



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

CASE NO: 2026/039564

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED.

SIGNATURE

DATE: 27/3/2026

In the matter between:-

**E[...] C[...] S[...]
(PASSPORT NUMBER: F[...])**

Applicant

and

**J[...] P[...] J[...]
(ID NUMBER: 7[...])**

First Respondent

CURRO (PTY) LTD t/a CURRO MIDRAND

Second Respondent

REQUEST FOR REASONS IN TERMS OF RULE 49(1)(c)

ALLEN AJ

INTRODUCTION

[1] This is an opposed urgent application for the following interim relief:

- “1. That this application be enrolled and heard as a matter of urgency, and that the forms and time periods prescribed in the Uniform Rules of Court be dispensed with in terms of Rule 6(12).
2. That the First Respondent be directed to remove the minor child, J[...] K[...] S[...], from Curro and enrol him at Sparks School, being the school agreed upon by the parties and one which is within their financial means.
3. That the First Respondent be directed to sign all necessary documentation and to provide all documents in her possession or under her control required to facilitate the re-enrolment of the minor child, J[...] K[...] S[...], at Sparks School.
4. That the Second Respondent should assist in the facilitation of the deregistration of the minor child J[...] K[...] S[...] with Identity number 1[...].
5. That the costs of this application be awarded against the First Respondent on the scale as between attorney and client.
6. Further and/or alternative relief.”

[2] The application was heard on 17 March 2026 and I made the following order:

- “1. The application is struck from the roll for lack of urgency;
2. No order as to costs.”

[3] On 20 March 2026 I received a request for written reasons from applicant’s attorneys of record as follows:

“**KINDLY TAKE NOTICE** that the above-mentioned Applicant request for written reasons. This matter was before the Honourable Acting **ALLEN AJ** and the Judgment was delivered EX TEMPORE on the 17th March 2026.”

BACKGROUND

[4] Applicant brought an urgent application to be heard on 3 March 2026. The application is opposed by first respondent (“respondent”) and who is also self-represented. Second respondent did not file any papers. No sheriff’s returns of service were filed to confirm service, alternatively reasons proffered why the sheriff could not serve the papers.

[5] Respondent’s notice to oppose was filed late for which condonation is sought. The answering affidavit was to be filed by 27 February 2026 and was uploaded one day later on 28 February 2026 with the date of service on applicant not disclosed. Applicant’s papers are silent in this regard. Applicant’s chronology is incomplete and unfortunately also silent about respondent’s papers and the date of service. In the circumstances, and should the answering affidavit have been served one day late, condonation is granted.

DISCUSSION

[6] On 3 March 2026 the matter was struck from the roll for no appearance. Applicant did not file an affidavit to explain the non-appearance prior to re-enrolment. This is a requirement in terms of paragraph 9.17 of the Practice Manual. Applicant argued that it was not necessary as a notice of removal was timeously filed. I find

this questionable as the notice was uploaded on Caselines only on 5 March 2026 at 11:54, two days after the date of hearing.

[7] The applicant hereafter set the matter down for 10 March 2026 on the “opposed roll” as per the notice of set down. The matter was not heard and no endorsement appears on Caselines regarding court proceedings on this day. The respondent argued that she was present at court. The matter was again set down for 17 March 2026 on the “opposed roll” as per the notice of set down and was heard in the urgent court. Applicant was unable to explain the discrepancy.

[8] Applicant’s papers are also not compliant with the directive of 1 December 2025 regarding the presentation of bundles and heads of argument on Caselines and the application was inadvertently processed. Applicant was to upload certificates to certify that the papers comply with the requirements of this directive, failing which the registrar shall not further process the matter. The directive further reads that: “...if a matter is inadvertently processed, the Judge who is eventually called upon to hear the matter shall strike it from the roll and punitive costs may follow.” (Own emphasis)

[9] Before I struck the matter from the roll, I requested the parties to address me on urgency.

URGENCY

[10] In the Uniform Rules of Court, Rule 6(12)(b) reads: “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.”

[11] Urgency is not there for the taking, should not be self-created and reasons should be provided why substantial redress cannot be achieved in due course.

[12] In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* (**11/33767**) (**2011**) **ZAGPJHC 196 (23 September 2011)**) at para 6 it was stated: “The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to

set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.”

