



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 4796/2023

(1) Reportable: No
(2) Of interest to other Judges: No
Revised: YES

SIGNATURE

DATE 08 SEPTEMBER 2026

In the matter between:

STRATORE (PTY) LIMITED

First Applicant

(Reg No: 2015/168510/07),

JOHANNA NINI MAHANYELE N. O.

Second Applicant

(ID No: 7[...])

DONOVAN THEODORE MAJIEDT N. O.

Third Applicant

(ID No: 7[...])

(in their capacities as the jointly appointed liquidators,
in Money Box Investments 156 (Pty) Limited
(in liquidation) (Reg No: 2008/013320/07)

And

ROBERT MPHUMELELI GUMBI

First Respondent

(ID No: 6[...])

MONEY BOX INVESTMENTS 156 (PTY) LIMITED (IN LIQUIDATION) (Reg No: 2008/013320/07)	Second Respondent
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ITSHUDU COAL (PTY) LIMITED (Reg No: 2021/113302/07)	Third Respondent
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MINISTER OF MINERAL RESOURCES AND ENERGY	Fourth Respondent
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DIRECTOR-GENERAL OF THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY	Fifth Respondent
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REGIONAL MANAGER OF THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY MPUMALANGA	Sixth Respondent
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REMAINING 60 to 80 EMPLOYEES OF MONEY BOX INVESTMENTS 156 (PTY) LIMITED (IN LIQUIDATION)	Seventh Respondent
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GUMBI ENERGY SOLUTIONS (PTY) LIMITED (Reg No: 2018/268652/07)	Eighth Respondent
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THE MASTER OF THE HIGH COURT MPUMALANGA DIVISION, MIDDELBURG	Ninth Respondent
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THE COMMISSIONER OF COMPANIES & INTELLECTUAL PROPERTY COMMISSION	Tenth Respondent
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WYKOM BOERDERY CC (Reg No: 1994/000870/23)	Eleventh Respondent
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MICHAEL MATIYASE MAGAGULA (ID No: 5[...])	Twelfth Respondent
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VLAKLAAGTE TRADING DESK (PTY) LIMITED (Reg No: 2025/238708/07)	Thirteenth Respondent
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JUDGMENT

LESO AJ

INTRODUCTION

[1] The applicants approach this Court on an urgent basis for interim interdictory relief against the First Respondent. The applicants seek to restrain the First

Respondent from conducting or continuing to conduct the business of the Second Respondent, Money Box Investments 156 (Pty) Ltd (“Money Box”) in liquidation. The applicant further seeks an interdict against the First Respondent from conducting mining operations in the Vlaklaagte mining area, and from dealing with the assets, coal, proceeds, records and business affairs of Money Box.

[2] The relief is sought pending the determination of an application by the second respondent in terms of section 354 of the Companies Act for the stay and setting aside of the final winding-up order granted against Money Box on 21 February 2024.

THE PARTIES

[3] The First Applicant, Stratore (Pty) Ltd, is a company incorporated in accordance with the company laws of the Republic of South Africa. It was a petitioning creditor in the liquidation proceedings involving Money Box.

[4] The Second and Third Applicants are the duly appointed joint liquidators of Money Box. They assert that, by virtue of their appointment, they have assumed control of the assets and affairs of the insolvent estate and are responsible for preserving and realising them for the benefit of creditors.

[5] The First Respondent, Mr Robert Mphumeleli Gumbi, was a director of Money Box. The Second Respondent is Money Box, which is in final liquidation.

[6] The remaining respondents include Itshudu Coal (Pty) Ltd, the relevant governmental authorities, employees and other entities.

BACKGROUND

[7] A final winding-up order was granted against Money Box on 21 February 2024. The court subsequently made provisional and final appointments of the liquidators on 2 May 2024 and 21 August 2025, respectively.

[8] On 8 July 2026, an application was instituted in terms of section 354 of the Companies Act seeking, inter alia, the stay and setting aside of the winding-up of Money Box.

[9] The applicants allege that, notwithstanding the final winding-up order and the appointment of the liquidators, business and mining operations continued without the authority or consent of the liquidators.

[10] An undertaking was sought from the respondents on 20 July 2026 to cease the alleged unlawful activities. The undertaking was not forthcoming.

[11] The present application was thereafter issued on 6 August 2026 and enrolled for hearing on 25 August 2026.

The relief sought

[12] The applicants seek extensive interim relief. The First Respondent is sought to be interdicted from conducting or continuing to conduct the business of Money Box, trading in its name, conducting mining operations in the Vlaklaagte mining area and dealing with coal or mineral products allegedly forming part of or derived from the business of Money Box.

[13] The applicants further seek to restrain the First Respondent from entering into contracts in the name of Money Box, receiving income or proceeds on its behalf, exercising authority over its affairs and assets, interfering with the liquidators' administration of the insolvent estate, or taking steps which may diminish, dissipate, encumber or alienate assets of the estate.

[15] Mandatory relief is also sought requiring the preservation and delivery of assets and records to the liquidators, unrestricted access to the Vlaklaagte mining area and associated facilities, and disclosure of information concerning coal extracted, proceeds received, customers, contractors and creditors.

[16] The relief is expressly sought pending the determination of the section 354 application concerning the winding-up order.

ISSUES FOR DETERMINATION

[17] The principal issues that arise for determination are,

1. first, whether the applicants have established the degree of urgency contemplated in Rule 6(12) of the Uniform Rules of Court; secondly,
2. whether the application is properly constituted, including whether the parties have been properly joined; thirdly,
3. whether the applicants complied with the applicable Practice Directives governing urgent applications; and, only if those issues are satisfactorily answered, whether the applicants have established the requirements for the grant of the interim interdict sought.

The applicants' case on urgency

[18] The applicants contend that the matter is urgent because mining and trading activities are continuing and that, unless restrained immediately, the assets of the insolvent estate will continue to be dissipated. They rely particularly on the alleged removal and sale of coal, the depletion of mineral reserves and the risk that proceeds may be placed beyond the control of the liquidators.

[19] The applicants submit that damages would not constitute an adequate alternative remedy because monetary compensation would not restore the liquidators' control over the estate or prevent the continued depletion of the alleged estate assets.

[20] It is further submitted that the urgency was not self-created. The applicants contend that they became aware of the alleged unlawful activities when the founding affidavit in the section 354 application was served and that they thereafter sought an undertaking from the respondents to cease the activities.

The respondents' opposition

[21] The respondents dispute the urgency of the application. They contend that the applicants knew of the material facts for some time before launching the urgent application and that the application was not brought with the degree of expedition required to justify the departure from ordinary procedural requirements.

[22] The respondents further rely on the fact that the substantive dispute concerning the winding-up of Money Box is already the subject of the pending

section 354 application. They contend that this affords the applicants substantial redress in due course and that the urgent application constitutes, in substance, an attempt to obtain interlocutory relief in advance of the determination of that application.

[23] The respondents also dispute the factual premise that Money Box is conducting the mining operations complained of. It is contended that mining is being conducted by Itshudu Coal (Pty) Ltd, a separate juristic person holding its own permits and operating in a separate area.

[24] The respondents accordingly contend that the relief sought is impermissibly broad and would affect the rights and operations of separate juristic entities.

[25] A further objection concerns the joinder of parties. It is contended that several respondents have been cited notwithstanding that no substantive relief is sought against them, while the relief sought is capable of affecting entities whose interests are directly implicated in the mining operations.

[26] Finally, the respondents contend that the applicants failed to comply with the Practice Directives governing urgent applications, particularly in relation to the preparation, indexing, pagination and bundling of the papers. The papers comprise approximately 619 pages and include, amongst other material, the papers in the separate section 354 application.

