



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case no:2025-140896

In the matter between:

**FEED CHAIN INDUSTRIES
CHRISTIAAN ARNOLDUS KURTZ
C QUIPTECH (PTY) LTD
CGC INDUSTRIES (PTY) LTD
CARL WILLIAM RICHTER
and
TECHNICAL SYSTEMS (PTY)LTD**

**FIRST APPLICANT
SECOND APPLICANT
THIRD APPLICANT
FOURTH APPLICANT
FIFTH APPLICANT

RESPONDENT**

Coram: BHOOPCHAND AJ

Heard: 5 December 2025,

Further submissions received: 12 December 2025

Bundle of documents received: 19 January 2026

Delivered: 23 January 2026

Summary: Urgent application usually struck from roll for lack of urgency. Where Applicants attempt to relitigate urgency, it is within the inherent jurisdiction of the Court to dismiss the application where the requirements for

urgency are not met and the application is an abuse of its process. A contempt application cannot be construed as a gatekeeping mechanism to bar the enrolment of a Rule 45A application.

ORDER

- 1 The urgent application to suspend the order of this Court under case number 7235/2017 pending the finalisation of the appeal process under case number A131/2025 is **dismissed** as an abuse of process.
 - 2 The Applicants in the suspension application, including the post-hearing notes are ordered to pay the Respondent's costs on the attorney-and-client scale, including the costs of two counsel where so employed.
 - 3 No further urgent application based on the same facts will be entertained by this Court absent a demonstrable and material change in the Applicants' circumstances.
 - 4 The urgent counterapplication brought by the Respondent to hold the Applicants in contempt of the order under case number 7235/2017 is struck from the roll with costs.
-

JUDGMENT

Bhoopchand AJ:

[1] The Applicants and the Respondents are engaged in poultry feed chain manufacture and sales. The Applicants ran a production line for the manufacture

of a Mc Auley type feed chain and a separate line manufacturing the Roxell type of feed chain. The five Applicants shall collectively be referred to as Feed Chain Industries ('FCI'). The Second Applicant (Kurtz) manages the companies, and the Fifth Applicant (Richter) is the financier. This application concerns the Applicants' third attempt to obtain urgent relief. They initially sought an urgent suspension of execution of the order granted on 29 July 2024 ('order of the trial court') and then an urgent suspension of the operation and execution of the order of the trial court ('the first suspension application'). The first two urgent applications were struck from the roll for lack of urgency, the latter being on 25 November 2025. The present application ('the second suspension application') was instituted on 2 December 2025 and heard before this Court on 5 December 2025. The parties were granted leave to provide further submissions on whether the Applicants, pursuant to a submission made on their behalf, were obliged to first satisfy the requirements of urgency in an application for a stay of execution of the order of the trial court under rule 6(12) if an application was allegedly brought under Rule 6(11) of the uniform rules of Court (URC).¹

[2] The facts informing all three urgent applications are materially identical. The Applicants contended that the execution of the order of the trial court had rendered them incapable of manufacturing chicken feed chain and that their commercial survival, as well as the livelihoods of their employees, is at risk. They attributed their failure to prosecute their appeal timeously to the ignorance of their attorney and the unavailability of counsel.

[3] The Respondent opposes the application and contends that the matter is not urgent. The Respondent contends further that the Applicants are engaged in

¹ The Applicants argued that they did not need to satisfy the requirements of urgency as their application was an interlocutory one and Rule 6(11) applied despite them devoting a whole affidavit to why their application was urgent.

serial relitigating, and that the present application constitutes an abuse of this Court's process.

BACKGROUND

[4] Following a protracted trial, judgment was granted against the Applicants on 29 July 2024. They were ordered, among others, to surrender documents and components of their feed chain manufacturing process to the Respondent. The Applicants noted an appeal, which suspended the operation of the order. However, they failed to comply with the rules governing the prosecution of appeals. They did not file their power of attorney, did not file the appeal record, and did not apply for a hearing date by 1 April 2025. The suspension of the 29 July 2024 order therefore lapsed.

[5] The Respondent proceeded to execute part of the order and obtained the surrender of documents and certain components of the production line. The Applicants' first urgent application to stay execution was heard after execution had already occurred and was struck from the roll for lack of urgency. The Applicants instituted irregular applications for reinstatement of the appeal which elicited objections from the Respondent. A proper application for reinstatement and condonation was eventually filed on 15 August 2025. There is no assurance that an appeal court will grant the Applicants condonation or a reinstatement of the appeal. The Respondent is intent on raising their application to have the Second and Fifth Applicants incarcerated and the Applicants fined for contempt of court arising from alleged breaches of the order of the trial court.

[6] The first suspension application was enrolled urgently for hearing in September 2025. That application was struck from the roll for lack of urgency on 25 November 2025. The present application followed on the heels of the

judgment and on the same papers as the first suspension application except that the Applicants augmented their grounds for urgency.

