IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

Not reportable

Case Number: 2026-045637

In the matter between:

ANDRIES MARTHINUS JANSE VAN RENSBURG	**FIRST APPLICANT**
JANINE JANSE VAN RENSBURG	**SECOND APPLICANT**

And

AGANG AFRICA HOLDINGS (PTY) LTD	**FIRST RESPONDENT**
MOORS EMPIRE (PTY) LTD	**SECOND RESPONDENT**

Coram: Reddy J

Heard: 8 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 18 May 2026 at 16h00.

Summary

Urgent Applications — Rule 6(12) — two distinct and conjunctive requirements: circumstances rendering matter urgent and reasons why substantial redress unavailable in ordinary course — applicant must account for every material period of delay from moment cause of urgency arose — right to eject crystallised 31 May 2025 — founding affidavit silent on three discrete periods of delay totalling some nine months — urgency self-created where applicant voluntarily concludes new sale agreement with 120-day suspensive condition with full knowledge of prevailing unlawful occupation — self-imposed deadline cannot found urgency — application fails on urgency and is struck from roll with costs.

JUDGMENT

REDDY J

Introduction

[1] Before this court is a semi-urgent application brought by applicants Andries Marthinus Janse van Rensburg and Janine Janse van Rensburg (the Van Rensburgs), the registered owners of Portion 138 of the Farm Buffelsfontein 46, Registration Division JQ, North West Province ("the property"), for the ejectment of the respondents, Agang Africa Holdings (Pty) Ltd (Agang) and Moors Empire (Pty) Ltd (Moors Empire), from the property, together with ancillary relief relating to certain movable assets.

[2] Agang and Moors Empire oppose the relief. Two distinct issues fall for determination. First, whether the matter is sufficiently urgent to be heard on the urgent roll under Rule 6(12) of the Uniform Rules of Court and second, if

urgency is established, whether the Van Rensburgs have made out a proper case for ejectment on the papers.

Background facts

[3] The Van Rensburgs are the registered owners of the property. On 24 July 2023, they entered into a written deed of sale with Agang ('the agreement'). The purchase price was R3,800,000.00, comprising R3,480,000.00 for the immovable property and R320,000.00 for identified movables. A deposit of R300,000.00 was payable immediately. Subsequently, monthly instalments of R35,000.00 were to be paid commencing 1 December 2023. The full purchase price was to be settled by 30 November 2024.

[4] On 1 September 2023, occupation was granted to Agang. The agreement provided that the property would be used as a chrome washing plant. The salient terms of the agreement were as follows. Clause 13.3 provided that a breach by Agang entitled the Van Rensburgs to cancel upon ten days' written notice. Clause 13.4.4 provided that, upon cancellation, Agang was to vacate by a date fixed in the Van Rensburgs' notice. Clause 15.1 provided that no indulgence would constitute a waiver of any right. Clause 15.2 provided that no variation would be valid unless reduced to writing and signed by both parties.

[5] Agang paid the deposit and made monthly instalments for a time. By 30 November 2024, the balance of the purchase price remained unpaid. Around October 2024 Agang requested that Moors Empire be substituted as purchaser in its stead. The Van Rensburgs agreed in principle to consider the

substitution. Draft documents, including a new deed of sale and a tripartite agreement reflecting Moors Empire as purchaser, were prepared and sent to Agang and Moors Empire. Notably, Moors Empire did not sign any of those documents.

[6] On 18 March 2025, the Van Rensburgs' attorneys served a breach notice on Agang, requiring payment of the outstanding balance within ten days. Agang failed to comply. On 19 May 2025, the Van Rensburgs issued a notice of cancellation, requiring the property to be vacated by 31 May 2025. The following day, 20 May 2025, the attorney for Agang and Moors Empire replied in writing, acknowledging that the Van Rensburgs had elected to cancel the sale agreement and invoke clause 13.4.1 and 13.4.4 of the sale agreement'.

[7] Notwithstanding the cancellation, Agang and Moors Empire remained in occupation. Following the latter, the parties engaged in an attempt, on a without-prejudice basis, to conclude a new agreement. Fresh draft sale agreements were circulated in November 2025, with a payment date of 31 December 2025. Agang and Moors Empire did not sign them. The December 2025 deadline passed without payment.

[8] On 10 February 2026, the Van Rensburgs entered into a deed of sale with Bila Mining (Pty) Ltd ('Bila') for a purchase price of R2,900,000.00. The agreement is subject to a suspensive condition that Agang and Moors Empire vacate the property and deliver vacant possession to Bila within 120 days of the date of signature, being 10 June 2026. On 3 February 2026, the Van Rensburgs had already served a further notice on Agang and Moors Empire to

vacate by 6 February 2026. They did not comply. The Van Rensburgs launched this application on 26 February 2026.

