



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

CASE NO: 2025-187545

In the matter between

S[...] L[...] M[...]

Applicant

and

A[...] D[...] M[...]

Respondent

JUDGMENT

KRÜGER AJ:

The application before court

[1] This judgment concerns an urgent application. The applicant sought, in part, a postponement of the trial, which was set down for 17 February 2026. The respondent's delivery of a notice of removal on Monday, 26 January 2026 at 14h20, caused the applicant not to pursue the requested postponement but to request an award of costs in respect of the preparation thereof. The second part of the urgent application sought to enforce a Rule 43 order of this court made by Rusi J on 30 December 2025 by way of contempt proceedings.

[2] The applicant and respondent are involved in contested divorce proceedings and have been engaged in multiple rounds of interlocutory litigation since the divorce proceedings were instituted in September 2022.

Urgency

[3] Rule 6(12) regulates the procedure for urgent applications. With such an application, the applicant, in effect, asks the court to prioritise their matter over others' matters. The rule permits applicants to set their own timeframes in accordance with the degree of urgency of the matter.¹

[4] In *African National Congress v uMkhonto weSizwe Party*,² the court held that an applicant must explicitly make out its case for urgency in the founding papers. Additionally, an applicant must demonstrate that they will not obtain substantial redress in the ordinary course.³

[5] In the applicant's founding affidavit, attested to on 26 January 2026, she noted the urgency of the postponement application in the light of the then-impending trial date of 17 February 2026 and the need to obtain legal advice prior to the trial. She explained that, on 23 January 2026, her attorneys requested an undertaking from the respondent attorney that the matter would be postponed by 9h00 on Monday 26 January 2026. They received the notice of removal at 14h22. Despite that notice, this application was filed and served on 27 January 2026 to address the respondent's non-compliance with the Rule 43 order of 30 December 2025, as it was prepared inclusive of the postponement part.

[6] The respondent's attorney, who attested to the answering affidavit, stated that an incorrectly numbered, unstamped version of the papers was emailed to them on 27 January 2026. He added that the matter was properly issued on the online platform only on 30 January 2026. He contended that the former was irregular and

¹ *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) para 37, 38 and 40.

² [2024] 3 All SA 137 (KZD) para 17.

³ Rule 6(12)(b). See *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2012] JOL 28244 (GSJ) paras 6-7.

the latter gave the respondent one clear day to oppose and respond, prior to the hearing, rather than the usual 10 and 15 days respectively, prejudicing him in preparing a proper response. The respondent also took issue with the applicant's failure to stipulate time frames in her notice of motion and to motivate the severe truncation of the notice period. As such, it was submitted that urgency was not established.

[7] In my view, the respondent's submission that the matter was served without being issued on 27 January 2026 and only via email, and that it, in fact, was only issued on 30 January 2026, is without merit. The evidence shows that the application was served on the respondent's attorneys at their offices on 27 January 2026 at 8h56. Whether the case number in the heading of the application that was served was correct or not is, in my view, not fatal to the application. The court stamped application, which was served, dealt in substance with an application for postponement of the trial set down for 17 February 2026 and with the contempt of court arising from non-compliance with the Rule 43 *pendente lite* order, dated 30 December 2025.

[8] While the applicant relied on communication from her attorneys to the respondent's attorney to demonstrate that attempts were made to ensure postponement of the matter and compliance with the court order without turning to court, she provided no explanation for the very short notice in her founding papers. It is so that 'applicants in urgent applications must give proper consideration to the degree of urgency and tailor the notice of motion to that degree of urgency'. However, to non-suit her for failing to set out the timelines only would be overly formalistic.⁴ In urgent applications, courts are called upon to exercise a judicial discretion 'upon sufficient and satisfactory grounds being shown by the applicants'.⁵ The exercise of the discretion includes a consideration as to "which deviations it will tolerate in a specific case."⁶ Each case must be determined on its own facts. I thus consider the facts as set out in the papers.

⁴ *Greyvenouw* para 37-40.

⁵ *IL&B Macrow Caterers v Gretermans SA* 1981 (4) SA 108 (C) 112H.

