IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION MAHIKENG

CASE NO.039814/2026

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:

DNCC GRANITE TOMBSTONES (PTY) LTD **APPLICANT**

And

LINNTOMBI ORGANISATION (PTY) LTD **RESPONDENT**

Judgment is handed down electronically by distributing to the parties' legal representatives by e-mail. The date that the judgment deemed to be handed down is 01 April 2026 at 10H00.

REASONS FOR JUDGMENT

MAKOLOMAKWE AJ

Introduction

[1] The applicant is DNCC Granite Tombstones Proprietary Limited, with registration number: 2006/010794/07 being a company, with profit-making as purpose and duly registered in terms of the Companies Act of the Republic of South Africa with registered address at 8 [K…] [A…], Brits industrial area, Brits.

[2] The respondent is Linntombi Organisation (Pty) Ltd with registration number: 2025/041325/07, a limited liability company for profit incorporated in terms of the provisions of the Companies Act 2008 with chosen *domicilium citandi et executandi* at 180 [D…] Road, [W…] [H…], Pretoria.

[3] This matter concerns an application for the eviction of the respondent from
the applicant`s property, Erf [2…] [W…] [A…] ('the second property'), Rustenburg which is a commercial property.

[4] The matter came before me in the urgent court on 6 March 2026.

[5] The respondent opposed the application on the basis that the matter was not urgent. Further, that it has a *bona fide* defence against the applicant`s claims.

[6] Having familiarized myself with the facts and issues, and having heard both in relation to the question of urgency and merits, I granted the following order:

‘1. THAT: The eviction forthwith of the Respondent and all such other occupiers that enjoy occupation through said Respondent from the premises situate at 1[...] W[...] Avenue known as Erf 2[...] Rustenburg Extension 2) ("the Premises");

2. THAT: Authorising and directing the sheriff or his lawful deputy to take such steps as are necessary to evict the Respondent and all persons holding occupation through the Respondent from the premises in the event of the said Respondent and such other persons failing to vacate the said premises forthwith upon service on them of the order herein;

3. THAT: Interdicting the Respondent pending the return of the premises to the Applicant to remove any equipment and movable items therefrom;

4. THAT: Authorising the Applicant to reasonably access the premises at 1[...] W[...] Avenue Rustenburg during business hours pending the return of the premises to the Applicant;

5. THAT: Costs on scale B against the Defendant;

6. THAT: Reasons for the order will follow.’

BACKGROUND

[7] On 14 June 2025 and at or near Rustenburg the applicant, represented by Gabriel Stephanus Philippus Van Vuuren (‘Van Vuuren’), its director and Ms. Lindiwe Ntombiyesiswe Ringane (“Ringane”), its director entered into two lease agreements in respects of two adjacent commercial premises in Rustenburg Extension 2, to wit Erf [2…] situated at 3 [W…] [S…] Rustenburg

Extension 2 and “the second property”. The lease agreements are attached to the application as Annexures.

[8] The lease with respect to “the “first property” was cancelled on 9 December 2025 and the respondent has vacated that property. This application only pertains to an eviction of the respondent from the second property.

[9] The relevant terms for the lease of “the second property” provides as follows:

9.1 The agreed rental was R140 000.00 (excluding VAT) per month payable in advance on the first day of the month (clause 4);

9.2 The agreement also provided for equipment and machinery to be included in the lease (clause 1);

9.3 A deposit of R140 000.00 (excluding VAT) and a utilities deposit of R150 000.00 (excluding VAT) prior to occupation (clause 5);

9.4 The commercial lease agreement commenced on 1 July 2025 and terminated on 31 January 2026 (clause 8)

[10] On the same day that the parties entered into the lease agreement, the parties, represented as when entering into the lease agreements referred to above, also entered into agreements of sale of the same abovementioned properties. The copies of the agreements of sale are attached to this application as Annexures.

[11] The purchase price in respect of the first property was R4,2 million (excluding VAT) and was payable on 1 November 2025. The agreed purchase price was not paid on the due date and the respondent was placed on terms and the agreement was cancelled. I will not deal with the terms of the sale agreement of that property.