The Van Rensburgs submissions on urgency

[9] Mr Keeny, contended that the matter is urgent for two primary reasons. First, the Bila Agreement will lapse if the suspensive condition is not fulfilled by 10 June 2026, resulting in the loss of a sale in the amount of R2,900,000.00. Mr Keeny claimed that the urgency triggered by the imminent loss of a sale to a new purchaser, caused by an unlawful occupier, is well-established in our law.

[10] Second, Mr Keeny opines that Agang and Moors Empire's ongoing mining operations at the property are causing progressive and irreversible environmental damage to agricultural land for which the Van Rensburgs, as owners, bear statutory liability. Towards this end Mr Keeny postulates that the urgency was not self-created. Simply put, Mr Keeny asserts that the Van Rensburgs engaged in protracted good-faith negotiations to avoid litigation, and this application was launched within two weeks of the conclusion of the Bila Agreement.

The submissions of Agang and Moor Empire on urgency

[11] Advocate Mavimbela contended that the application should be struck from the roll for lack of urgency. According to Advocate Mavimbela, the agreement was cancelled on 19 May 2025. He continued that if the matter was truly urgent, proceedings ought to have been instituted immediately thereafter. Advocate Mavimbela maintains that the Van Rensburgs engaged in negotiations for approximately eight months and thereafter concluded the

Bila Agreement on 10 February 2026 with full knowledge that Agang and Moors Empire remained in occupation.

[12] Advocate Mavimbela suggested that the urgency now relied upon is self-created. Otherwise stated, Advocate Mavimbela contended that a party cannot manufacture urgency by concluding a further commercial agreement with a third party while leaving an existing occupation dispute unresolved. Simply put, Advocate Mavimbela postulated that the Van Rensburgs, moreover, have adequate redress in the ordinary course by way of a properly enrolled ejectment application.

The law

[13] Rule 6(12) of the Uniform Rules of Court imposes two distinct but conjunctive obligations on an applicant seeking to invoke the urgent roll. First, the applicant must explicitly set out the circumstances that render the matter urgent. Second, separately, the applicant must explain why substantial redress cannot be obtained at a hearing in due course.[1]

[14] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[2], where the following was vocalized:

'[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

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[1] *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another t/a Makin's Furniture Manufacturers* 1977 (4) SA 135 (W) at 136 H

[2] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 para 5-7.

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.'

Analysis

[15] To my mind, strict acquiescence to Rule 6(12)(b) requires an applicant to account for every material period of delay in the chronology from the moment the cause of urgency arose. To juxtapose this principle with the current matter, this Court is required to determine whether the Van Rensburgs have discharged this predetermined jurisdictional requirement.

[16] It follows that a detailed examination of the full chronology is peremptory. The material dates are the following. On 24 July 2023, the agreement was concluded. On 1 September 2023, occupation was given to

Agang. The full purchase price was due by 30 November 2024. Agang failed to pay. On 18 March 2025, a breach notice was issued, affording ten days to pay. Agang failed to comply. On 19 May 2025, a notice of cancellation was dispatched, and Agang was required to vacate by 31 May 2025. On 20 May 2025, Agang and Moors Empire's own attorneys acknowledged in writing that the agreement had been cancelled. They did not vacate.

[17] On 9 June 2025, a settlement conference was held at which the Van Rensburgs provided Agang with a further extension to pay in two equal monthly instalments by 30 June and 31 July 2025. No payment was made. On 30 July 2025, a further notice was sent demanding vacation within seven days. They did not comply. In September 2025 Moors Empire promised payment by end of September 2025. No payment was made.

[18] On 27 November 2025, new draft agreements were sent to Agang and Moors Empire requiring payment by 31 December 2025. Follow-up emails were sent on 1, 3 and 9 December 2025. There was no retort to same. On 10 February 2026, the Bila Agreement was concluded. On 3 February 2026, a notice to vacate was issued requiring vacation by 6 February 2026. Agang and Moors Empire did not comply. On 26 February 2026, this application was launched. The application was enrolled for 8 May 2026.

The three periods for purposes of Rule 6(12)(b)

The first period

[19] The first period runs from 31 May 2025, being the date on which the cancellation notice required vacation, to 30 July 2025, when the next demand was issued. As at 31 May 2025, the Van Rensburgs had a complete and unimpeachable ejectment claim. The cancellation was acknowledged by Agang and Moors Empire's own attorney. Agang and Moors Empire's remained in occupation.

