



**IN THE HIGH COURT OF SOUTH AFRICA,
MPUMALANGA DIVISION, (MIDDELBURG LOCAL SEAT)**

CASE NUMBER: 2026-069702

(1) REPORTABLE: **YES**

(2) OF INTEREST TO OTHER JUDGES: **YES**

(3) REVISED **YES/NO**

DATE 09 APRIL 2026

SIGNATURE H.F. FOURIE

In the application between:

WITBANK TAXI ASSOCIATION

APPLICANT

and

LOCAL TAXI ASSOCIATION

FIRST RESPONDENT

JUMBO MALL

SECOND RESPONDENT

JUDGMENT

INTRODUCTION:

- [1] In the application at hand, the Applicant seeks, by way of urgent application, final interdictory relief against the First Respondent in what the Applicant phrases as a legality interdict seeking the First Respondent and its members to refrain from certain illegal activities. This Court is tasked to determine whether the Applicant has sufficiently met the threshold for the matter to be dispensed with on the urgent Motion Court Roll and, if so, thereafter, whether the Applicant has sufficiently set out facts to sustain the relief sought by way of final interdict.

MATERIAL FACTS:

- [2] Both the Applicant and the First Respondent are Taxi Associations that conduct business through their members in the Emalahleni Region of Mpumalanga. As with many similar matters, the underlying issues between the Applicant and the First Respondent pertain to the ultimate rights of their members, specifically on the use of certain routes driven and the use of certain facilities utilised for the dropping off and collecting of passengers.
- [3] The complained-of incident relates to the facilities at the newly established Jumbo Mall in Emalahleni and the facilities put in place for the conveying of passengers to and from the Jumbo Mall.
- [4] It is common cause that, on 19 March 2026, the Jumbo Mall commenced operations.
- [5] The crux of the Applicant's complaint is that, on the 19th of March 2026, when the Applicant's members attended the Jumbo Mall to commence the performance of their duties and rendering of services for the conveying of

passengers, they were prohibited from doing so by members of the First Respondent. It is not only the prohibition of the rendering of services against which the Applicant complains, but the manner in which their members were allegedly prohibited. The Applicant avers that their members were prevented from rendering the intended services through threats, intimidation, and aggressive conduct.

- [6] The Respondents deny the existence of the complained-of actions, and they take issue with the notion, as presented by the Applicant, that the Application is brought to protect the life and limb of the Applicant's members. The First Respondent alleges that the application is brought with an ulterior motive, which is to secure a commercial advantage for the Applicant's members to which the Applicant's members would otherwise not be entitled.

URGENCY:

- [7] A litigant who approaches Court for leave on an urgent basis must comply with Rule 6(12)(b) of the Uniform Rules of Court. The Rule reads as follows:

"In every affidavit of petition filed in support of any application under paragraph (a) of this sub-rule, the Applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reason why he claims that he could not be afforded substantial redress at a hearing in due course."

- [8] The importance hereof is that the procedure as set out in Rule 6(12) is not there for the mere 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 it claims that it 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 the absence of substantial redress in the 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 a normal course to be laid down by the Rules, it would not obtain substantial redress. It is important to note that the Rule requires the absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out its case in this regard[1].

[9] Thus, two requirements must be set forth in the Founding Affidavit to satisfy the Rule[2]. Whether an Applicant has succeeded in satisfying the requirements for urgency must be determined from the contents of the Founding Affidavit[3].

[10] In **LUNA MEUBELVERVAARDIGERS (PTY) LTD V MAKIN & ANOTHER 1977** Coetzee J held with reference to Rule 6(12)(b) the following:

“Mere lip service to the requirement of Rule 6(12)(b) will not do and an Applicant must make out a case in the Founding Affidavit to justify the particular extent of the departure from the norm which is involved in the time and day for which the matter be set down.”

[11] The test, insofar as it relates to urgency, remains, at its core, whether, if the Court does not deal with the matter at the current juncture and allows the matter to be heard in the normal course, the Applicant will be able to obtain substantial redress. Substantial redress will depend on the facts of each specific matter.

