IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: **2026-103211**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHERS JUDGES: NO
(3) REVISED: NO

[redacted]

31 July 2026
DATE SIGNATURE

In the matter between:

eNL MUTUAL BANK Applicant

and

UBITS TECHNOLOGY SOLUTIONS (PTY) LTD First Respondent

MUNEERAH MALEK Second Respondent

SAUD ALLY Third Respondent

JUDGMENT

NXUMALO, AJ

Introduction

[1] The applicant brings this application before the urgent Court seeking to have the respondents declared to be in contempt of the order granted by this Court on or about 21 May 2026 under the above case number. The order in question has been dubbed "the prior order" by the parties. For the sake of convenience, I shall adopt the same terminology when referring to that order.

[2] The relevant parts of the prior order, as presented by the applicant during argument, are the following:

(a) the respondents were directed to provide the applicant, by Saturday, 23 May 2026 at 17h00 and <u>for purposes of audit</u> (my emphasis), the items included in annexure "eNL 1A" which was annexed to the Court order;

(b) the respondents were directed to cooperate with the Auditors appointed by the applicant should they (the Auditors) need access to documentation for purposes of the audit, by Saturday, 23 May 2026 at 17h00 from the date of receipt of the said request.

[3] It is these two orders of the prior order that the applicant is alleged to not have complied with.

[4] It is evident from their wording that the two orders were concerned with ensuring that the applicant receives all the necessary documents and records to enable it to comply with its audit obligations. It is also necessary to point out that the prior order was made by agreement between the parties.

Urgency

[5] As mandated by Rule 6(12) of the Uniform Rules of this Court, it was incumbent upon the applicant to convince this Court that the application was urgent, prior to the merits of the matter being entertained.

[6] The applicant contended that every day that the respondents refuse to comply with the prior order causes continuing prejudice to it. It further stated that it remains under statutory and regulatory obligations to complete its audit and submit audited financial statements to the Prudential Authority and that the refusal of the respondents prevents the applicant from fulfilling these obligations, and risks the applicant falling foul of the Prudential Authority and possibly losing its license.

[7] It is alleged that the event that triggered the applicant's dash to the urgent Court was the termination of the applicant's access to and use of the Payflo system by the respondents on 18 July 2026. The applicant had initially been granted access to the Payflo system by virtue of a written Software licence agreement ("the licence agreement") between the first respondent and an entity known as YWBN Investments (Pty) Ltd ("YWBN Investments") which is not a party to these proceedings.

[8] The licence agreement was terminated by the first respondent on 17 July 2026. The termination had been preceded by a letter of demand sent by the first respondent to the applicant on 17 June 2026 notifying the applicant of the first respondent's intention to terminate the licence agreement if YWBN Investments failed to remedy its breach of the licence agreement within 30 days of the demand.

[9] It is contended by the respondents that YWBN Investments and the applicant knew from 17 June 2026 what would happen if YWBN Investments failed to remedy its breach of the licence agreement.

[10] The difficulty with the relief sought by the applicant is that it has failed to specify in its papers which parts of the prior order the respondents had failed to comply with.

[11] When pressed during argument, counsel for the applicant stated that the only part that has not been complied with is the part referred to in paragraph 9 of annexure "eNL 1A" to the prior order, which directed the respondents to grant access to information, systems, records, platforms, reports and supporting documentation on the Payflo system to the individuals named therein.

[12] It is stated in annexure "eNL 1A" that all requested information and access rights should be provided in full from inception to date of the prior order, unless otherwise specified.

[13] As already mentioned above, the purpose of the prior order was to ensure that the applicant receives all the information required by its Auditors in order for the applicant to meet its audit obligations. It was submitted by counsel for the respondents, correctly so in my view, that the access to the Payflo system provided for in the prior order was for audit purposes only and no other reason.

[14] The respondents also correctly point out that despite the applicant alleging that access to the Payflo system was essential to complete the statutory audit, the

applicant failed to identify which specific information, reports, date or functionality were allegedly inaccessible. There was no identification of any outstanding audit item which the respondents had allegedly refused to provide.

