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

CASE NUMBER: 2026/098879
(1) REPORTABLE: YES
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED YES/NO
DATE 25/5/2026
SIGNATURE

In the application between:

STEVE TSHWETE LOCAL MUNICIPALITY

APPLICANT

and

VERALOGIX PROPERTIES (PTY) LTD

FIRST RESPONDENT

**MIDDELBURG WATERFRONT HOME
OWNERS ASSOCIATION**

SECOND RESPONDENT

JUDGMENT

FOURIE AJ

INTRODUCTION:

- [1] The First Respondent, under the auspices of Rule 6(12)(c) of the Uniform Rules of Court, apply for the reconsideration of the Order granted by Leso AJ, on 12 May 2026.
- [2] The Judgment deals with the distinction that needs to be drawn between applications brought under Rule 6(8) of the Uniform Rules of Court, and applications brought under Rule 6(12)(c) of the Uniform Rules of Court.
- [3] This Judgment further deals with the test to be applied when applications under Rule 6(12)(c) under the Uniform Rules of Court are heard, and whether a party making an application under this Rule is necessitated to prove urgency or whether urgency flows from the nature of the application.

BACKGROUND:

- [4] On 12 May 2026, the Applicant obtained an interim interdict against the First Respondent, which deals in essence with interim access to a sewer pump station situated on the First Respondent's property. When the matter was heard on 12 May 2026, by Leso AJ, only the Applicant was present. The Applicant advanced that the application as issued by the Applicant on 30 April 2026, was served on the same day at 18h12 at 3[...] L[...] Street, Middelburg, the registered address of the First Respondent, a copy of the Notice of Motion being served to one Mr. SE Nkuna, a security guard of the First Respondent. To substantiate and prove service under the auspices of Rule 4(1)(a)(v) of the Uniform Rules of Court, the Applicant advanced a Sheriff's Return of Service indicating the aforesaid information.

- [5] It is a trite principle that the Sheriff's Return of Service is *prima facie*, but not conclusive evidence of the matter stated therein. It can only be impeached on the clearest and most satisfactory evidence.[1]
- [6] The party seeking to impeach a Return of Service carries the onus to show by clear evidence that the Return is not a proper Return.[2]
- [7] In this Court's view, Leso AJ was justified in accepting the information displayed on the Sheriff's Return of Service pertaining to service on the First Respondent, and proceeded to hear the application on 12 May 2026, under the belief that the First Respondent had received notice of the application, and had for whatever reason decided not to partake in the proceedings.
- [8] On 14 May 2026, and after learning of the Judgment and interim interdict granted against them, the First Respondent brought to Court an application under the auspices of Rule 6(12)(c) of the Uniform Rules of Court for the reconsideration of the Order of 12 May 2026, seeking the Applicant's application to either be struck, or alternatively dismissed with costs.
- [9] Both the Applicant in the main application as well as the First Respondent in the reconsideration application prayed in the form of Part B to their respective applications for certain ancillary and ultimate relief that will ultimately regulate the position between, specifically, the Applicant and the First Respondent.
- [10] The issues as identified during the hearing of this matter are accordingly only in respect of interim measures to be put in place with respect to the sewer pump situated on the First Respondent's property. Ultimately, the Court hearing the respective Parts B of the applications will need to decide whether the sewer pump is regular or irregular with respect to its location and functionality, and how the pump is to be dealt with. The parties currently seek the Court's direction as an interim measure on who should maintain the

sewer pump, who should have access to the sewer pump, and who is liable for the expenses incurred in respect of the maintenance of the sewer pump whilst the issues are pending finalisation.

ISSUES IN DISPUTE:

- [11] At the commencement of the hearing, Counsels for the First Respondent and Applicant respectively attacked each other, both aggressively and emotionally, with regard to the form and substance with which the respective main application and the current reconsideration application were brought.
- [12] The First Respondent claimed that the initial Judgment was obtained by way of underhand tactics in that the Applicant ought to have an automatic right under the auspices of Rule 6(12)(c) for the reconsideration of the matter.
- [13] The Applicant, taking issue with the sentiments of the First Respondent, persisted that the Order was validly obtained after proper service of the application occurred.
- [14] The First Respondent, together with their Answering Affidavit, filed an affidavit by Mr. Nkuna, indicating that he is not an employee in the sole employ of the First Respondent, and that he admits, after receiving the application, he misplaced the application and did not bring it to the attention of the First Respondent.
- [15] Counsel for the First Respondent advanced that the manner of service, which, according to the First Respondent, was irregular, ought to leave the matter akin to an *ex parte* application.
- [16] In requesting the matter to be evaluated essentially as if brought *ex parte*, the First Respondent argues that the matter falls foul of material non-disclosures, on which grounds the application is to be dismissed.

