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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO: 110842/2023

1. REPORTABLE: NO

2. OF INTEREST TO OTHER JUDGES: NO

3. REVISED: NO

DATE 19 MARCH 2026

SIGNATURE

In the matter between:

E[...] E[...] M[...]

Applicant

and

S[...] E[...] M[...]

First Respondent

GOVERNMENT EMPLOYEES PENSION FUND

Second Respondent

Delivered: this judgment was prepared and authored by the judge whose name is reflected and is handed down electronically and by circulation to the parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for handing down is deemed to be 19 March 2026.

JUDGMENT

Introduction

- [1] This is an opposed urgent application brought in terms of Rule 6(12) of the Uniform Rules of Court. The Applicant, in terms of a notice of motion dated 18 February 2026, seeks condonation for non-compliance with the prescribed forms, service, and time periods provided for in the Uniform Rules and requests that the matter be heard as one of urgency.
- [2] The relief sought by the Applicant includes the following:
- (a) Suspension of the execution of the divorce order marked Annexure “L1” in terms of Rule 45A of the Uniform Rules of Court, pending the determination of the application for leave to appeal before the Supreme Court of Appeal against the judgment of the Honourable Justice Moshoana;
 - (b) An order interdicting the Second Respondent from processing the Applicant’s pension fund proceeds as directed by the divorce order, pending the determination of the appeal; and
 - (c) Costs against the party opposing the application, including the costs of counsel.
- [3] Directions were issued requiring the Respondents to file their notices of intention to oppose by **19 February 2026 at 16h00**, and their answering affidavits by **20 February 2026 at 16h00**. On the day of the hearing, counsel for the First Respondent sought an indulgence from the Court to file opposing papers out of time. After considering the brief submissions made from the bar, I directed that the answering affidavit be filed on **25 February 2026**, with the Applicant to file its replying affidavit on the following day. The matter was accordingly set down for hearing on **26 February 2026**. The First Respondent complied with these directives and served its answering affidavit electronically on **25 February 2026**, followed by the Applicant’s replying affidavit.

Material Facts

- [4] The Applicant and the First Respondent were married in community of property on 4 April 2004 and resided at the matrimonial home. In September 2007, the First Respondent left the matrimonial home and has not returned. Since that time, the parties have not lived together as husband and wife.
- [5] Two minor children were born of the marriage, namely, on 03 March 1999 and 29 June 2004. Issues relating to their care and maintenance form part of the disputes arising from the divorce proceedings.
- [6] It is a common cause that the parties are presently divorced pursuant to a default judgment. The Applicant is challenging the divorce decree and has instituted proceedings seeking leave to appeal.
- [7] The Applicant contends that the enforcement of the divorce order, particularly in relation to the division of his pension fund benefits, would result in irreparable harm and undermine his right to pursue an appeal.
- [8] The First Respondent disputes that the matter is urgent and contends that the Applicant has failed to demonstrate any basis for urgency.

Urgency

- [9] Rule 6(12) of the Uniform Rules of this court permits a court to dispense with the ordinary forms and service provided for in the Rules and to hear a matter as one of urgency where the circumstances justify such intervention.

- [10] An applicant who seeks to invoke this rule must explicitly set out the circumstances that render the matter urgent and the reasons why the applicant cannot be afforded substantial redress in due course.
- [11] The requirement that urgency be established in the founding affidavit is well established. It is trite that the court must determine urgency based on the facts set out in the founding papers, and not on speculation or subsequent elaboration.
- [12] It is well established that the issue of urgency must be determined based on the facts set out in the founding affidavit. The founding papers must therefore contain sufficient particularity to justify the departure from the ordinary procedures of the court.
- [13] In the present matter, the explanation for urgency contained in the founding affidavit is sparse and lacking in particularity. The Applicant advances several grounds in support of urgency. These include that there is a pending application before the **Supreme Court of Appeal** challenging the divorce order granted by default, and that the Applicant believes he has good prospects of success.
- [14] The Applicant further relies on the fact that, on previous occasions, **Baqwa J and Mazibuko AJ (as she then was)** granted interim orders interdicting the payment of the pension benefits. The Applicant also contends that the Second Respondent has refused to provide an undertaking that the processing of the pension benefits will be suspended pending the outcome of the litigation.
- [15] It is further contended that enrolling the matter on the **ordinary roll** would render the relief sought moot, given the congested nature of the court roll, and that the Applicant would therefore not obtain substantial redress in due course.
- [16] The First Respondent, however, submits that the Applicant was aware as early as **September 2025** that the First Respondent had resigned from her

employment and that pension benefits were likely to become payable. This contention was not satisfactorily addressed in the founding affidavit.

- [17] Moreover, the Applicant has failed to adequately explain why the relief sought could not have been pursued through the ordinary processes available in the divorce proceedings, including the institution of appropriate interlocutory relief.
- [18] Although several points in limine were initially raised by the First Respondent, these were not pursued at the hearing. The only issue pursued was that of urgency, and this judgment is therefore confined to that question.
- [19] In determining whether a matter qualifies for urgent intervention, the court must consider whether the Applicant has demonstrated that substantial redress cannot be obtained in due course and whether the urgency relied upon is genuine and not self-created.
- [20] The founding affidavit must contain sufficient factual detail to justify a departure from the ordinary rules governing motion proceedings.
- [21] In this matter, the explanation for urgency is inadequate. The founding papers do not provide a coherent chronology of events demonstrating why the Applicant could not have sought relief in the ordinary course.
- [22] The absence of a clear and satisfactory explanation for the alleged urgency is fatal to the Applicant's case. Courts have consistently held that where urgency is not properly established in the founding papers, the matter ought to be struck from the roll.
- [23] In the circumstances, I am not satisfied that the Applicant has made out a proper case for the matter to be heard as one of urgency.
- [24] As a result, the following order is made:
1. The application is struck from the roll for lack of urgency.
 2. The Applicant is ordered to pay the costs of the application.

N NDLOKOVANE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

FOR THE APPLICANT:	MR. M MARWESHE
FOR THE RESPONDENTS:	MS. IM SELANE
HEARD ON:	26 FEBRUARY 2026
DATE OF JUDGMENT:	19 MARCH 2026