



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO: 2026-028598

In the matter between

MULEKA SA CC

Applicant

and

ULUVOLWAM GENERAL TRADING (PTY) LTD

Respondent

JUDGMENT

KRÜGER AJ:

[1] This opposed application came before me on an urgent basis. In addition to seeking that the matter be dealt with as urgent, condoning non-compliance with the rules and costs, the applicant requested relief in the following terms:

‘3. That the decision of the Respondent to refuse to pay the applicant for works done in terms of the sub-contracting agreement entered into between the parties for wet blading and shaping of gravel roads, until the entire project is complete is unlawful and in variance with the sub-contracting agreement entered into by the parties;

4. The respondent is ordered to pay the Applicant its *pro-rata* share within 24 hours if any payment has been made in relation to the gravel roads that were maintained and/or rehabilitated by the Applicant.

5. That the Respondent is directed to pay the applicant its *pro rata* share for the works done on the following roads DR 02051, DR 02058, DR 02043, DR 039, DR 02031, within 3 days of receiving payment for the said works done on those roads.’

[2] It was not in dispute that the parties entered into a subcontracting agreement under which the applicant would carry out the work of resurfacing and grading gravel roads for which the respondent had won a tender. The respondent conceded that it owed the applicant money for work done. However, the respondent's evidence was that the applicant had breached the contract and had not performed work on all the roads for which it now claims *pro rata* payment.

[3] I consider, in the first instance, whether the applicant has made out a case for urgency.

[4] On 9 February 2026, the applicant launched this application with the hearing set for 17 February 2026. The applicant imposed a tight schedule, requiring the respondent to oppose the matter within one day and to file an answering affidavit within three. Its own replying affidavit was due the following day, on 13 February 2026. On that day, the applicant indicated to the court that it received the respondent's affidavit only that morning and that it wished to reply thereto. The replying affidavit was filed on Monday, one day before the hearing.

[5] The applicant raised two grounds in support of its case for urgency. The first was based on an interaction between the deponent, the sole member of the applicant, Mr SS Mjayezi, and the sole director of the respondent, Dr NT Giba, on 4 February 2026. The text message from Dr Giba read:

'I will. gladly welcome ventilating this in court

I just want to let U know if U think Giba or uluvolwami owns cars or assets U are in for a big shock
U will have to deal with me as I am

Penniless

And instead uluvolwami owing banks Somlets go snee and do this in court And stop wasting our time

I will honour my word and call u when I'm done with this project
To reconcile yo contribution to be able to Determine what is due to U

So just stop Don't send me funny unjustifiable invoice That u are dreaming of
I can safely let u know that I will defend This matter with every breathe I have

I don't even know if muleka is an existing company

Stop sending me MSG's It's not gonna help anything
U will wait Until we reconcile

I won't even entertain this Totally disagree

Mukeka is not owed anywhere near this Amount

So I can safely tell snee We are in a big dispute

Mukeka breached the agreement So we can ventilate that in court

I'm gonna block this no to save myself from arguments

I dispute this vehemently

I shall reconcile with snee when we are done with project to work out amount due to him

Ps don't waste yo time sending me funny Invoices

I have given U my answer I don't ow mukeka such money

We shall sit and determine what is owed when the project is finished and we look at records'

[6] The applicant contended that this communication 'objectively viewed points to the fact that it [the respondent] may be insolvent or at least that the applicant may struggle if it attempts to proceed by way of action proceedings in future to obtain any substantial redress as the respondent has no assets and is penniless'.

[7] The respondent questioned the applicant's basis for urgency to seek a practical order to ensure that its contractual rights are protected. In particular, it was contended that, if the applicant seriously doubted the ability of the respondent to pay its debts, it would have utilised the statutory notice procedure provided for by section 345 of the Companies Act 61 of 1973.

[8] In the second instance, the applicant relied on its own financial position and dependence on *pro rata* payment in support of urgency. The applicant stated that it was indebted to its employees and creditors because it carried out work on the roads for the benefit of the respondent, for which it was not paid. It attached invoices from the company that provided most of the plant material, dated 3 February 2026 with an amount of R 448 000 outstanding, emphasising that the relief it seeks is to secure its rights under the contract. I find it useful to let the applicant speak for itself:

'I submit that, unless the orders prayed for are granted the applicant will not obtain substantial redress at a hearing in due course and the applicant will be at risk of being sued by its creditors and/or even being declared insolvent in which case it will be deregister[e]d and cease to exist in law'.