- [12] At the hearing of the matter, the Court enquired from the respective legal representatives whether the legal principles as enunciated in the normal matters dealing with urgency, such as *East Rock supra* and *Luna Meubel Vervaardigers, supra*, apply in a narrow sense to the current matter or matters similar to the current matter.
- [13] Counsel appearing for both the Applicant and the First Respondent, as in most urgent Court applications, confined themselves in their arguments to the normal principles of *East Rock Trading supra*, and *Luna Meubel Vervaardigers supra*. Neither of the Counsel can be faulted for their approach, as these matters and similar matters dealing with urgency all refer to the core principles as enunciated in these matters. The reasoning and principles on which those matters were found can similarly not be faulted.
- [14] This Court finds it necessary, however, to make a distinction between those matters and matters such as the one this Court is faced with.
- [15] Neither the Court in *Luna Meubelvervaardigers*, which was heard in 1977, nor the Court in *East Rock Trading*, which was heard in 2011, addressed urgent interdicts concerning threats of violence, intimidation, harassment, or physical injury.
- [16] It is a sad day when a Court is tasked with pronouncing and ordering a party to refrain from acts of illegality. Unfortunately, Courts are increasingly tasked with adjudicating matters in which litigants seek assistance from the Court to interdict a party from acts of illegality. To make matters worse, in certain instances, parties are directed to the Court to obtain interdictory relief by members of the South African Police Services who seemingly refrain from acting to prohibit acts of illegality until prohibitory interdicts are obtained. The need to obtain an interdict to prevent acts of illegality ought to be a foreign concept, but unfortunately, it is not. Courts are tasked daily with interdicting parties from performing acts that ought to be common knowledge to constitute acts of illegality. The question this Court needs to answer is,

being confronted with averments in a Founding Affidavit alleging acts of illegality, threats of violence, intimidation, physical harm or death, whether a Court can evaluate urgency in the same manner as a matter dealing with contractual disputes, commercial endeavours, family law matters or similar matters which frequently present themselves in the Urgent Courts around the country.

[17] The answer lies in the meaning of substantial redress, which, it is commonly accepted, is the test when dealing with urgency.

[18] Unfortunately, both litigants and the general public fail to appreciate what is actually meant and what ought to be proven by the test to evaluate whether substantial redress would be forthcoming if the matter is not heard in the manner as set down by the Applicant in an urgent application.

[19] Applicants frequently insert the phrase:

“The Applicant will not be able to obtain substantial redress in due course if the matter is not heard on the Urgent Court Roll”

Absent such an averment, Respondents, when opposing urgent applications, frequently insert the phrase:

“The Applicant has failed to allege that substantial redress in due course will not be forthcoming if the matter is not heard on the current Urgent Court Roll.”

[20] Neither of the aforesaid sentiments ought to find any place in the litigious framework of an Urgent application. To scrutinise founding or answering papers in search of specific words that would serve as a proverbial tick-box is a formalistic and outdated manner of evaluating compliance with the litigation process.

- [21] I am of the view that, even in the absence of a specific mention of the phrase “substantial redress”, if the facts as alleged by the Applicant in its founding papers set up a premise which, if ultimately tested and proven is proven to be the truth, and will lead to an Applicant invariable not obtaining substantial redress if the matter was not dealt with on the day as set down, the Applicant would have complied with his obligations in this regard.
- [22] The safeguard built in by the Uniform Rules of Court to protect against abuse of Court process, and what is commonly referred to as a jumping of the queue, is to protect against the following:
- [22.1] A Respondent being able to properly present the opposition they would otherwise have wanted to if they had sufficient time to present their opposition to the application.
- [22.2] The Court is being inconvenienced both in its preparation time and in the information, or lack thereof, at its disposal to come to an adequate decision.
- [22.3] Litigants are taking up valuable judicial resources, which could have been allocated to matters that patiently waited in line, which are now forced on the back burner by an Applicant that forced in a matter that could have been dealt with at either an earlier or later time.
- [23] Although the Respondents complain that the matter is not urgent, they take no issue with their ability to adequately prepare opposing papers or to present their case within the timeframes as stipulated in the Applicant’s Notice of Motion.
- [24] The continued violence, threats of fear and intimidation, threats of physical bodily harm or damage to property that form part of the daily routines for a large number of people residing in the Republic of South Africa is not only

unfortunate, but it is one that is deserving of being resolved as soon as possible when such arises.