[17] An *ex parte* application by its nature requires the utmost good faith on the part of an Applicant. The Court, on the return date or on the anticipated date, has a discretion to set aside the Order with costs on any grounds of non-disclosure. It should, however, be noted that the Court has a discretion, and is not compelled, even if the non-disclosure was material, to dismiss the application or to set aside the proceedings.[3]

[18] The threshold and utmost good faith required in respect of *ex parte* applications do not apply in the same degree to applications brought by way of notice. It is accordingly obvious why the First Respondent wishes the Court to find that the matter was brought *ex parte*, as it would open a whole line of attack on the applicant's application on all issues the First Respondent might believe ought to have been disclosed when the matter was brought to Court initially.

[19] It is noteworthy, however, that the First Respondent did not make the current application under the auspices of Rule 6(8) of the Uniform Rules of Court, which states that:

“(8) Any person against whom an order is granted ex parte, may anticipate the return day upon delivery of not less than 24 hours' notice.”

[20] The First Respondent elected to bring the matter to Court under the auspices of Rule 6(12)(c) of the Uniform Rules of Court, which states that:

“(c) A person against whom an order was granted in such person's absence in an urgent application may, by notice, set down the matter for reconsideration of the Order.”

- [21] It is important to make a clear distinction between the respective procedures in respect of Rules 6(8) and 6(12)(c) of the Uniform Rules of Court.
- [22] If an Applicant brings a matter to Court on an *ex parte* basis, such an Applicant must set out in their papers facts to justify why notice to a Respondent was either not possible or practical. This would be one of the considerations a Court would take into account prior to hearing a matter without affording the Respondent a right of audience under the principles of *audi alteram partem*.
- [23] A Respondent against whom an Order was granted *ex parte*, without any notice and without the Applicant attempting notice, after convincing the Court that it is just and equitable to do so, has an automatic right at their mere say so, to set the matter down by giving 24 hours' notice to anticipate the return date. It is, under Rule 6(8), the final hearing of the matter that is brought forward to be heard as anticipated by a party against whom an *ex parte* application was granted.
- [24] Under Rule 6(12)(c), the position is materially different. It would make no practical sense to avail Rule 6(12)(c) to a party against whom an *ex parte* Order was granted, as Rule 6(8) already grants such a Respondent an automatic right of anticipation.
- [25] It is only a reasonable inference that Rule 6(12)(c) caters to a situation where notice to a Respondent was given or attempted by an Applicant, which a Court found to be sufficient at the time, and upon which Judgment was granted in the absence of such Respondent participating in the proceedings. It is this Respondent, against whom an Order was granted in absentia, that can approach the Court under Rule 6(12)(c) of the Uniform Rules of Court.
- [26] The Rules of Court do not define nor set out how the absence of a Respondent is defined or to be dealt with.

[27] Counsel for the First Respondent suggested that the sub-rule is available to any Respondent who was not present when the matter was heard in Court, irrespective of the reason for such absence. I do not agree with the aforesaid reasoning for several reasons.

[28] The Court believes that the absence of a party can only be condoned if the Court is satisfied that the absence is not wilful.

[29] Although dealing with a Rescission of Judgment, I find no reason for this Court not to align itself with the Court in ***Maujean t/a Audio Video Agencies v Standard Bank of SA Limited***[4], where the Court found that:

“More specifically, in the context of a default judgment, wilful connotes deliberateness in the sense of knowledge of the action and of its consequences, i.e. its legal consequences and freely taken decision to refrain from giving notice of intention to defend, whatever the motivation for this conduct might be”

[30] The same principles have been upheld by the Constitutional Court under Rule 42 of the Uniform Rules of Court. [5]