THE LAW ON URGENCY

[27] Rule 6(12)(a) of the Uniform Rules permits the Court, in urgent applications, to dispense with the forms and service prescribed by the Rules and to dispose of the matter in such manner and at such time as the circumstances require. Rule 6(12)(b) however, places an express obligation upon an applicant to set out in the affidavit the circumstances rendering the matter urgent and, importantly, the reasons why substantial redress cannot be obtained at a hearing in due course.

[28] In *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another*¹ the Court emphasised the obligation resting upon an applicant who seeks to invoke the extraordinary procedure available to litigants in the urgent court. The court makes it clear that urgency is not established merely by asserting that the conduct complained of is unlawful or that prejudice may result. Since 1977, the principle has been developed that the applicant must demonstrate why the ordinary process of litigation will not afford substantial redress.

[29] In *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd*² it was held that “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. A crucial test for urgency 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 the applicant can be afforded substantial redress in due course, the matter is not urgent”.

APPLICATION OF THE LAW TO THE FACTS

[30] I accept that the preservation of assets belonging to an insolvent estate is a matter of importance and that the liquidators have statutory duties concerning the control, preservation and realisation of estate assets.

[31] That consideration, however, does not dispense with the applicants' obligation to establish urgency in accordance with Rule 6(12).

[32] The question is not whether the allegations, if ultimately established, would justify relief. The question at this stage is whether the applicants have demonstrated that they cannot obtain substantial redress by following the ordinary course of litigation. In my view, they have not.

[33] A material consideration is that the dispute concerning the continued existence and operation of Money Box is already before this Court in the section 354 application. That application seeks substantive relief concerning the winding-up order itself.

¹ See *Luna Meubel Vervaardigers (Edms) Bpk v Makin* 1977 (4) SA 135 (W), The court set the landmark standard for determining the degree of urgency required in urgent court applications under Uniform Rule of Court 6(12)

² See *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSI) para [8].

[34] The applicants therefore cannot, on the facts before this Court, convincingly contend that there is no avenue through which the issues concerning Money Box's status and its entitlement to conduct business can be determined.

[35] The applicants' own case demonstrates the connection between the relief sought in the present application and the pending section 354 proceedings. The present application is expressly framed as interim relief pending the determination of those proceedings.

[36] The existence of the pending proceedings does not, by itself, render an urgent application incompetent. There may be circumstances in which interim protection is necessary notwithstanding pending proceedings. However, the applicants must still demonstrate why the ordinary determination of the pending proceedings will not afford substantial redress. That threshold has not been met.

[37] The applicants rely heavily upon the alleged depletion of coal and mineral reserves. Yet the factual dispute as to the identity of the entity conducting the mining operations remains material. The respondents contend that Itshudu Coal, a separate juristic person, is conducting the mining operations pursuant to its own statutory authorisations.

[38] This factual dispute is particularly significant because the relief sought is not narrowly confined to identified assets proved to belong to Money Box. It extends to mining operations in the Vlaklaagte area and to coal and mineral products allegedly derived from the business of Money Box.

[39] The applicants have therefore not established, on the papers, a sufficiently clear factual foundation upon which this Court could conclude that the alleged ongoing mining activities are necessarily activities of Money Box or are being conducted by the First Respondent on its behalf.

[40] The existence of disputed facts is not, in itself, a bar to urgent relief. It is nevertheless relevant when determining whether the extraordinary procedure of the urgent court is appropriate, particularly where the relief sought is extensive and potentially affects the rights of separate juristic persons.

[41] The applicants also rely on the refusal of the respondents to furnish an undertaking. That refusal may be relevant to the merits of the dispute, but it does not, without more, establish the jurisdictional requirement of urgency.

[42] The chronology is further inconsistent with the degree of urgency alleged. The applicants became aware of the alleged conduct by at least the time the section 354 proceedings were served. An undertaking was sought on 20 July 2026, while the present application was only issued on 6 August 2026 and was enrolled for hearing on 25 August 2026.

