IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: 2026/094554

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates **NO**

In the matter between:-

BRONKHORSTSPRUIT MALL (PTY) LTD Applicant

and

WASQAR TRADERS (PTY) LTD 1st Respondent

***In re* joinder of:**

MOHAMMED YOUSAF 2nd Respondent

OCCUPIERS OF SHOP NO. 5[...]
BRONKHORSTSPRUIT MALL 3rd Respondent

This judgment is handed down electronically by circulation on the electronic *medium Case Lines. The date that the judgment is handed down, is deemed to be 14 May 2026.*

JUDGMENT

Reid J

Introduction

[1] This is an urgent application brought by the applicant, Bronkhorstspruit Mall (Pty) Ltd, for the eviction of the respondent, Wasqar Traders (Pty) Ltd, from commercial premises situated at Shop 5[...], Bronkhorstspruit Mall.

[2] The applicant also seeks to join Mr Mohammed Yousaf (the manager and surety) and all other occupiers of the shop as respondents.

Factual background

[3] The parties entered into a written lease agreement for the occupation of commercial property, on or about 29 August 2025, for a term of three years commencing 1 November 2025. The respondent took occupation and, on its version, expended approximately R492,000 on shop fitting, tiling, signage, and a deposit.

[4] By February 2026, the respondent had fallen into arrears. On 25 February 2026, the applicant's attorneys addressed a letter of demand calling upon the respondent to remedy its breach. The letter did not specify a time period within which the breach was to be remedied. On 6

March 2026, the applicant informed the respondent that the lease agreement is cancelled with immediate effect, relying on Clause 34 – a *lex commissoria* clause that entitles the lessor to cancel without notice upon any breach.

[5] On 7 March 2026, the respondent paid R60,000 towards the arrears, followed by further payments of R46,000 and R80,000 on 9 and 10 March 2026 respectively.

[6] The respondent also, through Mr Yousaf, sent a WhatsApp message on 7 March 2026 acknowledging the outstanding amount and stating: "*I will then vacate the premises at the end of March*".

[7] On 24 March 2026, the respondent launched an urgent spoliation application after the applicant locked the respondent from the premises. Francis-Subbiah J granted the spoliation order, restoring possession to the respondent. In that judgment, the court noted that the respondent had "*approached court with clean hands*" and had "*remedied its breach*".

[8] The applicant did not thereafter launch any further proceedings until 24 April 2026, when the present urgent eviction application was served on the respondent's attorneys. The application was initially set down for 28 April 2026 but was subsequently enrolled for hearing on 5 May 2026.

The applicant's case on urgency

[9] The applicant advances several grounds in support of urgency:

9.1. First, it contends that the lease was validly cancelled on 6 March 2026 and that the respondent remains in unlawful occupation.

9.2. Second, it argues that it has concluded a new lease with a third party who was due to take occupation at the end of April 2026 (alternatively, by 4 May 2026).

9.3. Third, it submits that it stands to suffer irreparable financial harm, including damages claims from the new tenant and loss of rental income, if the respondent is not evicted urgently.

9.4. Fourth, it characterises the respondent's conduct as a "Stalingrad strategy" and an ongoing violation of the rule of law, which, it contends, justifies urgent intervention.

[10] The respondent denies that the matter is urgent and states that the applicant can obtain substantial redress in due course.

Legal principles governing urgency

[11] Uniform Rule 6(12)(b) requires that an applicant in urgent proceedings "*set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course*".

[12] The test for urgency is well-established. In *Luna Meubelvervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137, the court held that the degree of deviation from the ordinary rules must not be greater than the exigency demanded by the facts.

[13] In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ) the following guidelines were given by Notsche AJ in determining whether a matter should be treated as urgent:

> *"[5] The issue of whether a matter should be enrolled and heard as an urgent application is governed by the provisions of 6(12) of the Uniform Rules. The aforesaid sub rule allows the court or a Judge in urgent applications to dispense with the forms and service provided for in the rules and dispose of the matter at such time and place in such manner and in accordance with such procedure as to it seems meet. It further provides that in the affidavit in support of an urgent application the applicant "… shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course."*
>
> *[6] The import thereof is that the procedure set out in rule 6(12) is not there for 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 he claims that he 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 absence of substantial redress in an 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 the normal course laid down by the rules it will not obtain substantial redress.*
>
> *[7] It is important to note that the rules require 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 obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard."*

[14] Urgency is not a mere formality. An applicant cannot create its own urgency by delaying the launch of proceedings or by contracting with a third party on the assumption that relief will be granted on an expedited basis. Self-created urgency is not a ground for invoking Rule 6(12). See *Soobedar & another v Minister of International Relations & Cooperation & another (2021) 42 ILJ 1761 (LC)*.

Analysis

[15] The applicant's primary grievance is that the respondent remains in occupation of the premises after the purported cancellation of the lease.

[16] However, the respondent disputes the validity of that cancellation, raising several arguable defences:

16.1. that the *lex commissoria* clause is unconscionable and contrary to the Consumer Protection Act 68 of 2008.