[31] The principles which this Court believes to find application as much in applications brought under the auspices of Rule 6(12)(c) are that a party wishing to rely on this Subrule needs to convince the Court that his absence at Court was not a result of knowledge of the proceedings and an election not to partake therein. If a Respondent has knowledge of proceedings or proceedings have been served on a Respondent that would bring knowledge of the proceedings to the attention of a Respondent had such a Respondent applied reasonable care and diligence, then the absence of the Respondent is wilful and the reliance on Rule 6(12)(c) of the Uniform Rules of Court is an

abuse of Court process. To reason otherwise would open the doors for Respondents to electively not partake in urgent application when they are brought and set down, and to then, as a runt, claim an audience with the Court for the reconsideration of the Order of Court at the leisure of the Respondent at a time when it is more convenient for the Respondent to deal with the matter.

[32] The Rule is designed rather to cater for situations where a Respondent genuinely did not receive notice of an application which was served on them.

[33] The onus of proving that the Respondent's absence was not wilful rests on the Respondent, and is the first hurdle a Respondent needs to overcome before the facts of a matter are reconsidered. If a Respondent is unable to prove that he was not wilful in his non-appearance and the matter was initially called, Rule 6(12)(c) of the Uniform Rules of Court would simply not be available to such a Respondent.

[34] If a Court is satisfied that the absence of a Respondent has reasonably been explained and the matter is to be heard under the auspices of Rule 6(12)(c) of the Uniform Rules of Court, the question that arises is whether the Respondent seeking a reconsideration of the initial order ought to prove that the reconsideration hearing is to be held urgently, and whether a burden of prove pertaining to urgency is placed on the Respondent.

[35] Rule 6(12)(c) of the Uniform Rules of Court is only available to a Respondent in respect of urgent applications, and is not available to a Respondent in respect of applications brought in the normal course.

[36] In all applications brought on an urgent basis under Rule 6(12)(c) of the Uniform Rules of Court, a Court will consider whether the matter is sufficiently urgent to be dealt with as such. This will be the case in

applications that are opposed and unopposed. The obligation of an Applicant to convince the Court on the urgency of the matter does not disappear absent opposition by a Respondent.

[37] It stands to reason that the Court initially dealing with the matter, in granting the Order, found that the underlying facts as between the Applicant and the Respondent were of such a nature that it justified the matter to be heard as an urgent application.

[38] It is further self-evident that an Applicant under this Rule had previously wanted the matter to be heard urgently and wanted to afford the Respondent the opportunity of having themselves heard.

[39] If a reconsideration application is brought within a reasonable time from the date on which the initial Order was granted, I find no reason why the reconsideration application ought not, as a right, be heard on an urgent basis. It is nearly inconceivable that a Court will find an application urgent and, a moment later, find that it is no longer urgent simply because a moment has elapsed or a Respondent is now present. My view is that it would be reserved for exceptional circumstances or matters where an undue time delay has occurred from the moment the initial Order was granted to the time when the reconsideration application is brought, for it to be considered necessary for a Respondent to again prove urgency.

[40] In the current matter, I find no reason not to accept that the Applicant did all they could in order to have the initial application properly served on the First Respondent. On the face value of the Sheriff's Return of Service, the Applicant could expect that the application would be brought to the attention of the First Respondent, and the Applicant was justified in advancing the application in the manner in which they did to the Court on the 12th of May 2026. The First Respondent has, however, by way of conclusive proof,

convinced the Court that the application did not come to the attention of the First Respondent, and that their absence at Court when the matter was called was not wilful.

[41] As such the Court is satisfied that the First Respondent has met the jurisdictional requirements to secure a right of audience to have the matter reconsidered under Rule 6(12)(c) of the Uniform Rules of Court.

RECONSIDERATION OF THE 12 MAY 2026 ORDER:

[42] The Constitution of the Republic of South Africa, 1996, provides Municipalities with an autonomous role in providing good governance in their communities. Together with legislation such as the Local Government Municipal Systems Act, 32 of 2000, and similar legislation, it is evident that Municipalities are legally obliged to ensure the adequate provision of basic services and the proper upkeep of critical infrastructure related to their provision. In the main application, the Applicant alleged that it was being prohibited, illegally so, by the First Respondent from performing their obligations in respect of the maintenance of the sewer pump situated on the First Respondent's property, which caused certain harm to the environment, the community, and disrupted the constitutional mandate of the Applicant.

