REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2026-098132

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES

7/5/2026 [redacted]
DATE SIGNATURE

In the matter between:

ALEXANDER BODO VON ARNIM, THE UNLAWFUL OCCUPIERS ELGIN AVENUE FERNDALE RANDBURG Applicant

and

DOREEN N.O VON ARNIM Respondent

JUDGMENT

C E THOMPSON AJ

[1] The Applicants were respondents in the Randburg Magistrate's Court in eviction proceedings under case number 21252/2025 wherein the Learned Magistrate Jansen granted a final order of eviction against them on 13 April 2026. The

eviction proceedings were dealt with in terms of the Prevention of Illegal Evictions and Unlawful Occupiers Act in the lower court.

[2] In terms of the order granted, the Applicants were to vacate the property in question voluntarily by 30 April 2026, failing which the Sheriff is authorized to evict the Applicants by 8 May 2026. This application is the second application in as many weeks to stay the eviction proceedings.

[3] The first stay application was enrolled before Minnaar AJ for the week of 28 April 2026. Minnaar AJ struck the matter from the roll, *inter alia* due to the fact that the stay of execution sought was open-endedly sought. In other words, the stay sought was not dependent on the happening of any other event, it would have endured indefinitely. By the time the matter was heard by Minnaar AJ, there were already murmurings on the side of the Applicants of a possible appeal against the decision of the Learned Magistrate or a possible review application in relation to the conduct of the proceedings in the lower court. The fact that neither had been launched by the time that the matter was before Minnaar AJ weighed heavily on Minnaar's mind and his decision to strike the matter from the roll.

[4] With Minnaar AJ striking the first urgent application from the roll on 29 April 2026, the Applicants launched this second urgent application on 30 April 2026, to be heard before me on 5 May 2026. The catalyst for the having this second application enrolled on 5 May 2026 was due the impending eviction to be carried out on 8 May 2026. This second application also followed on the launching of review proceedings on 30 May 2026 thereby, so the argument goes by the

Applicant, curing the concern of Minnaar AJ. For reasons unknown to the court, the Applicants did not seek a consent to stay the execution of the eviction order pending the finalization of the review application. The second urgent application was simply launched.

[5] This action taken by the Applicants on the basis of extreme urgency caused a set of founding papers to be presented to the court which does not, by any stretch of the imagination, amount to the standard of court pleadings and affidavits required for High Court litigation. The head piece to the litigation refers to the two of the Applicants, whose identity is known to the First Applicant as well as the attorney, Mr Moodley, as "*Unlawful Occupants*". The founding affidavit is a muddled-up version of events, to such an extent that it is difficulty if not nigh impossible to discern whether the order in lower court was granted by default or not. This latter issue required clarification during argument as it impacted on the nature of the relief sought. Much of the argument before me had to traverse the history of the lower court litigation just so that the court could get an understanding of whether the lower court order was by default or not. Much of the court's time was spent on this issue alone. Had the papers been properly drawn, this would not have been an issue, and unnecessary time would not have had to be spent on obtaining the material background to the matter.

[6] The extreme urgency with which the matter was brought also resulted in purported confirmatory affidavits being delivered by each of the Applicants in support of the affidavit deposed to by Mr Moodley (the attorney) which referred to a non-existent supplementary affidavit. I was informed in the proceedings

before Minnaar AJ there was a supplementary affidavit which required confirmatory affidavits. Mr Moodley, in preparing the papers, did not pay due attention to his professional work and duties and merely copied and pasted documents without due regard to the contents thereof.[1] The concern of possible fraud by utilizing affidavits pertaining to a different affidavit was waylaid by counsel appearing for the Applicants by demonstrating that the order of Minnaar AJ was 29 April 2026 and the (wrongly headed) supplementary affidavits were dated 30 April 2026.

[7] It is trite that in urgent matters, urgency lies in the fact that there is an absence of substantial relief in due course. As was stated in ***East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*** 2012 JDR 1836 (GSJ), urgency is not for the taking. The grounds upon which reliance is placed for urgency must be expressly set out. It follows that the lack of substantial redress in due course must not only be pleaded, it must be demonstrated. The Second Applicant, being Messrs Mokgore and Thobejane, both indicated in the lower court that they have alternative accommodation available to them. This was not disputed during argument. The record of proceedings in the lower court pertaining to Mr Mokgore was available and confirms the aforesaid.

[8] Messrs Mokgore and Thobejane also lay claim no right to the property, or occupation thereof, from which their eviction is being sought. In my view, they do not demonstrate that they cannot obtain substantial redress in due course.

[1] ***Lembore and Others v Minister of Home Affairs and Others*** (2023/097427) [2024] ZAGPJHC 502 (21 May 2024) at para [93] and [94]

[9] The First Applicant, who styles himself as a businessman, hangs his hat on the fact that the Last Will and Testament by which his mother, the First Respondent in this court and the applicant in the lower court, obtained her letters of executorship is a fraud. He also contends that he will be rendered homeless. The issue of homelessness would have been dealt with by the lower court and I need to revisit it. In any event, the allegation by the First Applicant in this regard is so bald and vague that no weight can be attached thereto. He does not even begin to attempt to demonstrate that, despite being a businessman, he has no funds available to procure alternative accommodation.