- [25] This Court is not for one moment suggesting that the floodgates need to open for litigants to rush to Court by making generic and unsubstantiated averments alleging violence or threats of physical bodily harm in the hopes that such would secure an audience with a judge sitting on an Urgent Court Roll, but it is deserving of evaluating the test for substantial redress in the context specifically of such allegations.
- [26] Illegal actions need to be stopped immediately. Threats of violence, intimidation, harassment, damage to property, or loss of life cannot be allowed to persist for any considerable amount of time once the facts alleging such conduct have, on a *prima facie* basis, been proven by the Applicant in its founding papers. Any bodily harm, violence or death that could occur should surely be an important factor to take into consideration when deciding on whether substantial redress would be obtained at a hearing in due course. Surely, substantial redress would not be obtained if an interested party is physically harmed while an application is pending on the normal court roll.
- [27] In court, as in life, a common-sense approach to matters is warranted. If the allegations of physical harm are sufficiently present in the papers and the harm or urgency has not been self-created, the court is supposed to immediately hear the complaint and pronounce thereon.
- [28] By finding that a matter is urgent, the Court has not pronounced on the facts or the ultimate success of the application. The Court merely says at that juncture that the allegations, on a *prima facie* basis, warrant the Court relaxing the normal principles governing the judicial process to accommodate the hearing of the current matter.

- [29] The one principle, which, however, runs as a golden thread through an evaluation of whether or not a matter is urgent, is true not only for urgent applications but for all actions or applications, and that is that a party needs to set out his case sufficiently in his papers to substantiate the relief he ultimately seeks. Courts are suited to deal with facts, and the facts of each matter emanate from the litigants who present them to the Court. Courts are not designed to speculate or to embark upon the unravelling nuances or speculative averments.
- [30] An applicant sets out the facts of the matter in his Founding Affidavit, and if those facts make it clear that it is a matter which is deserving of being attended to immediately, the Court will relax its rules and procedures to attend to that matter as such. Irrespective of the relief a party seeks, if the facts such a party represents to the Court are not sufficient to substantiate such relief, the Court will not come to such a party's assistance.
- [31] In the current matter, the Applicant presents two Taxi operating services seemingly on the brink of physical violence, harassment, damage to property and person, and a loss of life and limb should the Court not urgently intervene and hear the application.
- [32] In coming to the conclusion on this point, the Court ultimately does, the Court considers firstly the impact on the Applicant and the First Respondent, but also the impact such violence would have on the general public or the commuters and innocent bystanders that might be caught in the crossfire of such violent actions.
- [33] The Respondents complain that the Applicant did not properly enunciate the complained-of acts, an aspect which the Applicant verily conceded during argument.
- [34] Having regard, however, to the importance of the resolution of the issues between the Applicant and the First Respondent, the threat of violence and

loss of life or limb to both the Applicant, the First Respondent, and the general public, I am satisfied that the matter be dealt with as one of urgency. I am fortified in the aforesaid position that, given the nature of the matter, the interest of justice dictates that I deal with the matter immediately.

FINAL INTERDICT:

[35] The Applicant approached the Court for a prohibitory final interdict. The granting of a final interdict requires three requisites, all of which must be present for such an order to be obtained [4]. Although the *locus classicus* on the point of final interdicts dates back to 1914, the fact that principles as set out in *Setlogelo supra* have withstood the test of time is evident in the value it adds to the judicial certainty and well-reasoned premise on which final interdicts are to be obtained. In order to be successful, an Applicant needs to show:

[34.1] A clear right.

[34.2] An injury actually committed or reasonably apprehended; and

[34.3] The absence of any other satisfactory remedy available to the Applicant.