[43] In the Counterapplication brought by the First Respondent, the First Respondent alleges that the Applicant is not properly maintaining the sewer pump, and that the First Respondent ought to be granted carte blanche to deal with the sewerage pump, maintain it themselves, and then invoice the municipality for services rendered in respect of the pump station. From an evaluation of the papers before me, it seems that the First Respondent takes issue with the presence of the sewerage pump on its premises, and possible safety concerns of allowing people who are unknown to the First Respondent to attend its premises.

- [44] The dispute between the Applicant and the First Respondent, in the main, which is to be decided on the return date of this application, is the legitimacy of the positioning of the pump station, possible servitudes, and the infringement of rights pertaining to the positioning of the sewerage pump.
- [45] This Court, however, evaluates the matter on the immediate needs of the broader community, the environment, and the balancing of the aforesaid with the rights of the First Respondent.
- [46] The current matter is distinguishable from several other legal precedent where municipalities have unfortunately absconded from their duties towards service delivery and maintenance. At the very least, the Applicant cannot be faulted for their attempts to render services and maintenance, which is evident from the *prima facie* facts before me. The Court, during argument, raised with the respective Counsel whether there is any reason why the First Respondent should not allow the Applicant the opportunity to fulfil their constitutional mandate to provide the services and maintenance in respect of the sewerage pump. No such reason could be advanced.
- [47] Whilst it is commendable that individuals and entities sometimes step in to perform services that municipalities lack the capacity to provide, or from which municipalities simply abdicate, these functions can never become the primary objective or responsibility of individuals or entities. It can also not be argued, absent failure to perform by a municipality, that individuals may simply render services to a municipality, or, as in this case, prohibit a municipality from rendering such services, and then render invoices to a municipality thereafter. The proverbial administrative can of worms that such a proposition would open is unthinkable. Section 217 of the Constitution would be circumvented in its entirety if individuals were allowed to simply render services to a municipality and issue invoices thereafter without following a procurement process or being requested to do so.

[48] In the current matter, however, the ownership of the sewerage pump remains a disputed issue which the Court ultimately needs to evaluate. *Prima facie*, the sewerage pump is the property of the Applicant; it is common cause that the absence of proper maintenance of the sewerage pump poses significant health and safety risks to the community and the environment. Under these circumstances, the Court is satisfied, as an urgent interim measure, to extend the mandate in respect of the pump to include provisions during this time, for a possible situation where the constitutional mandate of the Applicant is not being performed. Neither of the Applicant nor the First Respondent seriously contested the aforesaid, and after argument was concluded, I believe the parties were in essence in agreement that this is how the matter ought to be dealt with as an interim measure.

[49] Given the nature of the matter and the underlying disputes, the First Respondent requested the Court to incorporate in the Order certain provisions to safeguard the First Respondent and the occupants of the premises to discount any safety concerns the First Respondent may have. Although I believe the broad terms as prayed for by the First Respondent might lead to undesirable effects and the possibility of interfering with the Applicant's mandate, I see no reason why an Order at least protecting the interest of the First Respondent to a certain degree cannot be incorporated in the initial Order as granted.

[50] On the *prima facie* facts available, the Order granted on the 12th of May 2026, cannot be faulted to the degree that it ought to be set aside completely.

[51] The First Respondent was previously not before the Court, and having had the benefit of their input, the Court is willing to, given the nature of the matter, vary the Judgment of 12 May 2026, very slightly to accommodate some of the concerns of the First Respondent.

[52] The variation is ordered simply because the issues as raised by the First Respondent would have been raised on the 12th of May 2026, and I have little doubt that the Court on that day would have made an Order in line with the Order this Court ultimately makes.

COSTS:

[53] The Court, during argument, indicated to both the Applicant and the First Respondent that neither party obtained real success in respect of the matter at hand, but in order to avoid further emotion between the parties pending the resolution of the final disputes, that an Order be made for the costs of the current application to be costs in the main application to which no objection was received. I remain satisfied that this is a just Order in respect of costs.

CONCLUSION:

[54] The Court is accordingly satisfied that the Applicant needs to be provided with a sufficient opportunity of performing their constitutional mandate, to gain access to the premises in question, and to ensure proper compliance with their duties.

