IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN

Case No: 2026-125578

In the matter between:

ROSS BERRIES (PTY) LTD (in business rescue)	First Applicant
TIERKLOOF BESSIES (PTY) LTD (in business rescue)	Second Applicant
STEPHANUS JOHANNES NEL N.O.	Third Applicant
and	
CHRIS LE CORDEUR ROSSOUW SNR	First Respondent
CHRIS LE CORDEUR ROSSOUW JNR	Second Respondent
THE AFFECTED PERSONS IN THE BUSINESS RESCUE OF THE FIRST APPLICANT	Third Respondent
THE AFFECTED PERSONS IN THE BUSINESS RESCUE OF THE SECOND APPLICANT	Fourth Respondent
STANDARD BANK OF SOUTH AFRICA LTD	Fifth Respondent
THE COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION	Sixth Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 9 June 2026

Delivered: Electronically on 10 June 2026

Summary: Urgency – non-compliance Rules 6(1) and 6(12) – struck from the roll – application constitutes an abuse of process egregious enough to warrant punitive cost order

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ORDER

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1. The application is struck from the roll as an abuse of process.

2. The first and second respondents' costs shall be paid by the applicants, jointly and severally, the one paying the other being absolved on an attorney and client basis.

JUDGMENT

Anderssen AJ:

[1] The application came before me in fast lane on an extremely truncated timetable. The applicants seek an urgent interdict interdicting the first and second respondents from interfering with, frustrating or jeopardizing the business rescue proceedings of the first and second applicant (the third applicant having been appointed as the business rescue practitioner). The complaint is that the first and second respondents repeatedly failed to comply with instructions, keep reopening settled issues, condition their cooperation on further demands, involve the employees of the first and second applicants (as well as third parties) in disputes and are causing implementation delays and uncertainty in the business rescue process.

The allegation is made that the pattern of conduct commenced in and around March 2026 and continues to date.

[2] On 13 May 2026 the attorneys for the applicants wrote an 8-page letter in which, in the penultimate paragraph, the first and second respondents were warned that "*should you persist with your conduct as detailed in previous correspondence, the Practitioner shall be forced to pursue legal remedies to protect the interest of the creditors and to prevent further prejudice to the business rescues and shall seek a punitive costs order against you*." The founding affidavit is silent as to any conduct by the first and second respondents, after 13 May 2026, that may have taken place and would justify the launching of the application. Despite this the applicants saw fit:

[2.1] to launch an urgent application consisting of an 8-page notice of motion, and a founding affidavit of 39 pages (non-compliant with WCHC practice directives in that it is typed in 1½ spacing) with 34 annexures totalling 215 pages.

[2.2] to serve the application via email on the first and second respondents at 15h11 on Friday 2026 and to afford them, in the timetable set out in the notice of motion, until 16h30 on Monday 1 June 2026 to file a notice to oppose and a further 24 hours – until 16h30 on the following day – to file an answering affidavit.

[3] The first and second respondents responded with a 32-page answering affidavit and 14 annexures totalling 54 pages. The affidavit was clearly signed after hours on 4 June 2026 before a member of SAPS.

Confirmatory and supporting affidavits totalling 25 pages were also filed on or after 4 June 2026. The replying affidavit (47 pages with 24 annexures totalling 113 pages) was then served on Sunday 7 June 2026 at 21h40 via email. When I came out of court on Monday (I was sitting in the slow lane) the file awaited me in my in-tray. I was also provided with a separate file with a rule 35(12) notice and documents provided in reply exceeding 200 pages. The following morning (the day of the hearing), at 08h48, a supplementary answering affidavit of 7 pages and 6 annexures (totalling more than 250 pages) arrived and I was informed in court that there is a brief supplementary replying affidavit also.

[4] A perusal of the founding affidavit demonstrated that the applicants did not comply with the provision of Rule 6(1) which requires that every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief. The facts must be set out simply, clearly and in chronological order, without argumentative matter.[1] The applicants did not identify in the founding affidavits what portions of the annexures they are relying on and did not indicate what case is sought to be made out on the strength thereof.[2] It should not be expected of the court or the respondent to have to read the annexures to establish what the relevance thereof may be or even to find something as simple as the date upon which the document was created or an action was taken because the information is no provided in the founding affidavit. It is not expected of the court or the respondents to trawl through lengthy

[1] ***Reynolds N.O. v Mecklenberg (Pty) Ltd*** 1996 (1) SA 75 (W). As Stegmann J pointed out applicants must explicitly plead primary facts rather than secondary facts (conclusions), as the court and respondent are entitled to know exactly what case the respondents are required to meet.

[2] ***Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa*** 1999 (2) SA 279 (T).

annexures to the affidavit and to speculate on the relevance of its content.[3]

[5] Furthermore, practitioners, when drafting applications, should ensure that only relevant information is placed before the court. Irrelevant facts that consist of background details, superfluous narrative, or factors that do not contribute to applying the legal principle at stake clutter affidavits, and increase the length of the papers and costs for litigants. The same is true of annexures. When an urgent application is launched, litigants must comply with rule 6(12), which regulates the procedure for urgent applications. In these applications, applicants are, in effect, asking the court to prioritise their matter over others' matters. The rule permits applicants to do so and to set their own timeframes in accordance with the degree of urgency of the matter but strict adherence with the rule[4] is required:

[5.1] An applicant must, in the founding affidavit, explicitly set forth the circumstances which it is averred render the matter urgent **and**, additionally, an applicant must demonstrate that they will not obtain substantial redress in the ordinary course. Mere lip service to the requirements of Rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm.

[5.2] Once an applicant is of the view that a matter is sufficiently urgent to justify a departure from the rules and an abridgment of the times

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[3] ***Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others*** (171/06) [2007] ZASCA 153 (28 November 2007); [2007] SCA 153 (RSA); 2008 (2) SA 184 (SCA).

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

> prescribed by the rules, the applicant must properly consider degrees of urgency. Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the rules and of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith.

[6] On the applicant's *ipse dixit* the behaviour complained about commenced in March 2026 but a perusal of the founding affidavit demonstrates that some of the conduct complained about commenced in late November 2025. The annual financial statements were signed (without authorisation apparently) in late January and early February 2026. Many of the letters were written in March, and April with correspondence continuing to 12 May 2026. Most concerning is that no document written by the first or second respondents was produced and no mention was made of any conduct – after the formal letter from the applicants' attorney was transmitted – on or after 13 May 2026. Despite this, the application was launched. The lack of any action by the first and second respondents after 13 May 2026 should have prevented the application. And even if there had been some action – buried in the myriad of annexures and not mentioned in the founding affidavit – the timetable set in this matter constituted an abuse so egregious that it raises the spectrum of litigation *in terrorem*.

[7] It is abundantly clear that this application constitutes an abuse of process and that the application must be struck from the roll and the applicants

must be mulcted in a punitive cost order. The applicant has neither complied with Rule 6(1) nor with Rule 6(12). Guiding principles set out in leading cases have simply been ignored. Mr Siyo made a valiant effort to persuade me otherwise but there is no reason why the first and second respondents should be out-of-pocket.

[8] The order is recorded above.

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ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicant: Adv Lunga Siyo
Instructed by: Murison & Associates Inc

For the respondent: Mr Willem van Heerden of Piet van Dyk Attorneys Inc