⁶ *Greyvenouw* para 37, relying on *Luna Meubelvervaardigers v Makin* 1977 (4) SA 135 (W) 137E-G and quoting from *Caledon Street Restaurants CC v D'Aviera* 1998 JOL 1832 (SE).

[9] In part, the applicant placed reliance for the urgency of the matter on the looming trial date of 17 February 2026, for which she sought a postponement, to brief counsel. The applicant did not persist with the requested postponement application. Since this motivation for urgency had fallen away by the time the application was launched, I do not take the urgency of the postponement application into account in determining whether the contempt application was urgent.⁷

[10] The applicant maintained in her founding affidavit that she was advised that contempt proceedings are inherently urgent, as are matters involving the best interests of children. This urgency, it was contended, was intensified by fact that the applicant has had to enlist the financial assistance of her father to ensure the admission of the parties' older sons to St Andrew's College for the 2026 academic year, the applicant's lack of financial means was exacerbated by the respondent's non-compliance with the court order, and the interests of the minor children were prejudiced by the respondent's actions.

[11] In response thereto, it was submitted that the respondent was afforded minimal time to respond to an application that could result in an order for his committal to prison, even if suspended. For the respondent, it was explained that his employment as a long-haul pilot made scheduling a consultation with his attorney difficult due to time differences and his flight schedule. As such, the answering affidavit was based on email and WhatsApp exchanges between the respondent and his attorney. Counsel for the respondent submitted that the urgency was self-created and that the application was brought only because it was prepared, not because it was urgent. It was submitted that the applicant did not indicate why she

⁷ *Afriforum NPC v Ngwathe Local Municipality (Parys)* [2022] 4 All SA 666 (FB) para 65: 'Based on the aforesaid principle, the present application would obviously have been urgent and would have necessitated urgent intervention by the court had the factual allegations relied on in the founding affidavit for purposes of urgency and in support of the relief claimed, been true and correct. Unfortunately for the applicant, they are not. As I have already indicated, the urgency of the entire application was pinned on the basis that there was a complete lack of electricity supply to Parys, with the resultant lack of water supply and no sanitation processes. Mr Coertze confirmed same in paragraph 5 of his heads of argument where he stated that the "crisis related to water and sanitation in Parys has its origin in the absence of electricity". However, it is evident from what I have already stated and found above, that the electricity had already been restored at the time when the application was issued. The alleged reasons for urgency did consequently not exist.'

would not obtain substantial redress in the ordinary course. Counsel highlighted that, on the applicant's version, the older children were enrolled at St Andrew's College, and there was no indication that their schooling there would abruptly end. She added that the respondent engaged with the school and substantially complied with the order by the time of the hearing. It was submitted for the respondent that the matter ought to be struck from the roll with costs on scale B, as the application seemed to be designed to punish the respondent.

[12] Wilson J in *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC*⁸ rejected the notion that any one type of matter is inherently urgent. He held:

'Sometimes, Parliament sets out the circumstances in which a court ought to determine a specific type of matter urgently (see, for example, section 18 (4) (iii) of the Superior Courts Act 10 of 2013 and section 5 of the Prevention of Illegal Eviction from, and Unlawful Occupation of Land Act 19 of 1998). In all other cases, urgency is determined not by the nature of the claim brought, but by the circumstances in which the applicant seeks its adjudication. Uniform Rule 6 (12) says that a matter is urgent if the applicant will not be able to obtain "substantial redress at a hearing in due course" without at least some urgent relief.

It follows that, whatever the nature of the claim, there must be some reason why the applicant will not be able to protect or advance their legal rights later, unless they are given specific relief now. Most of the time, the applicant requires no more than temporary protection from harm while the process of finally determining their rights progresses. Sometimes, though, a final determination of rights is necessary on an urgent basis because those rights will have little or no practical effect if the applicant has to wait weeks or months to vindicate them in the ordinary course.

