THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case no: 2026-098885

In the matter between:

BEN KATUZEIKO LUTUMBA	Applicant
and	
MELODY DENISE POYNTON	First Respondent
SHERIFF OF THE COURT FOR CAPE TOWN NORTH	Second Respondent

Delivered electronically by email to the parties this 15th day of June 2026

REASONS FOR ORDER

NDITA; J

Introduction

[1] The Applicant brought an urgent application on Sunday, 3 May 2026, seeking relief couched in the following terms:

"1. Dispensing with the applicable forms, service and time periods and directing that the application be heard as one of urgency a Rule Nisi be issued calling upon the any Respondent, to show cause on Thursday 4th June 2026, (or any other date determined by the Court) why an order should not be made in the following terms:

1.1 The Respondents are interdicted and restrained from executing a Warrant of Ejectment for the eviction of the Applicant and his family from 2[...] R[...] Crescent, Sunningdale, Western Cape, pending filing of an application for rescission/variation to be filed by the Applicant;

1.2 The Respondents are interdicted and restrained from evicting the Applicant from the property 2[...] R[...] Crescent, Sunningdale, Western Cape, pending the Court's ruling on the rescission/variation application, which shall be filed by the Applicants no later than 11th May 2026.

1.3 That prayers in 1.2 and 1.3 shall operate as interim interdict with immediate effect;

1.4 The costs of this application be paid by a Respondent who oppose this application."

[2] The matter served before O'Brien AJ, and the relief set out above was granted.

[3] On 22 May 2026, the matter served before me, and on 25 May 2026, I issued the following order:

"1. This application is struck off the roll due to lack of urgency.

2. The Rule Nisi granted by this court on 4 May 2026 is hereby discharged,

3. The operation of the eviction order granted by this Court under case number 2026-011579 on 24 March 2026 is reinstated and declared to be of full force and effect."

Factual background

[4] The factual background underpinning the current application is largely uncontested and may be summarised thus: The First Respondent and a company known as Global General Trade (Pty) Ltd ("the Company") duly represented by the Applicant who is its director concluded a lease agreement in terms of which the Applicant would occupy the Respondent's property situate at 2[...] R[...] Crescent, Sunningdale, Western Cape ("the premises") for six months at the rental amount of R28 000.00 (twenty eight thousand Rand). The lease expired on 31 May 2025 and subsequently thereto it was agreed that it would continue on a month-to-month basis on the same terms and conditions.

[5] It is common cause that the Company defaulted on the rental agreement by 30 November 2025. This culminated an Acknowledgement of Debt ("AOD") being signed for the arrear amount of R160 850.00. The Applicant had bound himself as surety and co-principal debtor.

[6] Pursuant to the AOD, the Company and the Applicant defaulted on the very first payment which was due on 30 November 2025 in terms of the AOD. In addition, they failed to pay the current rental amount of R28 000.00 due on 1 December 2025.As a result of the breaches, the First Respondent, through her attorneys cancelled the lease agreement on 9 December 2025 and demanded that the Company and the Applicant vacate the premises.

[7] Further as a result of the breaches, the First Respondent initially issued provisional sentence summons in the Cape Town Magistrate's Court for the liquidated amount of R160 850.00 based on the AOD. Second, the First Respondent also instituted Rental Interdict Summons in the same court under case number 2219/2026 for the arrear rental from November 2025 through April 2026 which totals R171 000.00 plus damages for holding over until date of vacating as well as interest and costs on attorney and client scale. The Applicant's attorney filed a Notice of Intention to Defend on 30 April 2026. Third, before this court, the First Respondent filed an application in terms of the Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act") for the eviction of the Applicant and all those occupying under him. This action was based on the notice of termination of the Applicant's right to occupy the property after breaching the lease agreement.

[8] It is not in dispute that the application in terms of PIE was served personally on the Applicant by the Sheriff on 26 January 2026. Furthermore, the court-sanctioned section 4(2) Notice under PIE, along with the City of Cape Town's Personal Circumstances Questionnaire was served on him by the Sheriff on 28 February 2026. The Sheriff's return of service in respect of the Notice in terms of section 4(2) reflects that it was served on C Lutumba, who is the Applicant's daughter. The application served before Saldanha J, on 24 March 2026, and an order evicting the Company and the Applicant was issued. The Applicant did not attend the proceedings of 24 March 2026. It was specifically ordered that they vacate the property by 30 April 2026 and that should they fail to vacate, the Sheriff or his/her Deputy was authorised and ordered to effect the eviction after 10:00 am on 4 May 2026.

