

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Number: 2024-045858
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: ~~YES~~/NO
DATE **20 February 2026**
SIGNATURE

In the matter between:

MATJEE TSHEPO JOHANNES 1st Applicant

BATSILE BOTLHE PROJECT DEVELOPMENT (PTY) LTD 2nd Applicant

BAKGATLA AND SONS HOLDINGS (PTY) LTD 3rd Applicant

and

M[...], O[...], K[...], M[...] 1st Respondent

FIRST NATIONAL BANK 2nd Respondent

M[...], L[...], M[...], P[...] 3rd Respondent

MASONGANYE SELIAAN SARAH 4th Respondent

BOKANG MORENA TRADING AND PROJECTS (PTY) LTD 5th Respondent

JUDGMENT

Mazibuko J

- [1] The first applicant, Tshepo Matjee ('Matjee'), second applicant, Batsile Bothle Project Development (Pty) Ltd ('Batsile') and the third applicant, Bakgatla and Sons Holdings (Pty) Ltd ('Bakgatla'), (together referred to as the applicants), the fourth respondent, Masonganye Seliaan Sarah ('Masonganye'), fifth respondent, Bokang Morena Trading and Projects (Pty) Ltd ('Bokang'), Malebana Kgabo Lebesia N.O ('Kgabo') are cited in the divorce proceedings, initiated in April 2024, by the first respondent, M[...] O[...] K[...] M[...] ('Mrs M[...]') against the third respondent, M[...] L[...] M[...] P[...] ('Mr M[...]').
- [2] Mr and Mrs M[...] were married to each other out of community of property with the inclusion of the accrual system on 14 December 2015.
- [3] It is common cause between the parties that Mrs M[...] caused the subpoena *duces tecum* ('the subpoena') to be issued in terms of which she wanted the First National Bank ('FNB') to produce financial documents as listed in Annexure A to the subpoena, relating to the affairs of all the parties, including Mr M[...] so she could use such documents and or information in the divorce proceedings between her and Mr M[...]. In resisting the subpoena, the other parties filed an application to review and to set it aside. The application was opposed. On 21 January 2026, Ally AJ dismissed the application.
- [4] Aggrieved by the judgment and the order of Ally AJ, the applicants filed leave to appeal application on 22 January 2026.
- [5] On 23 January, on behalf of Matjee, his attorneys dispatched correspondence to FNB notifying them that the operation and execution of the 21 January order are suspended until the finalisation of the application for leave to appeal and or appeal. Later that day, they emailed FNB to inform them that they had received

communication from their client stating that FNB intended to comply with the subpoena.

- [6] Matjee's correspondence demanding a written undertaking that FNB would not comply with the subpoena bore no fruit, as on 28 January, the day FNB was required to provide the requested written undertaking, FNB responded to the correspondence as follows:

'The subpoena was never at any point legally stayed, 'therefore, even in the instance that the appeal did suspend the order of dismissal, it does not have the effect of staying the subpoena.

The mere application to set aside the subpoena did not stay the subpoena. A subpoena is a directive from court that demands compliance and remain in full force and effect until set aside. The subpoena can only be stayed by a court order or agreement with the issuing party.

Any continued non-compliance with the subpoena places the Bank in contempt.

Kindly note that any application that seeks costs against the Bank will be opposed as the bank is merely complying with a validly issued legal directive that has not been stayed.'

- [7] On 29 January 2026, this application was launched on an urgent basis seeking an order declaring:

[7.1] The judgment and order handed down by Ally AJ on 21 January 2026 in the above-mentioned case number are final in effect and fall within the ambit of section 18(1) of the Superior Courts Act No. 10 of 2013 ('the Act').

[7.2] The applicants' application for leave to appeal suspends the operation and execution of the aforesaid order pending the final determination of the application for leave to appeal and other appeals.

- [7.3] In the alternative, Ally AJ's order is found to be interlocutory within the meaning of section 18(2) read with section 18(3) of the Act, in that it is stayed and suspended pending the final determination of the appeal proceedings.
- [7.4] The second respondent, First National Bank ('FNB'), is interdicted and restrained from producing, disclosing, copying, or making available any documentation or information sought in terms of the subpoena pending the final determination of the appeal proceedings.
- [8] FNB stated that it will abide by the court order. The other parties elected not to participate in these proceedings.
- [9] Mrs M[...] opposed the application and raised points *in limine*; that
- [9.1] The application is irregular, as FNB was impermissibly and irregularly joined in the dismissed review application, as it was not joined in the main divorce action.
- [9.2] The subpoena was issued on 6 February 2025; thus, the application lacks urgency.
- [10] She further asserted that the applicants would be afforded substantial redress at a hearing in due course.
- [11] The issue to be determined is whether Matjee, in his affidavit, made out a case justifying departure from the norm, and whether, in his application, he has made out a case for the relief sought.
- [12] This judgment will first deal with the points in limine as raised on behalf of Mrs M[...]. About the irregularity of the urgent application. Mrs M[...], through her counsel, argued that the court never granted an order joining FNB to the main divorce action, the dismissed review application, or this application.
- [13] In terms of the Uniform Rules, a party to a cause in which any other party has taken an irregular step may apply to the court to set it aside, specifying particulars of the irregularity or impropriety alleged, only if:

- [13.1] The applicant has not himself taken a further step in the cause with knowledge of the irregularity.
- [13.2] The applicant has, within 10 days of becoming aware of the step, by written notice, afforded his opponent an opportunity of removing the cause of complaint within 10 days.
- [13.3] If the applicant has made out a case for irregularity or impropriety, the court hearing the application may set the proceeding, irregularity or impropriety aside in whole or in part, either as against all the parties or as against some of them, and grant leave to amend or make any such order as to it seems meet.
- [13.4] Until a party has complied with any order of court made against him in terms of this rule, he shall not take any further step in the cause save to apply for an extension of time within which to comply with such order.¹
- [14] Mrs M[...] had already taken further steps in the proceedings by participating in the dismissed review application and opposing this application; submissions on her behalf were also made during the hearing of this application. In my respectful view, the subsequent events had cured any irregularity, if there was any. None of the parties suffered prejudice. Therefore, the point *in limine* on irregularity due to non-joinder stands to fail. Mrs M[...] had ample opportunity to express her complaint since the time of the review application.
- [15] With regard to urgency, Mrs M[...], through her counsel, argued that the subpoena was issued on 25 February 2025, therefore urgency cannot be relied on just less than a year later.
- [16] Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter urgent and why they cannot be afforded substantial redress at a hearing in due course.

¹ Rule 30 (1) to (4) of the Uniform Rules of Court.

- [17] The applicant must make out their case in the founding affidavit to justify departure from the norm.²
- [18] Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.³
- [19] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.⁴ In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll.⁵ The matter may also be struck from the urgent roll where the court finds that urgency was self-created.
- [20] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable harm" for the purposes of establishing an interim interdict.⁶
- [21] The applicant must explicitly set forth the circumstances that render the matter urgent and the absence of substantial redress if not heard as a matter of urgency. This is not the equivalent of irreparable harm. Delay will not automatically result in the matter not being considered urgent.⁷
- [22] Notwithstanding the correspondence exchanged between Matjee's attorneys and FNB, FNB remained resolute that it would comply with the subpoena. FNB's view was that the subpoena was valid and had not been legally stayed. Even though the leave to appeal application suspended the order, it did not

² Luna Meubel Vervaardiger (Edms) Bpk v Makin 1977(4) SA 135 (W) at 137E.

³ Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others 2006 (4) SA 292 (SCA) at [9].

⁴ East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others (11/33767) [2011] ZAGPJHC 196 (23 September 2011).

⁵ SARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA).

⁶ Several matters on the urgent court roll 2013 (1) SA 549 (GSJ).

⁷ (Molosi and Others v Phahlo Royal Family and Others [2022] 3 All SA 160 (ECM)).

have the effect of staying the subpoena, it was argued. They considered the continued non-compliance with the subpoena contemptuous.

