



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

CASE NO: 529/16

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

SIGNATURE

10/09/2026

DATE

In the matter between:

MKHONTO LOCAL MUNICIPALITY

APPLICANT

And

**PHADA TRADING AND PROJECTS (PTY) LTD
THE SHERIFF OF THE HIGH COURT,
PIET RETIEF (MKHONTO)**

**FIRST RESPONDENT
SECOND RESPONDENT**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand down is deemed to be 10 September 2026.

JUDGMENT

Introduction

[1] This is an urgent application brought in terms of Rule 6(12) of the Uniform Rules of Court by the applicant, Mkhondo Local Municipality, seeking to stay the execution of a warrant issued pursuant to a judgment granted in 2018. The application is launched pending final relief relating to the enforcement of a subsequent settlement agreement.

[2] The application is opposed and the first respondent contended that the application is not urgent, and if it is, the urgency was self-created.

Urgency

[3] It is trite that in terms of Rule 6(12)(b) a party seeking to approach the court on an urgent basis must set out explicitly the circumstances rendering the matter urgent and the reasons why substantial redress cannot be obtained in due course.

[4] Where the urgency is due to the applicant's own actions or inaction, the court will not come to the applicant's assistance. The respondent argued that the applicant knew about the existence of the court order as far as 2018. The applicant is relying on the settlement agreement that was entered into between the applicant and the first respondent, but the applicant did nothing to make the said settlement agreement an order of court.

[5] According to the applicant the trigger event for the current urgent application was the 21st of July 2026 when it became aware of the writ of execution.

[6] The warrant of execution was premised on the judgment and order obtained by the first respondent against the applicant on 18 September 2018.

The applicant's explanation for the delay is that internal governance processes were still being followed before appointing attorneys to launch the application. In my view, the delay is not sufficient to justify the truncation of the ordinary court process, especially where the risk of execution was known and imminent.

[7] The court is guided by the principle that urgency must not be self-created by the applicant's own inaction. In *Luna Meubel*¹, it was held that an applicant who unduly delays in bringing an application and then seeks to rely on urgency created by their own conduct should not be afforded urgent relief.

[8] Similarly, in *East Rock Trading*² the court sated the following:

“[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief, it is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. The applicant must make out his case in that regard.

¹ *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F–H.

² *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* [2011] ZAGPJHC 196 paras 6–8

[8] In my view the delay in instituting proceedings is not, on its own, a good 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 the 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 fix with regard to the two."

[9] The principle is that an applicant who, by their own delay or conduct, creates the urgency cannot expect the court to condone such conduct by granting urgent relief.

[10] In *Association of Mineworkers and Construction Union AND Others v Northern Platinum Ltd and Another*³ the court cautioned against self-created urgency as follows:

".... The more immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency..."

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[11] It is common cause that the applicant became aware of the warrant of execution as early as 8 June 2026, but only launched the urgent application on 21 August 2026, a delay of more than sixty days. The applicant, in its founding and replying affidavits, did not provide a satisfactory explanation for this delay.

³ 2016) 37 ILJ 2840 (LC) at para 26

[12] The applicant's counsel submitted that the underlying causa is the amount on the writ of execution. Counsel argued that the applicant only owes the first respondent an amount of R 110 546.40 as opposed to the R 705 856.66 in terms of the writ of execution. Still, the applicant had this information at least on the 21st of July 2026, but the delay in launching this application is not fully accounted for.

[13] In my view, the applicant failed to explicitly state the circumstances that make this matter urgent. The applicant, in my view, delayed in launching the application thereby creating its own urgency. Consequently, this application stands to be struck off the roll for lack of urgency.

Order

[14] In the result I make the following order:

- 14.1 The application is struck off the roll for lack of urgency.
- 14.2 The applicant is ordered to pay the costs of the application, including the costs of counsel to be taxed on scale B.



K F PHAHLAMOHHLAKA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG

Appearances

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Date judgment reserved: 8 September 2026