[10] The issue of the alleged fraudulent will is even more fatal to the First Applicant. The letters of executorship were issued by the Master in February 2025, based upon the Master's acceptance of the will. Save for a criminal complaint which will not undo the Master's decision unless the Master's decision is specifically challenged, the First Applicant has not sought to challenge the Master's decision to accept the will. The First Applicant, being a businessman, has not demonstrated that he was constrained for financial reasons to proceed by way of a criminal complaint as he cannot afford an expert of his own to inspect the will.

[11] Worse still, in the lower court in an apparent challenge to the *locus standi* of the First Respondent (the applicant in that court), the First Applicant relied on a photograph taken by Mr Moodley (the attorney) of the disputed signature and his and Mr Moodley's interpretation thereof. Subject a challenge to the Master's decision and issuing of the letters of executorship, the letters of executorship is valid and the inadmissible opinion evidence on which reliance is placed to dispute

the First Respondent's *locus stand* as executrix is a non-starter. Otherwise stated, the Applicants fail demonstrate a basis to attack the underlying judgment of the lower court.

[12] During argument and upon questions by the court in an attempt to discern the lack of substantial redress available to the First Applicant in due course, it was discovered that the First Applicant contends (from the Bar) that he will inherit the property on an intestate basis if the will is found to be fraudulent. Two issues arise in this respect. Firstly, this case is not made out in the founding papers before me. Secondly, the First Applicant is seriously misguided or ill-advised in this respect. A right to inherit is no more than a *spes*. In other words, he has a possible right to receive something from the deceased estate, he does not have an inherent right to receive something. In addition to the aforesaid, unless the potential intestate heirs (if the will, to which there is presently no challenge pending in a court, is found to be a fraud) agrees to a distribution of the estate in a particular manner, the First Applicant has no *spes* to inherit the property and take transfer thereof. At most he will receive a portion of the value of the property, dependent on the intestate calculation.

[13] Succintly put, the First Applicant also fails to demonstrate that he cannot be afforded substantial redress in due course.

[14] The First Applicant has also created his own urgency. He has known since February 2025 of the alleged fraudulent will and the appointment of the First Respondent as executrix. He has not sought to challenge the Master's decision,

or even to suspend the Master's decision pending a review of the Master's decision. Criminal complaints, it is trite, runs separately from civil proceedings. The urgency in this matter does not arise from the eviction order itself. The urgency, in my view, arises from the First Applicant's failure to take steps since February 2025 to challenge the Master's decision. The reason is simple, if he had timeously challenged the Master's decision, he would have had reasonable grounds to seek the stay of the eviction proceedings and, upon a refusal of such a stay, a review of the refusal to stay the eviction proceedings. *Locus standi* goes to the heart of a matter and I cannot see a court of review refusing to hear a review application on the basis that the proceedings had not been finalized. This is because in the absence of *locus standi*, there is no case to deal with.

[15] The First Applicant has only himself to blame for the present state of affairs by failing to challenge the Master's decision.

[16] As the Applicants cannot demonstrate a lack of substantial redress in due course, it follows that the matter is not urgent for the purposes of Rule 6(12). The Applicants also fail to demonstrate that it would be in the interests of justice to stay the eviction order from the lower court.

[17] Much time was spent in argument on whether Mr Moodley (the attorney) should pay the costs of the application *de bonis propriss*. The suggestion was that either this court is to grant such an order or to call upon Mr Moodley to advance reasons why such an order should not be granted. It was argued before me on the strength of ***Lion v Ram SC N.O. and others*** (Labour Court, Johannesburg case

number 2025-240674) that Mr Moodley is playing casino with the urgent court by approaching the urgent court in two consecutive weeks, playing with the same hand by advancing substantially the same case. In my view, as much as litigants must be persuaded not to approach the urgent court week after week hoping for a different judge to provide a different outcome, this matter is distinguishable from the *Lion*-case. In this matter Minnaar AJ expressed a concern as to a *lacuna* in the Applicants' case, namely the absence of a review application. This *lacuna* is now addressed, which means that a fact that did not exist before Minnaar AJ now exists and is dealt with for the first time. It must, however, be added that the mere existence of the review application does not assist the Applicants in demonstrating an absence of substantial redress in due course.

[18] As much as a displeasure must be expressed at the duplicitous approach to the urgent court, coupled with poorly drafted papers, I cannot find that Mr Moodley acted with gross negligence or abused the process of court (this time). The conduct must be deprecated and I am of the view that a strongly worded admonishment directed to Mr Moodley would suffice. The lack of action on the part of the First Applicant to challenge the Master's decision should be carefully considered by Mr Moodley and the impact it had on the unfolding of events over the past year and 3 months before seeking to again approach the urgent court, or any other court for that matter. Further approaches to the urgent court on the aforesaid facts or on this matter generally without something materially changing or coming to the fore that is not presently before the court or has not been dealt with may very well lead to this court making adverse costs orders against Mr Moodley. At this juncture I cannot find that such an order is justified and even if

the court were to call for reasons to be advanced by Mr Moodley why costs *de bonis propriss* should not be granted against him, I cannot foresee that this court would, in future and upon such explanation, granted a costs *de bonis propriss* order against Mr Moodley in due course in this matter.

[19] In the aforesaid premises I grant the following order:

1. The application is struck from the roll.
2. The Applicants are to pay the costs, jointly and severally the one paying the other being absolved, on Scale C.

[redacted]

C E THOMPSON AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG