REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2026-022250

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

25/03/2026 [redacted]

DATE SIGNATURE

In the matter between:

CANYON BLUE GROUP (PTY) LTD	First Applicant
MATEBELLO MABATHO MABYE	Second Applicant

And

ESKOM HOLDINGS SOC LIMITED	First Respondent
CHAIRPERSON OF THE SUPPLIER REVIEW COMMITTEE	Second Respondent
MINISTER OF FINANCE	Third Respondent

JUDGMENT

STRYDOM, J

[1] Canyon Blue Group (Pty) Ltd ("Canyon" or the "applicant") is a supplier to Eskom Holdings SOC (Pty) Ltd ("Eskom"). Canyon has provided, amongst other services, vegetation management services to Eskom at various Eskom sites around the country. These services have been provided in terms of various agreements over a few years.

[2] Eskom received complaints concerning Canyon regarding irregular procurement. These complaints were subsequently investigated by Eskom and culminated in a Supplier Discipline Process ("SDP") being instituted against Canyon in November 2024. The decision was made by the Supplier Review Committee ("SRC") after the grounds for the disciplinary action were provided to the applicant, who was given an opportunity to make written representations, which were received and considered.

[3] On 11 March 2025, the outcome of the SDP was communicated to the applicant in a letter from Eskom ("the Decision").

[4] In terms of the decision, Eskom had resolved to:

a. Restrict the applicant from doing business with Eskom for a period of five years; and

b. Refer the applicant and its director, Ms. Mabye (the "second applicant"), to the National Treasury to be included in the List of Restricted Suppliers on the National database.

[5] Currently, about one year later, the applicants have launched an urgent application, *inter alia*, seeking an interim order that pending the final determination of the review application under case number: 030307-2026, Eskom and the Chairperson of the SRC are ordered and directed to immediately unblock and reinstate the applicants vendor number: 11090319 and vendor profile on all procurement, financial and related systems operated or controlled by Eskom.

[6] Effectively, the applicants want the court to suspend the administrative decision made under the Promotion of Administrative Justice Act ("PAJA") pending review. In the interim, the applicant wants to be placed in a position as if the decision had never been taken.

[7] The urgency of the matter was opposed and was fully argued before this court.

[8] On behalf of the applicants, it was argued that Canyon has acted at all times with diligence, restraint, and good faith during the period from August 2025 until January 2026, and that the applicant made sustained and *bona fide* efforts to resolve this matter without resorting to litigation, in an attempt to avoid unnecessary court proceedings and further prejudice to all parties.

[9] A chronology of events was provided by both parties to this application. In what follows, a short synopsis of the events that have taken place leading up to the Decision and this urgent application is provided:

a. On 25 February 2025, the SRC met and considered the applicants' disciplinary matter and resolved to restrict the applicant from doing business with Eskom.

b. On 11 March 2025, the applicant was provided with the decision and informed that it may request reasons in a manner and within the time periods provided for in PAJA.

c. On 17 March 2025, the applicant delivered a request for reasons for the Decision.

d. On 27 March 2025, the applicant wrote to Eskom advising it of its intention to seek external redress through PAJA.

e. On 4 April 2025, the applicant demanded that Eskom unblock its vendor number and that it declares the disciplinary process to be null and void.

f. On 16 April 2025, Eskom delivered reasons for the decision and further stated that there is no internal review or appeal process available in respect of the supplier discipline process.

g. During the period from May to July 2025, the applicant alleges it attempted to engage with Eskom through personal visits and representations. This is denied by Eskom

h. On 10 August 2025, the applicant wrote to Eskom and made further representations. It pleaded for leniency and reconsideration of the Decision. Further representations were made ex post facto the Decision.

i. On 25 August 2025 and 26 August 2025, the applicant addressed emails to Eskom regarding the outcome of the further representations.

j. On 28 August 2025, Eskom sent an email to the applicant advising that its case had been duly adjudicated as per the decision sent on 11 March 2025. It has been further confirmed that there is no appeal mechanism in Eskom's supply disciplinary process. Notwithstanding this, they would request further guidance from the SRC.

k. During September 2025, various emails were sent by the applicant to Eskom requesting an update on the further representations and requested work. A request was made for feedback on the "guidance" to be sought from the SRC. A threat was made to utilize an interdict to induce a response from Eskom pertaining to the further representations

l. In October 2025, the applicant sent further emails, threatening to institute an urgent application during this month.

m. On 7 October 2025, Eskom advised the applicant that its email of 28 August 2025 is still the official position regarding the applicant's case.

n. On 22 October 2025, the applicant's attorney sent a letter of demand to Eskom wherein the applicant demanded that the applicant's vendor number be unblocked; for confirmation that they have exhausted all available remedies prior to approaching a court; requested a response by 27 October 2025, failing which the applicant would approach the court on an urgent basis for relief.

o. On 5 November 2025, Eskom acknowledged receipt of the letter of demand dated 21 October 2025. Nothing further was stated.

p. For the period from 22 October to 6 January 2026, two months went by without any further action from the applicant.

q. On 6 January 2025, a further letter referred to as a final letter of demand was sent by the applicant's attorneys to Eskom, repeating its demands.

r. On 9 January 2026, Eskom acknowledged receipt of the letter of demand and advised that the official handling the matter was out of the office, and the latter would be brought to her attention upon her return on 19 January 2026.

s. From 10 January 2026 to 20 January 2026, nothing further transpired.

t. On 27 January 2026, email correspondence was sent from the applicant's attorney to Eskom, reiterating previous demands made and again making threats of the institution of urgent legal proceedings.

u. On 27 January 2026, Eskom addressed a letter to the applicant, restating that there was no internal right of appeal available to the suppliers.

v. On 3 February 2026, the applicant issued an urgent application against Eskom but attached a wrong founding affidavit. On 12 February 2026, the applicants' attorneys served the corrected papers in the urgent application.

w. On 17 February 2026, this matter was initially enrolled on the urgent court roll but subsequently removed. The same happened on the 3rd of March 2026.

x. On 17 March 2026, the matter was enrolled on the urgent court roll before this court.

[10] On behalf of the applicants, it was argued that the above chronology demonstrates that Canyon and the second applicant did not create their own urgency. On the contrary, they exercised patience and restraint for months while

Eskom delayed unreasonably, failed to make decisions, and allowed severe prejudice to accumulate.

[11] It was argued that this matter is inherently urgent due to the timing of the excuses and the broader public-sector procurement cycle. The months of January to March constitute the critical window for advertising, evaluation, and award of tenders for the 2026/2027 financial year. As such, Canyon would not obtain substantial relief at a hearing in due course. The court was referred to the decision in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [1] where it was held that a delay in instituting proceedings is not on its own a ground for refusing to regard the matter as urgent. The court held that "*the important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at the hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the court to believe. On the other hand, a delay may have been caused by the fact that the applicant was attempting to settle the matter or collect more effects with regard thereto.*"

[12] Applicant argued that the ongoing unlawful blockage of Canyon's vendor profile prevents it from participating in all procurement opportunities during this decisive period. Even if the applicants are ultimately successful in the pending review application, such success would be hollow. By then, the first applicant would have lost an entire year of business and would likely have ceased to exist.

[13] Eskom's case on urgency was that the applicants' urgency was self-created, and the chronology of events indicated exactly that. There were lengthy periods of unexplained delay. Canyon's explanation is neither adequate nor covers the full period from when it realized that urgent relief should be pursued.

[14] The court was referred to the matter of *White River Marketing (Pty) Ltd and Another v Rothwell and Another* 2022 [2] where the court in paragraph [6] held that to establish urgency an applicant must show that " *in the face of a threat to it or its interest it had acted with the necessary haste to mitigate the effects of that*

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[1] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2012] JOL 28244 (GSJ) at paragraphs [8] and [9].

[2] *White River Marketing (Pty) Ltd and Another v Rothwell and Another* 2022 JDR 1186 (GJ).

threat". It was argued that Canyon did not do so. The court was further referred to the matter of *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Other*[3], where it was held that an applicant should act promptly to pursue an urgent application, and if there is a delay to file an urgent application, such delay should be fully explained.

[15] The starting point in considering whether a matter is urgent is to have regard to Rule 12(a) and (b). Subsection (b) provides that the applicant must set forth in an affidavit explicitly the circumstances that render the matter urgent and the reasons why the applicant claims it would not be afforded substantial redress in due course.

[16] This is not the only consideration. When an applicant creates its own urgency and fails to adequately explain the delay, the matter would not be entertained in the urgent court. (see: *ENX Group Limited v Brain Leonard Spilkin*[4] and cases referred to in this judgment, see also *Pacinamix (Pty) Ltd v Patina (Pty) Ltd*[5]).

[17] An applicant cannot create urgency by simply waiting until the normal rules governing the launch of applications can no longer assist the applicant.

[18] This does not mean that an applicant cannot explore settlement possibilities and try to seek compliance from a respondent with its demands before lodging an urgent application. This avenue could be explored, particularly to save legal costs. (see: *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC[6]).

