**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE DIVISION)**

**Reportable**

Case No: **2026-176862**

In the matter between:

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| **A CLASS CELLULAR (PTY) LTD** | First Applicant |
| **MOHAMMED EJAZ** | Second Applicant |

and

| | |
|---|---|
| **GOVERNMENT EMPLOYEES PENSION FUND** | First Respondent |
| **MOWANA PROPERTIES (PTY) LTD** | Second Respondent |
| **THE SHERIFF OF THE HIGH COURT, WYNBERG EAST** | Third Respondent |
| **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION** | Fourth Respondent |
| **THE NATIONAL CONSUMER COMMISSION** | Fifth Respondent |

**Coram:** Norton AJ

**Heard:** 6 August 2026

**Order granted:** 6 August 2026

**Delivered:** 11 August 2026 (electronically)

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**ORDER**

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1 The application under Part A of the applicants' Notice of Motion is struck from the roll.

2 The applicant is directed to pay the costs of the application, including the costs of one counsel on scale C.

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**REASONS**

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**Norton AJ**

[1] The applicants' application for interim relief suspending the operation of an ejectment order was set down on the urgent roll for hearing on Thursday 30 July 2026. The application was opposed by the first and second respondents (the respondents).

[2] On the morning of 30 July 2026 the legal representatives for the applicants and the respondents were advised that the matter would be heard at 15h30 on that day. During the course of the day an affidavit was filed on behalf of the respondents in which it was indicated that the respondents would seek a postponement of the matter to enable them to file answering papers.

[3] Shortly after 15h00 the attorney for the applicants advised the Court by email that the parties had agreed to a postponement of the application to the urgent roll on 26 August 2026 and a suspension of the ejectment order until 31 August 2026. A draft order in those terms was attached to the email. Counsel for the respondents, however, attended court at 15h30 and advised that there was no agreement in respect of the draft order and that the respondents wished to be heard on the question of urgency. The attorney for the applicants was notified that argument on urgency would be heard directly but advised that he was not able to attend court at that time for purposes of argument on urgency.

[4] On Friday 31 July 2026 I directed that argument on urgency would be heard on Thursday 6 August 2026. On that date, after hearing submissions on behalf of the applicants and the respondents, I handed down an order striking the application from the roll for lack of urgency. My reasons for doing so follow.

**Background**

[5] The first applicant, A Class Cellular (Pty) Ltd (the applicant), has since 1 August 2022 occupied premises at Shop 3[…], Vangate Mall,

Athlone (the premises) in terms of a lease agreement that it concluded with the first respondent (represented by the second respondent) as landlord. The applicant conducted a 'vape related products and related retail business' from the premises. The fixed term of the lease agreement terminated on 31 July 2025, but the applicant remained in occupation of the premises after that date.

[6] On 1 September 2025 the respondents instituted an application in this court for the ejectment of the applicant from the premises. On 13 May 2026 an order was granted by agreement between the parties in terms of which the applicant was directed to vacate the premises by no later than 31 July 2026, failing which the Sheriff of the Court was authorised to effect its ejectment from the premises (the ejectment order).

[7] On 23 July 2026 the applicant and its director, Mr Mohammed Ejaz, instituted an application in three parts. Under Part A they sought an order in terms of Uniform Rule 45A suspending the operation and execution of the ejectment order (and ancillary related relief) pending the final determination of their application under Parts B and C for, respectively, an order rescinding and setting aside the ejectment order and an order declaring section 14(1) of the Consumer Protection Act 68 of 2008 inconsistent with the Constitution.

[8] As a basis for the rescission order sought in Part B, Mr Ejaz stated in the founding affidavit that the ejectment order did not 'embody the Applicant's properly informed and authorised consent' and that an order purporting to be by agreement had been taken as a result of a series of errors involving (i) the applicant's attorney's belief that the matter would not

proceed on the allocated date; (ii) the applicant's attorney's unavailability on the date of the hearing, as a result of which his assistant and candidate attorney had been 'left in charge'; and (iii) the junior counsel on brief agreeing to the ejectment order without proper instructions to do so.

[9] On the urgency of the application under Part A, Mr Ejaz made four brief assertions. First, that the ejectment order was presently enforceable or might become enforceable imminently. Second, that the execution of the ejectment order might occur before the ordinary opposed motion timetable could run. Third, that the applicant could not obtain substantial redress in due course 'because restoring a functioning retail business after eviction is not equivalent to preventing its destruction'. Fourth, that the applicant 'approached the Court promptly after obtaining proper advice concerning the absence of authority, rescission, Rule 45A relief and the correct Rule 16A procedure'.

[10] Conspicuously, however, no explanation was furnished for the delay of ten weeks between the date of the ejectment order (13 May 2026) and the date when the application was instituted (23 July 2026).

[11] In a confirmatory affidavit filed on 30 July 2026, the applicant's attorney, Mr Lungani Ciko, stated that the agreement to the ejectment order had come about as a result of an 'internal misunderstanding in the conveyance of instructions while [he] was temporarily indisposed'. Claiming privilege in respect of the brief to counsel and the related attorney-and-client communications, Mr Diko stated that because he was temporarily indisposed, 'communications with junior counsel may have been conveyed

through a candidate attorney or an assistant' who did not have authority to agree to an enforceable ejectment order.

[12] Mr Diko's affidavit is also silent on the ten-week delay that ensued before the applicant instituted its application on an urgent basis and, on one week's notice to the respondents, brought the matter to Court the day before the applicant was to vacate the premises in terms of the ejectment order.

