

SOUTH AFRICA / JUDGMENT

DLC 56 Group (Pty) Ltd and Another v Mohlawe Technology (Pty) Ltd and Others (Ex tempore) (005443/2025) [2025] ZAGPPHC 260 (26 February 2025)

[2025] ZAGPPHC 260

COURT

North Gauteng High Court, Pretoria

BEFORE

Yende

CASE / FILE NUMBER

005443/2025

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case No. 005443/2025

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED: NO

DATE 14 March 2025

SIGNATURE

In the matter between:

DLC 56 GROUP (PTY) LTD

First Applicant

CALVIN MUTIZE

Second Applicant

And

MOHLAWE TECHNOLOGY (PTY) LTD

First Respondent

MALOSE MGOAI

Second Respondent

PATRICK PHILLIMON MASHA Third Respondent

JOHANNESMAGKIBA MALULEKA Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

KOKETSO CHARLES MAPHOTHOMA

Sixth Respondent

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Summary: Urgent Application -Uniform Rule of Court 6(12) -Applicants should set forth explicitly the reasons why the matter should be treated urgent-self -created / subjective perceived urgency does not entitle the applicants to urgent relief- Application struck from the roll for lack of urgency. The Sanctity of the Urgent Court has to be preserved for matters that are deservingly, lest the Urgent Court would the flooded with matters that are undeserving, self-created / subjective orientated urgency.

JUDGMENT- EX TEMPORE

YENDE AJ

[1] An application is brought in terms of the Uniform Rule 6(12), in that the application, it is common cause that the

applicants should set forth explicitly the reasons why the matter is urgent. Self -created urgency does not entitle the applicants to urgent relief and where it is found that the application is self -created, such application has to be struck off the roll for lack of urgency. The Sanctity of the Urgent Court has to be preserved for matters that are deservingly, lest the Urgent Court would the flooded with matters that are not deserving, self-created therefore subjectively orientated urgency.

[2] This Court has consistently refused urgent applications in cases where the urgency relied upon was subjective urgency, clearly self-created. Consistency is important in this context, as it informs the public and legal practitioners that rules of Court and Practice Directives can only be ignored at a litigant's peril. Legal certainty is one of the cornerstones of a legal system based on the Rule of Law.

[3] As we all know by now that the test for urgency was eloquently stated in the dictum from the judgment in East Rock Trading 7 (PTY) Ltd and Another v Eagle Valley Granite and Another's[1]

that “.... There import thereof is that the procedure set out in Rule 6(12) is not for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course”.

- [4] In other words, urgency must be considered together with the issue of whether there will be substantial redress at a later hearing if the matter is not heard on an urgent basis.
- [5] In this particular matter, this application is today brought before court on urgent basis for non-compliance with the court order viz contempt of court order. The applicants aver that the respondents have not complied or are in contempt of court order.

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- [6] It must be said that there is accordingly no class of proceedings that enjoys inherent preference. It is my view that counsel appearing in urgent court would do well to put the concept of inherent urgency out of their mind, remember, of course, as I said earlier on matters that deserve urgency.
- [7] In this particular matter, the contempt of court is by its nature urgent but the court has got to be very much circumspect when considering the non-compliance with the court order.
- [7.1] Firstly, as to whether those that are alleged to have not complied with the court order did, they have knowledge of same, was the court order served on them personally, do they know what exactly they are supposed to do;
- [7.2] Secondly, when the applicant contends that there is a flagrant contempt of the court order, he must show it to this court sufficiently how they have been in contempt of the court order.
- [8] It is sometimes said that the contempt of court proceedings is inherently urgent in this regard see, Rustenburg

Platinum Mines v Lesojane (UM44/2022) [2022] ZANWHC 36 (21 June 2022) at par 7 and Gauteng Boxing Promoters Association v Wysoke (22/6726)

- [2022] ZAGPJHC 18 (28 April 2022) at par 14). I do not think that can be true as a general proposition that the contempt of court proceedings is inherently urgent. I accept that the enforcement of a contempt of a court order may well qualify as urgent, in situations where time is of essence.

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- [9] But it seems to me that contempt of court proceedings entails the exercise of power which often demand the kind of careful and lengthy consideration which is generally incompatible with urgent proceedings, for example, it cannot be sound judicial policy to commit someone

to prison even where the committal is suspended or to impose a fine on an urgent basis simply because that might be the only way to enforce the court order. [My emphasis], there must, in addition, be some other feature of the case that render it essential that the court order be instantly enforced such that the penalties associated with the contempt require immediate impositions.

- [10] In casu, from the reading of the founding affidavit ad the contempt of court proceedings, the applicant says he saw the respondents being in contempt of the court order and he relies on ANNEXURE E, which is a picture, that depicts a number of employees clad in overalls, whose fascial appearance is not clear. Other than that, there is nothing from the applicant founding affidavit that clearly demonstrate to this court how exactly did the respondents contravene the court order and/or be in contempt of the court order.
- [11] I cannot accept the submissions made by the counsel for the applicant that the sheriff's return further, explain and strengthens the applicant's case by way of the return of service to the effect that they were served on the respondent

personally, that they were served at their place of employment. No where on the return of service does it indicate that each of these respondents did see the court order, same court order which we are here today about, being not complied with.

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- [12] It is the court's view that from the reading of the applicant's founding affidavit, there is a fundamental point that has not been alleged. The applicant has not alleged that there is any imminence and depth of harm that he will suffer if the relief sought is not granted. There is nowhere in his founding affidavit where he alleges same.
- [13] The court unfortunately is constrained to find that this application does not deserve to be heard on urgency and, secondly, the fact that the applicant has not successfully convinced this court as to how have the respondents contravened and or being in contempt of the court order save by only alluding to a picture, which picture upon proper scrutiny one cannot decipher who is who on that picture. That information is the basis upon which the applicant builds its case.
- [14] It is this court's view that the claim by the applicant of contempt of court order based on ANNEXURE E, which is the photograph of seven men whom none are identifiable, which is unclear. This court cannot rely on that photograph to conclude that indeed the respondents are in contempt of court order.
- [15] It is this court's strong view that the submissions made by the applicant's counsel, that the applicant has not succeeded;
1. in convincing the court that this application is urgent;

2. That the facts pleaded on the applicant's affidavit proves that indeed the respondents have been in contravention and /or are in contempt of the court order looking at the four corners of the applicants founding affidavit.

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[16] As a consequence thereof, this application falls to be struck of from the roll for lack of urgency.

Order

Accordingly, I make the following order: -

- (1) The applicant's urgent application be and is hereby struck from the roll for lack of urgency.
- (2) The applicants shall pay the respondent's costs for the urgent application on attorney and own client scale jointly and severally.

J YENDE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

This judgment was prepared by YENDE AJ. It is handed down electronically by circulation to the parties/their legal representatives by e-mail and uploaded on Caselines electronic platform and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed 26 February 2025.

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Appearances:

Advocate for Applicant(s): I Mureriwa Instructed by: S E Kanyoka Attorneys Advocate for Respondent(s): Z Schoeman Instructed by: Kgosana Attorneys Heard: 26 February 2025 Delivered: 26 February 2025

[1] (11/33767) [2011] ZAGPJHC 196 at par 6.

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