IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Not Reportable

Case No: 3875/2025

In the matter between:

SIBANYE STILLWATER LIMITED	**FIRST APPLICANT**
EASTERN PLATINUM LIMITED	**SECOND APPLICANT**
WESTERN PLATINUM PROPRIETARY LIMITED	**THIRD APPLICANT**

and

GREATER LOCAL COMMUNITIES UNEMPLOYMENT FORUM	**FIRST RESPONDENT**
TSHEPO HOPE MOLAULWA	**SECOND RESPONDENT**

Coram: Masike AJ

Date Heard: 12 June 2026

Judgment is handed down electronically by distribution to the parties' legal representatives by e-mail, and released to SAFLII. The date that the judgment is deemed to be handed down is **17 JUNE 2026** at **11h00**.

Summary: Urgent Motion Court Proceedings – rule 6(12)(c) application – second respondent contending an application under rule 6(12) (c) may be brought as an urgent application because the order sought to be reconsidered was made by the urgent court – rule 6(12)(c) second respondent seeking order reconsidering first order of court and further to set aside order for imprisonment made by second order of court whilst no application before court to reconsider second order – rule 6(12)(a) requirements for urgency – costs – consideration of factors in awarding an appropriate costs scale of costs by the court under rule 67A(3)(b)

JUDGMENT

MASIKE AJ

Introduction

[1] This is an opposed application under rule 6(12)(c) of the Uniform Rules of Court ('URC'). The application has been brought as an urgent application. Mr Tshepo Hope Molaulwa was the second respondent in an application that served before Hendricks Judge President ('Hendricks JP') on 5 September 2025. In that application, interdictory relief was sought and granted in favour of Sibanye Stillwater Limited ('the first applicant'), Eastern Platinum Limited ('the second applicant'), and Western Platinum Proprietary Limited ('the third applicant') against the Greater Local Communities Unemployment Forum ('the first respondent') and the second respondent.

[2] The order of Hendricks JP of 5 September 2025 reads as follows:

‘1. THAT: The non-compliance with the Rules relating to forms and service is dispensed with and the application is enrolled and heard as an urgent application in terms of Rule 6(12).

2. THAT: The First Respondent and its members, the Second Respondent and any other person acting in association with them and/or on their behalf and/or on their instruction, be restrained and interdicted from:

2.1 Interfering in any way with the mining and business operations of the Applicants’ mine known as the Marikana operations, situated on various portions of the farms Turffontein 462 JQ, Kafferskraal 460 JQ, Kareepoort 407 JQ, Modderspruit 461 JQ and Boschfontein 458 JQ, situated in the Magisterial District of Brits, North West Province (“**Properties**”)

2.2 threatening, intimidating or causing physical harm to any of the Applicants’ contractors, employees, security personnel and/or customers;

2.3 damaging the Applicants’ or its contractors property and/or equipment;

2.4 preventing the Applicants’ contractors, employees, security personnel and/or customers from entering or exiting the Properties;

2.5 blocking the gates or any roads leading to the Properties; and/or

2.6 acting in any manner that interferes with or causes disruption to any of the Applicants’ business operations and/or mining sites and/or any other component of the Applicants’ business operations and/or mining sites and/or any other component of the applicants’ business that negatively impacts upon its day- to-day mining and business activities.

3. THAT: In the event that the First and/or Second Respondents and/or any person acting in association with them and/or on their behalf and/or on their instruction contravene the interdict in paragraph 2 above, the Applicants are authorized to employ such security measures and as required by the circumstances to bring such contravention(s) to an immediate halt.

4. THAT: The costs of this application is to paid by the Respondents on scale C, jointly and severally, the one paying the other to be absolved.

5. THAT: The Applicants are ordered to serve this order upon the first and second Respondents.' ('the order').

[3] The order was granted in the absence of the first and second respondents in an urgent application. Aggrieved with the order, the second respondent approaches this Court and seeks relief in the following terms:

'1. The forms, service and time periods prescribed in terms of the Uniform Rules of Court be dispensed with, and directing that the matter be heard as one of urgency under Rule 6(12) of the Uniform Rules of Court.
2. The requirements of form and service as provided for in the rules, insofar as necessary, are dispensed with and the application for reconsideration of an order heard as one of urgency in terms of the Uniform Rules of Court;
3. The order granted against the second respondent on 5 September 2025 in their absence by the Hon Justice JP is hereby reconsidered;
4. The order granted by the Hon Justice Hendricks JP is amended as follows:
"The second respondent is immediately released from his imprisonment pursuant to 19 September 2025 order per the Hon Judge Trauste AJ."
5. In the alternative to prayer 4 above, that the order granted by Hon Justice Hendricks JP is amended as follows:
"5.1 The urgent application order granted on 5 September 2025 is set aside.
5.2 The applicants shall re-enroll the application in future, should they so wish."
6. The applicants to pay the costs of reconsideration including the costs on scale C.
7. Further and or alternative relief.'

[4] The affidavit in support of the application of the second respondent was deposed to by his attorney, Mr Nkhumise L Tlhabane ('Mr Tlhabane'), a major male person who describes himself as an admitted attorney of the High Court of South Africa practicing under the name and style of N L Tlhabane Attorneys which carries on business at Office 4[...], 4[...] V[...] V[...] Street, Plaza Building, Brits, North West Province.

Factual Background

[5] On 5 September 2025, the first, second and third applicants, collectively referred to from this point onwards as the applicants, sought and were granted interdictory relief against the first and second respondent as set out in paragraph 2 above. In the affidavit deposed to by Mr Tlhabane in support of the reconsideration application, the contents of the affidavit deposed to by Mr Mmereki Jonas Legoale ('Mr Legoale'), which was used in support of the application of the applicants that served before Hendricks JP, were summarised.

[6] Mr Tlhabane then goes on to quote extracts from the affidavit that was used in support of the application for contempt of court that served before Tsautse AJ on 19 September 2025. Mr Tlhabane, in his affidavit, proceeds to make submissions that the email service of the application that served before Hendricks JP was not effective service as it was served at the incorrect email address. Mr Tlhabane states that the email address used by the applicants' attorneys to forward the notice of motion and the affidavit of the application that served before Hendricks JP is t[...], whereas the correct email address of the second respondent is m[...].

[7] Mr Tlhabane then proceeds to address the service via WhatsApp of the application that served before Hendricks JP. Mr Tlhabane contends that, in his affidavit in support of the application, Mr Legoale states that service via WhatsApp was effected at 14h37. It is contended that this was 23 minutes before the 15h00 scheduled hearing time. Mr Tlhabane submits that this is an extremely truncated and unreasonable period.

[8] Mr Tlhabane states that the order was allegedly forwarded to the second respondent via WhatsApp at 18h00 on 5 September 2025. Mr Tlhabane further contends that 'a WhatsApp blue tick' on its own can hardly be regarded as sufficient proof of service, let alone service. He goes on to contend that no explanation was provided as to why service could not urgently have been affected by the Sheriff of the Honourable Court. It is contended by Mr Tlhabane that the service of the notice of motion that served before Hendricks JP was improper.

[9] Mr Tlhabane then proceeds to deal with the contempt of court application that served before Tsautse AJ. It is contended that the contempt of court application was granted on the basis of service via WhatsApp and email. Mr Tlhabane states that 'much of the contempt of court application is secondary to the primary catalyst interdict application'. Mr Tlhabane

persists with the submission that service via WhatsApp message and email did not reach the second respondent. It is worth noting that the second respondent did not file a confirmatory affidavit confirming that he did not receive the documents purportedly served on him via WhatsApp or email.

[10] Mr Tlhabane further refers to Practice Directive 10(11) of the High Court of South Africa, North West Division, Mahikeng ('North West High Court'), which reads as follows:

'In actions or applications for the imprisonment or sequestration of the respondent/defendant, and for divorce, and foreclosure in respect of an immovable property, personal service of the summons or application and notice of set down must be effected on the defendant/respondent.'

