IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Case No: 2026-100277

Not Reportable

In the matter between:

BAKUBUNG SHARE BLOCK COMPANY LIMITED **FIRST APPLICANT**

LEGACY HOTEL MANAGEMENT SERVICES (PTY) LTD **SECOND APPLICANT**

and

NORTH WEST PARKS & TOURISM BOARD **FIRST RESPONDENT**

PLANKTON TICKETS (PTY) LTD **SECOND RESPONDENT**

LATROFORCE (PTY) LTD **THIRD RESPONDENT**

Coram: Reddy J

Reserved: 22 May 2026

Delivered: Judgment is handed down electronically to the parties' legal representatives via e-mail and uploaded to Caselines. The date on which the judgment is deemed to have been handed down is 27 May 2026 at 16h00.

Summary: Urgent application to review a procurement decision of the North West Parks & Tourism Board and to obtain the Rule 53 record on an expedited basis — application struck from the urgent roll. Urgency pleaded in a single paragraph alleging "material delay" only; no fact-specific harm identified. Urgency self-created by a delay of 148 to 161 days from knowledge of the impugned arrangement. Substantial redress available in due course by operation of Rule 53(1)(b) without court order; the four-day difference between the hearing date and the ordinary record-production date not constituting urgency. Final review relief incompetently brought on papers the Applicants themselves acknowledged were incomplete. Costs awarded on the attorney-and-client scale with two counsel at Scale C — conduct held to constitute an abuse of the urgent jurisdiction.

JUDGMENT

REDDY J

Introduction

[1] This was an opposed application enrolled before me on the urgent roll of 22 May 2026. Launched on 5 May 2026, the Notice of Motion seeks, in its substantive prayers, the review and setting aside of the first respondent's ('the Board') procurement decision of 31 October 2025, a declaration of unlawfulness

under section 217 of the Constitution, and the invalidation of any contracts entered into as a result of that decision.

[2] The same Notice of Motion invokes Uniform Rule 53, calls upon the Board to provide the record of the impugned decision, and expressly reserves to the applicants the right to amend or supplement the founding affidavit upon receipt of the record.

[3] The case for urgency is not directed at the final relief but at obtaining the Rule 53 record on an expedited basis. On the eve of the hearing, the applicants retreated further. Their attorneys, by correspondence dated 20 May 2026, proposed a consent order directing the production of the record within five days, with costs reserved. That relief is not sought anywhere in the Notice of Motion. The first and third respondents oppose the application and move to have it struck from the urgent roll. The second respondent did not enter the fray.

Urgency

[4] Establishing urgency is the gateway to the urgent court. To this end, it bears restating the principles that govern urgency and the trite jurisdictional requirements that must be met.

[5] Uniform Rule 6(12) provides:

"(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure as it deems fit.

(b) In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant shall set forth explicitly the circumstances which it is averred render the matter urgent and the reasons why the applicant could not be afforded substantial redress at a hearing in due course."

[6] The two jurisdictional requirements are conjunctive. The procedure is not there for the taking. An applicant must explicitly set forth both the circumstances of urgency and the reasons why substantial redress cannot be obtained at a hearing in due course.

[7] In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)*[1] Coetzee J stated that mere lip service to the requirements of Rule 6(12)(b) will not do and that an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm.

[8] The crucial test, as set out in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*[2] , is not whether the applicant seeks urgent resolution, but whether, if the matter were to follow its normal course, the applicant would be afforded substantial redress. Where an applicant cannot demonstrate that substantial redress is not available in due course, the application does not qualify for the urgent roll. In instances of delay, the applicant must explain it and show why, despite the delay, substantial redress cannot be obtained in due course. An applicant cannot manufacture urgency through its own inaction and then rely on that urgency to catapult itself to the front of the queue.

[9] The applicants' urgency case is contained in a single paragraph of the founding affidavit. It avers, in substance, that if the matter proceeded in the ordinary course, the Rule 53 record would be obtained "much later in due course", causing "material delay". That is the totality of the case on urgency. No fact-specific harm is identified. No operational disruption, no irretrievable

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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 137-F.
[2] 2011 JDR 1832 (GSJ) paras 8-9.

prejudice, no specific right at risk of extinction is articulated. Such averments, which could be made by any litigant seeking expedited Rule 53 relief in any matter, fall far short of the explicit case the Rule requires. If they were to suffice, every Rule 53 review would qualify as urgent, and the distinction between the urgent and the ordinary motion roll would collapse. This is not our law.

