



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

Case No: 2026-02/336

In the matter between:

SANELISIWE MZIBA

Applicant

and

CAPITEC BANK

Respondent

JUDGMENT

MOLONY AJ:

Introduction

- [1] The applicant has launched this application, on an urgent basis, requesting a rule *nisi* (which, somewhat confusingly, is returnable on 5 February 2026), in order for the respondent to show cause as to why the following order should not be made final:

- (a) That the respondent be declared to be in contempt of three (3) orders of the Ngcobo Magistrates' Court, dated 18 December 2025, 14 January 2026 and 26 January 2026.
- (b) That the respondent be directed to immediately unfreeze all accounts belonging to Miss Nokuzola Mziba ('Ms Mziba') and to transfer the total available balance to the first applicant's¹ Capitec Bank account.
- (c) That the respondent be ordered to pay the costs of the application, on scale C.

[2] It was requested that prayer (b) above operate as an interim interdict with immediate effect pending the return date of the rule *nisi*.

[3] Pursuant to a directive obtained on 2 February 2026, the applicant served the application papers on the respondent on 2 February 2026, with the matter being heard on 5 February 2026. The respondent did not, in the very short time afforded, oppose the application.

Background

[4] A reading of the papers reveals that, due to a pre-existing dispute between the applicant and Ms Mziba (who is the applicant's mother), the applicant sought an anti-dissipation order, which was granted on 18 December 2025 in the Ngcobo Magistrates' Court, and which froze Ms Mziba's account with the respondent, and ordered that the respondent pay the funds in Ms Mziba's account into the bank account of the applicant (the applicant's bank account also being with the respondent).

[5] On 14 January 2026 the applicant and Ms Mziba settled the issues between them and signed a settlement agreement. The settlement agreement reflected the following:

¹ Ms Mziba was intended to be the second applicant, however this did not occur.

(a) The applicant and Ms Mziba agreed that the applicant would launch an *ex parte* application in the Ngcobo Magistrate's Court (with both parties consenting to the jurisdiction of the Ngcobo Magistrates' Court and agreeing that the matter should be resolved in the Ngcobo Magistrates' Court) which would set aside the order freezing Ms Mziba's bank account, with it being agreed that Ms Mziba² would then immediately transfer the money available in her account to the applicant's account.

[6] Pursuant to the above-mentioned agreement the applicant obtained another order from the Ngcobo Magistrate's Court (on 14 January 2026) which ordered the respondent to unfreeze Ms Mziba's account and uplift all restrictions with immediate effect. The respondent was also ordered to '*facilitate and assist*' Ms Mziba '*to immediately transfer the full amount available in her Bank Account*' into the applicant's bank account.

[7] According to the founding affidavit Ms Mziba declined to become involved in this matter as a second applicant (or as a respondent), *inter alia* due to the existence of the settlement agreement. She has also not provided a confirmatory affidavit, nor has she been cited as a respondent in this application, and the application has not been served upon her.

[8] On 15 January 2026 a letter was sent by the applicant's attorneys of record to the respondent's legal compliance department, demanding compliance with the order of 14 January 2026 and threatening to approach this court should the respondent not comply. In response the respondent, in essence, cited internal administrative requirements which had to occur prior to the account being unfrozen.

[9] A few days later the respondent paid an amount of R 400.00 into the applicant's account, apparently, according to the applicant, remaining silent in regard to '*the substantial funds held in the subordinate accounts*'. No further

² The parties agreed that the respondent would attend to this, the respondent in the settlement agreement being Ms Mziba.

information was provided in regard to the number of accounts involved, any details relating to these accounts, nor the total funds held in these accounts.

