v Mitchell*[12], namely whether, on those facts which are not seriously disputed, together with the inherent probabilities, the applicant has shown a prima facie right. Greenberg J explained that the Court must ask "*whether, on the affidavits as a whole, the applicant should on the facts obtain final relief at trial*".

Prima Facie Right

[30] The applicant relies on its contractual rights arising from the Sale of Farming Enterprise Agreement and the arbitration clause contained therein. It does not, at this stage, seek final enforcement of the sale. What it seeks is preservation of the subject matter pending arbitration. The respondent contends that the agreement has lapsed because the applicant failed to secure finance within 60 days and because Standard Bank did not furnish timeous consent. It further relies on the entire-agreement clause to exclude any tacit terms.

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[11] Fn 2 above.

[12] *Webster v Mitchell* 1948 (1) SA 1186 (WLD).

[31] The applicant's case is that the respondent failed to furnish due-diligence documentation timeously, thereby frustrating the applicant's ability to secure finance. It further contends that tacit extensions and waivers arose from the parties' conduct after 6 October 2025. These disputes go directly to the merits of whether the agreement lapsed. They cannot be finally determined on motion. They are precisely the disputes the parties agreed to refer to arbitration. The applicant has at least a prima facie right to insist that the arbitral process not be rendered nugatory by the alienation of the property beforehand. That suffices at the interim stage.

Reasonable Apprehension of Irreparable Harm

[32] The respondent disclosed only on 19 November 2025 that it had already sold the property to a third party some twenty-eight days earlier. There is currently no legal impediment preventing the registration of transfer in favour of that third party. If transfer occurs, the arbitration proceedings contemplated by clause 20 will be deprived of their primary subject matter. An award for transfer in favour of the applicant would be incapable of implementation.

[33] The respondent submits that damages would be an adequate remedy because there is substantial equity in the property. That assertion is not supported by any independent financial evidence. The applicant, on the other hand, points to the foreclosure proceedings instituted by Standard Bank and the absence of any disclosed financial statements. Immovable property and a going farming enterprise constitute unique property. Monetary compensation is not an equivalent substitute. The apprehension of irreparable harm is real and well-founded.

Balance of Convenience

[34] The applicant's contract predates the clandestine sale to the third party. If the interdict is refused and the applicant ultimately succeeds in arbitration, its victory will be hollow. The respondent faces financial pressure arising from Standard Bank's foreclosure, but that is a risk inherent in its own commercial affairs. The prejudice suffered by the respondent is financial and remediable in damages should the interdict later prove unwarranted.

[35] The respondent also concealed the existence of the third-party sale for almost a month and repeatedly refused undertakings. That conduct weighs heavily against it in the equitable assessment of convenience. In *Hix Networking*[13] the Supreme Court of Appeal held that "*a respondent's refusal to give an undertaking may itself tilt the balance of convenience in favour of an applicant*". That principle finds direct application here. The balance of convenience accordingly favours the granting of interim relief.

No Other Satisfactory Remedy

[36] The respondent contends that a damages claim constitutes a satisfactory alternative remedy. This submission is unsustainable on these facts. The respondent's financial position is opaque. There are existing foreclosure proceedings. No audited financial statements have been produced. A damages claim is therefore speculative and potentially unenforceable.

[37] In *UDC Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd and Another*[14], the Court held that damages are not adequate where "*the harm is not easily quantifiable, or the financial position of the respondent renders such damages illusory*". Those considerations apply directly in this matter. The arbitration process itself does not afford the applicant any coercive mechanism to preserve the status quo. Only this court can do so. There is accordingly no satisfactory alternative remedy.

[38] The applicant has established urgency, a prima facie right, a reasonable apprehension of irreparable harm, a balance of convenience in its favour, and the absence of any other satisfactory remedy. The purpose of the relief sought is purely preservatory. It does not finally determine the parties' rights under the sale agreement. Those rights remain to be determined by the agreed arbitration process.

Order

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[13] Fn 6 above.

[14] *UDC Bank Ltd v Seacat Leasing and Finance Co (Pty) Ltd and Another* 1979 (4) SA 682 (T) at 696.

[39] The following order is granted:

1. A rule nisi is issued calling upon the respondent to show cause, if any, on 7 January 2026 at 09h30, or as soon thereafter as the matter may be heard, why an order should not be granted in the following terms:

   1.1. That pending the final determination of the arbitration proceedings contemplated by clause 20 of the Sale of Farming Enterprise Agreement read with the Sale of Livestock Agreement:

   1.1.1. The respondent is interdicted and restrained from concluding any contract for the alienation, by sale, lease or otherwise, of the farming enterprise, the immovable properties and livestock which form the subject matter of the agreements, and from mortgaging, encumbering or transferring the immovable properties, enterprise or livestock;

   1.1.2. The respondent shall permit the applicant to graze the cows purchased by it on the property free of charge, as contemplated by the provisions of clause 8 of the Sale of Livestock Agreement.

   1.2. The respondent shall pay the costs of this application on the basis of scale C.

2. The provisions of paragraph 1.1 hereof shall operate forthwith as an interim order.

3. The respondent is directed to deliver any answering affidavit by 17 December 2025 and the applicant any replying affidavit by 24 December 2025.

4. The respondent is directed to pay the applicant's costs incurred in respect of 26 November 2025 on the basis of scale C.

MASIPA J

APPEARANCE DETAILS:

For the applicant:	Mr Hollis SC
Instructed by:	Strauss Daly, Umhlanga
For the respondent	Mr I Pillay
Instructed by:	Hay & Scott Attorneys, Pietermaritzburg
Matter heard on:	4 December 2025
Judgment delivered on:	5 December 2025.