



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION: MAKHANDA**

(1) REPORTABLE: YES

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

DATE: 24 MARCH 2026

SIGNATURE:

CASE NUMBER: 2026-046762

In the matter between:

EASTERN CAPE QUARRIES (PTY) LTD

Applicant

And

EYETHU QUARRY (PTY) LTD

Respondent

Summary: Urgent application-Rule 6(12) – Uniform Rules of Court – urgent - substantial redress - normal motion court explicit reasons. Application dismissed.

JUDGMENT

NTLAMA-MAKHANYA AJ

- [1] This application was brought on an urgent basis in terms of Rule 6(12) of the Uniform Rules of Court against the respondent for his failure to comply with agreed terms of the Memorandum of Agreement (MoA) that was entered on the 2nd of October 2025.
- [2] The applicant sought the following orders in terms of the Notice of Motion that the respondent:
- (i) *Be ordered to cease mining at the quarry located at Farm Grobelaarsgrave 2010 and Farm Roydon 209 Komani ('the premises').*
 - (ii) *Be ordered to vacate the premises following the lawful cancellation of the parties' agreement.*
- [3] This application was opposed by the respondent and other than urgency, he argued that the relief sought was final and amounted to eviction.
- [4] This Court will only address the principle of urgency and not go beyond the scope and merits of the case. This is motivated by the fact that urgency is the benchmark which would determine the substance of this case. It is essential that I deal with content of this principle. However, a brief background will suffice to provide an insight into the subject of the dispute.

BACKGROUND

- [5] On the 23rd of September 2025, the respondent made an offer to the applicant for the purchase of a crushing plant and the equipment. On the 2nd of October 2025, the offer was accepted and the parties entered a Memorandum of Agreement (MoA) as a framework that will regulate the contractual relations between them. The terms of the agreement were that the respondent would pay a deposit of R7 000 000.00 on the 31st of January 2026 of the agreed contractual amount of R14 000 000.00. Thereafter, the outstanding balance of R 7 000 000. 00 will be paid in monthly instalments.
- [6] The agreement was to be executed in two phases. Firstly, exploration and testing where the applicant would apply for the renewal of the mining permit which was due to expire on the 31st of January 2026 and the respondent would thereafter on renewal, pay 50% of the agreed purchase price. Secondly, in conclusion of the first phase, respondent will take over the acquisition of the plant. However, the agreement experienced some challenges even before it could take effect. Attempts were made to salvage the situation in vain with the consequent result of the applicant's cancellation of the agreement and the institution of this application.
- [7] This background provides an insight into the parties' submissions.

SUBMISSIONS AND ISSUES

- [8] The applicant submitted that the respondent committed a material breach of the agreement by failing/ alternatively refusing to pay the deposit of R7 000 000.00 which renders the application extremely urgent because:

- (i) *The applicant is not allowed access on site and has no idea whether preventative maintenance is being done to their plant and equipment that is worth R14 000 000.00.*
- (ii) *The applicant seeks to protect his commercial interest; and*
- (iii) *The mining permit can be revoked due to respondents' actions of mining the site illegally which would lead to the applicant suffering severe prejudice if the license is revoked.*

[9] On the other hand, the respondent submitted that:

- (i) *The application lacks urgency alternatively constituted self-created urgency;*
- (ii) *The applicant breached the terms of the agreement by failing to provide a maintenance plan; and*
- (iii) *The respondent was not obligated to pay the deposit because its due diligence process had not been completed because of the section 54 notice that was issued by the Department under the Mine and Safety Act.*

[10] These submissions raised the following issues that require this Court to determine whether:

- (i) *The application is urgent.*
- (ii) *Respondent committed a material breach of the agreement.*
- (iii) *Applicant validly cancelled the agreement: and*
- (iv) *The respondent is unlawfully occupying the property.*

[11] The background, submissions and issues are intertwined with each other and set a pathway to determine the core content of the “urgency” of this application. Therefore, I evaluate the extent of the urgency of this application.

ANALYSIS

- [12] The foundations of urgency are well-grounded in Rule 6(12). They bestow this Court with discretionary powers to determine the urgency of the matter as it sees fit. I am not going to reproduce the principles that had been set forth and contextualized the application of this Rule. However, it requires the party who alleges urgency to explicitly state the reasons that constitute it. The Court is not to imply the reasons as to why the party will not be afforded substantial redress at the normal motion. The content of this Rule is not a 'mere rule' that must be couched under what the applicant believed was urgent. This Court carries the sanctity of addressing well-deserved matters and not to be flooded with matters that could not have seen the roll of the urgent court.
- [13] In an order that was granted by Laing J dated 27 February 2026, it stated that this matter was "not sufficiently urgent to be dealt with on a day other than the normal motion." Judge Laing went on to state that the "application may be dealt with in accordance with rule 12(a) of the Joint Rules of Practice of the Eastern Cape (Joint Rules).: I am in the affirmative with Laing J that this matter was not ripe to be viewed on an urgent basis. I find it disturbing that Laing J declared this matter not urgent on the 27th of February 2026 and on the 10th of March 2026 found its way into the urgent roll. The substance of this case relating to facts and legal questions are of fundamental importance in business commercial transactions that need proper articulation and ventilation of the underlying factors relating to their merits.
- [14] It is my opinion that parties do not have to cloud cases under an urgent roll and use Rule 6(12) as a weapon to deal with serious prayers that were supposed to

have been properly allocated in a roll that will ensure the substantive consideration of its merits. In this instance, Matshaya AJ in *S v Khomo*¹ held:

