IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

CASE NO: 2026-049469

In the matter between:

PHILEMON MABOTE BOIKANYO	**APPLICANT**
and	
KHANYISA MOGALE ATTORNEYS INC	**FIRST RESPONDENT**
KHANYISA ISABELLA MOGALE	**SECOND RESPONDENT**

Coram: Reddy J

Judgment reserved: 13 March 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be on 18 March 2026 at 16h00.

Urgency-Self-created urgency- Applicant aware of dispute regarding accounting of trust funds and delivery of client file since March 2025. Inexplicable eight-month period of inactivity between referral to Legal Practice Council and launching of application. Failure to act with necessary haste. Purpose of urgent court not intended for dilatory litigants.

Procedure -Rule 6(12) of the Uniform Rules of Court-Jurisdictional requirements- Requirement to explicitly set forth circumstances rendering matter urgent and reasons why substantial redress cannot be afforded in due course- Failure to provide a granular and explicit timeline for the delay.

Substantial Redress - Alternative remedy - Dispute pending before the Legal Practice Council Fee Assessment Committee -Specialized statutory process specifically tailored for the dispute -Availability of substantial redress in due course. Application struck from the roll with punitive costs.

JUDGMENT

REDDY J

Introduction

[1] What falls for consideration before this Court is an application brought within the purview of Rule 6(12) of the Uniform Rules of Court ("the URC") by the applicant. The applicant moves for an order compelling the respondents, a firm of attorneys and its principal, to deliver a complete original client file and to provide a full accounting and payment of trust funds allegedly held by the respondents following a successful claim against the Road Accident Fund ("the RAF"). The respondents oppose the application.

[2] The respondents claim in limine that the applicant has failed to satisfy the jurisdictional requirements of Rule 6(12)(b) and that any urgency is entirely self-

created through a failure to act. Moreover, the respondents assert that the applicant has access to substantial redress through a live statutory process.

Background Facts

[3] The genesis of this dispute dates back to 5 March 2025, when the RAF confirmed that party-and-party costs related to the applicant's claim were approved for payment. Thereafter, a dispute arose regarding the accounting of these funds and the delivery of the file, which led the applicant to lodge a complaint with the Legal Practice Council ("the LPC"). On 23 May 2025, an Investigating Committee of the LPC considered the matter, and on 26 June 2025, the LPC formally notified the applicant that the committee recommended the matter be referred to a Fee Assessment Committee for a final determination regarding the disputed fees.

[4] What stands out from this timeline is that following the notification in June 2025, it appears that the applicant entered into a deep legal hibernation period. Put differently, for approximately eight months, between July 2025 and February 2026, the applicant took no further legal steps to escalate the matter or seek judicial intervention. Notwithstanding the dispute having been ongoing for nearly a year, the applicant only launched this urgent application on 4 March 2026.

Submissions by the Applicant

[5] The applicant posits that the matter is urgent because the continued withholding of his file and funds causes him ongoing financial prejudice and prevents him from finalizing his legal affairs. He avers that the respondents' refusal to account for trust monies constitutes a continuous infringement of his

rights. He further claims that the forty-eight-hour (48) demand issued in early March 2026, which was disregarded, compelled him to approach the urgent court.

Submissions by the Respondents

[6] The respondents argue that the urgency is entirely self-created through a failure to act. The respondents submit that the applicant has been aware of the dispute since early 2025 and chose to wait until March 2026 to approach this Court. Additionally, the respondents contend that the pending Fee Assessment at the LPC provides the applicant with a specialized and substantial remedy, and as such, he has failed to meet the requirement of showing a lack of substantial redress in due course.

Legal Principles

[7] Rule 6(12)(b) commands that an applicant must set forth explicitly the circumstances which render the matter urgent and the reasons why substantial redress cannot be afforded in due course. This jurisdictional qualification is the gateway to urgent relief.

[8] Rule 6(12)(b) provides:

"In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course."

[9] In *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd*[1], the court held that:

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[1] *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd* para 9.

"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."

[10] That being so, it is peremptory that an applicant requiring urgent redress make out a case for urgency in the founding affidavit. This aspect of our law is enunciated in *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers*[2], where the court held:

"The degree of relaxation should not be greater than the exigency of the case demands... Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down."

[11] Besides, urgency that is self-created through dilatoriness or an inexplicable failure to act does not satisfy the requirements of the rule.[3]

<u>Conclusion</u>

[12] On a proper consideration, the applicant's cause of action is rendered impotent on both qualifying criteria that form the fulcrum of the urgency test. Firstly, the applicant has failed to account explicitly by setting out a full chronology for the timeline between June 2025 and March 2026. The failure to act by the applicant for nearly a year is a paradigmatic example of self-created

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[2] 1977 (4) SA 135 (W) at 137F

[3] *Schweizer-Reneke Vleis v Die Minister van Landbou* 1971 (1) PH F11 (T)

urgency. The applicant failed to set out the timelines explicitly to justify why he waited eight months after the LPC referral to launch these proceedings.

[13] Secondly, the fact that there is a pending matter before the LPC Fee Assessment Committee indicates that the applicant has a live remedy to attain substantial relief. The existence of this specialized statutory process confirms that the applicant has alternative redress available. To have approached the urgent court was premature; prudence required awaiting the finalization of the pending process rather than circumventing it. A more circumspect approach would have seen the applicant exhaust the existing remedies before attempting to invoke the court's urgent jurisdiction.

[14] Against this backdrop, it would be remiss of me not to underscore the object and purpose of the urgent Court. The urgent roll is a specialized platform designed for matters which meet the two peremptory requirements that form the tenets of Rule 6(12)(b). It is only then that the urgent court's jurisdiction is engaged. It is not a springboard for dilatory litigants who have finally decided to act after an inordinate delay, nor is it a mechanism for a preferential hearing. By failing to act timeously and attempting to bypass the LPC process, the applicant has abused the court process.

<u>Costs</u>

[15] Costs are at the discretion of the court, notwithstanding the parties submissions in this regard. The respondents were required to file papers on extremely short notice for a dispute that has been pending for a year. Given the self-created nature of the urgency and the failure to disclose an explicit timeline, a punitive costs order is warranted to reflect the Court's displeasure at the misuse of the urgent roll.

Order

[16] In the premises, I make the following order:

1. The application is struck from the roll for lack of urgency.
2. The applicant is ordered to pay the respondents' costs on an attorney and client scale.

[redacted]

A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the Applicant : Mr Makgale

Instructed by: Makgale Ngwasheng Attorneys

Mahikeng

For the Respondents : Advocate Shole

Instructed by: Khanyisa Mogale Attorneys

C/O Mokaa Attorneys