- [23] It is unclear why FNB found it necessary to comply with the subpoena issued on 6 February 2025 only after Ally AJ's judgment of 21 January 2026, if Ally AJ's judgment and order had nothing to do with them complying with the subpoena. It was alleged that they stated that they would comply in 6 or 8 days. With respect, the inference to be drawn is that FNB considered the subpoena stayed pending finalisation of the dismissed review application. Therefore, if the review application stayed the execution of the subpoena, it follows that the leave to appeal application flowing from that dismissed review application should, because of the application or appeal, stay the subpoena.
- [24] FNB's contention in their correspondence that the subpoena was never legally stayed cannot be sustained, as the subpoena was issued on 6 February 2025 and required FNB to make the documentation and information available within 10 days of receipt. The review and set aside of the subpoena application was launched on 11 February 2025. They had not complied with the subpoena to date.
- [25] I believe that FNB's refusal to provide an undertaking that the subpoena would be stayed pending finalisation of the application for leave to appeal, and or the appeal, necessitated this application, as averred by Matjee. Matjee proffered an explanation for his conduct and the events leading up to the launch of the application. The facts or evidence placed before the court by Matjee justify the court's urgent attention to the stay and suspension of the subpoena. I believe the urgency upon which Matjee relied was not self-created.
- [26] The applicant has passed the threshold prescribed in uniform rule 6(12)(b) for the reasons already mentioned. Therefore, the application ought to succeed, and the matter ought to be enrolled in the urgent roll.
- [27] In order to answer the question of whether Matjee's application for leave to appeal automatically suspended Ally AJ's order, one must consider the effect of the order in question.

[28] It is established law that an order or decision issued by a court binds all persons to whom and organs of state to which it applies.⁸ It remains in force and effect until and unless it is overturned. The successful litigant may execute it.

[29] In terms of Rule 45A of the Uniform Rules of Court,⁹ the court may, on application, suspend the operation and execution of any order for such period as it may deem fit: Provided that in the case of an appeal, such suspension is in compliance with section 18 of the Act.

[30] Section 18 of the Superior Court Act¹⁰ reads:

'(1) Subject to subsections (2) and (3), and unless the court, under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged with the registrar in terms of the rules.'

⁸ Section 165(5) of the Constitution of the Republic of South Africa, No. 108 of 1996.

⁹ Uniform Rules of Court, Supreme Court Act, Act 59 of 1959.

¹⁰ Act 10 of 2013.

[31] In my respectful view, Ally AJ's order has final effect only in respect of the subpoena, through which Mrs M[...] intends to have documentation and information to assess her claim in the divorce action. It, therefore, has no final effect in the main divorce action.

[32] Section 18(3) of the Superior Court Act places a burden on the applicant to lay a basis that if the court does not grant them an order declaring the interlocutory judgment and or order final, they will suffer irreparable harm. If the court is so satisfied, it can grant an order declaring that the interlocutory judgment and or order has final effect.

[33] I do not agree with the submissions made on behalf of Mrs M[...] that Matjee will be afforded substantial redress in due course, on the basis that, even if she is furnished with the documentation demanded in the subpoena, she still has a discretion as to whether to use it. The requested documentation and information are for both the parties' personal and business capacities. Once they are shared, the applicants will have no control over their distribution, to the extent that they would suffer irreparable harm should that occur. Therefore, in my respectful view, there is no harm in Mrs M[...] not being supplied with the documentation and information in terms of the subpoena until the application for leave to appeal and or appeal is finalised. Consequently, the application for a declaratory and interdictory order ought to succeed.

[34] The next issue concerns the costs. The facts of the present matter and the interest of justice justify me to follow the general rule that the successful party should be awarded costs.

[35] Consequently, I make the following order.

Order:

[35.1] The application is heard as urgent in accordance with Rule 6(12) of the Uniform Rules of this Court, and the applicant's failure to

comply with the rules relating to forms, time periods and service and this court's practice directives is hereby condoned.

[35.2] The points *in limine* are dismissed.

[35.3] The judgment and order handed down by Ally AJ on 21 January 2026 in the above-mentioned case number is declared interlocutory within the meaning of section 18(2) read with section 18(3) of the Superior Courts Act No. 10 of 2013.

[35.4] The applicants' application for leave to appeal suspends the operation and execution of Ally AJ's order of 21 January 2026, pending the final determination of the application for leave to appeal and other appeals.

[35.5] FNB is interdicted and restrained from producing, disclosing, copying, or making available any documentation or information sought in terms of the subpoena pending the final determination of the appeal application and appeal proceedings.

[35.6] The first respondent will pay the costs of the application, including those of counsel, on scale B.

N G M MAZIBUKO
ACTING JUDGE OF THE HIGH COURT
PRETORIA

Heard on: 10 February 2026

Judgment delivered on: 19 February 2026

For the applicant: Adv MB Lekoloana

Instructed by: S. Twala Attorneys

For the respondent: Adv Z M Du Plessis

Instructed by: Masipa Attorneys