[9] On Sunday, 3 May 2026, the Applicant brought the urgent application I have already referred to, in respect of which O'Brien AJ, issued the *Rule Nisi* depicted in paragraph 1, of this judgment/

[10] According to the Applicant, after receipt of the eviction court papers, he had engagements with his landlady, the First Respondent, who made it clear to him that the main reason for the court action stems from the arrear rental. He avers that he understood that if he could settle the arrears owing, the problem would be solved. Thus, he focused on

securing the funds instead of opposing application, as a result on 13 March 2026, he settled the entire arrears reflected in the judgment debt. The Applicant states that pursuant to the payment, he and the First Respondent made an arrangement to the effect that the further outstanding rental payments would be paid on 13 June 2026. However, on 15 April 2026, he received an email from the First Respondent's attorneys enclosing the eviction order granted by the court on 24 March 2026 within a space of two weeks. This surprised him because he was under the impression that the matter had been resolved.

[11] In his founding affidavit, justifying the urgency with which the application had been brought, the Applicant states that he became aware of the Court Order on 15 April 2026 and although no warrant had been served on him, he believed that the eviction order would be implemented on 4 May 2026. He further states that as soon as he became aware of the order, he took steps to search for alterative accommodation, In addition, he *"requested lawyers to engage with the first respondent's attorneys in the matter so that the eviction is not implemented on 4 May 2026 and hopefully achieve an out of court settlement*." He further explains that when the First Respondent was not responsive to these endeavours, he called her directly on Thursday, 30

April 2026. According to the Applicant, the First Respondent indicated to him that she was waiting for her lawyers to contact her. He states:

> "39. When I became aware of the Court Order, immediately took steps because it was apparent that notwithstanding the arrear amount that settled, the First Respondent was proceeding with the eviction.
>
> 40. I will not be able to obtain adequate redress in the ordinary courts and by the time the hearing is held in the normal roll, we will have been evicted.
>
> 41. I submit that I have made out a case for urgency."

[12] The First Respondent opposes the application on the basis that it is not urgent and avers that the Applicant is disingenuous when he alleges that the eviction order "*took him by surprise'* because her attorneys (the First Respondent's attorneys) emailed him a letter on 31 March 2026 advising him that an eviction order had been granted and he needed to vacate the premises by 30 April 2026, failing which he and those holding under him would be removed by the Sheriff on 4 May 2026. Furthermore, so further contends the First Respondent, the matter was correctly set down on an unopposed basis on 24 March 2026 because the Applicant failed to file a Notice to Defend or appear in person on the day of the hearing.

[13] The First Respondent acknowledges the Applicant's telephonic call of 30 April 2026 but denies that any settlement was ever reached with

the Applicant. She admits that she informed the Applicant that she would await her attorney's instructions and that should not be construed as an agreement to suspend a valid and executable order. In the same vein, the First Respondent flatly denies that her attorneys ever agreed that the payment of R160 850.00 by the Applicant on 13 March 2026, agreed that it would "solve the problem" or that the need for the eviction was obviated. According to her the payment was for the provisions sentence order for the historical AOD debt and the Applicant paid the amount only after the Warrant of Execution had been obtained.

The legal principles

[14] Rule 6(12) (a), provides that in bringing an urgent application, an applicant must set forth explicitly circumstances which it avers render the matter urgent and the reasons why it claims it could not be afforded substantial redress at a hearing in due course.

[15] The import of the rule is explained by Notshe AJ, in *East Rock Trading (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) thus;

> "[5] The issue of whether a matter should be heard as an urgent application is governed by the provisions of 6(12)(b) of the Uniform Rules. The aforesaid subrule allows the court or a Judge 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 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 the 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 due course. The rule allows 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."

[16] With regard to self-created urgency, the learned judge found as follows:

"[8] In my view, the delay in instituting proceedings is not, on its own a ground for refusing to grant the matter as urgent. The court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at the hearing in due course. The delay might be an indication that the matter is not as urgent as the applicant would want the court to believe. On the other hand a delay may have been caused by the fact that the applicant was attempting to settle the matter or collect more facts with

regard thereto. See *Nelson Mandela Metropolitan Municipality v Greyveenouw* 2004 (2) SA 81 (SE) at 94 C-D; Stocks v Minister of Housing 2007 (2) SA 9 (C) 12I-13A.

[9] It means that there is some delay in instituting the proceedings an applicant has to explain the reasons for the delay and why despite the delay, he claims that he cannot be afforded substantial redress at the hearing in due course. I must also mention that the fact that the applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an applicant will be afforded substantial redress. If he cannot be afforded substantial redress at the hearing in due course, the matter qualifies to be enrolled and heard as an urgent application. If, however, despite the anxiety of an applicant he can be afforded substantial redress in an application in due course the applicant does not qualify to be enrolled and heard as an urgent application."

Analysis

[17] I have already indicated that the matter was struck off the roll on the basis that urgency had not been established. In assessing the facts concerning the urgency of the matter, it must be stated from the outset that what is most relevant is when the Applicant obtained knowledge of he order. In the replying affidavit, the Applicant assails the service of the Notice in terms of section 4(2) of PIE on the basis that the Sheriff served the aforesaid Notice on his daughter, who resides in Johannesburg but

was temporarily present at the property. According to the Applicant his daughter forgot to bring the Notice to his attention and for this reason, he denies that the urgency was self-created (as alleged by the First Respondent) as the delay in instituting the proceedings was caused by the latter's failure to effect proper and lawful service. However, in the founding affidavit he explains his non-attendance of the proceedings in the following manner:

> "24.1 I noted that the matter was issued by the Registrar on the 15th April 2026 for a judgment granted on 24th March 2026. I was not in Court on that day because I was under the impression that the problem was solved after I settled the debt."