“High courts should not be burdened by unmeritorious matters which are not properly brought before them and [they] should guard against disguised “urgent [applications]” like this one. Any matter that is ... referred to the High Court on [urgent basis] the [Judge] ... would have [to] satisfy himself/herself that indeed the matter is [urgent]. It cannot be correct that whenever a party is aggrieved [will file his application as urgent ...] to the high court willy-nilly.”²

[15] I am persuaded by Matshaya AJ because in this case, the applicant sought orders against the respondent to cease the operations at the Farm failing which he must vacate the site. It is quite disturbing because the site is not a mere site of economic development of the Province of the Eastern Cape but the country as well. For the applicant to come before this Court and prayed for an order to do what I refer to as “uprooting the respondent” needs to be “frowned upon”. It is incomprehensible that this application finds its way by urgency. It also appears to me that the issue in the applicant’s case was not necessarily of urgency, but the urgent enforcement of the R7 000 000 deposit which is the basis of this application. His grief about the respondent’s failure to make the payment due, does not fall within the confines of the principles of urgency.

[16] I find urgency in this matter unjustifiable because it limits the proper articulation of the underlying factors that could have been properly addressed at the normal motion proceedings. The filing of this applicant in urgent roll is an abuse of the Court processes, and it amounts to vexatious litigation. I must express that I am taking this with great concern that urgency will be clouded under the enforcement of a contract that will have repercussions for the evolution of the principles of motion court proceedings. It appears to me that the applicant needs to be

¹ *S v Khomo* 2024 (1) SACR 73.

² *Ibid* para 15.

reminded that the main issue in urgent proceedings is the justification of departure from the normal procedural requirements and not to serve as a basis to determine factual and complex legal issues.

- [17] The applicant believed that the application was urgent in terms of Rule 6(12). However, he failed to comprehend and proffer reasons why he could not be afforded substantial redress at the normal course proceedings. The applicant misconceived the principles of urgency and their location within the context of normal motion proceedings. The applicant was apprehensive that the respondent's failure to pay the deposit or vacate the property, the Minister of the Department of Minerals and Energy (Department) will revoke the mining license. This Court is not to assume and determine urgency based on the applicant's belief that the Minister may revoke the license if the respondent failed to pay the deposit. The Minister carries the executive authority of the Republic. He is required to uphold the rule of law and ensure adherence to the prescripts of the legal framework that regulate his allocated portfolio. Although the Minister holds the "purse and the sword"³ to enforce compliance, such authority could not be exercised without the due process of law. The process is prescribed in terms of section 47 of the Mineral and Petroleum Resources Development Act 8 of 2002 (Minerals Act) for a step-by-step process relating to the Minister's powers to suspend, cancel rights and or permits. Importantly, the role of the Minister falls within the broader framework of the rule of law. Nkabinde J in *Pheko v Ekurhuleni Metropolitan Municipality*⁴ contextualized the rule of law and is of equal application in this case and its effectiveness on the role of the courts in the application of the law. The Judge held:

"The rule of law, a foundational value of the Constitution, requires that the dignity and authority of the courts be upheld. This is crucial, as the capacity of the courts to carry out their functions depends upon it. As the Constitution commands,

³ See Kriegler J in *S v Mambolo* 2001 (5) BCLR 449 (CC), para 16.

⁴*Pheko v Ekurhuleni Metropolitan Municipality* [2015] ZACC 10.

orders and decisions issued by a court bind all persons to whom and organs of state to which they apply, and no person or organ of state may interfere, in any manner, with the functioning of the courts. It follows from this that disobedience towards court orders or decisions risks rendering our courts impotent and judicial authority a mere mockery. The effectiveness of court orders or decisions is substantially determined by the assurance that they will be enforced.”⁵

[18] The application of section 47 of the Minerals Act should not be used as a shield to compromise the rule of law and enforce matters that are unmerited for urgency. I am persuaded by the responded that the prayer for his “vacation” of the site is a final remedy. It constitutes what I would refer to as “getting rid” of the respondent from the site. It is my opinion that this application clouded primary issue of enforcing the contractual terms against the respondent under the principle of urgency.

[19] It bears repetition that I am not satisfied that the applicant met the requirements of Rule 6(12). It is my further view that this matter be removed from the urgent roll and be enrolled in the normal motion court roll where it will be provided with a substantive opportunity to address the complexity of facts and legal issues that emanate from it.

[20] In the circumstances of this case, both parties applied for costs on an attorney and client scale. I must express the discomfort because the costs are not meant to discourage parties in litigation because of punitive costs. The substance of litigation is to ensure the resolution of a dispute in impartial and fair processes of the law without any fear. It substantiates the foundations of constitutional democracy. I therefore order the costs as they appear below.

[21] In the result, the following order is made:

⁵ *Ibid* para 1.

[21.1] This application is dismissed for lack of urgency.

[21.2] The applicant is ordered to pay the costs of this application on Scale B and costs of one Counsel where so employed.

N NTLAMA-MAKHANYA
ACTING JUDGE OF THE HIGH COURT
MAKHANDA

Delivery: *This judgment is issued by the Judges whose name appears herein and is delivered and submitted to the parties /legal representatives. Its date of delivery is deemed 24 March 2026.*

Date Heard: 12 MARCH 2026

Date Delivered: 24 March 2026

Appearances:

Applicant: Advocate M van der Berg

Cape Town

Instructing Attorneys: SDP Attorneys

Grahamstown

Respondent: Advocate A Mafu

East London

Instructing Attorneys: Bate Chubb & Dickson Inc