[15] If anything, the respondents provided an email by the applicant's current Auditors in which they confirm that they have been provided with all the records requested by them.

[16] This then begs the question: which fire pertaining to its audit obligations is the applicant trying to douse through this application, which was brought on truncated timeframes. The answer to this question unfortunately cannot be found in the applicant's papers. The applicant's counsel's submissions were also of no particular assistance in this regard.

[17] As far as the truncated timeframes are concerned, it is necessary to mention that the respondents had proposed to the applicant that the matter be enrolled for hearing on Tuesday, 4 August 2026, to enable the parties sufficient time to prepare a complete set of papers prior to having the matter heard. This offer was refused by the applicant.

[18] The procedure set out in Rule 6(12) is not just there for the taking. An applicant has to set forth explicitly the circumstances which it avers render the matter urgent and why it could not be afforded substantial redress in the ordinary course.[1]

[19] This means that the applicant cannot merely treat the issue of urgency as a sideshow. Before the Court can entertain the application on the merits, it must be satisfied that the applicant has met all the requirements set out in Rule 6(12).

[20] On 4 October 2021, the former Deputy Judge President of this Court, in a bid

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[1] **East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others** [2011] ZAGPJHC 196 (23 September 2011) [6]

to curb the abuse of the Urgent Court process and prevent the cluttering up of the urgent Court roll, issued directives with regards to urgent matters enrolled in this Court ("the directives").[2]

[21] The directives contained the following relevant provisions:

> "...the ultimate practical test as to whether to set down a matter as urgent is whether an irreparable harm is apparent <u>if an order is not granted in that week;</u> if there is none, it ought not to appear on the roll." – (par. 5 of directives) (my emphasis).

[22] This matter sadly fits into the above category. There is no irreparable harm that could be detected from the applicant's papers, and certainly none could be demonstrated by the applicant's counsel during argument, if the order sought by the applicant is not granted in this week. It therefore follows that this matter ought not to have appeared in this week's urgent Court roll, which was so cluttered that it required the diligent services of at least five judges to work through it.

[23] There is a clear duty on an applicant who does not comply with the provisions of the practice directives of the Court to supply a proper explanation for its non-compliance. The applicant has failed to do so.[3]

[24] A further fatal complication to the applicant's case is the material dispute of fact that exists on the progress made in complying with the prior order. The respondents contend that they have complied with the prior order and have provided extensive correspondence exchanged between them and the applicant and/or its auditors, in compliance with the prior order. It is therefore evident that even on the merits, the applicant stands little to no chance of

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2 Notice to All Legal Practitioners about the Urgent Motion Court, Johannesburg (4 October 2021)

3 ***In re*: Several Matters on the Urgent Court Roll** 2013 (1) SA 549 (GSJ) [9]

succeeding with the contempt relief sought against the respondents.

[25] To hold the respondents in contempt, the applicant was required to, at the very least, demonstrate which parts of the prior order the respondents have failed to comply with. The applicant did not do so.

[26] The applicant was not able to point to any example of requests for records that were made to the respondents by the Auditors, which the respondents failed to satisfy.

[27] This dispute of fact is fatal to the applicant's case as it goes to the heart of the matter.[4]

Conclusion

[28] In light of the above, the applicant's application ought to be struck off the roll for lack of urgency.

[29] The following order is therefore made:

1. the application is struck off the roll for lack of urgency;

2. the applicant shall pay the costs, which shall include the costs of senior counsel, on the party and party scale C.

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4 **WIA Investments SA (Pty) Limited v Robile and Others** (2025//012813) [2025] ZAGPJHC 119 (17 February 2025) [5] – [7]

NS NXUMALO
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the applicant:	Adv L Tshigomana
Instructed by:	Katlego Ralikhuvhana Mokgola Inc
For the respondents:	Adv ARG Mundell SC
Instructed by:	Ayoob Kaka Attorneys
Date of hearing:	29 July 2026
Date of judgment:	31 July 2026

This Judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed to be 10am on 31 July 2026.