[9] Mr Chetty, for the applicant, referred me to *Chung-Fung (Pty) Ltd v Mayfair Residents Association*.¹ In that matter, Pullinger AJ held that a respondent contesting urgency because of prejudice must clearly outline the facts on which they rely for prejudice. A bald statement of prejudice, the judge stated, would not be sufficient where answering papers have been delivered and the issues ventilated.

[10] I was urged to find the matter urgent, as the respondent did not specifically indicate how the truncated timelines impacted its ability to defend the application. This, it was submitted, is evident from the respondent's complete response. The dispute was, in the applicant's view, fully ventilated and could be determined on the narrow basis of the relief sought by the applicant.

[11] Rule 6(12) requires an applicant to set out the circumstances that render their application urgent. Crucially, the applicant must demonstrate that they will not be afforded substantial redress in the ordinary course.² The degree of departure or relaxation from the rules must correspond to the degree of urgency.³

[12] An applicant who approaches a court on an urgent basis asks the court to prioritise their case above that of others. Fagan J in *IL&B Macrow Caterers v Gretermans SA*⁴ explained that:

'the Court's power to abridge the times prescribed and accelerate the hearing of the matters should be exercised with judicial discretion and upon sufficient and satisfactory grounds being shown by the applicant. The major considerations normally and in these two applications are three in number, viz the prejudice to the applicants might have to suffer by having to wait for a hearing in the ordinary course; the prejudice that other litigants might suffer if the applications were given preference; and the re prejudice that the respondents might suffer by the abridgement of the prescribed times and an early hearing'.

It is thus not only prejudice to the parties but also to other litigants that must be considered.

¹ (2023/080436) [2023] ZAGPJHC 1162 (13 October 2023).

² *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2012] JOL 28244 (GSJ) paras 5-7.

³ *Luna Meubel Vervaardigers (Edms) Bpk v Makin (T/A Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) 137E-F; *Nelson Mandela Metropolitan Municipality v Greyvenouw CC* 2004 (2) SA 81 (SE) para 37, 38 and 40; *In re Several Matters on the Urgent Court Roll* 2013 (1) SA 549 (GSJ) para 18.

⁴ 1981 (4) SA 108 (C) 112H-113A.

[13] I turn to consider the grounds raised by the applicants in support of urgency pertinently.

[14] The applicant raised the possibility of the respondent's insolvency or financial distress in support of urgency. A reading of the complete text from Dr Giba, quoted above, neutralises the 'soundbites' highlighted by the applicant to conclude that the respondent's financial ruin was imminent. The emotional reaction of the director of the respondent upon receipt of the applicant's invoice on 4 February 2026 must be seen in perspective. Her message was a response to what she viewed as an exorbitant amount claimed by the applicant on the invoice, which, notably, is not relied upon in this application. In the remainder of her text, the director clearly stated that she would honour her word and pay the applicant for the work done upon reconciliation of all information regarding the applicant's and others' work on the project.

[15] While I do not agree with the respondent that the applicant was required to give statutory notice in terms of section 345 if it were serious about the respondent's inability to pay its debts, the applicant's selective reading does not support the inference that the respondent is in financial distress. It was assured that it would be paid.

[16] The applicant also raised its own financial position to support its case for urgency. It did so in broad terms, stating that 'it will be at risk', as quoted above. The applicant did not state that it had cash flow problems, that it received demands for payment from its creditors, that its creditors were planning to take steps to enforce their debt, or that it faced imminent liquidation. Significantly, the applicant did not assert that *it was at risk*. While it is well-established that commercial interests may justify urgent proceedings,⁵ I do not think that a vague assertion of possible legal action is sufficient to establish urgency.

[17] There is no justification for prioritising the applicant's case over other litigants who are also seeking to protect their contractual rights.

⁵ *Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) 586G.

[18] Lastly, the applicant significantly reduced the timeframes in this matter. The matter was heard eight days after the application was launched. That is not proportionate to what the applicant identified as the grounds of urgency – the possibility of legal processes that could only unfold over weeks or months.

[19] The application is not urgent. There is no reason why costs should not follow suit.

[20] I make the following order:

(a) The application is struck from the roll for lack of urgency.

(b) The applicant is ordered to pay the costs of this application on party-and-party scale A.

R KRÜGER
ACTING JUDGE OF THE HIGH COURT

Date heard: 17 February 2026

Date delivered: 24 February 2026

APPEARANCES:

For the Applicant:
Instructed by:

Adv S Chetty
Moletsane PN Attorneys, East London c/o
Shenxane Inc, Makhanda

For the Respondent:
Instructed by:

Adv SG Poswa
Yandisa Sonamzi Attorneys, East London
c/o Yokwana Makhanda