[11] It is contended on behalf of the second respondent that he was not personally served with the order. It is contended that the deponent to the contempt of court application stated that the second respondent's knowledge of the order was confirmed by one Mr Spence. It is alleged that there was a WhatsApp correspondence between the second respondent and Mr Spence. It is contended that this alleged WhatsApp communication was not attached to the affidavit in support of the contempt of court application. Mr Tlhabane contends that the second respondent was denied the right to be heard.

[12] On urgency, Mr Tlhabane contends that the factors rendering this application urgent include the second respondent's 'current and unlawful' incarceration, which has persisted since 4 May 2026. The order of incarceration directs that the second respondent serve 60 days' imprisonment. If this application is heard in due course, the second respondent will not receive substantial redress, if any.

[13] The applicants have filed an answering affidavit to the founding affidavit deposed to by Mr Tlhabane; the affidavit has been deposed to by Ms Luanne Chance ('Ms Chance'), a major female person who describes herself as an attorney and is employed as a consultant at Malan Scholes Incorporated. Ms Chance explains that she is the attorney who attended to the service of the interdict and contempt of court applications on the second respondent.

[14] Three points *in limine* have been raised by the applicants. The first point *in limine*, the relief sought in prayer 4, is incompetent. It is contended by Ms Chance that prayer 4 seeks an

order amending the order so as to release the second respondent from imprisonment imposed under the order of Tsautse AJ dated 19 September 2025. It is contended that the relief sought therein is incompetent, in that the order which incarcerated the second respondent was a discrete order, it was not granted by Hendricks JP but by a different judge, Tsautse AJ, in separate contempt of court proceedings. The order of Tsautse AJ is not placed before this Court for reconsideration. The second respondent has not sought the reconsideration or rescission of the order of Tsautse AJ, and the order of Tsautse AJ is not annexed to the papers of the second respondent.

[15] The second point *in limine* is that of lack of urgency. It is contended that the second respondent is currently detained under the 60-day committal imposed by Tsautse AJ on 19 September 2025, which runs until 28 June 2026. The order the second respondent seeks reconsideration of was granted on 5 September 2025. It is contended by Ms Chance that the second respondent acknowledged receipt of the order to Mr Roelof Spence, 'Mr Spence' of Bapotrans, at approximately 18h00 on 5 September 2025.

[16] The contempt of court application was heard on 19 September 2025. The second respondent was aware of the order throughout the period and elected not to have it reconsidered. The writ of commitment for the arrest of the second respondent was issued, and he was arrested for the first time on 9 October 2025. The application for a declarator against the head of Losperfontein Correctional Centre ('Losperfontein'), which was heard by Makolomakwe AJ, was heard, and throughout this period, the second respondent took no steps to have the order reconsidered.

[17] Ms Chance states that the second respondent has been represented by Mr Tlhabane since at least 2 February 2026. It is alleged that on that date, the second respondent addressed a letter to the first applicant, copying his attorneys, Tlhabane Attorneys, in which he sought to distance himself from the unlawful conduct and apologised for the harm caused. On 18 May 2026, Mr Tlhabane, the attorney of the second respondent, requested from Ms Chance the contempt of court papers. Ms Chance states that she sent the documents to Mr Tlhabane on the same day. On 27 May 2026, Ms Chance sent the interdict documents to Mr Tlhabane. This was before the second respondent launched this application. Ms Chance contends that this application is not urgent and that the urgency is self-created.

[18] The third point *in limine* of the applicants is that the contents of Mr Tlhabane's affidavit constitute hearsay. It is contended that issues such as which address is the second respondent, whether he received and read the applications and the order, and what he knew and when, are peculiarly within the second respondent's knowledge. Mr Tlhabane has no personal knowledge of these facts. No explanation is advanced why the second respondent, who is in custody and able to depose to the affidavit, has not done so.

