

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2025-149728

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO

10 March 2026

DATE

SIGNATURE

In the matter between:

**CATERPILLAR FINANCIAL SERVICES
SOUTH AFRICA (PTY) LTD**

Applicant

and

MASAWA TRADING ENTERPRISE CC

Respondent

JUDGMENT

Raubenheimer AJ:

Order

1. Part A of this application is enrolled as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, condoning the applicant's non-compliance with the prescribed time periods, forms and service.
2. Any representative, employee or person acting under the instruction of the respondent, who is in possession of the following CAT equipment:

2.1. Caterpillar Backhoe Loader 426 with Serial Number/VIN E[...] under contract number IS/SA-002877 ('the first loader');

2.2 Caterpillar Backhoe Loader 426 with Serial Number/VIN E[...] under contract number IS/SA-003124 ('the second loader'); and

2.3. Caterpillar Backhoe Loader 426 with Serial Number/VIN E[...] under contract number IS/SA-003500 ('the third-loader'). UN COURT OF SOUTH AFRICA VISION, Private Bag X7, Johannesburg 2000 (collectively 'the CAT equipment') 2025

is to forthwith upon receipt of this order, deliver / make available for DIVISION collection / permit the collection / repossession by the applicant, of the CAT equipment which is in the possession of such person.

3. In the event that the applicant is unable to secure possession of the CAT equipment pursuant to the relief sought in paragraph 2 to 2.3 above, the sheriff, assisted by the South African Police Services, if required, is authorised to take such steps as may be necessary to take possession of the CAT equipment, wherever same may be found, and handing same over to the applicant for safekeeping.

4. The applicant is authorised to dispose of the CAT equipment listed in paragraph 2.1 to 2.3 above by way of private treaty.

5. The costs occasioned by part A of this application is to be paid by the respondent on an attorney and client scale.

6. The applicant is granted leave to supplement the founding affidavit, in support of further relief, including the relief sought in part B of this application, if so required.

Introduction

[1] The matter came before court, on an urgent basis, on 17 September 2025 for the return of certain heavy construction equipment and to dispose of them by way of private treaty.

[2] The court granted Part A of the Notice of Motion and granted the applicant leave to supplement the founding affidavit in support of a money judgment if so required.

[3] The respondent has requested reasons for the order. The reasons follow below.

The parties

[4] The applicant is a private company conducting business in the provisioning of financing for the purchase and acquisition of mining and construction equipment.

[5] The respondent is a close corporation

The claim

[6] The applicant's business is that of financing mining and construction equipment specialising in the financing for the purchase and acquisition of Caterpillar machines and equipment ('CAT equipment'). It does not distribute, sell, maintain or repair CAT equipment. The CAT equipment is manufactured in the USA, by Caterpillar Inc. and distributed in South Africa by Barloworld Equipment (Pty) Ltd who also provides maintenance and repair services to the CAT equipment purchased.

[7] A prospective purchaser of the CAT equipment is at liberty to secure financing from any financial services provider and the applicant is merely one of the options to obtain finance.

[8] Where a purchaser elects to finance a purchase through the applicant the parties conclude a Master Instalment Sale agreement ('MISA') containing the general terms and conditions applicable to all instalment sale agreement concluded with such purchaser.

[9] When a purchaser purchases multiple pieces of CAT equipment at once or in a staggered fashion, the specific payment and ancillary terms for the purchase of each piece of CAT equipment is recorded in the schedules ('schedules')

which is attached to and incorporated into the MISA and which then applies to all extant and subsequent instalment sale agreements.

- [10] The respondent financed the purchase of three Caterpillar Backhoe Loader 426. The financing agreement entailed an initial payment and 36 monthly payments varying from August 2022 to March 2026.
- [11] The applicant complied with its obligations under the agreement by providing the financing and delivering the Loaders on 19 January 2023, 25 April 2023 and 31 August 2025 respectively. The applicant furthermore rendered monthly invoices in accordance with the agreement.
- [12] The relevant terms of the MISA were that:
- a. the applicant retains ownership of the CAT equipment until all the amounts owing to the applicant have been irrevocably paid in full;
 - b. instalments were due and payable, unconditionally, and absolutely, without set-off or deduction for any reason whatsoever, even subsequent to cancellation of the agreement;
 - c. a certificate ('COB') signed by any general manager of the applicant, certifying any amount outstanding in terms of the agreement as due and payable to the applicant, inclusive of the rates of interest and other charges applicable thereto shall be prima facie proved by the COB;
 - d. the respondent must at its expense maintain the CAT equipment in good operating order, repair and condition and perform maintenance at least as frequently as stated in an applicable operator's guide, service manual or lubrication and maintenance guide, and the respondent had to only use original manufacturer parts on the CAT equipment;
 - e. the respondent may not alter a CAT equipment or affix any accessory or equipment to it, if doing so will impair its originally intended function or reduce the value of the CAT equipment;
 - f. the respondent consents and authorises the applicant to install and maintain, or to procure the installation and maintenance of proprietary monitoring device and system during the term of the agreement at the respondent's expense which the respondent is obliged to maintain and