[10] In my view, the urgency is, in any event, self-created. According to the applicants' own version, they were aware of the impugned arrangement no later than 26 November 2025, when the deponent to the founding affidavit attended a workshop at which the arrangement was openly explained. By 8 December 2025, the applicants' attorneys had identified the precise regulatory provision, Treasury Regulation 16A.6.6, underpinning the procurement they now seek to review.

[11] A Promotion of Access to Information Act, 3 of 2000 (PAIA) request was lodged on 28 January 2026. No proceedings were launched until 5 May 2026, some 148 to 161 calendar days after knowledge of the impugned arrangement crystallised. No satisfactory explanation is offered for that interval. Correspondence and the PAIA process are parallel mechanisms, not prerequisites to review proceedings; they do not account for the delay. The applicants could at any time have launched review proceedings in the ordinary course and supplemented their papers upon production of the record under Rule 53(4). They elected not to.

[12] Notably, the arithmetic of the matter is self-evidently decisive against the applicants. They set the application down for 22 May 2026, the thirteenth court day from service on 5 May 2026. Under Rule 53(1)(b), the record falls due within fifteen court days of service, which on this calendar would have been 26 May 2026. The "material delay" complained of, on the applicants' own chosen dates, is four calendar days. More fundamentally, substantial redress is not unavailable

in due course; it is axiomatic, by force of Rule 53 itself, from the moment the Notice of Motion was filed. Rule 53(1)(b) places a mandatory obligation on the Board to dispatch the record. No order of this Court was required to obtain it.

[13] It follows that the second jurisdictional requirement of Rule 6(12)(b) is accordingly not satisfied. The applicant's position is compounded by the Notice of Motion's internal inconsistency. Simply put, prayers 3, 4 and 5 seek final review relief and the invalidation of contracts, yet the same papers invoke Rule 53. More pertinently, the applicants admit that compliance with Treasury Regulation 16A.6.6 is "impossible to determine" without the record. A party cannot plead that the merits cannot be resolved without a document and simultaneously ask the Court to resolve the merits in its absence. Those prayers are not competent relief on the urgent roll.

Costs

[14] Costs are at the court's discretion. The first and third respondents seek costs on the attorney-and-client scale with two counsel on Scale C. Costs follow the event. The remaining question is whether the punitive scale is warranted. In *Public Protector v South African Reserve Bank*[3] the apex Court held that punitive costs are reserved for conduct that is vexatious or amounts to an abuse of the court's process.

[15] Applying the framework for punitive costs enshrined in Public Protector, the applicants' conduct warrants censure. The applicants were delayed for some five and a half months without adequate explanation, then invoked the urgent jurisdiction on terse foundational facts that purported to establish urgency. To

[3] *Public Protector v South African Reserve Bank* (CCT107/18) [2019] ZACC 29; 2019 (6) SA 253 (CC)-para 8.

accomplish this, the applicants invoked the urgent court's jurisdiction as dominus litis, compelling the respondents to oppose within a truncated timeline.

[16] It followed that the first respondent, a public entity, was obliged to expend public resources on opposition. Surprisingly, the applicants pursued final review relief on papers they themselves acknowledged were incomplete without the record. On the eve of the hearing proposed, by correspondence, a consent order for the production of a record that had never been prayed for as substantive relief in the Notice of Motion, an attempt to use the urgent hearing to cure a defect on the face of their own papers. Viewed cumulatively, this constitutes an abuse of the urgent jurisdiction of this Court.

[17] Two counsel at Scale C is warranted. The opposition required argument within a truncated timeline. Among other issues, the respondents were to prepare on self-created urgency, procedural incompetence regarding the substantive relief, lack of locus standi of the second applicant, and unreasonable delay under section 7 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Counsel were also required, in the alternative, to be prepared to address the constitutional procurement merits. That body of work, constrained by a truncated timeline, justified the deployment of two counsel.

Order

[18] I accordingly make the following order:

1. The application is struck from the urgent roll.

2. The Applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the First Respondent and the Third

Respondent on the attorney-and-client scale, including the costs occasioned by the employment of two counsel, with counsel's fees to be taxed at Scale C of Rule 69(7) of the Uniform Rules of Court.

A REDDY

JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

Appearances

For the Applicants: Advocate HJ Scholtz

Attorney for Applicants: D'Arcy-Herman Raney Inc, Johannesburg

For the First Respondent: Advocate CB Soyapi and Advocate MN Mahanyele

Attorney for First Respondent: Sebola Nchupetsang Sebola Inc, Johannesburg

For the Third Respondent: Advocate ES Cele.

Attorney for Third Respondent: Mandla Ntuli Inc, Richards Bay