GROUND FOR URGENCY

[7] The Applicants Mc Auley feed chain production line was halted through the execution of part of the order of the trial court in June 2025. The Applicants continued producing feed chain on their Roxell production line. It is common cause that during argument in the first suspension application, the Applicants gave an undertaking to halt the Roxell production line. The Applicants submitted that the Court hearing the first suspension application failed to take cognisance of the effect of this undertaking and erred in finding that the Applicants were not facing imminent commercial death because the Roxell line remained operational and generated income. The judgment confirms this.

[8] The Applicants allege and argue that because the Court hearing the first suspension application allegedly failed to consider the consequences of the undertaking, they are entitled to re-enrol the matter on the same papers, as supplemented by the Second Applicant's affidavit on urgency before this Court.

DOES THE UNDERTAKING CREATE NEW URGENCY?

[9] The fact that the undertaking was given during argument does not convert it into a new fact capable of founding a fresh urgent application. The undertaking was before the Court hearing the first suspension application. Its implications were capable of being argued. The Applicants' failure to appreciate or articulate those implications does not entitle them to relitigate urgency. Dissatisfaction with the omission or reasoning of the earlier court is a matter for appeal or reconsideration, not a basis to re-enrol the same urgent application before a different judge. Urgency cannot be revived by re-packaging facts that

were already before the earlier court, nor by asserting that the earlier court failed to take cognisance of a point. To permit this would undermine the finality of interlocutory decisions and encourage forum shopping.

[10] A finding that a matter is not urgent is not *res judicata* in the strict sense. However, the circumstances in which a litigant may re-enrol an urgent application are if new facts have arisen after the earlier hearing, or there has been a material change in circumstances, or the earlier court expressly granted leave to re-enrol. None of these conditions is present. The facts placed before the Court hearing the first suspension application remain unchanged. The Applicants' commercial position is the same as it was on 25 November 2025. The undertaking was already before the first urgent court. The fact that Roxell has removed its production line does not change anything as the undertaking, replete with its potential consequences had already been given when the first suspension application was argued in September 2025. It is inconceivable that the Applicants, advised by their seasoned Counsel, could have not known the consequences that would arise from offering the undertaking even though they claim it eventuated after the Court prompted them to make it.

ABUSE OF PROCESS

[11] The repeated enrolment of identical urgent applications constitutes an abuse of process. The High Court has an inherent power to prevent its procedures from being used oppressively or vexatiously. This is the Applicants' third urgent application on the same facts. The urgent roll cannot be used as a mechanism for serial relitigating. The Applicants' conduct burdens the court, prejudices the Respondent, and undermines the integrity of urgent motion proceedings.

[12] In these circumstances, the Court is not obliged to strike the matter from the roll yet again. Where a litigant repeatedly brings the same urgent application on the same facts, dismissal is an appropriate exercise of the Court's inherent jurisdiction.

THE RULE 45A APPLICATION

[13] Under the common law and under Rule 45A, an order may be suspended when real and substantial justice requires it, or put differently, where injustice would otherwise result. The Applicants contend that the legal position underlying their application to suspend the original court order pending their application for condonation and the reinstatement of the appeal against the 29 July 2024 order is that a Court will grant a stay of execution under Rule 45A where the underlying causa of the judgment debt is being disputed. They contend that this is the sole enquiry and the Court does not concern itself with the merits of the underlying dispute.²

[14] The Respondent contends that Rule 45A and the Court's inherent jurisdiction permit suspension of an order only where 'real and substantial justice 'so requires'.³ The factors for consideration correlate with the requirements for an interim interdict, namely the prospects of success on appeal, irreparable harm, balance of convenience, and absence of an alternative remedy. The Respondent contends that FCI would have to show that their appeal as well as the application for reinstatement of the appeal have reasonable prospects of success. The Respondent contends that their reason for non-compliance is based solely on their previous attorney's conduct. FCI has not shown how its own

² *Janse van Rensburg v Obiang and Another* 2023 (3) SA 591 (WCC) at paras 40-44, *Van Rensburg and Another v Naidoo and Others* 2011(4) SA 149 (SCA), *Gois t/a Shakespeare's Pub v Van Zyl and Others* 2011 (1) SA 148 (LC) at para 37(e)

³ *Stoffberg NO and Another v Capital Harvest (Pty) Ltd* 2012 JDR 1644 (WCC)

conduct and delay is excusable. The Respondent concedes that in some cases, a delay caused by an attorney may be a reasonable explanation.⁴

[15] Even if the Applicants were able to surmount the urgency requirement in this application, their prospects of success in the Rule 45A application would have been poor. The Applicants sought a stay of execution after the fact and suspension of the order long after the McAuley line was supposed to be dismantled. They gave an undertaking that shut down their own income stream. This Court cannot allow a litigant to create a crisis and then demand suspension as a rescue mechanism. The prejudice to the Respondent remains substantial. Suspending the order would prolong infringement, undermine the Respondent's copyright, their rightful share of the market, and the benefit of a final judgment. The Respondent has succeeded at the trial, and they are entitled to the fruits of the judgment.