is prohibited to transfer to any other CAT equipment without the applicant's express permission. The applicant may access information available in relation to any CAT equipment, including the history, location, use of fluids, error codes and data and use the information to exercise its rights if an event of default occurs;

- g. the respondent was prohibited from using, operating, maintaining or storing the CAT equipment improperly, carelessly, unsafely or in violation of any applicable law or regulation or for a purpose other than in the normal and ordinary course of the respondent's business;
- h. the respondent was prohibited from abandoning the CAT equipment, removing it from the location specified in the schedules and/or removing it from the Republic of South Africa, leasing or renting same or permitting the use of same by anyone other than the respondent, without the applicant's express prior written consent;
- i. the respondent was required to notify the applicant, should it move a CAT equipment to a property not owned by it;
- j. in the event that the respondent fell in arrears with payments due under the agreement, interest would accrue thereon, compounded daily in arrears at 5% above the Reserve Bank's publicised prime rate and it was payable upon the rendering of an invoice, therefore;
- k. payment allocation was within the exclusive discretion of the applicant;
- l. the respondent carried all risk in and to the CAT equipment and if same is worn out, lost, stolen, destroyed, taken by government action or, in the applicant's opinion, irreparably damaged. The respondent is liable to pay the amounts due under the remaining term (duration of the agreement) for the CAT equipment which suffered from a casualty a went respondent had to advise the applicant of a casualty event promptly, and pay the aforesaid amount rendered payable in consequence of the casualty event within 7 days;
- m. the respondent, at its expense, must keep the CAT equipment insured with a commercial insurance policy (reasonably acceptable to the applicant) and must ensure that the applicant's insurance interest have been noted and endorsed on such policy. The insurance must include physical damage insurance that will protect each CAT equipment

against all risks for an amount equal to the greater of the replacement value of the CAT equipment(s), or the remainder of payments due pursuant to the agreement from time to time (see clause 8) ('insurance clause');

[13] The agreement described an event of default as including failure to make payment/s under the agreement when same fell due; and tampering/attempted tampering with the monitoring device or system.

[14] On the occurrence of a default event occurs the applicant is entitled to:

- a. claim specific performance under the agreement;
- b. cancel the agreement and terminate any right of possession and or use of the equipment;
- c. claim payment of all amounts due or to become due under the agreement;
- d. claim additional damages and expenses suffered by the applicant occasioned by the event of default;
- e. require the respondent to assemble the CAT equipment, and make same available to the applicant at a place designated by it;
- f. enter the premises where the CAT equipment is situated, to take possession, and remove the CAT equipment, shut off and or de-rate the CAT equipment and take control and possession of the monitoring unit and system;
- g. claim from the respondent all charges, costs, expenses and reasonable attorney's fees incurred by the applicant in enforcing the agreement;
- h. in the event that the CAT equipment is sold by the applicant, the applicant is entitled to apply the proceeds from the sale as first charge, all expenses flowing from collection and enforcement of the agreement including the applicant's legal costs on an attorney and own client basis, and then to satisfy the respondent's obligations to the applicant under the agreement.

[15] The respondent fell into arrears and defaulted on payments due in terms of the agreement and after numerous letters of demand and the breaking of numerous undertakings to make payment of the arrears the applicant cancelled the agreement on 24 February 2025.

[16] Due to the acceleration clause that was triggered on cancellation the full outstanding balance, in the amount of R1 359 464.17 (One Million, Three Hundred and Fifty-Nine Thousand, Four Hundred and Sixty-Four Rands and Seventeen Cents), became due and payable and the arrear amount as certified by the certificate of balance was R193 567.00.