[36] When, as in the present matter, proceedings are launched by way of Notice of Motion, it is to the Founding Affidavit which a Judge will look to determine what the complaint is. An Applicant must stand and fall by his founding papers[5].

[37] Where a party is in possession of facts that would aid the Court to ultimately come to a decision that is just under the circumstances, it ought to be expected of that party to convey all the material facts in respect of the matter to the Court. Not to do so is done at a party's own peril [6].

- [38] The norm of a fair trial means each side being given an unambiguous warning of the case they are to meet, moreover, these requirements are not mere subtleties as between advisories; the Court too, is dependent upon the fruits of clarity and certainty to know what question is to be decided and to be presented only with admissible evidence that is relevant to that question. Making up your case as you go along is an anathema to orderly litigation and cannot be tolerated by a Court. Counsel's duty of diligence demands an approach to litigation which best assists a Court to decide the question, and no compromise is appropriate.
- [39] A party cannot be allowed to direct the attention of the other party to one issue and then, at the trial, attempt to canvas another [7].
- [40] The Applicant attempts to persuade the Court in its favour by relying on two portions of facts, the first being statements in their Founding Affidavit and Minutes of a meeting held between the Applicant and members of the South African Police Service. In respect of the incident of the 19th of March 2026, the Applicant states:

"Paragraph 4.1:

They were, however prevented from doing so by members of the First Respondent, who chased them away from the conveyance point and made it clear, through threats, intimidation, and aggressive conduct, that the Applicant's members would not be permitted to operate therefrom.

Paragraph 4.12:

The conduct of the First Respondent was violent, threatening, and calculated to instil fear in the Applicant's members as to prevent them from exercising their lawful right to loan and convey passengers from Jumbo Mall."

[41] The First Respondent answered to the aforesaid averments and bluntly refused that they ever occurred.

[42] It is noteworthy that the founding papers are completely silent as to which individuals were involved in the alleged actions, where exactly they transpired, what exactly was said or what exactly was done.

[43] If regard is had to the Minutes of the meeting held on 20 March 2026 between the members of the Applicant and the members of the South African Police Service, the highwater mark of the minutes indicates that:

“On the 19th of March they went to load, but LOTA turned them back and they backed down to avoid any conflicts as they could see that the situation was getting intense amongst the Taxi drivers of WTA and LOTA, hence they came here to the Police Station to seek assistance.”

[44] Again, no particularity of the incident is provided, and it is noteworthy that no criminal charge was laid.

[45] During his address, Adv Thumbathi, appearing for the Applicant, conceded that the Founding Affidavit was drafted in generalised terms and that no particularity to the incidents was provided.

[46] The difficulty for the Applicant in obtaining the relief they seek is that the Court needs to establish a well-appreciated eminent harm for the Applicant, which this Order seeks to prevent. Absent the Applicant providing specified facts and particularity at least to the degree that is available to them, the Court is left to speculate as to what was said, what was done, and whether such words or actions are indeed deserving of the protection the Applicant seeks.

[47] By approaching the Court with generalised statements, the Applicant does not allow the Respondent to answer to such statements and either admit or deny the same.

[48] If the Applicant, for instance, alleged that Person X was approached by Person Y that conveyed a specific message and acted in a particular manner which corroborates the factual premise the Applicant wishes to establish, it would allow the legal representatives of Person Y to obtain an affidavit or rebutting facts, if they exist, to answer to the allegations levied against such a person.

[49] At the very least, if the perpetrators were unknown, the same needs to be stated in the founding papers. As for the complained-of actions, if the Applicant believed they were being threatened with the loss of life and limb, surely they were in a position to convey to the Court what was stated to them, and what actions by which individuals moved them to the current application.

[50] In ***National Director of Public Prosecutions v Zuma***[8], the Supreme Court of Appeal stated:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities.”

[51] The Court has no difficulty in finding that the Applicant, acting to protect the life and limb of their members, would have a clear right susceptible to interdictory relief.

[52] The difficulty in the current matter lies in the interference complained of by the Applicant.