[12] The relevant terms for the sale agreement of the second property, are *inter alia* the following:

12.1 The purchase price was R12 million (excluding Value Added Tax) payable on 31 January 2026 (clause 2.1);

12.2 The respondent was responsible for the payment of all municipal charges from date of occupation (clause 6);

12.3 The respondent was responsible for the payment of the monthly insurance premium in the amount of R18 673.90, which insurance covered loss or damage to property and equipment (clause 7);

12.4 All buildings and permanent improvements, equipment, granite waste blocks and a Rolls Royce Generator were included in the sale;

12.5 Ownership of all the movable and immovable property sold in terms of the agreement remained vested in the applicant until transfer of the property into the name of the respondent (clause 15);

12.6 The respondent undertook to return possession of the property on termination of the agreement in the same condition, excluding fair wear and tear (clause 22.2);

12.7 In the event of breach of the agreement the applicant as seller had to give the respondent 7 days` notice to remedy the breach failing which the applicant would be entitled to cancel the transaction (clause 2.3).

[13] The agreed purchase price was not paid on the due date and the respondent was placed on terms. A notice dated 10 February 2026, was served by email on the director of the respondent as well as the respondent`s attorney of record. The agreement was cancelled as per.

[14] The applicant instituted action in the Rustenburg Magistrates` Court, *inter alia* for the outstanding rental and utility accounts with regard to both lease agreements as per the summons. The rental interdict was granted by the Rustenburg Magistrate's Court.

Pertaining Urgency

[15] I find that the application was urgent, and the rules relating to forms, service and time periods, as prescribed by the Uniform Rules of Court, be dispensed with for following reasons: According to the Practice Directive of this division,[1] urgent applications are ordinarily brought with less than five days` notice from the time of the application and semi- urgent applications are brought with more than five days` notice from the time of the notice of the application to the respondent (s) to the time of the hearing of the application.

[16] The respondent was served on 23 February 2026 with an urgent application, the respondent`s attorney filed notice of intention to oppose on 27 February 2026 and the answering affidavit was delivered on 04 March 2026. According to the practice directive, this application does not fall under

[1] Practice Directive 14.

extremely urgent application, as it was brought with more than five (5) days` notice from the time of the notice of the application to the respondent to the time of the hearing.

[17] It was argued on behalf of the respondent that the applicant is relying on issues that came to the knowledge of its director during November to December 2025, which amount to self-created urgency. Further, that the matter be struck off roll as it is not urgent. The submission on behalf of the applicant was that the matter is urgent and the delay in not lodging the application earlier was due to the negotiations that were ongoing between the parties.

Applicable Law

[18] Rule 6 (12)[2] enables the court to dispense with the normal rules relating to the forms and service as provided for in the rules and dispose of the matter at such time and place and in such manner and in accordance with procedure (which shall as far as practicable be in terms of these rules) as it deems fit. It is trite law that each urgent application must be determined on its own facts and merits. An applicant seeking to be heard on an urgent basis must set forth explicitly the circumstances which she avers renders the matter urgent and the reasons why she claims that she could not be afforded substantial redress at a hearing in due course.

[19] In *Luna Meubel Veraardigers v Makin and Another*,[3] it was highlighted that the degree of urgency must justify the deviation from the rules. Further the

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[2] Rule of the Uniform Rules of Court.
[3] 1977 (4) SA 135 (W), at 137F-G.

court distinguished between real urgency (such as imminent harm) and self - created urgency, where a litigant delay and then invokes urgency to fast-track relief.

[20] The correspondence between the parties` legal representative annexed to the founding affidavit confirms the submissions on behalf of the applicant that from November to February 2026 there were negotiation between the parties. The respondent did not dispute the aforementioned in the answering affidavit. Therefore, it remains undisputed. Counsel for the respondent argued that those correspondences are 'without prejudice' and the applicant cannot rely on them.