**Urgency**

[13] A court exercises a wide discretion under Uniform Rule 6(12)(a) in deciding whether to entertain a matter on the urgent roll (*Cornerstone Logistics (Pty) Ltd and Another v Zacpak Cape Town Depot (Pty) Ltd* [2022] ZASCA 12 (25 January 2022) para 30).

[14] It considers whether there is compliance with Uniform Rule 6(12)(b), which enjoins an applicant to set forth the circumstances that render the matter urgent and the reasons why the applicant claims that it cannot be afforded substantial redress at a hearing in due course. It also considers whether the applicant has acted expeditiously in bringing the application and, if it has not, the reasons for the delay. In *Dladla and Others v Ethekwini Municipality* [2023] ZAKZDHC 15 (4 April 2023) para 37 Nicholson J described these two 'conditions' for urgency as follows:

> '(a) The application must be brought as soon as possible; accordingly, cogent reasons must be advanced to the court for any delay in bringing the application;

(b) The applicant must provide a detailed account of why they believe that they will not receive substantial redress if the matter is heard in the ordinary course.'

[15] It is long-established that an applicant may be denied an urgent hearing on the grounds of 'self-created urgency' (see *Black Sash Trust v Minister of Social Development and Others (Freedom under Law Intervening)* 2017 (3) SA 335 (CC) para 36; *Schweizer Reneke Vleis Mkpy (Edms) Bpk v Die Minister van Landbou en Andere* 1971 (1) PH F11 (T) at 11-12).

[16] In *Ex Parte Minister of Social Development and Others* 2006 (4) SA 309 (CC) para 17 the Constitutional Court per Van der Westhuizen J stated that the applicants' conduct in approaching the Court to hear an application on the very same day that a suspension order was due to expire 'seem[ed] to be a classic example of the creation of one's own urgency, which would under normal circumstances justify a finding that no urgency has been shown'. It was only because the remissness of the applicants would have a far-reaching effect on many recipients of social welfare grants that the Court entertained the application on an urgent basis.

[17] In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 (23 September 2011) Notshe AJ approached the question of urgency in terms that have in some instances been construed as an assertion that an applicant who cannot obtain substantial redress in due course cannot be refused a hearing on the grounds

of self-created urgency. The relevant passages of the judgment are as follows:

> '[8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A 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 a hearing in due course. A 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.
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> [9] It means that if 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 a hearing in due course. I must also mention that the fact 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 a hearing in due course then 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 application does not qualify to be enrolled and heard as an urgent application.'

[18] I do not understand this dictum to renounce the principle that self-created urgency can, on its own, ground the refusal of an urgent hearing in appropriate circumstances. If that were so, there would be no need for a

tardy applicant to explain its delay or for the court to evaluate its explanation (requirements that are expressly acknowledged in the dictum itself) and the possibility of substantial redress in due course would be the sole consideration. As observed in *Roets N.O. and Another v SB Guarantee Company (RF) (Pty) Ltd and Others* [2022] ZAGPJHC 754 (6 October 2022) para 26:

> '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'.

[19] In *Godwill and Others v Van Rijswijk N.O. and Others* [2025] ZAWCHC 42 (11 February 2025) this Court held that self-created urgency warranted the striking of an application from the roll. The facts were strikingly similar to the facts in this matter. The applicants had approached the Court on 13 December 2025 for an order staying an eviction order that had been granted against them (in their presence) on 18 October 2025, pending the determination of an application to rescind the eviction order.

[20] Lekhuleni J noted in paragraph 21 of the judgment that Uniform Rule 6(12) confers upon courts 'a wide discretion to decide whether an application justifies enrolment on the urgent court roll based on the facts and circumstances of each case'. Finding that the applicants had provided no plausible explanation for their two-month delay beyond asserting a lack of

funds, Lekhuleni J held in paragraph 26 that the urgency asserted by the applicants was 'entirely a self-created urgency' and '[o]n this basis alone' the matter should be struck off the roll.

[21] In the matter before me the applicant waited ten weeks before instituting its application to stay an ejectment order that, on its own version, was granted on an agreed basis in circumstances where it was represented by an attorney and counsel. Remarkably, no explanation whatsoever has been furnished for this lengthy delay. There is no basis on which the reasons for the delay can be evaluated. It is in my view a pronounced case of self-created urgency.

[22] The basis on which the applicant asserts that it cannot be afforded substantial redress in due course is flimsy. There is the averment by Mr Ejaz that 'restoring a functioning retail business after eviction is not equivalent to preventing its destruction', but little that explains why a vape products retail business will suffer 'destruction' (rather than mere financial loss) if it must vacate the premises.

[23] Be that as it may, even if I accept that substantial redress in due course may not be possible, I am of the view that the extent of the applicant's delay in approaching the court, and its failure to offer any explanation for that delay, means that the application falls to be struck from the roll on the grounds of self-created urgency and that the applicant should pay the costs of the application.

**ML NORTON**

**ACTING JUDGE OF THE HIGH COURT**

**WESTERN CAPE DIVISION**

Appearances

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|---|---|
| For the applicant: | R McLean |
| Instructed by: | Lingani and Partners Attorneys |
| | Cape Town |
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| For the respondent: | E. Smit |
| Instructed by: | Pather & Pather Inc. |
| | Johannesburg |
| | c/o Mariam Cassim & Associates |
| | Cape Town |