16.2. that the letter of demand failed to specify a reasonable time for performance.

16.3. that the breach was in fact remedied by payment of the arrears before the applicant took any steps to enforce the cancellation.

[17] Importantly, the applicant did not act with the expedition one would expect of a party genuinely facing an urgent crisis. The lease was cancelled on 6 March 2026. On 7 March 2026 the applicant received the respondent's written undertaking to vacate by the end of March 2026. When the respondent failed to vacate, the applicant did not immediately approach the court. Instead, it waited.

[18] The applicant wrote letters on 2, 7, 10, and 13 April 2026. It engaged in settlement discussions. The applicant launched this application on 24 April 2026, some seven weeks after the purported cancellation and nearly four weeks after the respondent's undertaking to evict, expired.

[19] The applicant seeks to explain this delay by pointing to the spoliation proceedings, but those proceedings were concluded on 24 March 2026.

[20] From that date until 24 April 2026, the applicant took no steps to

enforce its rights. That is not the conduct of a litigant for whom every day of delay causes irreparable harm.

[21] The applicant's reliance on the new lease agreement is also misplaced. The applicant chose to contract with a new tenant on the assumption that the respondent would vacate by the end of April 2026. That assumption was commercially optimistic, given that the respondent had already disputed the cancellation and had obtained a spoliation order restoring its possession.

[22] The applicant cannot now use its own contractual exposure to a third party as a justification for urgency. To hold otherwise would permit any landlord to manufacture urgency by simply entering into a back-to-back lease and then claiming that delay would cause damages.

[23] The respondent states that it continues to pay rental. This is disputed by the applicant. The respondents do not attach any proof of payment of the lease. On the respondent's version, it is currently up to date with its rental obligations. The respondent argues that the applicant is not suffering a complete loss of income. If the applicant is receiving payment for the respondent's occupation, the applicant's claim of irreparable harm rings hollow. The respondent does not attach payments proving the payment of the rental amounts. However, the applicant has a monetary contractual claim against the respondent for

the rental amounts that are not paid.

[24] The applicant also invokes the rule of law and the vindication of property rights as grounds for urgency. I have no difficulty with the proposition that unlawful occupation is a serious matter. But not every unlawful occupation case is automatically urgent. This Court must assess the specific facts. Here, the respondent has been in occupation for months.

[25] The dispute over the validity of the cancellation is a justiciable controversy that can be resolved in due course. The applicant has not shown why it cannot obtain substantial redress in the ordinary motion proceedings.

[26] The timing of the application is telling. The applicant served the papers on 24 April 2026 – a Friday, before a long weekend. It initially sought to have the matter heard on 28 April 2026, giving the respondent virtually no time to answer. When that proved untenable, the matter was set down for 5 May 2026. Even on the applicant's own timeline, the crisis of the new tenant needing occupation by the end of April had passed before the hearing.

[27] The hearing took place on 5 May 2026. The new tenant had already been deprived of occupation. The applicant cannot contend that a

decision on 5 May 2026 would provide substantial redress for a deadline that expired at the end of April 2026.

[28] This is not a case where the applicant has shown that the ordinary rolls are so congested that it would wait months for a hearing. Nor has the applicant explained why it could not have launched this application immediately after the spoliation order, in March 2026. The delay is unexplained and, in my view, inconsistent with the required degree of exigency.

Conclusion on urgency

[29] The applicant has failed to set forth explicitly the circumstances that render the matter urgent. The grounds advanced (loss of a new tenant, ongoing unlawful occupation, and commercial harm) are, on the facts of this case, not so compelling as to justify the drastic departure from the ordinary Rules that an urgent application entails.

[30] The applicant has created its own urgency by delaying the launch of proceedings and by entering into a new lease without first securing vacant possession.

[31] The application is accordingly to be struck from the roll for lack of urgency.

Joinder application

[32] In light of the finding on urgency, it is strictly unnecessary to determine the joinder application. However, for the sake of completeness, I note that the joinder of Mr Yousaf and the other occupiers would, in any event, have been premature given that the main application has not been enrolled in the ordinary course.

[33] If the applicant wishes to pursue the eviction, it may do so by way of ordinary motion proceedings, and at that stage it may also consider whether joinder is necessary or appropriate.

Costs

[34] The respondent has been successful in opposing the urgent application.

[35] There is no reason to depart from the ordinary principle that costs follow the result. The applicant shall pay the respondent's costs.

[36] I am not persuaded that cost on Scale C or Scale B is warranted; the matter raised no exceptionally complex legal issues. Costs shall be on Scale A as between party and party.

Order

[37] In the premises, I make the following order:

(i) The application is struck from the roll for lack of urgency.

(ii) The applicant is to pay the respondent's costs of the urgent application, such costs to be taxed on Scale A as between party and party in terms of Rule 69(7).

(iii) The joinder application is not determined and may be re-enrolled, if necessary, in the context of ordinary motion proceedings.

FMM REID
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

Date of hearing: 5 May 2026

Judgment delivered: 14 May 2026

Appearances:

For the Applicant: Adv FJ Labuschagne

For the Respondent: Adv Omar