[21] It was contended on behalf of the applicant that they are relevant and the applicant is entitled to use them. In *Dimension Data (Pty) Ltd and Another v Rory Niall Pearton*,[4] a without prejudice 'meeting' was cited to demonstrate that the applicant had attempted to resolve the dispute, yet the respondent failed to act within a promised timeframe, thus creating an urgent need to approach the court. This authority supports the submissions made on behalf of the applicant.

[22] Applying the above principle to the present matter, I find that the without prejudice letters relied upon by the applicant, are relevant as they demonstrate that the applicant had attempted to resolve the dispute, and that the respondent failed to made payment of the purchase price of 'the second property' within a promised timeframe, and created an urgent need for the applicant to approach the court.

Analysis

[4] (2388/2020) [2021] ZAECPEHC 54.

[23] According to the founding affidavit, ‘Van Vuuren’ ascertained around 21 January 2026 from Envirocycle that the generator of the applicant was sold to them as scrap metal for R41 614.50 and that it made payment to the respondent on 15 January 2026.[5] Further, that on 30 January 2026 after ‘Van Vuuren’ gained access to the building with the Sheriff, he ascertained that two of the granite saws were in the process of being dismantled.[6]

[24] It is common cause that the lease agreement expired on 31 January 2026 and that the sale agreement was cancelled after the respondent was placed on terms on 10 February 2026. In *Chiodaroli N.O and Others v Yeboprop 7 Investment (Pty) Ltd and Others*,[7] the court found continued occupation after the lease expired to be unlawful and severely prejudicial.

[25] In the present matter the effects of the expiry of both the lease agreement and the sale agreement in respect of the second property are that the respondent became an unlawful occupier of that property. Further, the continued occupation by the respondent after the lease expired was unlawful and severely prejudicial to the applicant. I find that urgency under Uniform Rule of Court 6(12) was justified.

Pertaining whether the Applicant can get “substantial redress” in due course

[26] It is common cause that the applicant issued summons in the Rustenburg Magistrates` court for arrear rental, the rental interdict was granted by that court and on 30 January 2026 the Sheriff attached some of the items at “the second

[5] Paragraph 33.
[6] Paragraph 38.
[7] (18020/2022) [2024] ZAGPPHC 990, at paragraph 37.

property”. It is further common cause that the respondent is in arrears with rental, municipal bills or taxes and rates, and that the insurance of the equipment lapsed due to non-payment by the respondent.

[27] It was argued on behalf of the respondent that the applicant will not suffer irreparable harm as it has already approached the Rustenburg Magistrates` court, which has granted the rental interdict prohibiting the respondent from removing any equipment that was attached by the Sheriff. It was contended on behalf of the applicant that it will suffer irreparable harm.

[28] According to the founding affidavit on 20 February 2026, ‘Van Vuuren’ received a call from ‘Bester’, who had left the respondent`s services who informed him of items that were removed by the respondent after being attached and prior to him leaving the respondent`s services. The respondent denied this allegation in the answering affidavit. The applicant in its replying affidavit annexed the affidavit of “Bester” in which he stated in paragraph 3 that despite the attachment, the granite continued to be processed on the instruction of “Ringane” and thereafter sold to customers. It was argued on behalf of the respondent that the affidavit of ‘Bester’ contradicts what he telephonically conveyed to ‘Van Vuuren’ on 20 February 2026. It was submitted on behalf of the applicant that there is no contradiction.

[29] In the telephonic conversation “Bester” mentioned the removal of some of the attached items. In his affidavit he specified the item that was removed after being processed as being granite and the details of the vehicle which was used daily to continue with business operations of the respondent. I agree with the submissions on behalf of the applicant that there is no contradiction. Instead,

"Bester" specified the item that was removed and sold and the particulars of the vehicle that was used daily despite having been attached. The affidavit of "Bester" states clearly how the respondent disregarded the attachment and continued with its daily business of processing granite and transporting it to its customers with a Toyota Land Cruiser. The remedy provided by the granting of the rental interdict did not yield the results as the respondent continued with the business of the day as if the order was not granted.

[30] It was argued on behalf of the respondent that it has a bona fide defence in the action instituted or pending in the Rustenburg Magistrates` court. It was contended on behalf of the applicant that the defences raised by the respondent are vague and lack details. In paragraph 3 of the without prejudice letter dated 12 January 2026 the respondent acknowledged that there are certain outstanding amounts, including the arrear rental amounts and that the respondent will pay them on or before 26 January 2026. In *KDL Residential CC v Empire Earth Investments 17 (Pty) Ltd*[8] it was held that without prejudice communications can be admitted for the specific purpose of proving an acknowledgement of liability or a crucial fact, particularly when the lack of such evidence would allow a party to abuse the court process.

[31] In the present matter, the respondent did not place the applicant on terms for such a breach after the applicant`s attorneys placed them on terms for their breach. Instead, the respondent acknowledged that certain outstanding amounts, including the arrear rental amounts in the without prejudice letter. Applying the principle in *KDL Residential CC v Empire Earth Investments, supra,* to the present matter, I find that the 'without prejudice' letters are relevant and the applicant is entitled to rely on them for purpose of proving that the respondent

[8] [2017] ZASCA 98.

acknowledged liability for arear rental and certain outstanding amount as is a crucial fact in this matter.

[32] In *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*,[9] the Supreme Court of Appeal stated how the court should deal with uncreditworthy denials, including denials that are far-fetched or clearly untenable, and stated that the court is justified in rejecting them merely on the papers. In the present matter the respondent`s acknowledgement of the arear rental and certain outstanding amounts in the 'without prejudice' letters is an admission of the facts averred by the applicant.

[33] Amongst other defence raised is that the applicant breached the agreement by misrepresenting the conditions of some of the equipment on the property. Further that the sale was a going concern. It was submitted on behalf of the applicant that the defence raised by the respondent are vague and do not have details. In clause 19 of the sale agreement the respondent declared that it was granted a fair opportunity to inspect the property to its satisfaction…, all the items listed are sold "voetstoots" in their present condition without guarantees and/or representations, and will not hold the seller liable for any other damages and defects to the property which might become apparent at a later stage.

[34] In terms of section 11(1)(*e*) of Value Added Tax,[10] the parties to the sale agreement of a commercial property must agree in writing that the sale is a going concern and that the price includes VAT at 0%. In the present matter there is no such clause in the sale agreement between the parties. Applying the

[9] 1984 (3) SA 623 (A) at 634-635.
[10] 89 of 1991.

principle in the Plascon-Evans to the present matter, most of the averments of the applicant were admitted by the respondent. The above mentioned justifies the granting the relief sought by the applicant as the applicant will suffer financial loss due to the pilling billing, the use of the Toyota Land Cruiser vehicle continually, exposes the applicant to risk as the vehicle is not insured. Further, the removal and sale of the generator without the consent of 'Van Vuuren' of the applicant prejudiced the applicant and warranted the granting of the order.

Order

[35] Consequently, the following order is made:

1. THAT: The eviction forthwith of the Respondent and all such other occupiers that enjoy occupation through said Respondent from the premises situate at 1[...] W[...] Avenue known as Erf 2[...] Rustenburg Extension 2) ("the Premises");

2. THAT: Authorising and directing the sheriff or his lawful deputy to take such steps as are necessary to evict the Respondent and all persons holding occupation through the Respondent from the premises in the event of the said Respondent and such other persons failing to vacate the said premises forthwith upon service on them of the order herein;

3. THAT: Interdicting the Respondent pending the return of the premises to the Applicant to remove any equipment and movable items therefrom;

4. THAT: Authorising the Applicant to reasonably access the premises at 1[...] W[...] Avenue Rustenburg during business hours pending the return of the premises to the Applicant;

5. THAT: Costs on scale B against the Respondent;

L MAKOLOMAKWE

ACTING JUDGE

NORTH WEST DIVISION, MAHIKENG

APPEARENCES

Date of Hearing	6 March 2026
Judgment Handed down	01 April 2026
For the Applicant	Adv J Moller