

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Not Reportable

Case no: 2025-203676

In the matter between:

**THE MEC FOR THE DEPARTMENT OF TRANSPORT,
SAFETY AND LIAISON**

Applicant

and

OCEAN ECHO PROPERTIES (PTY) LTD

Respondent

Neutral citation: *MEC for the Department of Transport, Safety and Liaison v Ocean Echo Properties (Pty) Ltd* (Case no 203676/2025) 12 December 2025.

Coram: MAMOSEBO J.

Heard: 07 November 2025.

Delivered: 12 December 2025.

Summary: Urgent application – Applicant seeks immediate access to Respondent’s office building to retrieve documents for completion of audited financial statements – Section 40(1)(c) of the Public Finance Management Act 1 of 1999 – Respondent claims abuse of court process as matter is *lis pendens* – Relief sought *in casu* is narrower and not dispositive of the pending application – Immediate access for retrieval of documents granted.

ORDER

In the result, the following order is made:

1. The application is urgent, and the ordinary forms and service provided for in the Uniform Rules of Court are dispensed with.
 2. The respondent's late filing of the answering affidavit is hereby condoned.
 3. The respondent, Ocean Echo Properties (Pty) Ltd, is directed to provide the applicant, the MEC for the Department of Transport, Safety and Liaison, with immediate and full access to the building/offices at the corner of Sydney and Lennox Streets, Kimberley, for the recovery of documents.
 4. The respondent is ordered to pay the costs of this application on the scale as between party and party.
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JUDGMENT

Mamosebo J

- [1] This is an opposed application brought on an urgent basis. The applicant seeks an order directing the respondent to provide him with full access to its offices situated at the corner of Sydney and Lennox Streets, Kimberley, Northern Cape, in order to retrieve essential documents needed for the completion of mandatory annual financial statements. The applicant also sought further ancillary relief.
- [2] The applicant is the Member of the Executive Council for the Department of Transport, Safety and Liaison ("the MEC"), and the respondent is Ocean Echo Properties (Pty) Ltd, a limited liability company registered in accordance with the laws of the country.

- [3] Paragraph 27.2 of the respondent's answering affidavit expressly denies being a company but a close corporation, further intimating that the application is a nullity as the applicant has cited a non-existent party. It further suggested that the applicant should withdraw the application and tender costs on a punitive scale. There is an indication in the answering affidavit that this aspect would be argued at the hearing of the matter. In his reply, the MEC is silent in this regard and did not invoke Rule 28 of the Uniform Rules of Court or seek leave to file a supplementary affidavit, to correct the citation of the parties. Notwithstanding, the respondent did not raise this issue at the hearing. What is inexplicable and common cause is that the parties are cited in the same manner in Case number 1155/2025 which was postponed to 29 January 2027 to the opposed roll. I afforded the parties an opportunity to file supplementary heads dealing with this aspect. The respondent, relying on *Friends of the Sick Association v Commercial Properties (Pty) Ltd and Another*¹; *Devonia Shipping Ltd v MV Luis (Yeoman Shipping Co Ltd Intervening)*²; and *Van Heerden v Du Plessis*³, persisted with the argument of the incorrect citation being a fatal error and hence a nullity since "*Ocean Echo Properties (Pty) Limited*" lacks legal personality. The applicant, relying on both local and foreign jurisdiction cases⁴, maintained that this Court, in the absence of any prejudice, should entertain the matter as the citation was a mere misdescription which can still be amended.
- [4] Ocean Echo Properties (Pty) Ltd and Ocean Echo Properties 333 CC with registration number 2007/245380/23 have the same registered business address; 1[...] T[...] Street, Kimberley. The application was served on it. The respondent contented itself with the application and argued the matter fully despite recognising the error in its description. The applicant is not obliged to cross the evidentiary hurdle in respect of the lease agreement at this stage

¹ 1996 (4) SA 154 (D & CLD).

² 1994 (2) SA 363 (C) at 369J – 370A.

³ 1969 (3) SA 298 (O) at 304A – G.

⁴ *Consolidated Transport Rigging and Logistics (Pty) Ltd v Concord Cranes (Pty) Ltd* (34646/20) [2023] ZAGPPHC 1984 (12 December 2023); *Kaiso Nguwo v Maria Peno* HC 1220/16; *Mapondera v Fred Rebecca Goldmine Holdings Limited* SC 565/19; *Chambi and Others v Registrar General Cause 21 of 2020*; *Essence Lading CC v Infiniti Insurance Ltd and Another* 2024 (2) SA 407 (GJ); [2023] 3 All SA 410 (GJ); [2023] JOL 59420 (GJ); *Four Tower Investments (Pty) Ltd v Andre's Motors* 2005 (3) SA 39 (NPD).

as the merits will be argued in January 2027. The respondent did not take the preliminary point for this Court to consider as dispositive of the matter. In my view, an incorrect citation is a curable misdescription and not a fatal flaw, particularly where the question of prejudice to the respondent does not arise.⁵

Background and submissions

[5] On 20 June 2025, the applicant had brought an application under Case number 1155/2025 seeking the following relief:

- '1. That the locking of the building situated at Corner Phakamile Mabija and Lennox Streets, Kimberley (also known as the "Ocean Echo Building") by the Respondent, be declared unlawful.
2. That a Mandament van Spolie be granted against the Respondent as a consequence of the unlawful dispossession/deprivation of the property situated at Corner Phakamile Mabija and Lennox Streets, Kimberley (also known as the "Ocean Echo Building") that was taken from the Applicant and that the Applicant's peaceful and undisturbed possession of the property that was unlawfully taken from them, be restored.
3. Directing and ordering the Respondent to forthwith return and restore peaceful and undisturbed possession of the property situated at Corner Phakamile Mabija and Lennox Streets, Kimberley (also known as the "Ocean Echo Building").
4. That the Respondent to pay the costs of this application on Scale C, regardless of whether the application is opposed or not.' (Sic.)

The spoliation application was postponed to the opposed roll for 29 January 2027. The applicant maintains that the application *in casu* is addressing a limited aspect which is not dispositive of the pending matter.

[6] A brief factual background is necessary. The applicant and the respondent had concluded a lease agreement in terms of which the applicant's

⁵ See *Foxlake Investments (Pty) Limited trading as Foxway Developments (Pty) Limited v Ultimate Raft Foundation Design Solutions CC trading as Ultimate Raft Design and another* [2016] JOL 35631 (SCA) para 14.

Department was housed at the respondent's building. During the period of the lease, the building posed structural and ventilation issues which the applicant raised with the respondent. The Department of Employment and Labour issued two prohibition notices in respect of the same building on 26 November 2024, barring further occupation until the building is declared safe. The applicant's Department left its office equipment, documents and furniture in its reaction to the prohibition notices. According to the applicant, the long-term lease between the parties had lapsed, and they had been occupying the building on a month-to-month basis. The respondent, however, disputes the alleged lapse of the long-term lease and avers that it was automatically renewed in accordance with the relevant clauses of the agreement. There is a separate court order for the applicant to pay the rent directly to Nedbank Limited.

[7] Whilst awaiting the spoliation application to be heard in 2027, the applicant brought this application to be granted immediate access to the building where the Department's employees were housed before vacating the building in response to the prohibition notices. The access sought is said to be for the retrieval of the necessary documents that will enable the Department to comply with its mandatory requirements of filing audited annual financial statements to the Northern Cape Provincial Treasury, from whom a letter was received on 24 October 2025 under the signature of Ms GL Bosvark, Provincial Accountant General, Northern Cape Provincial Treasury. The abovementioned letter addresses serious concerns on the non-submission of the Department's annual financial statements as required by s 40(1)(c)(ii) of the Public Finance Management Act⁶ ("the PFMA").

[8] According to the letter from Treasury, the year ended on 31 March 2025. Paragraph 3 of the letter reads:

'The non-submission has a direct and adverse impact on the ability of Provincial Treasury to fulfil its statutory obligations, particularly, the preparation and submission of the consolidated provincial annual financial statement for auditing

⁶ 1 of 1999.

purposes and ensure timely tabling before the Provincial Legislature as required by section 19 of the PFMA. The obligation is contingent upon timely submission of audit financial statements from all departments and public entities.’

- [9] In its answering affidavit, filed out of time as per the filing schedule set by the applicant, the deponent, Ms Glynis Millicent Aysen, a member of the respondent, first sought condonation for the late filing of the answering affidavit. She refutes the urgency of the application and claims that the perceived urgency is self-created. Further that the matter is *lis pendens* and the applicant is abusing the court process. She urged the Court to strike the matter from the roll with costs due to lack of urgency.

Analysis

- [10] I deal first with urgency. The applicant must persuade the court, in terms of Rule 6(12), of the urgency of this application. The following conclusion is drawn by Van Loggenberg in *Erasmus*⁷ pertaining to urgent applications:

‘In other words, urgency (except where a statute provides for inherent urgency) is determined not by the nature of the claim brought, but by the circumstances in which the applicant seeks its adjudication. ... [I]t is peremptory that an applicant set out explicitly the circumstances on which he relies to render the matter urgent and the reason why he claims that he cannot be afforded substantial relief at a hearing in due course.’