[20] It must be underscored that an urgent application was competent from that date. No explanation is proffered why proceedings were not launched at that stage. The founding affidavit does not address this period in the context of urgency at all. The sole inference from the papers is that the Van Rensburgs elected to pursue further negotiations. That was a deliberate commercial choice. It was laudable and commendable, but it was a clear invocation of a choice. A party that chooses negotiation over litigation cannot later invoke that choice to explain away a failure to act. This is not, as the Van Rensburgs contend, a case of a party being unable to obtain substantial redress in due course. It is a case of a party that chose not to seek it.

<u>The second period</u>

[21] The second period runs from 31 July 2025, by which date the extended payment deadline had again passed without compliance, to 27 November 2025, when the draft new agreements were sent. This period spans some four months. Again, the founding affidavit proffers no explanation directed at urgency for this interval. The papers record further promises by Moors Empire and expressions of willingness to negotiate, but no explanation is given for why an ordinary ejectment application was not enrolled during this period.

[22] By this time, the agreement had been cancelled for over two months, with Agang and Moors Empire having failed to pay by two extended deadlines, and no new agreement had been concluded. The right to eject was beyond question. What stands out is that substantial redress in the ordinary course was clearly available.

The third period

[23] The third period runs from 9 December 2025, being the date of the last unanswered follow-up email, to 26 February 2026, when the application was launched. This period spans some eleven weeks. The papers offer no explanation for eleven of those weeks. The only event that occurs within this period is the conclusion of the Bila Agreement on 10 February 2026. The founding affidavit does not explain what the Van Rensburgs were doing between 9 December 2025 and 3 February 2026 when the next vacate notice was issued. No affidavit evidence accounts for the sixteen days between 10 February 2026 and 26 February 2026.

[24] The Van Rensburgs' contention that the urgency was triggered by the conclusion of the Bila Agreement does not avail them. The Bila Agreement was concluded voluntarily by the Van Rensburgs on 10 February 2026, with the implicit knowledge that Agang and Moors Empire were in occupation. Towards this end, the Van Rensburgs were fully aware that Agang and Moors Empire had been so since September 2023, and had failed to vacate despite the cancellation of the agreement and numerous notices.

[25] It is common cause that the one hundred and twenty day suspensive condition, calculated from 10 February 2026, expires on 10 June 2026. That window of one hundred and twenty days, to my mind, on any objective assessment, is precisely the period required for an urgent ejectment application. The inference is inescapable that the Van Rensburgs structured both the Bila Agreement and the launch of these proceedings to facilitate recourse to the urgent roll rather than the ordinary roll. In my view, that is the paradigmatic case of self-created urgency. An applicant cannot manufacture urgency by voluntarily assuming an obligation that presupposes a state of affairs that has not yet been secured.

[26] In my view, the authorities on commercial urgency that the Van Rensburgs placed much store on do not assist them. The plain distinction in this matter is that the obligation to deliver vacant possession by 10 June 2026 was self-imposed by the Van Rensburgs. This occurred with full knowledge of the prevailing occupation, after some nine months of inaction following the fruition of their ejectment right. These are materially different facts from the authorities relied on.

[27] I am further not satisfied that the Van Rensburgs have demonstrated, as required by Rule 6(12)(b), why substantial redress is unavailable in the ordinary course independently of the self-imposed Bila deadline. The papers do not estimate when an ordinary opposed application would be heard in this division, nor do they demonstrate that such hearing date would necessarily fall after 10 June 2026. The bare assertion that the Bila Agreement will lapse if an ordinary application is pursued is not a sufficient discharge of the Rule

6(12)(b) obligation, because the lapsing of the Bila Agreement is itself the product of the Van Rensburgs' own commercial election.

[28] Resultantly, I am not satisfied that this application complies with the requirements of Rule 6(12). The timeline aerates that the Van Rensburgs had a complete and enforceable ejectment right from 31 May 2025. The urgency now relied upon flows directly from the Van Rensburgs' voluntary conclusion of the Bila Agreement with knowledge of the prevailing occupation. In my view, that urgency is self-created. It follows axiomatically that the application falls to be struck from the roll.

Costs

[21] The application is struck from the urgent roll. Costs follow the result Agang and Moors Empire have been put to the expense of opposing an urgent application that ought not to have been brought on the urgent roll. They are entitled to their costs occasioned by the urgent enrolment on the party-and-party scale.

Order

[22] Resultantly, the following order is made:

1. The application is struck from the urgent roll for non-compliance with Rule 6(12) of the Uniform Rules of Court.
2. The Applicants are ordered to pay the costs of the Respondents, jointly and severally on the party -and- party scale, the one paying the other to be absolved.

[redacted]

REDDY J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

NORTH WEST DIVISION, MAHIKENG

Appearances

For Applicants:	Mr. WM Keeny
Instructed By:	VVD Attorneys C/O CJP Oelofse Attorneys
For Respondents:	Advocate Mavimbela
Instructed by:	Adonisi Attorneys