[13] In the case of *Roets N.O. v SB Guarantee Company (RF) (Pty) Ltd (36515/2021) [2022] ZAGPJHC 754 (6 October 2022)* at para 26 it was held: “...urgency which is self-created in a sense that an applicant sits on its laurels or take its time to bring an urgent application can on its own lead to a decision that a matter is struck off the roll. It would of course depend on the explanation provided but if the explanation is lacking and does not cover the full period from when it was realised, or should have been realised, that urgent relief should be obtained. If this criteria to strike a matter from the roll is not available to a court, a court would be compelled to deal with an urgent application where for instance nothing was forthcoming for weeks or months and a day or two before an event was going to take place a party who wants to stay that event can approach a court and argue that if an order is not immediately granted such party would not obtain substantial redress in due course. If this is the approach to be adopted by a court there exist no reason why any explanation for the delay should be provided at all. An applicant only has to show that should interim relief not be granted it will suffer irreparable harm.”

[14] In the case of *MM v NM and Others (15133/23P) [2023] ZAKZPHC 117 (18 October 2023)* at para 10 it was said about urgency: “If this was not a criterion by which one could strike a matter from the roll a court would be compelled to deal with an urgent application where for instance nothing was forthcoming for weeks or months and a day or two before an event was going to take place a party who wants to stay that event can approach a court and argue that if an order is not immediately granted such party would not obtain substantial redress in due course. If this approach was adopted in matters of urgency there exists no reason why any explanation for the delay should be provided at all. An applicant would only have to show that should interim relief not be granted it will suffer irreparable harm. This would be an untenable situation.”

[15] Respondent referred to “extra maths lessons” the minor child needed since 1 July 2025 and telephonic discussions between the parties thereafter. This resulted in

the discussion of 15 December 2025 and agreement to the current school. Applicant did not proffer any substance to counter these allegations. On 19 December 2025 respondent corresponded with the erstwhile school via email as per the agreement between the parties. The email was forwarded to applicant, marked "FYI", for his information. This correspondence was annexed to applicant's founding affidavit, annexure "ESC 7", confirming that he did receive it at the time. In the replying affidavit applicant in paragraph 23 responded as follows: "There was no agreement regarding enrolment at Curro. Annexure "A2" reflects that I was merely marked "FYI," indicating that the decision had already been made." It is undisputed that applicant received the email on 19 December 2025.

[16] The settlement agreement between the parties makes provision for mediation in the event of disagreement. If, for a moment, it is accepted that there was disagreement, then applicant elected not to make use of mediation since at least 19 December 2025. No family advocate report was submitted as to what will be in the best interests of the minor child predicated on the factual matrix disclosed of the minor's challenges that the previous school will be better suited than the current school. Applicant's tender of a 20% contribution towards school fees instead of the 50% confirms the suitability of the current school.

[17] The minor is enrolled at Curro and attend the new school from 14 January 2026. Respondent referred to telephonic discussions between her and the minor with applicant prior to this day and thereafter. Respondent did not proffer any substance to counter these allegations.

[18] On 31 January 2026 respondent forwarded an email to applicant which from the onset reads: "As you are aware ...". Applicant did not take issue herewith and on 4 February 2026 responded that his attorneys will contact her. From this date another month followed when the matter was initially set down and after it was struck from the roll, another two weeks followed when the matter was eventually heard. This matter was therefore heard approximately three months after applicant became aware of the change of schools and more than two months after the minor's first day in the new school.

[19] Applicant's trigger for urgency is predicated on a unilateral decision taken "without consultation, agreement, or consideration" of his financial capacity substantiated by applicant's disclosure of the 19 December 2025 email. Applicant avers in the replying affidavit that he only became aware on 31 January 2026 which I find questionable. Should it for a moment be accepted that applicant did not know of the developments since December 2025 and his child's new school until 31 January 2026, applicant took another six weeks before the matter was heard.

CONCLUSION

[20] I determined that there were no certificates and the papers were not compliant with the directive of 1 December 2025 resulting in a striking order. I further determined that the matter was not urgent and struck it from the roll for lack of urgency with no order as to costs.

[21] These are my reasons.

ALLEN AJ
ACTING JUDGE OF THE HIGH COURT,
GAUTENG DIVISION JOHANNESBURG

This judgment was prepared by Acting Judge Allen. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 27 March 2026.

HEARD ON: 17 March 2026

REASONS REQUESTED ON: 20 March 2026

DECIDED ON: 27 March 2026

For the Applicant: Mr.T. Mukwani
Instructed by: T. Mukwani Attorneys

For the First Respondent: In Person
For the Second Respondent: No Appearance