

SOUTH AFRICA / JUDGMENT

D.P.E v V.J.E (2024/066643) [2024] ZAGPPHC 1369 (24 December 2024)

[2024] ZAGPPHC 1369**COURT**

North Gauteng High Court, Pretoria

BEFORE

N G M Mazibuko

CASE / FILE NUMBER

2024/066643

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****Case****Number: 2024-066643****REPORTABLE:**

YES / NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED:

YES/NO

24

December 2024

In

the matter between: D[...]
 P[...] E[...]
 Applicant
 and
 V[...]
 J[...] E[...]
 Respondent

JUDGMENT

Mazibuko AJ

Introduction

- [1] This is an opposed urgent application seeking interdictory relief against the second respondent from paying the first respondent's entire pension interest to her pending the divorce action between the applicant and first respondent, who are married out of community of property, with the accrual included. Alternatively, an order for payment of half of the first respondent's pension interest to the applicant if the pension interest is paid out to her.
- [2] The applicant initiated the divorce proceedings in June 2024. It is common cause between the parties that at the time of this application, the first respondent's pension fund benefits represent a significant component of their respective estates for consideration when calculating the accrual.

Urgency

- [3] Rule 6(12) of the Uniform Rules requires applicants, in all affidavits filed in support of urgent applications, to set out the circumstances that render the matter urgent and why they cannot be afforded substantial redress at a hearing in due course.
- [4] Rule 6(12) affords the applicant to create its own rules within which a respondent must file a notice to oppose and an answering affidavit. This is why condonation must be sought when the court is approached. An applicant who cannot convince the court of the rationality and necessity for the timeline devised by it should expect its application to be struck from the roll with costs.[1]
- [5] The applicant must make out their case in the founding affidavit to justify their departure from the norm.[2]
- [6] '... Urgency is a reason that may justify deviation from the times and forms the Rules prescribe. It relates to form, not substance, and is not a prerequisite to a claim for substantive relief.[3]

[7] When a matter is brought to court on an urgent basis, the question to be answered is whether or not the applicant will be afforded substantial redress in due course.[4] In the event that the applicant does not succeed to convince the court that he will not be afforded substantial redress at a hearing in due course, the matter will be struck from the roll.[5]The matter may also be struck from the urgent roll where the court finds that urgency was self-created.

[8] The threshold to establish the juristic fact of "absence of substantive redress" is lower than that of "irreparable

harm" for the purposes of establishing an interim interdict.[6]

[9] Deposing to his founding affidavit in support of his application, the applicant asserted that the application is urgent for the following reasons:

[9.1] The second respondent was informed of the applicant's interest in the first respondent's pension on 6 November 2024.

[9.2] On 28 November 2024, a letter was sent to the first respondent's attorneys addressing the issue of the first respondent going on pension and the need to preserve the pension interest pending the finalisation of accrual calculations.

[9.3] The applicant will be severely prejudiced when the first respondent's employment ends in mid-December 2024, as he will not be included in any reporting process regarding the first respondent's pension payment.

[10] In reply, the applicant stated the first respondent's failure to respond to his letter dated 28 November 2024, where she would have provided an undertaking or confirmation that she was still employed, necessitated this application, averred the applicant.

[11] The first respondent disputed that she had resigned or retired. She contested that the application was not urgent on the following grounds:

[11.1] The parties' pending divorce action has been ongoing since June 2024. despite this being the case, the applicant, through his attorney, only informed the second respondent of the pending divorce on 6 November 2024.

[11.2] The parties held a pre-trial conference on 26 November 2024. During this, the applicant's attorneys did not mention the first

respondent's alleged resignation or retirement.

[11.3] The parties have been married since 22 July 1995, and the applicant has known about the first respondent's retirement age since then.

Discussion

- [12] The applicant must explicitly set forth the circumstances that render the matter urgent and the absence of substantial redress if not heard as a matter of urgency. This is not the equivalent of irreparable harm. Delay will not automatically result in the matter not being considered urgent.[7]
- [13] Notwithstanding that the applicant is legally represented and commenced the divorce proceedings in June 2024, only in November 2024 did he inform the second respondent about such proceedings. It can be accepted that the applicant had been fully appraised of his rights and any harm he could suffer with respect to the accrual calculations, at least since the commencement of the proceedings. Therefore, urgency cannot be relied on five months later.
- [14] When the applicant sought confirmation or verification about the resignation or retirement of the first respondent, the letter relied on was dispatched only on 28 November, the same date the founding affidavit attached to the notice of motion in this application was deposed on. By the morning of 29 November, the application had already been issued. She was not afforded an opportunity to respond to the letter. The letter was dispatched to her attorneys, who, by implication, needed to share same with her and obtain instructions. The applicant elected not to grant the first respondent sufficient opportunity to inform him whether she had resigned or retired.
- [15] It is unclear why the applicant only in his replying affidavit averred the first respondent informed him that she would go on pension. In his founding affidavit, he stated that he had 'established that the first respondent's employment will come to an end mid-December 2024'.
- [16] I believe it was not the first respondent's failure to respond to the said letter of 28 November that necessitated this application, as averred by the applicant. The applicant proffered no explanation for his conduct and the events leading up to the launch of the application. No facts or evidence were placed by the applicant before the court, justifying the urgent attention of the court with regard to the first respondent's pension fund benefits. I believe the urgency on which the applicant placed his reliance was self-created, amounting to abuse of the court process.
- [17] The applicant has not passed the threshold prescribed in uniform rule 6(12)(b) for the reasons already mentioned. Therefore, the application ought to be struck off the roll due to lack of urgency. For this reason, I need not proceed to determine the issue of merits. This brings me to the next issue concerning the costs.
- [18] The facts of the present matter and the interest of justice justify me to follow the general rule that the successful party should be awarded costs.
- [19] Consequently, I make the following order.

Order:

- a) The applicant's urgent application is hereby struck off the roll due to lack of urgency.

b) The applicant will pay the costs, including that of counsel, on scale B.

N G M MAZIBUKO

ACTING JUDGE OF THE HIGH COURT

PRETORIA

Heard on:

Judgment

delivered on: 17 December 2024 24 December 2024 For the applicant: Adv L K Van der Merwe
Instructed by: Cawood Attorneys For the respondent: Adv Z M Du Plessis Instructed by: Shapiro
and Ledwaba Inc

- [1] E.M.W v S.W (26912/2017) [2023] ZAGPJHC 710, para 10.
- [2] Luna Meubel Vervaardiger (Edms) Bpk v Makin 1977(4) SA 135 (W) at 137E.
- [3] Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd;
Commissioner, South African Revenue Services v Hawker Aviation Partnership and Others
[2006] ZASCA 51; 2006 (4) SA 292 (SCA) at [9]
- [4] East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others
(11/33767) [2011] ZAGPJHC 196 (23 September 2011).
- [5] SARS v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA).
- [6] Several matters on the urgent court roll 2013 (1) SA 549 (GSJ).
- [7] (Molosi and Others v Phahlo Royal Family and Others [2022] 3 All SA 160 (ECM).

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Prepared on 12 October 2026 · Esheria