- [11] Clearly, the prohibition notices had to be complied with. In vacating the premises, the applicant left essentially everything behind. This Court is not concerning itself with substantive issues to be ventilated by the parties on 29 January 2027. However, I am of the view that the respondent’s opposition ignores the real issue on the face of the letter from the Provincial Treasury to enable the Province to fulfil its mandatory obligations. This is justifiable and falls squarely within the purview of Rule 6(12) as there will not be substantial redress in due course. Having regard to the substantial value of the rights being infringed upon by the mere withholding of the essential documents, I

⁷ Erasmus: Superior Court Practice, 2ed, Volume 2 at RS 25, 2024, D1 Rule 6- 52.

am of a firm view that it was necessary for the matter to be heard as one of urgency.

- [12] Moving onto the respondent's application for condonation of the late filing of its answering affidavit, in *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk*⁸, this salutary explanation appears in the headnote:

'The effect of Rule of Court 6(12), analysed. Because Rule of Court 6(12) envisages that a respondent, in the case of urgent application on notice to the respondent, ***is entitled to act if he wishes to oppose the application in terms of the rules which the applicant has made applicable*** in the case of an extraordinary adjudication, the respondent is entitled to rely upon the process of extraordinary adjudication in the event of the applicant, at a late stage, deciding not to proceed with the application and he is entitled on notice of motion and by affidavit to place before Court the papers, if any, and the facts of the incompleted extraordinary process of adjudication and to apply for an order of costs.' (Own emphasis added.)

- [13] The respondent ought to have accepted the applicant's timelines and filed as proposed. However, the answering affidavit was filed after the applicant had already filed heads of argument, and two days out of time. Despite the late filing of the answering affidavit, I find, in my discretion, that two days is not inordinate and there will be no prejudice in accepting the answering affidavit. The late filing of the answering affidavit is accordingly condoned.

- [14] I now deal with the merits of this application. As already stated above, the fact that the Department left essentially everything behind is understandable in light of the prohibition notices. It also bears repeating that, at this stage, this Court is not concerning itself with the determination of the dispute concerning the respective rights of the parties. However, the importance of the Department's compliance with its statutory obligations in terms of the PFMA cannot be overstated. Section 40 of the PFMA provides:

⁸ 1972 (1) SA 773 (A).

'Accounting officers' reporting responsibilities

- (1) The accounting officer for a department, trading entity or constitutional institution –
- ...
- (c) must submit those financial statements within two months after the end of the financial year to –
- ...
- (ii) the relevant treasury to enable that treasury to prepare consolidated financial statements in terms of section 8 or 19.'

[15] The respondent's withholding of the sought documents stands between the Department and its compliance obligations in terms of the abovementioned provisions of the PFMA. The respondent's opposition of this application ignores, and even seems to downplay, the Department's compliance obligations notwithstanding the letter from the Provincial Treasury seeking the Department's compliance. Having regard to the need for the Department to comply with the PFMA, and the wider implications of the withholding of the said documents on the provincial treasury's responsibilities, I am of a firm view that the applicant must be provided with immediate access to the respondent's building to fetch the necessary documents. Needless to say that any harm on the respondent's rights which await determination in the pending spoliation application may be ameliorated upon finalisation of that application. Importantly, the same cannot be said for the applicant and the broader functioning of the system within which the Department operates.

[16] In relation to costs, the enunciation by Smallberger JA in *Intercontinental Exports (Pty) Ltd v Fowles*⁹ bears repeating:

'The basic rule is that, statutory limitations apart, all costs awards are in the discretion of the court (*Kruger Bros & Wasserman v Ruskin* 1918 AD 63 at 69, a decision which has consistently been followed). The court's discretion is a wide, unfettered and equitable one. It is a facet of the court's control over the proceedings before it. It is to be exercised judicially with due regard to all relevant considerations. These would include the nature of the litigation being conducted before it and the conduct of the parties (or their representatives).'

⁹ 1999 (2) SA 1045 (SCA) para 25.

[17] The respondent's opposition to the application is regrettable and unnecessary. The application for access to the building just to retrieve documents for purposes of the audited financial statements has nothing to do with the pending substantive issues which will still be argued before Court. The applicant was obliged to approach court for relief. There is no reason why costs should not follow the result.

[18] In the result, the following order is made:

1. The application is urgent, and the ordinary forms and service provided for in the Uniform Rules of Court are dispensed with.
2. The respondent's late filing of the answering affidavit is hereby condoned.
3. The respondent, Ocean Echo Properties (Pty) Ltd, is directed to provide the applicant, the MEC for the Department of Transport, Safety and Liaison, with immediate and full access to the building/offices at the corner of Sydney and Lennox Streets, Kimberley, for the recovery of documents.
4. The respondent is ordered to pay the costs of this application on the scale as between party and party.

MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:
On instructions of:

Adv. M Rasivhetshela
Office of the State Attorney
Kimberley

For the Respondent:
On instructions of:

Adv. J Harmse
Makhuni Inc Attorneys