The payment of the AOD judgment debt was made on 13 March 2026.

[18] This contradicts his earlier that the reason for his non-attendance of the proceedings on 24 March 2026, namely, the defective service of the section 4(2) Notice on his daughter.

[19] In addition, in paragraph 25 of the Respondent's answering affidavit, she emphatically denies that there ever was an agreement his payment of the amount due in terms of the AOD would solve the problem. His understanding of the problem goes straight into the heart of why he relaxed and assumed that all was well until he was faced with an eviction order two weeks before the Sheriff was authorised to evict him.

His response to the specific averments in the entire paragraph 25 negating the fact that the payment solved everything as well as the agreement that he could make another payment on 13 June 2026. He merely reiterates his understanding and does not answer to the allegations which impact on the reasons why he brought the application on extremely urgent basis. He states that:

> **"Ad paragraph 25**
>
> 24. Insofar as the contents of the allegations are inconsistent with the contents in this [sic] for my Founding Affidavit, they are denied.
>
> 25. I have indicated that it was my understanding that after payment of the initial amount and a commitment to pay the current arrears, will make my landlord happy. She had stressed that the arrears were the main reason why she had instituted eviction proceedings. Furthermore, in our discussion on 13th March 2026, she had not indicated that she was going got [sic] Court on 24th March to seek my eviction."

[20] It is also telling that the Applicant elected not to respond to the averments made by the First Respondent in paragraph 7. They read as follows:

> "7. The Applicant further states in his own affidavit that he only became aware that an Eviction Order was granted on 15th April 2026. My attorney in fact sent the Applicant an email letter on **31st March 2026** advising him inter alia that an Eviction was granted and that he needs to vacate by the 30th April

2026, failing the Sheriff is authorized to remove him along with those holding under him by 4th May 2026. See letter emailed to Applicant on 31 March 2026 marked **annexure MP"3"** attached.

The Applicant failed to take the Court into his confidence by disclosing whether he received the emailed referred to above. The Applicant's allegations of urgency are based on the fact that the knowledge of the order came to him a mere two weeks before he launched the application. The undeniable letter of 31 March 2026 advising him that he should vacate by 30 April 2026 contradicts his version.

[21] Likewise, the Applicant's version in amplification of urgency to the effect that he thought that his payment of the AOD amount resolved whatever issues he had with the First Respondent is indicative of ingenuousness when regard is had to the letter of 30 April 2026. The relevant part reads as follows:

"At the request of landlord, Melody Poynton, we address this letter to you.

…

As a result we have obtained judgement for the AOD which has now been paid but rental arrears have again accrued to the amount of R140 000.00 as of 30 March 2026.

You were served with eviction notices twice by the Sheriff of the High Court (S4(1) and S4(2) under the PIE ACT) at great expense to our client.

As a result, the High Court granted a final eviction order under the case number 2026-011579 for you and all those holding under you to vacate the premises by 30 April 2026, failing, the Sheriff is ordered to remove you from the property on 4 May 2026.

The Eviction Order we are informed will only be typed by the Registrar in the next few days which we will email.

As your lease expired on 31 May 2025 it is now strictly at the option of the landlord to extend your occupation on a month-to month basis.

Ms Poynton advised she will sign an affidavit that you are presently occupying the premises, but she regrettably will not renew the lease while the arrears are outstanding AND future rentals are not guaranteed."

[22] Of note, the impression created by the Applicant is that the eviction was sprung on him whilst his remaining on the premises was legitimate and based on the agreement reached by the parties. His narrative is that his attorneys were trying to engage with First Respondent's attorneys. [23] The First Respondent vociferously denied the existence of an agreement as set out in the summary of the salient facts. At paragraph 30 of the answering affidavit the First Respondent states that:

"The Applicant's narrative of his attorneys' attempts to engage with my attorneys is noted. However, no settlement was ever reached. My attorneys correctly sought my instructions, and I instructed them to proceed with the

eviction as my financial position had become untenable due to the Applicant's ongoing failure to pay rental since October 2025."

[24] The aforegoing analysis amply demonstrates that the version proffered by the Applicant which purports to justify the extreme urgency with which this application has been brought is inconsistent and riddled with avoidance of material issues such that in my view, it is untenable and untrue and must be rejected. Tit is my judgment that the Applicant failed to give a reasonable explanation for the delay in bringing the present application.

[25] For all these reasons, I dismissed the application with costs on the basis that urgency had not been established and discharged the Rule Nisi.

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NDITA, J

Appearances

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