[19] Ms Chance then proceeds to deal with the background facts of the interdict application that served before Hendricks JP and the contempt of court proceedings before Tsautse AJ. Ms Chance referred to a second memorandum of demands to 'The Management Bapo Trans', a company contracted by the applicants to transport its employees. It is alleged that this memorandum of demands was issued by the second respondent, who stated that the email address t[...] should be used for communication with the first and second respondents. Ms Chance states that she served the order on the second respondent by email at t[...] and via WhatsApp. She has further attached the confirmatory affidavit of Mr Spence, which was used in the contempt of court application that served before Tsautse AJ marked 'AA3'.

[20] Ms Chance states in her affidavit that on 9 October 2025, the second respondent was arrested and taken to Losperfontein to serve his sentence. It is stated that the correctional officials refused to detain the second respondent because the Sheriff and the police did not have a form known as a J7, and the police then released the second respondent. On 15 October 2025, the J7 was signed by Tsautse AJ and the Registrar of the North West High Court. It commanded the head of Losperfontein to receive the second respondent into custody for a period of 60 days in terms of the contempt order.

[21] Ms Chance alleges that the second respondent was presented to the head of Losperfontein on 9 December 2025. The head of Losperfontein again refused to accept the second respondent. It is alleged that the head of Losperfontein contended that the 60-day period as per the order of Tsautse AJ dated 19 September 2025 had lapsed because it commenced on 5 September 2025. The applicants then brought an urgent application for a declaratory order that the 60-day period would commence on the day the second respondent arrived at Losperfontein. That application was to have been heard on 18 December 2025; it was opposed by the office of the State Attorney, and the second respondent was cited in that application. Ms Chance alleges that the application was served on the second respondent via

email and WhatsApp. The application was postponed for the head of Losperfontein to file his answering affidavit.

[22] On 6 March 2026, the application for a declaratory order was heard by Makolomakwe AJ. On 9 April 2026, Makolomakwe AJ handed down an order which read as follows:

'1. THAT: Section 39(1) of the Correctional Services Act 111 of 1998 is not applicable to sentences of incarceration imposed for civil contempt.

2. THAT: The Second Respondent's 60 day period of imprisonment, imposed by this court, per Tsautse AJ, on 19 September 2025, under case number 3875/2025 will only commence and take effect from the day on which the Second Respondent is admitted to the Losperfontein Correctinal Centre.

3. THAT: The First Respondent is directed to receive the Second Respondent and keep him in custody until he has served his 60 day period of imprisonment.

4. THAT: The third respondent is ordered to pay the costs of this application on party and party basis Scale B.'

[23] On 29 April 2026, before the second respondent could be re-arrested, Ms Chance was notified that the second respondent had been arrested and detained by the police on a separate charge of assault. He had appeared in the Brits Magistrate's court on 28 April 2026, and his bail application had been postponed to 4 May 2026. On 4 May 2026, Ms Chance attended the Brits Magistrate's court and brought the contempt of court order of Tsautse AJ to the attention of the public prosecutor. Ms Chance alleges that at the time the second respondent was legally represented. Ms Chance alleges that the prosecutor discussed the matter with the legal representative of the second respondent, and, by agreement, the bail application was postponed to 3 July 2026 because the second respondent was serving the 60-day imprisonment period as per the order of Tsautse AJ at Losperfontein. It is contended by Ms Chance that the second respondent has not taken this Court into his confidence and disclosed the true circumstances of his present detention.

[24] Ms Chance contends that the remedy of reconsideration must be sought within a reasonable time. It is further contended that the second respondent does not engage the facts which gave rise to the order. Ms Chance insists that the second respondent was properly

served with the notice of motion of the application, which was heard by Hendricks JP. Ms Chance further denies that the correct email address of the second respondent is m[...].

[25] Mr Tlhabane had contended in the founding affidavit in support of the application to reconsider the order that, because the affidavit served on the second respondent by email and WhatsApp was unsigned, the application was irregular. Ms Chance countered this by stating that, because the application was extremely urgent, the affidavit served on the second respondent was not signed, but when the application was heard, the affidavit served before Hendricks JP was signed.