- [10] The applicant thereafter followed up with the respondent and was informed, via email on 19 January 2026, that the unfreezing would only apply to the account number specified in the court order. There is no account number specified in regard to any of Ms Mziba's accounts in the court order (with only the applicant's account number being provided), however the order refers to Ms Mziba's account (singular). The respondent was of the view that if funds needed to be transferred from any additional accounts, an amended court order would need to be provided.
- [11] The applicant obtained an amended order on 26 January 2026, which ordered the respondent to unfreeze Ms Mziba's *'main Banking Account and all Accounts that are under her name and uplift all restrictions on all those accounts with immediate effect'*, and to facilitate and assist Ms Mziba to immediately transfer the funds in those accounts to the applicant.
- [12] On 30 January 2026 the respondent conveyed to the applicant that the value of the matter exceeded the jurisdiction of the Magistrates' Court, and requested that the applicant obtain a High Court order to this effect.
- [13] The applicant views the respondent's stance as *mala fide*, and a delaying tactic, averring that the respondent unfreezing Ms Mziba's 'main account', and not the 'subordinate accounts' constitutes contempt of court. The relationship between the 'main account' and the unknown number of 'subordinate accounts' (containing an unknown amount of funds), is not explained in the application.
- [14] It is also unclear why Ms Mziba herself, being the holder of the relevant accounts, could not directly instruct the respondent to make the necessary transfers as the order of 14 January 2026 applied, according to the respondent, only to the 'main account' (which apparently contained only R 400.00).

Urgency

- [15] The applicant averred that the funds are necessary to support her minor children financially (including paying their school fees as they attend a private school), as well as to provide medical care to Ms Mziba³ who suffers from 'chronic ailments'.
- [16] No further information was provided in regard to the number of minor children involved, their ages, the nature of Ms Mziba's chronic ailments, or the financial position of the applicant.
- [17] It was also submitted during the hearing of this matter that contempt proceedings always contain an element of urgency.⁴
- [18] Applicants in urgent applications must give proper consideration to the degree of urgency in a matter, and tailor the notice of motion accordingly.⁵

³ Who is incorrectly referred to as the second applicant in para 31 of the founding affidavit at p. 9 of the papers.

⁴ See *Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others* 2021 (5) SA 327 (CC) at paras 31 – 36.

⁵Practice rule 12 of the Eastern Cape Joint Rules of Practice states as follows:

- (a) In all applications brought other than in the ordinary course in terms of the Rules of Court, the legal practitioner who appears for the applicant must sign a certificate of urgency which is to be filed of record before the papers are placed before the Judge and in which the reasons for urgency are fully set out.
- (b) The certificate of urgency shall set out the grounds for urgency with sufficient particularity for the question of urgency to be determined solely therefrom without perusing the application papers.
- (c) In matters contemplated in Rule 12(a) above, the registrar shall issue the papers and shall place the matter on the roll of cases as may be provided for in the notice of motion commencing the application.
- (d) In all urgent applications in which it is sought to enrol the matter other than on a day normally reserved for the hearing of motion court matters:
- (i) The practitioner who appears for the applicant must sign a certificate of urgency which is to be filed of record before the application papers are placed before the Judge and in which the reasons for urgency are fully set out. In this regard, sufficient particularity is to be set out in the certificate for the question of urgency to be determined solely therefrom and without perusing the application papers.

[19] An apposite and often cited judgment in this division is that of *Caledon Street Restaurants CC v D'Aviera*⁶, in which the following is stated in regard to the proper approach to urgent applications:

'Subject to the provisions of Rule 6(12) of the Uniform Rules of Court, the provisions of Rule 6(5) are peremptory. Rule 6(5)(a) provides that an application must be in a form as near as may be in accordance with Form 2(a). In terms of Rule 6(5)(b) an applicant is obliged to nominate a day, at least five days after service on the respondent, on or before which the respondent must notify the applicant of intended opposition. Rule 6(5)(d)(ii) provides that within 15 days of such notification, the respondent, who is opposing, must file opposing affidavits. Sub-rule (5)(f) provides for the application thereafter to the registrar for a date for the hearing of the matter, the date on which the registrar may be so approached depending on whether or not replying papers are filed by the applicant, which is also to be done within a prescribed time period.