There is, accordingly, no class of proceeding that enjoys inherent preference. Counsel appearing in urgent court would, in my view, do well to put the concept of "inherent urgency" out of their minds. There are, of course, some types of case that are more likely to be urgent than others. The nature of the prejudice an applicant will suffer if they are not afforded an urgent hearing is often linked to the kind of right being pursued. Spoliation is a classic example of this type of claim. Provided that the person spoliated acts promptly, the matter will nearly always be urgent. The urgency does not, though, arise from the nature of the case itself, but from the need to put right a recent and unlawful dispossession. The applicant comes to court because they wish to restore the ordinary state of affairs while a dispute about the right to possess a thing works itself out. Cases involving possible deprivations of life and liberty, threats to health, the loss of one's home or some other basic essential of daily life, such as water or electricity, destruction of property, or even crippling commercial loss, are also likely to be urgent.⁹

[13] In addressing the urgency of contempt proceedings pertinently, the learned judge commented:

'It is sometimes said that contempt of court proceedings are inherently urgent (see, for example, *Rustenburg Platinum Mines Limited v Lesojane* (UM44/2022) [2022] ZANWHC 36 (21 June 2022) at paragraph 7 and *Gauteng Boxing Promoters Association v Wysoke* (22/6726) [2022] ZAGPJHC 18 (28 April 2022) paragraph 14). I do not think that can be true as a general proposition. I accept that

⁸ 2023 JDR 2806 (GJ)

⁹ Paras 4-6. Emphasis added.

the enforcement of a court order may well qualify as urgent, in situations where time is of the essence, but it seems to me that contempt proceedings entail the exercise of powers which often demand the kind of careful and lengthy consideration which is generally incompatible with urgent proceedings. For example, it cannot be sound judicial policy to commit someone to prison, even where the committal is suspended, or to impose a fine, on an urgent basis, simply because that might be the only way to enforce a court order. There must, in addition, be some other feature of the case that renders it essential that the court order be instantly enforced, such that the penalties associated with contempt require immediate imposition.¹⁰

[14] I agree. While compliance with court orders goes to the heart of the rule of law, it cannot simply follow that every contempt application must be dealt with on an urgent basis. There must be more to an applicant's case for urgency.

[15] Section 28(2) of the Constitution provides that 'a child's best interests are of paramount importance in every matter concerning the child'. I was able to find one judgment, *H v H*¹¹ in which the court, in the context of a multi-faceted dispute about a minor child, including a dispute about the primary care of the child, boldly held that

'There is a plethora of authorities, which state that in matters involving the best interests of a child, said matters are inherently urgent and in the nature of Rule 6(12) of the Uniform Rules of Court, it permits me to disregard, notice, forms and service as I deem fit.'

The 'plethora' of matters held to be urgent, in fact, mostly involved disputes over the child's care and contact.¹²

[16] In my view, the dictum in *H v H* must be qualified. While all matters impacting on the rights of children are necessarily important, it cannot be that every matter concerning a child is necessarily urgent. The more appropriate approach was set out in *ES v PS*,¹³ where the court held that

'It is well-established in our jurisprudence that matters involving the welfare of a child are often regarded as inherently urgent. However, it is equally clear that each case must be determined on its own specific facts, and the mere involvement of a child does not automatically confer urgency on an application. Rule 6(12) of the Uniform Rules of court mandates that a party seeking relief on an urgent basis must explicitly set forth the circumstances that render the matter urgent and must provide compelling reasons why they cannot be afforded substantial redress at a hearing in due course.'

¹⁰ Para 7. Emphasis added. See also *Manamela v Maite* (2023/055949) [2023] ZAGPJHC 1011 (6 September 2023) para 47 and *M T v T H and Another; In Re: M T v T H* (10211/2020) [2020] ZAGPJHC 247 (2 October 2020). This matter concerned two applications for contempt of court relating to a maintenance order. Both were struck from the roll for lack of urgency.

¹¹ (2024/103863) [2024] ZAGPJHC 971 (26 September 2024) para 20.

¹² A search on the SAFLII database showed 67 judgments on the search terms 'urgency', 'children', 'contact' and 'care'.

¹³ (16138/24) [2024] ZAWCHC 201 (12 August 2024) para 21.

[17] Accordingly, I am of the view, in relation to both grounds of urgency relied upon, that something more than the nature of the matter must be placed before the court to convince the court of the urgency of a case.