[26] Ms Chance contends, and attaches proof to her answering affidavit, that the second respondent was served with the complete bundle of the issued and signed interdict application, together with the order, at 16h59 on 5 September 2025. Also, the order was served via WhatsApp on 5 September 2025 at 18h00. It is denied that the second respondent was served with the application that served before Hendricks JP only 23 minutes before the application was heard. It is contended that two blue ticks on WhatsApp reflect that the message has been received and read.

[27] In dealing with the contempt of court application, Ms Chance states that it was served by email at t[...] and by WhatsApp. Proof of the service is attached to the answering affidavit. Ms Chance contends that any challenge to the committal on the grounds that the application was not properly served on the second respondent lies in proceedings against that order, and not in the reconsideration of the order. It is further contended that what is required by the law to establish contempt is the order, service of the order, non-compliance, and that the non-compliance was wilful and *mala fide*.

[28] Ms Chance contends that the second respondent was not denied a hearing; he chose not to participate in the proceedings before Hendricks JP and Tsautse AJ. It is denied that the detention of the second respondent renders the matter urgent. It is contended on behalf of the applicants that the application for reconsideration of the order of Hendricks JP is intended to set aside the interdict so that the respondents are not exposed to contempt of court proceedings for their future conduct.

[29] Ms Chance lastly contends that applications under rule 6(12)(c), the court reconsiders the merits of the application. No answer is tendered to the facts raised in the founding affidavit that served before Hendricks JP. The second respondent does not deny that he leads the first respondent; that he delivered the memoranda of demands; that he made demands; or that the attacks on Bapotrans buses occurred. Costs on an attorney-client scale in the alternative on party and party, scale 'C', including the costs of two counsel, are sought against the second respondent.

[30] A replying affidavit has been filed on behalf of the second respondent. It is contended by Mr Tlhabane on behalf of the second respondent that the relief sought in prayer 4 of the notice of motion is not incompetent. It is contended that the release of the second respondent from prison is directly related to the initial interdict application. It is contended that imprisonment is a *sine qua non* of the interdict application. That the application for imprisonment was heard by a different judge, it is contended, is irrelevant.

[31] Mr Tlhabane contends that the second respondent could not depose to the affidavit in support of the application because he is unable to present himself before a commissioner of oaths to swear or affirm to an affidavit. Mr Tlhabane contends that the answering affidavit of Ms Chance is 'riddled with hearsay'. He refers to the allegations made in Mr Legoale's affidavit and states that there is no confirmatory affidavit from Mr Legoale. This Court has been asked that, in the event of finding that the allegations made in the affidavit of Mr Tlhabane amount to hearsay, then the allegations should be admitted under the provisions of section 3 of the Law of Evidence Amendment Act in the interests of justice.

[32] It is lastly contended that rule 6(12)(c) does not set time limits for when the application should be launched. It is contended that once an urgent order is granted in the absence of the other party, the latter becomes entitled to approach the urgent court; hence, the provision is under rule 6(12), which deals with urgent proceedings. It is contended in the alternative that the violation of the second respondent's rights to liberty is inherently urgent. It is denied that the second respondent had attorneys since 2 February 2026.

Analysis

[33] The first prayer sought in the notice of motion of the second respondent is for the rule 6(12)(c) application before this Court to be heard as an urgent application. I now turn to deal

with whether the second respondent has made out a proper case for bringing this application on an urgent basis. It has been contended on behalf of the applicants that the reconsideration application of the second respondent is not urgent. It has been contended that the second respondent was served with the order via WhatsApp and email at t[...]. The application for contempt of court was served on the second respondent and heard on 19 September 2025. The second respondent was arrested for the first time on 9 October 2025, and on 9 December 2025, the second respondent was arrested again. On 4 May 2026, the order of Tsautse AJ was brought to the attention of the public prosecutor handling the assault matter against the second respondent, and the order was discussed with the second respondent's legal representative. The second respondent did not bring the application for reconsideration of the order. The application to reconsider the order was brought on 5 June 2026 as an urgent application.