[17] The breach of the agreement was however not limited to non-payment and the following breaches of the agreement also occurred:

- a. the CAT equipment was moved to unknown sites without notice to the applicant;
- b. failure to keep the CAT equipment insured with a commercial insurance policy at its expense;
- c. tampering with the monitoring device and system installed on the second loader;
- d. failure to disclose the whereabouts of the CAT equipment.

[18] These breaches raised serious concerns about the whereabouts of the equipment and whether the equipment is being maintained properly in accordance with the contractual obligations.

[19] The applicant confirmed with the erstwhile insurer that the equipment is no longer insured which was confirmed by the representative of the respondent. The respondent does not deny failure to pay monthly instalments and does not deny the arrears.

[20] The respondent does not deny the existence, nature, content or purport of the agreements between the parties.

Discussion

[21] When evaluating the urgency element, the court conducts an objective assessment of the circumstances¹ as set out by the applicant² who is required to traverse the reasons why substantial redress will not be afforded at a hearing in due course.³ In the process of assessment the court considers the

¹ *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pers Publikasies (Edms) Bpk* 1972 (1) SA 773 (A) 782A - G.

² *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* ZAGPJHC 196.

³ *Id* at [6]. See also *Caledon Street Restaurants CC v Monica D'Alviera* 1998 JOL 1832 (SE) at pages 7 – 9; *Dynamic Sisters Trading (Pty) Limited and Another v Nedbank Limited* [2023] ZAGPPHC 709.

conduct of the applicant as well as the nature of the relief sought, i.e. the right it seeks to protect⁴ and the potential harm if the relief is not granted urgently.⁵

- [22] As the right to approach the Court for urgent relief is inextricably coupled with the right of a litigant in terms of section 34 of the Constitution,⁶ courts should be slow to entertain a matter where a litigant runs the risk of being deprived of substantial redress in due course. The delay between the hearing before the urgent court and a hearing in the ordinary course is a critical consideration.⁷
- [23] The agreement was cancelled on 25 February 2025 and the applicant endeavoured to obtain payment from the respondent ever since. The respondent made various undertakings to pay which was not honoured.
- [24] The respondent refused to disclose the location of the equipment despite being requested on numerous occasions to do so, the last of which was 27 August 2025. Also in August, it was confirmed that the equipment is no longer insured as disclosed by the insurer on 24 July 2025.
- [25] The applicant launched the application on 28 August 2025. There was consequently no undue delay in the launching of the application, neither was the urgency self-created.⁸ The application was for the return of the equipment and authority to dispose of the equipment by way of private treaty.
- [26] The relief is premised on the provisions of the agreement which the respondent has not disputed. The contract and the breach of the contract consequently stands as undisputed. The rights of the applicant established in terms of the agreement is therefore clear and unassailed.
- [27] The applicant has demonstrated that there is a real and actual apprehension of harm in that the equipment remains uninsured in contravention of the agreement. This apprehension is further strengthened by the refusal of the respondent to disclose the whereabouts of the equipment and the tampering

⁴ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* [2023] ZAGPJHC 846.

⁵ *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* [2019] ZACC 27; 2019 (9) BCLR 1104 (CC).

⁶ *Lesapo v North West Agricultural Bank and Another* [1999] ZACC 16; 2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 at [13]

⁷ *Chung-Fung (Pty) Ltd and Another v Mayfair Residents Association and Others* [2023] ZAGPJHC 1162 at [16].

⁸ *Id* at 27. See also *Dynamic Sisters Trading (Pty) Limited v Nedbank Limited* [2023] ZAGPPHC 709.

with the monitoring device and system, which is unexplained by the respondent.

[28] The applicant has demonstrated that as there is a real possibility that the equipment has been moved to a different site, is not being maintained as prescribed, has been tampered with and the whereabouts is unknown that there is no alternative remedy than an urgent application for the return of the equipment.

Conclusion

[29] The applicant has satisfied the urgency threshold and has met the requirements of a final interdict.

[30] Therefore, the order granted is merited.

**E RAUBENHEIMER
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG**

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **10 March 2026**

Heard on: 17 September 2025

Date of Judgment: 10 March 2026

Appearances:

For the Applicant: Adv van der Merwe

Instructed by: Senekal Simmonds Inc

For the Respondent: Adv Mudimeli

Instructed by: Tshitangano Attorneys Inc