[43] The applicants have not satisfactorily explained why, in the circumstances, substantial redress could not be obtained through the ordinary determination of the pending proceedings or by properly instituting appropriate proceedings on ordinary notice.

[44] The contention that damages would not be an adequate remedy does not answer the separate question whether substantial redress can be obtained in due course. The existence of an inadequate damages remedy does not, on its own, establish urgency.

[45] I accordingly find that the applicants have failed to establish the jurisdictional facts required to invoke the urgent procedure under Rule 6(12).

Non-compliance with the practice directives

[46] There is a further difficulty concerning the manner in which the application was prepared and placed before the urgent Court. The Mpumalanga Division's Practice Directives apply to matters placed on the Court roll, including urgent applications. They require court papers to be properly indexed and paginated and provide, importantly, that where the papers exceed 250 pages, they are to be divided into bundles not exceeding 250 pages each.

[47] The papers before Court comprised approximately 619 pages in a single bundle. The applicants also incorporated the papers in the pending section 354 application into the urgent application.

[48] Compliance with practice directives is not a matter of mere administrative convenience. Practice directives exist to facilitate the proper administration and adjudication of cases, particularly in the urgent Court where the Court is required to deal with substantial volumes of material within compressed time periods.

[49] The applicants' failure to comply with the applicable requirements materially compromised the orderly presentation of the matter. The inclusion of an entire separate application, already pending before this Court, compounded the difficulty.

[50] The fact that an application is urgent does not relieve a litigant from compliance with the applicable practice requirements. On the contrary, the greater the degree of urgency claimed, the greater the need for the papers to be properly prepared and presented in a manner enabling the Court to identify the issues expeditiously.

[51] I accordingly find that the applicants failed to comply materially with the applicable Practice Directives relating to the preparation, pagination and bundling of urgent applications.

Joinder and the proper constitution of the application

[52] There is a further difficulty arising from the manner in which the proceedings have been constituted. The applicants cite numerous respondents, including the Second Respondent, Itshudu Coal, governmental authorities, employees and other entities, yet the substantive relief is directed principally against the First Respondent. At the same time, the relief sought is formulated in terms wide enough potentially to affect the business, mining operations, permits, assets and interests of entities other than the First Respondent.

[53] The applicants' explanation that certain respondents have been cited notwithstanding that no substantive relief is sought against them because they have no substantial interest in the proceedings is difficult to reconcile with the breadth of the relief claimed.

[54] Joinder is not a matter of form. A party is required to be joined where it has a direct and substantial interest in the subject matter of the litigation which may be prejudicially affected by the order sought. The SCA has recently reaffirmed that the

enquiry turns on whether the order sought may directly affect the legal interests of the party concerned³.

[55] In the present matter, the applicants seek to restrain mining operations in a defined geographical area. The respondents' case is that at least some of those operations are conducted by Itshudu Coal, a separate juristic person holding its own authorisations.

[56] If that contention is correct, an order restraining mining operations in the area may directly and substantially affect Itshudu Coal's legal and commercial interests, yet the applicants have not established a proper legal basis upon which this Court can grant such relief against the operations of a separate juristic person through an order ostensibly directed at the First Respondent.

[58] Equally problematic is the fact that the applicants seek relief against the First Respondent personally on the premise that Money Box is in liquidation. The liquidation of a company does not, without more, make its former director personally liable for the company's obligations, nor does it dispense with the need to establish the legal basis for relief against that individual.

[59] The corporate identity of Money Box and that of its directors and other associated companies must be respected unless a recognised legal basis exists for disregarding that separate personality. On the papers before the Court, that legal basis has not been satisfactorily established.

[60] The application is therefore materially defective in its formulation of the parties and the relief sought. The difficulty is not merely technical. It goes to whether the Court can make an effective and legally competent order without prejudicing the rights of persons and entities whose interests are implicated by the relief.