[55] Should the Applicant fail to perform their duties, the Court can find no reason why the First Respondent ought not, at that stage, be allowed to intervene to the benefit of themselves and the greater community and environment to ensure a disaster does not unfold. The aforesaid intervention will, however, only be allowed under the most extreme of circumstances, and is not to be regarded by the First Respondent as *carte blanche* to interfere with the Applicant's infrastructure, as the First Respondent wishes.

[56] The Court is satisfied that certain safety measures may be put in place to safeguard the personal interest of the First Respondent and the occupants of its premises.

ORDER:

[57] For all the aforesaid reasons, the following Order is made:

[56.1] The First Respondent is granted leave to have the Order of 12 May 2026 reconsidered under Rule 6(12)(c) of the Uniform Rules of Court. The Applicant is authorised to enter upon the First Respondent's property situated at Portion 54 of Erf 2[...], A[...], Middelburg.

[56.2] The Applicant is granted immediate access to the sewer pump station situated on the First Respondent's property, and to take all steps necessary to prevent environmental harm, including addressing sewerage spillage into the natural water stream.

[56.3] The Applicant is authorised to inspect, repair, maintain, and restore the sewer infrastructure to full working order.

[56.4] The First Respondent is interdicted from any act or omission which interferes with or contributes to the malfunctioning of the sewer system.

[56.5] The First Respondent is interdicted and restrained from obstructing or denying the Applicant access to the property and the pump station.

- [56.6] The Applicant is authorised, if necessary, to obtain the assistance of the South African Police Service to give effect to the Order.
- [56.7] Any representatives of the Applicant who attend the First Respondent's premises shall be clearly identified and shall, upon request, make available their identification to prove their employment with the Applicant when attending the First Respondent's premises.
- [56.8] In respect of routine inspections and maintenance of the sewer pump, the Applicant shall give the First Respondent 24 hours' notice of the proposed attendance at the First Respondent's premises.
- [56.9] In respect of the emergency preparation of the sewer pump or emergency attendance at the sewer pump, the 24-hour period shall not be applicable, and the Applicant shall have undisturbed and immediate access to the sewer pump.
- [56.10] The Applicant's attendance at the First Respondent's premises shall be limited to reasonable access from the entrance of the premises to the sewer pump and shall be confined to the area in and around the sewer pump for the performance of necessary services as identified in this Order.
- [56.11] Any work required to be performed on the First Respondent's property by the Applicant in terms of this Order shall, at all times, be performed having due regard to all of the First Respondent's rights (including but not limited to its rights of ownership), and including the rights of the occupants thereupon. The Applicant

shall accordingly not intimidate and interfere with any persons or occupants of the First Respondent's premises, including such parties' rights of beneficial use and enjoyment of the property.

- [56.12] Should the Applicant, at any stage, fail to properly undertake all steps necessary concerning the sewer pump station, and fail to remedy such failure after being provided 48 hours written notice by the First Respondent, then and only in that event shall the First Respondent be authorised to remediate and maintain the sewer pump station on its property to address sewerage spillage into the natural water stream and to prevent environmental harm.
- [56.13] The right of the First Respondent to remediate and maintain the sewer pump station shall only manifest absent the Applicant starting remediation works within the timeframe stipulated, and finalising the remediation works within a reasonable timeframe.
- [56.14] Any remedial works performed by the First Respondent shall only be performed by suitably qualified persons.
- [56.15] Should any representatives of the intimidating or interfere with any representative so that the First Respondent or the residents on the property, then and in that event, the First Respondent shall be entitled to enlist the help of the South African Police Service to give effect to this Order.
- [56.16] The costs of the urgent application and the reconsideration application are to be determined when Part B of the application is heard.

Judgment reserved on: ___ May 2026
Date of delivery: ___ May 2026

- [1]** Deputy Sheriff v Goldberg 1905 TS 680

- [2]** SASFIN Bank Ltd and Another v Varelziz (15432/2013) [2019] ZAGPPHC 436 (23 August 2019)

- [3]** Schlesinger v Schlesinger 1979 (4) SA 342 (W) at 348E – 350B
See also National Director of Public Prosecutions v Basson 2002 (1) SA 419 (SCA) at 21

- [4]** Maujean t/a Audio Video Agencies v Standard Bank of SA Limited 1994 (3) SA 801 (C)

- [5]** Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, Including Organs of State and Others [2021] ZACC 28