[34] In reply, Mr Tlhabane has not addressed these allegations, apart from denying that service via email was affected at the correct email address and that two blue ticks on WhatsApp can hardly be considered proper service. It has been held that an urgent application must be brought as soon as possible; cogent reasons must be advanced to the court for the delay in bringing the application. A delay might indicate that the matter is not as urgent as the applicant would have the court believe.[1] If a party seeks the court's assistance urgently, it must come to the court at the earliest opportunity; it cannot stand back and do nothing, only to seek the court's assistance as a matter of urgency some days later.[2]

[35] In my view, insofar as it relates to urgency, the second respondent appears to have tied his colours to the mast of his being incarcerated at Losperfontein by virtue of the order of Tsautse AJ from 4 May 2026. It is contended that the incarceration of the second respondent is unlawful and that if the application is heard in due course, the second respondent will receive no substantial redress, if any. I understood this submission to relate to the date on which the second respondent is expected to be released from Losperfontein, which, according to the applicants, is 28 June 2026. I further understood this submission to mean that, if the application is to be heard in the normal roll, by the time it is heard, the relief sought will be

[1] *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) para [8] and [9]
[2] *Collins t/a Waterkloof Farm v Bernickow NO and Another* (C1173/01) [2001] ZALC 223 (7 December 2001) para [8]

moot, as the second respondent would have been released after serving the 60-day period of incarceration.

[36] Urgency, which is self-created in the sense that a party sits on its laurels or takes its time in bringing an urgent application, can, on its own, lead to a decision to strike a matter from the roll. It would, of course, depend on the explanation provided, but if the explanation is lacking and does not cover the full period from when it was realised, or should have been realised, that urgent relief should be obtained. If this criteria to strike a matter from the roll is not available to a court, a court would be compelled to deal with an urgent application, where for instance nothing was forthcoming for weeks or months and a day or two before an event was going to take place a party who wants to stay that event can approach a court and argue that if an order is not immediately granted such party would not obtain substantial redress in due course. If this is the approach to be adopted by a court, there exists no reason why any explanation for the delay should be provided at all. An applicant would only have to show that, if the relief sought is not granted, it will suffer irreparable harm.[3] In my view, this is not sustainable and should be discouraged.

[37] From the reading of the affidavit of the attorney of the second respondent and from the submissions made by counsel for the second respondent. It appears that counsel and the attorney of the second respondent are of the view that, because this application is under rule 6(12)(c), the urgency is there for the taking. This is not so. It has been held that an application for reconsideration is not urgent for the purposes of rule 6(12) simply because an order was granted in the urgent court. This means that, in the absence of demonstrable prejudice in the time between when an application may be heard before an urgent court and in the ordinary course, a party seeking a reconsideration must set out the prejudice that will ensue. The threshold is the same whether in an application for reconsideration or when approaching the court under rule 6(12)(a). In both instances, the parties seeking relief must set out in clear terms facts duly supported that will pass the threshold of 'absence of substantive relief' if the matter is not heard before the urgent court.[4]

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[3] *Roets N.O. and Another v SB Guarantee Company (RF) (PTY) Ltd and Others* (36515/2021) [2022] ZAGPJHC 754 (6 October 2022) para [26]

[4] *Joint Venture Comprising Gorogang Plant Razz Civils v Infiniti Insurance Limited* (unreported, GJ case no 02252/2023 dated 15 October 2024) para [71]; *Caterpillar Financial Services South Africa (Pty) Ltd v Musor Consultants and Project CC* (unreported, GJ case no 2025-023190 dated 5 August 2025) para [9].

