

REPUBLIC OF SOUTH AFRICA



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

Case No: 2025/246166

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
<u>30/3/2026</u>	
DATE:	SIGNATURE

In the matter between:

ROHIT MISRA

Applicant

and

THE RANDBURG MAGISTRATES COURT

1ST Respondent

CLERK OF THE COURT RANDBURG

2nd Respondent

NAZIRA MOOSA

3rd Respondent

MINISTER OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT

4TH Respondent

REASONS

Mia J,

Introduction

- [1] This application arrived on the urgent roll clothed in the language of constitutional grievance but, upon scrutiny, reveals itself to be a procedurally defective attempt to review the Magistrates' Court proceedings conducted under the Domestic Violence Act (DVA).¹ Reasons were furnished *ex tempore*, notwithstanding the furnishing of reasons, the applicant herein insists on further reasons. It noteworthy to mention that the matter first appeared on the urgent roll of my sister Modiba J on 27 January 2026. The matter was opposed by the third respondent and was removed from the roll. The court furnished directions for the further conduct of the matter. The applicant enrolled the application for hearing once again in the urgent court on 10 February 2026 adding a fourth respondent, the Minister of Justice and Constitutional Development. There is no record of service on the fourth respondent. The matter proceeded on 11 February when the applicant made submissions on the papers.
- [2] The applicant seeks to set aside an interim protection order granted in his absence. He appeared before the Magistrate in the District Court and complains that he was muted and could not participate meaningfully in the proceedings when the court adjourned. The gravamen of his complaint is that the respondent allegedly committed perjury by declaring herself unmarried, whereas she is his spouse. On that premise, he contends that his rights have been infringed and insists that this court review the proceedings and that the protection order be set-aside forthwith failing which he is gravely prejudiced.

¹ 116 of 1998

- [3] The application is fundamentally misconceived, on urgency and on procedure.

Urgency

- [4] Rule 6(12) is not an indulgence for the disorganised litigant. It is a narrow procedural gateway reserved for cases where immediate judicial intervention is indispensable. The governing principles are settled. In *Luna Meubels Vervaardigers (Edms) Bpk v Makin*,² it was held that urgency must be real, not self-generated. That principle has been consistently applied in this Division, including in *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*.³
- [5] This approach has been reinforced, urgency is not established by mere assertion of prejudice; it requires a demonstration that substantial redress in due course is unattainable.⁴ Where alternative remedies exist and are adequate, urgency is absent. The applicant was given directions for the further conduct of the matter when it served before Modiba J. It is not clear that the directives were complied with.
- [6] This application where the applicant seeks to proceed on the basis of urgency once again does not meet that standard of urgency required. It does not come close to it.

A review without a record

- [7] The relief sought is, in substance, a review. That has consequences. Review proceedings are record driven.⁵ This is not a matter of form; it is the essence of review jurisdiction. The court must examine what transpired in the tribunal below. Here, there is no record. None.

² 1977 (4) SA 135 (W)

³ (11/33767) [2011] ZAGPJHC 196 (23 September 2011) para [4] – [12].

⁴ *Id* at para [6].

⁵ *Turnbull-Jackson v Hibiscus Court Municipality and Others* (CCT 104/13) [2014] ZACC 24; 2014 (6) SA 592 (CC); 2014 (11) BCLR 1310 (CC) (11 September 2014) at para [37].

- [8] This court has repeatedly underscored that a review cannot be entertained in the absence of a proper record. The absence of a record is not a curable inconvenience; it is fatal to the cause of action. The applicant's attempt to bypass this foundational requirement by invoking urgency is impermissible. Urgency does not license evidential deficiency.

The perjury allegation

- [9] The applicant alleges perjury. The allegation is grave. It is attached as an annexure and unmarked. It is not evident that this supplementary affidavit was served on the respondents.
- [10] Motion proceedings are decided on evidence, not indignation. The invocation of criminal terminology, absent proof, is not a substitute for a case. The applicants assertion that the respondent has committed perjury ought to be determined at the hearing in the District Court to allow for the review thereof. The allegation in this regard carries no weight in the determination of urgency or relief in relation to the review.

The statutory scheme: domestic violence

- [11] The impugned proceedings arise under the DVA, a statute designed to provide swift and effective protection to victims of domestic violence. Section 5 of the Act expressly authorises the granting of interim protection orders, including in the absence of the respondent, where there is prima facie evidence of domestic violence. The respondent is permitted to anticipate the return date on short notice.
- [12] The Constitutional Court has repeatedly emphasised the State's obligation to afford effective protection against domestic violence. In *Carmichele v Minister of Safety and Security*,⁶ the Court underscored the constitutional duty resting on the State to protect vulnerable persons from harm.

⁶ [2001] ZACC 22; 2001 (4) SA 938 (CC); 2002 (1) SACR 79 (CC); 2001 (10) BCLR 995 (CC)

- [13] In *Omar v Government of the Republic of South Africa*,⁷ the Court recognised the legitimacy of interim measures that may operate robustly to secure effective protection, subject to subsequent procedural safeguards.
- [14] The DVA⁸ reflects that constitutional imperative. It creates a regime of immediate protection, balanced by procedural mechanisms allowing the respondent to be heard thereafter.
- [15] Those mechanisms include:
- a. the return date at which the respondent may oppose confirmation;
 - b. the right to seek variation or rescission; and
 - c. recourse to review proceedings properly constituted.
- [16] Where the applicant is dissatisfied with the outcome after opposition, the appropriate course is to pursue an appeal. Where the procedure is questioned, the applicant may opt to review the proceedings. In both instances this requires a written transcript of the proceedings in the court a quo. The applicant has elected to bypass all of these and instead seeks urgent intervention on defective papers. That is not what the statute contemplates.
- [17] The applicant has not demonstrated that he will be denied substantial redress in due course. The remedies available to him are immediate, practical, and specifically designed for the context in which he finds himself. The prejudice alleged is abstract. It is not shown to be irreparable. It is not shown to be incapable of redress. The chronology is opaque. There is no satisfactory explanation for the timing of the application or for the failure to pursue available remedies. The only reasonable inference is that any urgency is self-created. The urgent

⁷ [2005] ZACC 17; 2006 (2) SA 289 (CC); 2006 (1) SACR 359 (CC); 2006 (2) BCLR 253 (CC)

⁸ 116 of 1998.

court is not a refuge for litigants who ignore available procedures and then demand priority.

Discretion and structural considerations

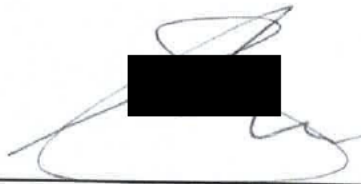
- [18] Even if urgency were established, which it is not, the court would be slow to intervene in the statutory domain of the Magistrates' Court on such impoverished papers. To do so would undermine the carefully constructed procedural framework of the DVA and invite litigants to circumvent it through the urgent roll. Courts must resist that invitation.

Costs

- [19] The application is ill-conceived and procedurally defective. There was no opposition as the respondents were not present and made no submissions.

Order

- [20] For the reasons above, the following order is made:
1. The application is struck from the roll for lack of urgency.
 2. No order as to costs.

A handwritten signature in blue ink, appearing to be 'S C MIA', is written over a black rectangular redaction box. The signature is fluid and cursive.

S C MIA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the applicant : Rohit Misra
rohit.misra.mail@gmail.com

Instructed by : In Person

On behalf of the respondents : No appearance

Date of hearing : 11 February 2026

Date of judgment : 30 March 2026