[18] The applicant is seeking to enforce a court order, on threat of imprisonment, requiring the respondent to pay the court-ordered maintenance to her and the children, and to make a payment to her attorneys as a contribution to costs. The orders 'sound in money'. One could thus infer that financial hardship or financial need informs the grounds of urgency relied upon. Kroon J in *Caledon Streets Restaurants CC v D'Aviera* commented as follows on financial loss or hardship relied on in support of urgency:

'Moreover, the fact that a litigant with a claim sounding in money may suffer serious financial consequences by having to wait his turn for the hearing of his claim does not entitle him to preferential treatment. On the other hand, where a person's personal safety or liberty is involved or where a young child is likely to suffer physical or psychological harm, the Court will be far more amenable to dispensing with the requirements of the Rules and disposing of the matter with such expedition as the situation warrants. The reason for this differential treatment is that the Courts are there to serve the public and this service is likely to be seriously disrupted if considerations such as those advanced by the applicants in these two matters were allowed to dictate the priority they should receive on the roll. It is, in the nature of things, impossible for all matters to be dealt with as soon as they are ripe for hearing. Considerations of fairness require litigants to wait their turn for the hearing of their matters. To interpose at the top of the queue a matter which does not warrant such treatment automatically results in an additional delay in the hearing of others awaiting their turn, which is both prejudicial and unfair to them. The loss that applicants might suffer by not being afforded an immediate hearing is not the kind of loss that justifies the disruption of the roll and the resultant prejudice to other members of the litigating public.'¹⁴

[19] The learned judge added the following qualification to this:

First, to the extent that[the point of departure is] that financial exigencies cannot be invoked to lay a basis for urgency, I consider that no general rule to that effect can be laid down. Much would depend on the nature of such exigencies and the extent to which they weigh up against other considerations such as the interests of the other party and its lawyers and any inconvenience occasioned to the court by having to entertain an application on an urgent basis.¹⁵

[20] The applicant's evidence was that the children were at school, and she did not indicate that their schooling, safety, or liberty was at risk as a result of the respondent's failure to make payments or to make arrangements in accordance with the court order. Significantly, the applicant did not explain why she would not obtain redress in the ordinary course.

¹⁴ *Caledon Streets Restaurants CC* 13.

¹⁵ 15.

[21] The applicant approached the court on severely truncated timelines for an order holding the respondent in contempt of court, bolstered by an order that may ultimately deprive him of his liberty and render him incapable of earning a living. The prejudice to the respondent if the matter were to be dealt with on an urgent basis, as well as the interests of the other litigants who may have to wait for their matters to be heard, outweigh that of the applicant who can get redress in the ordinary course.¹⁶ The matter is not urgent.

[22] One consideration remains: costs. I was specifically asked by counsel for the applicant to award costs for the preparation of the application for postponement. On the evidence, the application for postponement on an urgent basis presented a live issue until the service of the notice of removal on 26 January 2026 at 14h20. After that time, and given my findings regarding the lack of urgency of the contempt application, there was no need to launch this application urgently. Absent the application being launched on the contempt aspect, this court would not be in a position to make an award of costs for the preparation of the postponement application. Therefore, the requested order will not follow.

[23] On the evidence before me, the respondent's attorneys were unresponsive to the applicant's attorneys' communications regarding compliance with the court order and the postponement. While the respondent's attorney explained that he had difficulty taking instructions from the respondent due to the latter's work commitments, this does not account for the complete lack of communication with the applicant's attorneys regarding the matter. That is disrespectful and cannot be condoned. In the circumstances, the respondent must be deprived of his costs.¹⁷

[24] I make the following order:

- (a) The application is struck from the roll for lack of urgency.
- (b) Each party is to pay their own costs.

¹⁶ *IL&B Macrow Caterers v Gretermans SA* 112H.

¹⁷ *Cilliers Law of Costs* 3.09.

R KRÜGER
ACTING JUDGE OF THE HIGH COURT

Date heard: 3 February 2026
Date delivered: 12 February 2026

APPEARANCES:

For the Applicant: *Adv I Smuts SC*
Instructed by: Wheeldon, Rushmere & Cole Inc, Makhandia

For the Respondent: *Adv S Sephton*
Instructed by: Nolte Smit Attorneys, Makhandia