[38] In *Industrial Development Corporation of South Africa Limited v Artsolar (Pty) Ltd and Others*[5] *(Artsolar)* Wallis AJ, at paragraph 10 of the judgment, said the following:

'Rule 6(12)(c) itself contains no internal directive regarding urgency. That rule simply requires that reconsideration be set down on notice. The rule is a sub-rule to rule 6(12) which provides in 6(12)(a) for urgent applications. As a matter of construction, it seems to me that a party seeking a reconsideration under 6(12)(c) is required, if it wishes that the reconsideration be dealt with urgently, to provide a basis justifying an urgent hearing for the reconsideration.' (my emphasis)

[39] In *Artsolar* at paragraph 13, Wallis AJ referred to the judgment of Raath AJ in *Sheriff Pretoria North-East v Flink and Another*[6] *(Flink)* on page 9, in which the Honourable Acting Judge said the following:

'Nothing in rule 6(12)(c) suggests that such a respondent would be entitled to enrol the matter for reconsideration again on an urgent basis merely because the order had been obtained on an urgent basis. A proper case will have to be made out independently for the urgency of reconsideration of the order.'
I agree with the observations of Wallis AJ in *Artsolar* and Raath AJ in *Flink.*

[40] No explanation has been tendered on behalf of the second respondent for the inordinate delay in bringing the application from 5 September 2025 to 5 June 2026. I am not persuaded that the applicants' interdict application and the order were served at the wrong email address. The memoranda dated 3 September 2025 and annexed to the answering affidavit of the applicant marked AA2, from the first and second respondent, to the Management Bapo Trans, reads that should they require further clarification or wish to engage with the first and second respondent in the matter, they may contact them at the email address t[...].

[41] Even if I am wrong and the interdict application and the order were not served on the correct email address on 5 September 2025, surely the second respondent would have known of the order and the order of Tsautse J when he was arrested for the first time on 9 October

[5] (D1162/25) [2025] ZAKZDHC 16 (11 April 2025)
[6] 2004 JDR 0458 (T)

2025. A reasonable person would have sought the reasons for his arrest immediately after being released, or even upon being informed that he was being arrested on the strength of a contempt of court order. A reasonable person would have investigated the circumstances leading up to his arrest. In this matter, the second respondent was arrested again on 9 December 2025. No explanation has been tendered by the second respondent as to what happened between the period of the first arrest, the second arrest and 4 May 2026. In the absence of a cogent explanation for the delay in bringing the application within a reasonable period of the second respondent becoming aware of the order. I am of the view that the urgency in this application is self-created.

In conclusion

[42] It is clear from what I have stated above that, having brough the application under rule 6(12)(c) for reconsideration of the order as a urgent application under rule 6(12)(a), and the second respondent having failed to set out a cogent explanation for the delay in bringing the application within a reasonable period, the application stands to be struck from the urgent roll, as the urgency was self-created.

Costs

[43] It is a trite principle in our jurisprudence that costs follow the cause, and I have not found any reason to deviate from this principle. The purpose of an award of costs is to indemnify a successful party who has incurred expenses in instituting or defending an action.[7]

[44] I was informed by counsel for the applicants that senior counsel had been briefed in this application, but he was not available on 12 June 2026, and for that reason, junior counsel appeared alone to argue the application.

[45] The issues raised in this application were not complex. The importance of the application was addressed in the applicants' answering affidavit. The applicants sought the order to be preserved so as to protect their employees from further attacks by the first respondent. In the main, this was not a complex application warranting the employment of two counsel.

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[7] *Texas Co (SA) Ltd v Cape Town Municipality* 1926 AD 467 at 488

Order

[46] Resultantly, the following order is made.

1. The application is struck from the roll due to self-created urgency.

2. The second respondent is ordered to pay the costs of the rule 6(12(c) application to reconsider the order, including the costs of one counsel on a party and party scale, scale "B".

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T MASIKE
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the applicants:	Adv A McKenzie
Instructed by:	Malan Scholes Inc.
	C/o Van Rooyen Tlhapi Wessels Inc.
For the second respondent:	Adv M Kgomongwe
Instructed by:	Nkhumise L Tlhabane Attorneys