DOES AN APPLICATION UNDER RULE 6(11) CIRCUMVENT THE NECESSITY TO SATISFY URGENCY EVEN IF IT IS BROUGHT ON THE URGENT ROLL?

[16] The Applicants lead Counsel argued that as this application was an interlocutory application, Rule 6(11) of the URC applied. The Applicants were not required to satisfy the requirements for urgency under Rule 6(12). On further enquiry from the Court, Applicant's Counsel conceded that the Applicants had to satisfy the requirements if the application was brought on the urgent roll. Respondent's lead Counsel indicated that he wished to address this aspect in a further submission. The Court made provision for both parties to do so.

⁴

Mtshali NO v Buffalo Conservation 97 (Pty) Ltd (250/2017) [2017] ZASCA 127 (29 September 2017)

[17] The Respondent did not file a post-hearing note but submitted a response to the note filed by the Applicants. The Applicants went beyond the Court's directive and impermissibly denied the concession made by its lead Counsel during argument. From a brief perusal of the content of the notes, the Court's instinct on this point was correct. The Respondent's initial contention that it did not need to satisfy the urgency requirements under Rule 6(12) in an application brought on the urgent roll was incorrect.

[18] Rule 6(11) does not exempt interlocutory applications from the requirements of Rule 6(12) when they are enrolled on the urgent roll. An urgent Court cannot be forced to hear an interlocutory application at any time. Rule 6(11) regulates form, not urgency. A litigant who elects to approach the urgent court must establish urgency under Rule 6(12). The Applicants' contention that they were not required to motivate urgency is incorrect in law. The Applicants motivated their applications as urgent in both the first suspension application as well as in this application.

THE CONTEMPT APPLICATION

[19] The Respondent contended that the Applicants are and remain in breach of the order of the trial court and are not entitled to apply for relief pertaining to or associated with the order until they have purged themselves of their contempt. The Respondent indicated that it re-enrolled its contempt application as a counterapplication to the second suspension application. The set down of the contempt application, they submitted, was conditional on the Court's finding that the suspension application is urgent, i.e., the Respondent only intends persisting with the contempt application if the merits of the suspension application are to be determined. The Respondents contend that a court is

obliged to raise and deal with non-compliance of a court order by FCI to protect the judicial authority of the Court.⁵

[20] The Applicants contended that the ‘provisional counterapplication’ seeking to hold the Applicants in contempt of the trial court’s order is a procedural anomaly. The rules do not make provision for a provisional counterapplication. The Respondent was aware of the facts raised since 30 July 2025 but has done nothing to progress the counterapplication. The Applicants contend that the relief sought by the Respondent is incompetent in law i.e., an order compelling the applicants to unilaterally cancel contracts concluded with third parties and to repay funds received from them. None of those parties were joined to the proceedings.

[21] Contempt cannot be a jurisdictional bar or a threshold issue to Rule 45A relief. It may be a factor that influence the court’s discretion. The Respondent’s approach tries to convert contempt into a gatekeeping mechanism. This is not supported by any authority. A Court cannot collapse a contempt enquiry, requiring proper notice, procedural safeguards and proof beyond reasonable doubt, into an urgent interlocutory hearing. The Respondent has raised this application for the second time. The proper order would be to strike it off the roll with costs.

CONCLUSION

[22] The Applicants have failed to establish urgency. The present application is a repetition of two earlier applications struck from the roll. No new facts have arisen. The attempt to rely on the undertaking given during argument in the first

⁵ Fakie NO v CCII Systems (Pty) Ltd 2006 (4) SA 326 (SCA), SSv VVS(CCT247/16)[2018] ZACC 5; 2018 (6)BCLR 671 (CC) (1 March 2018)

urgent application is misconceived. The present application constitutes an abuse of process. In the circumstances, the application falls to be dismissed.

[23] The Respondent filed a contempt application that is irregularly labelled as a provisional counterapplication. The Court Rules do not make provision for ‘provisional’ applications. The Applicants were required to answer the application. This application falls to be struck off the roll.

[24] The Court has considered the draft orders filed as well as the parties’ submissions on costs. The appropriate order follows.

ORDER

1. The urgent application to suspend the order of this Court under case number 7235/2017 pending the finalisation of the appeal process under case number A131/2025 is **dismissed** as an abuse of process.
2. The Applicants in the suspension application, including the post-hearing notes are ordered to pay the Respondent’s costs on the attorney-and-client scale, including the costs of two counsel where so employed.
3. No further urgent application based on the same facts will be entertained by this Court absent a demonstrable and material change in the Applicants’ circumstances.
4. The urgent counterapplication brought by the Respondent to hold the Applicants in contempt of the order under case number 7235/2017 is struck from the roll with costs.

BHOOPCHAND AJ

Acting judge

High Court

Western Cape Division

Judgment was handed down and delivered to the parties by e-mail on 23 January 2026

Applicant's Counsel: G S Myburgh SC, R D E Gordon
Instructed by: Bossrs Inc

Respondent's Counsel: JA Van der Merwe SC, MB de Wet
Instructed by: Nabal Attorneys