[53] The requirement in as far as it relates to the act of interference has been described by the Court as follows:

“.....act actually done by the Company (Respondent) showing an interference with the exercise of any alleged rights possessed by the Government (Applicant); nor does it appear that there exists a well-grounded apprehension that acts of this kind will be committed by the Respondent”.[9]

[54] A person or persons against whom an interdict is sought must be the person responsible for the wrong committed or threatened. There must be no doubt as to precisely who is responsible and for what they are responsible. If such a doubt exists, a final interdict can simply not be granted.[10]

[55] In the current matter, the Applicant makes bold and unsubstantiated averments against the First Respondent. Nothing in the affidavits of the confirmatory proof advances any facts to substantiate these bold averments.

[56] I am satisfied that, absent any particularity to the averments, the Respondents were justified to blatantly and boldly refuse the same. A party cannot be expected to attempt to rebut unsubstantiated averments in the hopes that they are guessing the correct incident to which an opposing party is referring.

[57] Absent particularity, the Court is left to speculate on whether or not the complained-of incidents did in fact occur, whether the incidents warrant intervention by the Court by way of an interdict being granted against the First Respondents, and whether the Applicant has a real and properly grounded apprehension that, should the Court not intervene and grant the relief, real and eminent harm would be forthcoming.

[58] I do not believe it is necessary to deal with the last requirement for an interdict, having found that the Applicant has failed to satisfy the second requirement.

COSTS:

[59] The respective parties prayed for punitive costs to be awarded, the one against the other. I do not believe it is necessary to burden any of the parties with punitive costs under circumstances where the underlying issues between the respective parties will no doubt again resurface in the future. I am also mindful of the nature of the parties involved in the current litigation process, and I do not believe a punitive cost order against them would serve the ends of justice. The First Respondent was, however, dragged to Court on an urgent basis under circumstances where the Applicant's papers could not substantiate the relief they ultimately sought, and as the successful party, the First Respondent is entitled to its costs. Given the urgency with which the matter was brought, I am satisfied that the costs ought to include the cost of counsel on Scale B.

CONCLUSION:

[60] The current matter highlights the different thresholds parties need to meet in respect of proving urgency and, thereafter, proving the elements for the relief they ultimately seek.

[61] Although the *prima facie* position as set out by the Applicant might display a matter warranting the Court's immediate attention, it does not necessarily lead to ultimate success in the litigious process.

[62] Although the allegations made against the First Respondent and the possibility of violence and the loss of life and limb warranted the Court to dispense with the normal Rules of Court to hear the matter on the Urgent

Roll, the Applicant failed to prove the necessary requirements to sustain final interdictory relief.

[63] Accordingly, the only outcome in this matter is dismissal of the application.

ORDER:

[62] For all the reasons stated, the following Order is made:

[62.1] The matter is declared urgent, and the Court dispenses with the normal timeframes and Rules and hears it as such.

[62.2] The Applicant's application is dismissed.

[62.3] The Applicant shall pay the First Respondent's costs on a party and party Scale B.

H F FOURIE AJ
ACTING JUDGE OF HIGH COURT, MIDDELBURG

Counsel for the Applicant:
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Judgment reserved on:
Date of delivery:

7 April 2026
9 April 2026

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- [1] Eastrock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others (11133767) [2011] ZAGPJHC 196 (23 September 2011)
- [2] Salt & Another v Smith 1991 (2) SA 186 (NM) at 197 A
- [3] Il & B Marcow Caterers v Gretermans SA 1981 (4) SA 108 (C) at 111 A
- [4] Setlogelo v Setlogelo 1914 AD 221
- [5] Director of Hospital Services v Mistry 1979 (1) SA 626 (A) at 635 – 636A
- [6] Skosana v Road Accident Fund (3257/23) [2026] ZAMPMHC 5; [2026] 1 All SA 588 (MM) (2 February 2026)
- [7] Skosana *supra* at paragraphs 49 and 50

- [8]** National Director of Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) at paragraph 26
- [9]** BOK v The Transvaal Gold Exploration and Land Co 1883 (1) SAR 75 at 76
- [10]** Prinsloo v Nederduits Herformde or Gereformeerde Church (1890) 3 SAR 220