The requirements for an interdict

³ See *Rose v National Prosecuting Authority N O and Others* [2026] ZASCA 91, The first is whether the failure to join the accused as a party renders the application fatally defective. The court held, with reference to *Gordon v Department of Health, KwaZulu-Natal* [2008] (6) SA 522 SCA “that if the order or judgment sought cannot be sustained or carried into effect without necessarily prejudicing the interest of a party or parties not joined in the proceedings, then that party or parties have a legal interest in the matter and must be joined”.

[61] Even if I were to overlook the defects relating to urgency, joinder and compliance with the Practice Directives, the applicants would still be required to establish the requirements for an interim interdict.

[62] The requirements are a prima facie right, although open to some doubt; a well-grounded apprehension of irreparable harm if the interim relief is not granted; a balance of convenience favouring the grant of the relief; and the absence of another satisfactory remedy.

[63] The applicants' difficulty is that the alleged unlawful conduct is itself disputed. In particular, the identity of the entity conducting the mining operations and the relationship between those operations and Money Box remain disputed.

[64] The relief sought is also considerably wider than the factual foundation established in the papers. It would potentially restrain mining operations and dealings with mineral products beyond assets demonstrated to belong to Money Box.

[65] In those circumstances, the applicants have not established a sufficiently clear prima facie right to the full breadth of the relief sought, nor have they established, with sufficient particularity, that the alleged threatened harm is attributable to the First Respondent in his personal capacity.

[66] The Court therefore cannot grant an interdict merely on the basis that the liquidators have a statutory duty to preserve the estate. That duty does not relieve the applicants from proving the factual and legal basis upon which the particular respondent is to be restrained.

CONCLUSION

[67] First, the applicants have failed to establish that the matter is sufficiently urgent to justify the departure from the ordinary procedures of the Court. The existence of the pending section 354 proceedings is particularly material because it demonstrates that the applicants have a substantive avenue through which the underlying dispute can be ventilated and determined.

[68] Secondly, the application has not been properly constituted. The relief sought is directed at the First Respondent but is formulated in a manner capable of affecting the rights and operations of separate juristic persons. The applicants have not established a proper legal basis for such relief.

[69] Thirdly, the applicants materially failed to comply with the Practice Directives governing the preparation and presentation of urgent applications. The filing of approximately 619 pages as a single bundle, including the papers in a separate pending application, is inconsistent with the requirements intended to facilitate the efficient determination of urgent matters.

[70] Fourthly, and independently of the foregoing, the applicants have failed to establish the jurisdictional and substantive requirements for the interim interdict sought.

[71] The Court is mindful that the applicants are liquidators and that the preservation of the assets of an insolvent estate is an important function. That consideration cannot, however, justify the Court dispensing with the procedural and substantive requirements applicable to urgent interdictory proceedings.

[72] The applicants elected to invoke the extraordinary jurisdiction of the urgent Court. They consequently bore the burden of demonstrating why the ordinary course was inadequate and why the Court should intervene in advance of the determination of the pending section 354 proceedings. They have failed to discharge that burden.

[73] Although the absence of urgency ordinarily results in an application being struck from the roll rather than dismissed, the present matter was argued on both urgency and the merits, and the Court has considered and determined the substantive defects in the application, including the defective joinder and failure to establish the requirements for the interdict. In those circumstances, a final dismissal of the application is appropriate.

ORDER

[74] In the result, the following order is made:

1. The application for urgent interim interdictory relief is dismissed with costs.
2. The costs shall include the costs occasioned by the employment of counsel.

(This judgment is handed down electronically by uploading to the electronic file of this matter on CaseLines and by email to the Parties/their legal representatives by email. The date of this Order is deemed to be 08 September 2026)

ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

APPEARANCES:

For the Applicants:

Counsel: Adv Kloek
Attorneys: Jooste Peters Inc
087 701 1837
clemens@joostelaw.co.za

For the 1st, 2nd, 3rd, 8th and 12th Respondents

Counsel: Adv Sihlali
065 053 3559
Mafika.sihlali@gmail.com
Attorneys: Sihlali Attorneys
013 282 7304

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