Rule 6(12) provides, however, that in the case of an urgent application the matter may be disposed of by way of extraordinary adjudication.

.....

In the assessment of the validity of a respondent's objection to the procedure adopted by the applicant the following principles are applicable. It is incumbent on the applicant to persuade the court that the non-compliance with the rules and the extent thereof were justified on the grounds of urgency. The intent of the rules is that a modification thereof by the applicant is permissible only in the respects and to the extent that is necessary in the circumstances. The applicant will have to demonstrate sufficient real loss or damage were he to be compelled to rely solely or substantially on the normal procedure.

The court is enjoined by rule 6(12) to dispose of an urgent matter by procedures "which shall as far as practicable be in terms of these rules". That obligation must of necessity be discharged by way of the exercise of a judicial discretion as to the attitude of the court

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- (ii) The certificate of urgency will be placed before the Judge who will make a determination solely from that certificate as to whether or not the matter is sufficiently urgent to be heard at any time other than the normal motion court hours.
 - (iii) Should he/she determine that it is sufficiently urgent, he/she will then give directions as to the time and place, when and where the application is to be heard.
 - (iv) Should he/she decide that the matter is not sufficiently urgent to be heard on a day other than a normal motion court day he/she shall record same on the file whereupon the applicant may deal with the application in accordance with Rule 12(a) if so advised.'

⁶ 1998 JDR 0116 (SE) at pp. 6 – 11 and p. 21. See further *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137.

concerning which deviations it will tolerate in a specific case. Practitioners must accordingly again be reminded that the phrase " which shall as far as practicable be in terms of these rules" must not be treated as **pro non scripto**.

....

The degree of relaxation of the rules should not be greater than the exigencies of the case demand (and it need hardly be added these exigencies must appear from the papers).

....

However, the attractiveness of finally disposing of the litigation should not be allowed to govern. The approach should rather be that there are times where, by way of non-suiting an applicant, the point must clearly be made that the rules should be obeyed and that the interest of the other party and his lawyers should be accorded proper respect, and the matter must be looked at to consider whether the case is such a time or not.'

Analysis

[20] The lack of opposition on the part of the respondent does not automatically entitle the applicant to the relief sought – the applicant is still required to make out an appropriate case in this regard.

[21] The lack of required information provided, *inter alia*, in regard certain material aspects can be summarised as follows:

(a) No information was provided in regard to the total funds involved, which should have been information within the knowledge of Ms Mziba.

(b) No information was included regarding the details and number of Ms Mziba's bank accounts.

(c) No form of confirmation, or lack of opposition (which would have required service of the application) was provided on the part of Ms Mziba in regard to this application.

(d) No detail was included in regard to the minor children and their financial needs.

(e) No detail was provided in regard to Ms Mziba's chronic ailments, her medical needs, and why she could not utilise the funds in her own accounts for this purpose.

(f) It was not explained why Ms Mziba could not simply pay the funds to the applicant herself, as the bank accounts involved were her own.

(g) No information in regard to the applicant's financial position (income, expenditure, assets and liabilities), which required the alleged urgent intervention of this court, was provided.

(h) No information was forthcoming in regard to the original dispute between the applicant and Ms Mziba.

[22] Given the above-mentioned deficiencies, the applicant has not disclosed sufficient grounds to make out an appropriate case for the relief sought, particularly in regard to the issue of urgency.

[23] The applicant does however, *prima facie*, appear to face a predicament of sorts, and would be potentially hamstrung going forward were the application to be dismissed, as the applicant may yet obtain appropriate relief if the papers are adequately supplemented and the matter re-enrolled at a later date.

[24] For the above reason, the application will simply be struck from the roll, with costs.

Order

In the result the following is ordered:

The application is struck from the roll, with costs

APPEARANCES:

For the applicants: Adv Talapile

Instructed by: P Mbeshu Talapile Inc.

MTHATHA

For the respondent: No appearance

Heard on: 5 February 2026

Judgment delivered on: 6 February 2026