[19] At some stage, however, an applicant must realize that if a satisfactory outcome is not forthcoming, it should approach a court for relief. The attempt to obtain compliance cannot be pursued for lengthy periods, with a deadline looming, when substantial redress can no longer be obtained, unless an order is urgently obtained at the last moment.

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[3] *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Other* [2022] JOL 55628 (GJ) at para 26,
[4] *ENX Group Limited v Brain Leonard Spilkin* (unreported, ECG, case no: 2296/2022).
[5] *Pacinamix (Pty) Ltd v Patina (Pty) Ltd* (unreported, GJ case no 2022/045789 dated 25 November 2022) at paragraphs [9]-[10]
[6] *Nelson Mandela Metropolitan Municipality v Greyvenouw* CC 2004 (2) SA 81 (SE) at paragraph 34.

[20] This matter pertains to an administrative decision to block Canyon's vendor number. It could no longer compete for tenders from Eskom and other government institutions. Canyon should have been aware that the only remedy available to it was to seek a review of the decision. The applicant was on more than one occasion informed that no appeal or review was available and that the decision would stand. Despite this, the Canyon continued sending emails, pleading for reconsideration of the Decision. The applicant and his attorney must have realized that it would be irregular for Eskom to overturn its own administrative decision. As no internal appeal or review was available, the decision remains in force until set aside by a competent court.

[21] Canyon strongly relied on Eskom's letter stating that no appeal mechanism was available in Eskom's supplier disciplinary process, but, notwithstanding this, Eskom indicated that it would request further guidance from the SRC. The result of this undertaking was never provided to Canyon. Canyon should not have waited indefinitely for a reply. Particularly in circumstances where no internal review or appeal was available. This fact was related to Canyon multiple times.

[22] For almost a year, Canyon decided not to approach a court, despite indicating in September and October 2025 that it would. Final letters of demand were sent, but it was only in February 2026 that Canyon filed an urgent application, attaching the wrong founding affidavit. Only on 12 February 2026 was the correct founding affidavit attached to the application, in which the notice of motion referred to a hearing date of 3 March 2026. This led to the filing of an answering affidavit. Insufficient time was provided for a replying affidavit, which meant that the matter was removed from the roll and the notice of motion was amended to include the date of 17 March 2026. The matter was then set down before this court. The setting down of an urgent application from one week to the next after it was filed is problematic. In this case, it was done on at least three occasions, without a proper explanation provided under oath.

[23] In my view, self-created urgency is a form of abuse of the urgent court's processes. If the applicants had started the application in the ordinary course, shortly after the reasons for the decision were provided in April 2025, it would not

have been necessary to treat the matter as urgent at all, let alone to file an application only two weeks before the deadline for new tenders.

[24] For this reason, this court found that the urgency upon which the applicants relied was self-created and the matter was struck off the roll. Applicants were ordered to pay the application costs on scale C. The order should have stated that the cost order is made against the applicants, jointly and severally, with the one paying the other to be absolved. To that extent, I will correct my order.

[25] The court also reserved the question to decide the reserved costs for the hearing on 3 March 2026. The removal of the matter was underpinned by the applicants' wrong routes taken from the outset, in filing this application in the urgent court. The initial urgent application was set down for 6 February 2026, citing unrealistic timelines for filing an answering affidavit. A wrong founding affidavit was attached.

[26] This affidavit was simply replaced by another affidavit without seeking condonation. The timelines set in the notice of motion were amended. When the answering affidavit was filed, it provided an answer to the wrong and corrected founding affidavit. Ultimately, the applicants could not timeously file a replying affidavit, and on the date of the fresh set-down, 3 March 2026, the matter was removed from the roll. In my view, none of this would have transpired if realistic timelines were set from the outset. Accordingly, in my view, the applicants are responsible for the wasted costs occasioned by the removal of the matter from the urgent roll of 3 March 2026.

[27] The following order is made:

a. The matter is struck from the urgent court roll as the urgency was self-created.

b. The applicants to pay the costs of this urgent application, including the reserved cost on scale C, jointly and severally, the one paying the other to be absolved.

[redacted]

R. STRYDOM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Heard on:	17, 18 & 20 March 2026
Delivered on:	25 March 2026

Appearances:

For the Applicants:	Adv. D.B. Melaphi
	Adv. B. Malinga
Instructed by:	Pepu Attorneys
For the 1st and 2nd Respondent:	Adv. G. Singh
Instructed by:	Mchunu Attorneys