IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 043793/2022

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
25/01/2023	

In the matter between:

SIBANYE GOLD LIMITED	First Applicant
GOLD FIELDS OPERATIONS LIMITED	Second Applicant
GFI JOINT VENTURE HOLDINGS (PROPRIETARY) LIMITED	Third Applicant

and

THE VALUATION APPEAL BOARD FOR RAND WEST CITY LOCAL MUNICIPALITY	First Respondent
THE MUNICIPAL VALUER FOR RAND WEST CITY LOCAL MUNICIPALITY	Second Respondent
RAND WEST CITY LOCAL MUNICIPALITY	Third Respondent

JUDGMENT

YACOOB J:

1. The applicants approach this court on an urgent basis to seek a stay of proceedings before the first respondent (the Board) pending a review of a decision of the Board on a part of the proceedings that had been separated by agreement.

2. The principles regarding urgency are well established. An applicant must demonstrate both circumstances rendering the matter urgent and the reasons why it cannot obtain substantial redress in due course.

3. The urgent court does not exist for the convenience of the parties to be exploited for their own convenience or motives. On the other hand, in some circumstances the interests of justice may require that, despite the matter being set down in the urgent court in a manner that shows the applicant has been dilatory, the court nevertheless consider and determine the relief sought.

4. In this matter the applicants knew in July the outcome of the portion of the proceedings at issue and requested reasons with a view to reviewing that decision. The reasons were provided on 19 August. At a meeting on 31 August the applicants indicated their intention to review and also to apply formally for a postponement.

5. Nonetheless, the application for review was only instituted on 7 November 2022, and set down for 22 November 2022, a mere four court days before the VAB proceedings are set to resume.

6. The reasons for the delay in approaching this court that have been provided include that the legal team was busy with another similar matter, that they needed to first prepare the entire review application, that they needed to wait for the record, that the client only provided instructions at the end of October, and that the application is not late because the review is well within the 180 days provided by the Promotion of Administrative Justice Act, 3 of 2000 for the institution of review proceedings.

7. None of those reasons is a valid one. Another legal team could have been briefed simply for the purposes of the urgent application. The relief sought could have been premised on a review application still to be brought, and set out the bare bones of the intended case. The record is not as a matter of course provided before a review application is brought, that is why an applicant is entitled to file a supplementary founding affidavit after the record is filed. The fact that the client delayed in giving instructions is at the client's peril, and the client must bear the consequences of that. It is not for the client to decide at the last minute to burden the court and the respondents with an unnecessarily urgent application. The question of the time permitted for a review application to be brought is a red herring, because we are not dealing here with a review application, but with the stay of proceedings for which a date has already been set.

8. I am satisfied that the applicant was dilatory in bringing this appeal, and has created its own notional urgency.

9. However, the question whether the matter is urgent also requires a consideration of whether the relief sought is ripe. In my view it is not. While the hearing is set to resume on 28 November, I am not satisfied that the applicant has shown that a

stay is the only way in which it could protect its rights, which for purposes of this analysis I accept are worthy of protection.

10. At the meeting of 31 August the applicant intimated an intention to bring a substantive application for postponement by 7 September. They did not do so. According to the applicants this is because they were not permitted to do so and also because the Board, having set down the matter on 28 Nov, is *functus*.

11. There is an inherent contradiction in this submission. The Board cannot be *functus* if no application was made. Looking at the transcript of 31 August attached to the papers, it is clear that the matter was set down subject to whatever applications the applicant may bring, including an application for postponement. The applicants elected not to bring an application for postponement. They must bear the consequences of that election, too.

12. It was submitted that the postponement application would have been futile because the Board had already decided its position. I disagree. The Board shows in the transcript that it will deal with whatever comes, including a postponement application. The idea that because the Board regulates its own procedure a postponement application would not have been possible is simply speculative. Had the applicants brought a postponement application and the Board declined to deal with it, or refused it, things might have been different. In fact, the Board's power to regulate its own procedure is another reason why it should be permitted to consider on its own whether a postponement is warranted, without undue judicial interference.

13. I am not satisfied that the applicant has established that the matter should be enrolled urgently.

14. The matter is struck, with costs to include costs of two counsel

S. YACOOB

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

<u>Appearances</u>

Counsel for the Applicant:	CF Van Der Merwe SC
	J Gildenhuys SC
	X Khoza
Instructed by:	Norton Rose Fulbright South Africa Inc

Counsel for the First Respondent:	J Motepe
Instructed by:	Zinhle Nkuhlu Inc
Third respondent's representative:	Dr de Swardt
Instructed by:	De Swardt Myambo Hlahla Attorneys
Date of hearing:	25 November 2022
Date of judgment:	25 November 2022
Written reasons:	25 January 2023